



AGENDA

Benchers

Date: Thursday, February 13, 2020

Time: 12:30 pm

Location: Law Society Classroom, 3rd Floor - 200 St. Mary Avenue, Winnipeg, Manitoba

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1.0	PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT				
	The President will welcome to the meeting new Bencher Jessica Saunders.				
2.0	IN MEMORIAM				
	<p>The Honourable Justice Ronald Dean Bell, who passed away on January 13, 2020 at the age of 87. Mr. Bell received his call to the Bar on May 25, 1955. He then relocated to Ontario where he served as counsel to the Department of National Revenue, Taxation Division. From 1956 to 1991 he practised in Edmonton and Calgary and from 1991 to 2006 he served as a Judge of the Tax Court of Canada. Mr. Bell was appointed Queen's Counsel in 1976. He served as Chancellor of Brandon University from 1990 to 1996 and was named Chancellor Emeritus of the University in 1998. Mr. Bell resided in Winnipeg at the time of his death.</p>				

William David Hamilton, who passed away on January 13, 2020 at the age of 72. Mr. Hamilton received his call to the Bar on June 26, 1973. He then joined Thompson Dorfman Sweatman where he practised for 32 years. In 2006 Mr. Hamilton joined the Manitoba Labour Board where he served as chairperson and also as counsel up to the date of his death.

Marlo Jayne Jurkowski, who passed away on January 17, 2020 at the age of 41. Ms Jurkowski received her call to the Bar on June 16, 2005. She began her career as a partner with Perlov Stewart LLP before joining the Workers Compensation Board of Manitoba as in-house counsel in 2006. She served in this position up to the date of her death.

Raymond Phillip Oakes, who passed away on January 24, 2020 at the age of 60. Mr. Oakes received his call to the Bar on June 28, 1984. Following his call, Mr. Oakes practised as a sole practitioner and associate for three years. In 1987 he joined the firm known today as BD Oakes Jardine Kaneski UnRuh where he practised up to the date of his death.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
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3.0 CONSENT AGENDA

The consent agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting.

3.1	Minutes of December 19, 2019 Meeting			Attached	Approval
3.2	2020/2021 Bencher Budget			Attached	Approval

4.0 EXECUTIVE REPORTS

4.1	President's Report	5	Anita Southall	Attached	Briefing
4.2	CEO Report	10	Kris Dangerfield	Attached	Briefing
4.3	Strategic Planning	5	Kris Dangerfield	Attached	Briefing

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
5.0 DISCUSSION/DECISION					
5.1	Nominating Committee Report	30	Kathy Bueti Kris Dangerfield	Attached	Discussion/ Decision
5.2	CPLED	30	Leah Kosokowsky	Attached	Discussion/ Decision
6.0 COMMITTEE REPORTS					
6.1	Complaints Investigation Committee	5	Wayne Onchulenko	Attached	Briefing
6.2	President's Special Committee on Health and Wellness	10	Wayne Onchulenko		Briefing
6.3	President's Special Committee on Regulating Legal Entities	10	Grant Driedger		Briefing
7.0 MISCELLANEOUS BUSINESS					
7.1	2020/2021 Budget Report	20	Kris Dangerfield	Attached	Briefing
7.2	Reimbursement Fund Report	20	Kris Dangerfield Tana Christianson	Attached	Briefing
8.0 FOR INFORMATION					
8.1	Lawyers for Literacy Information and Pledge Form			Attached	Information
8.2	Media Reports			Attached	Information

MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield

DATE: February 5, 2020

RE: **Strategic Planning**

Attached to this memo you will find the Strategic Plan Update for the period 2017 to 2020 together with the more detailed Strategic Plan and Action Plan. We have made significant strides in achieving the goals that the benchers set out in April 2017:

- (1) A new high quality, pre-call education and assessment CPLED program (PREP) was developed and is now being delivered in collaboration with our CPLED partners in Saskatchewan and Alberta;
- (2) Collaboration with the Faculty of Law has resulted in the development of the Law Library Hub which will open for business February 10, 2020. This will assist in facilitating the Law School's ability to provide students with practice-ready skills;
- (3) Work on entity regulation has continued and an Entity Practice Management Assessment Tool has been developed that sets out management principles to support competent practice. Collaboration on this continues with our Prairie Working Group.
- (4) A regulatory infrastructure and rules for the implementation of entity regulation was developed that led to the registration of law firms and the designation of a Trust Account Supervisor effective April 1, 2019;
- (5) A law firm practice management course, now described as Law Practice Fundamentals, was and continues to be developed which provides resources to lawyers and law firms to support competent practice;
- (6) A President's Special Committee is currently exploring health and wellness issues, including the development of a diversion program outside the complaints/discipline stream for members who suffer from mental health issues or addictions that may affect legal practices;

- (7) A Trust Safety Program was created to prevent careless and inadvertent loss of trust funds caused by poor recordkeeping. The Program went into effect April 1, 2019 and required law firms with trust accounts to designate a Trust Account Supervisor who was required to take and complete specialized training in trust account management;
- (8) Work on removing regulatory barriers that prevent legal services from being reasonably available at a reasonable cost continues. The President's Special Committee on Regulating Legal Entities will make recommendations in April 2020 on the framework for the delivery of legal services through Civil Society Organizations (CSOs);
- (9) The Access to Justice Steering Committee engaged in strategic planning and has encouraged the development of a number of access initiatives, including the Law Library Hub and the application for funding of an Access Coordinator;
- (10) Collaboration with a range of stakeholders, including the Law School, the Province, CLEA and the Legal Help Centre (together with funding from the Manitoba Law Foundation) has led to the creation of the Law Library Hub;
- (11) The Law Society continues to work on initiatives to demonstrate commitment to equity, diversity and inclusion. This includes:
 - a. Education of the profession, the benchers and staff on issues relating to equity, diversity and inclusion;
 - b. Developing and delivering CPD programs to benchers, staff and the profession to increase cultural competency in response to the TRC Calls to Action;
- (12) A communications plan was developed with the assistance of the President's Special Committee on Communications that has led to:
 - a. The retention of a Communications Officer;
 - b. The development of new branding;
 - c. The development of the new Law Society website; and
 - d. The creation of a plan for ongoing communications with the profession and the public via social media.
- (13) Work continues on increasing communications with the profession via the new communications tools. Specific engagement will include the Information Session on becoming a new bencher to be held in February 2020.

All in all, it is safe to say that there has been an enormous amount of work that has been done that is directly related to the Strategic Plan that was approved by the benchers in 2017. Technically this plan will come to an end March 31, 2020, although there are a number of initiatives outlined in the plan that are not yet concluded or will continue into the future because they align with the Law Society's statutory mandate to protect the public. For example, the one major initiative that has not been fully developed is a Practice Audit Program.

We will continue to work to achieve the goals outlined in the plan in the short term, but of course we have a new round of strategic planning scheduled to take place April 23 to 24, 2020. As you can see, there is a direct relationship between the Strategic Plan and our activities that will follow over the course of the next three years. With that in mind it is **absolutely critical** that you ensure that you are available and will attend the full schedule of Strategic Planning activities that are set for April 23 to 24, 2020. This will include:

Thursday, April 23, 2020

12:30 to 2:00 pm Regular Bencher Meeting
2:15 to 5:00 pm Strategic Planning
6:00 to 9:00 pm Dinner

Friday, April 24, 2020

8:30 am to 4:00 pm Strategic Planning

We will be led through the Strategic Planning process by a certified facilitator, Scott Ferguson from Progress Consulting. We have been working with Scott to develop a plan that we believe will maximize our time together and produce a comprehensive Strategic Plan that will build on what was done in 2017 and provide a roadmap for the work of the Law Society for the next three year cycle. Attached you will find an overview of the proposed process. We have already begun the work of environmental scanning and prioritizing issues with both staff and the Executive Committee. Once this work is complete, you can expect to receive a survey so that you can share your own thoughts well in advance of the April session.

Atc.

The Law Society of Manitoba Strategic Plan 2017 - 2020

February 2020



Mission Statement

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

Competence

Regulate proactively to protect the public interest by ensuring that legal services are delivered by competent and ethical lawyers.

- Implement a "Cradle to Grave" approach by assessing and addressing the competence of lawyers at all stages of practice.
- Proactively assist lawyers and law firms to mitigate risk.
- Proactively ensure that lawyers are fit to practice by addressing members' capacity issues.
- Safeguard client property.

Benchers approve an incremental approach to the regulation of entities and the use of self-assessments November 2018

Registration of law firms commences April 1, 2019

On-line Trust Safety module commences delivery April 1, 2019 with trust account supervisors to be approved by October 1, 2019

Benchers approve adoption of a practice review/audit program to assist lawyers in meeting competency standards in their practices May 2019

Practice and Ethics Committee issues Report on Practice Audit/Reviews May 2019

Consideration of health and wellness issues by benchers September 2019; FLSC Conference on Health and Wellness in St. John's Newfoundland October 2019

President's Special Committee on Health and Wellness begins work November 2019

President's Special Committee on Delivering Legal Services begins work November 2019

Rules on Anti-Money Laundering and Terrorist Financing approved October 31, 2019

Continuing Professional Development programming delivered September to December 2019; Best Practice resources and checklists developed and shared with the Benchers and the profession

CPLED 2.0 pilot project commences in Alberta August, 2019

Cont'd

Access to Justice

Demonstrate leadership in the advancement, promotion and facilitation of increased access to justice for all Manitobans.

- Explore giving up the profession's monopoly over the delivery of legal services.
- Increase and improve collaboration with the Courts and other justice system stakeholders to advance, promote and increase access to justice.
- Promote the unbundling of legal services as a way to increase access to justice.

Participation in National Access Committee Summit April 2019

Benchers approve Report from the President's Special Committee on the Delivery of Legal Services to permit legal services to be delivered by providers who are unregulated, persons acting under the supervision of a lawyer, persons with a limited license and legal entities, including associations of lawyers and non-lawyers such as Civil Society Organizations May 2019; Report shared with Department of Justice

Work on Law Library Hub continues with collaboration across stakeholder groups

Report on Hub Project proposal shared with stakeholders November 2019

Manitoba Law Foundation approval of reallocation of funds for Hub Operations December 2019

Application for Manitoba Law Foundation to fund Access to Justice Coordinator

Hub commences operations February 2020

PREP Pilot project commence in Manitoba January 30 2020

Report to benchers on survey results on the articling experience September 2019; Report shared with Equity Committee

Meeting of national counterparts in St. John's, Newfoundland to discuss updates on entity regulation initiatives October 2019

Stakeholder Confidence

Build public and stakeholder confidence in the Law Society as the regulator of the legal profession.

- Communicate effectively with the public and other stakeholders about the Law Society's mandate as a regulator to protect the public interest.
- Increase the Law Society's engagement with and education of the public.
- Increase the Law Society's engagement with the profession.

Engagement with profession through surveys on articling May 2019

Engagement with profession through attendance at Welcoming Ceremony at Faculty of Law and sponsorship of reception September 2019

Engagement with profession through development of survey on part-time practising fees; Draft survey shared with Equity Committee October 2019.

Engagement with profession through 50 Year Lunch November 2019

Nominating Committee consideration of issues around increasing engagement of the profession in the electoral/appointment process December 2019

New branding of LSM implemented through new signage installed on LSM premises, introduction of new logo through the Communique December 2019

Website unveiled January 2020

Survey on part time practicing fees to be finalized and distributed Spring 2020

Information Session on Becoming a Bencher scheduled for February 2020

Equity, Diversity and Inclusion

Promote and improve principles of equity, diversity and inclusion in the regulation of the legal profession and in the delivery of legal services.

- Demonstrate commitment to equity, diversity and inclusion.
- Promote, support and facilitate equity, diversity and inclusion within the legal profession.
- Address the Calls to Action of the Truth and Reconciliation Committee.

Equity Committee focusing on cultural competency, equity and diversity initiatives for profession, Benchers and staff

Equity Committee develops Roadmap for Increasing Cultural Competency

Expansion of gender categories in Annual Member Report April 2019

Host SOGIC Pride Reception May 2019

Benchers and Equity Committee consider issues relating to part-time practising fees; Draft survey developed and shared with Equity Committee October 2019; Survey out for revisions December 2019

Engagement with Indigenous community in relation to Indian Day Schools Settlement Agreement August/September 2019

Sponsor reception for sacred eagle feather gifting ceremony September 2019

Engagement with Indigenous Bar November 2019

Engagement with Indigenous articling and law students through Building Connections event January 2020

Survey on part-time practising fees to be finalized and distributed Spring 2020

Nominating Committee Report to Benchers February 2020 recommending diversity in appointed Benchers



**The Law Society of Manitoba
2017-2020
Strategic Plan**

-and-

Action Plan

Updated January 2020

Strategic Objective 1: Competence

Regulate proactively to protect the public interest by ensuring that legal services are delivered by competent and ethical lawyers.




Desired Outcomes:

- Lawyers are competent upon being called to the Bar
- Lawyers are competent throughout all stages of practice
- Practice standards are enhanced
- Lawyers who have mental health issues are treated fairly and equitably
- Client property is safeguarded

Strategy 1.1





We will implement a “Cradle to Grave” approach by assessing and addressing the competence of lawyers at all stages of practice.

Actions	Priority Level	Steps	Timeline	Status
Activity 1.1.1 CPLED Program - Develop and deliver a renewed CPLED program that is a high quality, pre-call education and assessment program in collaboration with our CPLED partners in Alberta and Saskatchewan	Immediate	Step 1: Identify a consultant to review CPLED and identify transition plan for next version of CPLED	May 2016	✓
		Step 2: Receive and consider report from The Learning Group outlining groundwork for new version of CPLED (CPLED 2.0)	September 2016	✓
		Step 3: Retain Executive Search Company	March 2017	✓
		Step 4: Interview for new CPLED CEO	Summer - 2017	✓
		Step 5: Hire new CEO	September 2017	November ✓
		Step 6: Work with new CEO and CPLED Partners to develop new education and assessment program	2017 - 2019	✓

Actions	Priority Level	Steps	Timeline	Status
		Step 7: Consider how to more effectively integrate articling with the CPLED program	Ongoing	
Activity 1.1.2 Practice Audits - Develop plans and procedures for implementation of practice audits	Intermediate	<p>Step 1: Conduct environmental scan to identify other regulatory programs that implement practice audits (e.g. LSUC)</p> <p>Step 2: Identify whether LSM has necessary legislative authority to direct practice audits</p> <p>Step 3: Conduct Risk Analysis and determine categories of membership who are most at risk for complaints and claims</p> <p>Step 4: Consider whether all members should be subject to random practice audits</p> <p>Step 5: Consider nature of audits (scope; extent)</p> <p>Step 6: Determine who will conduct audits and address budgetary issues</p> <p>Step 7: Report and make recommendations to Benchers</p> <p>Step 8: Create regulatory infrastructure and rules as may be required for implementation</p>	2018 - 2019 April 2019 Ongoing	 
Activity 1.1.3 Law Schools - Consider and actively explore opportunities to deepen relationships and collaborate with law schools to provide “practice-ready” skills	Long-Term	<p>Step 1: Continue to liaise with Prairie Law School Deans</p> <p>Step 2: Identify ways to collaborate on providing skills-based learning</p>	Ongoing Law Library Hub Collaboration 2019-2020 Ongoing	

Strategy 1.2


We will proactively assist lawyers and law firms to mitigate risk.

Actions	Priority Level	Steps	Timeline	Status
Activity 1.2.1 Entity Regulation - Proactively assist law firms (entities) to mitigate risk by enhancing practice standards relating to specified management principles and by increasing practice supports	Immediate	Step 1: Develop Entity Practice Management Assessment Tool	2016 - 2017	
		Step 2: Conduct Pilot Project	July – August 2017	
		Step 3: Review assessments completed and returned	September 2017	ongoing
		Step 4: Create survey (in collaboration with Prairie Law Societies) to assess self-assessment tool	Fall 2017	
		Step 5: Send out survey to all participants and receive results	October - November, 2017	ongoing
		Step 6: Analyze feedback and report to Benchers with recommendations for implementation	February 2018	
		Step 7: Create regulatory infrastructure and rules for implementation of entity regulation	April 2019 Law Firm Registration	
		Step 8: Review and assess resources available to firms and lawyers to help meet expected standards in the delivery of legal services	Ongoing	
		Step 9: Assess and address resource requirements to supplement existing resources	Ongoing	

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 1.2.2</p> <p>Small Firms – Create a Small Firm Practice Management course and provide appropriate resources for lawyers who want to practice as sole practitioners</p>	<p>Immediate</p>	<p>Step 1: Conduct environmental scan of Law Practice Management Programs</p> <p>Step 2: Obtain authorization to adapt B.C Small Firm Practice Management Course</p> <p>Step 3: Begin adaptation and development of resources for Manitoba lawyers</p> <p>Step 4: Consider framework for requiring sole practitioners and others to complete Small Firm Practice Management Course</p> <p>Step 5: Create infrastructure and rules as may be required for implementation</p> <p>Step 6: First module rolled out with new website</p>	<p>September 2015 – February 2016</p> <p>May 2017</p> <p>June – December 2017</p> <p>February 2018</p> <p>May 2018</p> <p>January 2020</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>









Strategy 1.3

We will proactively ensure that lawyers are fit to practice by addressing members' capacity issues.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 1.3.1</p> <p>Develop a diversion program outside of the complaints/discipline stream for members who suffer from mental health issues or addictions that may affect legal practices</p>	<p>Long-Term</p>	<p>Step 1: Conduct an environmental scan and consider responses of other regulators (Establish President's Special Committee 2019-2020)</p> <p>Step 2: Consider opportunities for additional mental health supports and resources</p> <p>Step 3: Recommend framework for diversion program to Benchers</p> <p>Step 4: Create infrastructure and rules as may be required for implementation</p>	<p>2018 - 2019</p> <p>2019-2020</p> <p>2019-2020</p> <p>2019-2020</p> <p>2019-2020</p>	<p></p>

Strategy 1.4

We will safeguard client property.

Actions	Priority Level	Steps	Timeline	Status
Activity 1.4.1 Develop and implement "Trust Safety Program" to prevent carelessness and inadvertent loss of trust funds caused by poor record keeping	Immediate	Step 1: Consider environmental scan of trust compliance program in place in Alberta and other jurisdictions	2016 - 2017	
		Step 2: Consider components of trust compliance program appropriate for Manitoba context including application process and eligibility	2017	
		Step 3: Develop framework for training and approval of trust account supervisors and appeal process	2017 - 2018	
		Step 4: Consider and develop framework for revocation of approval of trust account supervisors and appeal process		
		Step 5: Report to Benchers with recommendations for implementation	February 2018	
		Step 6: Create regulatory infrastructure and rules as may be required for implementation	April 2018 April 2019	
		Step 7: Develop educational program for the profession outlining new trust safety requirements.	June 2018 April 2019	
		Step 8: Commence program implementation	October 2018 October 2019	

Strategic Objective 2: Access to Justice

Demonstrate leadership in the advancement, promotion and facilitation of increased access to justice for all Manitobans.

Desired Outcomes:

- Manitobans will have access to the required complement of appropriately trained lawyers and legal service providers to meet their legal needs
- The Law Society will advance, promote and facilitate the delivery of quality, innovative, accessible and affordable legal services including pro bono services
- The Law Society plays an active role regarding access to justice issues and ways to increase access

Strategy 2.1

We will explore giving up the profession’s monopoly over the delivery of legal services.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 2.1.1</p> <p>Remove regulatory barriers that prevent legal services from being reasonably available at a reasonable cost</p>	<p>Immediate</p>	<p>Step 1: Create President’s Special Committee on Alternate Legal Service Providers</p>	<p>June 2017</p>	<p>✓</p>
		<p>Step 2: Conduct research and do environmental scan in order to identify and analyze trends and developments relating to expanded models for delivery of legal services</p>	<p>August - September 2017</p>	<p>ongoing</p>
		<p>Step 3: Explore with Special Committee issues and options for Benchers to consider</p>	<p>September 2017 – March 2018 2018-2019 2019-2020</p>	<p>ongoing</p>
		<p>Step 4: Consider viability of collaboration with community colleges to develop “paralegal program” or alternate provider of legal services program</p>	<p>2018</p>	
		<p>Step 5: Report to Benchers with recommendations</p>	<p>April 2018 April 2019</p>	

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 2.1.2</p> <p>Plan and schedule a follow up strategic planning session for A2J Steering Committee</p>	Intermediate	<p>Step 1: Review existing A2J strategic planning session goals; evaluate alignment of goals with Terms of Reference; create status report for Steering Committee</p> <p>Step 2: Conduct strategic planning exercise with Committee</p> <p>Step 3: Report to Benchers with recommendations</p> <p>Step 4: Review priorities</p> <p>Step 5: Seek Manitoba Law Foundation funding for Access Coordinator</p>	<p>October 2017</p> <p>November 2017</p> <p>April 2018</p> <p>December 2019</p> <p>January 2020</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>

Strategy 2.2

We will increase and improve collaboration with the Courts and other justice system stakeholders to advance, promote and increase access to justice.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 2.2.1</p> <p>Promote and facilitate collaboration among Stakeholders relating to issues of common concern</p>	Intermediate	<p>Step 1: Facilitate meetings of access stakeholders to exchange information and ideas about access</p> <p>Step 2: With input from stakeholders, identify some common issues and invite participation from stakeholders to form smaller working groups to address those issues and propose possible solutions</p>	<p>Ongoing</p> <p>By January 2018</p>	<p>✓</p> <p>✓</p>
<p>Activity 2.2.2</p> <p>Review LSM Forgivable Loans Program and use it more effectively to increase access</p>	Intermediate	<p>Step 1: Program is revised in accordance with Benchers' resolutions</p> <p>Step 2: Amend information on Society website and Faculty of Law materials</p> <p>Step 3: Consider how to promote program more effectively and broadly (e.g. notices in Community Colleges, all Universities, rural high schools)</p>	<p>September 2017</p> <p>Fall 2017</p>	<p>✓</p> <p>In progress</p>
<p>Activity 2.2.3</p> <p>Advance, promote and facilitate an increase in the provision of legal resources and information to the profession and to the public</p>	Intermediate	<p>Step 1: Collaborate with stakeholders (e.g. CLEA) to share legal resources with the public via the Manitoba Law Library Inc.</p> <p>Step 2: Obtain status update on stakeholder survey conducted by Public Education and Information Working Group.</p> <p>Step 3: Meet with certain stakeholders to consider creation of information portal (no wrong door approach)</p> <p>Step 4: Explore funding sources to create development of information portal</p>	<p>August 2017</p> <p>Fall 2017</p> <p>January 2018 2018-2019 2019-2020</p> <p>2019</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>

Actions	Priority Level	Steps	Timeline	Status
		Step 5: Develop and establish Law Library Hub via Manitoba Law Foundation funding	2019-2020	✓

Strategy 2.3

We will promote the unbundling of legal services as a way to increase access to justice.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 2.3.1</p> <p>Create Continuing Professional Development programs to educate lawyers about how to engage in provision of unbundled legal services</p>	<p>Long-Term</p>	<p>Step 1: Continue to provide CPD and resources on the benefits of unbundling – especially in the area of family law</p> <p>Step 2: Communicate resources through website, Manitoba Law Library Inc. and Communique.</p>	<p>2017-2020</p> <p>2017-2020</p>	<p>✓</p> <p>✓</p>

Strategic Objective 3: Equity, Diversity, and Inclusion

Promote and improve equity, diversity and inclusion in the regulation of the legal profession and in the delivery of legal services.

Desired Outcomes:

- The legal profession is equitable, diverse, and inclusive
- Lawyers are culturally competent in the delivery of legal services
- Benchers are culturally competent

Strategy 3.1

The Law Society will demonstrate commitment to equity, diversity and inclusion.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 3.1.1</p> <p>Explore whether the Society’s operational policies and processes demonstrate commitment to equity, diversity and inclusion</p>	Intermediate	<p>Step 1: Amend Governance Policy End. No. 8 in accordance with Bencher decision</p> <p>Step 2: Conduct a review of Society’s operations (policies and processes)</p>	<p>October 2017</p> <p>2018 – 2019</p>	✓
<p>Activity 3.1.2</p> <p>Examine profession’s demographics and consider issues relating to under-representation and retention</p>	Long-Term	<p>Step 1: Consider how to improve collection and utilization of relevant data from membership relating to equity, diversity and inclusion (e.g. conduct exit interviews, seek reasons why members withdraw from practice)</p> <p>Step 2: Gather improved data</p> <p>Step 3: Conduct comparative analysis of demographic data to data from across Canada</p>	2018 - 2019	

Strategy 3.2

We will promote, support and facilitate equity, diversity and inclusion within the legal profession.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 3.2.1</p> <p>Educate the profession in understanding and addressing issues relating to equity, diversity, and inclusion</p>	Intermediate	<p>Step 1: Consider increasing educational opportunities to promote equity, diversity, and inclusion within the profession</p> <p>Step 2: Develop appropriate resources</p> <p>Step 3: Create and deliver CPD programs to provide education and resources to members relating to the issues</p>	<p>2018 - 2019</p> <p>2018 - 2019</p> <p>Ongoing</p>	<p>✓</p> <p>✓</p>
<p>Activity 3.2.2</p> <p>Develop current model policies and resources designed to assist profession to become more equitable, diverse and inclusive</p>	Intermediate	<p>Step 1: Secure continued delivery of Equity Ombudsperson services to the profession</p> <p>Step 2: Develop model to deliver services both internally and externally</p> <p>Step 3: Create current model policies and supplement existing resources for members</p> <p>Step 4: Monitor Federation of Law Societies Model Code Standing Committee's work on cultural competence as an ethical obligation</p>	<p>Summer – early Fall 2017</p> <p>Summer early Fall 2017</p> <p>2018 - 2020</p> <p>Ongoing</p>	<p>Dec. 1, 2017 (Equity Officer)</p>

Strategy 3.3

We will address the Calls to Action of the Truth and Reconciliation Committee.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 3.3.1</p> <p>Increase cultural competency in the delivery of legal services</p>	<p>Immediate</p>	<p>Step 1: Consider recommendations of 2017 Equity Committee and continue its work to implement specific Calls to Action.</p> <p>Step 2: Monitor work of the Federation of Law Societies TRC Calls to Action Advisory Committee</p> <p>Step 3: Develop a roadmap or targeted plan to assist members of the profession to become culturally competent in the delivery of legal services (plan to include short and long-term goals)</p> <p>Step 4: Assess and address any resource requirements associated with implementing the roadmap or targeted plan</p> <p>Step 5: Address whether changes need to be made to Rules (e.g. if there is going to be a requirement to take certain CPD programs) and make any required changes</p> <p>Step 6: Implement the plan</p>	<p>2017 - 2018</p> <p>Ongoing</p> <p>2017 - 2018</p> <p>2018 - 2019</p> <p>2018 - 2019</p>	<p>✓</p> <p>Ongoing</p> <p>✓</p> <p>✓</p>
<p>Activity 3.3.2</p> <p>Increase cultural competency among the Benchers and staff</p>	<p>Immediate</p>	<p>Step 1: Identify training opportunities and resources</p> <p>Step 2: Consider framework to provide annual training to Benchers and staff to assist them in becoming more culturally competent in their regulatory work.</p> <p>Step 3: Conduct blanket exercise with Law Society staff</p> <p>Step 4: Deliver training</p>	<p>2017-2018</p> <p>2017-2018</p> <p>October 2017</p> <p>2018-2019 2019-2020</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>

Strategic Objective 4: Stakeholder Confidence

Build public and stakeholder confidence in the Law Society as the regulator of the legal profession.

Desired Outcomes:

- The public, the profession, government and other stakeholders trust the Law Society to be proactive, fair, transparent, accountable and innovative in regulating the profession in the public interest
- The public and other stakeholders understand the role of the Law Society and the value of an independent and independently regulated profession
- The Law Society experiences greater engagement with the public, the profession and other stakeholders

Strategy 4.1

We will communicate effectively with the public and other stakeholders about the Law Society's mandate as a regulator to protect the public interest.

Actions	Priority Level	Steps	Timeline	Status
Activity 4.1.1 Develop a comprehensive communications plan to strengthen our relationships with all stakeholders	Intermediate	Step 1: Establish President's Special Committee on Communications	June 2017	✓
		Step 2: Analyze issues and consider solutions and opportunities to address communications challenges;	September 2017 – February 2018	ongoing
		Step 3: Develop key messages and processes, including social media, to enhance communications with the public, the profession, government, and other stakeholders to build a better understanding of the Law Society		✓
		Step 4: Report to the Benchers with recommendations	April 2018	✓
		Step 5: Hire Communications Officer	January 2019	✓

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 4.1.2</p> <p>Create new website for The Law Society of Manitoba</p>	Intermediate	<p>Step 1: Assess functionality and form of website with input from Law Society staff</p> <p>Step 2: Engage in consultation with website developer regarding structure and reorganization</p> <p>Step 3: Content review and revision using plain language</p> <p>Step 4: Develop online payment platform</p> <p>Step 5: Introduce new website</p> <p>Information session</p>	<p>Spring 2017</p> <p>Spring 2017</p> <p>Fall 2017</p> <p>Spring 2018</p> <p>June 2018</p> <p>January 2020</p> <p>February 2020</p>	<p>✓</p> <p>✓</p> <p>ongoing</p> <p>✓</p> <p>✓</p>

Strategy 4.2

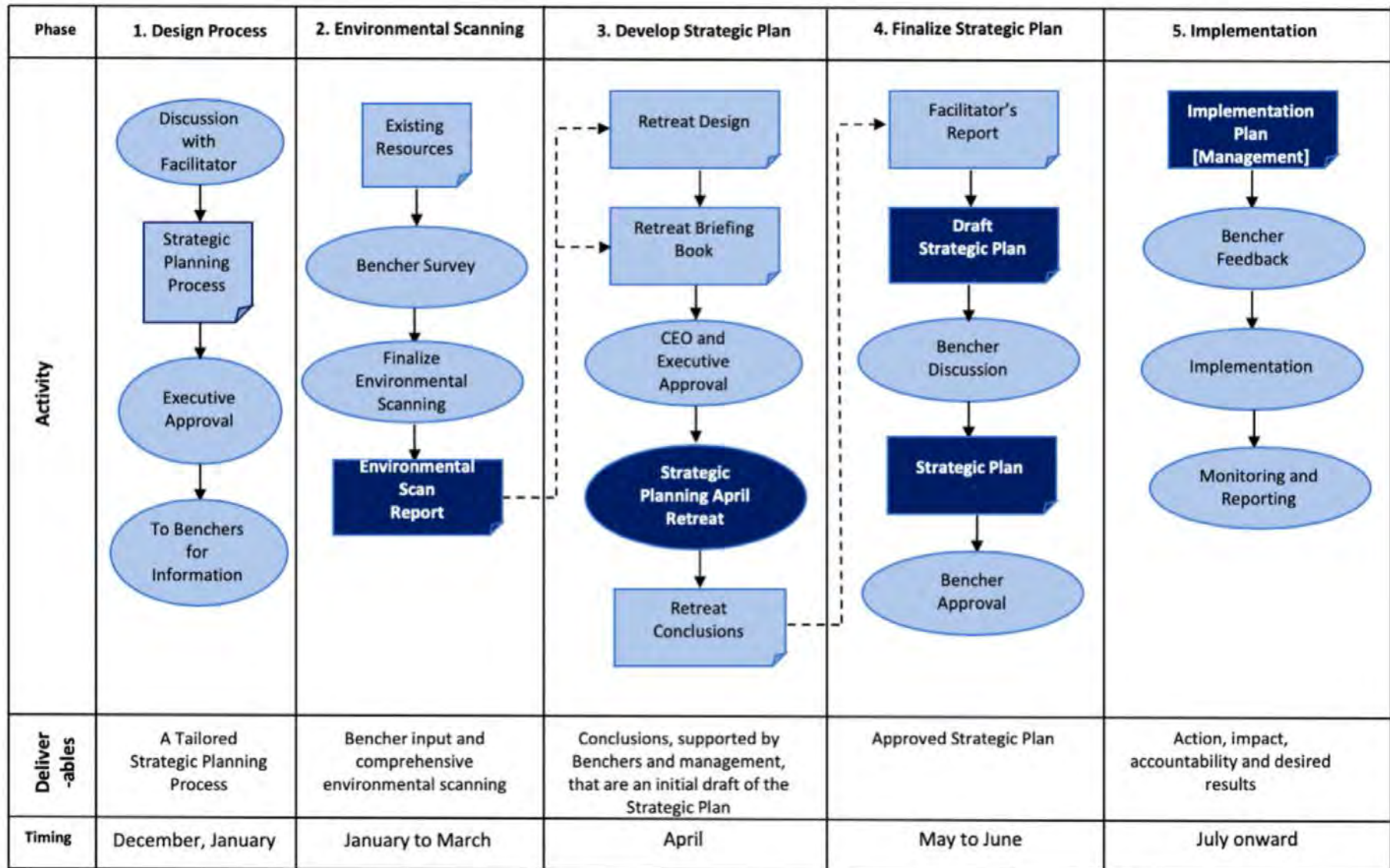
We will increase the Law Society's engagement with and education of the public.

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 4.2.1</p> <p>Determine what the public thinks of and wants from the Society</p>	<p>Long-Term</p>	<p>Step 1: Conduct survey to obtain information</p> <p>Step 2: Arrange Focus Groups or Town Halls</p> <p>Step 3: Participate in relevant Community meetings or debates or similar forums</p> <p>Step 4: Identify needs and develop a plan to respond to those needs</p> <p>Step 5: Report to Benchers</p>	<p>2019 - 2020</p>	
<p>Activity 4.2.2</p> <p>Manage the expectations of the public</p>	<p>Long-Term</p>	<p>Step 1: Increase available resources to educate the public</p> <p>Step 2: Make resources widely available (website, Library Hub)</p>	<p>2019 - 2020</p>	<p>✓</p> <p>✓</p>

Strategy 4.3

We will increase the Law Society's engagement with the profession.

Actions	Priority Level	Steps	Timeline	Status
Activity 4.3.1 Determine what the profession thinks of and wants from the Society	Long-Term	Step 1: Conduct survey to obtain information Step 2: Arrange Focus Groups, debates, forums or otherwise actively seek feedback on issues under consideration Step 3: Identify needs and develop a plan to respond to those needs Step 4: Report to Benchers	2019 - 2020 2019 - 2020	



MEMORANDUM

TO: Benchers

FROM: The Nominating Committee

DATE: February 5, 2020

In December, 2019 Kathy Bueti provided an oral report from the Nominating Committee. Here is the written report that follows.

Purpose and Mandate

This Committee was struck somewhat earlier in the fiscal year than has previously been the case to review and consider the following:

- (1) Issues around recruiting candidates for the 2020 election and for the appointment process;
- (2) The appointment process for committees and recommend candidates for committee appointments;
- (3) The current policies and skills matrix for bencher appointments to determine whether they are adequate or are in need of any revision;
- (4) The current structure of the Nominating Committee and make any recommendations for revision; and
- (5) To nominate candidates to run for President and Vice-President in April 2020.

The consideration of the question of candidates for President and Vice-President and committee appointments was deferred until the New Year as the Committee determined that in light of the bencher election in May 2020 other issues were of a higher priority.

Question 1: What steps should the Law Society take to encourage more candidates to put their names forward to run in the 2020 election and who should be responsible for recruitment?

The Committee concluded that a multi-pronged strategy ought to be adopted with respect to recruitment. The Law Society should reach out to let candidates know we are looking for people to run in the next election and increase awareness across the profession through:

- Informational meetings for the profession about the role of a bencher, the time commitments, committee work, etc.
- Engagement with organizations, such as the Manitoba Bar Association, the University of Manitoba, Faculty of Law, CLEA, the Legal Help Centre, etc.
- Encouraging the executive, staff and benchers to all take on the responsibility for the recruitment of candidates for the election and appointment process. Individuals who have expressed an interest in the work of the Law Society ought to be approached and encouraged to run and/or apply for an appointment.
- Identifying increased opportunities to communicate directly to the profession via emails and the website to publicize the election and appointment process.

Since having met in November, an information session has been scheduled for February 20, 2020 at noon at the Law Society to share information with the profession and respond to questions. The session has been advertised in the *Communiqué* and on the website and you are encouraged to share the notice of the event (attached as Appendix 1) with those who you think would be interested in our work at the Law Society.

Question 2: Are you satisfied with the present nomination process for appointed lawyer benchers?

With respect to this question, the Committee considered whether:

- The current policies and skills matrix in relation to the appointment of practising lawyers ought to be amended.
- The kind of considerations being taken into account by the Nominating Committees are appropriate or broad enough.
- There are any considerations that ought to be prioritized over others. For example, has sufficient attention been given to ensuring ethnic diversity around the bencher table?
- The benchers ought to make a commitment to ensuring that there is diverse representation around the table.

- Whether the benchers ought to allocate one or more seats at the bencher table to a person or persons from a marginalized community.

The Committee consulted with Dr. Rehman Abdulrehman. After reviewing the existing appointment policies he recommended that the skills matrix be amended to convert the category that is described as Ethnic/Cultural Diversity into two separate categories, one being Visible Minority/Ethnic Diversity and the other Cultural and Religious Diversity.

After considering Dr. Abdulrehman's comments, the Committee concluded that:

- (1) The skills matrix ought to be amended to take into account Visible Minority/Ethnic Diversity rather than Ethnic/Cultural Diversity;
- (2) It was not necessary to change the matrix to specifically take into account religious diversity.
- (3) When using the skills matrix, more weight ought to be ascribed to the perspective and background categories than skills and knowledge.
- (4) The Benchers ought to commit to reserving a seat at the bencher table for a person from the Indigenous community. That seat could be filled through either the electoral or appointment processes.

The Committee recommends that the existing matrix for appointed practising lawyers be changed as set out in the attached matrix at Appendix 2.

A draft amendment to Bencher Policy #1 reflecting the Committee's decision to preserve a seat for an Indigenous bencher is attached as Appendix 3 for your review and consideration.

Question 3: Are you satisfied with the present nomination process for lay benchers?

The Committee considered the same issues that had been identified for appointed lawyers and concluded that the appointment of lay benchers provides an important opportunity to fill the gaps through the appointment of individuals from diverse communities. The Committee was satisfied that the considerations being taken into account by the Nominating Committee are appropriate and broad enough but that the current policies and skills matrix for lay benchers ought to be changed to reference Visible Minority/Ethnic Diversity. As with appointed lawyer benchers, when assessing candidates, the perspective/background criteria set out in the skills matrix ought to be weighted more highly than the skills and knowledge criteria. The Committee thought that when filling lay

bencher positions it may be helpful to reach out to external organizations, such as legal-oriented organizations and community cultural centres, to identify prospective benchers and encourage their candidacy.

The Committee recommends that the existing matrix for appointed practising lawyers be changed as set out in the attached matrix at Appendix 4.

A draft amendment to Bencher Policy #2 reflecting the Committee's decision to preserve a seat for an Indigenous bencher is attached as Appendix 5 for your review and consideration.

Question 4: Are you satisfied with the present nomination process for committees?

The Committee concluded that a more formal process for the population of committees ought to be established and that:

- (1) Benchers ought to be invited to express an interest in serving on any particular committee so that the Nominating Committee may take that into account in making its recommendations. This would provide an opportunity to take advantage of interests, aptitudes and preferences of benchers, keeping in mind that all wishes cannot be accommodated as there are a range of considerations that need to be taken into account when appointing committees.
- (2) Consideration could be given to amending the Annual Member Report to enable members to declare whether they have an interest in volunteering with the Law Society.

Question 5: Are you satisfied with the current composition of the Nominating Committee or do you agree that a member of the public ought to be added to the Committee?

The Committee concluded that the public is adequately represented with the two lay benchers and there is no need to change the composition of the Committee.

Question 6: In an election year, should the Nominating Committee be struck earlier than is typically the case (February).

The Committee concluded that in future the Nominating Committee should be struck earlier in an election year.

The Committee will be scheduling meetings to further consider the remainder of the issues identified in its mandate and will be reporting back to you at the April Bencher meeting.

Atc.



Open Invitation – Information Session

Interested in the work of the Law Society?

The policy work of the Law Society is conducted by both benchers and committee members. If you are interested in learning about this work, volunteering for a committee or running/applying to be a bencher, please join us for a light lunch in the Law Society classroom on **February 20, 2020 at 12:00 noon**.

To help us accommodate the number of attendees, RSVP your interest to ekinchen@lawsociety.mb.ca

If you have any questions in advance, please contact any one of the following:

Kristin Dangerfield Chief Executive Officer	204-926-2013	kdangerfield@lawsociety.mb.ca
Leah Kosokowsky Director Regulation	204-926-2030	lkosokowsky@lawsociety.mb.ca
Anita Southall President	204-957-8303	alsouthall@fillmoreriley.com
Lynda Troup Vice-President	204-934-2337	lkt@tdslaw.com
Kathy Bueti Past President	204-989-0084	kathybueti@bwwlaw.ca

BENCHER POLICY #1

NAME OF POLICY	Appointment of Benchers - Practising		
APPLICABLE SECTIONS OF THE LEGAL PROFESSION ACT AND RULES	<i>Legal Profession Act, Sections 5, 7(1), 7(1.1), 7(1.2), 7(2), 8</i> Law Society Rules 2-28.1, 2-32, 2-32.1, 2-50, 2-51, 2-52, 2-61, 2-62		
Approved by the Benchers December 17, 2015	Effective February 18, 2016	Reviewed	Revised October 26, 2017 February 13, 2020

Appointment of Benchers

1. The Benchers shall appoint four practising lawyers as Benchers following an election of Benchers held under Part 2 of *The Legal Profession Act*.

Eligibility

2. Each candidate for the position of appointed practising Bencher must:
 - a. Be a practising member of the Society on the 1st Monday in March of the appointment year; and
 - b. Not be a Life Bencher or an ex-officio Bencher.
3. At least one of the four appointed practising Benchers must be from the Winnipeg District.
4. At least one of the four appointed practising Benchers must be from outside the Winnipeg District.

Term of Appointment

5. The term of the appointment shall be for two years or until a successor is appointed. The term is renewable by the Benchers to an aggregate limit of eight years of service as a Bencher, whether appointed or elected. Part of a year of service by a Bencher will count as a year of service toward the eight year aggregate limit.

Nominating Committee

6. A Nominating Committee will be appointed by the Benchers in each election year and will consist of the following individuals:
 - a. The Past President (Chair);
 - b. President;
 - c. Vice-President;
 - d. Four Benchers consisting of:
 - i. Two practising lawyer Benchers provided that at least one maintains his or her principal office outside the City of Winnipeg Electoral District; and
 - ii. Two Lay Benchers.

Mandate

7. One mandate of the Nominating Committee will be to solicit and recruit applications and nominations for candidates for the position of appointed Bencher. The Committee will consider candidates based on the skills matrix established by the Benchers from time to time and thereafter will recommend to the Benchers a slate of suitable candidates.

Process

8. Current appointed lawyer Benchers will advise the Chief Executive Officer by January 31st in an election year of their intention to seek re-appointment or to run for election as a Bencher.
9. The Nominating Committee will make a public call for nominations/applications following the election held under Part 2 of *The Legal Profession Act* in May of an election year.

10. The Nominating Committee will present a slate of candidates for the position of appointed practising Benchers to the Benchers by no later than the September Bencher meeting following an election held under Part 2 of *The Legal Profession Act*.
11. Where the Nominating Committee recommends that the term of an appointed practising Bencher be renewed, that recommendation may be brought to the Benchers at any time following an election under Part 2 of *The Legal Profession Act*.
12. Where a vacancy arises in relation to an appointed practising Bencher, the Nominating Committee may at any time bring recommendations to the Benchers, who must appoint a practising lawyer to fill the vacancy with all convenient speed.

Criteria

13. The Nominating Committee will assess candidates against the skills matrix approved by the Benchers from time to time and will ~~ensure that all candidates possess the required competencies~~ make recommendations for appointment that will ensure that:
 - a. all candidates possess the required competencies;
 - b. the Bencher table reflects the ethnically diverse population in Manitoba; and
 - c. in recognition of the cultural and historical context in Manitoba, a seat will be reserved at the Bencher table for a representative from the Indigenous community, whether as an elected or appointed lawyer Bencher or Lay Bencher.

BENCHER POLICY #2

NAME OF POLICY	Appointment of Benchers - Lay		
APPLICABLE SECTIONS OF THE LEGAL PROFESSION ACT AND RULES	<i>Legal Profession Act</i> , Sections 5, 7(1), 7(2), 8 Law Society Rules 2-28.1, 2-50, 2-51, 2-52, 2-61, 2-62		
Approved by the Benchers December 17, 2015	Effective February 18, 2016	Reviewed	Revised October 26, 2017 February 13, 2020

Appointment of Lay Benchers

1. The Benchers shall recommend the appointment of up to six persons as Lay Benchers following an election of Benchers held under Part 2 of *The Legal Profession Act*.
2. The recommendation shall be made to a committee consisting of:
 - a. The Chief Justice of Manitoba or a judge of The Court of Appeal designated by him or her, who shall chair the committee;
 - b. The Minister of Justice and Attorney General of Manitoba; and
 - c. The president of the Association of Manitoba Municipalities.

Eligibility

3. Each candidate for the position of appointed Lay Bencher must:
 - a. Be resident in Manitoba;
 - b. Not be a member or former member of the Society.

Term of Appointment

4. The term of the appointment shall be for two years or until a successor is appointed. The term is renewable by the Benchers to a maximum limit of eight years. Part of a year of service by a Bencher will count as a year of service toward the eight year maximum limit.

Nominating Committee

5. A Nominating Committee will be appointed by the Benchers and will consist of the following individuals:
 - a. The Past President (Chair);
 - b. President;
 - c. Vice-President;
 - d. Four Benchers consisting of:
 - i. Two practising lawyer Benchers, provided that at least one maintains his or her principal office outside the City of Winnipeg Electoral District; and
 - ii. Two Lay Benchers.

Mandate

6. One mandate of the Nominating Committee will be to solicit and recruit applications and nominations for candidates for the position of appointed Bencher. The Committee will consider candidates based on the skills matrix established by the Benchers from time to time and thereafter will recommend to the Benchers a slate of suitable candidates.

Process

7. Current appointed Lay Benchers will advise the Chief Executive Officer by January 31st in an election year of their intention seek re-appointment as a Lay Bencher.
8. The Nominating Committee will make a public call for nominations/applications prior to the election held under Part 2 of *The Legal Profession Act* in May of an election year.

9. The Nominating Committee will present a slate of candidates for the position of appointed Lay Benchers to the Benchers by no later than the September meeting following an election held under Part 2 of *The Legal Profession Act*.
10. Where the Nominating Committee recommends that the term of an appointed Lay Bencher be renewed, that recommendation may be brought to the Benchers at any time following an election under Part 2 of *The Legal Profession Act*.
11. The Benchers will forward to the statutory committee established under Section 7(1) of *The Legal Profession Act* the names of candidates who the Benchers recommend for appointment by the Committee.

Criteria

12. The Nominating Committee will assess candidates against the skills matrix approved by the Benchers from time to time and will ~~ensure that all candidates possess the required competencies~~ make recommendations for appointment that will ensure that:
 - a. all candidates possess the required competencies;
 - b. the Bencher table reflects the diverse population in Manitoba; and
 - c. in recognition of the cultural and historical context in Manitoba, a seat will be reserved at the Bencher table for a representative from the Indigenous community, whether as an elected or appointed lawyer Bencher or Lay Bencher.



MEMORANDUM

To: Benchers
From: Leah Kosokowsky
Date: February 5, 2020
Re: CPLED 2.0

CPLED Transitions

As I prepare this memo, the Law Society offices are abuzz with articling students. This week all the meeting rooms are filled with legacy students who are completing their final in person session while just last week, the PREP pilot project students attended for their orientation session. Meanwhile, we are preparing to receive applications from students who wish to be admitted to article and to register for the first formal offering of PREP.

Given that PREP is now being delivered via the pilot project and will be fully implemented in June 2020, it is imperative that the rules and policies that support PREP be fully developed and adopted across the four jurisdictions as quickly as possible.

As a result, we have been working with our colleagues in the four participating jurisdictions to ensure that the operational policies and principles are as consistent as possible insofar as they relate, for example, to admissions criteria, and the timing of admission as an articling student. We have also been collaborating on the nature of an appeal process and how that will be administered given the different structures that are currently in place across the four jurisdictions. As we have collectively endeavoured to identify and apply best practices, each province has been required to compromise with their own processes to achieve our shared vision for this program.

In developing proposals for adoption in the new PREP world, the group applied the following considerations:

- A. Greater benefit is derived from articling and PREP if the student is participating in both programs at the same time.
- B. The students ought to participate in a consistent program that is transparent and fair and complies with the requirements of the Office of the Fairness Commissioner.
- C. Consistency in the application of the admissions rules will reduce forum shopping by applicants.

- D. A clearly delineated appeal process will ensure that the students are treated consistently and fairly.

With that background, we have identified the following issues which will require changes to existing Manitoba rules and policies.

ADMISSIONS CRITERIA

Canadian Common Law Degree or CQ

In each of the four jurisdictions, an applicant for admission must provide proof that the applicant has obtained a Canadian common law degree or a Certificate of Qualification from the National Committee on Accreditation in order to be admitted.

Similarly, to be registered in PREP, an applicant must establish that the applicant has a Canadian common law degree or Certificate of Qualification.

Under the current Manitoba rules, however, an applicant may be admitted who is registered to take or is awaiting the results of exams or courses prescribed by the NCA. If this exception were to continue, students awaiting their results are likely to apply in Manitoba in disproportionate numbers as they would be ineligible to be admitted in the other three jurisdictions. Furthermore, while this exemption was intended to accommodate students who were simply awaiting the results of examinations, in practice it has given rise to some difficulties. For example, there have been occasions where students have been admitted and completed their articling year while awaiting the results of examinations or courses and, as a result, had still not even started the CPLED program by the time they completed their articles. In one case, the applicant never was successful at the NCA level and had completed articling before being removed.

For the above-noted reasons, we recommend that you direct that the rule be eliminated that permits the admission of applicants who are awaiting the results of exams or courses prescribed by the NCA.

Articling Position

The Manitoba rules, as currently drafted, are designed to admit individuals to both the CPLED program and as articling students. In addition to requiring proof of their education and good character, applicants are required to enter into an articling agreement with an approved principal. Our rules also provide, however, that students must commence articling by the sixth module of the legacy CPLED program, failing which they will not be permitted to continue in CPLED. In the new PREP, a "sixth module" no longer exists.

In the proposed program, students will register separately with CPLED and each individual law society will only admit individuals for the purpose of articling. CPLED has determined that while individuals without an articling position can be admitted to PREP and complete the foundation

modules, the student will not be permitted to continue in PREP beyond the foundation modules without providing proof that he/she has secured an articling position.

Given that the application to the Law Society is only for admission as an articling student, there is no benefit or advantage to admitting the individual unless and until that person has an articling position.

Accordingly, we recommend that in addition to deleting the reference to commencing articling by the sixth module of CPLED, you direct that we amend the rules to clearly articulate that an applicant will not be admitted without proof that he/she has secured an articling position with an approved principal in Manitoba.

PREP GRADES & APPEALS

As noted at the October bench meeting, CPLED is responsible for a number of centralized functions that were formerly the responsibility of individual law societies, such as processing student registration, collecting tuition fees, managing the delivery of the PREP program and administering students' requests for accommodation, deferral and withdrawal. However, each of the law societies expressed a desire to retain some level of responsibility for adjudicating appeals. As such, the working group has developed a draft appeal policy that will necessitate fairly extensive amendments to the rules. In developing the concepts included in the proposed appeal policy, the CPLED board obtained a comprehensive legal opinion from James Casey, a recognized leader in administrative law.

Decisions that are subject to appeal

PREP decisions that will be subject to appeal are:

- Denial of admission to PREP;
- Suspension or expulsion from PREP;
- A requirement to repeat PREP;
- An inability to repeat PREP after reaching the maximum number of permitted attempts;
- Results of the Capstone re-assessment (the final assessment); and
- An assessment result based on the grounds of failure to accommodate.

Appeals from these decisions would be made to the new CPLED Appeal Committee.

Each law society will retain jurisdiction over the articling admission criteria, assessments of good character and fitness to practice. Accordingly, law society processes would apply and in Manitoba, the Admissions and Education Appeals Subcommittee would continue to hear appeals of this nature. In addition, if a PREP student were to engage in conduct that calls into question the student's

integrity and/or character, PREP will inform the Law Society and the benchers will retain jurisdiction to remove the student from articling or otherwise discipline the student.

Composition of Appeal Committee

For PREP appeals, it is proposed that there be an appeal committee established annually which would be comprised of six appointees from each of the four jurisdictions. The chairperson of the committee would rotate annually among the four law societies and the chairperson would be appointed by his/her own law society from one of the six appointees.

While CPLED will administer the appeal process, appeal panels, as well as the panel chair, would be selected by the committee chairperson and would consist of three members, at least one of whom must be from the home jurisdiction of the appellant.

Manitoba is the only jurisdiction that appoints a public representative to all admission and education appeal panels and at present there is no intent on the part of the other CPLED jurisdictions to change that practice. Given the academic nature of the PREP appeals and the fact that Manitoba will retain jurisdiction to address serious conduct issues via our local Admissions and Education Appeals Subcommittee, **we recommend that for the purpose of PREP appeals only, you direct that our practises be modified to only appoint lawyer members to the PREP appeal committee.**

Appeal Format

As it is contemplated that the majority of PREP appeals will be in respect of assessments or grades, it is proposed that an appeal proceed much like admissions appeals in Manitoba, based solely on written materials, unless the appellant requests that there be oral submissions and, in exceptional circumstances only, the chair can direct that there be oral evidence.

The hearing panel can meet by any means, whether it be by teleconference, video conference or in-person, depending on the nature of the appeal. Again, however, we anticipate that most appeals will be conducted by teleconference because they will be based upon written materials.

Given the nature of the appeals and the proposed format, there would be two departures from our current processes in the proposed appeal process. First, hearings would not be open to the public. While transparency in self-governance generally would dictate that hearings be open to the public, there is less of a public interest component in having open hearings regarding grades or assessments or even requests for accommodation. In addition, although Manitoba admissions and education hearings have been open to the public, we have never had a member of the public attend or express an interest in attending. Finally, were there to be serious conduct issues requiring a discipline hearing or if the student was removed from articling and appealed that decision, those hearings would remain open to the public.

The second distinction is the standard of review for PREP appeals as it is proposed that the standard be one of reasonableness. As most of you will know, Manitoba admissions and education appeals

are decided upon a standard of correctness. We do not view this distinction to be of concern for a number of reasons. First, the nature of the appeal is such that, an appeal of a grade or assessment is likely to be similar to a re-read of the assessment or examination. The appeal panel would be more likely to defer to the subject matter experts that made the initial decision and therefore reasonableness would appear to be an appropriate standard. Secondly, if the appeal panel were to hear fresh evidence on appeals of a different nature and the panel were to come to a different conclusion than the original decision, they could do so on a standard of reasonableness or correctness as the evidence would not have been before the original decision maker.

We recommend that you direct that the rules be amended to remove CPLED appeals from the jurisdiction of the Law Society's Admissions and Education Appeals Subcommittee and that you endorse the above-noted principles that establish the processes and parameters for the hearing of PREP appeals.

SUMMARY

As you will have observed, each of the four participating law societies has different rules and procedures for admissions, admissions requirements and the administration of CPLED. That said, there has been excellent collaboration and cooperation among the four law societies to achieve our common vision and we are satisfied that the proposed policies and rule changes will support an appeal and registration process that is transparent, fair and defensible.

Provided that the above-noted proposals meet with your approval, we will return to you with corresponding rule amendments for your consideration.

In addition to the matters that we have asked that you consider today, we have identified some additional issues that have not yet been considered with the counterpart group. We intend to pursue those issues further within the working group and will return to you at future date to consider further rule amendments.

LCK

MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield

DATE: February 6, 2020

RE: **2020 - 2021 Budget**

Attached to this memo you will find the Law Society of Manitoba budget for the period from April 1, 2020 to March 31, 2021.

Every year I am required by the Governance Policies to present you with a budget that is within the Executive Limitations that have been established by the benchers. It is not necessary that you formally approve the budget but it is important for you to be satisfied that the budget is within those Executive Limitations. Although this has been an extremely challenging year for budgeting purposes, this budget is within the established criteria in each of the four funds that we operate:

- (1) The General Fund
- (2) The Education and Competence Fund
- (3) The Reimbursement Fund
- (4) The Professional Liability Claims Fund

It has been some time since we increased fees for members. In each of 2017 and 2018 the total fees assessed for members remained steady at \$2,650. In 2019 we actually were able to reduce fees by \$175 to \$2,475 which reflected in part, the early elimination of a previously assessed Capital Improvement Levy.

Unfortunately, this year can best be described as an *annus horribilis* when it comes to both insurance and reimbursement claims. There is always a level of unpredictability when it comes to these claims and some years that is to our benefit. That is certainly not the case this year. While such claims are entirely distinct from one another, coincidentally in the same year we have seen more and larger claims in each of the two funds than we have in seen in many years.

On the reimbursement side, claims for loss arising from theft by a lawyer presently exceed \$5 million. You will see elsewhere in the agenda an overview of the reimbursement and insurance funds that will put this into context. While all of those claims will not qualify for

compensation from the Reimbursement Fund, suffice it to say that we expect claims of \$1 million will be paid out in 2020 – 2021 and there is another \$1.1 million in claims that would exceed the cap of \$300,000 per claim. While we have not budgeted for payment out of claims exceeding the cap, we do anticipate coming to you over the course of the next year to ask you to consider the policy issue of whether, and in what circumstances the Benchers would consider lifting the existing cap in which case, there would be a substantial impact on the 2021-2022 Budget.

On the insurance side, we expect to pay out claims of nearly \$1.5 million by the end of this fiscal year and have budgeted for another \$1.25 million in 2020-2021. With this claims history we fully expect that we will face a double whammy later this spring. The mandatory CLIA premiums will be increased and our actuary will set a levy that will likely result in an increase in insurance fees. While the insurance budget cannot really be finalized at this point, nor can a levy be set until we receive an actuarial report in May, we have notionally set the budget in anticipation of an increase in the insurance levy of \$200 per lawyer.

For these reasons, the budget for this year will necessitate an increase in fees as set out below:

Practising Fee	\$1,925
Contribution to the Reimbursement Fund	575
Contribution to the Education and Competence Fund	<u>175</u>
Total	<u>\$2,675</u>

In order to arrive at this we have:

- Increased the General Fund practising fee by \$25 to \$1,925;
- Increased the levy in the Reimbursement Fund from \$275 to \$575; and
- Reduced the levy for the Education and Competence Fund by \$125.

The net impact on lawyers' practising fees will be an increase of \$200 per lawyer.

In each of the General and Education Funds we have been able to budget for a small surplus, however, that has not been possible for the insurance and reimbursement funds and each reflects a deficit.

General Fund	\$ 8,055
Reimbursement Fund	(274,710)
Professional Liability Claims Fund	(86,035)
Education and Competence Fund	<u>23,880</u>
Total	<u>\$(328,810)</u>

Although we never like to budget for a deficit, keep in mind that the Law Society does have significant surplus in place for this very reason. While this budget has been challenging on many levels, it does accurately reflect the forecasted revenues and expenses both to the conclusion of this fiscal year and for 2020 – 2021. That is due to the attention to detail provided by Colleen Malone, our Chief Financial Officer, who scrupulously tracks both our revenues and expenditures. Many thanks to Colleen for her usual attention to detail and hard work in developing a budget in the face of difficult circumstances.

I have set out below some of the significant considerations that were taken into account when we developed the budget.

Manitoba Law Foundation Contribution

We have been fortunate this year to expect for the 2020 – 2021 fiscal year a substantial increase in the annual grant from the Manitoba Law Foundation in both the Reimbursement Fund and the Education and Competence Fund. We anticipate that contribution will be \$625,000 in each of the two Funds, which is an increase of \$175,000 per fund. As you know, these funds are somewhat volatile as they are generated by revenues on lawyers' trust accounts and so it is hard to say what we might expect in the 2021 - 2022 budget year. If those levels are not sustainable, it will inevitably impact on fees or services or both.

Interfund Transfers

Every year you will find in the General Fund a reference to "Interfund Admin Charges". In each of the other funds you will find a corresponding expense called a "Grant to General Fund". These entries reflect as accurately as possible the administrative resources from the General Fund that are used by the other funds, for example the cost of my time, accounting and IT support, the use of the leased premises and a wide array of other resources. This year we have increased the interfund transfer in the Reimbursement Fund to reflect the significant amount of resources we expect to be associated with the prosecution of matters giving rise to reimbursement claims, the assessment and management of those claims and the consideration of related policy and legal issues that will take place in 2021 - 2022.

Salaries

We anticipate some salary increases based both on COLA and in accordance with the performance based management model in place. The most significant increase in salaries

reflects the hiring of counsel to support the work of our General Counsel, Rocky Kravetsky. We have identified over the last several years an increase in both the volume and the complexity of conduct matters and so we have allocated funds for a new lawyer to be hired in 2020.

Technology

We were able to replace some older computers last year, however, there remain approximately 15 computers that we will need to replace in this fiscal year and those have been accounted in the budget. You will also see a reduction in professional services as we have now essentially completed the work on the new website and branding initiative and will require little support from our external consultant.

Transition to PREP

With the transition to the new CPLED model where PREP is delivered out of a centralized office, we no longer receive CPLED tuition fees. As a result, you will have noted a reduction of income in the Education and Competence Fund by in excess of \$200,000. Not all of the implications of the new model are apparent but we do recognize that we will continue to require Law Society staff as an important component of the program. Both Joan Holmstrom and Tatiyana Bubnowicz will continue to work on the delivery of the legacy program until April 2020, and will support the implementation of the Pilot Project that began in January 2020, the full PREP in June 2020 and also remedial education. Tatiyana will be with us until July when she will be heading off on a maternity leave. Lisa Ehnes, the CPLED Administrative Assistant in Manitoba, will also provide administrative services to PREP, in particular during the face-to-face modules. Under the new model the Law Society will be reimbursed by PREP for both classroom space and staff time that is utilized in the delivery of PREP and so you will have seen a revenue line in the Education and Competence Fund with an anticipated \$50,000 in income.

Trust Safety Program

Last year we allocated \$30,000 in the Reimbursement Fund for the development of the trust safety educational module, the assessment of the applications for Trust Account Supervisors and for addressing any appeals that followed from decisions under the Program. In fact, with the hard work of staff across the organization and in particular from the Audit and Competence and Education Departments, no additional resources were required. As such, we have eliminated that line in the budget for 2020 - 2021.

Unexpected Revenues

In the General Fund we were the beneficiaries of some unexpected revenues. Under "other income" you will see insurance claim proceeds of \$37,910 resulting from the theft of the bencher mike system, which allowed us to significantly upgrade our equipment when it was replaced. We also received \$17,384 of miscellaneous revenue when the Law Society of Alberta returned our share of funds that had been pooled many years ago when the law societies were working jointly on the Western Conveyancing Project.

Investment Income

We have projected investment income for 2020 -2021 at \$700,000 which is allocated across the four funds. That reflects a reduction from the 2019 - 2020 budget as we do not expect to see the same returns this fiscal year.

Atc.

Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
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Income

Administration fees

Admin fee, Great Library	\$ 20,000	\$ 20,000	\$ 20,000
Instalment payment fee	\$ 59,200	\$ 65,000	\$ 60,000
Late payment penalty	\$ 6,385	\$ 8,000	\$ 7,000
Refund fee	\$ 16,200	\$ 16,000	\$ 16,000

Total Administration fees	\$ 101,785	\$ 109,000	\$ 103,000
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Annual Fee

Non-practising	\$ 31,300	\$ 28,900	\$ 30,000
Practising	\$ 3,990,788	\$ 3,942,500	\$ 4,042,500

Total Annual Fee	\$ 4,022,088	\$ 3,971,400	\$ 4,072,500
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Application fees

Application fee, other	\$ 2,130	\$ 1,500	\$ 1,500
Exemption from articling	\$ 4,200	\$ 3,500	\$ 3,500
Law student registration	\$ 2,680	\$ 3,600	\$ 2,800
Resumption of active practise	\$ 9,000	\$ 7,800	\$ 10,000
Transfer to MB Bar	\$ 6,900	\$ 4,200	\$ 6,900

Total Application fees	\$ 24,910	\$ 20,600	\$ 24,700
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Call fee - transfer applicants	\$ 13,800	\$ 9,600	\$ 13,800
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Contribution, leasehold allowance

Capital items	\$ 109,490	\$ 130,700	\$ 128,520
Expense items	\$ 10,443	\$ -	\$ 5,000

Total contribution, leasehold	\$ 119,933	\$ 130,700	\$ 133,520
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Costs recovered - discipline	\$ 53,534	\$ 70,000	\$ 60,000
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Gain on sale of 219 Kennedy	\$ 1,814,000	\$ -	\$ -
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Grants

Employment	\$ 3,178	\$ -	\$ 3,000
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Investment income

Interest income	\$ 56,963	\$ 50,000	\$ 55,000
Investment - RBC	\$ 21,000	\$ 48,600	\$ 37,800

Total Investment income	\$ 77,963	\$ 98,600	\$ 92,800
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Law Society of Manitoba
 General Fund (GF) Budget
 April 1, 2020 to March 31, 2021

FINAL

Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
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Other income

Certificate of standing	\$ 11,800	\$ 9,000	\$ 12,000
Fast track revenue	\$ 27,000	\$ 26,000	\$ 28,000
Insurance claim proceeds	\$ 37,910	\$ -	\$ -
Law corporation fees	\$ 81,600	\$ 84,000	\$ 84,000
Locker rental revenue	\$ 12,800	\$ 14,000	\$ 13,000
Miscellaneous revenue	\$ 17,384	\$ 500	\$ 3,000
Parking revenue	\$ 2,450	\$ -	\$ -
Pitblado lectures	\$ -	\$ 89,800	\$ -
Section 51 revenue	\$ 18,017	\$ 18,017	\$ 16,940
Total Other income	\$ 208,961	\$ 241,317	\$ 156,940

Total Income

\$ 6,440,152	\$ 4,651,217	\$ 4,660,260
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Expense

Allowances - Pres/Vice	\$ 45,000	\$ 45,000	\$ 45,000
Buliding operation/maintenance			
Building insurance	\$ 24,796	\$ 6,000	\$ 15,000
Hydro	\$ 4,479	\$ -	\$ -
Janitorial services	\$ 29,483	\$ 29,880	\$ 28,440
Janitorial supplies	\$ 1,106	\$ 3,000	\$ 1,200
Maintenance	\$ 17,065	\$ 4,600	\$ 5,600
Property tax	\$ 22,042	\$ -	\$ -
Water	\$ 2,068	\$ -	\$ -
Total Buliding operation/maintenance	\$ 101,039	\$ 43,480	\$ 50,240

Catering/functions

50 Year lunch	\$ 3,652	\$ 5,000	\$ -
Coffee/water/pop/milk	\$ 10,147	\$ 12,000	\$ 10,400
Committee meetings	\$ 6,024	\$ 8,000	\$ 7,000
Meetings	\$ 6,330	\$ 10,000	\$ 8,500
Strategic planning	\$ -	\$ -	\$ 5,000
Other receptions	\$ 12,209	\$ 10,000	\$ 10,800
President's reception	\$ 8,434	\$ 10,000	\$ 10,000
Staff functions	\$ 8,756	\$ 10,000	\$ 9,000
Total Catering/functions	\$ 55,552	\$ 65,000	\$ 60,700

Prosecution & investigation

\$ 23,034	\$ 20,000	\$ 20,000
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	Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
Custodial expenses			
Custodian fees	\$ 61,196	\$ 60,000	\$ 60,000
File storage costs	\$ 3,962	\$ 6,000	\$ 5,000
Total Custodial expenses	\$ 65,158	\$ 66,000	\$ 65,000
Depreciation expense			
Hardware	\$ 40,956	\$ 36,720	\$ 36,800
Furniture/equipment	\$ 8,517	\$ 8,840	\$ 7,600
Leasehold improvement	\$ 65,282	\$ 64,392	\$ 65,600
Software	\$ -	\$ 21,850	\$ 18,800
Total Depreciation expense	\$ 114,755	\$ 131,802	\$ 128,800
Grants/prizes			
CANLII grant	\$ 89,106	\$ 90,000	\$ 90,000
CLEA grant	\$ 67,000	\$ 67,000	\$ 67,000
FLSC annual levy	\$ 61,645	\$ 63,000	\$ 63,000
Forgiveable loan	\$ 50,000	\$ 50,000	\$ 50,000
Gifts	\$ 6,463	\$ 5,000	\$ 10,000
MB Library grant	\$ 550,000	\$ 550,000	\$ 550,000
Misc grants/donations	\$ 4,323	\$ 5,000	\$ 5,000
Prizes	\$ 3,750	\$ 4,500	\$ 4,500
Staff recognition	\$ 2,245	\$ -	\$ 5,000
Total Grants/prizes	\$ 834,532	\$ 834,500	\$ 844,500
Honoraria	\$ 17,850	\$ 19,000	\$ 18,000
Interfund admin charges			
Education and Competence	\$ (200,000)	\$ (200,000)	\$ (200,000)
Professional Liability Claims	\$ (475,000)	\$ (475,000)	\$ (475,000)
Reimbursement	\$ (200,000)	\$ (200,000)	\$ (300,000)
Total Interfund admin charges	\$ (875,000)	\$ (875,000)	\$ (975,000)
Miscellaneous expense	\$ 364	\$ 1,000	\$ 500
Office and sundry			
Courier	\$ 4,188	\$ 7,000	\$ 5,000
Office furniture/equipment	\$ 6,395	\$ 5,000	\$ 6,000
Office supplies	\$ 25,342	\$ 24,000	\$ 25,200
Photocopying expense	\$ 8,739	\$ 16,000	\$ 22,000
Postage/fax	\$ 12,651	\$ 17,000	\$ 13,000
Total Office and sundry	\$ 57,315	\$ 69,000	\$ 71,200

	Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
Other services			
Court reporters	\$ 15,952	\$ 10,000	\$ 15,000
Filing fees	\$ 2,352	\$ 2,000	\$ 2,500
Notifications	\$ 5,473	\$ 8,000	\$ 6,000
Serving of documents	\$ 1,226	\$ 1,500	\$ 1,500
Total Other services	\$ 25,003	\$ 21,500	\$ 25,000
Professional development			
Course/conference fees	\$ 10,290	\$ 20,000	\$ 15,000
Membership fees	\$ 6,896	\$ 7,000	\$ 7,500
Total Professional development	\$ 17,186	\$ 27,000	\$ 22,500
Professional fees			
Broker fees	\$ 80,000	\$ -	\$ -
Complaints commissioner	\$ 6,300	\$ 7,500	\$ 6,500
Contract services	\$ 2,964	\$ 6,000	\$ 4,000
Discipline chair	\$ 20,000	\$ 23,000	\$ 22,000
External audit	\$ 34,698	\$ 34,000	\$ 35,500
General legal/consulting	\$ 29,427	\$ 26,000	\$ 40,000
Investment management expense	\$ 4,862	\$ 5,000	\$ 5,200
Pension advisor	\$ 9,840	\$ 15,000	\$ 10,000
Speaker fee	\$ -	\$ 3,000	\$ 3,000
Systems consulting	\$ 36,982	\$ 15,000	\$ 7,500
Total Professional fees	\$ 225,073	\$ 134,500	\$ 133,700
Publications			
Books/subscriptions	\$ 10,354	\$ 12,000	\$ 10,500
LSM Regulations	\$ 4,024	\$ 5,000	\$ 5,000
Outside printing	\$ 744	\$ -	\$ 1,000
Total Publications	\$ 15,122	\$ 17,000	\$ 16,500
Rent space			
Additional rent	\$ 259,507	\$ 297,000	\$ 240,000
Basic rent	\$ 255,778	\$ 268,720	\$ 269,200
Management fee	\$ 13,437	\$ 13,440	\$ 14,110
Outside rent	\$ 267	\$ 500	\$ 500
Total rent	\$ 528,989	\$ 579,660	\$ 523,810
Salaries and benefits			
CPP exp	\$ 70,772	\$ 65,500	\$ 71,320
EI exp	\$ 25,240	\$ 25,190	\$ 25,530
Group insurance	\$ 220,848	\$ 225,000	\$ 245,000
MB payroll tax	\$ 52,368	\$ 50,580	\$ 54,480
Pension - current service	\$ 475,383	\$ 460,750	\$ 487,575
Salaries	\$ 2,362,460	\$ 2,352,200	\$ 2,532,250
Total Salaries and benefits	\$ 3,207,071	\$ 3,179,220	\$ 3,416,155

Law Society of Manitoba
 General Fund (GF) Budget
 April 1, 2020 to March 31, 2021

FINAL

	Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
Service fees			
Banking fees	\$ 258	\$ 500	\$ 500
Credit card fees	\$ 30,161	\$ 32,000	\$ 30,000
Payworks	\$ 3,604	\$ 3,500	\$ 3,600
Total Service fees	\$ 34,023	\$ 36,000	\$ 34,100
Technology			
Hardware	\$ 19,064	\$ 20,000	\$ 20,000
Software	\$ 3,915	\$ 5,000	\$ 9,000
Tech services	\$ 10,596	\$ 17,000	\$ 15,000
Total Technology	\$ 33,575	\$ 42,000	\$ 44,000
Telecommunications			
Conferencing	\$ 426	\$ 500	\$ 500
Telephone	\$ 10,860	\$ 13,000	\$ 11,000
Total Telecommunications	\$ 11,286	\$ 13,500	\$ 11,500
Travel			
Bencher/committee travel	\$ 21,146	\$ 27,500	\$ 25,000
President/Vice travel	\$ 11,984	\$ 25,000	\$ 18,000
Presenters travel	\$ 2,760	\$ 1,000	\$ 3,000
Staff travel	\$ 34,895	\$ 54,000	\$ 50,000
Total Travel	\$ 70,785	\$ 107,500	\$ 96,000
Total Expense	\$ 4,607,712	\$ 4,577,662	\$ 4,652,205
Net Income	\$ 1,832,440	\$ 73,555	\$ 8,055
Fund Equity, beginning of year	\$ 5,944,723	\$ 5,944,723	\$ 7,777,163
Fund Equity, end of year	\$ 7,777,163	\$ 6,018,278	\$ 7,785,218
Executive limitation (> 20%, fund equity end of year/total expenses)	168.79%	131.47%	167.34%

Law Society of Manitoba
 Reimbursement Fund (RF) Budget
 April 1, 2020 to March 31, 2021

FINAL

	Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
Income			
Practising fees	\$ 576,552	\$ 570,625	\$ 1,207,500
Manitoba Law Foundation	\$ 559,556	\$ 450,000	\$ 625,000
Investment - RBC	\$ 7,126	\$ 16,470	\$ 12,810
Total Income	\$ 1,143,234	\$ 1,037,095	\$ 1,845,310
Expense			
Meeting	\$ -	\$ -	\$ 5,000
Staff functions	\$ 123	\$ -	\$ 150
Damages, net of recoveries	\$ (200)	\$ 10,000	\$ 1,000,000
Administration fees	\$ -	\$ -	\$ 10,000
File storage costs	\$ 148	\$ -	\$ -
Lawyers trust protection premium	\$ 131,860	\$ 180,000	\$ 200,000
Grant to General Fund (GF)	\$ 200,000	\$ 200,000	\$ 300,000
Miscellaneous	\$ 151	\$ -	\$ 200
Courier	\$ 281	\$ 1,000	\$ 2,000
Office supplies	\$ 206	\$ 300	\$ 300
Photocopying	\$ 200	\$ -	\$ 1,000
Course/conference fee	\$ 1,500	\$ 1,600	\$ 1,600
Membership fees	\$ 4,420	\$ 5,000	\$ 5,000
Investment management expense	\$ 1,608	\$ 2,000	\$ 2,000
Parking expense	\$ 4,680	\$ 4,800	\$ 4,800
CPP exp	\$ 13,040	\$ 12,320	\$ 13,050
El exp	\$ 4,744	\$ 4,300	\$ 4,600
MB payroll tax	\$ 9,447	\$ 8,940	\$ 9,525
Pension - current service	\$ 98,963	\$ 95,760	\$ 103,120
Salaries	\$ 430,147	\$ 415,530	\$ 442,550
Hardware	\$ 1,142	\$ 1,700	\$ 4,000
Software	\$ -	\$ 500	\$ 500
Tech services	\$ 139	\$ 200	\$ 625
Staff travel	\$ 7,784	\$ 12,000	\$ 10,000
Trust safety project	\$ -	\$ 30,000	\$ -
Total Expense	\$ 910,383	\$ 985,950	\$ 2,120,020
Net Income	\$ 232,851	\$ 51,145	\$ (274,710)
Fund equity, beginning of year	\$ 2,265,957	\$ 2,265,957	\$ 2,498,808
Fund equity, end of year	\$ 2,498,808	\$ 2,317,102	\$ 2,224,098

Executive limitation - Ending equity at least \$500,000 (deductible)

Law Society of Manitoba
Professional Liability Claims Fund (PLCF) Budget
April 1, 2020 to March 31, 2021

FINAL

Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
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Income

Insurance levy, CLIA portion	\$ 452,964	\$ 424,960	\$ 639,100
Insurance levy, LSM portion	\$ 2,284,931	\$ 2,231,040	\$ 2,431,900
Insurance levy	\$ 2,737,895	\$ 2,656,000	\$ 3,071,000
Costs recovered - deductibles	\$ 97,444	\$ 100,000	\$ 100,000
Cyber insurance	\$ 77,985	\$ 78,750	\$ 78,750
Interest income	\$ 184	\$ -	\$ -
Investment - RBC	\$ 372,494	\$ 808,020	\$ 628,460
Total Income	\$ 3,286,002	\$ 3,642,770	\$ 3,878,210

Expense

Other functions	\$ -	\$ 4,000	\$ 6,000
Damages/repairs, net	\$ 1,458,671	\$ 1,000,000	\$ 1,250,000
Administration fees	\$ 74,867	\$ 12,000	\$ 60,000
Defence costs, net	\$ 740,223	\$ 500,000	\$ 600,000
Non insurance payments	\$ 6,901	\$ -	\$ -
Cyber insurance	\$ 78,764	\$ 74,700	\$ 80,050
Directors and officers insurance	\$ 19,150	\$ 20,000	\$ 20,000
Excess insurance	\$ 11,486	\$ 12,000	\$ 12,000
Lawyer assistance	\$ 51,535	\$ 60,000	\$ 52,000
Mandatory premiums	\$ 446,965	\$ 600,000	\$ 650,650
CLIA, RST collected on fees	\$ (38,442)	\$ (41,700)	\$ (50,250)
RST, paid to CLIA	\$ 37,827	\$ 48,000	\$ 50,870
Grant to General Fund (GF)	\$ 475,000	\$ 475,000	\$ 475,000
Miscellaneous	\$ 200	\$ 400	\$ 400
Courier	\$ 719	\$ 1,000	\$ 1,000
Office supplies	\$ 522	\$ 150	\$ 300
Photocopying	\$ 1,401	\$ 3,000	\$ 3,000
Filing fee	\$ 90	\$ 75	\$ 100
Course/conference fee	\$ 771	\$ 700	\$ 2,000
Membership fees	\$ 278	\$ 500	\$ 500
Actuarial fees	\$ 26,968	\$ 30,000	\$ 28,000
Investment management expense	\$ 84,223	\$ 76,500	\$ 85,000
Practice advisor	\$ 30,300	\$ 35,000	\$ 32,000
Systems consulting	\$ 3,000	\$ 10,000	\$ 5,000
Books/subscriptions	\$ 117	\$ -	\$ 150

Law Society of Manitoba
Professional Liability Claims Fund (PLCF) Budget
April 1, 2020 to March 31, 2021

FINAL

	Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
CPP exp	\$ 13,575	\$ 13,090	\$ 13,925
El exp	\$ 5,004	\$ 5,000	\$ 5,000
MB payroll tax	\$ 9,579	\$ 9,450	\$ 10,000
Pension - current service	\$ 93,860	\$ 92,660	\$ 98,300
Salaries	\$ 440,404	\$ 439,400	\$ 460,000
Hardware	\$ 3,858	\$ 4,000	\$ 4,000
Software	\$ 1,848	\$ 2,000	\$ 3,500
Tech services	\$ 8	\$ 100	\$ 100
Conferencing	\$ 6	\$ -	\$ 50
Staff travel	\$ 3,722	\$ 5,000	\$ 5,600
Total Expense	\$ 4,083,400	\$ 3,492,025	\$ 3,964,245
Net Income	\$ (797,398)	\$ 150,745	\$ (86,035)
Fund Equity, beginning of year	\$ 11,054,883	\$ 11,054,883	\$ 10,257,485
Fund Equity, end of year	\$ 10,257,485	\$ 11,205,628	\$ 10,171,450

Executive limitation - Fee not less than recommended by actuary

Law Society of Manitoba
 Education and Competence Fund (ECF) Budget
 April 1, 2020 to March 31, 2021

**FINAL
 REVISED**

	Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
Income			
Pitblado admin fee	\$ 89,881	\$ -	\$ -
Practising fees	\$ 630,404	\$ 622,500	\$ 367,500
Application to article	\$ 12,700	\$ 13,000	\$ 13,000
CPLED grads call fee	\$ 56,375	\$ 57,500	\$ 60,000
CPD program revenue	\$ 238,491	\$ 408,000	\$ 375,000
CPLED recovery	\$ 2,150	\$ -	\$ 50,000
CPLED tuition fees	\$ 231,500	\$ 216,000	\$ -
Manitoba Law Foundation	\$ 559,556	\$ 450,000	\$ 625,000
Investment - RBC	\$ 11,617	\$ 26,900	\$ 20,930
Material sales	\$ 15,458	\$ 15,000	\$ 5,000
Miscellaneous revenue	\$ 1,499	\$ 1,000	\$ 1,000
Qualification exam	\$ -	\$ 1,400	\$ -
Total Income	\$ 1,849,632	\$ 1,811,300	\$ 1,517,430
Expense			
Call ceremony	\$ 11,294	\$ 12,000	\$ 12,000
Coffee/water/pop/milk	\$ 1,950	\$ 2,500	\$ 2,500
Meetings catering	\$ 2,817	\$ 4,500	\$ 4,000
Other receptions catering/functions	\$ -	\$ 1,000	\$ 3,000
Program catering	\$ 22,826	\$ 50,000	\$ 45,000
CPLED development	\$ 55,181	\$ 55,000	\$ -
Gifts	\$ 305	\$ -	\$ 5,000
Honoraria	\$ 30,160	\$ 47,350	\$ -
Grant to General Fund (GF)	\$ 200,000	\$ 200,000	\$ 200,000
PREP subsidy	\$ -	\$ -	\$ 260,000
Miscellaneous	\$ 236	\$ 400	\$ 400
Courier	\$ 1,062	\$ 2,000	\$ 1,000
Office furniture/equipment	\$ 113	\$ 1,000	\$ 3,000
Office supplies	\$ 3,349	\$ 5,000	\$ 5,000
Photocopying expense	\$ 3,139	\$ 9,000	\$ 6,200
Postage/Fax	\$ 82	\$ 3,000	\$ 100
Course/conference fee	\$ 3,788	\$ 5,500	\$ 7,000
Membership fees	\$ 4,692	\$ 4,400	\$ 5,250
Contract services	\$ 2,465	\$ 35,000	\$ 10,000
Investment management expense	\$ 2,994	\$ 2,700	\$ 3,600
Program speaker fee	\$ -	\$ 10,000	\$ 10,000
Books/subscriptions	\$ -	\$ 5,000	\$ -
Outside printing	\$ 744	\$ -	\$ -
Program printing	\$ 1,637	\$ 5,000	\$ 4,000
Rent - space	\$ 1,143	\$ 5,000	\$ 3,000
CPP exp	\$ 27,515	\$ 24,490	\$ 28,800
El exp	\$ 10,383	\$ 9,320	\$ 10,600
MB payroll tax	\$ 17,821	\$ 17,940	\$ 18,800
Pension - current service	\$ 143,513	\$ 145,200	\$ 151,000
Salaries	\$ 820,516	\$ 834,200	\$ 870,000

Law Society of Manitoba
 Education and Competence Fund (ECF) Budget
 April 1, 2020 to March 31, 2021

**FINAL
 REVISED**

	Projected April 1, 2019 to March 31, 2020	Budget April 1, 2019 to March 31, 2020	Budget April 1, 2020 to March 31, 2021
Paypal fee	\$ 550	\$ 400	\$ 600
AV services	\$ 4,562	\$ 10,600	\$ 10,000
Hardware	\$ 6,824	\$ 7,500	\$ 5,000
Software	\$ 1,299	\$ 2,000	\$ 2,700
Tech services	\$ 1,960	\$ 3,000	\$ 1,500
Conferencing	\$ 916	\$ 2,000	\$ 1,000
Student CPLED travel	\$ 19,410	\$ 35,000	\$ 30,000
Presenters' travel	\$ 15,872	\$ 15,000	\$ 15,000
Staff travel	\$ 12,911	\$ 15,000	\$ 18,500
Total Expense	\$ 1,434,029	\$ 1,587,000	\$ 1,753,550
Net Income	\$ 415,603	\$ 224,300	\$ (236,120)
Fund Equity, beginning of year	\$ 1,431,963	\$ 1,431,963	\$ 1,847,566
Fund Equity, end of year	\$ 1,847,566	\$ 1,656,263	\$ 1,611,446
Executive limitation (> 20%, Fund Equity end of year/Total expenses)	<u>128.84%</u>	<u>104.36%</u>	<u>91.90%</u>

MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield and Tana Christianson

DATE: February 5, 2020

RE: Reimbursement Fund

This year the budget is impacted significantly by virtue of claims against both the Reimbursement and Insurance Funds. In order to provide you with some context, what follows is some background information about the Reimbursement Fund and theft and misappropriation claims. This information is general in nature. You can read it even if you would otherwise have a conflict in discussing a specific incident of misappropriation of trust funds or property.

The Act

The Reimbursement Fund has been in place since 1943. The Fund is established by *The Legal Profession Act* "...to compensate claimants who have sustained pecuniary losses because of a member's or law corporation's misappropriation or wrongful conversion of the claimants' money or property." (Section 46[2])

Compensation is at the discretion of the benchers (Section 47[2]), although you have delegated that role to a Reimbursement Fund Claims Committee (Rules 5-37-5-40).

Section 47(2) of *The Legal Profession Act* sets out that a loss may be compensated when you are satisfied that money (or other property) was entrusted to or received by a member or their law corporation in their capacity as a lawyer, and that the member misappropriated or wrongfully converted the money or property (Section 47[1]).

The Reimbursement Fund Guidelines

The Reimbursement Fund operates under Reimbursement Fund Claims Payment Guidelines established by the benchers which came into effect January 1, 2005 (Appendix A). The Guidelines place no limits on the number of claims that can be made by an

individual, but limit the amount of recovery on an individual claim to \$300,000. A copy of the guidelines is provided to everyone who makes a claim under the Fund.

The Reimbursement Fund CLIA Compensation Fund Policy

Since 2005, the Law Society has been purchasing its trust protection indemnification coverage for the Reimbursement Fund from the Canadian Lawyers Insurance Association, the reciprocal insurer for our Professional Liability Claims Fund. Staff in our insurance program administer the Reimbursement Fund. A copy of the 2019-2020 CLIA Trust Protection Indemnification policy is attached (Appendix B).

The Law Society of Manitoba enters into a Trust Protection Indemnification Policy with CLIA on July 1st of each year. That July 1 date means that a claim that came to the attention of the Law Society before July 1, 2019 is considered a claim in the 2018-2019 policy year and a claim that came to our attention after July 1, 2019 falls in the 2019-2020 policy year. The limit of liability under the policy each year is \$10 million per loss with an aggregate limit of \$10 million. Our group deductible is \$100,000 per loss and our stop-loss in the aggregate for the policy period is \$500,000. This group deductible provision means that if a payment on one claim in any given year exceeds our group deductible of \$100,000, the Law Society pays the first \$100,000 and CLIA pays any portion of that claim over \$100,000. Stop loss means that when the Law Society pays \$500,000 on claims reported in one policy year, CLIA takes over payment of claims paid after the first \$500,000.

Would the Law Society ever indemnify clients for theft in excess of the \$300,000 limit? That is a question that we will have to consider over the course of the next year and you can expect to hear more about that in 2020.

Reimbursement Fund vs Professional Liability Claims Fund

Clients (and lawyers) are often confused about the distinction between the Reimbursement Fund and the Law Society's Professional Liability Claims Fund. Although both Funds are administered by the same Law Society staff and both Funds are insured through CLIA, each Fund covers distinct – and mutually exclusive – occurrences and different insureds.

Who is Covered?

Professional liability insurance is restricted to only those lawyers who pay a professional liability insurance contribution on their practising fees, whereas the Reimbursement Fund applies to all practising lawyers in the Province of Manitoba.

What is Covered?

The Professional Liability Insurance Policy only covers claims in negligence or what you might call 'honest mistakes'. That policy specifically **excludes** claims for theft or misappropriation of trust funds or for dishonest or criminal acts. It also won't cover the innocent partners of the lawyer who steals trust funds. A copy of Professional Liability Insurance policy is on the members' portal under the Insurance section.

The Reimbursement Fund only responds to claims arising from theft or misappropriation of trust funds or property by lawyers. This policy expressly waives rights of recovery against any lawyer with a financial interest in the misappropriating lawyer's firm, provided that member is neither the author, accomplice nor acting in collusion with the dishonest lawyer (Condition 4.7[c]). This is consistent with the position of the Law Society since 1993, post Guercio, when it was determined by your predecessors that there should be no subrogation against innocent partners. For those of you who were not around at that time, Mr. Guercio misappropriated funds in excess of \$6 million but the exposure to the Reimbursement Fund was about \$1.5 million. This led to the need for the Law Society to develop a policy around whether the Fund was one of first resort or last resort. At the time there was some significant exposure to Mr. Guercio's law partners and after much consultation with the profession, the benchers of the day adopted the policy that it would not subrogate against the innocent partners of Mr. Guercio. That policy continues in place today.

Atc.

Reimbursement Fund Claims Payment Guidelines
[Effective January 1, 2005]

*References: Sections 46 to 48, The Legal Profession Act, S.M. 2002, c.44
Rules 5-37 to 5-40, Rules of the Law Society of Manitoba*

1. **“Chief Executive Officer or CEO”** means the Chief Executive Officer of the Society or an employee to whom the Chief Executive Officer has delegated any of his or her powers, duties or functions;

“Committee” means the Reimbursement Fund Claims Committee;

“Fund” means the Reimbursement Fund.
2. All claims made against the Fund must meet the following conditions set out in subsection 47(1) of *The Legal Profession Act*:
 - (a) money or other property was entrusted to or received by
 - (i) a law corporation, or
 - (ii) a member in his or her capacity as a lawyer;
 - (b) the corporation or member misappropriated or wrongfully converted the money or other property; and
 - (c) the claimant sustained a pecuniary loss as a result of that misappropriation or wrongful conversion.
3. The CEO is responsible for investigating all claims made against the Fund and has authority to pay claims up to a value of \$25,000. Only the Committee has authority to pay claims in excess of \$25,000.
4. Subject to guideline 3, the CEO or Committee may authorize payment of the “principal amount” of a claim, namely, the amount of money or value of the property received by the lawyer, less the actual amount returned or otherwise accounted for to the claimant.
5. A claim for compensation from the Fund must be initiated by submitting a statutory declaration or an application in the required form to the Society. No payment shall be made out of the Fund unless the statutory declaration or application is received by the Society within two years after the loss came to the knowledge of the claimant or should reasonably have come to the claimant’s knowledge, or such further time, not exceeding ten years from the date the loss came to the knowledge of or should reasonably have come to the knowledge of the complainant, as in any case may be allowed by the Committee.

6. The statutory declaration or application must be submitted by the person who sustained the pecuniary loss, or alternatively, by a person who holds Power of Attorney or who is the trustee or personal representative (i.e. executor/executrix/administrator) of the estate of the person who suffered the loss.
7. A copy of the statutory declaration or application received must be forwarded by the CEO to the lawyer involved for his or her written response.
8. The CEO must consider the statutory declaration or application submitted by a claimant and the written response received from the lawyer. The CEO may request that further information be provided by either the claimant or the lawyer.
9. Formal hearings are not held and neither claimants nor lawyers shall meet with the CEO or appear before the Committee when it considers a claim or an appeal under guideline ~~18~~ 17. Oral presentations or submissions will not be accepted from a claimant or lawyer involved in a claim.
10. A person may submit a claim to the Society for compensation from the Fund for:
 - (a) the money misappropriated or converted; and
 - (b) in the case of property, the value of the property misappropriated or converted.
11. No claim will be approved without satisfactory proof that money or property was received by a lawyer from or on behalf of the claimant and that the money or property or an equivalent value has not been returned or accounted for to the claimant.
12. The lawyer must have received the money or other property in his or her professional capacity as a lawyer.
13. The transaction giving rise to the loss must have been in all respects a legitimate and honest one.
14. A lawyer who also carries on an outside business activity such as that of investment adviser, mortgage broker or mortgage dealer is not covered by the Fund for losses caused by misappropriation or conversion as a result of that outside business activity.
15. There are no limits on the number of claims that may be made by a person against the Fund. However, the amount of recovery on an individual claim is limited to \$300,000.00.

16. Subject to guidelines 3, 4 and 17, the CEO or Committee may in their discretion pay a claim in whole or in part or may pay some claims and refuse to pay others in accordance with these payment guidelines.
17. Where the CEO authorizes payment of a claim in part or refuses to pay a claim, the claimant may appeal the CEO's decision to the Committee.
18. In considering an appeal under guideline 17 the Committee must either confirm or vary the CEO's decision.
19. Payment of interest to the claimant, or payment of costs, legal fees, expenses, or damages incurred or suffered by the claimant, will not ordinarily be made out of the Fund, except in accordance with payment guideline 22.
20. Where the lawyer appears to have a valid demand against the claimant for fees and disbursements in respect of legal services provided by the lawyer, the amount of the award will be reduced by the approximate amount of the lawyer's fees and disbursements.
21. The CEO or Committee may, in exceptional circumstances, recommend to the Benchers of the Society that an amount in excess of the principal amount of the claim be paid to the claimant. The Benchers will then determine the disposition of the claim and may in their discretion pay the claim in whole or in part, refuse to pay the claim, or dispose of the claim in any manner they consider proper.
22. Once the Committee has determined to pay a claim in whole or in part, the Committee must limit initial payments on approved claims to the sum of \$100,000.00. At the end of the fiscal year, if the total amount of approved claims does not exceed the annual retention plus the insurance coverage on the fund, then the balance unpaid on any approved claim will be paid out together with interest from the date of the initial payment. The interest payment is to be calculated in accordance with the prejudgment interest rate set out under *The Court of Queen's Bench Act*. If the aggregate claims awards exceed the annual retention plus the insurance coverage on the fund, payments in excess of \$100,000.00 will be pro-rated.
23. Where, with respect to a matter giving rise to a reimbursement claim:
 - (a) criminal charges have been preferred against the lawyer involved;
 - (b) the matter is under investigation or an inquiry is pending before a Committee of the Society; or
 - (c) there are civil proceedings pending;

a decision on a claim may be delayed until there has been a final decision by the court or the Discipline Committee that the lawyer had misappropriated or converted to his or her own use the money or property of the claimant. The CEO or Committee may dismiss a claim where a claimant did not pursue his/her civil claim or other remedies against the lawyer involved.

24. Where there has not been a finding by any court or by the Society's Discipline Committee that the lawyer misappropriated or converted money or property of a claimant to his or her own use, the CEO or Committee may authorize payment of the claim, if the claimant provides sufficient evidence to prove the claim.
25. The Fund will not cover losses suffered by a person as a result of the negligence of a lawyer. A civil claim for any loss arising from a lawyer's negligence may be brought against the lawyer and may be covered by the lawyer's professional liability insurance and the Society's Professional Liability Claims Fund.

**Canadian Lawyers Insurance Association
Association d'Assurances des Juristes Canadiens
Head Office: 600, 919 - 11th Avenue South West
Calgary, Alberta T2R 1P3**

TRUST PROTECTION INDEMNIFICATION POLICY

DECLARATIONS

- | | | |
|----|--|---|
| 1. | POLICY NO.:
Replacing Policy No.: | 32022
31022 |
| 2. | INSURER: | Canadian Lawyers Insurance Association |
| 3. | LOCAL ADMINISTRATIVE
OFFICE AND ADDRESS
FOR SERVICE: | Canadian Lawyers Insurance Association
c/o Law Society of Manitoba
200 - 260 St. Mary Avenue
Winnipeg, Manitoba R3C 0M6 |
| 4. | PRINCIPAL ATTORNEY FOR
THE INSURER: | David Jackson |
| 5. | INSURED PARTY: | Law Society of Manitoba |
| 6. | POLICY PERIOD: | July 1, 2019 to July 1, 2020, both days at 12:01
a.m. local time at the address for service shown
in the Declarations |
| 7. | LIMITS OF LIABILITY: | (i) Per Loss – \$10,000,000
(ii) Aggregate Limit – \$10,000,000 |
| 8. | GROUP DEDUCTIBLE: | (i) \$100,000 per Loss
(ii) \$500,000 in the Aggregate for the Policy
Period |
| 9. | PREMIUM: | As agreed between the Insured and the Insurer
based on number of members of the Insured at
beginning of Policy Period |

I. DEFINITIONS

In this policy:

Compensation Program, for the purposes of this policy, means the Reimbursement Fund as provided under the Legal Profession Act L.M. 2002, c.44

compensation program means:

- (i) any statutory compensation program, as provided for by any legislative act which is similar to the Act governing the **Compensation Program**;
- (ii) similar funds as established by a **law society** to pay for **Losses** from any misappropriation, wrongful conversion or dishonesty by members of a **law society** as may now or subsequently be established; and
- (iii) any substantially similar compensation programs established by any government

Enterprise means any proprietorship, partnership, co-operative, society, business, association, joint venture, syndicate, company, corporation, firm or other legal or commercial entity

Expenses means any and all costs incurred by the **Member**, the **Insured** and/or the **Insurer** in investigating, adjusting or resolving a **Notice of Loss**

Insured means the Law Society of Manitoba

Insurer means the Canadian Lawyers Insurance Association

law society means a law society, barristers' society or similar organization of a jurisdiction other than Manitoba

limits of liability means the **Occurrence** limit and aggregate limit

Loss means direct financial loss sustained by a **person** of no more than the value of **Money** or the equivalent cash value of **Securities and Property** that is the subject of an **Occurrence** by a **Member**, but does not include:

- (a) any amount for which the claimant or **Member** has or is entitled to claim indemnity under any other policy or form of insurance, including the **Scheduled Policies**, title insurance, or any **compensation program** other than the **Compensation Program**; or
- (b) **Expenses**

Member means a **person** who, at the date of the **Occurrence**, was a practising lawyer as defined by the Legal Profession Act and, at all relevant times, was acting in the capacity of a lawyer

Money, Securities or Property means:

- (a) Money including currency, coins, and bank notes having a face value and in current use;

- (b) Securities including all negotiable and non-negotiable instruments or contracts representing **Money** and includes revenue and other stamps, tokens and tickets in current use;
- (c) Property including trust **Money**, in cash or on deposit, and chattels, which have been entrusted

Notice of Loss means the receipt by the **Insured** of a completed application for compensation, in a form approved by the **Insured** from time to time, alleging an **Occurrence** and seeking reimbursement or compensation

Occurrence means the misappropriation or wrongful conversion by a **Member** of **Money**, **Securities or Property** entrusted to or received by a **Member** in the **Member's** capacity as a lawyer, regardless of the form or forms of business organization through which the practice is conducted

person includes an individual and an **Enterprise**

Policy Period means the period that is indicated in the Declarations

Scheduled Policies means the Law Society of Manitoba Lawyers' Professional Liability Insurance Group Policy Number 32003 and any successors thereto, and the Lawyers Excess Liability Insurance of Manitoba Ltd. Lawyers' Professional Liability Insurance Group Policy Number 32019 and any successors thereto

II. INSURING AGREEMENTS

In consideration of payment of the premiums when due, and subject to the **limits of liability**, deductibles, exclusions, conditions and all other terms of this policy, the **Insurer** agrees to reimburse the **Insured** for **Losses** paid by the **Insured** through the **Compensation Program** resulting from **Occurrences** discovered during the **Policy Period**.

III. EXCLUSIONS

The insurance coverage given by this policy does not apply to any payment made for:

- 3.1 an **Occurrence** to which either or both of the **Scheduled Policies** responds, regardless of the limits of liability of the **Scheduled Policies**; compliance, or lack thereof, with the notice and/or reporting requirements of the **Scheduled Policies**; and whether either or both of the **Scheduled Policies** have been cancelled;
- 3.2 bodily injury, sickness, disease or death of any **person**;
- 3.3 physical damage to tangible property, including physical damage that results in the loss of use of the property;
- 3.4 a claim against a **Member** made by or on behalf of the **Member's** law firm or its partners unless the **Loss** would have been insured under this policy in the absence of such claim;

- 3.5 a **Loss** sustained by a **person** who committed, participated in committing, consented to expressly, or implicitly, acquiesced in the misappropriate or wrongful conversion, or was reckless or willfully blind to the misappropriation, wrongful conversion or dishonesty of the **Member**;
- 3.6 a **Loss** sustained by a **person** or **persons** who had unlawfully obtained the **Money, Securities or Property** that were the subject of the **Occurrence**;
- 3.7 a **Loss** that an officer of the **Compensation Program** knew or reasonably ought to have known that could form or did form the basis of an **Occurrence** under a **compensation program** prior to March 31, 2006;
- 3.8 a **Loss** that could form the basis of an **Occurrence** that an officer of the **Compensation Program** knew about prior to the inception date of this policy;
- 3.9 a claim excluded under the *Nuclear Incident Exclusion Clause* (attached);
- 3.10 a claim excluded under the *War and Terrorism Exclusion Clause* (attached).

IV. **CONDITIONS**

The coverage afforded by this policy is subject to the following conditions:

4.1 **Limits of Liability**

- (a) **Occurrence Limit:** The **limit of liability** of the **Insurer** for all payments made in respect of an **Occurrence** is as shown in Item 7(i) of the Declarations, regardless of the number of **Losses** arising out of the **Occurrence**, the number of **Notices of Loss** in respect of the **Occurrence** or the number of **Members** involved or alleged to be involved in the **Occurrence**.
- (b) **Aggregate Limit:** The **limit of liability** of the **Insurer** for all payments made during the **Policy Period**, regardless of the number of **Occurrences** in respect of all **Members** of the **Insured**, shall not exceed the amount shown in Item 7(ii) of the Declarations.
- (c) Multiple **Losses, Notices of Loss**, claimants or **Members** involved in a single **Occurrence** will not increase or cumulate the limits shown in Items 7(i) and (ii) of the Declarations.

4.2 **Discovery and Notice**

- (a) An **Occurrence** will be deemed to have been discovered on the date on which a **Notice of Loss** relating to the **Occurrence** is received by the **Insured** or, if earlier, the date on which an officer of the **Compensation Program** receives sufficient information indicating that a **Member** may be responsible for the **Occurrence**.

- (b) The **Insured** will give notice to the **Insurer** by quarterly loss summary reports of all **Occurrences** discovered during the preceding quarter and all known **Losses** related thereto. In all events, notice by the **Insured** must be given to the **Insurer** no later than three months after the end of the **Policy Period**.

4.3 Proof of Loss/Information

Detailed loss information, in a form prescribed by the **Insurer**, must be submitted by the **Insured** to the **Insurer** on any payments made in excess of \$50,000. Upon the **Insurer's** request, detailed loss information, in a form prescribed by the **Insurer**, must be submitted by the **Insured** to the **Insurer** on any payments made equal to or less than \$50,000. Upon the **Insurer's** request, the **Insured** will produce for the **Insurer's** examination all pertinent records relating to such payments at the offices of the **Insured**.

4.4 Group Deductible

For each **Loss** covered under this policy, the **Insured** shall retain all payments up to the maximum set out in Item 8(i) of the Declarations, however, the **Insured** shall not be required to retain more than the aggregate amount specified in Item 8(ii) of the Declarations.

4.5 Other Insurance

- (a) *With Insurer.* If a **compensation program** (or programs) provided by another Canadian **law society** (or Canadian **law societies**) other than the **Insured** applies to a **Loss** covered by this policy, the total amount of insurance provided under these policies together will not exceed the total value of the **Loss** or the most that is available under either (any one) of these policies alone, whichever is less. The decision as to which of these policies will respond, or as to any allocation between (or amongst) the policies, will be made by the **Insured** together with that other **law society** (or, if more than one, with those other **law societies**) and the **Insured** agrees to be bound by that decision. However, the aggregate coverage provided under all applicable policies will not exceed the **Occurrence** limit of \$10,000,000, regardless of the number of policies involved.
- (b) Except to the extent that Condition 4.5(a) applies, if there is available to the **Insured** or **Member** any other insurance or indemnity (other than excess insurance), this policy will apply only as excess insurance over the amount recoverable or recovered under such other insurance or indemnity and will not be called upon in contribution.

4.6 Cancellation

This policy may be cancelled at any time by agreement between the **Insured** and the **Insurer**.

4.7 Subrogation and Salvage

- (a) In the event of any payment under this policy, the **Insurer** shall be subrogated to all of the **Insured's** rights of recovery therefor against any **person**, including **Member(s)**, in respect of said payment and the **Insured** shall execute and deliver

instruments and papers and render assistance to secure such rights. The **Insured** shall do nothing after loss to prejudice such rights.

- (b) The amounts recovered through the exercise of subrogation and/or salvage, by or on behalf of the **Insured** and the **Insurer**, shall be applied net of the expense of such recoveries as follows:
 - (i) First to the satisfaction of the **Losses** which would have been paid but for the fact that it is in excess of the **limit of liability** under this policy;
 - (ii) Second to reimburse the **Insurer** for payments under this policy;
 - (iii) Third to reimburse the **Insured** for payments made within the deductible set out in Item 8 of the Declarations.
- (c) It is expressly agreed between the **Insured** and the **Insurer** that the **Insurer** shall be subrogated to all of the **Insured**'s rights of recovery, including the value of any dishonest **Member**'s interest in any partnership or firm as determined by closing said partnership's or firm's books as of the date of the discovery of the **Loss** by the **Insured**, including any amounts owing to such dishonest **Member** by said partnership or firm, but in no event for more than the amount of coverage applicable to the Insuring Agreements of this policy. The **Insurer** expressly acknowledges that it waives all rights of recovery against any **Member** having a financial interest in the partnership or firm in question who were neither the author, accomplice, nor acting in collusion with the dishonest **Member** in respect of the **Occurrence** resulting in any **Loss** paid under this policy.

4.8 Miscellaneous Conditions

- (a) *Effect of bankruptcy or insolvency.* The bankruptcy or insolvency of the **Insured** or a **Member** will not affect the obligations of the **Insurer** under this policy and will not relieve the **Insured** of responsibility for its obligations under this policy.
- (b) *Effect of death or incapacity.* The death or incapacity of a **Member** will not affect the obligations of the **Insurer** under this policy with respect to **Occurrences** before the death or incapacity.
- (c) *Notice of changes.* Notice of matters relevant to the **Insurer** must be given to the **Insurer** at the local address for service shown in the Declarations. Notice to any other **person**, or knowledge by that **person**, of such matters does not affect the **Insurer** or its rights under this policy or the applicability of the terms and conditions of this policy. Any waiver of or change to the terms and conditions of this policy must be made by written endorsement forming part of this policy and signed by a duly authorized representative of the **Insurer**.
- (d) *Action against Insurer.* The following are conditions precedent to an action against the **Insurer** by the **Insured**:
 - (i) the **Insured** must have complied in all respects with the terms and conditions of this Policy; and

- (ii) the amount payable in respect of the claim must have been finally determined by a court of competent jurisdiction or by written agreement or settlement.

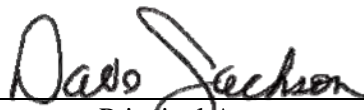
Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act* (Manitoba).

- (e) *Arbitration.* This provision applies to any dispute that arises between the **Insurer** and the **Insured**. Such a dispute shall be adjudicated by arbitration. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act* (Manitoba) by a single arbitrator and may be initiated by any party to the dispute on written notice to the other party at any time after the expiration of 90 days from the date the dispute arose.
- (f) *Assignment.* The rights of the **Insured** under this policy that are exercisable against the **Insurer** cannot be assigned to any other **person**.
- (g) *Service.* Service of any action to enforce the obligations of the **Insurer** under this policy shall be made on the Principal Attorney for the **Insurer** at the local address for service shown in the Declarations.
- (h) *Currency.* All **limits of liability** and deductibles under this policy are stated in lawful currency of Canada and all payments under this policy shall be made in the same currency.
- (i) *Governing law.* This policy shall be governed by and construed in accordance with the laws of the Province of Manitoba.

In Witness Whereof the **Insurer** has caused this policy to be executed the 1st day of July, 2019 by its Principal Attorney.

CANADIAN LAWYERS INSURANCE ASSOCIATION

Per: _____


Principal Attorney

**NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-
DIRECT (BROAD)-CANADA**

(For use with all Public Liability Policies except Personal, Farmers' and Storekeepers')

It is agreed that this Policy does not apply:

- (a) to liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof; nor
- (b) to bodily injury or property damage with respect to which an Insured under this Policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- (c) to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
 - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured;
 - (ii) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
 - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this Policy:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material.
2. The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by or pursuant to any law, act or statute, or law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
3. The term "nuclear facility" means:
 - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

- (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilising spent fuel, or (iii) handling, processing or packaging waste;
- (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if, at any time, the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

- 4. The term “fissionable substance” means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- 5. With respect to property, loss of use of such property shall be deemed to be property damage.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

WAR AND TERRORISM EXCLUSION

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is agreed that this Policy excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (2) any act of terrorism.

For the purpose of this endorsement, an act of terrorism means an act, including, but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Insurer alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.