



AGENDA

Benchers

Date: Thursday, October 29, 2020

Time: 12:30 pm

Location: Via Videoconference and Teleconference

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT					
	The President will welcome newly elected student bencher, Christine Williams, to the meeting.				
2.0 IN MEMORIAM					
	The Honourable William Robert Martin , who passed away on October 5, 2019 at the age of 90. Mr. Martin received his call to the Bar on May 8, 1957. He practised law as a sole practitioner for ten years before joining the Department of Justice as a crown attorney. In 1970 Mr. Martin was appointed a judge of the Provincial Court of Manitoba in The Pas and served on the bench until his retirement in 1994. He was appointed Queen's Counsel in 1967.				

George Walter Hately, Q.C., who passed away on January 9, 2020 at the age of 88. Mr. Hately received his call to the Bar in Manitoba on September 30, 1955. He served as in house counsel to the Canadian National Railway for three years. In 1959 Mr. Hately relocated to Ontario where he practised for the remainder of his career with Blake, Cassels & Graydon LLP.

Bernard Wilfred Hoeschen, who passed away on May 6, 2020 at the age of 80. Mr. Hoeschen received his call to the Bar on September 13, 1965. He practised as an associate with Westbury & Co. for three years before transferring to British Columbia in 1969.

Campbell Millar, who passed away on July 9, 2020 at the age of 92. Mr. Millar received his call to the Bar on June 23, 1954. He was a practising member of the Law Society until 1962.

Edward Demaray Brown, who passed away on September 15, 2020 at the age of 78. Mr. Brown received his call to the Bar on June 26, 1968. Upon receiving his call, Mr. Brown joined and practised up to the date of his death with the firm that is known today as Pitblado LLP. He was recognized by the Law Society in 2019 for having practised law for 50 years.

Ursula Bingham Goeres, who passed away on September 11, 2020 at the age of 66. Ms Goeres received her call to the Bar on June 30, 1977. Over the course of her career she practised as an associate and as a sole practitioner, and also as legal counsel to the City of Winnipeg and to the Nature Conservancy of Canada (Manitoba Region). Ms Goeres retired from practice in 2018.

Frederick Alexander Jackson, who passed away on October 1, 2020 at the age of 65. Mr. Jackson received his call to the Bar on June 30, 1988. Upon receiving his call, he joined Paterson Bass Dubois as an associate and practised in Neepawa for three years. From 1991 to the date of his death, Mr. Jackson practised in Minnedosa, initially as an associate with Sims & Co. and later as a sole practitioner.

Jerrold Lawrence Gunn, who passed away on or about October 9, 2020 at the age of 82. Mr. Gunn received his call to the Bar on June 17, 1963. He was a practising member of the Law Society until 1991.

The Honourable John Johann Enns, who passed away on October 19, 2020 at the age of 90. Mr. Enns received his call to the Bar on August 15, 1957. He served as a crown attorney for the Department of Justice for 11 years before being appointed a Magistrate in 1968. In 1973 Mr. Enns was appointed a judge of the Provincial Court of Manitoba. He served on the bench until his retirement in 1999.

ITEM	TOPIC	TIME (min)	SPEAKER		ACTION
3.0 CONSENT AGENDA					
The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting.					
3.1	Minutes of September 10, 2020 Meeting	5		Attached	Approval
3.2	<i>In Camera</i> Minutes of September 10, 2020 Meeting			Attached	Approval
3.3	Approval of Rule Amendments - Part 5 - Division 1 - Admissions			Attached	Approval
3.4	Honoraria Policy for Executive Members and Lay Benchers			Attached	Approval
3.5	Committee Appointments			Attached	Approval
3.6	Report of the Complaints Investigation Committee			Attached	Approval
3.7	Reports of the Discipline Committee			Attached	Approval
4.0 EXECUTIVE REPORTS					
4.1	President's Report	5	Lynda Troup	Attached	Briefing
4.2	CEO Report	10	Kris Dangerfield	Attached	Briefing
4.3	Strategic Planning	30	Kris Dangerfield	Attached	Briefing

ITEM	TOPIC	TIME (min)	SPEAKER		ACTION
5.0 DISCUSSION/DECISION					
5.1	Practice Audits	60	Kris Dangerfield Darcia Senft	Attached	Discussion/ Decision
5.2	Law Firm Practice Management Resources	20	Kris Dangerfield	Attached	Discussion/ Decision
6.0 COMMITTEE REPORTS					
6.1	Equity Committee	10	Jessica Saunders		Briefing
6.2	President's Special Committee on Regulating Legal Entities	10	Wayne Onchulenko		Briefing
7.0 MONITORING REPORTS					
7.1	Financial Statements - September 2020	5	Kris Dangerfield	Attached	Information
7.2	Investment Compliance - September 2020	5	Kris Dangerfield	Attached	Information
8.0 MISCELLANEOUS BUSINESS					
8.1	Reimbursement Issues in October 2020	20	Kris Dangerfield Tana Christianson	Attached	Briefing
8.2	Report of Federation Council Member	10	David Swayze		Briefing
8.3	<i>In Camera</i> Discussion	20	Lynda Troup		Briefing

ITEM	TOPIC	TIME (min)	SPEAKER		ACTION
9.0 FOR INFORMATION					
9.1	Joint Message to the Profession re: Articling Recruitment			Attached	Information
9.2	Resource: <i>Conducting Fair and Equitable Articling Interviews</i>			Attached	Information
9.3	Orange Shirt Day Photos			Attached	Information



**The Law Society
of Manitoba**

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MINUTES

Benchers

Date: Thursday, September 10, 2020

Time: 12:30 pm

Location: Law Society Offices, 200 - 260 St. Mary Avenue
and Via Videoconferencing and Teleconferencing

Present:

Lynda Troup, President	Anna Maria Magnifico
Grant Driedger, Vice President	Kenneth Mandzuik
Anita Southall, Past President	Brian McLeod
Susan Boulter, Officer-at-Large	Wayne Onchulenko
Acting Dean David Asper, Q.C.	Anu Osborne
Mason Broadfoot	Joëlle Pastora Sala
Miriam Browne	Sacha Paul
Paul Grower	Jason Poettcker
Tehani Jainarine	Kelli Potter
Ashley Joyce	Vincent Sinclair
Anthony Kavanagh	Gerri Wiebe
Patricia Kloepfer	

Regrets: Christian Monnin Jessica Saunders

Guests: David Swayze

Staff Present:

Kris Dangerfield	Colleen Malone
Leah Kosokowsky	Deirdre O'Reilly
Pat Bourbonnais	Richard Porcher
Tana Christianson	Sean Rivera
Eileen Derksen	Alissa Schacter
Joan Holmstrom	Darcia Senft

1.0 President's Welcome and Treaty Acknowledgement

Ms Troup, President, called the meeting to order at 12:35 pm. Treaty territories 1, 2 and 5 were acknowledged.

2.0 In Memoriam

Benchers observed a moment of silence for Lawrence Ramsay Crane, Q.C., Abraham Louis Simkin, Q.C., William Glenn McFetridge and Gordon Edward Hannon.

3.0 Consent Agenda

3.1 Minutes of June 25, 2020

Motion: That the Consent Agenda item be approved as presented.

MOVED: Ms Southall
Seconded: Ms Browne
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Ms Troup's report dated September 2, 2020.

It was noted that Bradley Regehr, a past president of the Manitoba Bar Association, would be taking office as President of the Canadian Bar Association at a reception being held for him later in the day and in doing so would be the CBA's first Indigenous president.

Motion: That congratulations be extended to Mr. Regehr on behalf of the benchers to acknowledge this noteworthy occasion.

MOVED: Mr. Onchulenko
Seconded: Mr. Kavanagh
Carried.

Ms Dangerfield confirmed that the good wishes of the benchers would be conveyed to Mr. Regehr at the CBA reception.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Dangerfield's report dated September 1, 2020. Ms Dangerfield advised that a survey had been circulated to all members of the Law Society to gauge interest in implementing part-time practising fees. Benchers were reminded that this matter had arisen in response to a request made by the Woman Lawyers' Section of the Manitoba Bar Association in 2018 to recognize part-time status by providing a discount on Law Society practising fees and insurance fees. Benchers were encouraged to participate in the survey.

With regard to part-time practising fees, it was noted that non-practising and inactive members are not eligible to run or vote in a bencher election. Benchers were advised that there are a variety of reasons why a member may hold a non-practising or inactive status and that in certain circumstances it would be inappropriate for a member to participate in a bencher election. These are, however, issues which will form part of the Equity Committee's review on part-time practising fees.

Ms Dangerfield advised that a discipline hearing had been held for Mr. Hesse earlier in the day. The member had been charged with more than 100 counts of professional misconduct as authorized by the Complaints Investigation Committee in 2019 in response to numerous public complaints received which involved allegations of significant misappropriations. The panel hearing the matter ordered that the member be disbarred and that the Law Society be awarded costs in the amount of \$40,000. The hearing panel indicated that written reasons would be forthcoming.

Benchers were advised that a formal Call to the Bar Ceremony will be held at the Law Society offices on October 2, 2020. Graduating students will be permitted to attend the Ceremony either in person or via videoconference. Due to COVID-19 restrictions, in person attendance will be limited to essential dignitaries, staff and students. The event will, however, be streamed live for viewing by family, friends and the profession.

4.3 Strategic Planning

Benchers considered Ms Dangerfield's memorandum, dated September 3, 2020. As the strategic planning session which was to have been held in conjunction with the bencher meeting was now postponed until the spring or fall of 2021 due to COVID-19 restrictions, benchers were invited to consider at this time (a) whether there were any steps which they believed ought to be addressed in the interim; (b) whether there were any initiatives currently underway which ought to be improved, scaled back or halted; and (c) if there were any issues which ought to be on the agenda for discussion when the strategic planning session takes place.

Benchers indicated that they would like to receive the full report prepared by the facilitator, Mr. Ferguson, so that they could review the survey data, including staff responses, before providing direction on whether there were any steps which they felt needed to be addressed before the strategic planning session was able to take place. It was confirmed that this report would be included in the October 29, 2020 benchers meeting agenda materials and that this issue would be revisited at that time.

With regard to interim activities, benchers indicated that they would like to see further progress made on public engagement (Strategy 4.2) so that they are better able to determine what level of priority ought to be placed on this area when developing the next strategic plan. It was suggested that an additional activity which could be added to this strategy would be to determine whether the needs of a diverse community are being met. This activity could be achieved through community forums.

And finally, with regard to issues to be discussed at the strategic planning session, it was requested that consideration be given to developing strategies to address the recruitment and retention of lawyers in rural communities as part of improving access to justice. Benchers were advised that the Law Society had implemented a forgivable loan program in 2012 which was intended to encourage new lawyers to practice in communities outside of Winnipeg. Over the years some adjustments had been made to the program to encourage greater participation and it is intended that the Admissions and Education Committee will consider whether additional enhancements could be made to the program. The Committee will report to benchers on its findings in advance of the strategic planning session.

Benchers were advised that strategic planning will continue to be placed on each meeting agenda so that they are able to monitor current and developing issues.

5.0 Discussion/Decision

5.1 Proposed Rule Amendments - Calls to the Bar

Benchers considered Ms Kosokowsky's memorandum, dated September 3, 2020, which recommended that benchers direct that the Rules be amended to permit the Chief Executive Officer to waive or vary the formalities for lawyers to be called to the Bar as prescribed within Rule 5-13(1) in exceptional circumstances.

Benchers were advised that in light of the recent change in admission practices which have arisen as a result of COVID-19 and with the commencement of the new PREP program, it is intended that the Admissions and Education Committee will consider whether new call practices should be put in place which better accommodate the needs of the profession, while maintaining certain longstanding Manitoba call traditions. Accordingly, this proposed

rule amendment is intended to provide the Chief Executive Officer with the authority to address future call issues in the interim.

Motion: That the proposed addition of sub-rule 5-13(2) to the Rules be approved in principle as presented.

MOVED: Mr. Grower
Seconded: Ms Magnifico
Carried.

Benchers were advised that the rule amendment would be presented for final approval in both English and French.

Ms Wiebe excused herself from the meeting at 1:45 pm.

5.2 Honoraria and Expense Policies for Executive Members and Lay Benchers

Benchers considered Ms Dangerfield's memorandum, dated August 31, 2020, which invited benchers to consider whether the annual honoraria paid to the president and vice-president ought to be increased and whether the honoraria paid to lay benchers ought to be increased as well. Benchers were advised that the time commitment and level of responsibility in the role of the president and vice-president had increased significantly since benchers last reviewed the honoraria for these two positions in 2011.

Benchers wondered how the proposed increase in the honoraria paid to the president and vice-president would affect the current and future budgets. Ms Dangerfield advised that because there had been a substantial reduction in meeting and travel expenses over the past several months due to COVID-19, the Law Society was in a position to absorb the increase for these two positions in the current budget and that future increases would be incorporated into budgets as they are prepared. In this instance, the cost on a per member basis would be nominal. She recommended that benchers review the honoraria every two years moving forward to minimize the impact of future increases on practising fees.

While benchers generally supported the increase in honoraria to the president and vice-president, some benchers were of the view that it may not be the right time to do this while members and the public continue to be impacted by the pandemic.

Motion: That the honoraria paid to the president and vice-president be increased to \$40,000 and \$20,000, respectively; that the honoraria be increased by an additional \$5,000 for the president and \$2,500 for the vice-president if the incumbent resides outside of Winnipeg; and that benchers consider increasing the honoraria by an additional \$10,000 for the president and \$5,000 for the vice-president at the time the budget for the 2021/2022 fiscal period is prepared.

MOVED: Mr. Grower
Seconded: Ms Magnifico
Abstentions: Ms Troup, Mr. Driedger, Ms Kloepfer and Ms Osborne
Carried.

Benchers were invited to consider a proposed increase in the honoraria paid to lay benchers from \$100 to \$150 per meeting attendance. It was noted that the honoraria had not been increased since 2009. Benchers generally supported an increase in the honoraria paid to lay benchers, although some benchers were again of the view that from a public perception perspective, the timing was not right. However, given that benchers had just approved an increase in the honoraria paid to the president and vice-president, it would appear unfair to not approve an increase in honoraria for the lay benchers. It was also suggested that benchers consider increasing the honoraria to \$200 per meeting attendance, that the Law Society provide payment electronically and that payment to lay benchers be made on a quarterly basis.

Benchers were also of the view that the honoraria for lay benchers should continue to be paid based upon meeting attendance rather than a fixed annual rate given that the time commitment from one lay bencher to another will vary depending upon committee assignment.

Motion: That the honoraria paid to lay benchers be increased from \$100 to \$150 per meeting and that the honoraria be reviewed at the time the 2021/2022 budget is prepared.

MOVED: Mr. Driedger
Seconded: Ms Magnifico
Abstentions: Ms Osborne, Ms Pastora Sala, Ms Kloepfer and Mr. McLeod
Carried.

Ms Southall confirmed that the increase in honoraria for the president, vice-president and lay benchers would apply to the current fiscal period. Benchers will consider any additional increase in honoraria for the two executive positions and for the lay benchers at the time the budget for the 2021/2022 fiscal period is prepared. At that time benchers will also determine when the next honoraria review will take place as well as the frequency of future reviews.

Ms Dangerfield advised that the decisions made by benchers regarding honoraria would be incorporated into a formal bencher policy.

Acting Dean Asper, Q.C., joined the meeting at 2:20 pm. and Ms Wiebe rejoined the meeting as well.

5.3 Awards

Benches considered Ms Dangerfield's memorandum, dated August 24, 2020, which invited benches to consider the recommendation of the Richard J. Scott Award Selection Committee to amend the parameters of the Award in 2021 as follows:

"The Richard J. Scott Award is presented annually by the Law Society of Manitoba to an individual who advances the rule of law and contributes to a strong and independent legal profession through advocacy, litigation, teaching, research, writing or mentoring."

Benches were also asked to consider the establishment of a second Law Society award or medal which would recognize the services or contributions made by individuals which are directly linked to the work of the Law Society and warrant recognition. It was emphasized that the creation of the new award should not replicate any of the awards given out by the Manitoba Bar Association even though only MBA members are eligible to receive the awards presented by that organization.

And finally, benches were asked to consider whether they supported the creation of a Certificate of Merit which could be presented to lay persons in appropriate circumstances.

Motion: That benches approve (a) the recommendations of the Richard J. Scott Award Selection Committee; (b) the establishment of a second award or medal to recognize the services or contributions made by individuals which are directly linked to the work of the Law Society and which warrant recognition; and (c) the creation of a Certificate of Merit to honor lay persons as benches deem appropriate.

MOVED: Ms Southall
Seconded: Ms Browne
Carried.

5.4 National Discipline Standards

Benches considered Ms Kosokowsky's memorandum, dated August 27, 2020, which provided a detailed report on the performance of the Law Society of Manitoba in the areas of complaints and discipline as against national standards set by the Federation of Law Societies of Canada Standing Committee on National Discipline Standards.

5.5 FLSC Council Member

Benches considered Ms Dangerfield's memorandum, dated August 25, 2020, which invited benches to consider the appointment of Ms Troup to replace Mr. Swayze as representative to the Council of the Federation of Law Societies of Canada. Benches were advised that in

November of 2020 Mr. Swayze will have completed his sixth year of service in this position and, as prescribed by Bencher Policy #3, would no longer be eligible to serve in this capacity.

Motion: That Ms Troup be appointed to replace Mr. Swayze as Council member to the Federation of Law Societies of Canada for a three-year term, effective November 15, 2020.

MOVED: Ms Southall
 Seconded: Ms Browne
 Abstention: Ms Troup
 Carried.

6.0 Committee Reports

6.1 Complaints Investigation Committee

Benchers received for information the report of the Complaints Investigation Committee.

Benchers were advised that this was the final meeting Mr. Poettcker would be attending. Mr. Poettcker was thanked for the contributions he had made to the Law Society in his role as Student Bencher.

7.0 Miscellaneous Business

7.1 *In Camera* Discussion

All guests and staff, with the exception of Ms Bourbonnais, were excused from the meeting at this time.

Motion: That the meeting proceed *in camera*.

MOVED: Mr. Kavanagh
 Seconded: Ms Southall
 Carried.

Ms Troup discussed with benchers matters arising from the resignation of Ms Dangerfield as Chief Executive Officer.

Motion: That the meeting proceed *out of camera*.

MOVED: Ms Boulter
 Seconded: Ms Browne
 Carried.

8.0 For Information

Benchers considered the materials provided for information.

There being no further business, Ms Troup adjourned the meeting at 3:40 pm.



MEMORANDUM

TO: Benchers

FROM: Leah Kosokowsky

DATE: October 9, 2020

RE: Rule Amendments
Part 5 - Division 1 - Admissions

At the September 10, 2020 bencher meeting, you resolved to enact Law Society Rule 5-13(2) to allow for the chief executive officer to waive or vary the formal requirements for lawyer candidates' Calls to the Bar as set out in Rule 5-13(1).

The rule has been translated in French and is attached for your final approval.

LCK

Atc.

- (a) has successfully completed the bar admission program;
- (b) continues to be of good moral character and a fit and proper person to be called to the bar; and
- (c) has paid the required fees.

(AM. 04/04; 05/07; 10/07; 04/13; 05/20)

Certificate of qualification required

5-12(2) Repealed 05/20

Repetition of CPLED program

5-13 Repealed 05/20

Presentation to court

5-13(1) Following the approval of an application for call to the bar:

- (a) the applicant must be presented to the Court of Queen's Bench by a bencher or the chief executive officer at a date and time determined by the chief executive officer;
- (b) the presentation must take place at a sitting of the Court of Queen's Bench; and
- (c) the applicant must sign the rolls.

(AM. 05/20)

5-13(2) In exceptional circumstances, the chief executive officer may waive or vary the formal requirements of 5-13(1).

Conditional practising certificate

5-14 The chief executive officer may refuse to issue a practising certificate to an applicant for call to the bar or may impose conditions or restrictions on the practising certificate of the applicant. (AM. 04/04; 05/07; 10/07; 05/12)

Admission of Law Students

Registration of law students

5-15(1) A person may be registered in the society's student register as a law student if the person:

- (a) provides proof of enrolment in a law degree program;
- (b) is approved by the chief executive officer to practise law under the control, supervision and authority of a practising lawyer;

Célérité raisonnable nécessaire

5-11(3.11) Si le stagiaire n'exerce pas avec une célérité raisonnable son droit d'appel visé à l'article 5.1-11, le directeur général peut mettre fin au sursis à la condition de l'en aviser au moins 14 jours à l'avance. (ADOPTÉ 05/20)

Audience

5-11(3.12) Une formation du sous-comité des appels peut tenir une audience pour étudier une contestation lui ayant été soumise en vertu de l'article 5.1-10 ou une affaire que lui a renvoyée le directeur général. Toute décision rendue par la formation à l'issue d'une telle audience est définitive. (ADOPTÉ 05/20)

Reprise du programme de formation professionnelle

5-11(3.13) Le stagiaire qui échoue au programme patrimonial du CCFJP peut demander au directeur général la permission de s'inscrire au programme de formation professionnelle; il ne peut toutefois s'inscrire à ces programmes que deux fois, en tout. (ADOPTÉ 05/20)

Conditions d'admissibilité au barreau

5-12(1) Un stagiaire est admis au barreau aux conditions suivantes:

- a) terminer le stage prévu au paragraphe 5-5(1);
- b) obtenir une attestation satisfaisante de la part de son directeur de stage;
- c) réussir le programme de formation professionnelle;
- d) être toujours de bonne moralité et apte à être admise au barreau;
- e) payer les droits prescrits.

(MOD. 04/04; 05/07; 10/07; 04/13; 05/20)

Certificat de compétence obligatoire

5-12(2) Abrogé 05/20

Reprise du programme du CCFJP

5-13 Abrogé 05/20

Présentation à la cour

5-13(1) Une fois que la demande d'admission au barreau d'un candidat est acceptée, les formalités qui suivent doivent être accomplies:

- a) le candidat est présenté à la Cour du Banc de la Reine par un conseiller ou le directeur général à la date et à l'heure que fixe le directeur général;
- b) la présentation a lieu au cours d'une séance de la Cour du Banc de la Reine;
- c) le candidat signe les registres attestant de son inscription au tableau.

(MOD. 05/20)

5-13(2) Le directeur général peut, dans des circonstances exceptionnelles, modifier les formalités prévues au paragraphe 5-13(1), voire y renoncer.

5-13(2) *In exceptional circumstances, the chief executive officer may waive or vary the formal requirements of 5-13(1).*

5-13(2) *Le directeur général peut, dans des circonstances exceptionnelles, modifier les formalités prévues au paragraphe 5-13(1), voire y renoncer.*

CERTIFICATE OF TRANSLATION ACCURACY

I, François Blais, being a member of the Corporation of Translators, Terminologists and Interpreters of New Brunswick (CTINB), hereby certify that I am fluent in the English and the French languages and that the translation showing above is accurate.

François Blais

M^c François Blais
CTINB Certified Member
Barreau du Québec Member (Retired Lawyer)

Sept 16 2020

Date



MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield

DATE: October 22, 2020

RE: Honoraria

When you last met you reviewed the annual honoraria paid to the president and vice-president and the honoraria paid per meeting to lay benchers, neither of which had been increased since 2011. After some discussion you resolved to increase the honoraria paid to the president and vice-president for the 2020-2021 fiscal year to \$40,000 and \$20,000 respectively. The honoraria is to be increased by an additional \$5,000 for the president and \$2,500 for the vice-president if the incumbent resides outside of Winnipeg.

With respect to lay benchers you determined that honoraria should continue to be based upon meeting attendance rather than a fixed annual rate. You resolved to increase the honoraria from \$100 to \$150 per meeting.

You were of the view that when the budget for 2021-2022 is being prepared the issue of the rate of honoraria ought to be reviewed once again, with consideration being given to increasing the president and vice-president's honoraria to \$50,000 and \$25,000 respectively and lay benchers' honoraria being increased to \$200 per meeting. Increasing those rates so that they are effective for the 2021-2022 fiscal year will require you to revisit this issue in December 2020.

Attached is Bencher Policy #5/Operations Policy #3 on Honoraria/Prizes which incorporates the approved increases. Please note the incorporation of a review period of "no less than two years" which will permit you to revisit this issue in December and thereafter establish a review schedule of no less than every two years. This bencher policy will require your approval.

You will also note the incorporation of the operations policy with respect to the need to issue T4As.

Atc.



BENCHER POLICY #5 OPERATIONS POLICY #3

NAME OF POLICY	Honoraria/Prizes		
APPLICABLE SECTIONS OF THE LEGAL PROFESSION ACT AND RULES or Other Legislation	RC4157		
Approved by the Benchers October 29, 2020	Effective October 29, 2020	Reviewed	Revised
Approved by the CEO October 29, 2020	October 29, 2020		

Honoraria

In order to conduct its affairs the Law Society of Manitoba relies on the contributions and expertise of volunteers, including both lawyers and non-lawyers. In many instances a nominal honoraria is paid as a “thank you” gesture for the voluntary service although the amount of that honoraria does not reflect the fair value of the volunteer’s contribution of time and services.

The Law Society of Manitoba pays honoraria as follows:

- Lay benchers for attending a meeting (\$150/meeting)
- Discipline panel public representatives (\$150/day for first 2 days, \$500/full day for additional days)
- Educational presenters/facilitators

In addition, the Law Society pays an honorarium of \$40,000 to the President and \$20,000 to the Vice-President. In the event the President or Vice-President reside outside of Winnipeg, they will receive an additional \$5,000 and \$2,500 respectively per annum. The allowances

paid to the President and Vice-President are not considered by CRA to be honoraria payments but reflect “employment income”, attracting both CPP and EI.

The amount of the honoraria will be reviewed by the benchers no less than every two years.

All honoraria must be paid directly to the volunteer. Should the recipient wish to donate the funds to a charity, they must do so directly themselves.

CRA views honoraria payments as taxable income. Payees receiving cumulative annual payments totalling more than \$500 will receive a T4A.

Services performed by an individual with a status number on a reserve are tax exempt and will not be included on any T4A reporting. In these instances, a status number should be provided. However, if the services are performed off of a reserve, the same rules apply as for others.

Volunteers who will be recipients of an honoraria will be informed by Law Society staff that the CRA requires the issuance of a T4A for cumulative annual payments of \$500 or more.

Prizes

The Law Society provides cash awards to those students from the University of Manitoba Faculty of Law who have achieved the top four standings upon completion of their third year of studies. A T4A must be prepared and delivered to these award recipients.

T4A

The information required from the recipient of the honoraria/prizes is:

- Last name of the person to whom the Society made the payment, followed by the first name and initials
- The full address of the recipient, including the province and postal code
- The recipient’s social insurance number (SIN)
- Status number, if applicable

The attached Information Required for Canada Revenue Agency by Recipients of Honoraria/Prizes must be completed by the volunteer and award recipient and submitted to the accounting department prior to the payment being made.

The T4As will be sent to the volunteer no later than February 15th of the following year. Volunteers should contact the Chief Financial Officer of the Law Society in the event they have not received a T4A by this date.

Atc.

Information Required for Canada Revenue Agency by Recipients of Honoraria/Prizes

Honoraria/prizes are considered taxable income by CRA. If the cumulative annual total of honoraria paid to you during the current year is \$500 or more, a T4A will be issued by the Law Society of Manitoba. Volunteers should contact the Chief Financial Officer of the Law Society in the event they have not received a T4A by February 15th.

Surname:

First name and initials:

Reason for payment:

Please select one of the following

Lay Bencher

Public Representative

Prize Winner

Presenter

Other

Personal Information Required

Social insurance number (SIN):

Street address:

City:

Postal Code:

Date:

Signature:



MEMORANDUM

TO: Benchers

FROM: Executive Officers

DATE: October 22, 2020

RE: **Committee Appointments**

The recent appointment of Sam Raposo and Cindy Sholdice as judges of the Provincial Court of Manitoba has resulted in the loss of two members of the Complaints Investigation Committee. The Executive Officers are therefore recommending that:

1. Bernice Bowley (from Filmore Riley LLP) and Michael Clarke (from Myers Weinberg LLP) be appointed to serve on this committee. Each of them have agreed to serve if appointed.

Additionally, as we begin to consider the claims made against the Reimbursement Fund, we have identified some conflicts that need to be addressed prior to any claims being brought forward in relation to Mr. Hesse. This will necessitate the removal of some members of the committee as well as some new appointments to replace them.

In the circumstances, the Executive Officers are recommending that:

2. The Chair, Sacha Paul be removed from the Committee;
3. Bradley Zander be removed from the Committee and appointed to the Discipline Committee.
4. The current Vice-Chair, Ashley Joyce be elevated to chair the Reimbursement Committee;
5. The following persons be appointed to the Committee:
 - a. Gerrit Theule (Wolsely Law)
 - b. Kelli Potter (Patersons)
 - c. Blair Filyk (Meighen Haddad)

The Executive Officers are also recommending that:

6. The Acting Dean of the Law School, David Asper, Q.C. be appointed to serve on the Equity Committee.



MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield

DATE: September 3, 2020

RE: **Strategic Planning**

NOTE: This memo is returning to you for further review. The memo has been updated to include the facilitator's full report as per your request. No changes have been made to any of the other documents attached to the memo.

As you know we are not gathered in Clear Lake to engage in the full scale strategic planning session that we had previously deferred from April 2020 in light of the pandemic. In discussions with the Executive we concluded that so much of the value in strategic planning comes out of the in person discussions that take place both in and out of the focused sessions. It is unfortunate, but as with everything we have to be nimble and move forward with an alternate plan. We expect that we will proceed with strategic planning in 2021, as early as April and perhaps as late as our annual Clear Lake meeting.

This doesn't mean that the work of the Law Society will come to a screeching halt without the benefit of a shiny new strategic plan. Although our current strategic plan had a life span of three years that was to come to an end in April 2020, there is much work that remains to be done. In some instances work that was done as contemplated by the strategic plan was completed (e.g. the development of the Trust Safety program, the development of the new PREP program, the retention of an Equity Officer to further the Law Society's work on equity and diversity-related issues, the retention of a Communications officer to lead work to improve stakeholder confidence and the development of LSM branding and website). In other instances the work done in relation to specific goals (for example to remove regulatory barriers to prevent the delivery of legal services) has led to changes in circumstances that will require still further work to be done. For example, the Reports of Special Committees led to the Province's introduction of Bill 28. This will require the Law Society to develop a framework for the introduction of classes of limited practitioners and consideration of the nature of any further exemptions from the unauthorized practice provisions of the *Legal Profession Act*. Still other initiatives were identified in the plan but the work in developing those initiatives is still underway (it was after all an ambitious strategic plan!) and will require

further attention in 2020-2021 (e.g. practice audits, law firm self-assessments and a mental health diversion program).

In preparation for the strategic planning session, we asked that you complete a survey over the summer. Our facilitator, Scott Ferguson, has taken the results of those survey responses and prepared the first draft of a report that will go to you in advance of the strategic planning session and allow you to frame your thinking on what ought to be the Law Society's important strategic priorities. For today's purposes however, we are providing you only with the Executive Overview of that report to give you a general sense of the benchers' and management's reaction to the Environmental Scan that was shared with you. In the Overview, Scott has provided us with a potential way forward for the short term, given the deferral of the full strategic planning process and suggests three steps that can be taken prior to the formal strategic planning session.

1. Given the assessment in the Executive Overview, identification of any important or urgent steps that the Law Society ought to take that shouldn't "wait" for the development of the next strategic plan in the spring.
2. Identification of any initiatives under the four pillars of the current strategic plan (updated versions of which are attached) that ought to be stopped, scaled back or significantly improved.
3. Collection of issues to be considered for discussion at the Law Society's 2021 strategic planning session.

You will want to have a discussion about the extent to which either the benchers or staff ought to address these steps in advance of the formal strategic planning session.

Atc.



REGULATING IN THE PUBLIC INTEREST

2020 STRATEGIC PLANNING QUESTIONNAIRE

LAW SOCIETY OF MANITOBA

FACILITATOR'S REPORT

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

October 14, 2020



REGULATING IN THE PUBLIC INTEREST

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REGULATING IN THE PUBLIC INTEREST

EXECUTIVE OVERVIEW

CONTEXT AND PURPOSE

As part of its 2020 Strategic Planning Process, the Law Society of Manitoba:

- Provided benchers and members of management with an Environmental Scan, and
- Solicited their reaction to it and their insights via a Strategic Planning Survey.

This is the Facilitator's Report on the results and implications of the survey.

FORMAT OF EXISTING STRATEGIC PLAN

To assist readers to assess progress and implications, this document adopts the format of the Aim, Strategic Ends and Four Pillars of the existing Strategic Plan.

THE LAW SOCIETY SERVES THE PUBLIC INTEREST WELL

½ to 2/3rds of respondents believe that the Law Society is doing “a good job” in fulfilling its Strategic Aim to serve the public interest.

1/5th to 1/3rd provide the Law Society with an even higher rating – “Very Well/Excellent”.

Management provides the highest ratings. Lay benchers provide the lowest.

In serving the public interest, respondents believe that the law Society is on the right track. The biggest challenge will be pivoting to continue to serve well and even better among astonishing changes in the world around us. For example, this survey took place in the midst of the COVID-19 pandemic and the related recession and during society's heightened focus on EDI, especially regarding Black Lives Matter following the death of George Floyd.

THE LAW SOCIETY PERFORMS BETTER ON SOME STRATEGIC ENDS THAN ON OTHERS

Among the Law Society's Strategic Ends, respondents place the Law Society in three categories:

“Very Good”

- Law Society's and legal profession's independence
- Thorough investigation and disposition of complaints
- Fair investigation and disposition of complaints
- Protecting the public from financial loss due to lawyers' transgressions.

“Good”

- Competence of lawyers
- Timely investigation and disposition of complaints
- Transparency
- Overall, a public well-served.

“Less Than Adequate”

- All qualified persons have an equal opportunity to participate in the legal profession
- Legal services are reasonably available to the public
- The public can access legal services at a reasonable cost.

FOR THE MOST PART, THE FOUR PILLARS ARE BEING ADDRESSED WELL

When asked, “What’s **most important** for the Law Society’s Strategic Plan to address?”, responses ranged widely and broadly “across the pillars”, which could lead to one of two conclusions:

- “Everything needs fixing”, or
- “We are doing well on all fronts”.

The encouraging feedback, above, regarding the Strategic Aim and Four Pillars, suggests the latter.

THERE ARE TWO PILLARS TO SIGNIFICANTLY IMPROVE

The issues that stood out for particular improvement are:

- Access to Justice, and
- Equity, Diversity and Inclusion.

Responses indicate that these are not areas of Law Society “failure”. Respondents cited very few LMS “weaknesses”.

Rather, the need for, and challenge of, improvement may be because of factors such as:

- The long-standing nature of these issues:
 - The Truth and Reconciliation Commission occurred relatively recently in our history and raises issues that have been decades or centuries in the making
 - Cultural diversity and justice issues are similarly long-standing
- Complexity – that EDI requires changes of attitude and action by society as a whole
- Society’s sensitivity about these issues has been growing rapidly, particularly in recent years, and especially recently with respect to Black Lives Matter.

THERE ARE FOUR SIGNIFICANT ADJUSTMENTS TO CONSIDER

For four factors, the need for “improvement” would likely be an overstatement. Rather, “adjustment” is likely most accurate.

1. AFTERMATH OF COVID-19

Respondents identify implications that range among:

- Concerning
- Encouraging, and
- Completely unknown.

Such implications will affect:

- The public’s need for legal services
- The provision of legal services
- The required competencies of lawyers
- The regulation of lawyers
- The justice system.

The Law Society faces a significant challenge to interpret the implications of the pandemic and provide leadership in addressing them.

2. RAPID EXECUTION

Respondents differ as to the appetite and ability of the legal profession, the justice system and the Law Society to anticipate, adjust to and lead in change. However, their input suggests that there is potential for improvement, particularly as the pandemic accelerates change even more rapidly than technological advances.

Suggestions to become more nimble address a wide range of aspects including the education, and continuing education, of lawyers, the diversity of the Law Society and of the profession, improved access to justice and the organization and governance of the Law Society itself.

There is also a pattern where some respondents view an aspect of change as a threat while others view it as an opportunity. Expansion of alternative service providers is an example. A wholesome discussion of issues as “opportunities” vs. “threats” might be a fascinating, worthy and beneficial aspect of a future strategic retreat.

3. MAKE THE BEST USE OF RESOURCES

Respondents point out that the Law Society is a relatively small organization with limited resources. A clear message is, “We can’t do everything”. Accordingly, as this Strategic Planning process continues, avoid an attempt to “do everything”, over-tax volunteers and staff or spread resources “too thin”. Apply strategic thinking to focus effort and other resources to where they will do the most good to fulfill the Law Society’s Strategic Aim.

4. DEVELOPING METRICS

Respondents suggest the need for clearer metrics to track performance and focus effort, guide systematic implementation and guide best use of resources.

A caution, though. Dr. W. Edwards Deming, the US statistician who guided Japan's post-war economic turnaround, famously observed, "*Not everything that is important can be measured ... not everything that can be measured is important.*"

To prevent "reinventing the wheel", this appears to be an ideal initiative to conduct in collaboration with other Law Societies and with other regulators with whom Law Societies have a lot in common.

A POTENTIAL WAY FORWARD

Due to the present risk from the pandemic, the Law Society has postponed its scheduled Strategic Planning Retreat from September 2020. It will likely occur in early spring 2021 under the Law Society's next CEO.

In the meantime, the Law Society can take three steps to advance its Strategic Aim:

1. Consider the overall assessment that this Executive Overview provides and identify any important and urgent steps the Law Society should take that do not require guidance from a formal Strategic Plan
2. Consider the survey's input for each pillar/Strategic Objective from the last Strategic Plan and identify what should be stopped, scaled back, started or significantly improved, and
3. Develop a list of issues that next year's retreat should debate and resolve to provide necessary strategic guidance to the Law Society's focus and activities.

REGULATING IN THE PUBLIC INTEREST

CONTEXT, PURPOSE AND FORMAT

CONTEXT AND PURPOSE

This is a Briefing Book to inform benchers and those staff who are involved in the Law Society's Strategic Planning process.

It originally had two purposes:

- A. Report the results of the July Strategic Planning Survey, and
- B. Set out the issues to frame a September Strategic Planning retreat.

Due to the pandemic, the Law Society has postponed the retreat by as much as six months. Accordingly, this report does not address purpose "B". Instead of "B", this document contains the facilitator's suggestions as to how the Law Society might make the best use of "A" until a retreat can be held.

PARTICIPATION IN THE SURVEY

Participation in this survey was as follows:

Lawyer Benchers	11
Lay Benchers	5
Members of Management	12.

PURPOSE AND SCOPE OF THE SURVEY

The survey sought participants' reaction to the Environmental Scan dated July 10, 2020. The symbol "✓" indicates submission of the same input by other participants.

REACTION TO THE ENVIRONMENTAL SCAN

Three respondents commented on the Scan itself in terms of what surprised them.

- *Overall good environmental scan*
- *That the NCA, itself, is conducting the "gap analysis", when it is in a clear conflict of interest*
- *The breadth of this document was stunning - very thorough and comprehensive - much outreach research done ✓✓*

FULFILLING MISSION (AIM) AND STRATEGIC ENDS

COMPARATIVE SCORING METHODOLOGY

To compare responses to the first multiple-choice question from different constituent groups, results have been weighted with the following “scores” out of 100:

“Excellent/Very good”	90
“Good”	70
“Adequate”	55
“Poor”	30
“Unsure/Don’t know”	–

Responses of “Unsure/Don’t know” were eliminated from the results so as not to affect these scores.

For example, if most participants replied “Excellent/Very Good” and the rest said “Unsure/Don’t know”, the composite score would be **90**.

FULFILLING THE LAW SOCIETY’S STRATEGIC ENDS

In your opinion, what is the situation today? (score out of 100)

	TOTAL	LAWYER BENCHERS	LAY BENCHERS	MANAGEMENT
a. Lawyers are qualified on entry to the profession	59	58	57	61
b. Lawyers provide legal services competently over their entire career.	67	66	71	66
c. Lawyers are ethical and of good character in the practice of their profession	72	68	71	77
d. Investigation and disposition of matters relating to non-compliance ... are thorough	77	69	71	87
e. Investigation and disposition of matters relating to non-compliance ... are timely	59	62	47	58
f. Investigation and disposition of matters relating to non-compliance ... are fair	78	69	78	85
g. To the extent permitted by law, the Law Society conducts its business in a matter that is transparent	72	71	70	73
h. The legal profession is independent from government in a manner that best preserves and promotes the rules of law	80	81	74	81
i. Legal services are reasonably available to the public	38	35	33	42
j. The public can access legal services at a reasonable cost	29	35	22	27
k. The public is protected from financial loss arising from dishonest or negligent lawyers	77	76	59	83
l. All qualified persons have an equal opportunity to fully participate in the legal profession	48	38	28	67
m. Overall, the public is well served by the legal profession	68	63	64	74

40% of Lay Benchers responded “Unsure/Don’t know” to “e” and “f”

20% of Lay Benchers responded “Unsure/Don’t know” to “d”, “g”, “k”, “l”

FULFILLING THE MISSION

The Mission (aim) of the Law Society of Manitoba is a public well-served by a competent, honorable and independent legal profession, characterized by specified Ends.

In your opinion, how good a job is the Law Society of Manitoba doing in **SERVING THE PUBLIC INTEREST?**

	TOTAL	LAWYER BENCHERS	LAY BENCHERS	MANAGEMENT
Excellent/Very Good	29%	27%	20%	33%
Good	61%	55%	60%	67%
Adequate	7%	18%		
Poor				
Unsure/Don't Know	4%		20%	
Score out of 100	75	73	75	77

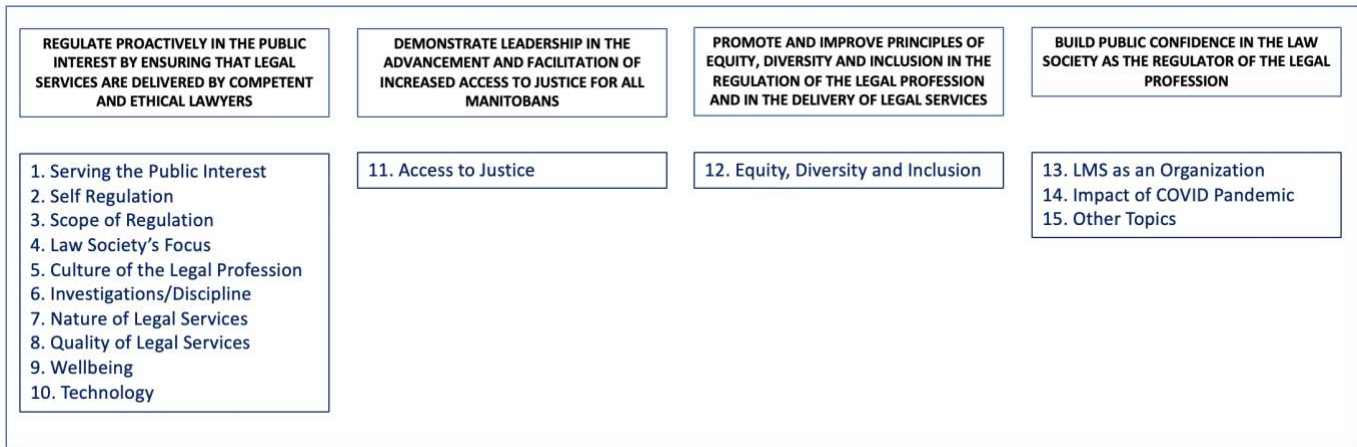
How should the Law Society better serve the public interest? [Up to 20 words]

- a. Develop a common understanding of “public interest” among Benchers, management and the public
- b. Outreach: public outreach to various communities (EG: indigenous) ✓
- c. Outreach (outgoing): Develop (and measure) a better understanding of LSM among the public ✓✓✓
- d. Outreach (incoming): Listen to what the public wants in the context of the Law Society’s mandate
- e. Stop worrying about trends
- f. More proactive risk- based regulation
- g. Continue to progressively address mental health, equity and access
- h. Promote Wellness among lawyers to prevent transgressions
- i. Execute the four pillars of the strategic plan
- j. Better support soles and newly called lawyers
- k. Adopt a comprehensive and systematized approach to forecasting future trends, not merely emerging issues
- l. Be more transparent and inclusive
- m. Ensure that benchers and staff are reflective of society and the demographics of the profession ✓
- n. Access: Improve access to justice, particularly in the North
- o. Access: Promote affordable access to legal services ✓
- p. Access: reduce barriers to non-lawyers providing low risk services to the public (eg: allow ASLPs) ✓
- q. Quality of legal services: increase the minimum expected standards of competency
- r. Quality of regulation: More significant discipline of chronic offenders
- s. Timeliness of regulation: More timely discipline
- t. More TRC
- u. Facilitate greater coordination among players in the justice system (government, courts, academia, PREP, NCA body, law society)

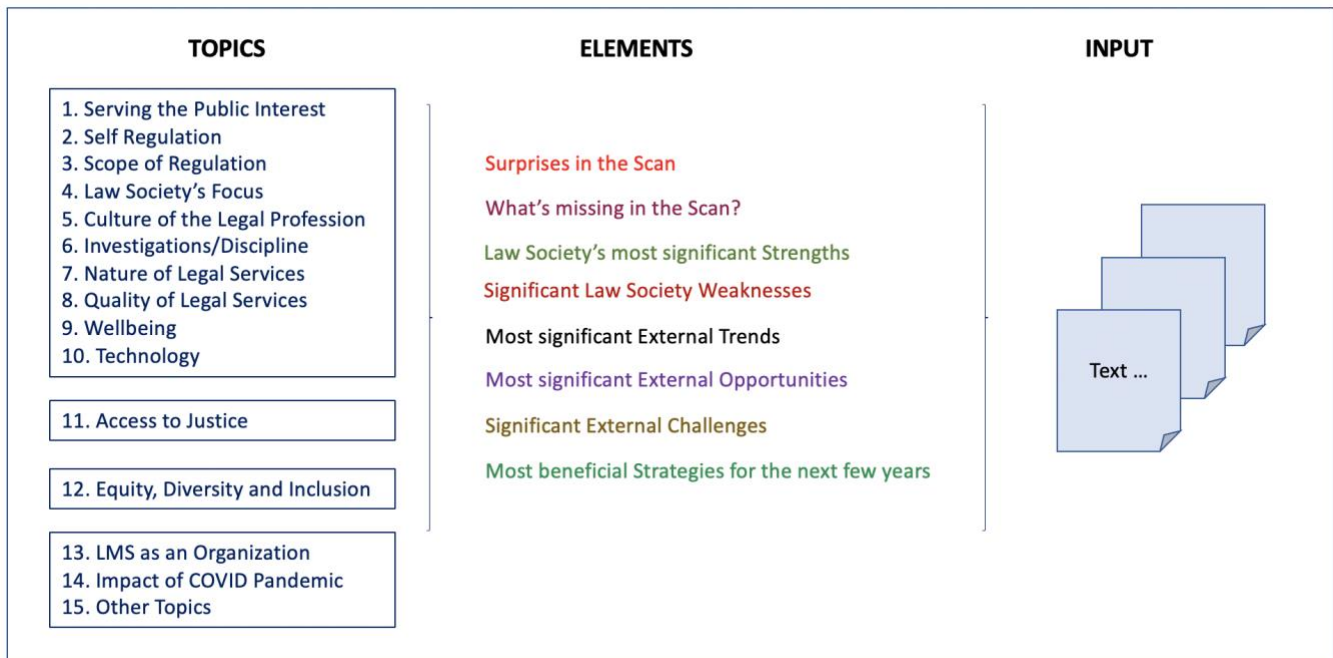
REACTION TO THE ENVIRONMENTAL SCAN

FORMAT OF THIS SECTION

Specific reaction to the Environmental Scan addresses 15 topics that generally map across the Four Pillars¹ as follows:



The material is presented in three layers:



¹ The Four Pillars are from the Law Society's existing Strategic Plan

REGULATE PROACTIVELY

1. SERVING THE PUBLIC INTEREST

1	Surprises	That the Manitoba Law Society chooses not to define the public interest
3	Surprises	That the election of benchers suggests that benchers are accountable to the profession ✓
2	Surprises	There may be a public interest in eliminating solicitor client privilege
4	What's missing	Do we need to revisit what the “public interest” means?
5	What's missing	Mention of processes LSM uses to ensure they are acting in the public interest.
6	LMS Strengths	Public confidence ✓✓
7	LMS Strengths	Commitment to protecting the public interest
8	LMS Strengths	Protecting public from dishonest lawyers ✓
9	LMS Strengths	Regulation as relates accounting practices, insurance and complaints
10	LMS Strengths	Quick to act on matters of public concern
11	LMS Strengths	Well run insurance program that benefits the client's loss
12	LMS Strengths	Solid attempts being made to modernize the system in a way that is mutually beneficial to the legal profession and public
14	LMS Weaknesses	Adequately addressing competence concerns and gaps in the public interest
15	LMS Weaknesses	Public awareness of what the Law Society does, services offered
16	External Challenges	Intergenerational wealth transfer from baby boomers to their children – risks to the reimbursement fund
17	Potential Strategies	Clearer online resources for the public
18	Potential Strategies	Knowing what the public wants in the context of our mandate
19	Potential Strategies	Improved public confidence in the Law Society
20	Potential Strategies	Respond to public faster and more clearly

2. SELF-REGULATION

1	Surprises	Canada is fairly unique in self-regulation v v
2	Surprises	Public skepticism in ability of self-regulators
3	Surprises	International push against self-regulation
4	Surprises	Higher threat to self-regulation than I realized before
5	Surprises	BC government was taking more direct control of regulation over professions
6	Surprises	Exploring giving up "monopoly" despite mission statement
7	Surprises	The public has a growing doubt in self-regulation and that one leader thinks the loss of self-regulation is a possibility
8	LMS Strengths	Lawyers seem to have a genuine interest in properly administering self-regulation.
9	LMS Strengths	Innovation and proactive regulation
10	LMS Strengths	Autonomy from government/politics
11	LMS Weaknesses	Overly burdensome for profession
12	Trends	Never ending need to protect self-regulation
13	Trends	Public skepticism/ distrust of self-regulatory organizations
14	Trends	Harmonization across jurisdictions (avoid made in Manitoba approach)
15	Trends	Increasing transparency and accountability
16	External Opportunities	With planning and effort we can strive to be the last profession on the government's "radar" in this respect.
17	External Opportunities	Capitalize on positive relationship with government; collaborate AND coordinate access efforts.
18	External Opportunities	Best practices international - eg. Mayson - UK report on reforming legal services
19	External Opportunities	Best practices Canada
20	External Opportunities	Technology boom - Allow innovative sandboxes here.
20	External Challenges	Public concern/skepticism about self-regulation v
21	External Challenges	Oversight by the government and the risk of losing the ability to self-regulate
22	External Challenges	The population as a whole will expect more from organizations such as the Law Society. Even the slightest issue will be put under a microscope.
23	External Challenges	Money-laundering - use of lawyers; risk to self-governance.
25	Potential Strategies	Advocate for the importance of self-regulation and demonstrate this through actions.

3. SCOPE OF REGULATION

1	Surprises	Consideration of staying out of the way re: non-lawyer legal services
2	Surprises	How unprepared we are for direct-to-consumer technologies
3	LMS Weaknesses	Relatively unprepared for other entities/professions entering legal field
4	LMS Weaknesses	Flexibility - although amendments are improving that
5	Trends	Expansion of who can provide legal services
6	Trends	Possibly regulating paralegals and others who provide legal services (alternative service providers) √√√√
7	Trends	The need for people to access what could be considered "legal services" from people that are not lawyers but can still provide those services properly and cost-effectively.
8	Trends	Proactive regulation of firms
9	Trends	Increased specialization may lead to the need for limited licensing √
10	Trends	More regulation of entities
11	External Challenges	Whether and how to regulate legal solutions (info & services) being provided online.
12	Potential Strategies	Implementation of entity regulation

4. LAW SOCIETY FOCUS

1	Surprises	Only three law societies include "truth and reconciliation" in their formal strategic plans
2	Surprises	In strategic focus (p.7), our current plan has "public confidence" and "communication with the public"; I don't recall seeing any work related to those items.
3	What's missing	The Strategic Plan states that the Law Society "emphasizes the importance of stakeholder engagement" however there is no articulation of the LSM engagement plan.
4	What's missing	LSM role in advocacy
5	LMS Weaknesses	Gets caught up in trends √
6	LMS Weaknesses	LSM has an ambitious agenda with limited resources. Some staff are stretched thin at times.

5. CULTURE OF THE LEGAL PROFESSION

1	What's missing	Needs of Gen Z were not addressed. They have different needs and values than millennials. These are the young people who are willing to take a stand for social justice, search for truth and will question corporations that don't practise what they preach. They are intuitive about the use of technology and more likely to use social media to find what they need and form opinions. These are also the young people who will be entering Law School.
2	What's missing	The needs of elders in an aging population in our society and in our profession. With the latter, there is a need to value their experience and wisdom and provide them with accommodation to work part time (this may be a necessity for many given the upcoming economic downturn) by offering them part-time professional dues and support with technological know-how.
3	LMS Strengths	LSM: Lack of Bureaucracy. Flexibility to change. Nimble. ✓✓✓
4	LMS Strengths	Bencher and management appear to be open to new ideas and ways of working
5	LMS Strengths	Willingness to change processes - adopting proactive regulation
6	LMS Weaknesses	The mentality that law is a "noble tradition" that is to be maintained today as it always has been can create reluctance to change.
7	LMS Weaknesses	Lawyers are inherently cautious and reluctant to adopt innovative approaches to regulation and the delivery of legal services.
8	Trends	Strategic planning that is ongoing and flexible (a need amplified by COVID)
9	External Opportunities	Items that break from past traditions (e.g. alternative service providers) will be easier to implement now since the world looks very different than it did 6 months ago.
10	External Challenges	Increased speed of change around us

6. INVESTIGATIONS/DISCIPLINE

1	Surprises	That 71% of hearings commence within 12 months of authorization ✓
2	Surprises	That it can take 12 - 18 months to deal with and resolve a complaint.
3	Surprises	The length of time to get matters to hearing is not in keeping with the National Discipline Standards
4	Surprises	Desire of some Canadian lawyers to have developmental discipline decisions
5	LMS Strengths	Investigation and resolution of complaints.
6	LMS Strengths	Good with complaint adjudication generally
7	LMS Weaknesses	Thoroughness of investigations precludes timeliness of investigations ✓✓
8	LMS Weaknesses	Perception that one set of rules exist for lawyers at big firms and another for solo practitioners
9	LMS Weaknesses	Be more proactive, less reactive/punitive
10	LMS Weaknesses	Specific communication/reports to members on matters of discipline
11	Trends	Proactive risk-based regulation ✓✓✓
12	Trends	Right Touch regulation
13	Trends	Increased demand on LSM, less time to respond
14	Trends	increased regulated accommodation
14	Trends	Diversion programs ✓✓
16	External Opportunities	LSS doing data analysis to reduce complaints and claims
17	Potential Strategies	Develop and implement a practice audit framework
18	Potential Strategies	Use AI and/or electronic audits of paperwork to assess lawyer competency and mandatory record keeping.
19	Potential Strategies	More proactive, risk-based identification and addressing high risk lawyers

7. NATURE OF LEGAL SERVICES

1	Surprises	The impact on law firms because of the pandemic
2	What's missing	Although alluded to in the scan, the immediate reality of the virtual law firm and legal practice needs to be addressed given the pandemic. Also, given the pandemic, technology and AI advances will likely be accelerated and will need to be addressed in the upcoming few years.
3	Trends	Increase in complexity of legal issues
4	Trends	Increase in consumer expectations
5	Trends	Increasing pace of change
6	Trends	Increased specialization
7	Trends	More people using technology (Google) to seek answers/solutions
8	Trends	The increasing number of small or solo practices ✓
9	Trends	Centralization of legal services to large centres rather than staying regional
10	Trends	Services not always requiring expensive lawyer (ie cadet vs police)
11	Trends	"Law as a buyer's market" will accelerate
12	Trends	Many lawyers working from home
13	Trends	Need to deal with clients remotely (issue raised by pandemic, but applicable in many other scenarios- elderly people, rural areas, cost efficiencies, etc.)
14	Trends	Alternative hearing/court methods (online, in-person, mix models)
15	Trends	The need for cultural competency and fluency
16	Trends	Digital filing of documents (LTO, court, etc.) and practices surrounding that.
17	Trends	Greater mobility in west (allowing, e.g., MB insurance / fees to cover practice in other provinces) ✓
18	Trends	Direct-to-consumer legal services via technology ✓✓✓✓
19	Trends	Disruptive pressures for services from non-lawyer sources
20	Trends	The intrusion of non-law firms, or law firms, without any physical connections to MB
21	Trends	Use of AI
22	Trends	Alternative legal representation (training for paralegals and other non-lawyers to provide certain "legal" services) ✓✓
23	External Opportunities	Increased socio-economic wealth of youth provides an opportunity for legal services.

24	External Opportunities	COVID19 presents some forced opportunities to reconsider alternative business practices and legal practices (where, how, who, and what).
25	External Opportunities	Consumer comfort with technology/ easy to implement new processes
26	External Opportunities	Changing expectations on career paths – potential for part time lawyers either because of family needs, personal preferences, potential for semi-retirement
27	External Opportunities	The Barreau monitoring AI
28	External Opportunities	Limited licensing
29	External Opportunities	Using tele-health and tele-medicine as models for incorporating technology and AI into practice √√
30	External Opportunities	Incorporating business practices that enhance and support the virtual practice of law √
31	External Opportunities	Electronic signature of documents
32	External Opportunities	Lawyers willing to try new methods
33	External Challenges	New lawyers taking on work they are not yet prepared to take on just to pay the bills
34	External Challenges	Downward pressure on legal fees
35	External Challenges	Millennials and Gen X lawyers and clients do things differently
36	External Challenges	Understanding the impact of technology on the practice of law
37	External Challenges	Artificial Intelligence transforming legal industry and elbowing out some lawyers.
38	External Challenges	The evolution and dynamic of the family structure. e.g. delivery of services in relation to increased common-law partnerships and how property is handled; wills and estate planning; end-of-life considerations, health directives etc.
39	Potential Strategies	We should aim to have a more holistic view of a lawyer's practice.

8. QUALITY OF LEGAL SERVICES

1	Surprises	Higher standards limit the quantity of available and affordable legal services – suggests less lawyers practise high standards and charge more
2	Surprises	Despite huge competence concerns, we allow new lawyers to set up own shop
3	Surprises	The concept of a practice audit program
4	Surprises	Policy development in areas (ie. Continuing professional development, coaching etc.) is only 'adequate' b/c there isn't data to inform development.
5	Surprises	Belief by some a Law Society should only provide PD not available elsewhere
6	Surprises	Dump law society CPD? Leaving expensive or poor quality CPD?
7	Surprises	Don't count on PREP to be the answer
8	Surprises	Sandbox concept horrified me
9	Surprises	The US State Department views Canada as money laundering oasis ✓
10	What's missing	There is great need for mentorship generally among young lawyers, particularly as articling experiences vary so widely.
11	What's missing	Recognition or reality that one-two person shops will have a vastly different interaction / need / engagement with LSM
12	LMS Strengths	Good articling program and PD opportunities for lawyers
13	LMS Strengths	Mandatory CPD requirement
14	LMS Strengths	PREP may be improving new lawyers' skill sets
15	LMS Strengths	Lawyers have resources available for self-improvement and are required to do so.
16	LMS Strengths	Supporting ethical conduct in practising law
17	LMS Strengths	Diversion program
18	LMS Weaknesses	Inability to change university curriculum or to enforce mentoring practices in firms
19	LMS Weaknesses	Law school does not prepare individuals for a practicing career. The Law Society's education program should start earlier in the education process.
20	LMS Weaknesses	The absence of mentoring and coaching impacts on competence of lawyers
21	LMS Weaknesses	Enhancing the "wellness" of lawyers

22	LMS Weaknesses	LSM could do better job of leveraging technology to mine data to understand where problems are and develop targeted approach – ideally preventative. Some of it we know anecdotally. E.g. Solo practitioners face greater risk at diff points.
23	Trends	Holistic support of lawyers
24	Trends	Mental health pressures on the profession and whether different discipline/support options can exist in those situations.
25	Trends	Mental health and wellbeing of articling students and lawyers will promote competent legal services ✓
26	Trends	More NCA lawyers
27	External Opportunities	With the apparent declining focus of universities on basic, practical law (and the practice of same), how the LSM can continue to “step up” with such things as PREP to ensure that future lawyers have the skills they need.
28	External Opportunities	Online legal education
29	External Opportunities	The need for quality CPD will only increase as we realize that our embarrassingly low requirement of 12 hours is not in the public interest
30	External Opportunities	New way of helping lawyers eg: CPLED
31	External Opportunities	PREP as a potential partner in providing CPD and supporting lawyer competence
32	External Opportunities	Lawyers and courts making better use of technology ✓✓
33	External Challenges	Increasing demands by the public for services that are faster and cheaper
34	External Challenges	The quality of candidates – both from a competence and ethical consideration – for admission to the Bar. The Jhanji and Hesse matters may be outliers or may be canaries in the coal mine. The benchers need a detailed report on this.
35	External Challenges	The increase of articling students needing positions ✓
35	External Challenges	Online learning - consequences for students
36	External Challenges	Competency of NCA grads
37	External Challenges	Not all are self-represented due to financial constraints (they'd play Google-lawyer regardless)
38	External Challenges	The impact of technology and the delivery of services by unregulated/unidentified service providers
39	External Challenges	Technology competency in service delivery
40	External Challenges	Technology is great and convenient, but shouldn't create a second-tier legal system (e.g. for outside of Winnipeg)
41	External Challenges	Concern from lawyers and public re: legal services by non -lawyers

42	External Challenges	Immigration consultants, especially those that only operate within ethnic-specific communities, acting / being viewed as legal professionals.
43	External Challenges	The comment about the economic downturn incentivizing lawyers to cut corners was concerning. A proactive approach to addressing this would be preferred over dealing with it on the discipline side of things.
44	External Challenges	Impact of starvation in solo and small firms on the public
45	External Challenges	TRC/ MMIWG Calls to Action - meaningful changes to the legal profession and law practice are required to meaningfully implement the recommendations. While this is necessary, it will also be challenging. ✓
46	Potential Strategies	Increase in proactive education and supports ✓
47	Potential Strategies	Changes to articling ought to be adopted to more effectively train young lawyers
48	Potential Strategies	In light of COVID's impact on articling, finding creative solutions to ensuring new lawyers get crucial support and mentoring
49	Potential Strategies	A mentoring program like the LSO's should be implemented ✓
50	Potential Strategies	Better PD opportunities for rural/remote lawyers
51	Potential Strategies	Lawyers, especially small/soles, needing more guidance and resources, eg: best practices; Have robust resources available to support small and solo practitioners in areas in which we know they struggle. ✓✓
52	Potential Strategies	Supporting young lawyers, older lawyers and sole practitioners
53	Potential Strategies	Making ADR competencies mandatory
54	Potential Strategies	Implementation of trust safety program
55	Potential Strategies	A great CPLED program
56	Potential Strategies	Digital/online programming for PD opportunities to become more mainstream
57	Potential Strategies	Targeted competence plans that address greatest needs
58	Potential Strategies	Given Canada's pariah status in respect of anti-money laundering, ensuring that lawyers are well educated – and updated - on AML processes, procedures and best practices. After COVID, further and practical training – flowing from lessons learned – will be required.
59	Potential Strategies	Anti-money laundering – continue to find ways to educate the profession to help identify red flags
60	Potential Strategies	Establish practice audits

9. WELLBEING

1	What's missing	Health and wellness of LSM staff
2	Trends	A focus on lawyer well-being (not just mental health and addiction)
3	External Opportunities	Mental Health Research is being done nationally. Resources ought to be developed collaboratively.
4	Potential Strategies	Take a preventative (as opposed to cure-based) approach to lawyer well-being and mental health ✓✓✓✓✓
5	Potential Strategies	Need to appropriately address mental health and substance abuse issues as health issues, rather than in discipline stream [Diversion Program] ✓

10. TECHNOLOGY

1	LMS Weaknesses	Not embracing technology for LSM itself or profession; no sandboxes ✓✓
2	Trends	Digital security standards for firms/lawyers
3	Trends	Use of technology to aid and increase the speed of delivered services to the public.
4	External Opportunities	Technology - using it more in education and by lawyers
5	External Opportunities	Technology in the justice system/government
6	External Opportunities	Increase in use of technology by all due to pandemic opens opportunities to enhance Law Society's use of technology ✓
7	Potential Strategies	Increasing use of and competency in technology to make work more efficient ✓
8	Potential Strategies	Enhance training in and innovative use of technology in LSM and firms

INCREASE ACCESS TO JUSTICE

11. ACCESS TO JUSTICE

1	Surprises	Legal services are \$25B industry in Canada but only 15% of legal matters include a legal professional √√√√√
2	Surprises	85% self-representation in some jurisdictions for family matters
3	Surprises	Higher standards for competence can undermine access to justice
4	Surprises	Too many graduates for the marketplace
5	Surprises	The scan suggests that an increase in complaints was due to a more litigious and “aggressive and tenacious” public without even mentioning the possibility that there may be issues with the profession itself.
6	Surprises	Judge rulings can be affected by sleep, food eaten and how sports team did
7	What's missing	There was very little regarding legal services in rural/remote areas.
8	What's missing	How can the stakeholders identify, recruit and promote residents of the north to service the north to possibly improve access to justice in the north?
9	What's missing	What do lawyers think and what does the public think is preventing better access to justice and less costly services?
10	What's missing	Lack of information about the value of incorporating ADR as an integral part of our legal system, if not the first choice. This is an important issue for many immigrants who do not trust our legal system and who value privacy and face-saving in dispute resolution and for First Nations peoples and immigrants who prefer to use a "wise-elder" to resolve disputes. Is it time to redefine what "zealous advocacy" means and that competency means having integrated ADR skills with ADR as the first option in problem-solving not traditional positional negotiation?
11	What's missing	LSM’s lack of collaboration with government and judiciary and court administration that especially relate to access issues and solutions.
12	LMS Weaknesses	Not doing enough about the access crisis.
13	LMS Weaknesses	Speed at addressing access to justice matters
14	Trends	Demands for improved access to justice
15	Trends	Increased specialization that increases fees and limits access to markets that cannot bear to support such specialized lawyers
16	Trends	Increasing numbers of new lawyers
17	Trends	Greater use of non-lawyer specialists (paralegal) √

18	Trends	Opportunities for technology in the delivery of legal services to provide greater access
19	External Opportunities	Examine approaches in other jurisdictions that allow for alternative methods of services delivery ie. paralegals. This may reduce the cost of delivering a service and increase public use of legal services.
20	External Opportunities	Collaborate with other jurisdictions that have models to address equity / access of racialized groups to get quality legal services.
21	External Opportunities	Impact of pandemic on use of technology; can improve access
22	External Challenges	Access crisis
23	External Challenges	Due to inability to access justice system, risk that Canadians will lose faith in it.
24	External Challenges	Decreased # of lawyers (pandemic recession and boomers)
25	External Challenges	Economic downturn could increase concerns that legal services are not affordable/ accessible √√
26	External Challenges	Increased self-representation √
27	External Challenges	Manitoba has a significant number of newcomers, immigrants, multi-generational family households, young wealth and entrepreneurs who rarely access the services of legal professionals.
28	External Challenges	Lawyer relevance; affordable services from unknowns √
29	Potential Strategies	Improve access to justice √√
30	Potential Strategies	Take a more active role in promoting practice in rural/remote areas √
31	Potential Strategies	Progress on alternative legal service providers √√√√
32	Potential Strategies	Consider a pathway for paralegals to deliver low risk services or a self-service model that the public can use.
33	Potential Strategies	Light touch regulation of services delivered by non-lawyers should facilitate improved access √
34	Potential Strategies	Expand use of ADR
35	Potential Strategies	Consider an interdisciplinary approach – for example co-locate legal aid offices with providers of other social services in recognition of fact that many people are dealing with multiple problems and legal issues are related to other issues they’re dealing with. Consider moving toward interdisciplinary model for providing support.
36	Potential Strategies	Become more active on how the Courts operate to assist with A2J, such as encouraging technology (both for filings, records and attendance at court) as well as removing the old-fashioned trappings (M’Lord and robes) and providing for outside of office hours and even summer access.

IMPROVE EQUITY, DIVERSITY AND INCLUSION

12. EQUITY, DIVERSITY AND INCLUSION

1	Surprises	Percentage of lawyers who are white.
2	Surprises	The Benchers make-up does not reflect the demographics of our profession or our society
3	Surprises	The Equity, Diversity and Inclusion initiative was not completed and has been approached in a "band-aid" fashion
4	Surprises	Lack of data + disaggregated data re: Internationally trained lawyers; BIPOC and LGBTTQ
5	What's missing	Extent of diversity of LSM staff
6	What's missing	Systemic barriers in the profession
7	What's missing	Although cultural competency has been identified as an issue to be addressed, the urgency of it as a priority.
8	LMS Strengths	Diversity of perspectives
9	LMS Weaknesses	Insufficient representation of visible minorities at Benchers level ✓
10	LMS Weaknesses	Diversity of staff ✓✓
11	LMS Weaknesses	Slow acceptance by some lawyer Benchers to the needs and reality of the majority of practitioners and of a multicultural society.
12	Trends	Emphasis in society on EDI
13	Trends	A public recognition of our lack of diversity. For example, the Jul.17.20 Globe and Mail piece on "Why are there still so few Black lawyers on Bay Street?" ✓
14	External Opportunities	Increasing responsiveness to gender-, race- and equity-issues
15	External Opportunities	LSM can foster relationships with other Law Societies and external groups to assist in building-up the cultural competency of lawyers. Additional supports are needed to assist lawyers in addressing unconscious bias and how their contribution to the legal framework impacts racialized communities. ✓
16	External Opportunities	BIPOC lives matters - the movement presents an opportunity to seek public input on how the profession can better demonstrate meaningful respect for and representation of BIPOC
17	External Opportunities	Widespread momentum generated by Black Lives Matter movement. Increased awareness of and appreciation of EDI issues ✓
18	External Challenges	External image - still seen as "old boys" club, unchanging, stiff
19	External Challenges	Resistance to increasing diversity and inclusion

20	External Challenges	Increasing diversity in a profession not known for diversity
21	External Challenges	Increasing diversity, multiculturalism and immigration
22	External Challenges	Diversity - how does the profession catch up?
23	External Challenges	Young members - seeing the world differently than the old ones
24	External Challenges	How to recognize and train lawyers in respect of unconscious bias / systemic racism
25	External Challenges	Diversity within the profession will need to move beyond a general goal and into something with specific, numerical goals that we will be judged as to how they compare to other provinces and professions.
26	Potential Strategies	Diversity and inclusion strategy for the profession
27	Potential Strategies	Ensure lawyers work toward becoming culturally competent as per TRC's recommendations.
28	Potential Strategies	Making cultural competence mandatory; building cultural competence ✓✓
29	Potential Strategies	Professional Development opportunities that allow Lawyers to hear how their profession impacts marginalized and disadvantaged communities.
30	Potential Strategies	Need to ensure internal and externally facing policies, procedures and practices support equity, diversity and inclusion and don't have effect of perpetuating systemic racism.
31	Potential Strategies	Support for increasing diversity in the legal profession ✓
32	Potential Strategies	TRC and MMIWG Calls to Action - offer important guidance to lawyers and law societies
33	Potential Strategies	Engaging in outreach to BIPOC communities through their communities of practice ie. ethnocultural, ethno-faith, LGBTQI, youth etc. to increase awareness.
34	Potential Strategies	Develop reciprocal relationships/ environment/ culture between the profession and public to empower groups to engage in more equitable ways.
35	Potential Strategies	Actively engage historically underrepresented groups in both promoting them to enter the profession and make available legal services to their group specifically.
36	Potential Strategies	Increase outreach efforts with racialized, ethno-cultural / ethno-faith communities and LGBTQI.
37	Potential Strategies	Increase collection of disaggregated data by using technology and anonymous surveys aimed at specific groups.
38	Potential Strategies	Tackle TRC in a more meaningful way
39	Potential Strategies	Continued progress on diversity within the society/benchers ✓✓✓

BUILD PUBLIC CONFIDENCE IN THE LAW SOCIETY

13. LSM AS AN ORGANIZATION

1	LMS Strengths	Carver model of governance; effective governance √√
2	LMS Strengths	Size - smaller facilitates communication, working together
3	LMS Strengths	4 pillars in strategic plan are more relevant than ever
4	LMS Strengths	Good administrative structure to deal with any issue
5	LMS Strengths	Strong and committed benchers/volunteers ✓
6	LMS Strengths	Collegiality with bench, bar, faculty, etc.
7	LMS Strengths	Continuity Board and staff
8	LMS Strengths	Attracts nice people as benchers and staff
9	LMS Strengths	Conscientious, high-quality management and staff √√√√√√√√√√√√√√
10	LMS Strengths	Helpful staff who are knowledgeable and good at providing guidance and answering questions
11	LMS Strengths	LSM has an increasing self-awareness and understands its limitations/ deficits
12	LMS Strengths	Identification of issues that affect the profession and those we serve √√
13	LMS Strengths	Responsiveness to issues (as shown by their leadership in adjusting practices, such as document execution, during COVID)
14	LMS Strengths	Balanced moderate approach to current issues impacting practice of law
15	LMS Strengths	LSM is proactive
16	LMS Strengths	Communicating with the profession
17	LMS Strengths	Accessible to membership; once members of the Bar learn not to fear the Law Society, it is very accessible and helpful ✓
18	LMS Strengths	Collegial bar
19	LMS Strengths	Well run organization that is highly regarded within the profession and beyond and has strong relationships with other organizations – legal and non-legal
20	LMS Strengths	Support of profession and respect of judiciary
21	LMS Strengths	Leadership and collaboration with other societies
22	LMS Strengths	Wonderful workplace culture with high level of engagement among staff - commitment, loyalty and dedication

23	LMS Strengths	Implementation of the strategic plan
24	LMS Weaknesses	Governance structure with oversized Benchers Board and many committees
25	LMS Weaknesses	The committee structure – with limited meetings of ever-changing members who do not have the necessary history – means that progress is often very slow.
26	LMS Weaknesses	Perception that LSM is staff-driven, not profession / benchers-driven
27	LMS Weaknesses	Relatively small size limits the available resources for new programming
28	LMS Weaknesses	Not specifically identifying/considering the effect on or response of the profession to proposed changes well before they are brought to the Benchers for consideration.
29	LMS Weaknesses	Getting hung up on minutiae
30	LMS Weaknesses	The political nature of the profession is downplayed
31	LMS Weaknesses	Greater reliance on non-lawyer experts - educational experts, for example
32	LMS Weaknesses	Not providing the ability of the profession to obtain guidance on ethical/code issues without the need to have to contact the actual regulator (i.e. the “police”).
33	LMS Weaknesses	Plan for implementation of main issues such as lack of public engagement, diversity of profession, and A2J.
34	LMS Weaknesses	Availability of accessible and plain-language information about the role of the Law Society is needed.
35	LMS Weaknesses	Communication with the public
36	LMS Weaknesses	Not always as effective as we could be at communicating what we do - even profession doesn't always get it...admittedly it's difficult
37	LMS Weaknesses	It may not broadcast as well as it should that it is a positive resource for its members.
38	LMS Weaknesses	Lack of outreach beyond Winnipeg
39	LMS Weaknesses	Need more resources or more efficient use of resources ✓✓✓
40	External Opportunities	Learning from other Societies/Regulators - what works/doesn't
41	External Opportunities	Partnerships across professions or jurisdictions
42	External Opportunities	Flexible home-based models for staff
43	External Challenges	Image of LSM among members - non approachable, non-caring, opposing
44	External Challenges	Ensuring our members and the broader community understand what we do.
45	Potential Strategies	Appointment of all Benchers to ensure diversity, exclusivity and demographic representation
46	Potential Strategies	Incorporating more lay Benchers to enhance public trust in self-regulation

47	Potential Strategies	Creative solutions - bencher election info session to encourage candidates to run
48	Potential Strategies	Less protective of "lawyers" and willingness to employ non-layers at LSM and bench
49	Potential Strategies	Improving public confidence through ongoing and regular public engagement and implementation of recommendations flowing from public input.
49	Potential Strategies	Strengthening 4 pillars of strategic plan
50	Potential Strategies	Improve collaboration with law school and courts.
51	Potential Strategies	Setting goals by using metrics to measure those and to more objectively track progress [eg: Quality of lawyers and legal services, Diversity, TRC, Access to Justice] √√√√
52	Potential Strategies	Adopting an important and needed advocacy role to support the changes necessary
53	Potential Strategies	Implement document management systems; make data-driven policy decisions.
54	Potential Strategies	We should look into using AI and Big Data to anticipate issues or prevent issues from escalating. √
55	Potential Strategies	Improving self-awareness of what to take on and what to pass on

14. IMPLICATIONS OF THE COVID PANDEMIC

1	Surprises	Extent of changes due to COVID pandemic
2	What's missing	Not missing, but the "Post-Pandemic Perspectives" will be a much bigger focus if this document was prepared today, tomorrow, next year. I believe many items that were addressed will be viewed in the future through the lens of COVID-19.
3	Trends	COVID-19 changed the world on a grand scale overnight. The legal profession will be demanded to adapt/evolve faster than before.
4	Trends	Regulation will be performed more "online"
5	Trends	Post-COVID recession
6	External Opportunities	Justice system demonstrated ability to "pivot on a dime" because of COVID - what positive changes can we make permanently rather than returning to normal.
7	External Opportunities	Fallout from COVID over 1-3 years. Some positive – adoption of flexible work schedules, increased efficiencies through use of online court appearances, meetings etc.
8	External Challenges	COVID19 - presents challenges as the business of lawyers may be negatively impacted
9	External Challenges	Changes to legal practice as result of the pandemic
10	External Challenges	Increased stress and substance abuse issues, job losses, failing law practices
11	External Challenges	COVID - changes in how the Law Society interacts both internally and with its stakeholders

15. OTHER TOPICS

1	Surprises	The Pareto Principle: 80% of what we do produces 20% of results
2	External Opportunities	No harm in Federation / CBA being more on the same page - they can learn from each other (locally too)
3	External Challenges	Increasing societal unrest and distrust
4	External Challenges	Cyber-attacks; cyber security.
5	Potential Strategies	Social safety net for lawyers
6	Other Input	Many important issues are identified and prioritized in the Plan, including access to justice, TRC, public input and diversity. The next few years present an important opportunity for the LSM to demonstrate how it will implement concrete actions towards these issues/goals.
7	Other Input	What would the staff want the board to do first and not at all? What does the staff think the public would want us to do first and not at all?
8	Other Input	We should be looking for blind spots. Current high level of staff competence may lead to complacency at Board and staff level.
9	Other Input	The pandemic has emphasized the need to be nimble and adjust priorities and strategies as required. The Law Society should adopt a strategic plan that allows for that and that will be reviewed in two rather than 3 years.
10	Other Input	As an incoming lay bencher with very limited exposure to date re LSM, I need more time to reflect - certainly the environmental scan provided ample basis for thoughtful discussion.
11	Other Input	I appreciate the opportunity as a Law Bencher, to contribute to the process of setting the future course of the Law Society in these challenging times. Thank you.
12	Other Input	Strategic goals require adequate resources to ensure success. Can't "do it all."

CONSIDER A POTENTIAL WAY FORWARD

Due to the present risk from the pandemic, the Law Society has postponed its Strategic Planning Retreat from September 2020. It will likely occur in early spring 2021 under the Law Society's next CEO.

MAKE THE BEST USE OF RESOURCES

Respondents point out that the Law Society is a relatively small organization with limited resources. A clear message is, "We can't do everything". Accordingly, as this Strategic Planning process continues, avoid an attempt to "do everything", over-tax volunteers and staff or spread resources "too thin". Apply strategic thinking to focus effort and other resources on where they will do the most good to fulfill the Law Society's Strategic Aim.

The following suggestions outline a possible way forward with the Society's limited resources in mind.

1. CONSIDER THE OVERALL ASSESSMENT

Engage management and Executive in a discussion of the overall assessment of the state and the future of the Law Society as outlined in the Executive Overview:

1. *How accurate does the Overview seem to be, based on the detailed results of the survey that appear in this document?*
2. *How complete is the Overview?*
3. *Given this assessment, what are the most important and urgent actions that the Law Society must take that:*
 - a. *Can't wait for a 2021 strategic planning retreat, and/or*
 - b. *Do not require the guidance of a formal strategic plan?*
4. *What are we going to do about these, by when, by whom?*

2. CONSIDER EACH PILLAR

Engage management in a consideration of each of the four pillars, and for each, explore:

What are the fewest, most important improvements that the Law Society can take to make the most progress in fulfilling the Strategic Aim, that do not require the guidance of a formal strategic plan, in terms of:

- a. *What to stop or scale back*
- b. *What (new activities) to start by when and by whom*
- c. *What (existing activities) to do differently and better, and how, by when and by whom.*

3. COLLECT IDEAS FOR A STRATEGIC PLANNING RETREAT

During the next several months leading up to a strategic planning retreat, collect a list of issues to debate and resolve where the Law Society requires clear strategic guidance.

The Law Society of Manitoba Strategic Plan 2017 - 2020

September 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 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 Delivering Legal Services begins work November 2019

Rules on Anti-Money Laundering and Terrorist Financing approved October 31, 2019 and implemented January 1, 2020

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

June 2018 the Law Society seeks amendments to the *Legal Profession Act*

Report on Hub Project proposal shared with stakeholders November 2019. Funding secured through Manitoba Law Foundation

Law Library Hub commences delivery of services in February 2020. (Currently on hold due to COVID)

Application for Manitoba Law Foundation to fund Access to Justice Coordinator in January 2020 (Currently on hold due to COVID)

March 2020 the Province of Manitoba issues Bill 28 to amend the *Legal Profession Act* to create a class of limited practitioners and permit the benchers to expand the exemptions under the *Act* from unauthorized practice

May 2020 President's Special Committee on Regulating Legal Entities presents report to benchers. Recommendations include further work on the expansion of exemptions from the unauthorized practice provisions and development of infrastructure to support delivery of legal services through Civil Society Organizations (CSOs)

President's Special Committee on Health and Wellness presents recommendations to benchers in April 2020 for a diversion program and other initiatives to support health and wellness in the profession. Recommendations approved with work to continue in 2020/2021

PREP Pilot project commences 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

Law Society endorses national study on health and wellness in the legal profession facilitated by the Federation of Law Societies of Canada

PREP commences delivery in four CPLED provinces June 2020

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 annual attendance at Welcoming Ceremony at Faculty of Law and sponsorship of reception September

Engagement with profession through development of survey on part-time practising fees; Draft survey shared with Equity Committee October 2019 with formal survey to be circulated to the profession September 2020

Engagement with profession through bi-annual 50 Year Lunch

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 Communiqué December 2019

Website unveiled January 2020

Information Session on Becoming a Bencher held 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

Annual Co-Host SOGIC Pride Reception

Benchers and Equity Committee consider issues relating to part-time practising fees;

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

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



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

-and-

Action Plan

September 2020 Update

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	
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 (March 2018)	✓

Actions	Priority Level	Steps	Timeline	
		<p>Step 6: Work with new CEO and CPLED Partners to develop new education and assessment program</p> <p>Step 7: Consider how to more effectively integrate articling with the CPLED program</p>	<p>2017 – 2020</p> <p>Ongoing;</p>	<p>✓</p> <p>2021?</p>
<p>Status Comments:</p> <p>CPLED</p> <p>The development of CPLED 2.0 is essentially complete. Dr. Kara Mitchelmore was hired as the new CEO of CPLED in March 2018. She engaged in broad ranging consultations with stakeholders from the partner provinces and from across Canada. In September 2018 the benchers approved a capital investment of \$600,000 to fund the development of CPLED. The funding was structured as a loan and CPLED has entered into several service agreements with the Law Society of Manitoba with respect to the use of LSM resources. A pilot project ran in Manitoba commencing in January 2020 and those students will complete their Capstone Assessments in October 2020. As of June 2020 the full PREP program is being delivered in Manitoba, Saskatchewan, Alberta, Saskatchewan and Nova Scotia.</p> <p>Articling</p> <p>In May 2019 we participated in a survey developed by the Law Society of Alberta to assess the current state of articling. Students, young lawyers, principals and mentors were asked questions intended to explore the strengths and weaknesses of the current program, the level of support that new lawyers receive, the perceived value of the program, how well it prepares individuals for entry level practice, and how to improve the training. This survey will provide excellent data if the benchers wish to explore changes to the articling program as part of the next strategic plan. In the interim concerning information about discrimination and harassment during recruitment and articling was identified. Those concerns have been referred to the Equity Committee for consideration of how best to address those issues. Staff also identified and are utilizing opportunities to improve communications with young students and lawyers about existing resources to assist them.</p>				
<p>Activity 1.1.2</p> <p>Practice Audits - Develop plans and procedures for implementation of practice audits</p>	<p>Intermediate</p>	<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>2018 - 2019</p> <p>March 2019 to present Preliminary Analysis</p>	<p>✓</p> <p>✓</p> <p>✓</p>

Actions	Priority Level	Steps	Timeline	
		<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>	<p>March 2019 to present</p> <p>March 2019 to present</p> <p>March 2019 to present</p> <p>April 2019</p> <p>April 2019 to present</p>	

Status Comments:

An environmental scan of other regulatory programs was completed. In April 2019 the Practice and Ethics Committee made recommendations to the benchers to develop and implement a practice audit program. Staff have continued to work on the development of a practice audit program that would integrate a range of Law Society resources to support competent practice. At your October meeting you will be asked to consider some different models for a practice audit program.

<p>Activity 1.1.3</p> <p>Law Schools - Consider and actively explore opportunities to deepen relationships and collaborate with law schools to provide “practice-ready” skills</p>	<p>Long-Term</p>	<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>	<p>ongoing</p> <p>ongoing</p>	
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Status Comments:

In the course of her engagement with stakeholders, Dr. Mitchelmore met with Law Deans from across the prairies to share information on PREP with Faculty and students. She has visited the University of Manitoba Faculty of Law on several occasions.

In January 2020 the Law Society submitted a request to the Manitoba Law Foundation under its Special Grants Initiative. The Law Society sought funding for a dedicated Access Coordinator to lead the work of the Access to Justice Steering Committee and collaborate with the Faculty of Law to engage law students in access initiatives. Decisions by the MLF with respect to funding were put on hold until the Fall 2020 in light of COVID-19.

In February 2020 the Law Library Hub was opened. The Law Society collaborated with the Faculty of Law to provide students in the Family Law externship course with the opportunity to provide legal information and assistance to members of the public at the Law Courts through the Law Library Hub. This initiative was put

Actions	Priority Level	Steps	Timeline	
on hold in March 2020 given the impact of COVID-19 which prevented both access to the court house and the availability of law students to service the Hub.				

Strategy 1.2

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

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

Status Comments:

A working group was struck in 2018 to work with our counterparts in Alberta and Saskatchewan to develop a framework for the regulation of legal entities.

In November 2018 the benchers approved the incremental approach to the regulation of entities and the use of self- assessments.

In June 2018 the benchers approved a recommendation to begin the registration process by identifying a responsible lawyer for ensuring compliance with Law Society Rules.

In September 2018 the benchers approved the rules to require the registration of law firms effective April 1, 2019.

Commencing in April 2019 all law firms were required to register with the Law Society and designate a responsible lawyer to receive communications from the Law Society.

Work has continued on the development of an online law firm practice management assessment tool that will support lawyer competence and law firm management. That tool is being revised following feedback received and a work book is being developed. Consideration is being given as to the manner in which the tool, work book and related resources could be utilized in association with a practice audit.

<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>September 2015 – February 2016</p> <p>May 2017</p> <p>June – present</p> <p>February 2018</p> <p>May 2018 to present</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>
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Status Comments:

In February 2018 a proposal for a "Law Firm Management" course was presented to the benchers. The trust accounting module was the first completed module with a delivery date of April 1, 2019. All law firms were required to have a trust account supervisor in place who had successfully completed the module.

A series of other chapters were to be developed on subject matters such as Retainers, Conflicts, File Retention and Disposal and Coverage During Absence. The benchers approved a model where the course would be available as eligible CPD activity with credit hours attached to encourage member participation. It was to be posted on the Law Society website and available to lawyers, students and law firm employees at no cost. Participation was to be voluntary, but promoted in a manner to encourage participation as a resource for law firms (not limited to small firms). The benchers would then revisit the issue of whether some or all of the course should be mandatory for some or all members.

Since February 2018 a significant amount of work has been done on the resources. At present only the trust accounting module has an assessment component. Consideration is being given as to the manner in which

the course may be utilized as a resource in association with law firms conducting self-assessments and in association with practice audits.

Strategy 1.3

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

Actions	Priority Level	Steps	Timeline	
<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</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>April 2020</p> <p>Ongoing</p>	<p>✓</p> <p>✓</p> <p>✓</p>
<p>Status Comments:</p> <p>Staff completed an environmental scan to determine the response of other regulators and presented that information to the President’s Special Committee on Health and Wellness struck in 2019-2020. The Committee was tasked with considering not only a diversion program but also with looking more broadly at health and wellness in the legal profession and considering what steps might be taken by the Law Society. A series of recommendations were approved by the benchers in April 2020 which require staff to develop and bring back to the benchers a comprehensive plan for the implementation of a Diversion Program. The Committee also identified short, medium and long-term initiatives to support wellness in the legal profession. This work will continue through 2020-2021 under the oversight of the President’s Special Committee on Health and Wellness.</p> <p>The Law Society endorsed the participation by the Federation of Law Societies in the National Well-Being Study on the well-being of legal professionals in Canada. The results of this initiative will inform the work of the Health and Wellness Committee and ultimately create some potential for national collaboration in this area.</p>				

Strategy 1.4

We will safeguard client property.

Actions	Priority Level	Steps	Timeline	
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	2017-2018	✓
		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	✓
		Step 7: Develop educational program for the profession outlining new trust safety requirements.	June 2018	✓
		Step 8: Commence program implementation	October 2018 to April 2019	✓

Status Comments:

In February 2017 the benchers approved a proposed Trust Safety Program in principle and requested that staff return with a proposal for rule amendments and a budget to fund the Program.

In June 2018 recommendations were made to the benchers for the Trust Safety Program to proceed to full implementation in 2018-2019. The benchers approved the Program which incorporated on-line education and an application, approval, revocation and appeal process.

Actions	Priority Level	Steps	Timeline	
<p>In September 2018 the benchers approved the rules that support the Trust Safety Program. Effective April 1, 2019 all law firms and lawyers who operate a trust account are required to have a lawyer approved as a trust account supervisor.</p> <p>From September 2018 to April 2019 a significant amount of work was completed to develop the infrastructure necessary to implement the program and provide for the education, assessment and approval of trust account supervisors for every law firm with a trust account.</p> <p>Continuing Professional Development programming was delivered in December 2018 and January 2019 to promote the Trust Safety Program.</p> <p>By October 2019 all trust account supervisors were required to successfully complete the on-line education program.</p> <p>Other Initiatives:</p> <p>Anti-Money Laundering</p> <p>Staff played an integral role in developing and monitoring Model Rule Amendments in relation to Anti-Money Laundering and Terrorist Financing - Developing Education and Best Practices.</p> <p>The benchers approved rule amendments in October 2019 to change the Know your Client Rules and Client ID Rules to conform with Model Rules.</p> <p>Continuing Professional Development programming was delivered from September to December 2019 to educate the profession about the risks of money laundering and the impact of the new rules.</p> <p>New Anti-Money Laundering rules came into effect January 1, 2020. Resources were created and provided directly to the profession and via the Law Society website.</p>				

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	
Activity 2.1.1 Remove regulatory barriers that prevent legal services from being reasonably available at a reasonable cost	Immediate	Step 1: Create President’s Special Committee on Alternate Legal Service Providers	June 2017	✓
		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	August - September 2017	2017 - 2018
		Step 3: Explore with Special Committee issues and options for Benchers to consider	September 2017 – March 2018	2017- 2018
		Step 4: Consider viability of collaboration with community colleges to develop “paralegal program” or alternate provider of legal services program	2018	
		Step 5: Report to Benchers with recommendations	April 2018	✓

Actions	Priority Level	Steps	Timeline	
<p>Status Comments:</p> <p>A detailed report from the President’s Special Committee on Alternate Legal Service Providers was presented to the benchers in April 2018. That report recommended that the Law Society seek legislative amendments that would permit the benchers to authorize further exceptions to the unauthorized practice provisions and permit the provision of prescribed legal services by persons either under the supervision of a lawyer or with a limited license. The Report was approved by the benchers and then shared with the Minister of Justice. A meeting was held with the Executive of the Law Society and the Minister on June 14, 2018.</p> <p>In May 2018 a President's Special Committee on the Delivery of Legal Services was struck to further consider the issues arising from the Report of the President's Special Committee on Alternate Legal Service Providers. It developed a framework for consultation with stakeholders, initially in the area of family law. The Committee presented a Report to the benchers in May 2019 recommending that the Law Society engage with stakeholders in the justice system in the area of family law, develop policies for the delivery of legal services by permitted legal service providers, permit the delivery of legal services through Civil Society Organizations and further explore the development of a regulatory framework for Alternative Business Structures. The Report was approved by the benchers. Engagement with stakeholders was put on hold due to two significant developments: (1) The Family Law modernization Act and Project; and (2) New Court of Queen’s Bench Family Law Rules.</p> <p>In March 2020 the Province of Manitoba issued Bill 28 proposing to amend the <i>Legal Profession Act</i> to create a class of limited practitioners to provide a narrow scope of services to the public in low risk areas. The proposed amendments also permit the Law Society to expand a list of exemptions in the existing legislation for services that do not constitute unauthorized practice.</p> <p>Ongoing engagement with stakeholders in the justice system and the profession continues. The Pitblado Lectures were held in November 2018 and the theme was Reimagining Justice: Trust, Truths and Transformation(s). The LSM/MBA Joint Meeting was held in December 2018 with a focus on access to justice. Those in attendance heard Four Big Pitches to Support Access to Justice.</p>				
<p>Activity 2.1.2</p> <p>Plan and schedule a follow up strategic planning session for A2J Steering Committee</p>	<p>Intermediate</p>	<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>October 2017</p> <p>November 2017</p> <p>April 2018</p>	<p>Meeting Feb 5, 2018</p> <p>Feb 5, 2018</p>
<p>Status Comments:</p> <p>The Access to Justice Steering Committee met in February 2018 and determined to focus its efforts on developing a pilot project with stakeholders to focus on the enhanced provision of legal information and advice through the Manitoba Law Library.</p>				

Actions	Priority Level	Steps	Timeline	
<p>The Access to Justice Steering Committee met in January 2019 to receive a report on the proposed Law Library Hub.</p> <p>Strategic planning took place in November 2019 at which time the Committee discussed the expansion of its Terms of Reference.</p> <p>An application was submitted in October 2018 to the Manitoba Law Foundation for funding a Law Library Hub in collaboration with other stakeholders to establish a pilot project to deliver legal information and resources via the Great Library. The application was approved and funding in the amount of \$100,000 was provided to the Law Society for this initiative. A project manager was hired, students were accessed, work space was set up in the Great Library and work was begun. With COVID-19 the project was put on hold in March 2020.</p> <p>In January 2020, following consultation with the Access to Justice Steering Committee, the Law Society submitted a request to the Manitoba Law Foundation under its Special Grants Initiative. The Law Society sought funding for a dedicated Access Coordinator to lead the work of the Access to Justice Steering Committee and collaborate with the Faculty of Law to engage law students in access initiatives.</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	
<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 (twice yearly)</p> <p>By January 2018</p>	✓
<p>Status Comments:</p> <p>See Activity 2.1.2.</p> <p>Meetings were held with the Minister of Justice in June 2018 and January 2019 to discuss a range of issues, including access to justice. Ongoing consultation with the Office of the Minister of Justice has led to the appointment of the Deputy Minister of Justice to the Access to Justice Steering Committee for 2020-2021.</p> <p>Two Manitoba representatives from the Access to Justice Steering Committee were appointed to the National Access to Justice Committee in March 2020.</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>In progress</p>	<p>✓</p> <p>2021?</p>
<p>Status Comments:</p> <p>The Access to Justice Steering Committee met in November 2019 and engaged in a policy discussion on the Forgivable Loans Program. The Committee determined that further consideration ought to be given to changing the parameters of the program.</p> <p>Staff completed a review of internal resources and changed some of the application forms and marketing materials to reflect the changes recommended by the benchers to the Forgivable Loan program to:</p> <ul style="list-style-type: none"> Remove the requirement that applicants must come from an under-serviced community and are applying to the Faculty of Law because of the program; 				

Actions	Priority Level	Steps	Timeline	
<ul style="list-style-type: none"> • Expand eligibility to include students enrolled in second and third year law; • Remove the requirement that applicants come from or demonstrate a commitment to an under-served community in Manitoba; • Reduce the post-call practice commitment from five years to three; and • Add a new criterion which encourages students from rural communities to apply. <p>The program may be brought back to the Admissions and Education Department in 2020-2021 to assess whether the program in its current form promotes access to justice.</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>	<p>Intermediate</p>	<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</p> <p>October 2018 to December 2018</p>	<p>✓</p>
<p>Status Comments:</p> <p>The Law Society extended an invitation to representatives from CLEA, The Legal Help Centre, the Department of Justice, and the Law School to meet and explore opportunities to develop a concept for providing legal information and assistance. (See Activity 2.1.2)</p> <p>An application was submitted in October 2018 to the Manitoba Law Foundation for funding a Law Library Hub in collaboration with other stakeholders to establish a pilot project to deliver legal information and resources via the Great Library. The application was approved and funding in the amount of \$100,000 was provided to the Law Society for this initiative. A project manager was hired, students were accessed, work space was set up in the Great Library and work was begun. With COVID-19 the project was put on hold in March 2020.</p>				

Strategy 2.3

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

Actions	Priority Level	Steps	Timeline	
Activity 2.3.1 Create Continuing Professional Development programs to educate lawyers about how to engage in provision of unbundled legal services	Long-Term	Step 1: Continue to provide CPD and resources on the benefits of unbundling – especially in the area of family law Step 2: Communicate resources through website, Manitoba Law Library Inc. and Communique.	2017-2020 2017-2020	✓ ✓
Status Comments: A component of the Law Firm Practice Management Course incorporates a segment on unbundling of legal services in the module on retainers and is published on our website.				

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	
<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 ongoing</p>	✓

Status Comments:

Changes have been made to the Annual Member Report and student registration to reflect the Law Society's commitment to equity, diversity and inclusion. In particular, there has been an expansion of gender categories in the Report:

- (a) On the student registration form, the honorific Mx was added as an option in addition to Mr., Mrs. and Ms.. The prefix Mx is used by those who wish to avoid specifying their gender or by those who prefer not to identify themselves as male or female;
- (b) In the Annual Member Report, the gender categories of "non-binary" and "other" have been added;
- (c) The "Lawyer Demographics" section of the Annual Member Report has been reviewed and revised. A category has been added to allow members to self-identify as Indigenous.

An internal group was struck to work toward compliance with *The Accessibility for Manitobans Act*. The Law Society has educated staff and adopted an Accessibility Policy which is posted on the Law Society website.

The Law Society's ability to develop and deliver programming in French was enhanced through the hiring of fluently bilingual Competence Counsel.

Diversity training was provided to the Discipline Committee in November 2018.

Our Discipline and Complaints Departments and volunteer members received training on sexual harassment in the workplace in 2019.

In 2020 the Law Society extended an opportunity to members of the Indigenous Law Students Association for summer employment.

Activity 3.1.2 Examine profession's demographics and consider issues relating to under-representation and retention	Long-Term	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) Step 2: Gather improved data Step 3: Conduct comparative analysis of demographic data to data from across Canada	2018 - 2019	✓ ✓
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Status Comments:

An exit survey was developed in an attempt to gather improved data and identify why lawyers are leaving the profession.

Consideration of issues around part-time practising fees. Report to benchers and approval to proceed with developing improved data. Survey developed and to be distributed to profession in September 2020.

Strategy 3.2

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

Actions	Priority Level	Steps	Timeline	
<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>Status Comments:</p> <p>The Law Society has provided CPD programming and training on institutionalized racism, unconscious bias and "soft" discrimination in the professional world.</p> <p>The Competence and Education Department delivered programming on "Women Thriving in the Law With a Grit and Growth Mindset", featuring a panel of diverse women.</p> <p>Law Society staff attended a presentation of the video "But I Was Wearing a Suit".</p> <p>The Competence and Education Department is developing an online course with the Manitoba League for Persons with Disabilities to educate the profession about the standards and policies that all private and non-profit organizations need to be in compliance with under <i>The Accessibility for Manitobans Act</i>.</p> <p>The Law Society has partnered with the MBA and the Indigenous Students Association to provide mentoring opportunities for Indigenous law students.</p> <p>The Law Society has hosted networking events with the Indigenous Law Students Association in 2019 and 2020 to bring students and employers together.</p> <p>The Law Society hosted a reception with internationally trained lawyers in 2019.</p> <p>The Law Society annually supports the Pride Reception with SOGIC.</p>				
<p>Activity 3.2.2</p> <p>Develop current model polices 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>Summer – early Fall 2017</p>	<p>Dec. 1, 2017 (Equity Officer)</p>

Actions	Priority Level	Steps	Timeline	
		<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>2018 - 2020 ongoing</p> <p>ongoing</p>	✓

Status Comments:

Information on the role of and services provided by the Equity Officer has been added to the CPLED Handbook and arrangements have been made to have the Equity Officer present to both law and CPLED students on an annual basis.

Cultural competency training is being incorporated into the new PREP program.

Strategy 3.3

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

Actions	Priority Level	Steps	Timeline	
Activity 3.3.1 Increase cultural competency in the delivery of legal services	Immediate	Step 1: Consider recommendations of 2017 Equity Committee and continue its work to implement specific Calls to Action.	2017 - 2018	ongoing
		Step 2: Monitor work of the Federation of Law Societies TRC Calls to Action Advisory Committee	Ongoing (FLSC Report issued June 2020)	ongoing
		Step 3: A roadmap was developed to assist members of the profession to become culturally competent in the delivery of legal services (plan to include short and long-term goals)	2017 - 2018 (2018-2019)	✓
		Step 4: Assess and address any resource requirements associated with implementing the roadmap or targeted plan	2018 - 2019	
		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	2018 – 2019	
		Step 6: Implement the plan	Ongoing	

Status Comments:

See Activity 3.2.1.

See Activity 3.1.2 regarding the Exit Survey

The Equity Committee continues to explore a range of responses to the TRC recommendations and will continue its work in 2020. This includes consulting with Indigenous members to seek input on additional opportunities for providing education and support.

The Competence and Education Department developed an Elder Law education session at Turtle Lodge in September 2018 on Indigenous laws.

CPLED/Articling Students will be able to self-identify as Indigenous so they can be identified for the purposes of targeted programs.

Actions	Priority Level	Steps	Timeline	
<p>The Equity Committee has developed a roadmap to assist the Law Society in responding to the Calls to Action, including the need to increase cultural competency in the delivery of legal services. The Roadmap was presented to the benchers in February 2019.</p> <p>There has been an enhanced provision of information and resources for the profession on cultural competency via the Communiqué.</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>2017-2018</p> <p>2017-2018</p> <p>October 2017</p>	<p>Sept 2018 Bencher meeting</p> <p>✓</p>
<p>Status Comments:</p> <p>Senior staff attended programs at the Canadian Museum for Human Rights Museum (CMHR) in 2018 to explore opportunities to partner with CMHR on programming to support cultural competency, including understanding and education on Indigenous Rights, Laws and Traditions.</p> <p>In September 2018 the benchers and staff received training to improve diversity and inclusion through better understanding of institutionalized racism, unconscious bias and "soft" discrimination in the professional world. Additional training was provided to the profession and to Law Society staff in February 2019.</p> <p>Equity Committee is focusing on cultural competency, equity and diversity initiatives for profession, benchers and staff.</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	March 2018	✓
		Step 4: Report to the Benchers with recommendations	April 2018	✓

Actions	Priority Level	Steps	Timeline	Status
<p>Status Comments:</p> <p>A Communications Officer was hired and commenced her role effective January 1, 2019. Her immediate priorities were the development of the new LSM Website and a comprehensive communications plan involving social media.</p> <p>In collaboration with Graphic Designers, a consistent design and brand for the LSM was identified and incorporated into all LSM communications effective January 2019.</p> <p>Ongoing external communications have taken place through scheduled meetings with the Minister of Justice in June 2018 and January 2019.</p> <p>Continued engagement with the MBA through events such as the Annual Joint Meeting in December, the CBA Mid-Winter Meeting, Manitoba Law Day and the Western Bar meeting held at Clear Lake in September.</p> <p>Enhanced communications from the Great Library to the profession (Elex and Great Lexpectations). Delivery of legal research training at no cost to the profession.</p>				
<p>Activity 4.1.2</p> <p>Create new website for The Law Society of Manitoba</p>	<p>Intermediate</p>	<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>Spring 2017</p> <p>Spring 2017</p> <p>Fall 2017</p> <p>Spring 2020</p> <p>December 2019</p>	<p>✓</p> <p>✓</p> <p>ongoing</p> <p>✓</p> <p>✓</p>
<p>Status Comments:</p> <p>The new Law Society of Manitoba logo and website was unveiled in December 2019.</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>2021?</p>
<p>Status Comments:</p> <p>This activity was identified as a long-term priority that will be addressed in 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</p>	<p>2019 - 2020</p>	<p>2021?</p>
<p>Status Comments:</p> <p>These are long-term initiatives and will be developed further once appropriate resources are put in place.</p> <p>The Communications Committee concluded that there was little value in convening focus groups or town halls.</p> <p>Developed a For the Public section on the website</p>				

Strategy 4.3

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

Actions	Priority Level	Steps	Timeline	Status
<p>Activity 4.3.1</p> <p>Determine what the profession 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, debates, forums or otherwise actively seek feedback on issues under consideration</p> <p>Step 3: Identify needs and develop a plan to respond to those needs</p> <p>Step 4: Report to Benchers</p>	<p>2019 - 2020</p> <p>2019 - 2020</p>	<p>2021?</p>
<p>Status Comments:</p> <p>The Communications Committee concluded that there would be value in conducting a survey of the profession. This was determined to be a long-term initiative and so that will not take place until 2019-2020.</p>				



MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield and Darcia Senft

DATE: October 22, 2020

RE: Practice Audits

I. Practice Audits

In the 2017-2020 Strategic Plan, the Benchers endorsed various initiatives as part of the Law Society's strategic objective to protect the public interest by ensuring that legal services are provided by competent and ethical lawyers. One of those initiatives was the development of a plan for the implementation of practice audits.

The matter was referred to the Practice and Ethics Committee for its consideration. The benchers reviewed the Committee's report in May 2019 and the report (without its referenced attachments) is attached as **Appendix A**. (If you would like to review the attachments, please let us know and we will provide copies.) Ultimately, the Committee made the following six recommendations and the benchers adopted all of them:

1. The Law Society of Manitoba adopt a practice review/audit program to assist lawyers in meeting competency standards in their practices.
2. Law Society staff be directed to develop a model for a practice review/audit program for consideration by the benchers that will include a cost benefit analysis of utilizing volunteer practice auditors, contract advisors, an in-house practice advisor, mentors or some combination thereof.
3. The program should be flexible enough to allow for targeted audits, risk-based audits and some random selection audits.
4. For risk-based audits, the risk analysis should be based on a range of objective

criteria, including:

- (a) Number of complaints;
 - (b) Insurance history (to the extent it is ascertainable);
 - (c) Years at the bar (for example under 5 years and over 35 years);
 - (d) Size of law firm;
 - (e) Anecdotal information obtained from the judiciary and/or the profession;
 - (f) Re-entry to the profession;
 - (g) Practice areas (based on an analysis of the most high-risk practice areas); and
 - (h) Failure to meet CPD requirements.
5. The Chief Executive Officer should be able to direct targeted practice audits in circumstances where there is reason to believe that clients are at risk.
6. The Law Society should consider integrating a practice audit program with other proactive regulatory work being done in relation to entity regulation (firms assessing ethical infrastructure), the development and use of practice management checklists and the practice management course that is currently under development.

Developing a model for a practice audit program necessarily involves a detailed consideration of factors that may point to increased risk and a consideration of how to best assist members in meeting competency standards in the most proactive way, taking resources into account.

II. Risk Considerations

A. Targeted Practice Audits

For the purpose of this report, we use the description of a “targeted” practice audit in circumstances where there is reason to believe that a particular lawyer is practising law in a manner that is a risk to the public.

i) Complaints Investigation Committee

The majority of complaints reviewed by the Complaints Resolution Department are resolved by complaints counsel, often with a reminder letter if it is determined that a lawyer has breached a Rule under the *Code of Professional Conduct*. Generally speaking, only more serious matters are brought to the attention of the Committee for the authorization of charges or the offer of a formal caution to a lawyer which, if accepted, forms part of a lawyer’s formal discipline record with the Law Society. At other times, matters may be brought before the Committee because there are several complaints under investigation and complaints counsel is concerned that other legal matters may be at risk, perhaps due to an underlying

issue that is leading the lawyer to neglect his/her practice. In those situations, there may be a recommendation that the Committee use its authority under Rule 5-82(1) to order a practice review of a member's practice. The Committee may do so when it "decides there are reasonable grounds to believe that a member is practising law in an incompetent manner." A practice review/audit often reveals that there are other matters where the lawyer is engaged in professional misconduct or is incompetent.

Consequently, a review may ultimately lead to the Committee determining that it is in the public interest to authorize charges and interim suspend the lawyer pending a discipline hearing or impose restrictions on a lawyer's practice. Clearly, when a practice review is ordered by the Committee after the Law Society has been investigating complaints against a particular member, the regulatory response is reactive in nature.

ii) Chief Executive Officer

In the past, there have been occasions where staff had reason to believe that a member and his practice were at risk but there was no formal complaint under investigation and the Society was not in a position to open up an internal investigation that would afford the ability to attend the lawyer's office and begin a practice review. In one particular case, by the time formal complaints were made and the member was required to appear before the Committee, things had deteriorated significantly and, not long afterwards, the member passed away. The benchers agreed that the Chief Executive Officer should be able to direct that a practice audit take place in circumstances where there is reason to believe that clients are at risk. For example, Department Directors may engage with lawyers whose circumstances raise some red flags that may indicate some risk (e.g. unreachable by clients or Law Society staff; anecdotal information about substance abuse, etc.). It is a measure that would be used sparingly where there are pressing and substantial concerns that would warrant directing a practice audit outside of a CIC investigation.

While this regulatory response from the CEO would also be somewhat reactive, directing a practice audit earlier rather than later could prevent further harm from occurring both to the lawyer and to the clients. We will return with rules for your consideration in order to increase the opportunities for targeted practice audits.

B. Risk-Based Practice Audits

In addition to broadening the basis for conducting targeted practice audits, the benchers determined the Law Society should also undertake risk-based practice audits, using objective criteria to determine what categories of lawyers should be subject to practice audits. The benchers wanted this competency initiative to be proactive, have a random component, and integrate with other Law Society proactive regulatory initiatives.

Objective Criteria

i) Insurance Data

When the Professional Liability Claims Fund is presented with a potential or actual claim, the insurer owes a duty to its insured lawyers to act in good faith. This would include defending the conduct of the lawyer where that conduct is not viewed as negligent or where the damages claimed are unreasonable. That may involve hiring counsel to defend the lawyer in question. If a lawyer has been negligent and that negligence results in a loss, the Insurer will pay out the claim along with any associated costs.

Due to its contractual obligations and the legal obligation to act in good faith with insured lawyers, the Insurer is not in a position to provide information to other departments within the Law Society that might flag an insured as a risk. The inability to identify a particular insured obviously impacts the ability to conduct a targeted practice review in a situation where it may be warranted. For example, even if a particular member has four open insurance claim files and a history of two paid insurance claims, that information may not be considered in the context of determining whether a targeted review should be conducted. Having said that, often when there are several open insurance claims files, there are also related open complaint files. Clients make their concerns known and in the course of the investigation, depending upon the facts, complaints counsel may tell the lawyer who is the subject of the complaint to put the Insurer on notice of a potential insurance claim.

The Insurer is able to provide generic information relating to claims. However, there are several challenges relating to the ability to obtain meaningful insurance statistics on a generic basis. For example, while statistics could be provided about how many insurance claims are reported against “junior lawyers” (lawyers between one and eight years at the Bar), the number provided may be inaccurate because:

- in some firms, senior supervising lawyers will take responsibility for claims made against junior lawyers;
- some lawyers and designated members of firms take insurance coverage so seriously that they tend to over report potential claims which can lead to skewed statistics; and,
- some lawyers are “unaware” and don’t know what they don’t know (i.e. they may not even appreciate that they have done something that should be reported to the Insurer as a potential claim).

Some other factors may skew insurance statistics. For example, a report could be generated about how many insurance claims are reported against lawyers who are between one and eight years at the Bar; but, if a lawyer does not become aware of a potential claim until well after an error occurred, the lawyer may be nine years at the Bar before reporting a claim relating to conduct that occurred years earlier. The Insurer could also produce generic

statistics relating to the number of reported claims from a certain class of practising lawyers (e.g. those who are more than 30 years at the Bar) but potential claims may be without merit (and will never result in a paid claim) or some clients may decide not to pursue the insurance claim even though the lawyer may have been negligent. Other claims result in payments being made to cover damages and/or costs.

ii) Complaints Data

Statistics from the 2018 Annual Report were reviewed by the Practice and Ethics Committee considering these issues. They indicate that relatively few complaints actually result in a formal discipline hearing. The Complaints Resolution Department opened 317 new complaint files in 2017-2018. In the same fiscal year, only 37 matters were referred to the Complaints Investigation Committee which considers only the most serious matters. Charges were authorized on 27 matters relating to 13 lawyers. Of those 13 lawyers who were charged, 6 were sole practitioners and another 5 were practising in firms of less than 3 lawyers. In the same period, there were 10 discipline hearings. Of those hearings, 2 related to sole practitioners and 7 involved lawyers from firms with less than 3 lawyers. The average number of years at the Bar for those lawyers involved was 30.5 years. Five of the matters related to lawyers who had been practising on average 42.2 years. None of the matters involved lawyers with less than 10 years at the Bar.

A significant number of the charges related to a failure to provide the appropriate quality of service and included breaches of the trust accounting rules, breaches of trust conditions, failing to respond to the Society, misleading clients and misappropriation. The available data suggests that a disproportionate number of disciplinary matters (in particular as they relate to quality of service complaints) related to lawyers in firms of less than three lawyers and with more than 30 years at the Bar.

As the majority of charges and ultimately discipline hearings in that year related to lawyers who are in sole or small practices, it seems reasonable to conclude that lawyers in these practice settings are in a risk category. This makes some sense when you consider that a lawyer who practises with no other colleagues or one other colleague has no, or fewer opportunities to consult or collaborate on complex legal issues and to assist with practice management, including being able to arrange for coverage so that vacations may be taken. Many lawyers who practise as sole practitioners or as the only litigator in a “two-person” office, feel constrained in their ability to take a reasonable amount of time off. Clients are ever more sophisticated and in these days of instantaneous communications and the ability to keep in touch no matter where you are, it is even more difficult to explain to clients that you will be “unavailable.” There is always a concern that clients may choose to take their business elsewhere because you are not able to provide them with the services they want. It is very difficult to turn away work when you are a one-person operation. No one is there to refer a file to you or to bring other matters into the firm.

The Complaints Resolution Department sees first-hand the deterioration that can occur in a lawyer's ability to handle the rigors of practice and the associated stress if the lawyer starts to fall behind in service delivery. Issues tend to multiply and the stress can begin to take a toll on the quality of legal services being provided and on the lawyer's health. Sometimes, lawyers become so overwhelmed that they develop an alcohol or substance abuse problem that compounds the difficulties. Other lawyers develop anxiety disorders or suffer from depression. We see various combinations of these possible consequences due to insufficient supports.

Statistics demonstrate the significant number of lawyers who fall into one or more risk categories. The 2020 Annual Report (April 1, 2019 to March 31, 2020) sets out that there were 2,036 practising lawyers and 750 law firms of various sizes. Approximately 25% of the lawyers had been practising for less than 5 years. Another 17.1% of the lawyers had been practising for more than 36 years. Of the practising lawyers, 57% were sole practitioners and 37% of lawyers practised in firms comprised of 2 to 10 lawyers.

iii) Junior Lawyers

It should be noted that the Law Society receives communications from judges who bemoan the fact that many junior lawyers do not seem to have had much guidance provided to them in relation to important aspects of practice, such as court procedures, drafting appropriate pleadings, and treating the court with civility. The judges provide their views that these junior lawyers could really benefit from good mentoring about the practical aspects of practising law competently and effectively. It is important to consider what skills a graduate has or may have upon graduating. Some disparity will be evident even at this early stage. Some students take part in experiential learning while in law school through the Legal Aid Clinic on campus, the Legal Help Centre (as a volunteer) or Pro Bono Students Canada. But, there are many others who begin articling and having never interacted with a real client.

Articling students will be required to participate in the recently revised Bar Admission Course, now called "PREP." Every articling student must successfully complete this course, which we expect will provide more rigorous training than the former CPLED program. However, articling experiences can vary quite broadly from student to student. For example, those who article with the Department of Justice may receive a fair level of supervision and opportunities to be mentored. If they only do criminal law work, they are not benefitting from exposure to diverse areas of the law. They will, however, learn a great deal about advocacy and have ample opportunities to hone those skills. Those working at a large firm may be exposed to a broader range of research assignments but may never set foot in a court room. Only a small percentage of matters go to trial because it is typically in the interests of parties to settle disputes outside of court. Articling students working at a small law firm or with a sole practitioner will likely be exposed to a fairly broad range of legal tasks covering different areas of law. However, depending upon the "Principal," (main supervisor) the amount and quality of supervision or mentoring received, regardless of the size of the

firm, can result in vastly different experiences.

Simply put, junior lawyers are at risk of not obtaining the practical skills or the mentoring they may require depending upon where they land in the future and what kind of law they end up practising. They typically learn about the procedural side of practising a particular area of law, however, most students will not be exposed to trust accounting rule requirements and other practice management requirements. Skills learned through articling help form the foundation for how they will practise law in the long-term. It is clearly desirable that all of our young lawyers have opportunities to develop good practice habits as opposed to developing bad habits. Inexperience is a definite risk factor.

When you add in another risk factor, risk may increase quickly for junior lawyers. For example, some newly-called lawyers have difficulty securing a position at a firm where they may have a good chance of receiving some mentoring and training from a number of lawyers with a broad range of practice experiences. In these uncertain times of a global pandemic and recession, the ability of newly-called lawyers to secure work in environments that may be able to support them and engage them in ongoing training in practising law will likely only worsen. Those unable to find gainful employment in the legal sector often strike out on their own as sole practitioners or enter into space-sharing arrangements with other sole practitioners, including other newly-called lawyers. As noted above, lawyers who practise as sole practitioners or in very small firms are more at risk of becoming engaged with the discipline side of the Law Society. Consequently, junior lawyers who work by themselves or in very small firms (especially with other junior lawyers) would fall into two risk categories.

For newly-called lawyers it can be very overwhelming to set up an office, learn the business side of a legal practice, open up a trust account and learn the Rule requirements, engage in marketing to obtain clients and provide them with the appropriate quality of service that is required by the *Code*. While getting a law degree and then passing the Bar Admission program certainly demonstrates aptitude and a level of competency, there is no question that it does take time for lawyers to hone the skills routinely needed in day-to-day practice. When a newly called lawyer starts out as a sole practitioner, those skills must be learned or honed on the job – with no support being provided by more senior lawyers.

In terms of a risk analysis, the conduct of these junior lawyers may not result (at first) in serious conduct/competency concerns. However, without appropriate supports and proper guidance, there is a good chance that these lawyers may develop bad habits that can be hard to break.

Examining risk in this context, it is understandable that when the Law Society of Ontario decided to expand its practice review program beyond targeted audits to a program that conducted audits randomly following a risk analysis, it decided to focus its practice review program lens on lawyers who were between one and eight years of practice. The Law Society determined it was preferable to use its limited resources to conduct audits earlier on a

proactive basis, to help lawyers develop best practices and avoid potential conduct complaints/insurance claims.

You have directed that the Law Society engage in proactive regulatory work. Resources spent on a practice audit program could be characterized as an investment in competency. Practically speaking, you may wish to consider where there is significant potential to achieve the best return on that investment.

III. Practice Audit Program: Selection Process

Having regard to the information set out above, we have set out some options with respect to the factors to be considered when determining who should be the subject of random risk-based practice audits.

Option 1: Sole/Small and Only Senior Lawyers (>30 years)

Conduct practice audits based on whether a lawyer falls into a class of lawyers who are most likely to face discipline hearings (e.g. sole practitioners/lawyers in small firms who have been practising for more than 30 years).

Pros: Sole practitioners who have practised for many years fall into a particular risk category. It would be best to try to help them through a practice audit before they become (more) engaged with the discipline department.

Cons: By the time a lawyer has practised for several decades, methods of practising are fairly entrenched and it is hard to practise law differently. This criteria would also capture some lawyers who are in soles or small firms who practise in an exemplary manner and have never been the subject of a discipline matter, and would use resources that are already limited to review how that lawyer has practised without incident for years.

Option 2: Sole/Small and Junior (1-5 years) or Senior Lawyers (>30 years)

Conduct practice audits based on whether a lawyer is a sole practitioner or practises in a small firm whether he/she is a junior lawyer (e.g. from one to five years after Call to the Bar) **or** has been practising for decades.

Pros: It can be a challenge for those in sole and small firm practices to have sufficient supports, checks and balances, resources, and time to create the necessary systems for their practices. A random audit based on lawyers in this category would address competency concerns that may exist for a junior lawyer as well as a very senior lawyer. This would capture junior lawyers in their first five years of practice and would

assist in establishing good work habits early on.

Cons: This criteria would also capture some lawyers who are in soles or small firms who practise in an exemplary manner and have never been the subject of a discipline matter, and would use resources that are already limited to review how that lawyer has practised without incident for years.

Option 3: Junior Lawyers (one to five years) and Any Practice Setting

Conduct practice audits on lawyers in private practice one to five years from Call to the Bar - regardless of size of practice (i.e. junior lawyers in soles, small firms, medium firms, large firms).

Pros: Attempts to assess and enhance competencies when a lawyer is learning how to practise law effectively and safely, with a view to avoiding discipline problems later. Conducting an audit during this early stage of a lawyer's career might also pick up some deficits that already exist. This may lead the firms in which they practise, regardless of the size, to consider policies and protocols to the ultimate benefit of the firm as a whole. It would also pick up young lawyers in the early stage of their careers before they have established bad habits.

Cons: Captures lawyers who practise in mid-sized and larger firms which tend to have practice management controls. The larger the firm the more likely individual lawyers are relieved of day-to-day management responsibilities. Would use some limited resources to review the practices of lawyers who have supports in place.

Option 4: Sole/Small and Only Junior Lawyers (one to five years)

Conduct practice audits on lawyers in private practice who are between one to five years from Call to the Bar who practise as sole practitioners or in small firms (e.g. three lawyers or less).

Pros: Would address lawyers who fall into two risk categories (i.e. junior lawyers **and** lawyers who are sole practitioners or practise in small firms). Represents an effort to assess and enhance competencies when a lawyer is learning how to practise safely and effectively in early years of practice, when it is more likely that behaviors may be molded for the better and also targets Law Society resources at a segment of lawyers who typically have the least resources to assist them to practise competently.

Cons: Lawyers who practise as soles or in small firms beyond five years at the Bar also pose a risk. A focus on only lawyers in the junior category would miss that senior cohort that could benefit from additional supports.

IV. Program Models

Several years ago the benchers determined it would be helpful if lawyers could access the services of a Practice Management Advisor because the effective management of a lawyer's practice and office is essential to the lawyer's success. A lawyer in private practice is contracted by the Society at a modest flat annual rate to provide advice and assistance to lawyers at no charge. Services cover a broad range of practice management topics. The assistance provided through this initiative is quite different from the services that would be provided by a practice auditor to conduct both targeted and random risk-based practice audits. However, there are a number of models that could be adopted in the development of a practice audit program.

1) Volunteer Practice Auditors

Historically, the practice reviews that have been directed by CIC typically have been conducted by two volunteer lawyers. When using the current checklists and following the practice of pulling a selection of files to be reviewed, these reviews have taken a number of hours – first to connect with the member (and try to obtain a client file list), then to meet with the lawyer to discuss the nature of the practice and consider practice management issues, then to review a sampling of files relating to open client matters, and then to write a report setting out the findings of the review along with any recommendations for the lawyer. Quite often, a follow-up visit is recommended in a fixed number of months and this takes additional time.

Although the Society is extremely grateful for the valuable time that is donated by our members, it has been our experience that having volunteers conduct the practice reviews takes a great deal of time – even just to coordinate when to meet, with three lawyers involved. Also, at times we must follow up with volunteers to obtain their written reports and it is challenging to put strict deadlines on a busy lawyer who is generously donating time with no payment for the services rendered. We have also been concerned that using different volunteers can result in inconsistent reviews.

Pros: The benefit of continuing with this approach is that there are no external costs and so the program runs under the direction of existing Law Society staff.

Cons: The drawbacks (delay, lack of accountability, inconsistent methods) are significant.

COST: Minimal

2) Professionally Staffed In-House Auditors

A second option would be to use in-house Law Society professional staff to design, develop

and conduct the practice audits, whether an audit is a targeted one directed by the CEO or ordered by the Complaints Investigation Committee or whether the audit is random and risk-based using objective criteria. Depending upon the annual goal that is set for the number of random risk-based practice audits, we expect that the program would require a lawyer at least on a part-time basis and perhaps full-time, again depending upon program expectations.

Pros: An-house lawyer would have easy access to Law Society resources, including other professional staff. In creating a program, the lawyer could take full advantage of the institutional memory of staff and use other in-house lawyers as resources. Any concerns about inconsistent results due to the involvement of different lawyers is eliminated. There could be some synergies and efficiencies having an in-house lawyer.

Cons: This option is more expensive in that it would require the hiring of a lawyer to run the program(s). It would also require some administrative support.

If in-house counsel conduct the practice audits, the profession may question whether anyone other than a lawyer in private practice understands what it is like to practise “in the trenches” (i.e. less “buy-in”). However, this could be offset somewhat by hiring a more senior private practice lawyer to serve in that role.

COST: \$150,000 per annum.

3) Private Practitioner Auditors

The Law Society could contract with one or more private practitioners to conduct practice audits. We could develop a roster of experienced lawyers who are willing to do this kind of work at Law Society “outside counsel” rates. This option would likely still require some dedicated staff resources, although on a reduced scale. We pay outside counsel at hourly rates that are much less than what the lawyer typically charges to clients. Currently, the rate for a lawyer with at least ten years at the Bar is \$200. (For those with 20 or more years at the Bar, the hourly rate is \$250.) We estimate that under the proposed practice audit program, a practice audit will take approximately 2 to 2.5 days to conduct. Time is spent to arrange a time to meet with the lawyer, obtain an initial client file list, meet with the lawyer to conduct an initial interview, review any existing practice management systems, randomly choose approximately 10 files to review utilizing various checklists in the process, prepare a written report of findings and recommendations for improvement, and conduct any required follow-up to determine if recommendations have been followed. If only 2 days were spent or 14 hours, using an hourly rate of \$200, an average practice audit would cost approximately \$2,800 plus GST. That figure would have to be multiplied for the number of audits that are to be completed each year.

Pros: If private practitioners were hired on contract, the Society would be in a position to retain lawyers with current and relevant practice experience, which would provide the program with added credibility and more meaningful guidance. The Law Society could require that services be provided within a certain time-frame, eliminating the delay risks when relying upon volunteers with busy practices. If the roster of lawyers was kept small, there would be less of a concern relating to consistency in the audits and written reports. To have more certainty about costs, it may even be possible to hire a firm or an individual lawyer to conduct all of the required practice audits (both targeted and random risk-based) on the basis of a set block annual fee, as is currently done for custodial matters, or a set fee per audit, e.g. \$2,500 per audit.

Cons: Hiring private bar lawyers on contract could become expensive depending upon the hours that may be required to conduct a particular practice audit (and any required follow up visits) and also depending upon the number of audits that may be ordered or otherwise conducted in a given year. There would still be a need for some dedicated Law Society professional staff resources in particular to design and develop the program as well as some more limited administrative staff support. However, we believe that there would be an opportunity to identify some synergies with other practice support initiatives using existing Law Society staff, with the potential for dedicating up to an additional 30% – 50% of dedicated Law Society staff time.

COST: \$100,000 per annum

V. Methods and Resources

The Law Society will be in a position to implement different tools when a practice audit is conducted. For example, we already have various checklists that are used by volunteer practice reviewers when visiting a lawyer to conduct a practice review that has been ordered by the Complaints Investigation Committee. But, as a result of some other Law Society competence initiatives, there will be excellent additional resources available to assist with the Practice Audit Program once the necessary framework has been put into place.

a) Impact of Entity Regulation

One competence initiative the benchers previously determined to pursue is entity regulation, or the regulation of the business entity through which lawyers deliver their legal services. Historically, the Law Society has regulated the conduct of individual lawyers through Rules set out in our *Code of Professional Conduct*; however, it was recognized that sometimes the conduct of an individual member arises out of established law firm practices and that it is not appropriate in those scenarios to sanction the conduct of an individual lawyer. The benchers saw the value in addressing a gap in regulation and an

opportunity to assist law firms in creating an ethical infrastructure by enhancing practice standards relating to specified management principles and by increasing practice supports.

In 2015, *The Legal Profession Act* was amended to authorize the Law Society to regulate entities. As a first step towards entity regulation, all law firms were required to register with the Society by April 1, 2019 and provide the name of a designated member with whom the Society may communicate on matters relating to the operations of the firm. The Society's Trust Safety Program was also launched. All law firms that wished to operate a trust account must complete two steps before opening a trust account. First, the firm must apply to the Law Society for a practising lawyer to be approved as the firm's trust account supervisor. Second, the approved trust account supervisor must successfully complete the Society's online Trust Accounting Fundamentals education program and examination. The firm's trust account supervisor will be responsible and accountable for the operation of the firm's trust account(s), for the firm's record keeping requirements and will be the contact person for communications with the Society about the firm's accounting or record keeping.

Proceeding with a requirement for law firms to conduct a practice management risk assessment will be the next step in implementing entity regulation. For the past several years we have been working collaboratively with the Law Societies of Alberta and Saskatchewan with a view to developing a harmonized approach. A pilot project was undertaken with the involvement of a number of firms of varying size participating in the completion of a "Practice Management Risk Assessment Tool" that addresses the following areas:

- competence and capacity;
- client management;
- file management;
- financial management; and
- relationships with third parties and the administration of justice.

Many consultations took place and our collaborative work continues as we refine law firm assessment tools to be used by either sole practitioners or by larger firms. Currently, the prairie law societies have engaged a company to create an online document for the use of firms and to transcribe our next iterations of the Assessment Tools onto a digital platform.

These Practice Management Risk Assessment Tools may play an important role in the contemplated practice audit program as many of the factors to be considered by a law firm in assessing its ethical infrastructure would influence a lawyer's competency and conduct, including the quality of legal services delivered to clients.

b) Law Firm Practice Management Resource

In a further effort to proactively assist lawyers to mitigate risk, the benchers determined that the Law Society should develop a “Small Firm Practice Management Course” and provide appropriate resources for lawyers who practise as sole practitioners. You will have seen elsewhere in the Agenda information on the new Law Firm Practice Management Resources that have been developed. These will be a valuable resource for a practice auditor to use when conducting audits and making recommendations to practitioners arising out of that review. This could include, for example, requiring a newly called lawyer who has opened a new firm as a sole practitioner to review particular practice resources, or successfully complete any associated assessment based on those materials.

VI. CONCLUSION

It would be our recommendation that you endorse a Model that will allow the Law Society to conduct practice audits that are:

1. targeted
2. risk-based with particular regard to a random selection of:
 - i) lawyers between 1 to 5 years of practice (Option 3)
 - ii) lawyers with 30 or more years of practice in firms of 3 or fewer lawyers (Option 1)
3. utilize the services of private practitioner auditors under the direction of a dedicated Law Society staff lawyer (30 to 50%)
4. conducted on a one year pilot basis with a report back to the benchers as to the effectiveness of the approved model and with any recommendations for expanding the scope of the program, changing the model or the risk factors.

Questions:

- 1) **Do you wish to proceed with the practice review program as recommended?**
- 2) **Do you prefer an alternate model based upon:**
 - i) **Other staffing models;**
 - ii) **Other risk factors.**

Atc.

MEMORANDUM

TO: Benchers

FROM: Practice and Ethics Committee

DATE: April 26, 2019

RE: Practice Audit Program

A. Introduction

When you created the Strategic Plan for 2017 - 2020, you identified as one of your four main strategic objectives a requirement for the Benchers to:

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

The specific strategies that you approved to reach that objective call upon the Benchers to:

- 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; and
- Safeguard client property.

As part of a detailed activity plan, you decided to consider the implementation of practice audits – which would consist of a review of an individual lawyer’s practice. This was considered to be a proactive approach to enhance lawyer competence by identifying and addressing risks in a lawyer’s practice before they escalate. That is, instead of waiting for complaints or insurance claims to be made, the Society would assess an individual lawyer’s practice against standard benchmarks, or what may be described as “best practices” to determine if the lawyer is practising in a competent manner. Identifying deficiencies at an early stage would arguably reduce the risk that a complaint or an insurance claim might be made against the lawyer and should allow the Society to assist the lawyer to address any concerns.

The Practice and Ethics Committee was tasked with considering the merits of implementing a practice audit program and reporting back to you. In this report we outline the information that we considered and make some recommendations for your consideration.

B. Current State of Spot Audits and Practice Reviews in Manitoba

We noted that the Law Society of Manitoba already has a robust spot audit program relating to trust accounts. Typically, law firms (as opposed to individual lawyers) are audited approximately every three years. Those firms that have been identified as high risk are audited more frequently.

However, such audits are generally limited to an audit of the firm's trust accounting records and, therefore, would not typically lead to identification of concerns about competence or practice management issues.

The Complaints Investigation Committee (CIC) does have the authority under Rule 5-82 of the Law Society Rules to order practice reviews in response to matters that are already before the Committee. A review may be ordered when "there are reasonable grounds to believe that a member is practising law in an incompetent manner". Practice reviews are typically conducted by volunteer lawyers from a comparable practice area who will review some or all files of the member and make a report back to CIC. CIC then has the broad authority to take action in respect of the member following receipt of the report, as set out in Rule 5-82 (attached as **Appendix A**).

There are, however, some limitations associated with practice reviews only being directed in association with the investigation of complaints into a member's competence. There have been occasions when it would have been desirable for the Law Society to have the ability to undertake a targeted practice review before a complaint, or several complaints were considered by CIC.

For example, in one case a lawyer was clearly having difficulties managing his practice. Warning signs relating to quality of service/competence were prevalent, although no complaints had been made. Law Society staff paid a visit to the member's office in light of concerns they had about the member's ability to practice competently and the member's well-being. There was some evidence of addiction and yet staff did not have the authority to review any of the member's files to identify whether the addiction was impacting on the member's practice and putting the public at risk. By the time the concerns escalated and were put to CIC, the member's condition had deteriorated significantly and it was not possible to provide supports to assist the member.

The Law Society currently offers practice management services through its Practice Management Advisor, Barney Christianson. He has over 40 years of experience running a practice and has been retained to provide practice management advisory services to Law Society members. His services are free of charge and cover a broad range of practice management areas, including office management, office systems and technology, time management and opening or closing a practice. From time to time a member is required to meet with Barney through the complaints or discipline stream. However, the services of the Practice Management Advisor are usually accessed by lawyers who voluntarily seek out assistance.

C. Environmental Scan

A number of Canadian law societies either have, or are in the process of implementing, a program that provides for random practice audits of a lawyer's practice. The approaches taken by Ontario and Saskatchewan are summarized below.

Ontario

The Law Society operates a Practice Review Program which is intended to ensure that lawyers meet competency standards and identify areas for improvement in managing the lawyer's practice. Reviewers provide practical suggestions on how to maintain practice at optimal levels to lead to greater efficiencies, high quality service and greater lawyer and client satisfaction. The Ontario program began in 2004 with targeted reviews and has since expanded to provide for three types of reviews:

1. Focused Reviews: These are for lawyers showing significant signs of deterioration in their practices as evidenced by increases in complaints and the type of indicia set out in a “*Guide for Members*” (attached as **Appendix B**). Lawyers may be referred to Practice Review via any of the Law Society’s regulatory units (for example admissions, education, complaints) and also via LawPRO (the professional liability insurer in Ontario).
2. Re-Entry Reviews: Where a lawyer re-enters private practice as a sole or small firm practitioner after a hiatus of five years, a Practice Management Review must take place within 12 months of the return to practice.
3. Practice Management Reviews: These are risk-based random audits of lawyers in their first eight years of (private) practice and are designed to support the goal for lawyers to be efficient, effective and competent. Those selected reflect the percentage of law firms represented in Law Society conduct matters, segregated by firm size (i.e. 50% soles, 25% firms with 2 - 5 lawyers, etc.).

The Practice Review Program is administered and coordinated by Law Society staff; however, the actual assessment and reporting is completed by either a roster of experienced lawyers (external reviewers) or one of the Law Society’s Counsel or in-house Practice Reviewers. The process for each of the three types of review is the same, with the only difference being the method of selection. The Reviewer and the lawyer will complete a Lawyer Basic Management Checklist (attached as **Appendix C**) which helps to identify possible deficiencies in the lawyer’s practice.

Throughout a Review, the lawyer receives practical advice and feedback. Risk areas are identified, strategies for remediation are discussed, matters requiring action are identified, and the lawyer will be directed to relevant resources. If the Review is of an associate and deficiencies are noted in practice management systems administered by the firm’s management, the matters will be addressed directly with the responsible partner.

During Focused Reviews, attention is given to the underlying causes for rising complaints, insurance claims and other indicators of poor patterns of practice. Client files are reviewed and the Reviewer may speak with other office staff who work with the lawyer. Areas of review include:

- time management
- file management/client service
- financial management
- communications
- technology and equipment
- professional management
- personal management

Following a Review, an initial report containing an analysis and assessment of the practice is prepared. It may include recommendations for improvements and enhancements to current practice management systems or mandatory recommendations where action is required to ensure that the lawyer meets standards of competence. If there are no recommendations, or if the Department is satisfied with the lawyer’s implementation of any mandatory recommendations, the file will be closed. If the lawyer is failing to meet the standards of competence required, a re-attendance is scheduled after approximately six months to permit an assessment of the implementation of any mandatory recommendations and the completion of the Review. A final

report will then be issued with an opinion on competence and the lawyer will be given the opportunity to respond. In some instances the Department may be obliged to refer the matter to Professional Regulation.

The Law Society of Ontario reports that in 2015 a total of 531 Practice Management Reviews were conducted. In approximately 30% of the initial attendances, lawyer's practices were not meeting standards of professional competence. Of those who were not meeting standards, sole practices made up 72%, small firms 19% and mid/large firms 9%. Over 96% of the lawyers that underwent a Practice Management Review indicated that they found the process to be constructive and value-added to managing their practice. The Law Society has concluded that for many of the top practice management deficiencies there was a significant improvement for practitioners across the life of the program and members are more aware of the importance of effective practice management processes in their firm and for their clients.

Saskatchewan

The Law Society of Saskatchewan introduced a Practice Advisor program in 2003 which was intended to be educational and supportive in nature. While it received positive feedback, it had limitations because it was complaint driven, as a result of which the program was rebranded as the "Practice Review Program". It now permits Practice Advisors to conduct reviews based on risk-based criteria rather than simply in response to complaints.

The risk-based criteria were developed following an audit of complaints received which demonstrated that a significant number of complaints involved sole practitioners or those in small firms and usually related to lawyer delay, failure to respond, lack of communication and quality of service issues.

Under the Rules, Professional Responsibility Counsel may direct a review of any member's practice to determine whether a lawyer is in compliance with the *Act*, the Rules and the *Code of Professional Conduct*. A review may include a review of the lawyer's files, books, records, office management systems (such as procedures in place to reduce the risk of complaints and liability for insurance claims) and interviews with staff. Lawyers must co-operate with the Practice Advisor and comply with all reasonable requests.

Factors which may result in a referral to the Practice Review Program, in the absence of a complaint, are the existence of:

1. A number of insurance program claims;
2. A number of complaints in a short timeframe which, taken individually, would otherwise be considered minor;
3. Accounting issues;
4. Informal concerns raised by the Courts and/or members;
5. Comments in Court decisions relating to the member's conduct/competence; and
6. Failure to meet mandatory professional development requirements.

In addition, members who meet the criteria for Saskatchewan's "New Solo/Small Firm Practitioner Program" are *required* to submit to a Practice Review, whether or not a complaint exists. This would include:

1. Members who commence a new solo practice;

2. Members who commence a new 'small firm' practice (three or fewer members); and
3. Members who commence practice in loose association with other members, where there may be the appearance of a larger firm but the members are operating independently while merely sharing expenses/space.

On any referral, the Practice Advisor will conduct an on-site, hands-on review of office procedures, accounting, file organization, file opening and closing practices, case advancement and general management of the office, staff and clients.

If the review is complaint-driven, the Practice Advisor will review the file which led to the complaint to provide specific, practical advice in relation to how that file may have been handled differently. The Practice Advisor will provide general advice and recommendations for practice improvement and follow-up as needed.

A review results in a report from the Practice Advisor which will often include recommendations/advice to the member(s) for improvements to their current practice structure. These recommendations may relate to any aspect of the practice, including staffing, insurance, trust accounting, file management, etc. Barring any serious competence concerns arising from the review, the report is provided to the member, retained on file for future reference, and the matter is concluded after any recommended follow-up is completed. It is only if the review and report result in greater concerns regarding member competence that the matter will be referred to the Chair/Vice-Chair of the Professional Standards Committee to identify what tools are available to address the competency concerns. The available tools are comparable to CIC's tools under Rule 5-82 and could include referral to the discipline stream.

Where members are referred to the Program by Professional Responsibility Counsel or the Professional Standards Committee, there are no associated costs. Practice Advisers can offer personalized contract practice management assistance to members if they simply wish to access the expert assistance at their own initiative, though this rarely happens. More recently the Practice Advisor Program has been expanded to allow members to contact Practice Advisors directly for "one-off" practice advice free of charge. The Practice Advisors bill their time for these calls back to the Law Society, providing anonymous usage and demographic data.

In 2018, approximately 50 matters were referred through the Practice Review Program. Included in the budget are the not insignificant costs associated with travel by the Practice Advisors, as many solo/small firm practitioners live/work in rural and remote areas. The overall cost for the program is split between the Law Society and the Saskatchewan Lawyers' Insurance Association.

D. Some Statistics

Our Committee considered information contained within the 2018 Annual Report of the Law Society. We noted the following statistics about the demographics of the profession:

Number of practising lawyers	2,020
Less than five years at the Bar	502 (27.9%)
More than 36 years at the Bar	382 (18.9%)
Number of Law Firms	
- Sole Practitioners	212
- Law firms with 2 to 10 lawyers	148

- Law firms with 11 to 25 lawyers	17
- Law firms with 26 to 50 lawyers	4
- Law firms with more than 50 lawyers	<u>6</u>
Total Number of Law firms	387

Sole practitioners comprise 55% of all law firms. Another 38% of law firms would be considered to be small in size, meaning 93% of law firms have less than ten lawyers.

In 2018 the Complaints Resolution Department opened 317 new complaint files. In the same fiscal year only 37 matters were referred to the Complaints Investigation Committee. Charges were authorized on 27 matters relating to 13 lawyers. Of those 13 lawyers who were charged, six were sole practitioners and another five were practising in firms of less than three lawyers. In the same period there were ten discipline hearings. Of those hearings, two related to sole practitioners and seven involved lawyers from firms with less than three lawyers. The average number of years at the Bar for those lawyers involved was 30.5 years. Five of the matters related to lawyers who had been practising on average 42.2 years. None of the matters involved lawyers with less than ten years at the Bar. A significant number of the charges related to a failure to provide a quality of service and included breaches of the trust accounting rules, breaches of trust conditions, failing to respond to the Law Society, misleading clients and misappropriation. This data would suggest that a disproportionate number of disciplinary matters (in particular as they relate to quality of service complaints) relate to lawyers in firms of less than three lawyers and with more than thirty years at the Bar.

E. Mandate and Authority

The Law Society clearly has the authority to implement a proactive practice audit/review program. Section 3(2) of *The Legal Profession Act* requires the Society to establish standards for the education, professional responsibility and competence of persons practising law in Manitoba and to regulate the practice of law. The Supreme Court of Canada confirmed the broad public interest mandate of the Law Society and broad regulatory powers delegated by the legislature to accomplish that mandate in *Green v. The Law Society of Manitoba*.

F. Related Initiatives

We considered the fact that you have already approved some initiatives that address competence that might affect your considerations regarding the nature of any practice audit program you may want to implement.

(a) Entity Regulation

As part of your strategy to proactively assist lawyers and law firms to mitigate risk, the Law Society has been working collaboratively with the Law Societies of Alberta and Saskatchewan in considering and implementing entity regulation – or, the regulation of the business entity through which lawyers deliver their legal services. As you know, a pilot project was undertaken with a number of firms participating in the completion of a “Practice Management Risk Assessment Tool” that addresses areas such as:

- competence and capacity;
- client management;

- file management and recordkeeping;
- financial management and operational sustainability;
- relationships with third parties and the administration of justice;
- equity, diversity and inclusion; and
- access to legal services.

When you last considered the work of the prairie law societies, you endorsed an initial “soft touch” approach to entity regulation such that firms will be expected to complete an assessment every three years and provide a declaration to the Society that the assessment has been completed. They will also be required to sign an acknowledgment that the Society may require that the firm produce its completed assessment. The Assessment Tool needs some revision to take into account the feedback received. For example, the prairie law societies concluded that it would be preferable to have a separate tool for sole practitioners.

Although the Law Society of Manitoba is not yet ready to require firms to complete the Assessment Tool, as a first step towards entity regulation all firms were required to register with the Society by April 1, 2019 and provide the name of a designated lawyer with whom the Society may communicate on matters relating to the operations of the firm.

The Practice Management Tool that has been developed might play an important role in a practice audit program as many of the factors to be considered by a law firm would influence a lawyer’s competency.

(b) Law Firm Practice Management Course

In a further effort to proactively assist lawyers to mitigate risk, the Law Society has been developing a Law Firm Practice Management Course that was initially designed with sole practitioners in mind but that may be useful for lawyers in a variety of practice settings. The first module to be introduced is the Trust Safety Module, which is a required program for all lawyers or law firms who wish to operate a trust account. It will be followed by a series of modules on matters such as Retainers, File Retention, Conflicts, etc.

The Law Firm Practice Management Course was adapted from a similar program in British Columbia. In that province the course may be taken by any lawyer but is a requirement for lawyers:

- practising in certain defined small firm settings after January 1, 2007;
- as a requirement for call and admission after January 1, 2018; or
- as ordered by the Practice Standards Committee.

You considered whether the program should be mandatory in Manitoba for some or all lawyers and concluded that it was too early to make that determination. Once the program is fully developed and the Society has some experience with it as a voluntary program, we expect that the issue will return to you for further consideration.

G. Resourcing

Implementing a practice audit program would necessarily require additional resources that are as yet undetermined. We considered what kind of program would best support the strategic objectives of the Law Society. We looked at the following models:

1. Volunteer driven: The Law Society could develop a program that would be supported by volunteers (as is currently the case with practice reviews conducted by CIC);
2. Use of professional staff to support the program, for example by hiring an internal Staff Practice Advisor/Auditor to design and implement the program;
3. Contracting with private practitioners to serve as Practice Advisors/Auditors; or
4. Expanding the scope of the current Practice Management Advisor.

The more comprehensive the program, the more costly it becomes. Staff charged with developing the program will have to make an assessment of the best and most cost-efficient means by which to deliver the program.

H. Conclusion and Recommendations

In our view, the Law Society's ability to proactively assist lawyers and law firms to mitigate risk and to ensure that lawyers are fit to practice is limited by the narrow range of tools that are currently available. While lawyers in Manitoba have the ability to contact the Practice Advisor for assistance, their willingness to seek out such a valuable resource is dependent upon their insight into the need for that assistance. We believe that the Law Society ought to proactively reach out to lawyers to provide that assistance, advice and support.

At present practice reviews may take place at the direction of the Complaints Investigation Committee. We believe that a process that will provide lawyers with the opportunity to engage with a reviewer and receive practical advice and feedback as well as recommendations for improvements and enhancements to one's practice would be much more likely to generate a positive outcome than is the case when that review is generated by a complaint.

We have concluded that a practice audit program is a proactive regulatory tool that would assist in uncovering competence or fitness concerns and provide an opportunity for lawyers to address and resolve those concerns before they escalate. We see value in such a process, both on an entirely random basis but also based on a risk analysis. The Society is in the best position to analyze its data in order to identify categories of lawyers and or individual lawyers who are more likely to benefit from the guidance available through a practice review process.

In keeping with your strategic objective relating to competence, the Practice and Ethics Committee, therefore, recommends that:

1. The Law Society of Manitoba adopt a practice review/audit program to assist lawyers in meeting competency standards in their practices.
2. Law Society staff be directed to develop a model for a practice review/audit program for consideration by the Benchers that will include a cost benefit analysis of utilizing volunteer

practice auditors, contract advisors, an in-house practice advisor, mentors or some combination thereof.

3. The program should be flexible enough to allow for targeted audits, risk-based audits and some random selection audits.
4. For risk-based audits, the risk analysis should be based on a range of objective criteria, including:
 - (a) Number of complaints;
 - (b) Insurance history (to the extent it is ascertainable);
 - (c) Years at the bar (for example under 5 years and over 35 years);
 - (d) Size of law firm;
 - (e) Anecdotal information obtained from the judiciary and/or the profession;
 - (f) Re-entry to the profession;
 - (g) Practice areas (based on an analysis of the most high-risk practice areas); and
 - (h) Failure to meet CPD requirements.
5. The Chief Executive Officer should be able to direct targeted practice audits in circumstances where there is reason to believe that clients are at risk.
6. The Law Society should consider integrating a practice audit program with other pro-active regulatory work being done in relation to entity regulation (firms assessing ethical infrastructure), the development and use of practice management checklists and the practice management course that is currently under development.

Atc.



MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield

DATE: October 22, 2020

RE: **Law Firm Practice Management Resources**

In the Strategic Plan for 2017 to 2020 the benchers identified as a strategy the need to proactively assist lawyers and law firms to mitigate risk. One of the key activities that was considered as a priority by the benchers was the development of a “Small Firm Practice Management Course” and the provision of appropriate resources for lawyers who want to practice as sole practitioners.

The Law Firm Practice Management Course was intended to focus on practice management skills and was to be adapted from a similar program in British Columbia. In that province the course was developed primarily to assist new lawyers, lawyers practising alone or in small firms and others to review key practice management topics. The intent of developing the program in Manitoba was to enable practising lawyers to take the course with minimal disruption to their practice. The course would be delivered online and it was contemplated that there would be a quiz at the end of each module and that lawyers would receive some sort of designation for successful completion. It was anticipated that the program could be made mandatory for some segments of the profession (for example new lawyers opening up a law firm) or could be used as remedial training in the event of competence concerns.

Work began on the program in 2017 - 2018 and while developing the course, several things became evident. First, some significant adaptation and improvement of the BC materials would be required to make them meaningful and valuable for the profession. Second, although the initial intent was to design modules with small firms and sole practitioners in mind, the resources would be useful for lawyers in a variety of practice settings. Third, our immediate priority was the Trust Safety Module which required initial development as part of our move toward entity regulation.

As a result the first module that was developed and introduced was the Trust Safety Module, which is a required program for all lawyers or law firms who wish to operate a trust account. It was made available in January 2020, concurrent with the introduction of the new Law Society website. The Trust Safety Module is a true stand alone “course” that has an assessment tool at the conclusion which enables us to determine whether someone has successfully taken and completed the module. This is a key requirement for anyone who intends to serve as a Trust Account Supervisor. However, the Trust Safety program also exists independently as a resource for the profession to refer to when considering issues around trust accounting.

When the benchers looked at the proposal for the Small Firm Practice Management course in 2018, they determined several things. First, they recommended that the program be available free of charge on the Law Society website. Second, that there ought to be some eligibility for CPD credit. And third, that at least initially, participation should not be mandatory. Instead, the Law Society should make the course available free online and broadly available as reference material. They concluded that once the Law Society has had the opportunity to review data on member participation, decisions could be made on whether some or all portions of the program ought to be mandatory

Work has continued on the program and a comprehensive set of modules that would support competent practice across the profession have been developed. However, in addition to the practice management materials that were originally contemplated, we have reviewed and completely updated what some of you might recall as the old Bar Ad resource materials and you will find them on the website as Practice Fundamentals. There are also additional materials created on Professional Responsibilities, for example, in relation to Anti-Money Laundering.

We have not yet developed the assessment tools that would be required if we proceed to incorporate quizzes into some or all of the modules in order to determine whether a lawyer has successfully completed a module. However, we thought it important to share these resources with the profession as soon as reasonably possible.

These modules were made available earlier this month free of charge on the website and may be accessed at a lawyer’s convenience [here](#). They contain substantive and procedural guidance, case law, precedents and forms with the ease of hyperlinked references in numerous topic areas grouped by three main categories:

1. Practice Management – resources relating to running a practice and the business of a law firm with content on Billings, Retainers, Retirement- Winding up your Practice.
2. Practice Area Fundamentals – resources if a lawyer is new to a practice area or wants a refresher on the current law and practice in Manitoba; the old Bar Admission

materials have been updated in many practice areas including: Criminal Procedure, Corporate and Commercial, and Real Estate.

3. Professional Responsibilities - resources providing guidance on Trust Accounting, Anti-Money Laundering, and the Legal Profession.

It is intended that content will be added regularly.

At present the Manitoba version of Law Firm Practice Resources will serve as a significant resource for lawyers in different practice settings. There are two issues that you will now want to consider given that the nature and breadth of the materials have evolved well beyond what was originally anticipated:

1. Now that the resource materials have been developed, they can be relatively easily converted to a mode that would contain an assessment (which can range from relatively simple to more complex) at the conclusion of each module. Do you wish us to take that next step now or should we wait and assess the uptake and feedback on the value of the resource materials that have been made available to the profession?
2. At present "self-study" is not considered to be an eligible CPD activity. In the absence of assessment tools for each of the modules, would you like us to bring back some further information to you on our existing CPD program and any proposed changes with respect to CPD requirements and eligibility?



MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield and Tana Christianson

DATE: October 22, 2020

RE: **Reimbursement Issues in October 2020**

You will recently have seen news coverage about a Winnipeg lawyer named Paul Hesse. Mr. Hesse was a lawyer at Pitblado LLP who was disbarred following a hearing held on September 10, 2020. In its decision, a panel of the Discipline Committee deemed Mr. Hesse to have admitted to 29 charges of professional misconduct, including 27 counts of misappropriation as set out in the 126 page citation. You will find the decision in the Consent Agenda materials.

When a lawyer is disbarred, the benchers are advised of the disbarment but there are generally no further discussions at the bencher table. Typically any reimbursement claims are dealt with in the ordinary course by the Reimbursement Committee appointed by the benchers to hear claims for compensation arising out of the misappropriation of client trust funds. However, this case raises some larger questions that may necessitate consideration for the benchers over the course of the next year. Because some of you are in firms that represent Mr. Hesse's former clients, or represent people who want to participate in a potential class action against him and Pitblado LLP, some of you will not be able to hear or participate in any of those discussions about Mr. Hesse that might take place at the virtual bencher table. Nonetheless, as recent news coverage has raised questions, we thought it was timely to provide you with some background about the nature of the Reimbursement Fund.

For the purposes of this meeting, the information that we share with you will be general in nature only and without reference to specific Hesse examples so that none of you will have to be excused from the call due to conflicts of interest.

The Reimbursement Fund

The Reimbursement Fund is one of the oldest programs of the Law Society of Manitoba. The Reimbursement Fund came into existence under our legislation in 1943. Its sole purpose is to compensate clients when lawyers steal trust funds.

This Reimbursement Fund (hereafter 'Reimbursement') existed long before the Professional Liability Claims Fund insurance program (hereafter 'Insurance') came into existence in the 1970s. Because Reimbursement has always covered theft of trust funds, all professional liability policies for the Insurance program since the inception of mandatory insurance have specifically **excluded** theft or misappropriation of trust funds or property. So, Reimbursement covers theft of trust funds, and Insurance specifically excludes claims arising out of, or from the theft or misappropriation of trust funds or property or in any way related to such theft or misappropriation.

Reimbursement: Coverage for theft? **YES**

Insurance: Coverage for theft? **NO**

Just to complicate matters, every year the Law Society purchases a policy to cover the **Law Society** in the event the Law Society has to pay more than a set amount out of the Reimbursement Fund. Since 2005, we have arranged this policy through the Canadian Lawyers' Insurance Association (CLIA). CLIA is the reciprocal that we belong to with nine territorial and provincial law societies. When we talk about CLIA, it is usually as the insurer for the Professional Liability Insurance program. But, the CLIA policy for Reimbursement and the CLIA policy for Insurance are two completely different policies with different wording, coverage, limits and insureds. There is no overlap in coverage. If a claim is covered under one policy, it is not covered under the other.

The Two CLIA Policies

Here is some basic information about the **CLIA Reimbursement policy**:

1. The Law Society is the insured.
2. The policy year starts in July each year and claims are opened in the year in which they are reported (which is relevant to Hesse because the claims were reported between June and August 2019, spanning two policy years).
3. The limit per claim is \$10,000,000 (although our Guidelines set lower limits).
4. The Aggregate limit of coverage is \$10,000,000 per year.
5. The Law Society's deductible per claim is \$100,000, however, once an aggregate of \$500,000 has been paid in deductibles, the Law Society pays no other deductibles.
6. There is no recourse against innocent partners.

7. There is recourse against the misappropriating lawyer.
8. The policy coverage is limited to “misappropriation or wrongful conversion by a member of the Law Society of Money, Securities or Property entrusted to or received by a Member in the Member’s capacity as a lawyer”.
9. The policy is the same in every CLIA province.
10. If the Law Society wants to claim coverage under the CLIA policy and recover amounts paid out under Reimbursement, the Law Society must comply with the terms of the CLIA reimbursement policy.

Here is some basic information about the **CLIA Professional Liability Insurance Policy - Insurance**.

1. The individual Member is the insured.
2. The policy year starts in July each year and claims are opened in the year in which they are reported.
3. The limit under the policy is \$1 million per claim, \$2 million in the aggregate.
4. The member pays a base deductible of \$5,000.
5. The policy covers services normally provided or supervised by a lawyer within the scope of a usual lawyer-client relationship
6. The policy specifically **excludes** claims arising out of or from the theft or misappropriation of trust funds or property or in any way related to such theft or misappropriation.
7. The policy specifically **excludes** dishonest or criminal acts.
8. The policy does not cover **Ancillary Activities**, defined as activities of a quasi-legal or non-legal nature (including, without limiting the generality of the foregoing, financial, investment and accounting services, brokerage services, and real estate development and appraisal) that are ancillary to or independent of the practice of law and are provided by an **Insured** for compensation or personal benefit referable specifically to those activities.
9. The insurer will not take steps to collect damages or defence costs incurred from either an insured or the firm (except for the insured’s deductible).
10. The policy is almost identical in every CLIA province.
11. To claim the benefits of coverage, we must comply with the terms of the policy and our agreements with CLIA.

What *The Legal Profession Act* Says About Reimbursement

The Reimbursement Fund is established by *The Legal Profession Act* (see Section 46[2]). Compensation under the Reimbursement Fund is at the discretion of the benchers (sec. 47[2]), although you have delegated that role to a Reimbursement Fund Claims Committee (“Reimbursement Committee”) (Rules 5-37 to 5-40).

Here's what Section 47(2) of *The Legal Profession Act* sets out as the criteria for compensation:

- (a) money or other property was entrusted to or received by a member (or law corporation) 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.

The Reimbursement Fund Guidelines

The Reimbursement Committee and staff operate under Reimbursement Fund Claims Payment Guidelines (hereafter 'the Guidelines') which you will find **here**. Your predecessors established them in 2005 to set out how the process should operate. A copy of the Guidelines is provided to everyone who makes a claim for Reimbursement.

Neither the Guidelines nor the CLIA Reimbursement policy provide coverage for consequential loss, such as claims for interest, legal fees, loss of opportunity to invest or other damages. The claimants can try to recover those costs from the lawyer personally or the firm. However, because the Insurance policy specifically excludes claims arising in any way from theft or misappropriation of trust funds or property, were a claimant to bring a claim against the Law Society, the lawyer or the law firm, the Insurance policy would not respond, not even to cover innocent partners.

Claims under \$25,000

Any claims where the amount misappropriated is less than \$25,000 will be dealt with by staff. Claims over \$25,000 will be dealt with by the Reimbursement Committee.

Claims under \$100,000

Under the Guidelines, the Reimbursement Committee determines whether a claim fits the criteria of the *Act* and Guidelines. If the claim is for less than \$100,000, it can direct the claim be paid out, at its discretion. The Reimbursement Committee is not required to come back to the benchers.

Claims over \$100,000 up to \$300,000

The Reimbursement Committee can exercise its discretion and authorize payment of claims of up to \$300,000.

If the Reimbursement Committee, in its discretion, determines that a claim for more than \$100,000 should be paid out, the Committee can direct that the first \$100,000 of that claim be paid out, but that the balance of the claim be held until the end of the fiscal year at which point the balance would be paid out to the claimant, plus interest, if there was enough money remaining in the Reimbursement Fund.

This is a provision in the Guidelines that we expect we will bring back for you at a future point to consider whether holding back full payment of claims over \$100,000 is either necessary or appropriate.

Claims over \$300,000

If the Reimbursement Committee believes that a claim that exceeds \$300,000 should be paid, they must bring that claim to the benchers as a whole, and the benchers in their discretion can determine whether or not that claim should be paid, or whether the claim should be limited to the \$300,000. This would have to be considered in each and every case and in the context of the policy year and with the input of CLIA. Staff will keep a running tally and can provide updates to the benchers on an *in camera* basis.

If the Reimbursement Committee rejects a claim or decides to pay only part of the amount claimed, the claimant can 'appeal' that exercise of the Committee's discretion to the benchers as a whole (or at least to those who don't have conflicts). The benchers can then exercise their own discretion.

Claims Under the Guidelines

Jim Crook, a lawyer at the firm of LLP, is convicted of multiple counts of misappropriation from a number of estate files (a typical reimbursement scenario). Staff will ask representatives for the various estates to provide a sworn declaration in support of an application for reimbursement. Staff will prepare the documents in draft and send them to the claimants to be completed and executed in the presence of a lawyer who can also verify the identity of the claimant.

Once a sworn declaration is received, staff will present the declaration to the Reimbursement Committee for its consideration. No one will appear on behalf of the claimant. The Reimbursement Fund is a discretionary fund and the Reimbursement Committee will determine whether the claim should be paid. If it exercises its discretion to pay the claim, staff will prepare a release, releasing the Law Society of any further obligations and also assigning the claimant's rights against Crook so that the Law Society can sue Crook under the assignment and potentially recover from Crook what it has paid out. Once the executed release and assignment have been received back from the claimant, the claimant will be paid.

As the Guidelines currently stand, if Crook were to steal \$200,000 from one estate, the Committee would pay the first \$100,000 to the estate and advise the estate that it might receive the remaining \$100,000 at the end of the fiscal year. Payment would be dependent upon whether there were sufficient funds remaining to pay all the claims that had been presented.

As the Guidelines currently stand, if Crook were to steal \$350,000 from one estate, the Committee could exercise its discretion to pay \$300,000 but would have to come to the benchers, who would determine whether the balance of \$50,000 could or should be paid to the estate, which might not be recoverable from CLIA.

Under the CLIA policy on reimbursement, staff will keep CLIA informed of the claims made against the Fund. If any one claim exceeds the Law Society's deductible of \$100,000, staff will requisition the amount over the deductible from CLIA. Once the Law Society's annual aggregate of \$500,000 has been paid out, staff will requisition payment from CLIA for any further payments out.

Once executed assignments have been received, staff will sue on the assignments and try to obtain judgements against Crook and collect.

Recourse Against Innocent Partners

The CLIA 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.

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 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.