



AGENDA

Benchers

Date: Thursday, February 11, 2021

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 benchers and staff to the meeting.				
2.0 IN MEMORIAM					
	<p>Trang Thi Ly, who passed away on December 17, 2020 at the age of 32. Ms Ly received her call to the Bar on June 16, 2016. She practised as an associate with Theodore L. Mariash Law Office up to the date of her death.</p> <p>William Parker Fillmore, who passed away on December 27, 2020 at the age of 70. Mr. Fillmore received his call to the Bar on June 24, 1975. He practised with Fillmore Riley LLP for 36 years, retiring in 2011.</p>				

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
3.0 CONSENT AGENDA					
The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting.					
3.1	Minutes of December 17, 2020 Meeting	5		Attached	Approval
3.2	<i>In Camera</i> Minutes			Attached	Approval
3.3	Appointment of Nominating Committee			Attached	Approval
3.4	Report of the Complaints Investigation Committee			Attached	Approval
3.5	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	Leah Kosokowsky	Attached	Briefing
4.3	Strategic Planning	5	Leah Kosokowsky		Briefing
5.0 DISCUSSION/DECISION					
5.1	Admissions and Education Committee: PREP & Articling, Training for Principals	15	Sacha Paul	Attached	Discussion/ Decision

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
5.2	Rule and Code Amendments: Civil Society Organizations	15	Leah Kosokowsky/ Darcia Senft	Attached	Discussion/ Decision
5.3	President's Special Committee on Health and Wellness: Partnership Opportunity	15	Vincent Sinclair	Attached	Discussion/ Decision
5.4	Health and Wellness Contract	15	Leah Kosokowsky	Attached	Discussion/ Decision
5.5	Allowances and Honoraria	15	Leah Kosokowsky	Attached	Discussion/ Decision
5.6	2021/2022 Bencher Expense Budget	5	Leah Kosokowsky	Attached	Discussion/ Decision
6.0 COMMITTEE REPORTS					
6.1	Equity Committee	10	Jessica Saunders	Attached	Briefing
6.2	Access to Justice Steering Committee	10	Gerri Wiebe		Briefing
6.3	President's Special Committee on Regulating Legal Entities	10	Wayne Onchulenko		Briefing
7.0 MISCELLANEOUS BUSINESS					
7.1	2021/2022 Budget	20	Leah Kosokowsky	Attached	Briefing
7.2	Hesse Reimbursement Payments	15	Leah Kosokowsky	Attached	Briefing
8.0 FOR INFORMATION					
8.1	Media Reports			Attached	Information



MEMORANDUM

TO: Benchers

FROM: Executive Officers

DATE: February 2, 2021

RE: **Appointment of Nominating Committee**

Every year in February the Benchers appoint a Nominating Committee which has the mandate to nominate at least two candidates for Vice-President and at least one candidate for President (usually the Vice-President). It also recommends committee chairs and how those committees are to be populated. The President and Vice-President are elected in April to take office in May. The committee chairs and members are appointed in May.

The Rules say that the Nominating Committee is to be chaired by the Past President and must include the President and Vice-President as well as four benchers, consisting of two practising lawyer benchers (one of whom must practise outside of Winnipeg) and two lay benchers.

We recommend that in addition to Anita Southall, Lynda Troup, and Grant Driedger, the four other benchers appointed to the Nominating Committee be Ashley Joyce, Gerri Wiebe, Susan Boulter and Miriam Browne. All four have agreed to serve if appointed.



MEMORANDUM

To: **Benchers**
From: **Admissions and Education Committee**
Date: **January 12, 2021**
Re: **- PREP & ARTICLING – CONTINUED IMPACT OF COVID-19**
- TRAINING FOR PRINCIPALS

INTRODUCTION

The new CPLED program, called PREP, is administered on behalf of the law societies in Alberta, Saskatchewan, Manitoba and Nova Scotia. CPLED is an arms-length entity and its board of directors is comprised of two representatives from each of the Prairie Provinces and one representative from Nova Scotia. While the ultimate intent is to have a skills based board, during the development phase it was felt to be important to have either a CEO or CEO designate of each of the three founding partners on the Board.

PREP was designed (pre-COVID) to be a nine-month program consisting of four distinct phases delivered through on-line and face-to-face sessions. In the first phase, the Foundation Modules are self-directed study over a period of three months, where students can choose to begin at any time in the first month. In Phase Two, the Foundation Workshops are held at a five day in-person session hosted in the fourth month. Phase Three, the Virtual Law Firm, takes the students back on-line where they work through simulated client files from beginning to end over an additional four months. The Capstone, the final phase of PREP, is a four day in-person assessment that is held in month nine.

After the completion of pilot projects in Alberta in 2019 and Manitoba starting in February 2020, the first cohort of the fully established program started in June 2020.

In order to accommodate the changes that were attendant with the program, the benchers passed rules in February 2020. At the time that the rules were approved, CPLED had determined that while individuals without an articling position could be admitted to PREP and complete the foundation modules, the student would not be permitted to continue in PREP beyond the foundation modules without an articling position.

In the spring of 2020, as a result of the COVID-19 pandemic, both CPLED and each of the law societies approved of a number of changes to address concerns that were expressed by law firms and articling students about their ability to meet certain articling requirements. These concerns affected

both the articling students who were due to be called in 2020 and those who were scheduled to begin their articling terms in the spring or summer of 2020.

In April 2020, the CPLED Board changed the policy for the 2020-2021 PREP year to waive the requirement that students have secured articles before commencing Phase Two of PREP, thereby allowing students to complete the entire PREP course without having secured articles. It was thought that those firms who were hesitant to hire students due to the impact of COVID might be able to subsequently offer articling positions without being precluded from doing so by virtue of the timing of PREP. The waiver was granted for one year as a pilot project in response to the concerns arising from COVID.

In Manitoba, at a special meeting held also in April 2020, the benchers approved a change under rule 5-51 that the CEO would adopt a policy for the 2020 and 2021 calls that an abridgement of up to 16 weeks would be granted upon request. Manitoba's approach was consistent with changes made in Saskatchewan to reduce articles to eight months and in Alberta to a minimum term of eight months and a maximum term of twelve months. The benchers decided that the changes to the articling policies would be revisited before the end of 2021.

While the end of 2021 is not yet upon us, the need for the benchers to consider these questions is pressing as the students who will begin articling in the summer of 2021 will be registering for PREP as early as March 2021.

The Admissions and Education Committee met on January 11, 2021 to review the changes that:

- a) Permitted students to complete PREP course without having secured articles; and
- b) Had the CEO adopt a policy to abridge a student's required articling period of 52 weeks by up to 16 weeks upon request.

The Committee also considered whether to recommend to the benchers that the Law Society of Manitoba invest in the development of a course to train lawyers who act as principals to articling students.

COMPLETING PREP WITHOUT ARTICLES

The pandemic shows no signs of abating in the near future and CPLED would like to see students continue to be permitted to take PREP without having secured articles.

The committee considered the benefits and drawbacks of students potentially completing PREP, in whole or in part, prior to serving their terms of articles. There was some evidence that students could develop the necessary competencies in PREP that could be applied immediately when the students begin their articles. By contrast, the committee also was made aware of studies that indicated that "interleaving" the different experiences offered by CPLED and articling improves

learning. The committee was also advised that the other three CPLED jurisdictions have indicated that they are unlikely to object to students taking PREP without articles.

Our rules require that students complete PREP and their articling term within two years. Accordingly, the committee determined that although PREP was originally intended to allow only those with an articling position to complete the program, the challenges posed by the pandemic for some in obtaining articling positions ought not to hold them back from proceeding with at least the bar admission program provided that the student is aware that the requirement to complete articles within a certain timeline still exists. While it is too early to determine what impact, if any, this may have on the students, we will be able to assess the impact over the next year or two.

Recommendation

The Committee recommends that for the 2021 calendar year, the benchers support CPLED's decision to allow students who do not have articles to take the full PREP course.

TRUNCATED ARTICLING YEAR

When the policy was implemented to permit a truncated articling year, approximately 35% of the students took advantage at the outset. Other employers and students elected to stay with a twelve month term as it fit with their business plan.

At this stage, while COVID remains a challenge, we do not have meaningful information from principals or firms as to the performance of the students or the extent to which a truncated year will assist firms in continuing to hire articling students. However, the committee was of the view that providing some flexibility to allow a workplace to reduce the number of articling weeks may permit firms to take on students that they might otherwise have not been able to accommodate. The committee was therefore generally in favour of maintaining the policy to permit a truncated articling year for the 2021 students, which appears to be consistent with the likely approach of our CPLED partners in Alberta and Saskatchewan. The committee noted that further consideration will be given based upon our assessment of the need for a truncated period and the competence of students who are serving truncated articles. This may be accomplished by conducting a survey at the appropriate time.

The committee also considered the impact of a truncated articling year on foreign trained lawyers who can apply to be exempted from articling for all or part of the articling term based upon their practising experience. While the rule is expansive, the Law Society implemented a policy in 2020 to only permit exemptions of up to six months, as our experience has demonstrated that many of those applicants require more training, rather than less. The committee resolved that all articling students must article for a minimum period of six months, taking into account both a truncated articling period and an exemption from articling based upon foreign practising experience.

Recommendation:

The Committee recommends that for the 2021 calendar year, the benchers approve of the CEO continuing to allow an abridgement of a student's required articling period of 52 weeks by as many as 16 weeks upon request. This recommendation is not to further reduce the requirement that foreign trained lawyers must article for a minimum period of six months having been exempt for some period of articles based upon foreign practising experience.

TRAINING FOR PRINCIPALS

The committee engaged in a discussion regarding the effectiveness of principals in their training and mentorship of articling students. In that respect, the committee received and reviewed an excerpt from a report prepared by Jordan Furlong that had been commissioned by the Law Society of Alberta on Lawyer Licensing and Competence in Alberta. (Attached) The report includes a number of recommendations, some of which will come back to the committee and to the benchers at a future date. However, one aspect of the report was considered by the committee at the January meeting as it relates to the training of principals.

The Furlong report recommends, among other things, that principals be required to participate in training and that the law societies provide that training for principals. In addition, the 2019 Prairie law societies' survey revealed that 24% of articling students were subject to harassment and discrimination in the recruitment process and during articling. This led our Equity Committee to recommend that principals receive training in relation to equity, diversity and inclusion.

While the qualification of principals and mandatory training are issues for future consideration, the committee reviewed a proposal by CPLED for the development of a training program for principals in Alberta. (Attached) The committee was advised that Saskatchewan has expressed an interest in participating and it would be possible for Manitoba to share in the costs of that program and utilize it for the purpose of providing principal training in Manitoba. The estimated costs of such training is in the range of \$82,000 to \$128,000 which would be shared among the participating jurisdictions.

The committee saw considerable value in having such training available for principals and CPLED is well-positioned to develop and deliver such training.

Recommendation:

The Committee recommends that the Law Society of Manitoba pursue the development of a course to train lawyers acting as principals to articling students.

Atc.

Lawyer Licensing and Competence in Alberta

Analysis and Recommendations

Final Report

**Submitted to the
Benchers of the Law Society of Alberta
September 16, 2020**

By Jordan Furlong

Table of Contents

1.	Executive Summary	3
2.	Introduction	8
3.	Observations	
	(A) Understanding “Competence”	10
	(B) The Role of the Law Society	12
	(C) The Role of Law Schools	14
	(D) Reconsidering Core Competencies	17
	(E) Equity, Inclusion, and ITLs	19
	(F) Lawyer Learning in Law Firms and Departments	22
4.	Licensing Lawyers	23
	Lawyer Licensing Recommendations	36
5.	Developing New Lawyers	42
	New Lawyer Development Recommendations	55
6.	Continuing Learning for Lawyers	58
	Continuing Learning Recommendations	75
7.	Summary and Conclusion	80
	Appendix A: Teaching Law Firms	83
	Appendix B: Other Professions	87
	Acknowledgments	95

1. Executive Summary

This report presents the Law Society of Alberta with an analysis of its lawyer licensing and competence assurance systems and makes several recommendations for their improvement.

This report concludes that although Alberta's current approach to lawyer licensing and competence is generally sound, several steps should be taken to maintain the quality and enhance the effectiveness of the system. In addition, fundamental changes to the legal services market will create more serious challenges to lawyer licensing and competence in the near future, and so the law society should immediately begin to seek longer-term solutions to these challenges.

The report opens with an introduction that explains why the report was commissioned and describes the parameters and limitations of its scope, as well as the iterative process of review and consultation through which this final version was reached.

The report then makes six preliminary observations about lawyer licensing and competence assurance that do not rise to the level of formal recommendations, but that lay the groundwork for the more detailed discussions that follow.

- The law society should strive to ensure lawyer “competence” both in the minimum sense of baseline adequacy of knowledge and skills, and in the more aspirational sense of continuous advancement towards true proficiency in many different areas.
- The law society should act both as a “coach” to encourage lawyers’ fulfillment and enhancement of professional norms and as a “cop” to enforce standards and address violations of those standards, but the “coach” should be the default approach.
- The legal education system is outside the scope of this report, but its longstanding and well-documented failure to adequately prepare aspiring lawyers for legal careers should not be allowed to continue and requires urgent law society attention.
- The law society’s six core lawyer competencies, originally formulated eight years ago, would benefit from reconsideration and revision, in particular with the addition of cultural competence and a shift towards more client-centric standards of competence.
- The law society should seriously consider the implications of anti-racism movements and the barriers and biases faced by lawyers who are Black, Indigenous, people of colour, and internationally trained on its licensing and competence systems.

- The law society should recognize the growth of sophisticated competence assurance programs within law firms, public-sector law departments, and corporate law departments, and should strive to dovetail its competence efforts with them.

The report then turns to the three broad categories of lawyer licensing, lawyer development in the first three years of practice, and continuing lawyer learning. These subjects are dealt with in three separate sections that begin with lengthy discussions of the topic and end with a series of recommendations for law society action.

Lawyer Licensing

The first of these three sections is devoted to lawyer licensing. The three components of lawyer licensing in Alberta are the law degree (outside the scope of this report), the bar admission course (ably administered by the Canadian Center for Professional Legal Education (CPLED)) and articling, which occupies most of this section.

Articling is a vestigial holdover from the earliest days of the Canadian legal profession that has been co-opted to serve a competence assurance function for new lawyers. Its longstanding imperfections were amplified by surveys conducted last year by the Prairie law societies that revealed significant levels of discrimination, harassment, and ineffective professional development experienced by articling students.

Articling is the only system currently available to provide aspiring lawyers with supervised practice experience, which the law society judges to be a necessary condition for bar admission, and therefore articling cannot be abolished outright. But nor can it be perfected, as its flaws are fundamentally interwoven with its benefits.

Articling instead should be improved. This report recommends that the law society set baseline criteria, including the successful completion of an application process and a training program, that all lawyers who wish to act as articling principals must successfully meet. It further recommends that principals and students jointly develop and regularly review a learning outcomes document to guide the student's experiential development throughout the articling term. Acting as an articling principal should be allowed to constitute fulfillment of a lawyer's annual continuing learning requirements.

But articling should also be supplemented with other ways in which aspiring lawyers can obtain supervised practice experience. The law society should expect the number of available articling positions to diminish rapidly in the very near future, as fundamental changes to the legal services market reduce the amount of entry-level work that clients send to law firms, and as the pandemic triggers both short-term economic crises and longer-term upheaval in the legal sector.

Therefore, Alberta should immediately begin considering alternatives to articling, such as a training-intensive Law Practice Program, an integrated practice curriculum in law schools, and the development of a teaching law firm (described in more detail in an appendix) to provide universal and consistent supervised practice experience to all aspiring lawyers.

It is conceivable that these recommended changes will be met with such resistance from lawyers and law firms that they cannot be implemented. This would confront the law society with a choice between continuing to require aspiring lawyers to use a flawed and damaging articling system or dropping the “supervised practice experience” requirement for bar admission altogether. Given this stark choice, this report recommends the law society adopt the latter course.

The second of the three main sections of this report focuses on the development of lawyers in their first three years in the profession. There is a gap between what a law licence authorizes a new lawyer to do and what the lawyer actually is competent (and feels competent) to perform. The report examines whether and to what extent this gap is an addressable problem.

The report concludes that although a law licence authorizes a new lawyer to take on any and all types of cases, no matter how complex and serious, this does not present a problem in practical terms, as neither new lawyers nor clients seek these types of retainers. A “graduated licensing” system, by which a new lawyer would be authorized to perform only limited types of legal services, is considered but rejected on the grounds that no clear path exists for a limited-license lawyer to prove “full-license” competence, and that such a system would amount to a multi-year articling requirement that would create even more barriers to entry to the practice of law.

The report accepts that new lawyers frequently feel unprepared to practise law, but contends that this not a problem with new lawyer competence so much as an opportunity to continue and enhance new lawyer development. Law society statistics indicate that lawyers in their first three years of practice generate fewer competence problems than other cohorts. To the extent that junior lawyers do experience problems, these are more attributable to a lack of professional support and training than to an inherent failing of the lawyer’s conscientiousness or quality.

The report therefore recommends that the law society create an online competence development program for new lawyers that continues and complements the knowledge and skills these lawyers acquired through law school, the bar admission course, and articling. The law society should make completion of this program compulsory for lawyers in their first three years in practice, in order to provide these new lawyers with the support and resources they need and deserve.

The report also cites a recent study into the shortcomings of traditional methods of new lawyer supervision, in particular the over-emphasis of “normative” correction and quality control, and the under-emphasis on “formative” mentoring and learning facilitation and “restorative” support for new lawyers in processing the cognitive and emotional impact of the transition to practice. The report therefore recommends that new lawyers’ active participation in the law society’s successful mentoring programs be strongly encouraged.

The third of the three main sections in the report is devoted to continuing lawyer learning. Earlier this year, the law society suspended the requirements of its Continuing Professional Development (CPD) program over concerns that the program was failing to provide the desired level of accountability and compliance among lawyers with regard to ongoing learning.

Unique among Canadian jurisdictions, Alberta does not require lawyers to complete a minimum number of hours of professional development activity; rather, lawyers are annually required to assess their learning needs, identify learning outcomes for the year ahead, and develop and carry out a learning plan to achieve these outcomes.

Although the “minimum hours” system is far more common in other jurisdictions and among other professions (described in more detail in an appendix), the report nevertheless contends that Alberta should not abandon its self-assessment and learning outcomes system. “Minimum hours” is an input measure that does not show how the lawyer has actually improved, which is the only outcome the law society is interested in achieving. Self-assessment is the preferred approach of experts in professional development and adult education, as well as the leading global study into lawyer competence, the Legal Education and Training Review.

Notwithstanding the foregoing, the report also finds that flaws in the implementation of the law society’s CPD program reduced its effectiveness and made lawyers’ compliance with the program unnecessarily difficult. The report therefore recommends the law society undertake three significant changes to its continuing lawyer learning system:

- Oversee the development of an online training program to help lawyers understand what “learning self-assessment” is and how it works, why the law society is requiring self-assessment, and how a lawyer can assess their own learning needs and choose learning outcomes related to those needs.
- Conduct random “learning checkups” on a percentage of Alberta lawyers each year to help ensure lawyers’ compliance with and pursuit of their stated learning activities and outcomes, with an initial emphasis on coaching to encourage desired behaviours and the eventual invocation of more punitive measures if compliance remains absent.

- Periodically supplement lawyers' continuing learning efforts with mandatory activities and initiatives meant to ensure or enhance competence in areas of universal relevance to Alberta lawyers, including but not limited to professional conduct, cultural competence, access to justice, and health and wellness.

The report goes on to note that lawyers with more than 20 years' experience in the profession present fewer competence problems and have different learning and competence needs than less experienced lawyers. This represents an opportunity to develop a more flexible approach to CPD for this demographic cohort. The law society should develop an alternative program of continuing learning by which these lawyers can perform a range of activities in public service, public legal education, and professional development in order to satisfy their continuing learning requirements.

The report further notes that lawyers in smaller firms, and especially sole practitioners, have less access to resources, training, and assistance than lawyers in other types of employment, a fundamental inequity that may contribute to the disproportionate frequency with which these lawyers experience complaints about competence. The law society should develop an online information and training program for sole practice, and should make completion of the program mandatory for all lawyers who wish to start practising solo (and consider mandating it for all current solos as well).

The report then discusses the difficulties many lawyers face with preparing for the end of their careers and transitioning into the next stage of their lives, and the consequences these difficulties can create for these lawyers' clients. The law society therefore should create a free business continuity plan template and should require all sole practitioners (and encourage all law firms) in Alberta to create a business continuity plan and register it with the law society.

The report concludes with a summary of its recommendations and an exploration of the urgent need for a unified system of "lawyer formation" in Alberta, stretching from the day a person considers applying to law school to the day they become an independent and autonomous lawyer. The report suggests that the law society exercise its statutory powers and lead all stakeholders in the lawyer development process through the creation of a new structure and vision for the formation of lawyers in Alberta.

2. Introduction

This report was commissioned by the Law Society of Alberta in April 2020. A draft version of the report was prepared and submitted for the review of two law society committees in late July 2020; feedback from these committees and other stakeholders resulted in a revised draft submitted in early September 2020. This final version of this report, provided today to the Benchers of the law society, prefigures a published version that will be circulated for stakeholder comment in late November 2020.

Five months have passed between the initial commission of the report and the submission of this final version. It perhaps goes without saying that these timelines do not permit an extensive investigation of worldwide research regarding lawyer licensing and competence, or the commissioning and collection of detailed survey data about licensing and competence in Alberta. The COVID-19 pandemic, obviously, has also been a factor during the preparation of this report.

Nevertheless, more than two dozen experts and authorities in lawyer development, legal education, and lawyer licensing in Canada, the United States, and Great Britain have been interviewed over the course of these past five months. In addition, numerous staff members and Benchers of the Law Society of Alberta have given freely and significantly of their time and attention in the creation and revision of this report. All these individuals are acknowledged with gratitude at the end of this document.

The purpose of this report is to help the Law Society of Alberta improve the quality and effectiveness of lawyer licensing and competence in this province. It is intended to provide a framework of reference with which the law society can both attend to immediate enhancements to its lawyer licensing and competence systems and lay the groundwork for more significant reforms in the near future.

The key triggering event for the commission of this report was the decision of the law society in February 2020 to suspend, for this year and next, the mandatory Continuing Professional Development filing requirement for Alberta lawyers, so that the CPD system could be analyzed and re-evaluated.

In addition, the law society also had the results of two 2019 surveys conducted by the law societies of Alberta, Saskatchewan, and Manitoba that revealed alarming levels of discrimination and harassment in the articling system in these provinces. It made sense to dovetail these two related issues together into one investigation of lawyer licensing and competence in Alberta.

The bulk of this report is divided into three sections. The first deals with lawyer licensing, including a particular focus on the articling system and the supervised practice requirement for bar admission. The second deals with the first three years of a lawyer's career and investigates whether and to what extent the law society should provide compulsory continued learning for lawyers during this time. The third deals with CPD in Alberta, which this report refers to as "continuing lawyer learning," and recommends changes to this system for all Alberta lawyers and for solo and more experienced lawyers in particular.

Prefacing these three sections is a series of observations that explain the premises upon which this report is based and explore key issues related to the lawyer development lifecycle and ecosystem. Included in an appendix is an overview of the current licensing and continuing learning practices of other regulated professions in Alberta. Based on feedback from Benchers and further discussions with law society personnel in the coming weeks, the final published edition of this report will also contain a suggested prioritization of its recommendations according to the law society's strategic and financial parameters.

This final version of the report is provided today to the Benchers of the Law Society of Alberta for their review, examination, and requested approval. I look forward to answering any questions and providing any additional information that would assist the Benchers in their deliberations, and I thank the Law Society of Alberta for the opportunity to prepare and submit this report.

Jordan Furlong
September 16, 2020

4. Licensing New Lawyers

The Articling Dilemma

A person who wishes to obtain a licence to practise law from the Law Society of Alberta must fulfill three requirements.²⁴ The first is to complete a Bachelor of Laws or Juris Doctor degree from a faculty of common law at a Canadian university, or an equivalent qualification.²⁵ The second is to complete the bar admission course administered by the Canadian Centre for Professional Legal Education.

The third requirement, which is the focus of this section and most of the recommendations at its conclusion, is to complete a term of articling with an Alberta legal employer. Every province and territory in Canada — indeed, most jurisdictions worldwide — require an aspiring lawyer to complete a period of supervised practice experience.²⁶

Articling is one of the few elements of 19th-century legal practice to survive mostly intact into the 21st century. Professor W. Wesley Pue, in his comprehensive 1995 treatise “Law School: The Story of Legal Education in British Columbia,”²⁷ succinctly lays out articling’s origins and function.

For most of its history, the legal profession has simply assumed that new lawyers would adequately learn their trade by doing it. Ideally, an initial period spent working under the direction of experienced and knowledgeable practitioners would expose the trainee to the mysteries of the lawyer’s art.

²⁴ “How to Become a Member in Alberta,” Law Society of Alberta (<https://www.lawsociety.ab.ca/lawyers-and-students/membership-services/how-to-become-a-member-in-alberta/>)

²⁵ “National Requirements for Canadian Common Law Degree Programs,” Federation of Law Societies of Canada (<https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>)

²⁶ “Qualification in other jurisdictions: International benchmarking,” a report by the Solicitors Regulation Authority, September 2016: <https://www.sra.org.uk/sra/policy/sqe/research-reports/>. Only the United States and India admit lawyers to practice without first requiring the completion of an experiential term of practice under the supervision of a lawyer. (“Admission to practice law,” https://en.wikipedia.org/wiki/Admission_to_practice_law)

²⁷ “Law School: The Story of Legal Education in British Columbia,” Professor W. Wesley Pue, University of British Columbia Faculty of Law, 1995 (<http://faculty.allard.ubc.ca/pue/historybook/school.html>)

Over time, more or less formal apprenticeships were developed. Lawyers' guilds came to require service for specified periods of time, as what came to be called "articles" developed into the principal mode of qualifying to practise law.²⁸

The evolutionary explanation for articling, therefore, is that it is a vestigial remnant of the original apprenticeship path towards law practice from the era before law schools developed.²⁹ Today, however, with 24 law schools across the country (and more law schools worldwide whose degrees are recognized by the FLSC), the apprenticeship path into law practice has all but vanished.

Yet articling remains as a compulsory component of bar admission in every Canadian jurisdiction. Our modern rationale for articling is that it provides aspiring lawyers with the opportunity to translate their academic legal knowledge into tangible legal outcomes, learning how to serve clients and operate a legal services business in an effective and ethical manner under the supervision of a more experienced lawyer.

There is no serious argument against this; hardly anyone in Canada advocates changing our model to follow our American colleagues and permit bar admission without practice experience. This report therefore proceeds on the basis that bar admission in Canada properly requires a term of supervised practice under the auspices of an experienced lawyer.

For as long as we have had articling in Canada, however, we have also had arguments about its quality and validity. Professor Pue cites an address to the 1913 General Meeting of the Law Society of Alberta by University of Saskatchewan political scientist and lawyer Ira MacKay, who favoured formal legal education over what he saw as the unsystematic nature of apprenticeship.

The [articling] clerks in the offices spend most of their time doing clerical work which they will not do for themselves but which they will require their own clerks to do for them when they themselves begin to practise. The result is a profession of apprentices without principals. These clerks receive absolutely no instruction and scarcely any assistance in their work.

Mr. MacKay perhaps overstated his case; but more than a century later, the Canadian legal profession appears to be no happier with the articling system. Google "articling problems in Canada" today, and the first page of results will deliver titles with phrases like "horror stories" and "intolerable human cost," among others.

²⁸ Ibid. (<http://faculty.allard.ubc.ca/pue/historybook/school01a.html#c1p2>)

²⁹ See generally: "The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction," Ralph Michael Stein, 57 *Chi.-Kent L. Rev.* 429 (1981): <http://digitalcommons.pace.edu/lawfaculty/228>

Many law societies have established task forces, working groups, and inquiries over the years to look into articling's problems and how they might be fixed. Most have recommended minor adjustments, but hardly any have come up with comprehensive solutions.

Not since the Law Society of Upper Canada's 1973 Report of the Special Committee on Legal Education³⁰ (generally referred to as the "MacKinnon Report") has any serious attempt been made to abolish articling.³¹ That attempt failed and none has been made since, not least because there is no easy replacement for the functions articling performs.

New Challenges for Articling

More recent inquiries have revealed other, more disturbing realities about articling. In May and June 2019, the Law Societies of Alberta, Saskatchewan and Manitoba conducted two surveys. One asked articling students and lawyers who articulated in the previous five years about their training and mentoring, and in particular about any discrimination and harassment they might have experienced. It also asked them how prepared they feel to practise law. A second survey posed similar questions to articling principals, recruiters and mentors.³²

The results of the surveys were dismaying. The law society heard from 549 student and new lawyer respondents in Alberta. Nearly one in three (32 per cent) reported experiencing discrimination or harassment during recruitment and/or articling. The surveys also found an inconsistent experience in the competencies learned during articling and in how prepared students feel for entry-level practice, as well as challenges around the quality of mentorship and feedback for both students and their principals and mentors.³³

The law society requires aspiring lawyers to undergo articling in order to gain admission to practice. The regulator has a corresponding duty to ensure that these individuals can

³⁰ See, "Should Articling Be Abolished?" Lorne Sossin, personal blog, Oct. 26, 2010: <https://deansblog.osgoode.yorku.ca/2010/10/should-articling-be-abolished/>

³¹ "Licensing and Accreditation Task Force Consultation Report," Law Society of Upper Canada, 2008: https://www.law.utoronto.ca/documents/conferences/Legaethics08_LSUCTaskForce.pdf

³² "Articling system rife with harassment and discrimination," Carolynne Burkeholder-James, Canadian Bar Association *National*, Jan. 28, 2020: <https://www.nationalmagazine.ca/en-ca/articles/the-practice/young-lawyers/2020/articling-system-rife-with-harassment-and-discrimi>

³³ "2019 Articling Survey Results Report," Law Society of Alberta: <https://www.lawsociety.ab.ca/2019-articling-survey-results/>

access a safe and effective environment in which to meet this requirement. If the purpose of articling is to provide instructive experience in law practice, the regulator must also take steps to ensure that the experience is provided properly.

We have only scratched the surface of articling's challenges here: To make a long story short, it is a flawed system. We cannot fault the architects of articling for its flaws, however, because there were no architects. Articling made its way to the centre of our lawyer development system almost by accident. And like most structures assembled without an architectural plan, the foundations are starting to give way.

Articling was not invented to serve as the critical third step in lawyer formation; it was borrowed and adapted over time to serve that purpose. Now, it is questionable how well it even does that. Articling today is a system in which:

- not everyone who wants an articling position can obtain one;³⁴
- not everyone who obtains a position will be paid a salary;³⁵
- not everyone who obtains a position (paid or unpaid) will receive an acceptable level of training and supervision;³⁶ and
- not everyone who completes their articling term will do so without enduring a difficult or even damaging personal experience.³⁷

This report does not recommend the abolition of articling. The Law Society of Alberta recognizes that supervised practice experience is a necessary condition of licensing for aspiring lawyers, and articling is currently the only means available to the law society for providing this experience.

³⁴ "Will the conversation catalyzed by the Law Society of Ontario mean the end of articling?" Aidan Macnab, *Canadian Lawyer*, Aug. 19, 2019 (<https://www.canadianlawyermag.com/resources/legal-education/will-the-conversation-catalyzed-by-the-law-society-of-ontario-mean-the-end-of-articling/297439>)

³⁵ "Law students concerned as firm posts articling job covering a transit pass," *Law Times*, July 20, 2015 (<https://www.lawtimesnews.com/news/general/law-students-concerned-as-firm-posts-articling-job-covering-a-transit-pass/261805>)

³⁶ "The Ethics of Articling," Adam Dodek, *Slaw*, Dec. 9, 2013 (<http://www.slw.ca/2013/12/09/the-ethics-of-articling/>)

³⁷ In addition to the results of the Prairie Law Societies' 2019 surveys, see the May 2018 "Options for Lawyer Licensing Consultation Paper" by the Law Society of Ontario, which found that "21 percent of respondents who had completed articling indicated that they had faced comments or conduct relating to personal characteristics that were unwelcome, and 17 percent felt that they had received different or unequal treatment relating to personal characteristics." (https://lsdialogue.ca/wp-content/uploads/2018/05/lawyer_licensing_consultation_paper_bookmarks-weblinks-toc.pdf)

Neither does this report prescribe a series of remedies that can transform articling into an outstanding experience for every aspiring lawyer in Alberta. Such remedies simply are not available. The reason why so many attempts over the years to “fix” articling have failed is that articling cannot really be fixed.

Articling is imperfect by nature. It is a process by which the regulator hands over — outsources, essentially — the critical final stage of bar admission to the private sector. This inherently creates a wide spectrum of potential workplace environments for articling students and surrenders any practical degree of control or close supervision by the regulator over the experience. When we complain that articling experiences are wildly inconsistent, subject to the demands of busy law practices, and resistant to centralized oversight, we are not reciting articling’s bugs. We are listing its features.

This report does recommend a series of steps by which the articling experience can be improved. In particular, the report recommends changes to the role of the articling principal³⁸ and their relationship with the articling student, in order to re-focus the experience on the aspiring lawyer.

More importantly, this report recommends the development of additional methods by which aspiring lawyers can obtain supervised practice experience. The following subsections of this report will explain the reasoning behind these recommendations and address potential questions or concerns about them.

But it is also important to make clear that even if all the improvements recommended in this report are implemented, articling still must be accepted for what it is: a tradition held over from a bygone era in law’s history to act as a makeshift solution in this one. It is a 19th-century square peg with which we are attempting to fill a 21st-century round hole.

If the Law Society of Alberta were considering, for the first time, how to provide aspiring lawyers with a period of supervised practice experience before bar admission, it is unlikely that it would come up with the current articling system. But it is the system we have. Since articling can neither be abolished nor perfected, this report recommends that it be improved and, more importantly, supplemented.

³⁸ Throughout this report, “articling principal” refers to the lawyer who is charged with the responsibility to oversee the student during their articling term and to report to the law society at the conclusion of the term whether the student has satisfactorily met the required standards. The obligations and opportunities for articling principals recommended herein are not intended to apply to other lawyers within the workplace who happen to have any kind of supervisory contact with the student.

Market Forces and New Pathways

The first of the five recommendations in this section is that the Law Society of Alberta develop additional routes and methods by which aspiring lawyers can apply their legal knowledge and skills in a supervised legal work environment before being granted entry to the profession.

Put differently, the law society should create new experiential “pathways into practice.” That is the term used by the Law Society of Ontario to describe the three ways in which an aspiring lawyer may gain the experiential learning required for admission to practice in that province:

- Complete a term of articling,³⁹
- Complete the Law Practice Program (LPP)’s four-month work placement,⁴⁰ or
- Complete a law degree that features an Integrated Law Practice Curriculum (IPC, currently in use at Lakehead University Law School in Thunder Bay and scheduled to be used at the new Ryerson University Law School in Toronto starting this fall)⁴¹

This report recommends that the Law Society of Alberta also pursue the development of additional experiential learning pathways in this province. This is not to say that Alberta should simply copy Ontario and develop both an LPP and IPC; Alberta should chart its own course forward. But Ontario offers a model by which articling can be supplemented with other means for an aspiring lawyer to obtain supervised practice experience.

This report contains a number of recommendations by which the articling experience can be improved. But even if every one of these recommendations is accepted and implemented, and even if the quality of the articling experience improves significantly as a result, the recommendation to develop additional pathways into practice would still stand. This is because there is reason to believe that the supply of available articling

³⁹ “How Do I Become a Lawyer in Ontario? Information for law students and NCA applicants,” Law Society of Ontario: <https://lso.ca/becoming-licensed/lawyer-licensing-process/how-do-i-become-a-lawyer-in-ontario#gain-experience-working-in-a-legal-environment-5>

⁴⁰ “Law Practice Program,” Law Society of Ontario (<https://lso.ca/becoming-licensed/lawyer-licensing-process/law-practice-program>); “Program Overview,” Ryerson University Faculty of Law (<https://lpp.ryerson.ca/prospective-candidates/>); “Law Practice Program,” University of Ottawa Faculty of Law (<https://commonlaw.uottawa.ca/en/students/law-practice-program>)

⁴¹ “Integrated Practice Curriculum,” Bora Laskin Faculty of Law (<https://www.lakeheadu.ca/programs/departments/law/curriculum/ipc>) and “Integrated Practice Curriculum,” Ryerson University Faculty of Law (<https://www.ryerson.ca/law/program/integrated-practice-curriculum-ipc/>)

positions in Canada is diminishing and very soon will fall below the level required to sustain each incoming class of new lawyers.

Set aside for a moment the growing number of aspiring lawyers in Canada, which has arisen from larger class sizes at most Canadian law schools and an increase in the number of internationally trained lawyers seeking a license to practise law in this country.⁴² While each of these phenomena contributes to the *demand* for articling positions, they are unrelated to the more systemic reasons for the dwindling *supply* of those positions.

The premise of articling is that a law firm or other legal employer will hire an articling student to carry out formative, entry-level tasks within their limited capacity. But this premise relies upon the sufficient availability of entry-level tasks to give to the articling student. If clients do not send these tasks to law firms, then the firms cannot give the tasks to articling students, and students' work on these tasks cannot be billed.

Economic and technological forces are now bringing transformative changes to the legal market, and there is every indication that they will only grow in importance in the coming years.⁴³

- Corporate clients, whose work has kept generations of articling students employed at many law firms, have substantially increased their in-house lawyer ranks⁴⁴ and are

⁴² “Canadian law schools added 316 students and 35 tenured faculty over five years, says FLSC update,” Bernise Carolino, *Law Times*, Nov. 28, 2019: <https://www.lawtimesnews.com/resources/legal-education/canadian-law-schools-added-316-students-and-35-tenured-faculty-over-five-years-says-flsc-update/323360>

⁴³ “Where Have All the Big Law Associates Gone?” Bob Graff and Michelle Fivel, *Bloomberg Law*, Mar. 21, 2017: <https://news.bloomberglaw.com/business-and-practice/where-have-all-the-big-law-associates-gone-perspective>

⁴⁴ Statistics for Canada are not available, but between 1997 and 2016, the number of American lawyers working in corporate law departments increased by 203 percent. In that same period, the number of lawyers employed by law firms grew by just 27 percent. (“How Much Are Corporations In-Sourcing Legal Services?” Prof. William Henderson, *Legal Evolution*, May 2, 2017: <https://www.legalevolution.org/2017/05/003-inhouse-lawyers/>) See also, “Bring it in-house,” *Canadian Lawyer*, July 24, 2011: <https://www.canadianlawyermag.com/news/general/bring-it-in-house/268273>

keeping, or “insourcing,” many basic legal assignments that once went to law firms as a matter of course.⁴⁵

- When these clients do outsource entry-level tasks, they frequently choose to send the work to an “alternative legal services provider”⁴⁶ that can perform the work more efficiently, with greater use of process and technology, and therefore less expensively than law firms.
- Many law firms, recognizing this shift in the market, are building alliances with alternative legal services providers,⁴⁷ or in some cases, creating and building their own “captive ALSPs” to perform this work;⁴⁸ in both cases, the services of entry-level lawyers and articling students play a very small part.⁴⁹
- Remarkable advances in technology over the past decade have increased the reach and effectiveness of tools that perform document automation, e-discovery, legal research, and due diligence — tasks that once occupied thousands of early-stage lawyers but that no longer do.⁵⁰

Simply put, every year there is going to be less work that law firms can give to early-stage or lightly skilled trainee lawyers, and therefore less incentive for firms to employ

⁴⁵ “Canadian legal landscape 2019: Issues and trends facing in-house counsel in Canada,” Deloitte (<https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/finance/ca-en-deloitte-legal-industry-report2019.pdf>); “Why alternative legal service providers are on the rise,” Cornelius Grossmann, EY Law (https://www.ey.com/en_ca/tax/why-alternative-legal-service-providers-are-on-the-rise)

⁴⁶ “Close to 50% of Canadian businesses will turn to alternative legal service providers within 5 years,” Anita Balakrishnan, *Law Times*, Oct. 2, 2019: <https://www.lawtimesnews.com/resources/practice-management/close-to-50-of-canadian-businesses-will-turn-to-alternative-legal-service-providers-within-5-years/306011>

⁴⁷ “Even Without Client Pressure, Firms Are Becoming BFFs With ALSPs,” Victoria Hudgins, *LegalTech News*, Feb. 19, 2020: <https://www.law.com/legaltechnews/2020/02/19/even-without-client-pressure-firms-are-becoming-bffs-with-alsps/>

⁴⁸ “A Safe Space for Innovation — Law Firms Creating ‘Captive ALSPs,’” Gregg Wirth, Legal Executive Institute, Thomson Reuters, July 8, 2019: <https://www.legalexecutiveinstitute.com/forum-magazine-captive-alsps/>

⁴⁹ “Despair ahead: Millennial lawyers and the legal job market,” Hassan Ahmad, *Canadian Lawyer*, July 10, 2017: <https://www.canadianlawyermag.com/news/general/despair-ahead-millennial-lawyers-and-the-legal-job-market/270546>

⁵⁰ “AI having uneven impact on lawyers,” Anita Balakrishnan, *Law Times*, Aug. 28, 2019 (<https://www.lawtimesnews.com/news/general/ai-having-uneven-impact-on-lawyers/302816>)

these lawyers as associates or articling students.⁵¹ Many law firms are shrinking their lawyer workforces during this pandemic. But those decreases were already happening before COVID-19; the crisis is merely going to accelerate that process.⁵²

Overall, law firms are likely to employ fewer novice lawyers in the years to come, which could pose an existential threat to the continued viability of articling as a supervised practice pathway. Even if we succeed in reforming articling, it is possible that we are merely postponing its day of reckoning.

The goal therefore should be to ensure that, whether the articling system continues or comes to an end, *all* applicants to enter the Alberta legal profession can safely obtain the supervised practice experience required for bar admission. Accordingly, the law society should begin now to develop new systems for enabling aspiring lawyers to obtain supervised practice experience that is:

- universally accessible,
- systematically defensible,
- rigorously consistent, and
- compliant with professional standards for legal workplaces.

Appendix A to this report contains an extensive discussion of one potential approach to supervised practice that the law society ought to closely consider — the teaching law firm. See “Teaching Law Firms,” p. 83.

The more pathways into practice that are developed for Alberta lawyers, the less pressure will be placed on the articling system to carry the entire burden of ensuring a supervised practice experience for all bar applicants.

The Student-Centred Articling Experience

Three other recommendations at the end of this section concern the two most important people in the articling process: the supervising principal and the supervised student. This

⁵¹ The main reason why technology has not already eviscerated the ranks of law firm associates is that the great majority of law firms rely on billed hours for their revenue, and automating lawyer tasks would vastly reduce firms’ hourly inventory. Should fixed-fee or monthly-retainer pricing models ever truly catch on in law firms, the legal profession would face an unemployment crisis. See generally, “The obsolete associate,” Jordan Furlong, *Law21*, July 14, 2016: <https://www.law21.ca/2016/07/the-obsolete-associate/>

⁵² “Canadian Law Firms Make Adjustments in the Age of the Coronavirus,” Marlis Silver Sweeney, *Law.com International*, May 6, 2020: <https://www.law.com/international-edition/2020/05/06/canadian-law-firms-make-adjustments-in-the-age-of-the-coronavirus/>

report recommends that a lawyer who wishes to serve as an articling principal should be required to apply for the role and to meet certain criteria in order to be approved for it, and that the principal and student should jointly develop and regularly revisit a learning outcome plan for the articling term.

The goal of these recommendations is to help ensure a safer, more effective, and higher-quality experience for articling students. If accepted and implemented, these recommendations would toughen the conditions under which a lawyer can become an articling principal and increase the principal's responsibilities. But more importantly, they would represent a shift towards a more "student-centred" model for the articling experience.

A lawyer who acts as principal to an articling student is taking on a great responsibility — they will serve as the first and perhaps most important supervisor for whom a lawyer will ever work.⁵³ As the results of the 2019 Prairie Law Society surveys demonstrate, too many articling principals are failing in their duty to provide a secure, healthy, and effective workplace and training experience for their students.

Some of these principals, to speak bluntly, were simply unfit for the role and should not have sought, been asked, or been allowed to take it on. But most of the remaining principals had good intentions — they did not set out to create or allow an ineffective or uncomfortable articling experience for their students.

The law society therefore must not only screen out unfit principals; it must also provide guidance and assistance to principals who are willing to properly fulfill the demands of the role and who would, with proper training, be able to do so.

As it stands, almost all lawyers who apply to act as articling principals in Alberta are approved. The law society believes that both current regulations and principles of procedural fairness require that lawyers who wish to be principals cannot be turned down without providing them with evidence to support the refusal.

The difficulty with this approach is that such evidence frequently resides in the negative experiences of people who had previously worked with or served under the principal. In order to satisfy the demands of administrative justice, complaints or warnings about a lawyer's unfitness would have to be brought forward by previous supervisees willing to go on the record and face the person who had fostered or permitted a hazardous working environment.

⁵³ One Law Society Benchers who has presided over many disciplinary cases reported anecdotally that most of the lawyers she has witnessed in such cases share in common a poor articling or early development experience at the start of their legal careers.

In most cases, it is not realistic to expect such evidence to be forthcoming. Many former articling students, especially ITLs and women and BIPOC lawyers, who have experienced hostile working conditions under a supervising lawyer will not lodge formal complaints. These ex-students might now be employed as associates at the same firm where the lawyer is a partner. Or they might be working in the same small town or community or practice area. Or they might simply have seen what happens to whistleblowers whose accusations threaten people of power and privilege.

At the core of this problem is the concept that a lawyer has a “right” to act as an articling principal. This concept prioritizes the lawyer’s interests over those of the articling student. That is an incorrect prioritization even in the many healthy and constructive relationships between principals and students.

When more than 99 percent of principals are approved, but nearly one-third of all articling experiences involve discrimination or harassment, the balance between the interests of principals and the interests of students has been wrongly struck.

Keeping in mind its duty to provide articling students with the conditions for a safe and effective supervised practice experience, the law society should set a high standard for articling principals. The law society should require a lawyer to show why they should be permitted to fill the role. All aspiring principals should meet established standards and receive formal training in mentoring and supervision before being allowed to take on the role. Serving as a principal is a privilege to be earned, not a right to be asserted.

The articling student is the person for whom the articling process exists. It is that person to whom the law society owes its primary consideration and on whom the articling experience should be centred.

Effective Training vs. Gainful Employment

Most aspiring lawyers regard articling as the final hoop to jump through on the way to bar admission, and perhaps more importantly, as their first real “legal” employment opportunity — one that could set the course of their legal career for years to come. For most students, articling’s main purpose is to be a year-long audition for full-time employment.

Many employers that hire students, it should be acknowledged, view articling as a professional duty, a way to “pay forward” the benefits of a law licence to the next

generation of lawyers.⁵⁴ But for many other employers, articling is primarily a talent development opportunity, a tool for recruiting relatively inexpensive workers and potential future partners while also turning a profit.

These are all legitimate aims and aspects of articling for both students and employers. But there is a third stakeholder in the articling system — the law society, which regards articling first and foremost as a professional licensing requirement to ensure the competence of new lawyers.

All the central players — the regulator, the student, and the employer — have different reasons for participating in the articling process. Inevitably, tensions arise when these inconsistent priorities intersect. This report adopts the regulator's view of articling and places it above the others in importance.

When these recommendations were first discussed with various stakeholders in the lawyer licensing process, one concern was consistently expressed: that placing more requirements on articling principals would have a chilling effect on the willingness of lawyers to fill the role. Many lawyers, it was suggested, would conclude that the new costs of becoming a principal outweighed the benefits, and they would decline the opportunity. If enough lawyers responded in this fashion, articling's continued existence could be jeopardized.

This report regards its proposed requirements for principals as reasonable. For example, one recommendation is that the law society should create a process and standards by which lawyers who wish to serve as articling principals must successfully apply for the role of principal and receive training to perform the job properly.

Most people who wish to perform a role, even in a volunteer capacity, normally are asked to supply evidence that they have successfully performed the role previously. If the role has a supervisory element, and especially if it relates to another person's ability to enter their chosen career, then the person can be asked to demonstrate that they have sufficient skills and experience in this area, or to accept training that will bring them up to an acceptable level. Regulators have both the right and the obligation to require no less when overseeing the admission of new members to a profession.

Another recommendation is that the articling principal and student jointly prepare a customized learning plan for the articling year, and that the two parties revisit this plan four times throughout the articling term.

⁵⁴ One Law Society Benchler, a partner in a firm that regularly hires many articling students, opined that from a purely economic perspective, articling no longer makes much sense for the firm, and that it is now primarily the professional responsibility to help new lawyers gain their licenses that sustains the articling process there.

Many articling students find out near the end of their term whether or not the firm intends to hire them back as associates. This decision, not infrequently, is the only actionable feedback they ever receive. Myriad problems result when a student rarely receives real-time feedback during their articling term.

- It prevents the student from accessing formal, structured assessments of their progress and performance that could help improve both.
- It allows the principal to downplay or ignore the developmental aspects of their role in favour of the supervisory and revenue-generating elements.
- It creates an informational vacuum for the student regarding their performance, which in turn generates significant mental and emotional stress.

Should these recommended requirements for articling principals, which are not especially onerous, nonetheless be considered so burdensome as to jeopardize the very existence of articling, then the law society will have to decide whether it is prepared to continue imposing on aspiring lawyers a bar admission requirement that is deeply flawed and frequently harmful, yet is also effectively immune to reform and improvement. If forced to choose between sustaining an unreformable articling system or doing away with this requirement for admission altogether, this report suggests that the law society take the latter road.

A student's desire to be hired back as an associate, and a law firm's desire to maximize the financial value of the student's efforts, are both understandable. But the point of the articling term is not to help a student get a job as a lawyer or to help a law firm profitably develop new talent.

The point of articling is to ensure that an aspiring lawyer has achieved minimum levels of practice competence through experiential learning in a safe and professional environment in order to be granted bar admission. That is why articling exists. The following recommendations are meant to help ensure that goal is achieved.

Lawyer Licensing Recommendations

A1. The law society should develop one or more new pathways, in addition to articling, by which bar applicants can fulfill the workplace experience requirement for bar admission.

The reasons for this recommendation, set forth in detail previously, are not unique to Alberta. This recommendation therefore could be fulfilled by the law society acting alone, or it could be undertaken in concert with other law societies and/or with the FLSC.

There is no reason why a term of articling in a law firm would not remain an option for obtaining supervised practice experience. Indeed, it seems likely that even if the law society authorizes new “pathways into practice,” many law firms might continue to offer articling positions regardless. If those firms can meet the standards for articling principals set out in the following recommendations, they should be permitted to offer these positions.

The law society should pursue this recommendation with alacrity. Even in normal times, articling’s numerous shortcomings, combined with imminent changes to the legal services market and the law firm business model, would leave articling in a precarious position. The pandemic and its economic consequences will greatly exacerbate these problems and accelerate these trends.

The law society should therefore proceed on the assumption that articling alone very soon will be unable to fulfill the requirement that bar applicants complete a term of supervised practice. Additional methods to ensure the supervised practice requirement should be thoroughly investigated as soon as can be arranged.

A2. The law society should establish baseline criteria — including the successful completion of an application process and a training program — that all lawyers who wish to act as articling principals must satisfy in order to serve in that capacity.

The law society already has a process by which lawyers can become articling principals; this process should be enhanced. The law society should establish baseline criteria that an aspiring principal must meet, develop an application and approval process based on those criteria, and provide training to principals to ensure their supervisory and mentoring skills meet the standards required.

The conditions that an articling principal must meet should include the following:

- Describe the lawyer’s previous experience in a supervisory or mentoring role.
- Provide contact information for a former supervisee or mentee who is willing to be interviewed about their experience.⁵⁵
- Confirm that the lawyer has completed (or obtain an undertaking that they will shortly complete) a training course required by the law society.⁵⁶

Whatever requirements the law society chooses to impose should be sufficiently robust to show the law society takes seriously its duty to ensure that articling students receive a safe, high-quality environment in which to begin learning the practice of law.

Approval from the law society to act as a principal should be considered valid for 24 months following the date of the approval. If a principal has been approved by the law society once, then in the absence of new information coming to the law society’s attention, the principal need only apply for routine renewal of the previous authorization. The principal should be under a positive duty to inform the law society of any material change in circumstances.

Pre-authorized Approval

Where possible, an articling student should not be offered an articling position until the lawyer designated to serve as principal has received law society approval to do so.

⁵⁵ It is possible that an aspiring principal has never acted as a principal before, in which case a person from a supervisory or mentoring relationship outside the law should be put forward as a contact. If an applicant has never held any sort of supervisory or mentoring role before, the law society would be entitled to take that into account when assessing the application — but that should not be a disqualifying factor by itself.

⁵⁶ This course is described in Recommendation A3.

Consider a student who accepts an articling offer, then learns that their would-be principal has been denied permission to act in the role. That student could lose their articling job and have no time to find a new one before other positions have been filled.

Authorization to act as a principal should therefore be obtained before a lawyer offers a bar applicant an articling position — in effect, would-be principals should seek and receive pre-authorization.

At some law firms, it is the practice to offer an articling position before the firm has determined which lawyer will serve as principal to the articling student. These firms should begin the pre-authorization process at their earliest opportunity, to ensure that a lawyer who might be designated to act as a principal has been cleared by the law society before the firm's articling process is fully engaged.

Principal Training

The law society should develop a training program and supporting resources to provide articling principals with training in best practices for supervising and developing new talent in a legal workplace. The content, duration, delivery model, and provider of this training and support should be determined by the law society, in conjunction with experts in lawyer development and adult education.⁵⁷

Some potential considerations in this regard might include the following.

(a) Minimal demands. The training course for principals should make the fewest demands necessary on would-be principals while still providing the baseline amount of training needed for the role. This training course should be designed to produce the “minimum viable principal,” not a world-class lawyer development expert.

(b) Online offering. The training course should be offered online to the greatest possible extent. An online training course could reduce cost, increase convenience, be accessed asynchronously at the most convenient time for the user, and be broken down into smaller and shorter modules for quicker and easier digestion and review.

(c) Broad application. A core competence for Alberta lawyers is “practice management,” and a critical element of that competence is the management of people. If a principal training course helps a lawyer become a better manager overall, that would be additional incentive for a lawyer to take on the principal role.

⁵⁷ Recommendation 16 of the Legal Education and Training Review in England & Wales states: “Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.” <http://www.lettr.org.uk/wp-content/uploads/LETR-Report.pdf>, p. 290.

A3. The law society should require an articling student and their articling principal to jointly complete a “learning outcomes” plan at the commencement of the articling term, and to jointly review the student’s learning outcomes quarterly throughout the term.

Currently, articling principals must sign a “Principal Articling Agreement” in which they undertake, among other things, to ensure their articling student “obtains practical experience, training and mentoring” in five areas of competence (ethics and professionalism, practice management, client relationship management, conducting matters, and adjudication/ADR).⁵⁸

This document is completed, however, with no input from the articling student, depriving the student of the opportunity to participate in an assessment of their learning needs and an identification of their learning outcomes. The student will be expected to undertake this assessment and identification throughout their career, as part of their annual continuing learning activities detailed later in this report.

It is therefore recommended that the law society replace the “Principal Articling Agreement” with a collaborative process that requires the articling student and their principal to jointly carry out the following activities.

- (a) Review the law society’s core competence requirements and accompanying list of suggested activities.
- (b) Discuss the student’s own self-assessment of learning needs, ideally conducted through the self-assessment process outlined in Recommendation C1 below.
- (c) Discuss which activities the principal can offer to meet both the competence requirements and the articling student’s desired learning outcomes.
- (d) Develop a schedule of activities for the articling term by which the student can gain these competencies and work towards these outcomes.

The results of this process should be entered into a document template provided by the law society, which should then form the basis of quarterly reviews throughout the articling term of the student’s progress toward their learning outcomes. At the final review, the student and principal should discuss whether and to what extent the competence and learning outcomes have been achieved. The principal should provide the student with their assessment, and the student should be given the opportunity to comment on that assessment. Based on this final review, the principal should complete (if warranted) and submit to the law society a modified version of the “Certificate of Principal” document that confirms the satisfactory completion of the articling term.

⁵⁸ Note that these five areas differ from the six core competencies that the law society sets for practicing lawyers. The law society should address this discrepancy.

A4. The law society should permit articling principals to consider their activities as principals to constitute fulfilment of their annual continuing learning requirements.

Acting as a principal, while a privilege and not a right, nonetheless does represent a significant commitment of time and effort that the lawyer could otherwise devote to clients or firm business. The role includes a series of activities that enhance a lawyer's competence and effectiveness. In order to properly supervise an articling student and ensure they achieve entry-level competence in the core areas mandated by the regulator, a principal:

- must have deep knowledge and confident command of ethical requirements, business necessities, client communications, management techniques, and other key skills;
- must ensure that the workplace into which they are inviting the articling student has a system and culture that exemplify and encourage core professional competencies; and
- must maintain the knowledge and skill necessary to assess whether and to what extent the articling student is meeting the expectations of their learning outcomes plan.

Permitting principals to consider their activities as principals to constitute fulfilment of their annual continuing learning requirements could also help incentivize lawyers to take on the role and would recognize the contribution they are making to the profession.

A5. The law society should, in collaboration with CPLED, suggest potential modifications and improvements to the Practice Readiness Education Program that could improve the PREP experience for aspiring lawyers.

CPLED is the administrator of the bar admission process and the Practice Readiness Education Program (PREP), while the law society is an important stakeholder in both. It is expected that the law society and CPLED will collaborate in the ongoing development and improvement of PREP. This report suggests one potential issue that the law society and CPLED could discuss further.

During its pilot phase, PREP runs concurrently with the articling term. While articling students are learning law practice, carrying out assigned tasks and attending to their learning outcomes, they are simultaneously completing a rigorous bar admission program that requires more than 200 hours of learning activity. This creates a heavy workload that can be, and reportedly for some articling students already has been, overwhelming.

One potential solution considered during the preparation of this report would be to compress PREP into a full-time 12-week course and schedule it at the start of the articling term, so that the articling student acquires baseline practice skills and experiences through the Foundation Modules and Virtual Law Firm that can then be applied effectively and productively throughout the balance of the articling term.

This approach has drawbacks, however. Law firms might be understandably reluctant to pay articling students for three months at the start of the articling term during which the student can carry out little or no billable work. And pedagogically, although it is less efficient to “interleave” the different types of learning experiences provided by PREP and articling, many educational experts believe it also improves learning.⁵⁹

It is therefore recommended that the law society and CPLED discuss these and other issues further, in order to identify solutions that safeguard articling students’ mental and physical wellness while also creating the most effective environment for experiential learning.

⁵⁹ See, for example: “The Effects of Interleaved Practice,” Kelli Taylor and Doug Rohrer, September 2010, *Applied Cognitive Psychology* 24(6):837-848 (https://www.researchgate.net/publication/227530785_The_Effects_of_Interleaved_Practice); “The Interleaving Method: How to Efficiently Pick Up New Skills Quickly,” Thomas Oppong, Medium, May 25, 2020 (<https://medium.com/personal-growth/the-interleaving-method-a-surprisingly-effective-way-to-learn-faster-4c9505b05f13>)

Principal Training Program

Development Plan and Cost

To	The Law Society of Alberta
From	Dr. Kara Mitchelmore, CEO CPLED
Date	October 1, 2020

Introduction

The results from the 2019 articling surveys brought to light the need to address reports of discrimination and harassment during recruitment and articling. As well, survey findings included inconsistent student experience during articles affecting how well students feel prepared for entry level practice.

The Law Society of Alberta (LSA) has put forward immediate steps to address the articling survey results. One of the recommendations is to investigate mandatory training for principals. Consequently, the Law Society of Alberta (LSA) approached CPLED to develop a proposal for the development of a principal training program.

This document provides an outline of what the principal training program will look like and the cost associated with developing the program.

Considerations and Training Requirements

Building and delivering a successful principal training program requires a consideration of principals' and the LSA's needs and preferences.

- Principals do not want to be "taught" and they will probably resist a boring or long training session.
- Principals are busy and successful people, and their time needs to be respected.
- There is an opportunity for creating an attitude shift – something that is best achieved through imparting new experiences, not just knowledge.
- Building empathy for law students need to strike an emotional (nostalgic even) chord with principals.
- The skills involved with giving constructive feedback and mentoring are useful to principals, going beyond the principal training program, as it will help elevate the law profession in general.

The training program therefore should be experiential, fun, and it must be able to connect with the principals. A talk-down or e-read strategy will not work.

With these considerations in mind, CPLED proposes a two-and-a-half-hour virtual training program that allows principals to complete the program on their own time.

The principal training program will include the following modules:

1. A review of the role of a principal (i.e. duties/requirements) including completing reports for the Law Society;
2. An overview of how to provide constructive feedback both written and oral;
3. A summary of effective mentoring/coaching skills;
4. An introduction to the life of an articling student (Law Society requirements, CPLED requirements, work requirements etc.);
5. An explanation of why each aspect of articling training is important for building an individual ready to be called to the Bar and enter practice.

CPLED User Group Feedback

The principal training program proposal was shared with CPLED's User Group for feedback. The User Group includes education, admissions, and credential representatives from the Law Society of Alberta, Law Society of Saskatchewan, Law Society of Manitoba, and The Nova Scotia Barristers' Society. The overall response was positive with all four jurisdictions expressing interest in offering a training program for their principals.

User Group feedback includes:

- The training program must include a section on discrimination and harassment providing resources on model policies.
- Consider including PREP course material e.g. culture, effective lawyer, competencies.
- Mental health issues experienced by students is prominent and there needs to be an understanding of the challenges involved with balancing PREP and articling work with students' personal lives.
- A method needs to be developed that allows principals to take their learnings from the training program back to the workplace and to be able to share with their co-workers.
- There needs to be a clear expectation and understanding of what competent means.

Principal Training Modules and Development Cost

There are three options to deliver principal training learning objectives with each offering differing degrees of efficiency and value:

Module	Option 1	Option 2	Option 3
1. A review of the role of a principal (duties/requirements) including completing reports for the Law Society (10 mins)	Text and images to provide essential information to principals. Will consist of reading material.	A mix of text lessons combined with an interactive module with videos on responsibilities resulting in an experiential learning module.	Adaptive module with a pre-test. Based on how principals do on a pre-test, they either go through all the content (10 minutes) or a select "review" (3 minutes).

Module	Option 1	Option 2	Option 3
2. Providing constructive feedback (verbal and written) (60 mins)	This will be a highly interactive / gamified module that lets a principal see a situation, and then respond to it. As a branching scenario, the principal's decisions will build up over the length of the module, and they will see real life consequences. For example, if a principal continues to give feedback poorly, the student will become disheartened and disillusioned with the scenario ending poorly. If the principal provides constructive feedback well, the student improves, and performs better both in practice and in PREP.		
3. Effective mentoring/coaching skills (60 mins)	Same approach as above but with a different example and storyline.		
4. The life of an articling student (5 mins)	A text passage interspersed with images and testimonials of students.	Video production of current and former CPLED students talking about their life in articling.	
5. Why each aspect of the articling training is important to build an individual ready to be called to the Bar and enter practise (15 mins)	Reading material	Interactive infographic of a new lawyer that uses click and reveal to show the various skills a student must master, and how PREP prepares them for it.	"Make a Lawyer". A gamified infographic where principals set every step of the way as they "teach" their student avatar various legal skills.
*Cost Estimate	\$82,500 CAD	\$103,000 CAD	\$128,000 CAD

*The cost estimate is an estimate based on the above assumptions and approach. Specific and firm numbers will be determined when the approach is finalized. There is an opportunity for the LSA to reduce development cost if there is an appetite for other jurisdictions to join in the development of the training program. See Appendix A for a breakdown of development costs.

Principal Training Program Delivery – Assumptions and Estimated Cost

It is assumed the principal training program is mandatory for all principals with re-certification required every three years.

There are approximately 400 principals in Alberta. It is therefore assumed that the training program will run at full capacity the first year and every third year. The training program will be available for new principals to take any time during the year.

It is assumed that CPLED will deliver the training program. This includes the registration process, collecting program fees, answering principal's questions, and providing the LSA with a report listing the names of principals who have completed the training program.

The following is the number of first-time principals in Alberta from the last six years:

	2015	165
	2016	155
	2017	162
	2018	202
	2019	185
	2020	175
Average		<u>174</u>

Therefore, it is assumed that the number of participants in the first year of the program is 575 (400 current principals plus 175 new principals). It is estimated that 175 principals will take the training program in the second year.

Last, it is assumed that the principal training program fee does not include the recovery of developmental costs because the LSA will pay for the development of the program in its entirety. If this holds true, then the estimated principal training program fee is \$155 (see Appendix B for a breakdown of delivery costs).

Conclusion

CPLED proposes a five-module principal training program with an estimated development cost in the \$82,500 to \$128,000 range depending on the level of interaction and experiential learning preferred. As well, CPLED will deliver the program with an estimated program fee of \$155 per principal.

Appendix A – Estimated Development Costs

	Option 1 (\$)	Option 2 (\$)	Option 3 (\$)
Artha Learning development cost	50,000	70,000	93,000
D2L set-up	14,950	13,050	12,100
MemberPro database setup	5,000	5,000	5,000
CPLED project management and administration charges	4,500	5,000	5,500
Appreciation for principal volunteers	500	500	500
<i>sub-total</i>	74,950	93,550	116,100
Contingency (10%)	7,495	9,355	11,610
TOTAL	\$ 82,445	\$ 102,905	\$ 127,710

Appendix B – Estimated Delivery Cost (per principal)

D2L licence fee	\$100
MemberPro licence fee	\$15
Administration fee	\$40
Total	\$155



MEMORANDUM

To: Benchers
From: Leah Kosokowsky and Darcia Senft
Date: February 4, 2021
Re: Rule Amendments Part 3 - Division 8 - Civil Society Organizations
Code of Professional Conduct Amendments

I. BACKGROUND

Historically, legal services have been provided to members of the public only through the traditional structure of a law firm. Such a model acknowledges the need for the legal profession to maintain its independence and for lawyers to be unconstrained in their ability to comply with their professional ethical obligations. In fact, the *Code of Professional Conduct* prohibits the sharing of fees between lawyers and non-lawyers. However, over the past several years, as other jurisdictions such as England have loosened regulations relating to firm ownership with a view to encouraging innovation in the delivery of legal services, special bencher committees in Manitoba have considered issues relating to the delivery of legal services through entities that are described as “alternative business structures.” (“ABS”)

A. Civil Society Organizations

In 2019/2020, in an effort to increase access to justice you resolved to permit the delivery of legal services by lawyers through a type of ABS described as a “Civil Society Organization” based upon a model developed in Ontario.

It was accepted that if a member of the public attends a registered charity or not-for-profit corporation to receive certain services, they would likely benefit from being able to speak with a lawyer who could also provide them with advice relating to their unmet legal needs.

Ultimately, you determined that any regulatory framework should include the following conditions:

- a) The CSO must deliver its services through either a registered charity or an incorporated non-for-profit organization;
- b) The CSO must be registered with the Law Society;
- c) The delivery of the legal services through the CSO must be controlled by a practising lawyer;
- d) A lawyer providing services to clients of the CSO must hold professional liability insurance;
- e) Solicitor-client privilege and client confidentiality must be protected and maintained;
- f) The fundamentals of professionalism must be maintained;
- g) The CSO must provide annual updates to the Law Society with respect to the nature of the legal services being delivered;
- h) The CSO may be de-registered for non-compliance with the prescribed conditions;
- i) The legal services must be provided on a pro bono (no cost) or low bono basis;
- j) Neither lawyers providing services nor CSOs facilitating those services may give or receive any financial or other reward for the referral of clients or client matters.

The proposed Manitoba model differs from Ontario's in three respects.

First, you decided that lawyers providing legal services to clients of the CSO would not need to be employees of the CSO but would still have to hold the required insurance. It was noted that some CSOs may not be in a financial position to hire a lawyer as an employee but may be in a position to retain a lawyer to provide legal services through the CSO to its clients on a limited basis. For example, a CSO might want to hire a lawyer as an independent contractor to provide legal services to its clients for a few hours each week.

Secondly, you resolved that the legal services could be provided on a low bono basis and not exclusively on a pro bono basis. You questioned why a lawyer should be prohibited from receiving modest sums for the delivery of legal services through a CSO to clients of the CSO.

Thirdly, you determined that lawyers providing services through a CSO should not be prohibited from operating trust accounts in connection with those services, subject to meeting any Law Society requirements.

While you reviewed and approved a CSO Registration Form and the development of a Guide for CSOs, you directed that we return to you with draft Rule and Code amendments to give effect to this initiative.

B. Regulatory Framework

1. Rules

While drafting the rules, we identified some issues that warrant additional consideration. As noted, you determined that the legal services could be provided either on a pro bono or “low bono” basis and that the lawyer would not have to be employed by the CSO.

Allowing a lawyer to charge for legal services provided through a CSO leads to questions about who is supposed to pay for those legal services.

For example, if a registered CSO hires a lawyer as an employee, the lawyer ought not to be charging any legal fees to the clients receiving the legal services.

If a lawyer is hired as an independent contractor, the lawyer’s compensation for providing such services presumably would be covered by the CSO through the service contract and there should be no basis for a client to receive a statement of account from the lawyer for legal services rendered.

We do not believe that you envisioned a regulatory framework where lawyers would provide legal services through CSOs to their clients and directly charge those clients legal fees, although at a rate lower than market. It would be difficult to distinguish this structure from a typical law firm. In fact, some lawyers provide legal services to the public using this business model.

In light of the above, we recommend that the Law Society initiate its foray into the delivery of legal services through CSOs on the basis that any legal services provided by a lawyer through a CSO to its clients must be provided pro bono to those clients. Any compensation received by the lawyer providing such services would be provided by the CSO – whether the compensation is paid to the lawyer as an employee (including a part-time employee) or on a contract basis. A lawyer could also choose to provide legal services through a CSO to its clients on a volunteer basis but all of the other conditions would still apply.

If you accept our recommendation, this would eliminate the need for lawyers to operate trust accounts in connection with the legal services provided through the CSO to its clients.

With those recommendations in mind, we developed draft rules for your consideration. These are attached at **Appendix 1**. If approved, they will be brought back to you with the accompanying French translation, for final approval.

2. Code of Professional Conduct

The following amendments to the *Code of Professional Conduct* were approved in principle:

- “civil society organization” should be added to the Definition section in Rule 1.1;
- Rule 3.1 on Competence should be amended to add specific commentary about what lawyers should take care to do when providing legal services through CSOs;
- Rule 3.4 on Conflicts should be amended to stipulate that when practising law through a CSO, a lawyer shall establish a system to search for conflicts of interest of the civil society organization;
- Rule 3.6 on Fees and Disbursements should be amended to set out that a lawyer providing legal services through a CSO shall not directly or indirectly charge a fee to the person for whose benefit the legal services are provided, but the lawyer may charge disbursements in accordance with Rule 3.6-1;
- Rule 3.6 should be amended further to make it clear that a lawyer must not give or receive any financial or other reward for the referral of clients or client matters when providing legal services through a civil society organization.

Draft *Code* amendments have been prepared and are attached for your consideration at **Appendix 2**. If approved, they will be brought back to you for final approval with the French translation.

C. Communication Plan

When the Rules and *Code* amendments are in place, we will provide the profession and justice system stakeholders with more detailed information about the CSO Regulatory Framework to advertise the Law Society’s initiative to improve access to justice.

RULE AMENDMENTS

Rule 3 – Division 8

SERVICES DELIVERED BY OR THROUGH CIVIL SOCIETY ORGANIZATIONS

3-75 Definition

In this division, “civil society organization” means a registered charity under the *Income Tax Act* (Canada), a not-for-profit corporation incorporated under the laws of Manitoba, or a not-for-profit corporation permitted under the laws of Manitoba to operate in the Province.

3-76 Provision of legal services through registered civil society organizations

A member may provide legal services to the clients of a civil society organization if:

- a) the member is an employee or independent contractor of, or a volunteer with the civil society organization,
- b) the civil society organization has registered with the Society in accordance with rule 3-77, and
- c) the member has the appropriate insurance as required under rule 3-83.

3-77 Registration

In order to be registered with the society under this division, a civil society organization shall complete and submit to the society the registration form required by the chief executive officer and shall adhere to the conditions therein.

3-78 Requirement to file annual report

On or before March 31st in each year, a civil society organization must file a report with the society in the form prescribed by the chief executive officer.

3-79 De-registration

(1) A civil society organization may be de-registered at the discretion of the chief executive officer for failing to comply with the conditions of its registration as determined by the chief executive officer.

(2) Members may not provide legal services through a civil society organization that has been de-registered by the chief executive officer.

3-80 Member control of delivery of services

A member providing legal services under this division must maintain control of the delivery of those services and must be able to take any action necessary to ensure that he or she complies with the Act, the rules and the code of professional conduct.

3-81 Multi-service civil society organizations

A member providing legal services under this division may refer a client to an employee of the civil society organization who provides non-legal services, but the member shall ensure that no confidential or privileged information concerning the client is disclosed to the non-member employee unless the client gives his or her informed consent.

3-82 Fees

(1) Services provided by members under this division shall be provided at no cost to the client.

(2) Costs for disbursements in connection with the provision of legal services may be required from a client, including but not limited to court filing fees, photocopying costs, court reporting services and fees for experts.

(3) If costs for disbursements will be charged to a client receiving services under this division, the client must be informed of and understand his or her obligations prior to entering into the lawyer-client relationship.

(4) Neither members providing services under this division nor civil society organizations facilitating those services may give or receive any financial or other reward for the referral of clients or client matters.

3-83 Insurance requirements

Members providing legal services under this division shall maintain professional liability insurance as required by sections 19(2) and (3) of the Act.

CODE AMENDMENTS

1.1 DEFINITIONS

1.1-1 In this Code, unless the context indicates otherwise:

“associate” includes a lawyer who practices law in a law firm through an employment or other contractual relationship;

“civil society organization” means a registered charity under the *Income Tax Act* (Canada), a not-for-profit corporation incorporated under the laws of Manitoba, or a not-for-profit corporation permitted under the laws of Manitoba to operate in the Province.

“client” means a person who:

- (a) consults a lawyer and on whose behalf the lawyer renders or undertakes to render legal services; or
- (b) having consulted the lawyer, reasonably concluded that the lawyer has agreed to render legal services on his or her behalf;

and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work;

Commentary
[1] A lawyer-client relationship may be established without formality.
[2] When an individual consults a lawyer in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing.
[3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

“conflict of interest” means the existence of a substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person;

“consent” means fully informed and voluntary consent after disclosure:

- (a) in writing, provided that, if more than one person consents, each signs the same or a separate document recording the consent; or
- (b) orally, provided that each person consenting receives a separate written communication recording the consent as soon as practicable;

“law firm” includes one lawyer or two or more lawyers practising together, and may include:

- (a) a sole proprietorship;
- (b) a law corporation or limited liability partnership;
- (c) a partnership or association of lawyers or law corporations or a combination of both;

but excludes arrangements where lawyers share office space and certain common expenses, but otherwise practise as independent practitioners;

“lawyer” means a member of the Society as defined in *The Legal Profession Act*, S.M. 2002, c. 44 - Cap. L107;

“Society” means The Law Society of Manitoba;

“tribunal” includes a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures.

Competence

3.1-2 A lawyer must perform all legal services undertaken on the client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

- (a) the complexity and specialized nature of the matter;
- (b) the lawyer's general experience;
- (c) the lawyer's training and experience in the field;
- (d) the preparation and study the lawyer is able to give the matter; and
- (e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice

and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

- (a) the lawyer's or law firm's practice areas;
- (b) the geographic locations of the lawyer's or firm's practice; and
- (c) the requirements of clients.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer should recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

- (a) decline to act;
- (b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or
- (c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7A] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1A.

[7B] In providing short-term summary legal services under Rules 3.4-2A – 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. A lawyer should only express his or her legal opinion when it is genuinely held and is provided to the standard of a competent lawyer.

[9] A lawyer should be wary of providing unreasonable or over-confident assurances to the client, especially when the lawyer’s employment or retainer may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social implications involved in the question or the course the client should choose. In many instances the lawyer’s experience will be such that the lawyer’s views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[10A] When it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.

[11] Intentionally left blank.

[11.1] Lawyers who provide legal services through civil society organizations to clients are required to control the delivery of legal services. The lawyer should take care to:

(a) act on behalf of the client’s interest;

(b) advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide through the civil society organization;
and

(c) avoid conflicts of interest between the client and the civil society organization.

[11.2] Where other services are provided through the civil society organization, or where the lawyer's services are provided together with other services, the lawyer should take care to protect client confidentiality and privilege, and should only disclose client confidential or privileged information with client consent, or as required by law.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] A lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] **Incompetence, Negligence and Mistakes** - This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

Acting for Borrower and Lender

3.4-12 Subject to rule 3.4-14, a lawyer or two or more lawyers practising in partnership or association must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

3.4-13 In rules 3.4-14 to 3.4-16 “**lending client**” means a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.

3.4-14 Provided there is compliance with this rule, and in particular rules 3.4-5 to 3.4-9, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction in any of the following situations:

- (a) the lender is a lending client;
- (b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price;
- (c) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction; or
- (d) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act* (Canada).

3.4-15 Where a lawyer acts for both the borrower and the lender in a mortgage or loan transaction, the lawyer must disclose to the borrower and the lender, in writing, before the advance or release of the mortgage or loan funds, all material information that is relevant to the transaction.

Commentary

[1] What is material is to be determined objectively. Material information would be facts that would be perceived objectively as relevant by any reasonable lender or borrower. An example is a price escalation or “flip”, where a property is re-transferred or re-sold on the same day or within a short time period for a significantly higher price. The duty to disclose arises even if the lender or the borrower does not ask for the specific information.

3.4-16 If a lawyer is jointly retained by a client and a lending client in respect of a mortgage or loan from the lending client to the other client, including any guarantee of that mortgage or loan, the lending client's consent is deemed to exist upon the lawyer's receipt of written instructions from the lending client to act and the lawyer is not required to:

- (a) provide the advice described in rule 3.4-5 to the lending client before accepting the retainer;
- (b) provide the advice described in rule 3.4-6; or
- (c) obtain the consent of the lending client as described in rule 3.4-7, including confirming the lending client's consent in writing, unless the lending client requires that its consent be reduced to writing.

Commentary

[1] Rules 3.4-15 and 3.4-16 are intended to simplify the advice and consent process between a lawyer and institutional lender clients. Such clients are generally sophisticated. Their acknowledgement of the terms of and consent to the joint retainer is usually confirmed in the documentation of the transaction (e.g. mortgage loan instructions) and the consent is generally deemed by such clients to exist when the lawyer is requested to act.

[2] Rule 3.4-16 applies to all loans when a lawyer is acting jointly for both the lending client and another client regardless of the purpose of the loan, including, without restriction, mortgage loans, business loans and personal loans. It also applies where there is a guarantee of such a loan.

Civil Society Organizations

3.4-16.1.1 When practising through a civil society organization, a lawyer shall establish a system to search for conflicts of interest of the civil society organization.

3.6 FEES AND DISBURSEMENTS

Reasonable Fees and Disbursements

3.6-1 A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.

Commentary

[1] What is a fair and reasonable fee will depend upon such factors as:

- (a) the time and effort required and spent;
- (b) the difficulty of the matter and the importance of the matter to the client;
- (c) whether special skill or service has been required and provided;
- (d) the results obtained;
- (e) fees authorized by statute or regulation;
- (f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;
- (g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;
- (h) any relevant agreement between the lawyer and the client;
- (i) the experience and ability of the lawyer;
- (j) any estimate or range of fees given by the lawyer; and
- (k) the client's prior consent to the fee.

[1A] A fee will not be fair and reasonable and may subject the lawyer to disciplinary proceedings if it is one that cannot be justified in the light of all pertinent circumstances, including the factors mentioned, or is so disproportionate to the services rendered as to introduce the element of fraud or dishonesty, or undue profit.

[2] The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden

fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person. An example of conduct which may offend this rule is a lawyer who applies little skill or effort in assisting a client in obtaining periodic indemnity benefits, and charges an administration fee for collecting such monies or a fee which is calculated as a percentage of such benefits.

[3] A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined. A legal assistant's time for tasks specific to the client, and for which the legal assistant is qualified and able to carry out, may be charged to the client at a fair and reasonable rate provided that the lawyer advises the client in advance, preferably in writing, of the intention to do so and the rate to be charged.

[4] A lawyer should be ready to explain the basis of the fees and disbursement charged to the client. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should give to the client an immediate explanation. A lawyer should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses and a lawyer may revise an initial estimate of fees and disbursements.

Civil Society Organization Clients

3.6-1.2 A lawyer providing legal services through a civil society organization shall not directly or indirectly charge a fee to the person for whose benefit the legal services are provided, but the lawyer may charge disbursements in accordance with rule 3.6-1.

Division of Fees and Referral Fees

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

- (a) the fee is reasonable; and
- (b) the client is informed and consents.

3.6-7 A lawyer must not:

- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer; ~~or~~
- (b) give any financial or other reward for the referral of clients or client matters to any person who is not a lawyer; ~~or,~~
- (c) give or receive any financial or other reward for the referral of clients or client matters when providing legal services through a civil society organization.

Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

- (a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;
- (b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;
- (c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or

(d) occasionally entertaining potential referral sources by purchasing meals, providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

3.6-8 Intentionally left blank.

3.6-9 Intentionally left blank.

3.6-10 Intentionally left blank.

3.6-11 Intentionally left blank.



MEMORANDUM

To: **Benchers**
From: **President's Special Committee on Health and Wellness**
Date: **January 18, 2021**
Re: **PARTNERSHIP OPPORTUNITY**

INTRODUCTION

At the committee's meeting on December 21, 2020, the committee received an update on the progress of the planning for and the structure of the Diversion Program as well as other work that is being undertaken in the area of education, training and resources. The balance of the meeting, however, was devoted to a discussion regarding a potential partnership opportunity with the Manitoba Bar Association to provide a more robust peer support program than is currently offered.

PEER SUPPORT

Currently, Manitoba lawyers and articling students as well as their families can receive short-term counselling through the EAP program offered by Manitoba Blue Cross. Although the services are funded by the Law Society as a loss prevention program, it is entirely confidential with the Law Society receiving statistics on usage only.

Manitoba lawyers and students who are members of the Manitoba Bar Association also have access to the Lawyers Helping Lawyers peer support program. The MBA publishes a list of volunteer lawyers who are available to support others who are seeking assistance. Lawyers Helping Lawyers, like many other peer support programs, has its roots in twelve step programs, designed to assist lawyers with substance use issues.

The MBA is desirous of providing a more structured and meaningful peer support program as their current program is quite informal. There is no application process for volunteers and they are neither trained nor accountable. There also is no means by which to receive feedback on the program's efficacy.

Manitoba lawyers and their families will benefit from having both a meaningful counselling services program and a peer support program which could work collaboratively to provide the most effective support to our members.

The Law Society of Manitoba and the MBA have an enviable, close and collegial relationship despite our different mandates. At this committee's direction, Law Society staff met with the MBA representatives where both groups expressed an interest in partnering in the area of peer support.

The committee also received information on the more sophisticated and structured programs that are offered in British Columbia and Alberta. While it was noted that it would be too challenging and ambitious in the initial stages to establish a comprehensive program such as is offered elsewhere, there is interest in exploring a more modest program which might include the employment of a half-time person to develop a structure for the program, with an application process for volunteers, a triage function, training, feedback and marketing.

Given the very limited resources that are available from the MBA, the Law Society would be looked to for the initial funding. Funding from the Law Society, however, would require that the services be available to all Manitoba lawyers (not just MBA members) and would necessitate some oversight and control.

With that understanding, the MBA remains interested in pursuing a joint initiative. The committee therefore recommends that the benchers approve of the establishment of a small working group, comprised of representatives from the Law Society and the MBA, to develop a proposal for a peer support program.

Recommendation:

The Law Society establish a small working group, along with members of the MBA, to develop a proposal for a peer support program.



MEMORANDUM

To: Benchers
From: Leah Kosokowsky
Date: February 4, 2021
Re: Allowances and Honoraria

INTRODUCTION

At the September 2020 benchers meeting you were invited to review the existing allowances for the president and vice-president along with the honoraria that is paid to lay benchers given that they had not been reviewed in over a decade.

At the time of the meeting, the compensation paid to the president was \$30,000 and that received by the vice-president was \$15,000. If the incumbent resided outside of Winnipeg, then the compensation was increased by \$5,000 for the president and \$2,500 for the vice-president. You were also advised that the travel expenses for these two positions were paid in accordance with the Society's Operations Policy for Travel Expenses.

Lay benchers were compensated at the rate of \$100 per meeting attendance, which would include seven benchers meetings and various committee meetings over the course of the year. Where a lay benchers sits on a discipline matter, he/she will receive \$100 for each of the first two days and \$500 for each day thereafter.

Lawyer benchers and lawyer volunteers receive no compensation for attendance at meetings other than discipline hearings. In those matters, they receive no compensation for the first two days of a hearing and \$500 per day commencing on the third day.

SEPTEMBER BENCHERS MEETING DECISIONS

After having reviewed the responsibilities undertaken by the president and vice-president, you resolved to immediately increase their allowances to \$40,000 and \$20,000 respectively, with the increases for out-of-Winnipeg incumbents to remain the same. You also recommended that, at the time that the budget is prepared for the 2021/2022 year, the benchers consider increasing the allowances by a further \$10,000 and \$5,000 respectively which would result in the president's compensation being set at \$50,000 and the vice-president's at \$25,000, plus the modest increase for rural incumbents.

With respect to lay bencher honoraria, you resolved to increase the rate to \$150 per meeting for the remainder of the current fiscal year, but with the direction that the benchers consider a further increase of \$50 when the 2021/2022 budget is prepared.

BUDGET

As you will see elsewhere in this agenda, the budget has been prepared and the proposed increases have been included therein. As you will have noted, this is an austerity budget. Accordingly, you will want to consider those factors in your discussion.

Question: Do you wish to:

- (a) Increase the allowances for the president to \$50,000 and for the vice-president to \$25,000?
- (b) Increase the honoraria for the lay benchers to \$200 per meeting?

LCK



MEMORANDUM

TO: Benchers

FROM: Equity Committee

DATE: February 9, 2021

RE: Recommendations Regarding Indigenous Advisory Committee

On October 29, 2020, you approved the creation of an Indigenous Advisory Committee (IAC) to guide the Law Society in its ongoing response to the Truth and Reconciliation Commission's Calls to Action. You referred the matter of developing Terms of Reference for the IAC to the Law Society's Equity Committee, and requested that the Terms of Reference address the following issues:

- the importance of establishing a clear purpose and mandate for the Committee;
- timelines for the work of the Committee;
- representation from both the legal and broader Indigenous communities;
- representation from urban, rural and northern Manitoba; and
- compensation, specifically for non-lawyer members.

The Equity Committee met on February 9, 2021 to review and discuss proposed Terms of Reference for the Law Society's IAC. The Committee had the privilege of having The Honourable Murray Sinclair attend this meeting as a guest to provide his thoughts and insights on the role and mandate of the IAC and provide background on the intentions of the TRC's Commissioners when drafting Call to Action #27.

Attached as Appendix "A" are proposed Terms of Reference for the IAC, which incorporate the suggestions and feedback provided by The Honourable Murray Sinclair.

The following are the recommendations which the Committee determined ought to be brought forward for consideration and approval by benchers:

1. The Equity Committee recommends that the benchers approve the proposed Terms of Reference for the IAC, attached as Appendix "A".
2. The Equity Committee recommends that The Honourable Murray Sinclair be appointed as the Chair of the Indigenous Advisory Committee.

Law Society of Manitoba

Proposed Terms of Reference for Indigenous Advisory Committee

I. BACKGROUND

The Law Society of Manitoba recognizes the significance of the work of the Truth and Reconciliation Commission (TRC) and the 94 Calls to Action directed at all segments of Canadian society. In particular, the Law Society endorses Call to Action #27 that calls upon law societies to

"...ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights and anti-racism."

The Law Society is committed to responding to the Calls to Action as they relate to its mandate to ensure the public is well served by a competent, honourable and independent legal profession. The Law Society recognizes the work required to achieve reconciliation is ongoing and must be carried out in collaboration with Indigenous peoples. To guide the Law Society in its ongoing response to the TRC's Calls to Action, the benchers approved the creation of an Indigenous Advisory Committee on October 29, 2020.

II. PURPOSE

The Indigenous Advisory Committee will, after familiarizing itself with the components of the TRC Report giving rise to Call to Action #27, as its first priority develop a plan of action to help guide the Law Society in its ongoing response to the TRC's Calls to Action on issues within the mandate of the Law Society. More specifically, it will:

1. Provide advice and feedback to the Law Society on its educational programs generally, with regard to the potential for cultural bias, as well as actions aimed at increasing cultural competency within the profession.
2. Aid the Law Society in addressing the unique needs and perspectives of Indigenous peoples within the Law Society's regulatory processes.
3. Provide advice and guidance to the Law Society generally on how it should prioritize its work in this area. This will include acting as a resource and providing feedback on program initiatives and engagement related to supporting Indigenous lawyers and students.

4. Provide advice and support to the Law Society in effectively engaging and building further relationships with Indigenous peoples.
5. At the request of the benchers or the Law Society Executive, provide advice or recommendations on other issues affecting Indigenous peoples within the legal system.

III. COMPOSITION and GOVERNANCE

The Advisory Committee will consist of benchers, volunteer members and representatives of Indigenous communities appointed by the benchers of the Law Society. At least half of the Committee members will be members in good standing of the Law Society and at least one member will be a current bencher.

The selection of Committee members will be made in accordance with the Law Society's appointments practices. Efforts will be made to reflect:

- Different regions of the province, including urban, rural and northern locations;
- A broad range of Indigenous perspectives; and
- Gender diversity.

As a matter of priority, and a condition of appointment, all members must have demonstrated experience with and knowledge relevant to the issues under consideration, including knowledge of the history, culture and rights of Indigenous peoples, Indigenous law, the Canadian justice system, legal education and regulation of the legal profession as well as strong connections with Indigenous communities in Manitoba.

Membership Term

Members of the Committee will be appointed for either a one or two year term. No member will serve more than five consecutive years on the Committee.

Law Society Governance Policies

The Committee will operate in a manner consistent with the Law Society's governance policies.

Remuneration

All Committee members will be reimbursed for pre-approved out-of-pocket expenses in accordance with Law Society policy. No further remuneration will be provided to Law Society members, however members of the public who serve on the Committee will be remunerated for their participation.

Meeting Practices

The Committee shall meet as required, typically three to four times per year.

The Committee will work to reach consensus in decision making. If consensus cannot be reached, then decisions may be deferred for further consideration, or if necessary, determined by majority vote.

Chair

The Chair of the Advisory Committee will be appointed by the Law Society's benchers. The role of the Chair is to:

- a. Collaborate with Law Society staff to manage the work of the Committee and its meetings;
- b. Work with Law Society staff to schedule meetings and develop agendas;
- c. Report as necessary to the Law Society benchers;
- d. Ensure the Committee fulfills its duties as outlined in these Terms of Reference; and
- e. Lead an annual evaluation of the Committee's Terms of Reference and make suggestions for improvement to the Law Society's benchers.

Role of Staff

The role of Law Society staff in supporting the Advisory Committee is to:

- a. Assist the Chair in scheduling meetings and developing agendas;
- b. Attend all Committee meetings and draft Minutes following the meetings;
- c. Identify issues and initiatives for review by the Committee; and
- d. Provide additional administrative support to the Committee.

IV. REPORTING

The Committee will report to the benchers in writing at least twice a year. The first report will identify priorities for the year and the second report will provide a progress update. The Committee may provide additional oral or written updates at regularly scheduled bencher meetings as necessary.

V. REVIEW OF TERMS OF REFERENCE

These Terms of Reference are subject to review from time to time as deemed appropriate by the Committee or the benchers.



MEMORANDUM

To: Benchers
From: Leah Kosokowsky
Date: February 4, 2021
Re: 2021/2022 Budget

Attached to this memo you will find the Law Society of Manitoba budget for the period April 1, 2021 to March 31, 2022. In accordance with the Governance Policies, the Chief Executive Officer is to present you with a budget that is within the 12 Executive Limitations that have been established by the benchers. While it is not necessary that you formally approve the budget, it is important for you to be satisfied that the budget is within those Executive Limitations.

As you will be aware, the Law Society has the following four funds for the administration of specific programs:

The General Fund (GF), the purpose of which is to account for the general operations of the Society, including accounting, admissions and membership, benchers, complaints resolution, discipline, information technology and general administration;

The Reimbursement Fund (RF), which exists for the benefit of clients who suffer losses from the theft of trust funds by lawyers. The operation of the audit department is included in this fund.

The Professional Liability Claims Fund (PLCF), which provides insurance coverage to all Manitoba lawyers; and

The Education and Competence Fund (ECF), the purpose of which is to support the competence of lawyers through continuing legal education.

The Executive Limitations require that the Chief Executive Officer prepare a budget that meets the following criteria.

1. The budget contains sufficient information, credible projections and attributes costs associated with each fund.

2. The planned expenditures do not exceed the anticipated revenue or available equity in each of the funds.
3. It includes a budget related to bencher activity.
4. The budget restricts the combined increase in the GF and the ECF levies to less than 10% in any year and 33 1/3% over five years.
5. For the GF, the ending reserve is at least 20% of the budgeted expenditures for that year.
6. In the GF, for any fee or other assessment over \$100 (other than practising), the annual increase is not more than 25% in any year.
7. For the RF, the ending reserve is more than the aggregate group deductible as set under the Society's Trust Protection Indemnification Policy, which is currently \$500,000.
8. The RF provides for insurance to at least \$10,000,000 limit of liability.
9. In the PLCF, the fee set is at least the amount recommended by our actuary.
10. In the PLCF, the assessment is dependant upon the claims experience of the Program as a whole and the claims history of the individual lawyer.
11. For the ECF the ending reserve is greater than 20% of the budgeted expenditures.
12. The budget attributes to each fund of the Law Society all costs reasonably associated with that fund.

The budget presented to you does in fact meet each of the limitations set. That said, as will be set out in more detail, the past year has been extremely challenging financially and planning for the upcoming year presents the same challenges. As a result, even with reducing expenditures significantly, we are budgeting with deficits in three of the four funds.

Practising Fee & Professional Liability Insurance Contribution

As most of you will know, practising members pay an annual practising fee, which is due on April 1st and a contribution to the professional liability insurance fund which is due on July 1st. Over the last several years, members have had the option of spreading the cost over two instalments. In the last fiscal year, we accommodated members in three ways to address the impact of the pandemic. First, we allowed for the insurance contribution to be paid in three instalments. Secondly, we lowered the instalment fee by \$25 for the insurance contribution. Thirdly, although we had budgeted for an

increase of \$200 per member to cover an anticipated increase in insurance claims, we reduced the contribution by \$150, resulting in a decrease in revenue in the PLCF of \$350 per member, which had a significant impact on the financial results in this fund.

This budget was approached on the basis that raising the practising fees ought to be a very last resort to address the ongoing effects of the pandemic on the profession generally. We have cut many expenditures and have added others and have managed to do so without increasing the practising fee for the 2021/2022 year. The levy allocation between the three funds remains the same as last year at:

General Fund	\$1,925
Reimbursement Fund	\$ 575
<u>Education & Competence Fund</u>	<u>\$ 175</u>
Total	<u>\$2,375</u>

We also intend to permit the practising fee to be paid in three instalments, rather than two payments as is typically the case.

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

Income

The pandemic has had a significant impact on our revenues, both in terms of the Manitoba Law Foundation funding and investment income. Pursuant to s. 90 of *The Legal Profession Act*, the Society receives from the Foundation 16.67% of interest earned on lawyers' pooled trust accounts. While the Society received \$1.3 million in the last fiscal year, we have been advised that this year the projected funding will be close to the statutory minimum of \$335,383. Half of that funding is allocated to the Reimbursement Fund with the other 50% allocated to the Education and Competence Fund and the reduction has had a significant impact on both funds.

Similarly, investment income is projected to be down significantly even though the markets have rebounded somewhat from the initial blow of the pandemic.

Salaries

Salaries and benefits typically account for roughly half of total annual expenditures. Due to COVID, staff salary adjustments were postponed for six months and the salary adjustments that were made effective October 1, 2020, will remain in effect until March 31, 2022. Increases in salaries in the General Fund reflect the hiring of two additional staff – Ayli Klein (Hearing Counsel) and Ronald Rarama (IT Technician). The budget in the General Fund for the upcoming year also contemplates

the addition of an Access to Justice Coordinator which is fully funded for two years through a Manitoba Law Foundation Grant. In the Professional Liability Compensation Fund, the budget includes an additional lawyer in the insurance area, commencing in the fall of 2021.

A decrease in salary expenses in the Education and Competence Fund results from CPLED staff being reallocated to positions left vacant due to retirement.

General Fund

In the General Fund, you will find a reference to "Interfund admin charges" and in each of the other funds you will find a corresponding expense called a "Grant to General Fund". These entries reflect as accurately as possible the administrative resources from the General Fund that are used by the other funds. The interfund transfer has not changed in this year's budget.

As you know, the Society is no longer delivering the CPLED program. Accordingly, the revenue from applications to article and PREP graduate call fees, and the costs for the call ceremony (net revenue of \$67,000), have been reallocated from the Education and Competence Fund to the General Fund as they more appropriately relate to the admission and membership function.

Reimbursement Fund

For the Reimbursement Fund, aside from the significant reduction in the Manitoba Law Foundation funding, the deficit budget is directly attributable to the Paul Hesse misappropriations. Not only is the Society paying reimbursement claims, CLIA re-evaluated our performance resulting in a retroactive assessment of \$1,302,190 that is payable over five years. The Society made the first payment and has budgeted to make the second instalment in the upcoming year.

If members of the profession were called upon to cover the assessment, the cost would be \$614 per member. However, in order to avoid an increase in fees to the profession that is still coping with the COVID fallout, the Society is absorbing the cost of \$260,438 for this fiscal year.

Professional Liability Claims Fund

As predicted, we have experienced a terrible year for insurance claims, resulting in higher claims paid and increased mandatory CLIA premiums. As a result, we anticipate that our actuary will set a levy that will likely result in an increase in insurance fees. As noted in the Executive Limitations, the levy cannot be lower than that which is recommended by the actuary. Accordingly, while the insurance budget cannot be finalized at this point and the insurance levy cannot be set until we receive the actuarial report in May, we have notionally set the budget in anticipation of an increase in the insurance levy of \$200 per lawyer.

Education and Competence Fund

As noted above, the Society is no longer involved in the delivery of the bar admission program, with the new PREP program delivered out of a centralized office known as CPLED. To fund CPLED's development of the PREP program, the participating law societies each made loans to CPLED, with Manitoba's contribution being \$600,000. Repayment of this loan, with interest, is to begin in June 2021. All contributing law societies have agreed to waive the interest that is due in June 2021.

We are experiencing for the first time, the impact of the decision to move to the new model of PREP. We no longer receive the revenues from student tuition of \$240,000 which contributed to the costs of delivering CPLED 1.0 (roughly \$300,000). This net savings does not offset the subsidy of \$2,600 per student, or \$312,000 which we have incurred with CPLED 2.0.

The PREP tuition fee per student is \$6,100. The \$2,600 subsidy that is provided to Manitoba students was made at the direction of the benchers to keep the costs to students low and because of a concerted effort on the part of the CPLED jurisdictions to keep costs consistent. For this year, we are satisfied that this can be absorbed through the Law Society surplus given the current messaging to students and firms, but you will want to give some thought in the context of your strategic planning as to whether that is sustainable. As maintaining competence and developing the new CPLED program have been significant components in our current strategic plan, you will want to consider whether to maintain the subsidy, reduce it or increase the ECF levy so that the additional costs are picked up by the profession.

The Society generally expects to recover some costs from the rental of our classroom and some staff time, but for the current and upcoming year, COVID will most likely prevent any in-face sessions.

Reduced or Eliminated Expenditures

As the effectiveness of the Forgivable Loan Program is under review and as the Access to Justice Coordinator may make recommendations for an alternative means to achieve this access to justice initiative, we have not budgeted for this program.

As COVID has reduced, eliminated or delayed our ability to have in person meetings and events, the budget for meetings has been reduced considerably. We have not budgeted for a 50 year lunch and you may wish to consider the future viability of hosting 50 year lunch celebrations.

In order to further reduce expenses, we have:

- Reduced expenditures for travel, conferences, meeting costs, furniture, equipment and staff functions

- Delayed annual staff salary adjustments by six months without any further review for 18 months
- Set aside funds for a consultant to begin looking at the cost of our defined benefit pension plan
- Reallocated staff that had been providing services for CPLED

We will also review the benchers' prior direction to deliver programming and resources to members at no charge and will come back to the benchers with recommendations to provide for cost recovery.

New Initiatives

Finally, the budget includes expenses related to the following new initiatives that the benchers approved in the last year, although we have deferred the start date so as to reduce the expenditure for the 2021/2022 fiscal year:

- Access to Justice Coordinator (fully funded)
- Chair - Indigenous Advisory Committee - \$5,000
- Mental Health Diversion Program - \$26,500
- Practice Checkup Program - \$25,000
- Training for Articling Principals - \$16,000

As these new expenditures have not been included in this year's practising fees, you will want to consider, as part of the strategic planning, the ongoing cost of these initiatives as well as how future initiatives will be funded.

Summary

While maintaining the dollar amount of the practising fee payable April 1, 2021 and expecting an increase in the insurance levy of \$200/member payable July 1, 2021, the following surplus/(deficits) are being budgeted for:

General Fund	\$ 7,604
Reimbursement Fund	(524,261)
Professional Liability Claims Fund	(122,740)
Education and Competence Fund	<u>(424,208)</u>
Total	<u>\$(1,063,605)</u>

Although we never like to budget for a deficit, the Society does have surplus that we build in the good times and draw down to subsidize fees in bad times. To the extent possible, this is a year to draw it down. While this budget has been extremely challenging, it does reflect our expectations of

revenues and expenses for the fiscal year 2021/2022. This is due to the attention to detail provided by Colleen Malone, our Chief Financial Officer, who scrupulously tracks both our revenues and expenditures.

I would like to acknowledge Colleen's hard work and expertise and express my gratitude to her for effectively tackling this enormous challenge.

LCK

Atc.

Law Society of Manitoba
 General Fund (GF) Budget
 April 1, 2021 to March 31, 2022

FINAL

Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
---	--	--

Income

Administration fees

Admin fee, MB Library	\$ 20,000	\$ 20,000	\$ 20,000
Instalment payment fee	\$ 52,625	\$ 60,000	\$ 59,000
Late payment penalty	\$ 4,550	\$ 7,000	\$ 6,000
Refund fee	\$ 15,500	\$ 16,000	\$ 16,000

Total administration fees	\$ 92,675	\$ 103,000	\$ 101,000
----------------------------------	------------------	-------------------	-------------------

Annual Fee

Non-practising	\$ 31,200	\$ 30,000	\$ 30,000
Practising	\$ 4,123,169	\$ 4,042,500	\$ 4,081,000

Total annual fee	\$ 4,154,369	\$ 4,072,500	\$ 4,111,000
-------------------------	---------------------	---------------------	---------------------

Application fees

Application fee, other	\$ 350	\$ 1,500	\$ 1,000
Application to article	\$ -	\$ -	\$ 13,000
Exemption from articling	\$ 350	\$ 3,500	\$ 1,400
Law student registration	\$ 2,500	\$ 2,800	\$ 2,800
Resumption of active practise	\$ 6,900	\$ 10,000	\$ 7,500
Transfer to MB Bar	\$ 5,400	\$ 6,900	\$ 6,000

Total application fees	\$ 15,500	\$ 24,700	\$ 31,700
-------------------------------	------------------	------------------	------------------

Call fee

PREP	\$ -	\$ -	\$ 66,000
Transfers	\$ 11,400	\$ 13,800	\$ 12,000

Total call fee	\$ 11,400	\$ 13,800	\$ 78,000
-----------------------	------------------	------------------	------------------

Contribution, leasehold allowance

Capital items	\$ 109,620	\$ 128,520	\$ 109,620
Expense items	\$ 13,741	\$ 5,000	\$ 14,080

Total contribution, leasehold	\$ 123,361	\$ 133,520	\$ 123,700
--------------------------------------	-------------------	-------------------	-------------------

Costs recovered - discipline

\$ 36,300	\$ 60,000	\$ 50,000
------------------	------------------	------------------

Grants

Employment	\$ -	\$ 3,000	\$ 3,000
MB Law Foundation Access	\$ -	\$ -	\$ 134,000

Total grants	\$ -	\$ 3,000	\$ 137,000
---------------------	-------------	-----------------	-------------------

Investment income

Interest income	\$ 24,996	\$ 55,000	\$ 30,000
Investment - RBC	\$ -	\$ 37,800	\$ -

Total investment income	\$ 24,996	\$ 92,800	\$ 30,000
--------------------------------	------------------	------------------	------------------

Law Society of Manitoba
 General Fund (GF) Budget
 April 1, 2021 to March 31, 2022

FINAL

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
Other income			
Certificate of standing	\$ 7,700	\$ 12,000	\$ 10,000
Fast track revenue	\$ 26,700	\$ 28,000	\$ 27,500
Law corporation fees	\$ 78,350	\$ 84,000	\$ 81,000
Locker rental revenue	\$ 10,500	\$ 13,000	\$ 10,500
Miscellaneous revenue	\$ 150	\$ 3,000	\$ 1,000
Section 51 revenue	\$ 16,940	\$ 16,940	\$ 47,184
Total other income	\$ 140,340	\$ 156,940	\$ 177,184
Total Income	\$ 4,598,941	\$ 4,660,260	\$ 4,839,584
Expense			
Allowances - Pres/Vice	\$ 62,500	\$ 45,000	\$ 80,000
Building operation/maintenance			
Building insurance	\$ 15,178	\$ 15,000	\$ 15,250
Janitorial services	\$ 18,203	\$ 28,440	\$ 27,200
Janitorial supplies	\$ 847	\$ 1,200	\$ 1,200
Maintenance	\$ 4,258	\$ 5,600	\$ 5,000
Total building operation/maintenance	\$ 38,486	\$ 50,240	\$ 48,650
Catering/functions			
50 Year lunch	\$ -	\$ -	\$ 1,000
Call ceremony	\$ -	\$ -	\$ 12,000
Coffee/water/pop/milk	\$ 2,673	\$ 10,400	\$ 4,000
Committee meetings	\$ 551	\$ 7,000	\$ 4,000
Meetings	\$ 560	\$ 8,500	\$ 5,000
Strategic planning	\$ -	\$ 5,000	\$ 7,500
Other receptions	\$ -	\$ 10,800	\$ 5,000
President's reception	\$ -	\$ 10,000	\$ 10,000
Staff functions	\$ 2,706	\$ 9,000	\$ 5,700
Total catering/functions	\$ 6,490	\$ 60,700	\$ 54,200
Prosecution & investigation	\$ 24,365	\$ 20,000	\$ 10,000
Custodial expenses			
Custodian fees	\$ 56,889	\$ 60,000	\$ 60,000
File storage costs	\$ 4,515	\$ 5,000	\$ 5,000
Total custodial expenses	\$ 61,404	\$ 65,000	\$ 65,000

Law Society of Manitoba
 General Fund (GF) Budget
 April 1, 2021 to March 31, 2022

FINAL

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
Depreciation expense			
Hardware	\$ 49,433	\$ 36,800	\$ 49,500
Furniture/equipment	\$ 8,847	\$ 7,600	\$ 8,880
Leasehold improvement	\$ 65,427	\$ 65,600	\$ 65,600
Software	\$ -	\$ 18,800	\$ 21,840
Total depreciation expense	\$ 123,707	\$ 128,800	\$ 145,820
Grants/prizes			
CANLII grant	\$ 89,106	\$ 90,000	\$ 90,600
CLEA grant	\$ 67,000	\$ 67,000	\$ 67,000
FLSC annual levy	\$ 60,757	\$ 63,000	\$ 55,000
Forgiveable loan	\$ 27,083	\$ 50,000	\$ -
Gifts	\$ 3,617	\$ 10,000	\$ 7,500
MB Library grant	\$ 550,000	\$ 550,000	\$ 525,000
Misc grants/donations	\$ 2,000	\$ 5,000	\$ 3,700
Prizes	\$ 4,500	\$ 4,500	\$ 4,500
Staff recognition	\$ 775	\$ 5,000	\$ 2,500
Total grants/prizes	\$ 804,838	\$ 844,500	\$ 755,800
Honoraria	\$ 26,250	\$ 18,000	\$ 33,000
Interfund admin charges			
Education and Competence	\$ (200,000)	\$ (200,000)	\$ (200,000)
Professional Liability Claims	\$ (475,000)	\$ (475,000)	\$ (475,000)
Reimbursement	\$ (300,000)	\$ (300,000)	\$ (300,000)
Total interfund admin charges	\$ (975,000)	\$ (975,000)	\$ (975,000)
Miscellaneous expense	\$ 100	\$ 500	\$ 500
Office and sundry			
Courier	\$ 4,477	\$ 5,000	\$ 5,000
Office furniture/equipment	\$ 799	\$ 6,000	\$ 3,000
Office supplies	\$ 14,841	\$ 25,200	\$ 18,000
Photocopying expense	\$ 16,874	\$ 22,000	\$ 18,000
Postage/fax	\$ 6,429	\$ 13,000	\$ 8,000
Total office and sundry	\$ 43,420	\$ 71,200	\$ 52,000
Other services			
Court reporters	\$ 10,574	\$ 15,000	\$ 13,000
Filing fees	\$ 1,350	\$ 2,500	\$ 2,500
Notifications	\$ 9,326	\$ 6,000	\$ 8,000
Serving of documents	\$ 1,293	\$ 1,500	\$ 1,500
Total other services	\$ 22,543	\$ 25,000	\$ 25,000

Law Society of Manitoba
 General Fund (GF) Budget
 April 1, 2021 to March 31, 2022

FINAL

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
Professional development			
Course/conference fees	\$ 4,091	\$ 15,000	\$ 10,000
Membership fees	\$ 6,476	\$ 7,500	\$ 7,500
Total professional development	\$ 10,567	\$ 22,500	\$ 17,500
Professional fees			
Complaints commissioner	\$ 7,401	\$ 6,500	\$ 12,500
Contract services	\$ -	\$ 4,000	\$ 4,000
Discipline chair	\$ 20,000	\$ 22,000	\$ 22,000
Executive search	\$ 12,340	\$ -	\$ -
External audit	\$ 35,377	\$ 35,500	\$ 37,000
General legal/consulting	\$ 52,443	\$ 40,000	\$ 35,000
Indigenous advisor	\$ -	\$ -	\$ 5,000
Investment management expense	\$ -	\$ 5,200	\$ -
Mental health diversion	\$ -	\$ -	\$ 26,500
Practice audits	\$ -	\$ -	\$ 25,000
Pension advisor	\$ 14,680	\$ 10,000	\$ 20,000
Speaker fee	\$ 1,916	\$ 3,000	\$ 3,000
Systems consulting	\$ -	\$ 7,500	\$ 2,000
Total professional fees	\$ 144,157	\$ 133,700	\$ 192,000
Publications			
Books/subscriptions	\$ 10,217	\$ 10,500	\$ 10,500
LSM regulations	\$ 1,799	\$ 5,000	\$ 3,000
Outside printing	\$ 933	\$ 1,000	\$ 1,000
Total publications	\$ 12,949	\$ 16,500	\$ 14,500
Rent space			
Additional rent	\$ 231,576	\$ 240,000	\$ 235,000
Basic rent	\$ 268,740	\$ 269,200	\$ 270,000
Management fee	\$ 13,437	\$ 14,110	\$ 14,110
Parking	\$ 1,222	\$ -	\$ -
Outside rent	\$ -	\$ 500	\$ 500
Total rent	\$ 514,975	\$ 523,810	\$ 519,610
Salaries and benefits			
CPP exp	\$ 72,933	\$ 71,320	\$ 86,500
EI exp	\$ 24,227	\$ 25,530	\$ 28,325
Group insurance	\$ 217,836	\$ 245,000	\$ 236,000
MB payroll tax	\$ 54,475	\$ 54,480	\$ 61,725
Pension - current service	\$ 463,485	\$ 487,575	\$ 492,125
Salaries	\$ 2,438,662	\$ 2,532,250	\$ 2,767,925
Total salaries and benefits	\$ 3,271,618	\$ 3,416,155	\$ 3,672,600

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
Service fees			
Banking fees	\$ 675	\$ 500	\$ 500
CAFT fees	\$ 251	\$ -	\$ 600
Credit card fees	\$ 393	\$ 30,000	\$ 600
Payworks	\$ 3,320	\$ 3,600	\$ 3,600
Total service fees	\$ 4,639	\$ 34,100	\$ 5,300
Technology			
Hardware	\$ 19,780	\$ 20,000	\$ 10,000
Software	\$ 2,169	\$ 9,000	\$ 5,000
Tech services	\$ 25,813	\$ 15,000	\$ 28,000
Total technology	\$ 47,762	\$ 44,000	\$ 43,000
Telecommunications			
Conferencing	\$ 209	\$ 500	\$ 500
Telephone	\$ 9,925	\$ 11,000	\$ 11,000
Total telecommunications	\$ 10,134	\$ 11,500	\$ 11,500
Travel			
Bencher/committee travel	\$ 2,157	\$ 25,000	\$ 15,000
President/Vice travel	\$ 299	\$ 18,000	\$ 13,000
Presenters travel	\$ -	\$ 3,000	\$ 3,000
Access Travel	\$ -	\$ -	\$ 10,000
Staff travel	\$ 649	\$ 50,000	\$ 20,000
Total travel	\$ 3,105	\$ 96,000	\$ 61,000
Total Expense	\$ 4,259,009	\$ 4,652,205	\$ 4,831,980
Net Income	\$ 339,932	\$ 8,055	\$ 7,604
Fund Equity, beginning of year	\$ 6,998,783	\$ 6,998,783	\$ 7,338,715
Fund Equity, end of year	\$ 7,338,715	\$ 7,006,838	\$ 7,346,319

Executive limitation 152.04%
 (> 20%, fund equity end of year/total expenses)

Law Society of Manitoba
 Reimbursement Fund (RF) Budget
 April 1, 2021 to March 31, 2022

FINAL

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
Income			
Practising fees	\$ 1,231,021	\$ 1,207,500	\$ 1,219,000
Manitoba Law Foundation	\$ 653,957	\$ 625,000	\$ 167,692
Investment - RBC	\$ 9,121	\$ 12,810	\$ 11,440
Trust account inspection	\$ 4,010	\$ -	\$ -
Total Income	\$ 1,898,109	\$ 1,845,310	\$ 1,398,132
Expense			
Meeting	\$ -	\$ 5,000	\$ -
Damages, net of recoveries	\$ 727,000	\$ 1,000,000	\$ 550,000
Damages recoveries	\$ (8,500)	\$ -	\$ -
Administration fees	\$ 122	\$ 10,000	\$ 10,000
Lawyers trust protection premium	\$ 188,474	\$ 200,000	\$ 210,000
Lawyers trust retro assessment	\$ 260,438	\$ -	\$ 260,438
Grant to General Fund (GF)	\$ 300,000	\$ 300,000	\$ 300,000
Miscellaneous	\$ -	\$ 350	\$ 350
Courier	\$ 283	\$ 2,000	\$ 1,000
Office supplies	\$ 310	\$ 300	\$ 300
Photocopying	\$ 489	\$ 1,000	\$ 700
Course/conference fee	\$ 1,685	\$ 1,600	\$ 1,700
Membership fees	\$ 4,360	\$ 5,000	\$ 5,000
Investment management expense	\$ 1,779	\$ 2,000	\$ 2,000
Parking expense	\$ 4,680	\$ 4,800	\$ 4,800
CPP exp	\$ 12,499	\$ 13,050	\$ 14,130
EI exp	\$ 4,363	\$ 4,600	\$ 4,750
MB payroll tax	\$ 9,421	\$ 9,525	\$ 9,600
Pension - current service	\$ 98,016	\$ 103,120	\$ 102,000
Salaries	\$ 428,136	\$ 442,550	\$ 437,000
Hardware	\$ 4,055	\$ 4,000	\$ 2,500
Software	\$ -	\$ 500	\$ 500
Tech services	\$ 743	\$ 625	\$ 625
Staff travel	\$ 1,116	\$ 10,000	\$ 5,000
Total Expense	\$ 2,039,469	\$ 2,120,020	\$ 1,922,393
Net Income (Loss)	\$ (141,360)	\$ (274,710)	\$ (524,261)
Fund the Retro Assessment			
Fund equity, beginning of year	\$ 2,501,740	\$ 2,501,740	\$ 2,360,380
Fund equity, end of year	\$ 2,360,380	\$ 2,227,030	\$ 1,836,119

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

Law Society of Manitoba
Professional Liability Claims Fund (PLCF) Budget
April 1, 2021 to March 31, 2022

FINAL

Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
---	--	--

Income

Insurance levy, CLIA portion	\$ 663,403	\$ 639,100	\$ 791,580
Insurance levy, LSM portion	\$ 1,955,676	\$ 2,431,900	\$ 2,297,920
Insurance levy	\$ 2,619,079	\$ 3,071,000	\$ 3,089,500
Costs recovered - deductibles	\$ 97,493	\$ 100,000	\$ 100,000
Cyber insurance	\$ 79,785	\$ 78,750	\$ 69,800
Investment - RBC	\$ 497,479	\$ 628,460	\$ 624,195
Total Income	\$ 3,293,836	\$ 3,878,210	\$ 3,883,495

Expense

Other functions	\$ -	\$ 6,000	\$ -
Damages/repairs	\$ 1,606,456	\$ 1,250,000	\$ 1,000,000
Damages, recoveries	\$ (86,169)	\$ -	\$ -
Administration fees	\$ 14,131	\$ 60,000	\$ 10,000
Defence costs	\$ 1,357,066	\$ 600,000	\$ 770,000
Defence recoveries	\$ (713,140)	\$ -	\$ -
Non insurance payments	\$ 3,638	\$ -	\$ -
Cyber insurance	\$ 74,425	\$ 80,050	\$ 70,000
Directors and officers insurance	\$ 21,769	\$ 20,000	\$ 23,000
Excess insurance	\$ 13,970	\$ 12,000	\$ 14,500
Lawyer assistance	\$ 67,955	\$ 52,000	\$ 66,000
Mandatory premiums	\$ 650,708	\$ 650,650	\$ 803,000
CLIA, RST collected on fees	\$ (52,173)	\$ (50,250)	\$ (60,300)
CLIA, RST paid on premiums	\$ 49,099	\$ 50,870	\$ 61,110
Grant to General Fund (GF)	\$ 475,000	\$ 475,000	\$ 475,000
Miscellaneous	\$ 399	\$ 550	\$ 400
Courier	\$ 628	\$ 1,000	\$ 1,000
Office supplies	\$ 154	\$ 300	\$ 300
Photocopying	\$ 2,575	\$ 3,000	\$ 3,000
Filing fee	\$ 114	\$ 100	\$ 100
Course/conference fee	\$ 200	\$ 2,000	\$ 500
Membership fees	\$ 275	\$ 500	\$ 500
Actuarial fees	\$ 27,913	\$ 28,000	\$ 29,000
Investment management expense	\$ 95,860	\$ 85,000	\$ 96,000
Practice advisor	\$ 30,300	\$ 32,000	\$ 32,000
Systems consulting	\$ 3,064	\$ 5,000	\$ 5,000

Law Society of Manitoba
Professional Liability Claims Fund (PLCF) Budget
April 1, 2021 to March 31, 2022

FINAL

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
CPP exp	\$ 13,578	\$ 13,925	\$ 16,000
El exp	\$ 4,729	\$ 5,000	\$ 5,500
MB payroll tax	\$ 9,718	\$ 10,000	\$ 10,325
Pension - current service	\$ 94,304	\$ 98,300	\$ 95,400
Salaries	\$ 444,124	\$ 460,000	\$ 473,000
Hardware	\$ 1,077	\$ 4,000	\$ 3,000
Software	\$ 1,393	\$ 3,500	\$ 2,000
Tech services	\$ 558	\$ 100	\$ 600
Conferencing	\$ 288	\$ 50	\$ 300
Staff travel	\$ -	\$ 5,600	\$ -
Total Expense	\$ 4,213,986	\$ 3,964,245	\$ 4,006,235
Net Income (Loss)	\$ (920,150)	\$ (86,035)	\$ (122,740)
Fund Equity, beginning of year	\$ 11,504,845	\$ 11,504,845	\$ 10,584,695
Fund Equity, end of year	\$ 10,584,695	\$ 11,418,810	\$ 10,461,955

Executive limitation - Fee not less than recommended by actuary

Law Society of Manitoba
 Education and Competence Fund (ECF) Budget
 April 1, 2021 to March 31, 2022

FINAL

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
Income			
Practising fees	\$ 374,956	\$ 367,500	\$ 371,000
Application to article	\$ 12,300	\$ 13,000	\$ -
CPLED grads call fee	\$ 67,210	\$ 60,000	\$ -
CPD program revenue	\$ 337,413	\$ 375,000	\$ 425,000
PREP recovery	\$ 22,500	\$ 50,000	\$ 5,000
Manitoba Law Foundation	\$ 653,957	\$ 625,000	\$ 167,692
Investment - RBC	\$ 11,459	\$ 20,930	\$ 14,365
Material sales	\$ 8,104	\$ 5,000	\$ -
Miscellaneous revenue	\$ -	\$ 1,000	\$ 500
Total Income	\$ 1,487,899	\$ 1,517,430	\$ 983,557
Expense			
Call ceremony	\$ 2,075	\$ 12,000	\$ -
Coffee/water/pop/milk	\$ 371	\$ 2,500	\$ 500
Meetings catering	\$ 144	\$ 4,000	\$ 500
Other receptions catering/functions	\$ -	\$ 3,000	\$ -
Program catering	\$ -	\$ 45,000	\$ 25,000
CPLED development	\$ 13,348	\$ -	\$ -
Gifts	\$ -	\$ 5,000	\$ 2,000
Honoraria	\$ 450	\$ -	\$ -
Grant to General Fund (GF)	\$ 200,000	\$ 200,000	\$ 200,000
Miscellaneous	\$ 108	\$ 400	\$ 400
Courier	\$ 68	\$ 1,000	\$ 1,000
Office furniture/equipment	\$ 324	\$ 3,000	\$ 1,500
Office supplies	\$ 1,353	\$ 5,000	\$ 2,000
Photocopying expense	\$ 6,050	\$ 6,200	\$ 6,200
Postage/Fax	\$ -	\$ 100	\$ -
PREP subsidy	\$ 276,900	\$ 260,000	\$ 312,000
Course/conference fee	\$ 657	\$ 7,000	\$ 3,500
Membership fees	\$ 3,122	\$ 5,250	\$ 4,500
Contract services	\$ 1,500	\$ 10,000	\$ 18,000
CPLED - training principals	\$ -	\$ -	\$ 16,000
Investment management expense	\$ 2,420	\$ 3,600	\$ 2,320
Program speaker fee	\$ 8,348	\$ 10,000	\$ 10,000
Outside printing	\$ 747	\$ -	\$ 1,000
Program printing	\$ 500	\$ 4,000	\$ 2,500
Rent - space	\$ -	\$ 3,000	\$ 3,000

Law Society of Manitoba
 Education and Competence Fund (ECF) Budget
 April 1, 2021 to March 31, 2022

FINAL

	Projected April 1, 2020 to March 31, 2021	Budget April 1, 2020 to March 31, 2021	Budget April 1, 2021 to March 31, 2022
CPP exp	\$ 29,003	\$ 28,800	\$ 20,440
El exp	\$ 9,693	\$ 10,600	\$ 7,260
MB payroll tax	\$ 17,078	\$ 18,800	\$ 13,350
Pension - current service	\$ 135,008	\$ 151,000	\$ 99,750
Salaries	\$ 782,832	\$ 870,000	\$ 608,845
Credit card fees	\$ 10,764	\$ -	\$ 20,000
Paypal fee	\$ 957	\$ 600	\$ 1,000
AV services	\$ -	\$ 10,000	\$ 5,000
Hardware	\$ 1,797	\$ 5,000	\$ 3,000
Software	\$ 1,699	\$ 2,700	\$ 2,700
Tech services	\$ 5,085	\$ 1,500	\$ 5,500
Conferencing	\$ 89	\$ 1,000	\$ 500
Student CPLED travel	\$ -	\$ 30,000	\$ -
Presenters' travel	\$ -	\$ 15,000	\$ 5,000
Staff travel	\$ -	\$ 18,500	\$ 3,500
Total Expense	\$ 1,512,490	\$ 1,753,550	\$ 1,407,765
Net Income (Loss)	\$ (24,591)	\$ (236,120)	\$ (424,208)
Fund Equity, beginning of year	\$ 1,799,893	\$ 1,799,893	\$ 1,775,302
Fund Equity, end of year	\$ 1,775,302	\$ 1,563,773	\$ 1,351,094
Executive limitation (> 20%, fund equity end of year/total expenses)			<u>95.97%</u>



MEMORANDUM

To: **Benchers**
From: **Leah Kosokowsky**
Date: **February 4, 2021**
Re: **Hesse Reimbursement Payments**

At its January 27, 2021 meeting, the Reimbursement Claims Fund Committee approved two payments, one for \$10,000 and the second for \$71,000.

With these payments, there have been six claims approved for a total of \$686,000.

You are entitled to additional details regarding the potential remaining claims, the reserves and the risks associated therewith. However, as some of the benchers are in a conflict of interest arising out of a class action that is pending against Pitblado LLP, we will deliver a supplementary verbal report at the bencher meeting in the absence of benchers who have a conflict.