



AGENDA

Benchers

Date: Thursday, November 10, 2022

Time: 12:30 p.m.

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT					
	The President will welcome newly elected student bencher, Nikhilesh (Nik) Verma, guests and staff to the meeting.				
2.0 IN MEMORIAM					
	Ronald Gary Reimer , who passed away on August 31, 2022 at the age of 72. Mr. Reimer received his call to the Bar on June 29, 1978. He practised for one year as an associate with David Friesen and Associates and then served as in house counsel to Qualico Developments Limited until 1996. From 1996 until the date of his death he continued to be employed by Qualico Developments but was not licensed to practice law.				

Mark Chapnick, who passed away on September 2, 2022 at the age of 62. Mr. Chapnick received his call to the Bar in Manitoba on June 27, 1985. He practised with Wolch Pinx Tapper for two years before relocating to Ontario to further his education.

Jagjit Singh Gill, who passed away on September 4, 2022 at the age of 89. Mr. Gill received his call to the Bar in Manitoba on June 25, 1974. He practised in Winnipeg for 30 years, primarily as a sole practitioner. Mr. Gill retired from practice in 2006.

William Samuel Hechter, who passed away on September 17, 2022 at the age of 75. Mr. Hechter received his call to the Bar on June 29, 1971. He practised in Winnipeg for five years as a sole practitioner and then relocated to the United States to further his education. At the time of his death, Mr. Hechter resided in Ontario where continued to practice law.

Sidney Roe Restall, who passed away on September 20, 2022 at the age of 65. Mr. Restall received his call to the Bar on June 23, 1983. Over the course of 31 years of practice, he served as in house counsel to Manitoba Hydro for eight years, and for the remainder of his career he served as counsel to the Department of Justice (Canada). Mr. Restall retired from practice in 2014.

Lydia Louise Ritchie, who passed away on October 17, 2022 at the age of 92. Ms Ritchie joined the Law Society in 1992, serving as a claims examiner in the Insurance Department for 19 years. In addition to working in several Winnipeg law firms, including Newman MacLean and Thompson Dorfman Sweatman, Ms Ritchie taught the legal assistant course at Success Business College to several generations of students.

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

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

3.1	Minutes of September 9, 2022 Meeting	5		Attached	Approval
3.2	Complaints Investigation Committee Report			Attached	Information
3.3	Discipline Committee Reports			Attached	Information

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
4.0 EXECUTIVE REPORTS					
4.1	President's Report	5	Sacha Paul		Briefing
4.2	CEO Report	10	Leah Kosokowsky	Attached	Briefing
4.3	Strategic Plan Progress Report - October 2022 and Website Presentation	30	Leah Kosokowsky	Attached	Briefing
5.0 DISCUSSION/DECISION					
5.1	<i>Code of Professional Conduct - Language Rights - AJEFM Request for Amendments</i>	10	Darcia Senft	Attached	Discussion/ Decision
5.2	British Columbia Single Legal Services Regulator	15	Leah Kosokowsky	Attached	Discussion/ Decision
6.0 MONITORING REPORTS					
6.1	Complaints Resolution Department and Discipline Department	15	Leah Kosokowsky	Attached	Briefing
7.0 COMMITTEE REPORTS					
7.1	Access to Justice Steering Committee	10	Ken Mandzuik		Briefing
7.2	Equity Committee	10	Ken Mandzuik		Briefing
7.3	Indigenous Advisory Committee	10	Alissa Schacter		Briefing

8.0 MISCELLANEOUS BUSINESS

8.1	FLSC Council Report	10	Lynda Troup	Attached	Briefing
8.2	National Wellness Study - Phase I Report	10	Leah Kosokowsky	Attached	Briefing

9.0 FOR INFORMATION

9.1	Media Reports			Attached	Information
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**The Law Society
of Manitoba**

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STRATEGIC ACTIVITIES
PROGRESS REPORT
OCTOBER, 2022

STRATEGIC OBJECTIVE 1: COMPETENCE

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

STRATEGY 1.1: Proactively support lawyers and law firms to mitigate risk.

ACTIVITY 1.1.1 Practice management tool	TIME LINE	STATUS
Post practice management workbook to LSM website	April 30, 2022	Workbook near completion – expected to be posted prior to November 10, 2022 bencher meeting.
Launch interactive practice management assessment tool	May 31, 2022	Online launch to follow completion of workbook and harmonization of resources.
Develop communication plan		Plan completed. Coming Soon notice published in <i>Communiqué</i> .

ACTIVITY 1.1.2 Practice management resources	TIME LINE	STATUS
Complete and post practice management resources for: <ul style="list-style-type: none"> • File closing, etc. • Withdrawal • Contingency planning • Billing disbursements • Retainers • Retirement • Trust accounting • The Legal Profession 		Complete.
Complete and post practice management resources for: <ul style="list-style-type: none"> • Opening a law firm • Client communications • Conflicts 	Dec 31, 2022	<ul style="list-style-type: none"> ➤ Research underway ➤ First draft in progress ➤ Draft prepared and under review
Develop communication plan		

Complete and post practice fundamentals resources for: <ul style="list-style-type: none"> • Criminal law • Civil procedure • Corporate commercial • Real estate • Wills and estates 	Sept 2022	Complete and posted. Chapters 1-3 complete and posted. Chapters 4-6 to be posted in fall of 2022. Complete and posted. Complete and posted. Updating in preparation for 2-day CPD program on wills and estates – Dec 2022.
Complete and post practice fundamentals resources for: <ul style="list-style-type: none"> • Family law • Child protection 		<ul style="list-style-type: none"> ➤ Five of eight chapters posted. Three remaining chapters likely to be posted prior to November 2022 bench meeting ➤ Chapter drafted and in final review
Develop communication plan		Plan drafted and initial communications have begun.

ACTIVITY 1.1.4 e-Learning modules	TIME LINE	STATUS
Complete Phase II of shopping cart development	Aug 31, 2022	Challenge encountered with log in and credentials component. Research completed and recommendation in development. Launch likely in early 2023.
Create e-learning modules for practice management and identify other e-learning opportunities		Draft e-learning modules completed for file closing, withdrawal, contingency planning, retainer and retirement. Will be posted when Phase II of the Education Centre is launched.
Develop communication plan		

STRATEGY 1.2: Proactively ensure lawyers are fit to practice by addressing capacity and well-being.

ACTIVITY 1.2.1 Health Recovery Program	TIME LINE	STATUS
Complete consent form and Health Recovery program agreement template	March 31, 2022	Forms completed – Spring 2022.
Draft rules		Rules approved by benchers May 19, 2022.
Formalize engagement with medical assessor	June 2022	Engagement letter and terms approved. Final editing and signing late October or early November 2022.
Establish program coordinator position		Complete.
Provide training to committees and coordinator	Fall/Dec 2022	Mental Health First Aid training provided to coordinator. Law(yer) strong training video in editing. Will be available to program coordinator at end of October 2022. Overview presented to Discipline Committee at November 25 orientation. Overview presented to CIC at December 14, 2022 meeting.
Develop communication plan for staff and profession	December 2022	Program announced in World Mental Health Day news item. Article in October 2022 well-being issue of <i>Communiqué</i> . New website page developed under Health and Wellness. Further communications in winter 2022.

ACTIVITY 1.2.2 Facilitate and support peer-support program	TIME LINE	STATUS
Establish program	2021	Law(yer) Strong established in partnership with the Manitoba Bar Association.

Promote awareness		Website launched summer 2022. Regular promotion through multiple channels.
Develop informal structure for referrals among Blue Cross EAP, Health Recovery Program and Law(yer) Strong	Fall 2022	Key Blue Cross employee on board of Law(yer) Strong. Peer support training includes guidance on other programs and where best to address an issue.

ACTIVITY 1.2.3 Culture of well-being in profession	TIME LINE	STATUS
Develop comprehensive plan for wellness communications	Aug 31, 2022	Plan drafted and in implementation. Refreshed Lawyer Health and Wellness website page outlining three health support programs. Newly added LSM resources page.
Develop and promote wellness pledge and well-being challenge for profession	Fall 2022	Initial conversation with informal managing partners group. (WO) Internal brainstorming session planned.
Dedicate annual issue of <i>Communiqué</i> to well-being	October 2022, 2023 and 2024	Second annual edition in progress. To be published end of October.
CPDs on well-being and incorporate wellness content in other programs	Ongoing	Both initiatives are ongoing.

STRATEGY 1.3 Proactively support, assess and address the competence of lawyers at stages of practice when most needed.

ACTIVITY 1.3.1 Connect smalls and solos to resources and supports	TIME LINE	STATUS
Deliver programming for smalls and solos		Ongoing.
Incorporate CPD offerings into regional Bar offerings	June 2022 and ongoing	Northern Bar – June 2022. Central Bar – August 2022. Western Bar – engagement planned for September 2023.

Promote e-Lex and resources for smalls and solos	Ongoing	e-Lex format and design refreshed and launched September 2022. e-Lex subscription included in Annual Member Report (increased subscription by 600%). MLL presentation to MBA Legal Research Section and Young Lawyers Section (October 2022).
Collaborate with MBA small/solo sub-section	TBD	
Host solo/small firm forum	2023	

ACTIVITY 1.3.2 Create practice checkup program	TIME LINE	STATUS
Create pilot program to support solos/smalls in early stages of practice	Long term	Benchers to decide upon parameters following advance of activities 1.1.2, 1.1.3 and 1.3.1.

ACTIVITY 1.3.3 Support retirement as an option and support transition	TIME LINE	STATUS
Develop retirement series	2022-2023	First session delivered 2021. Session 2 on financial planning – finalizing dates with presenters.
Collaborate with MBA and CBIA on CPDs for financial planning and promoting pensions	2023-2024	See above.

STRATEGY 1.4: Proactively engage with articling students to provide support and resources as appropriate.

ACTIVITY 1.4.1 Work with firms to increase awareness for students	TIME LINE	STATUS
Incorporate resources and supports into model education plan	June 2022	Complete.
Incorporate resource awareness into mid-year assessments	December 2022	In progress.

ACTIVITY 1.4.2 Increase engagement with articling students	TIME LINE	STATUS
Host in-person event for students	2023	Networking events hosted in Winnipeg and Brandon – September 2022. Scouting for firm/organization to host reception in the north.

STRATEGIC OBJECTIVE 2: ACCESS TO JUSTICE

Advance, promote and facilitate increased access to justice for all Manitobans.

STRATEGY 2.1: Engage with Manitobans in northern and rural communities, members of Indigenous communities and others who are members of vulnerable and historically disadvantaged groups about unmet legal needs and opportunities to address those needs.

ACTIVITY 2.1.1 Outreach regarding other potential legal services providers	TIME LINE	STATUS
Conduct engagement sessions with community organizations	February 2022	Engagement sessions held on Zoom platform – February 15 and 16, 2022.
Follow up communications with community organizations	March 31, 2022	Complete.
Review and analyze responses from consultation with profession	June 30, 2022	Preliminary review and summary completed. Report to special committee – November 2022. Report to benchers – December 2022.

ACTIVITY 2.1.2 Conduct surveys of the public and stakeholders	TIME LINE	STATUS
Create communication plan	April 20, 2022	Complete.
Conduct public survey	May 2022	Partnered with the MLF in survey that is underway by Prairie Research Associates – summer 2022.
Review and analyze survey results	June 2022	Survey underway – to be completed late fall.

Report to benchers with analysis of consultations and survey results	October 2022	Report to special committee – November 2022. Report to benchers – December 2022.
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ACTIVITY 2.1.3 Develop Limited Practitioner Proposals	TIME LINE	STATUS
		Pending results of above activities.

STRATEGY 2.2 Explore opportunities to remove regulatory barriers to the delivery of legal services in new ways.

ACTIVITY 2.2.1 Pursue advisability of regulatory sandbox	TIME LINE	STATUS
Present report of Regulating Legal Entities Committee	March 2022	Report reviewed and approved by benchers.
Create application forms and infrastructure	May 31, 2022	Forms and structure completed - October 2022.
Develop communications plan	Summer 2022	Plan drafted – fall 2022.
Launch sandbox	Fall 2022	Application form and webpage posted for soft launch. Official announcement prepared for Access to Justice Week.

STRATEGY 2.3 Promote and facilitate collaboration about access issues with the courts and other justice system stakeholders to increase access to justice.

ACTIVITY 2.3.1 Focus on enhanced providing of legal information and advice through the Hub	TIME LINE	STATUS
Obtain status report to assess viability of in-person delivery	April 30, 2022	Complete.

Request extension of pilot funding from MLF	Summer 2022	Fall 2022 – extension requested.
Resume in-person operations if possible	September 2022	October 19, 2022. Offering in-person and virtual appointments. Expand services to civil litigation – January 2022.
Assess viability of Phase II of pilot (public website) with the A2J Steering Committee	October 31, 2022	To assess in March 2023.

ACTIVITY 2.3.2 Support A2J Coordinator to facilitate collaboration, including improved data collection and coordination of efforts to address unmet legal needs	TIME LINE	STATUS
Facilitate collaboration on creation of A2J listserv and/or website		A2J blog launched September 2022 by Faculty of Law and A2J Coordinator.
Collaborate with stakeholders on data collection		Education session for A2J Week on People-Centred Data collection – October 25, 2022 Survey of profession re: unmet legal needs undertaken by Prof. Gerard Kennedy (Faculty of Law) and A2J Coordinator in cooperation with the Law Society.
Conduct outreach in northern and remote rural areas		A2J Coordinator and ED of Manitoba Law Foundation to travel to northern Manitoba.

STRATEGY 2.4 Explore opportunities for the Law Society to increase the number of lawyers who practice law in remote/rural communities and improve retention.

ACTIVITY 2.4.1 Review Forgivable Loan Program	TIME LINE	STATUS
Present memo to benchers	May 2022	Memo and questions presented to benchers at May 19, 2022 meeting.
Consider options to increase number of lawyers in rural areas		Research underway. Planning Admissions and Education Committee meeting for January 2023.

STRATEGIC OBJECTIVE 3: EQUITY, DIVERSITY AND INCLUSION

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

STRATEGY 3.1: Engage and inspire Indigenous youth in Manitoba to become lawyers.

ACTIVITY 3.1.1 Create opportunities for Law Society outreach to high school students	TIME LINE	STATUS
Identify high schools and their career day plans.	Fall 2022	Preliminary discussions held with MILSA regarding partnership opportunity.
Establish committee to develop a high school outreach plan	June 2022	Equity Committee meeting in November to further develop ideas.
Implement committee recommendations	2023	

STRATEGY 3.2 Remove inequitable barriers to admission into the legal profession for Indigenous people and other equity-seeking individuals.

ACTIVITY 3.2.1 Consider admissions process and good character requirements	TIME LINE	STATUS
Post inclusivity statement on website		Complete.
Present report on good character to A & E Committee	April 2022	Complete.
A & E Committee report to benchers with recommendations	May 2022	Complete.

Implement benchers recommendations	Summer 2022	Good character requirement clarified in admissions documents and on website. Good character requirement clarified and explained in all presentations to schools and to law students. Defer further action until Federation of Law Societies addresses issue. Federation confirmed that review of the good character requirement included in 2022-2023 activity plan.
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ACTIVITY 3.2.2 Consider options for financial support such as bursaries or scholarships	TIME LINE	STATUS
Establish committee to consider options	June 2022	Equity committee tasked with project.
Report to benchers	Spring 2023	
Implement benchers recommendations		

STRATEGY 3.3: Consider imposing mandatory continuing legal education relation to cultural competency as a regulatory requirement for lawyers.

ACTIVITY 3.3.1 Seek recommendation from Indigenous Advisory Committee	TIME LINE	STATUS
Refer issue to IAC	Fall 2021	Complete.
IAC report to benchers	March 2022	Complete. Benchers resolved to require all practising members participate in one-time Indigenous cultural awareness and competency training – The Path. To be supplemented by Manitoba module. Exemptions possible and to be considered on a case-by-case basis.

Implement committee recommendations	2022-2023	IAC working with Nvision to create made for Manitoba Module for delivery to profession. Considering parameters of regulatory requirements.
Launch project	April 2023	

STRATEGY 3.4 Promote, support and facilitate equity, diversity and inclusion within law firms.

ACTIVITY 3.4.1 Educate the profession in understanding and addressing issues	TIME LINE	STATUS
Regular articles in <i>Communiqué</i>	Ongoing	
Deliver programming	2023	The Path Forward – Conversations around Reconciliation. Anti-racism training for staff September 2022. Anti-racism training for benchers February 2023.
Equity Officer offer sessions for managing partners	Spring 2023	
Post videos/vignettes on LSM website	Fall 2023	

ACTIVITY 3.4.2 Educate the profession regarding equity, diversity and inclusion in hiring and advancement	TIME LINE	STATUS
Include content in existing CPD curriculum	Summer 2023	
Develop communication plan, including <i>Communiqué</i> articles	October 31, 2023	Complete.
Create stand-alone CPD programs regarding hiring, retention and advancement	Fall 2024	

STRATEGIC OBJECTIVE 4: STAKEHOLDER CONFIDENCE

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

STRATEGY 4.1: Engage with members of the public who belong to vulnerable and historically disadvantaged groups.

ACTIVITY 4.1.1 Identify and connect with organizations and leaders who support members of vulnerable and disadvantaged communities.	TIME LINE	STATUS
Create list of organizations and identify leaders	June 2024	
Arrange opportunities to engage in groups or individually	Sept 2024	Equity Committee tasked with this project.
Create appropriate and relevant content for engagement	October 2024	
Host meetings or attend organizations to provide information and seek feedback	Nov 2024 – Feb 2025	
Review and analyze feedback	April 2025	

ACTIVITY 4.2.1 Organize webinars/town halls in northern and rural communities	TIME LINE	STATUS
Create list of key community contact persons	Mid-Feb 2024	

Arrange outreach opportunities and engagement sessions	March 2024	
Create content	April 2024	
Conduct outreach and engagement and seek feedback	May-June 2024	
Review and analyze feedback	Summer 2024	

STRATEGY 4.2 Increase and improve engagement of the Law society with members of the Northern Bar and other rural communities.

ACTIVITY 4.2.1 Increase attendance of executive committee members and senior staff at Northern Bar meeting. Create time for dialogue	TIME LINE	STATUS
Attend Northern Bar meeting	June 2022	Delivered program and engaged in extensive dialogue with Northern Bar members.
Establish regular webinar sessions with members	Nov 2022 – June 2023	
Consider issues raised and create plans to address	TBD	

ACTIVITY 4.2.2 Proactively engage with groups of lawyers in rural communities to obtain viewpoints and identify needs	TIME LINE	STATUS
Identify and contact rural lawyers in different areas	August 2023	
Arrange and conduct regional virtual town hall sessions	Fall/Winter 2023	

Consider issues and create plans to address	TBD	
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STRATEGY 4.3: Build members' confidence and competence by connecting them to Law Society resources and supports.

ACTIVITY 4.3.1 Connect members to resources and supports	TIME LINE	STATUS
Devote issue of <i>Communiqué</i> to LSM resources and supports	Spring 2023	
Deliver programming on how to navigate LSM website	Spring 2023	Video tour created in June 2022 for Northern Bar and Central Bar meetings. May edit and distribute more widely.
Deliver programming on how to avoid and respond to complaints	Fall 2023	



MEMORANDUM

To: Benchers
From: Darcia Senft
Date: October 20, 2022
Re: **Code Amendments – Language Rights
- AJEFM Request for Amendments**

A. BACKGROUND

As you will recall, at the June 2022 benchers meeting you considered a request from L'Association des juristes d'expression française du Manitoba (the AJEFM) for amendments to the commentaries relating to language rights in Rule 3.3-3A and Rule 3.2-2B of the *Code of Professional Conduct*. For ease of reference, attached as **Appendix 1** you will find the memorandum and draft proposed amendments that were prepared for the benchers' consideration at that time.

As you will further recall, at the meeting benchers Christian Monnin also circulated a proposed revision that would align closely with the approach adopted by the Law Society of New Brunswick. However, after receiving a submission from an AJEFM representative, Mr. Monnin and the benchers agreed to defer further consideration of the issue until we had an opportunity to meet with the AJEFM representatives to discuss their concerns and the various options that might be employed to address those concerns.

B. UPDATE

Leah Kosokowsky and I had a fruitful meeting with the AJEFM representatives. They shared with us their concern that while the French population in Manitoba is growing due to increased immigration from French speaking countries, Manitoba lawyers are not recognizing their professional obligation to advise clients of their rights to receive legal services in French and to decline a retainer if they are not competent to provide legal services in French.

Recognizing the concerns expressed, we canvassed with the AJEFM what would be the most effective means of reminding the profession of their French language ethical obligations. That is, the concerns may not necessarily be addressed by expanding the language of the commentaries as initially proposed. Rather, we might be able to better achieve their goals by adopting the key amendments and by employing tools to educate the profession.

We agreed that we would collaborate on certain activities, namely:

- Drafting a Practice Direction to highlight the practical application of Rules 3.2-2A and 3.3-2B of the *Code*;
- Creating an article for the *Communiqué*;
- Delivering a continuing professional development activity primarily tailored for an audience of lawyers who are unable to or have limited ability to provide professional services in French.

C. PROPOSED AMENDMENTS

In collaboration with L'Association, we developed a revised version of the proposed amendments adopting the approach suggested by Mr. Monnin but with language for (new) Commentary 3 that more specifically aligns with the particular sections referenced.

Recommendation

We recommend that you approve amendments to Commentary 2 and Commentary 3 of Rule 3.2-2B as outlined in **Appendix 2**.

Should you agree with our recommendation, we will return to you with a French translation of the *Code* amendments. We will also apprise the Federation of Law Societies of the Manitoba *Code* amendments and include a recommendation that the Standing Committee consider the advisability of making a similar amendment to the *Model Code*, at Commentary 2, in relation to the *Divorce Act* provision.

ATC.

MEMORANDUM

To: Benchers
From: Darcia Senft
Date: June 14, 2022
Re: **Code of Professional Conduct
- AJEFM Request for Amendments**

A. INTRODUCTION

Many years ago, in light of the increased mobility of lawyers across jurisdictions, it was recognized that it would be desirable for law societies in different provinces and territories to harmonize professional conduct rules to the extent possible. Accordingly, through the Federation of Law Societies, a *Model Code of Professional Conduct* ("*Model Code*") was developed and adopted, in large part, by all but one Canadian law society. Concurrent with the Federation's work on the national *Model Code*, the Law Society of Manitoba embarked upon a complete review of its own *Code of Professional Conduct* and with a few small exceptions, Manitoba's *Code* largely mirrors the national *Model Code*.

From time to time, proposals are made to amend the *Model Code* and there is a Standing Committee on the *Model Code* that meets regularly to determine if amendments should be made. Fairly recently, the Standing Committee adopted a "national importance" test as a way to better manage its work.

The Standing Committee consults with the *Model Code Liaisons Group* (of which Manitoba is a member), which was created to ensure there is a mechanism for consulting with and obtaining feedback from law societies throughout the Committee's consideration and deliberations. Not only can the *Model Code Liaisons Group* suggest topics to the Committee for consideration, its feedback can help the Committee determine whether law societies think particular topics are priorities.

Amendments to the *Model Code* must be approved by the Federation Council, of which each law society is a member. Typically, the Standing Committee sends out consultation packages seeking feedback from the law societies before putting any amendments before the Federation's Council. For example, the benchers recently were asked to consider proposed amendments to the *Code* provisions regarding sexual harassment. Your views were delivered to the Standing *Model Code* Committee and we anticipate that they will be considered by the Federation Council in the next short while.

As noted above, Manitoba's *Code* largely mirrors the *Model Code*. It is not identical. Historically, the benchers have adopted the practice of only making amendments that they consider to be necessary in light of the desire to have consistent *Code* provisions across the country.

The Law Society has received a request from L'Association des juristes d'expression française du Manitoba (AJEFM) for amendments to the commentaries relating to language rights in Rule 3.2-2A and Rule 3.2-2B of the *Code*.

B. LANGUAGE RIGHTS RULES

Rule 3.2-2A states:

A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

Rule 3.2-2B states:

Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

The wording of the Manitoba rules is based on the corresponding rules found in the Federation's *Model Code*. The commentary that follows provides a concise overview of language rights at the national level and says that the lawyer should be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages as set out below:

[1] *The lawyer should advise the client of the client's language rights as soon as possible.*

[2] *The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s.19(1) and Part XVII of the Criminal Code regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.*

[3] *When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.*

C. REQUESTED AMENDMENTS

Although the AJEFM notes that the Rules provide a concise and generic overview of language rights at the national level, they are of the view that the content would be greatly enhanced if it also identified the main components of the constitutional, statutory and policy framework applying the use of French and English in Manitoba. For example, they suggest that the language guarantees recently added to the *Divorce Act* should be taken into account given that they include the right to commence a divorce proceeding in either official language.

The AJEFM also has proposed that the following Manitoba-specific language be added to Commentary 2:

In Manitoba, legislation, policies and guidelines pertaining to the use of English and French in the area of law and justice include:

- *Section 23 of the Manitoba Act, 1870;*
- *The Manitoba Francophone Community Enhancement and Support Act;*
- *Part III of the Court of Appeal Rules [Manitoba Regulation 555/88 R];*
- *Translation and Interpretation Guidelines of Manitoba Courts;*
- *The Government of Manitoba's French Language Services Policy; and*
- *The Statement on the Appointment of a Greater Number of Bilingual Individuals to Quasi-Judicial Tribunals in Manitoba.*

The AJEFM seeks the referenced amendments to more fully contextualize the principles underlying the language rights rules with a view to providing clearer guidance to members.

D. DISCUSSION

As noted above, the *Code* contains rules and commentaries. The wording in the rules sets out lawyers' professional obligations in terms of what a lawyer *must do* while the commentaries flesh out the ethical obligations and provide some guidance about what lawyers *should do* in order to comply with the rule. Lawyers must be competent in the delivery of legal services and the *Code* is not designed to provide lawyers with answers to questions that are best addressed through appropriate legal research.

As such, when considering proposed amendments, we suggest that you consider whether the amendment will provide guidance about the ethical obligation itself.

With that in mind, we agree that commentary 2 to Rule 3.2-2 ought to include a reference to the *Divorce Act* and to s. 23 of the *Manitoba Act, 1870* as lawyers ought to be aware of the rights that are granted to individuals to:

- Commence proceedings in either official language (s. 23.2 of the *Divorce Act*); and
- Have equal access to the legislature, the laws and the courts in both official languages (s. 23 of the *Manitoba Act, 1870*).

However, the balance of the suggested additions to the commentaries do not give rights to individuals. Rather, they either incorporate policy statements, rules or guidance on how services can be obtained from the government in the French language or through the Courts. There is a difference between a lawyer being aware of a client's constitutional language rights and understanding the corresponding ethical obligation to advise clients of their language rights and a lawyer being aware of other legislation that may set out a framework for the development of language rights or of policies or guidelines that may provide guidance about how a client may exercise their constitutional rights.

Accordingly, absent the effect of providing guidance to lawyers on how to comply with their professional obligations pursuant to Rules 3.2-2A and 3.2-2B, we are of the view that including reference to the other items on this list is not necessary.

E. OTHER JURISDICTIONS

A quick scan of the Federation's interactive *Model Code* reflects that a majority of the provinces and territories (eight) have adopted the same generic language found in the commentary within the national *Model Code* and within Manitoba's *Code*. Some of the jurisdictions have revised their commentaries to varying degrees. For example, in British Columbia's *Code*, after the referenced Commentaries 1 – 3, there is a fourth commentary that states:

[4] Civil trials in British Columbia must be held in English: Conseil scolaire francophone de la Colombie-Britannique v. British Columbia, 2013 SCC 42. Under section 530 of the Criminal Code, R.S.C. 1985, c. C-46 an accused has the right to a criminal trial in either English or French.

In New Brunswick, after the commentaries found within the *Model Code*, the law society has added a fourth commentary that addresses, more specifically, the language rights contained within s. 19 of the *Charter* and within the *Criminal Code* (already referenced in Commentary 2) and then lists a language rights section contained within the *Insurance Act* provisions applicable in New Brunswick and several language rights sections contained with the provincial *Official Languages Act*.

Recommendation

We recommend that you approve amendments to Commentary 2 of Rule 3.2-2 as outlined in Appendix 1.

Should you agree with our recommendation, we will apprise the Federation of the Manitoba *Code* amendments and include a recommendation that the Standing Committee consider the advisability of making a similar amendment to the *Model Code* in relation to the *Divorce Act* provision.

Atc.

Language Rights

3.2-2A A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

3.2-2B Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary

[1] The lawyer should advise the client of the client's language rights as soon as possible.

[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s.19(1), and Part XVII of the Criminal Code and section 23.2 of the Divorce Act regarding language rights in courts under federal jurisdiction and in criminal and divorce proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages. The lawyer should be aware that, in Manitoba, there is a specific constitutional provision relating to language rights set out in section 23 of the Manitoba Act, 1870.

[3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.

Language Rights

3.2-2A A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

3.2-2B Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary

[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s. 19(1), and Part XVII of the Criminal Code and section 23.2 of the Divorce Act regarding language rights in courts under federal jurisdiction and in criminal and divorce proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages. With regard to Manitoba in particular, section 23 of the Manitoba Act, 1870 sets out constitutional guarantees to ensure full and equal access to the Legislature, the laws and the courts in either French or English or both official languages.

[3] A lawyer should, when appropriate, inform the client of the client's language rights relating to a client's matter, including where applicable:

- a) subsection 19(1) of the *Canadian Charter of Rights and Freedoms* which provides for the right to use English or French in, or in any pleading in or process issuing from, any court established by Parliament;
- b) Part XVII of the *Criminal Code* (Language of Accused) which primarily provides for the right of an accused whose language is one of the official languages of Canada to be tried before a judge or a judge and jury, if applicable, who speak the official language of the accused or, if the circumstances warrant, both official languages;
- c) subsection 23.2 of the *Divorce Act* which recognizes the right of any person to use either English or French, or both official languages, in a proceeding conducted under that Act;
- d) section 23 of the *Manitoba Act, 1870* which provides for the right to use English or French in, or in any pleading or process issuing from, any court of Canada or any

courts of the Province of Manitoba and which requires provincial legislation to be enacted in both English and French.

[4] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.



MEMORANDUM

To: Benchers

From: Leah Kosokowsky

Date: October 21, 2022

Re: British Columbia - Single Legal Services Regulator

INTRODUCTION

There has been an interesting development in the regulation of the legal profession in British Columbia. While the project is in its infancy and at a consultative stage, were such changes to be considered by Attorneys General throughout Canada, it could have a significant impact in Manitoba, particularly as it relates to the independence of the legal profession and the independence of the regulator. Accordingly, we intend to provide feedback to the Ministry of the Attorney General in British Columbia regarding their initiative and we invite your feedback regarding the matter.

SINGLE REGULATOR OF BRITISH COLUMBIAN LEGAL SERVICES PROVIDERS

In British Columbia, the Law Society of British Columbia regulates lawyers. Unique to British Columbia among the Canadian common law jurisdictions, is the status of notaries who are licensed to provide some limited real estate transactions and wills services. They are regulated under a separate statute. Paralegals are not separately regulated and currently are only permitted to deliver services under the supervision of a lawyer.

In March 2022, the Ministry of the Attorney General in British Columbia announced its intention to modernize the framework for legal services providers in the province and to enact legislation that will create a single regulator to regulate lawyers, notaries and licensed paralegals. In September 2022, the Ministry circulated a [General Intentions Paper](#) setting out the rationale for the proposed reforms as well as their scope.

The main rationale for the reforms is the enormous gap in access to legal services, an issue that is not unique to British Columbia. In the Intentions Paper, the Ministry articulates that access to legal services is in part a regulatory issue because rules around who is permitted to provide what services

have an impact on the availability and cost of those services to the public. They also say that access is at least in part a governance issue because it requires a governance framework that prioritizes the public interest over the interests of the professionals it regulates.

The intentions outlined in the paper are aimed at two objectives. The first objective is facilitating better access to legal services for the public. The second objective is modernizing the governance framework for all legal services providers, ensuring they can continue to regulate themselves both independently from government and in a manner that ensures the public interest is paramount.

It is interesting to note that the Ministry explicitly states in the paper that they have no intention of implementing changes that will see a shift away from self-regulation and they emphasize that the contemplated reforms would ensure that the legal professions in BC remain self-regulating. However, they qualify their statements by indicating that self-regulation does not mean no oversight or involvement by government.

The intentions expressed in the paper are forward thinking and exciting in many respects. Many of them align with the goals of the Law Society of British Columbia which has not succeeded in previous attempts to have lawyers and BC notaries come under the authority of a single regulator. With that said, the LSBC is concerned that the proposed structure of the board would not preserve the independence of the regulator. They, like us, hold the view that the independence of the profession and the independence of the regulator are inextricably linked. They would hope to receive some assurance from the Ministry that lawyers/notaries would hold the majority of the positions at the board table so as to ensure its independence.

The Ministry has invited written submissions in response to the General Intentions Paper with a deadline of November 18, 2022. At the Federation Conference, our council members expressed support for the Federation providing a written submission in support of the LSBC's position. The LSBC also welcomed the notion of individual law societies writing to the Ministry as well.

Do you have any concerns with respect to the Law Society of Manitoba making a written submission to the BC Ministry of the Attorney General asserting the essential importance of an independent legal regulator to an independent legal profession?

Further, if you have no such concerns, we welcome any feedback or input you have in relation to the nature and content of such a submission.



MONITORING REPORT

To: Benchers

From: Leah Kosokowsky

Date: October 24, 2022

Re: Complaints Resolution Department and Discipline Department

I. INTRODUCTION

This is the sixteenth complaints and discipline monitoring report since 1999 with the last report having been presented to the benchers in May 2021. In addition to generally providing you with a knowledge base that will be helpful to you in your work as a bencher, the purpose of the monitoring report is to assist you to:

- (a) judge if we are meeting the ends that you have established;
- (b) consider whether the ends need modification; and
- (c) judge if we are complying with the executive limitations and whether they need modification.

The ends that you have established as they relate to complaints and discipline are:

2. *Lawyers provide legal services competently after the call to the Bar and are honourable and ethical in the practice of their profession.*
3. *The investigations and dispositions of matters relating to non-compliance with the Code, Act and rules are thorough, timely and fair.*
6. *Members of the public are protected from financial loss arising from dishonest or negligent lawyers.*

STAFF

The Complaints Resolution Department is headed up by the Director, Noelia Bernardo, who not only oversees the work of the department, she also is the primary person to dispose of complaints

where no investigation is warranted and she addresses concerns of individuals engaging in the unauthorized practice of law.

In addition to Noelia, we have three staff lawyers who conduct all the investigations, resolve most complaints and refer matters to the Complaints Investigation Committee where appropriate. Those staff lawyers are Chris Donaldson (full-time), Jennifer Houser (.9) and Ashley Korsunsky (full-time) who joined the department in June 2021.

Early in 2020 the department moved largely to a paperless environment, which streamlined many of our processes. That, combined with the effects of the pandemic, substantially reduced the work of the department paralegal. Accordingly, the paralegal position was eliminated in February 2022 with the administrative assistant, Corinne Penner, assuming responsibility for complaints intake. Corinne is currently on maternity leave and Anna Brown, who usually serves as an administrative assistant in the Discipline Department, is filling Corinne's position temporarily. The department is filled out by Debra Rossol, who has other roles but also serves as the fee arbitration coordinator.

On the discipline side, our Senior General Counsel, Rocky Kravetsky and Hearing Counsel, Ayli Klein, (both full-time) conduct our discipline hearings and any related appeals, admissions appeals, trust safety appeals and applications to the Court of King's Bench for custodial orders. They will intervene in existing legal proceedings or initiate actions to prevent the unauthorized practice of law. Currently, Rocky is assisting the Society in responding to a complaint filed with the Manitoba Human Rights Commission by a former articling student. Rocky also serves as a mentor and advice giver to the Society generally.

Rocky and Ayli usually are supported in their work by Anna Brown, who is also responsible for custodial files, and Lee-Ann Harrison who is assistant to the Discipline Committee. While Anna is seconded to the Complaints Resolution Department, her position is being filled by Lori Arnold.

INDEPENDENT CHAIR OF DISCIPLINE

The Law Society also has an Independent Chair of the Discipline Committee, former Chief Justice Richard Scott, who presides over the set-down list, appoints all the discipline hearing panels and oversees the annual discipline committee training.

COMPLAINTS REVIEW COMMISSIONER

A non-lawyer, the Complaints Review Commissioner reviews, at the request of a complainant, staff decisions to not investigate a complaint and staff decisions to resolve a complaint by means short of referral to the Complaints Investigation Committee.

In 2020, Lorne Gibson was appointed to the position for a two-year, renewable term. However, Mr. Gibson's appointment was terminated by the benchers in 2022 and he was replaced by Thomas Vowel, who was appointed in June for a two-year, renewable term. The Complaints Review Commissioner sits for a maximum of four terms, or eight years.

COVID-19 IMPACT

Most Complaints Resolution Department staff members continue to work partly from home and partly in the office. However, because the department functions almost entirely on a paperless basis, the long-term impact of COVID-related restrictions and distancing measures have been minimal.

In terms of investigating and resolving quality of service complaints against lawyers, earlier in the pandemic the department saw that many lawyers would cite the pandemic-related restrictions as the reason for delays in advancing matters. With most people having adapted to the pandemic, it no longer appears to be a factor in complaints received in the last year.

The Discipline Department adapted to the pandemic-related restrictions by holding set-down hearings and discipline hearings by video conference on the Zoom platform. Hosting virtual hearings has proven to be an effective means of conducting hearings where there is a guilty plea and either a joint recommendation or oral argument regarding penalty. Accordingly, we will continue to hold hearings by Zoom where the parties agree.

Similarly, all set-down dockets continue to be held remotely as it is both efficient and convenient for the chairperson and for all counsel.

THE PROCESS AND SOME NUMBERS

All contacts made with the Law Society regarding concerns about the competence or conduct of Manitoba lawyers are considered by the Complaints Resolution Department. Those complaints range from quality-of-service concerns (my lawyer won't return my telephone calls, there are lengthy unexplained delays, etc.) to the most serious of matters (such as missing client monies or sexual harassment). Complaints are received most often from clients, but are also submitted by former clients, opposing clients, other lawyers, the courts and service providers. Referrals are occasionally made from other Law Society departments and lawyers are required to self-report certain issues, such as criminal charges and bankruptcies. On occasion, matters come to the Law Society's attention through a media report or anonymous tip which can prompt our engagement or an investigation.

Public Inquiries, Early Interventions and Informal Resolutions

The Law Society encourages those with concerns to telephone the Society prior to making a written complaint to see if the concerns can be addressed at an early stage. A telephone call may also direct the individual to another resource if the concerns do not fall within the Society's jurisdiction. Where we can resolve a complainant's concerns at this stage, we do not open a formal complaint file.

Complaints department staff members have been making a concerted effort to spend more time with callers to understand the individual's concerns and to explain what can and cannot be achieved through the complaints process. By so doing, the staff members are better able to provide the caller with tools to resolve their concerns directly with their lawyer and without intervention from the Society. Staff members fielded 1,131 public inquiries in the 2021-2022 fiscal year. While it is difficult to track the success of these efforts, as is noted below, the number of written complaints has been in decline over the last many years.

Some of the public inquiries result in the staff member reaching out to the lawyer to discuss the concerns and to try to resolve the concerns without the receipt of a formal written complaint. We track these matters as early interventions. Over the three fiscal years ending in March 2020, there were, on average, 129 early interventions made annually. For the 2020-2021 year, the number of early interventions dropped to 52, but in the 2021-2022 year, they jumped back up to 110 resolutions.

The Law Society also can resolve a complaint on an informal basis after a written complaint is received. In the three years ending on March 31, 2020, there were an average of 18 informal resolutions annually. In the 2020-2021 and 2021-2022 fiscal years, there were 10 and 35 informal resolutions respectively.

The number of written complaints received has been declining, with the average number of written complaints received over the three years ending in March 2020 as 325, 294 written complaints received in 2020-2021 and 278 such complaints received in the 2021-2022 fiscal year.

No Investigation

There are instances in which the complaint, on its face, does not merit investigation or is outside of the Society's jurisdiction. In those cases, the staff lawyer must decline to investigate with a letter explaining the basis for the decision. While an average of 127 complaints were dismissed on that basis in the three prior years, in the fiscal year ending March 31, 2021, 81 complaints were so dismissed and in the 2021-2022 year, 98 were dismissed with no investigation.

Investigations

In the majority of cases, the complaint is investigated at the conclusion of which the staff lawyers have many options for disposition. For example, they can conclude that the lawyer provided a satisfactory response or they can find that there has been a breach of the *Code* but that a reminder letter or a recommendation to the lawyer is an appropriate disposition. In the most serious of matters and at the conclusion of the investigation, staff lawyers refer the concerns to the Complaints Investigation Committee, often with the recommendation that the lawyer be charged with professional misconduct, conduct unbecoming a lawyer or incompetence.

The average dispositions of investigated complaints over the three years ending in 2020 and in the years ending 2021 and 2022 were:

Decision	Avg. 2018-2020	2020-2021	2021-2022
No further action/satisfactory response	59	69	41
Lawyer reminded of professional obligations or a course of action was recommended to the lawyer	88	49	66
Concerns referred to Complaints Investigation Committee	47	37	31

Complaints Review Commissioner

As noted above, where the Complaints Resolution Department declines to investigate or disposes of a complaint without a referral to the Complaints Investigation Committee, the complainant is advised of the right to request that the staff lawyer’s decision be reviewed by the Complaints Review Commissioner. The number of requests and the Complaints Review Commissioner’s findings have remained relatively consistent throughout the reporting period, with an increase in referrals to CIC in 2021-2022.

Fiscal Year	Request for Review	Decision Confirmed	Directed to Investigate	Referred to CIC
2018	48	43	1	4

2019	42	37	2	3
2020	43	40	1	2
2021	40	36	2	2
2022	31	23	1	7

In all seven matters referred by the Complaints Review Commissioner to the Complaints Investigation Committee in the most recent fiscal year, the committee determined that the staff disposition had been appropriate and the committee decided therefore to take no further action.

Discipline Hearings

In 2021-2022, 14 hearings were held regarding the conduct of 14 lawyers. One hearing arose from an application for a pardon. The parties made a joint submission and the panel granted the pardon.

In a second matter, the lawyer was acquitted of the charges following a contested hearing.

The remaining 12 matters proceeded by way of a guilty plea and the evidence was submitted by way of a statement of agreed facts. In ten of those matters, the parties made a joint submission on penalty each of which was accepted by the discipline hearing panel.

In two matters, there was a contest as to the appropriate penalty. In one case, the panel imposed a reprimand, although the Society had requested a short period of suspension. In the other matter, the panel accepted the Society's submission that a two-year suspension was appropriate.

In the 12 matters resulting in findings of professional misconduct, the nature of the charges included:

- Failing to act with integrity - misappropriation, misleading clients, misleading the Law Society and creating false documents;
- Conflict of interest by acting against a former client, acting where the lawyer's own interests were engaged;
- Failing to be candid with the court;
- Failing to maintain accurate trust accounting records;
- Failing to respond to inquiries from the Law Society;
- Discourtesy to the court;
- Failing to comply with undertakings and trust conditions;

- Quality of service – delay; failure to respond.

The following penalties were imposed:

- Two reprimands;
- Five fines;
- Three suspensions;
- Two permissions to resign.

In all but one case, the member was required to contribute to the Society's costs. One matter is under appeal.

Proceedings against two lawyers were stayed after they were diverted from the disciplinary process to alternative measures considered sufficient to protect the public in the particular circumstances.

Since May of 2021, two appeals of discipline matters were heard and decided by the Manitoba Court of Appeal. In both cases the decision of the panel was upheld. An additional appeal where the decision was pending in May 2021 has been decided. It also was dismissed. On the same matter, the Society responded to an application for leave to appeal to the Supreme Court of Canada which also was dismissed.

CUSTODIAL MATTERS

If a member (usually a sole practitioner) is no longer able or no longer authorized to practise law, the Society can apply to the Court of King's Bench for an order granting custody of the practice to named custodians. The custodians take control of the client files and trust funds, attend to urgent matters and transfer other files to new counsel at the direction of the clients. The Society also takes custody of the closed files, indexes and stores them for a period of time.

Since May of 2021, the Society sought and obtained five custodial orders. Three were conduct related, one was due to incapacity from illness and another was due to the death of the lawyer.

NATIONAL DISCIPLINE STANDARDS

All 14 Canadian law societies have approved of a set of 23 aspirational discipline standards directed at timeliness, public participation, transparency, accessibility and the qualification and training of volunteers. In accordance with standard #23, the Society's performance against the standards was reported to the benchers in May of this year.

As you may recall, in the 2021-2022 fiscal year, the Society met 18 standards with one standard not applying. An area in which we have performed below the national standard is in the service of citations and the commencement of hearings. As we have reported in the past, however, often there are principled reasons for the delay that are not systemic or performance related. Many of our investigations and charges relate to the same members. It is possible that one member will be the subject of five separate complaints that are submitted over the course of a year. If CIC charges on the first complaint, the file is referred to discipline counsel. However, if we are aware that there are other investigations ongoing that are likely to result in charges, discipline counsel often will wait until those matters are considered by CIC before issuing the citation. A delay in the issuance of that citation will also result in a delay for the start of the discipline hearing – the national discipline standard measures the time from the date the charges are authorized by the Complaints Investigation Committee.

Similarly, there are matters where the citation has issued and the matter is on the set down list for a number of months while other investigations are completed or at the request of the member. We have come to scrutinize those requests more closely in light of the *Law Society of Saskatchewan v. Abrametz* case, where the delay in the investigation and prosecution of a Saskatchewan lawyer placed the disposition of the matter in jeopardy.

In May of this year, the benchers were advised of a new prehearing procedure intended to move matters to hearing more expeditiously. Pursuant to the new procedure, a discipline matter may be adjourned no more than two times following the first appearance on the monthly docket. If the parties are unable to set a hearing date by the third appearance, counsel will be directed to appear before the chair of the Discipline Committee no later than the next following monthly docket date. Although, we are in the early stages of the implementation of the new procedure, anecdotal reports indicate that it has been quite effective to move matters forward.

DISCIPLINE HEARING PANELS

As you are likely to recall, we reported to you in May 2021 that in the course of a lengthy discipline hearing, the chair of a three-person hearing panel was appointed to the Court of King's Bench. The appointment occurred after the decision had been rendered on the merits and before the hearing had been reconvened for the panel to receive submissions on the appropriate sanction or penalty.

Unlike many other Canadian jurisdictions, our rules did not specifically address the consequence of the loss of a hearing panel member during the course of a hearing. Rather, the rules provided (with certain exceptions relating to the powers of the chairperson) that the duties of the committee must be exercised by a panel of three members of the committee. That said, despite the member's argument that the hearing should be heard anew with a newly appointed panel of three panel

members, the remaining two panel members accepted the Society's argument that provisions in *The Interpretation Act* enabled them to carry on with the remaining two panel members. In a very recent decision, the Manitoba Court of Appeal upheld the decision of the discipline hearing panel and dismissed the lawyer's appeal. See [Jhanji v. Law Society of Manitoba 2022 MBCA 78](#).

While the lawyer's appeal to the Court of Appeal was pending, the benchers resolved to amend the Law Society Rules to explicitly state that the remaining two panel members retain jurisdiction in such circumstances. In a more recent matter, the new rule was invoked by a hearing panel to deal with a post-decision motion as the chair of the panel had resigned from the Discipline Committee in the intervening period.

DISCIPLINE COMMITTEE TRAINING

As directed by the benchers, the Law Society purchased an on-line adjudicator training program from the Law Society of Alberta to assist with the training of all Law Society adjudicating committees. It has recently been modified for our use and will be rolled out to the Discipline Committee members in the next several weeks.

There will also continue to be in-person orientation and training with the Independent Chair of the Discipline Committee which will include a component on decision writing, in accordance with the National Discipline Standards.

QUALITY OF SERVICE AND PRACTICE MANAGEMENT CONCERNS

Some years ago, the name of the department was changed from Discipline Department to Complaints Resolution Department to more accurately reflect the work that is carried on by the staff lawyers on a daily basis. That is, if remediation is successful, it is preferable for the Society to take remedial steps to protect the public interest where quality of service issues arise than to pursue disciplinary action. An ongoing challenge for the Complaints Resolution Department is finding a balance between addressing complaints in a remedial fashion, without allowing for the individual's practice to get out of hand. The staff lawyers employ an informal guideline to escalate the response to such concerns, which steps include reminders, recommendations to meet with the practice management advisor, undertakings to do certain things and finally, to charges of professional misconduct. When dealing with the member, the staff lawyers spend much time and energy attempting to determine the source of the problem and making recommendations to the member to address the underlying issue. Once a member has been disciplined for misconduct relating to client service, the Discipline Committee can, and does on occasion, require the member to take remedial steps to assist them to comply with their professional obligations. When all else fails, the member may ultimately lose their right to practise.

In the past 12 months, (October 2021 – October 2022), the department closed 263 complaints in the following manner:

- 35 were informally resolved or the complaint was withdrawn
- 124 were closed without investigation on the basis that they were without merit
- 37 were closed without further action after an investigation
- 50 matters resulted in the issuance of a reminder letter to the lawyer following investigation.

Of the 50 reminders that were issued, 20 related to poor quality of service. A scan of the lawyers who were the subject of those 20 reminders shows that:

- 12 lawyers were sole practitioners
- Five were in firms with two to three lawyers
- Three were lawyers in medium sized firms
- 16 of those lawyers practised within the City of Winnipeg
- Six lawyers had been practising for less than 10 years
- Five lawyers had been practising for between 10 and 20 years
- Nine lawyers had been practising for more than 20 years.

Of the matters that were referred to the Complaints Investigation Committee in the same time period, six raised quality of service concerns (relating to four lawyers). The lawyers who were referred have the following descriptions and histories:

- Lawyer 1 practises in a small firm in Winnipeg and has been practising for more than 30 years;
- Lawyer 2 practises in a small firm outside of Winnipeg and has been practising for more than 20 years;
- Lawyer 3 practises in a small firm outside of Winnipeg and has been practising for more than 40 years;
- Lawyer 4 had been practising in a medium firm in Winnipeg for over 25 years.

Between them, the four lawyers have been the subject of 138 separate complaints.

Of the 2,273 practising lawyers in Manitoba, 17 have had at least 45 complaints registered against them. Of those 17 lawyers, 11 have a discipline record. While a majority (11) practise primarily in family law, others included in this group have general litigation and immigration practices.

Of the same group of 17 lawyers, 12 work in a small firm or solo practice, four practise in a medium size firm and one practises in a large firm. All 17 lawyers practise in the City of Winnipeg.

WHAT DOES THIS TELL US?

We always want to be cautious with statistics, in the absence of controlled studies. It is also important to view the above-noted statistics in light of the statistic that approximately 50% of complaints raise quality of service concerns. A small number of those eventually escalate to the requirement for disciplinary action. The time spent by our staff to address quality of service concerns on a remedial basis is considerable, but worthwhile if it is effective for the protection of the public interest. Where a lawyer is unable or unwilling to adhere to their professional obligations, discipline proceedings are necessary.