



# AGENDA

## Benchers

Date: Thursday, June 22, 2023

Time: 12:30 p.m.

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

| ITEM  | TOPIC   | TIME<br>(min) | SPEAKER | MATERIALS | ACTION |
|---|---|---------------|---------|-----------|--------|
| <b>1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT</b> |   |               |         |           |        |
|   | The President will welcome Jill Perry, K.C., President of the Federation of Law Societies of Canada, Jonathan Herman, Chief Executive Officer of the Federation of Law Societies of Canada, new benchers Sarah Innes, KC and Christopher Lange as well as benchers, guests and staff to the meeting.  |               |         |           |        |
| <b>2.0 IN MEMORIAM</b>                                    |   |               |         |           |        |
|   | <p><b>Brendan Terrill Surendra Mahatoo</b>, who passed away on May 29, 2023 at the age of 30. Mr. Mahatoo received his call to the bar on June 14, 2018, following which he practised with several firms in the City of Winnipeg, mainly with Levene Tadman Golub Law Corporation.</p> <p><b>Mathew Patrick Good</b>, who passed away on April 27, 2023 at the age of 37. Mr. Good received his call to the bar on November 19, 2013 and practised primarily in British Columbia.</p> |               |         |           |        |

| ITEM  | TOPIC   | TIME (min) | SPEAKER          | MATERIALS | ACTION               |
|---|---|------------|------------------|-----------|----------------------|
| <b>3.0 CONSENT AGENDA</b>   |   |            |                  |           |                      |
| The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting. |   |            |                  |           |                      |
| 3.1   | Minutes of May 18, 2023 Meeting   | 5          |                  | Attached  | Approval             |
| <b>4.0 PRESENTATION TO STUDENT PRIZE WINNERS</b>  |   |            |                  |           |                      |
| 4.1   | Presentation to Students with the Four Highest Standings in Third Year Law            | 5          | Wayne Onchulenko |           |                      |
| <b>5.0 EXECUTIVE REPORTS</b>  |   |            |                  |           |                      |
| 5.1   | President's Report  | 10         | Wayne Onchulenko |           | Briefing             |
| 5.2   | CEO Report  | 15         | Leah Kosokowsky  | Attached  | Briefing             |
| <b>6.0 DISCUSSION/DECISION</b>  |   |            |                  |           |                      |
| 6.1   | Bencher Code of Conduct: Representation Before Law Society Panels                     | 10         | Leah Kosokowsky  | Attached  | Discussion/ Decision |
| 6.2   | Rule Amendments: Mandatory Indigenous Intercultural Awareness and Competency Training | 10         | Rennie Stonyk    | Attached  | Discussion/ Decision |

| ITEM                              | TOPIC   | TIME (min) | SPEAKER                               | MATERIALS | ACTION                  |
|-----------------------------------|---|------------|---------------------------------------|-----------|-------------------------|
| <b>7.0 COMMITTEE REPORTS</b>      |   |            |                                       |           |                         |
| 7.1                               | Indigenous Advisory Committee - Exemptions to Mandatory Requirement to Take The Path                      | 10         | Alissa Schacter                       |           | Discussion/Decision     |
| <b>8.0 MISCELLANEOUS BUSINESS</b> |   |            |                                       |           |                         |
| 8.1                               | Western Entry to Practice Competency Profile Update   | 10         | Rennie Stonyk                         | Attached  | Briefing                |
| 8.2                               | Draft NCA Competency Profile – Request for Feedback   | 10         | Rennie Stonyk                         | Attached  | Discussion/ Decision    |
| 8.3                               | Insurance Levy 2023-2024  | 10         | Leah Kosokowsky/<br>Tana Christianson | Attached  | Briefing                |
| 8.4                               | CLIA Audit of Claims Files  | 10         | Leah Kosokowsky/<br>Tana Christianson | Attached  | Briefing                |
| 8.5                               | <i>Fair Registration Practices in Regulated Professions Act - Amendments and 2023 Registration Review</i> | 10         | Rennie Stonyk/<br>Richard Porcher     | Attached  | Discussion/<br>Decision |
| 8.6                               | FLSC Council Report   | 10         | Lynda Troup                           | Attached  | Briefing                |
| <b>9.0 GUEST PRESENTATIONS</b>    |   |            |                                       |           |                         |
| 9.1                               | Remarks from the President and CEO of the Federation  | 15         | Jill Perry, KC/<br>Jonathan Herman    |           | Briefing                |
| <b>10.0 FOR INFORMATION</b>       |   |            |                                       |           |                         |
| 10.1                              | Blue Cross Employee Assistance Annual Report  | 10         | Leah Kosokowsky                       | Attached  | Briefing                |

|      |                                   |  |  |          |             |
|------|-----------------------------------|--|--|----------|-------------|
| 10.2 | Legal Help Centre - Spring Update |  |  | Attached | Information |
| 10.3 | Media Reports                     |  |  | Attached | Information |



## MEMORANDUM

**To:** **Benchers**  
**From:** **Leah Kosokowsky**  
**Date:** **June 5, 2023**  
**Re:** **CEO Report**

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1. I am pleased to report that the Prime Minister's Office has appointed Madam Justice Marianne Rivoalen to serve as the first female Chief Justice of Manitoba. Chief Justice Rivoalen received her call to the Bar in 1988, following which she practised with Pitblado & Hoskin, Aikins, MacAulay & Thorvaldson and the Department of Justice (Canada). She was appointed to the Manitoba Court of Queen's Bench in 2005 and the Federal Court of Appeal in 2018.
2. We last conducted a bencher self-evaluation in 2021 at which time, the benchers directed that we do so every two years so that the newer benchers have at least one year of experience before completing it. You can expect to receive a survey in July which we would ask that you complete and we will provide you with the results at the September bencher meeting.

In the responses to the 2021 evaluation, the benchers also indicated that existing benchers ought to be invited to join the new bencher training for a refresher. We will be providing a new bencher orientation session for Sarah Inness and Chris Lange over the summer months. If anyone is interested in a refresher, please send me a note and we will include you in the planning.

3. On Tuesday, May 30<sup>th</sup>, the Law Society co-hosted a Pride Reception with the Sexual Orientation and Gender Identity subsection of the Manitoba Bar Association. A number of our staff attended, along with bencher Ken Mandzuik and vice-president Gerri Wiebe, who delivered her first remarks on behalf of the Society. Those who were in attendance appeared to enjoy the event.

4. Due to very low registration numbers, the scheduled activities for the Northern Bar were cancelled and the CPD program was converted to a webinar. As a result, Wayne, Betta and my planned road trip was cancelled. In addition to the usual challenges experienced by our Northern Bar practitioners, the low registration can be attributed to more than one issue. The Provincial Court was sitting in both The Pas and Flin Flon on the date of the program, along with a special sitting in Lac Brochet. Justice Manitoba – Public Prosecutions, will permit their lawyers to attend, but they must take vacation time and bear the cost on their own. Legal Aid Manitoba was moving offices the same week, taking up staff time out of the office.

We have spoken with the Chief Judge of the Provincial Court who is very willing to work with us to designate a day for the Northern Bar whereupon most courts will not sit or with limited hearings. However, the court sittings are set a year in advance, so we will have to work with the Northern Bar to reserve a date in the next short while. We also intend to approach Public Prosecutions and Legal Aid to develop a plan to increase attendance and some cohesion among the northern bar. There are also plans in the works to form a committee with individuals from all three major centres in the north to plan next year's event.

Meanwhile, given that the Law Society was hosting the originally planned Friday night dinner at the Thompson Golf Club, we provided the funding to the organizer to host a less formal dinner, so as to bring together as many interested people as possible. We received the following note following the event.

*The Friday night dinner was a **huge** success. We had about 30 people in attendance including judges, lawyers, and articling students. Almost all out of Thompson but a couple out of The Pas.*

*They applauded our planning efforts (literally) and there was a renewed excitement for future events. I received several compliments on the quality of the CPD, and people were excited to see what is possible with some effort.*

*I think the dinner was just the jolt people needed. One Crown attorney asked how she could volunteer because 'she liked planning events'. So there is a real excitement that is building. A committee would be useful in channelling that energy. Judge Rambow and Simon Jack seemed interested in seeing that through.*

*\$1200 is received. It is much appreciated and the event could not have taken place without it.*

5. By the time of the bencher meeting, Wayne, Rennie and I will have attended this year's Call to the Bar Ceremony at the RBC Convention Centre, and we will have presented 79 candidates to the Court of King's Bench. I will always remember my call to the bar. It was a stand out day in my life which represented the culmination of many years of education and hard work. I didn't give any thought, however, to how the event came to pass. I, and my classmates, simply took it for granted that it would be a great ceremony.

An enormous amount of effort is devoted to the production of this event, primarily by Joan Holmstrom and Lisa Ehnes, but also with the support of many other staff members, including Debbie Rossol, Elaine Kinchen and Charlene Barber plus many others who are providing support at the ceremony. I would like to acknowledge them for making this very special and joyous event run smoothly.

6. Several hours after the Call, Grant, Sacha, Wayne, Gerri and I attended a reception to honour the end of the seven-year term of Chief Judge Margaret Wiebe as the Chief Judge of the Provincial Court. When Chief Judge Rolston takes the reins in July, Judge Wiebe will continue to sit as a member of the Provincial Court.
7. Gerri, Lynda and I attended the Law Society of Alberta bencher retreat in Jasper the theme of which was Back to the Future - What Does the Next Decade Hold? The discussion focused on artificial intelligence, innovators, multi-occupation regulators as well as general trends in regulation. We were challenged to think about our core regulatory values and work as well as what it means to be an independent legal profession. I anticipate that we will bring many of the same ideas to the bencher meeting in September in Clear Lake.

We also received an update regarding the British Columbia government's move toward a single legal regulator in BC. Matters are moving at a rapid pace and I will provide you with a fulsome update at the bencher meeting.



## MEMORANDUM

**To:** Benchers  
**From:** Leah Kosokowsky  
**Date:** June 6, 2023  
**Re:** **Bencher Code of Conduct - Representation Before Law Society Panels**

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### INTRODUCTION

At the May 2023 bencher meeting, the nominating committee raised for your consideration an issue regarding life benchers who resign from the discipline committee so as to act for a member who is in the discipline stream and then seek to be re-appointed to the discipline committee at the conclusion of the discipline matter. After some discussion, you directed that we return to you with further analysis of the issue and options for your consideration.

### DISCIPLINE COMMITTEE APPOINTMENTS

You will find that the following groups of individuals are appointed to sit on the discipline committee:

- (i) Elected, appointed lawyer benchers and appointed lay benchers who have not been appointed to the complaints investigation committee;
- (ii) Life benchers unless they have declined the appointment;
- (iii) Public representatives;
- (iv) Volunteer lawyers.

### BENCHERS' AND COMMITTEE MEMBERS' CODE OF CONDUCT

The relevant provision in the Benchers' Code of Conduct provides that:

- 2. Appearing as counsel:
  - a. Benchers must not appear on behalf of a member or the Law Society in a hearing before a committee or a panel thereof;



- b. A Bencher must not appear before the Courts on behalf of a member of the Society in a discipline, complaints investigation, reimbursement or admissions matter;
- c. Members of a Bencher's firm may represent members of the Society before the Courts but if it is a discipline, complaints investigation, reimbursement or admissions matter, the Bencher concerned must not:
  - (i) be in any way involved in that representation; or
  - (ii) participate in any decision or decisions in respect of the matter or the representation.

Notably, the reference to Benchers in the Bencher Code of Conduct refers to both Benchers and non-Bencher committee members.

### *CODE OF PROFESSIONAL CONDUCT*

All lawyers must comply with the provisions of the *Code of Professional Conduct*, the relevant provision of which is Rule 5.1-2 which states:

5.1-2 When acting as an advocate, a lawyer must not:

- (c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice.

The *Code of Professional Conduct* also addresses the return to practice of retired judges in Rule 7.7, as follows:

A judge who returns to practice after retiring, resigning or being removed from the bench must not, for a period of three years, unless the governing body approves on the on the basis of exceptional circumstances, appear as a lawyer before the court of which the former judge was a member or before any courts of inferior jurisdiction to that court or before any administrative board or tribunal over which that court exercised appellate or judicial review jurisdiction in any province in which the judge exercised judicial functions.

### *CANVASS*

We have canvassed other law societies who, for the most part, do not automatically appoint life benchers to their discipline committees and who do not have a policy or rule. However, the Law Society of Alberta rules are expansive and stipulate that:

- Benchers and adjudicators may not represent anyone in proceedings before the Law Society;
- Committee members may not represent anyone in proceedings before the Law Society while a committee member and for three years from the date they cease to be a committee member;
- Past benchers and past adjudicators may not represent anyone in proceedings before the Law Society for three years from the date on which they ceased to act in that role, three years from the date on which the person last participated as a member of a hearing committee; and for three years from when they sat as the Law Society's representative on another organization.

## DISCUSSION

The issue under consideration relates primarily to life benchers who, for the most part, are automatically appointed and re-appointed to the discipline committee. However, if you were to decide to institute a cooling off period provision in the Benchers Code of Conduct, it would apply to all lawyer discipline committee members as well as appeal committee members that hear appeals of admissions and trust safety decisions.

As a starting point, our focus is to always meet the standard of procedural fairness that applies to adjudicative committees. Accordingly, when setting rules that affect the procedures before those committees, their effect and necessity should be seen through that lens.

When a lawyer sits as a member of an administrative tribunal, they will have actual knowledge of the workings of the tribunal, its processes and procedures. They are likely to have had discussions with fellow committee members regarding the tribunal's general approach to their work. The lawyer also is likely to have developed relationships with fellow tribunal members. Accordingly, if a tribunal member resigns from the tribunal to represent an individual appearing before it, there may be a perception that they have some inside knowledge or influence with the panel. That is the rationale for the Code provision that imposes a three-year cooling off period for former judges who return to practice.

With that said, it is important to consider the actual workings of our discipline committee.

The Law Society discipline committee usually meets once annually for discipline committee training. Accordingly, unless the committee member is appointed to act as the Conflicts Chair or Vice-Chair, who may attend monthly set down dockets, set panels and hear pre-hearing motions, they are unlikely to have inside knowledge of the workings of the committee that they could use to an improper advantage.

The discipline committee also is quite large – this year's discipline committee has 62 members comprised of nine lawyer benchers, 22 life benchers and 20 volunteer lawyers. Although not

affected by your decision on this issue, the committee also has four lay benchers and seven public representatives. With a committee this large, although the Independent Chair of Discipline tries to utilize most committee members, it is possible that a committee member may not be appointed to a committee in a given year.

Experience has shown that some life benchers have declined appointments to the discipline committee because they regularly represent lawyers in discipline matters. Other lawyers have given up acting for lawyers facing discipline so that they can sit on Law Society committees.

In the final analysis, you will want to consider whether a bencher, life bencher or non-bencher committee member can immediately act for a member (or the Law Society) before the discipline or appeal committee after their tenure concludes or whether there ought to be a cooling off period before they can so act. This will be determined by your view of the appearance of influence or bias as a result of them sitting as a member of the committee.

Having a recently resigned committee member appear before an adjudicative committee on behalf of a member has never been a cause for concern for the Law Society. Furthermore, if there is prejudice caused by counsel knowing how the committee works, that is not likely to be a concern to the member being represented. If there is an advantage to be gained, it is gained by the member, not the Society and therefore, there does not appear to be a procedural fairness problem. The only exception may be if something specific to the case was dealt with by the Committee as a whole (which should never happen) in which case any objection to counsel can be made to the hearing panel, as occasionally happens when a member objects to Society counsel and seeks disqualification.

I would suggest that our concern is more about the committee member's commitment to the committee if they intend to, or think they can, jump off and on the committee to accommodate a member/client. Although discipline is a large committee, its membership is fixed annually and one of the reasons there is such a large committee is to be able to set a hearing panel after eliminating those with conflicts and who are not available. One of the ways we strive to comply with National Discipline Standards is by first fixing a date available to counsel and the Society's facilities and then canvassing the members. If there is no stability in the committee membership, this could be a problem if the resigning member is one of a limited number who would otherwise be qualified to sit on some other matter.

One potential, but extremely unlikely scenario is that a member resigns from the committee to represent a lawyer while on a hearing panel. Although it is a remote possibility, and likely unethical conduct, it may be a factor for you to consider if you are considering imposing a waiting period.

## OPTIONS

1. Impose a cooling off period for benchers, life benchers and all volunteer committee members before they can act on a discipline or appeal matter (the Alberta approach)

Pros: There is a clear demarcation from the individual's role in Law Society work and appearing as counsel on an adjudicative matter.

Cons: This is a far-reaching policy which would apply to committee work that is remote from discipline hearing work. Further, some standing committees (such as Practice and Ethics) meet rarely, if ever, in a given year.

Imposing such an expansive policy may deter lawyers from volunteering for Law Society work and goes beyond addressing the underlying concern.

2. Impose a cooling off period for benchers, discipline committee and appeal committee members (both life benchers and volunteer committee members) before they can appear before an adjudicative committee.

Pros: Given that benchers are extensively involved in the policy development at the Law Society, it may be appropriate for there to be a cooling off period before they appear as counsel. Establishing a gap period for Law Society adjudicators as opposed to all committee members ties the concerns of the appearance of influence and insider knowledge to actual workings of the adjudicative committee.

Cons: Imposing a cooling off period would be impractical in the moment when an individual is seeking the services of that particular counsel. However, this may be addressed by informing a lawyer of the policy if they are considering volunteering. If the volunteer disagrees with the rule, they can decline to volunteer or accept the appointment.

3. Impose a cooling off period for benchers and to discipline/appeal committee members who have sat on a panel within the previous twelve months (or other applicable period)
4. Impose no cooling off period, but put the resigning member to an election – if they withdraw to represent an individual, they will not be re-appointed to the discipline/appeal committee.

Pro: This would discourage members from jumping on and off a committee without having to consider a cooling off period, which may be seen as solving a problem that doesn't exist.

5. Impose some combination of the first four options.

We will return to you with a draft policy or rule to reflect the decision you reach.



## MEMORANDUM

**To:** Benchers

**From:** Rennie Stonyk

**Date:** June 13, 2023

**Re:** Rule Amendments  
- Mandatory Indigenous Intercultural Awareness and Competency Training

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### INTRODUCTION

At the March 2022 benchers meeting, you approved of the Society instituting mandatory one-time Indigenous intercultural awareness and competency training for members in the form of *The Path*. Attached you will find proposed rule amendments that provide the Society with the authority to mandate such training. For ease of reference, the proposed additional language is highlighted in yellow in the attachment.

### PROPOSED NEW RULES

Part 2, Division 8.1 of the rules sets out the requirements for members' professional development. Rule 2-81.1(2) provides that benchers may require lawyers to take such courses and training as the benchers deem appropriate for the purposes of education, professional responsibility, and competence. While we are of the view this rule alone likely provides sufficient authority for the Society to mandate *The Path*, we have added new rules 2-81.1(4) and 2-81.1(5) which specifically reference the requirements for Indigenous intercultural awareness and competency training. In subsequent rules we have addressed the consequences of failing to comply with the requirement to complete this training: a member faces potential administrative suspension and ultimately, a failure to comply with the new rules may amount to professional misconduct.

We recommend these amendments for the following reasons:

- The new language provides for the timeline within which members must complete the training as well the consequences they face if they fail to comply with the requirements. This provides clarity to members regarding their obligations.

- In 2011, the Society added comparable rules to Division 8.1 when lawyers were required to take training on the then-new *Code of Professional Conduct*. These rules are no longer applicable and have since been repealed, but when they were in effect, they also provided clarity on the specific training required and the timelines within which the training had to be completed, notwithstanding the general authority granted under rule 2-81.1(2). By implementing similar rules for *The Path*, we are taking a consistent approach.
- As you are aware, the Law Society of Alberta recently implemented mandatory Indigenous intercultural awareness and competency training for its members, however this was not without challenge. A petition was signed by 50 lawyers and presented to the Law Society of Alberta, in which the petitioners sought a resolution to repeal the rule upon which the Law Society of Alberta was relying to require their members to complete specific continuing development programming, including *The Path*. Ultimately, the majority of the members of the Law Society of Alberta voted against the resolution and the rule was upheld. While we do not expect to encounter the same level of challenge in Manitoba, starting out with robust rules which particularize the training requirements, the expected timelines, and the consequences of failing to comply may serve to reduce any potential arguments a challenger might make – for example, that the Society does not have the requisite authority to mandate this particular type of training.

If you approve of these draft amendments, we will have them translated into French and return to you for approval of the finalized translated amendments in the fall.

ATC.

## Division 8.1 – Professional Development

(ENACTED 05/11)

### Definitions

**2-81.1(1)** In this division,

**“continuing professional development”** means learning activities that protect the public interest by enhancing the competence, integrity and professional responsibility of lawyers;

**“eligible activities”** are learning activities determined by the chief executive officer that comply with the guiding principles for mandatory continuing professional development approved by the benchers;

**“IIAC training program”** means the society’s continuing professional development program on Indigenous intercultural awareness and competency.

(ENACTED 05/11)

### Professional Development

**2-81.1(2)** In order to enhance standards for the education, professional responsibility and competence of lawyers, the benchers may, from time to time, require lawyers to:

- (a) report annually on the extent of their continuing professional development activities,
- (b) complete a minimum number of hours of continuing professional development,
- (c) complete mandatory training and educational requirements relating to the practice of law or a particular area of law,
- (d) complete such other programs, training or reporting as the benchers determine may be appropriate for this purpose.

(ENACTED 02/11) (AM 05/11)

### Requirement to report continuing professional development activities

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

### Mandatory Indigenous Intercultural Awareness and Competency training

**2-81.1(4)** All practising lawyers must successfully complete the IIAC training program before April 1, 2025.

### **Mandatory Indigenous Intercultural Awareness and Competency training for other members**

**2-81.1(5)** When a new, non-practising, inactive or suspended member who has not completed the IIAC training program begins or resumes active practice, they must successfully complete the IIAC training program by December 31 of the following calendar year from when they first begin or first resume active practice.

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

**2-81.1(6)** The chief executive officer may extend the time for completion of the requirements set out in subsections (3), (4) and (5). (ENACTED 02/11) (AM. 05/11; 10/21)

#### **Failure to comply**

**2-81.1(7)** Failure to complete the requirements set out in subsections (3), (4), (5) and (11), without reasonable excuse, may constitute professional misconduct. (ENACTED 02/11) (AM 05/11; 10/21)

#### **Mandatory continuing professional development**

**2-81.1(8)** Subject to subsection (10), a practising lawyer must complete one hour of eligible activities for each month or part of a month in a calendar year during which the lawyer maintained active practising status. Where the lawyer maintained active practising status for three or more months in the calendar year, one and a half hours of the total eligible hours must relate to ethics, professional responsibility or practice management. (ENACTED 05/11) (AM. 10/21)

#### **Carry over permitted only in exceptional circumstances**

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

#### **Exemption in year of call**

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

#### **Auditing compliance**

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

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



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

(ENACTED 05/11)

### **Failure to complete continuing professional development activities**

#### **2-81.1(12)**

- (a) Where a practising lawyer fails to comply with subsection (4), (5) or (8), the chief executive officer may send a letter to the lawyer advising that he or she must comply with the requirements within 60 days from the date the letter is sent. A member who fails to comply within 60 days is automatically suspended from practising law until such time as the requirements have been met and a reinstatement fee paid.
- (b) Where a member is suspended under subsection (a) for a period of 30 days or less, the member must be reinstated on the date of payment, provided the requirements under rules 2.81.1(4), 2.81.1(5) or 2.81.1(8), as the case may be, have been met.
- (c) Where a member is suspended under subsection (a) for a period exceeding 30 days, then in addition to meeting the requirements under rules 2.81.1(4), 2.81.1(5) or 2.81.1(8) and paying the reinstatement fee, the member must apply to resume active practice under rule 5-28.2.

(ENACTED 05/11) (AM. 09/13; 10/21)

### **Referral to complaints investigation committee**

**2-81.1(13)** Where a member is suspended more than once for failing to comply with subsection (8), the chief executive officer may also refer the matter to the complaints investigation committee for its consideration. (ENACTED 05/11)



## MEMORANDUM

**To:** Benchers  
**From:** Alissa Schacter  
**Date:** June 12, 2023  
**Re:** Indigenous Advisory Committee - Exemptions to Mandatory Requirement to Take The Path

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### BACKGROUND

When you approved the creation of the Indigenous Advisory Committee (IAC), you simultaneously referred to it the question of whether the Law Society should institute mandatory one-time Indigenous intercultural awareness and competency training for Manitoba lawyers, and if so, what the nature and content of this training should be. At the March 24, 2022 benchers meeting, the IAC made a series of recommendations to you, all of which you approved. Among those were the following:

Recommendation #1 - The Society's benchers institute one-time, mandatory Indigenous intercultural awareness and competency training for practising members effective April 1, 2023. (Note at a subsequent meeting you approved moving the start date to October 1, 2023 to allow more time for the development of the Manitoba components of the course.)

Recommendation #2 - The one-time mandatory training consist of the online course, *The Path*, which would be supplemented by the development of a Manitoba specific module.

Recommendation #3 - Indigenous lawyers should be able to apply for an exemption from taking either segments of the course or the entire course. Requests for exemptions should be considered on a case-by-case basis and criteria will be developed for assessing these requests.

### I. PARTIAL EXEMPTION FOR LAWYERS WHO HAVE ALREADY TAKEN *THE PATH*

At the same time that the IAC presented the above recommendations to you, it raised the issue for consideration of whether or not lawyers who have already taken the Canadian Bar Association (CBA)'s version of *The Path* need to take it again. The IAC's position was that lawyers who have already taken *The Path* should not be required to take it again, rather they should **only** be required to take the new Manitoba components, which will comprise approximately one hour of the six-hour course. Instead, these lawyers will be encouraged to take other Indigenous intercultural awareness

and competency training of equal duration within the same time period. While there was agreement on this point at the bench meeting, this issue was not the subject of a motion. It is appropriate at this time to formalize the position of the IAC on this issue.

## II. EXEMPTIONS FOR INDIGENOUS LAWYERS

Since the time the above recommendations were made to you, the IAC has had further discussions related to the issue in Recommendation #3, namely whether an exemption to the mandatory requirement to take *The Path* should be available to Indigenous lawyers. Following considerable discussion at the IAC meeting on March 24, 2023, the Committee changed its position on this issue, and is now recommending that there be no exemptions from the mandatory requirement to take *The Path* for Indigenous lawyers.

The rationale for the IAC's original position was that many Indigenous lawyers have lived experience with some of the content covered in *The Path* and might be offended or angered if they were required to take a course on these topics. There was also concern that it could be re-traumatizing for lawyers who live with inter-generational trauma. When the IAC discussed the issue again, they talked about the fact that there are lawyers with Indigenous heritage who have neither lived experience, nor background knowledge of the content covered in *The Path*. The Committee wants to avoid a pan-Indigenous approach and making assumptions about levels of understanding or knowledge among individuals with Indigenous heritage.

They also considered that exempting Indigenous lawyers from this mandatory educational requirement may create division between the Indigenous and non-Indigenous bar. Some Indigenous members of the IAC reported that they had learned new things about other Indigenous groups from the course, so viewed it as worthwhile, even for Indigenous lawyers. In addition, the IAC believes it is beneficial for Indigenous lawyers to know what their non-Indigenous colleagues are learning.

From a practical stand point, if there was a specific exemption for Indigenous lawyers, there would be challenges determining what the appropriate criteria should be and who would assess the requests. It could lead to a situation where we ask Indigenous lawyers to explain their trauma in order to obtain an exemption to avoid being re-traumatized.

For all of these reasons, the IAC does not think there should be a specific exemption from the mandatory requirement to take *The Path* for Indigenous lawyers.

To address the initial concerns identified, the IAC discussed including content warnings in the course to provide advance notice of potentially upsetting content. They also discussed some options for providing additional support for Indigenous lawyers, for example holding a facilitated sharing circle so Indigenous lawyers could come together if they so choose and discuss their experiences taking the course.

### **III. RECOMMENDATIONS**

1. The IAC recommends that members who have already taken the CBA version of *The Path* only be required to take the new Manitoba components of the course.
2. The IAC recommends that there not be a specific exemption from the mandatory requirement to take *The Path* for Indigenous lawyers. Indigenous lawyers, along with all other lawyers who have already taken the CBA version of *The Path* will only be required to take the new Manitoba components of the course.



## MEMORANDUM

**To:** Benchers  
**From:** Rennie Stonyk  
**Date:** June 13, 2023  
**Re:** Western Entry to Practice Competency Profile Update

---

### INTRODUCTION

At the March 2023 benchers meeting, you were provided with a status report on the entry-to-practice competency profile being jointly developed by the western law societies. Since that time, much progress has been made and below is a further report on the status of the project.

### MEETING OF THE TASK FORCE

The Task Force, which is made up of a diverse group of representatives from each participating province, met in person in Calgary at the beginning of June in order to develop a first draft of the competency profile. As previously mentioned, Kelli Potter, Lisa Stiver (TDS) and Mark Alward (Taylor McCaffrey) are Manitoba's representatives on the Task Force. The initial draft was provided to the Advisory Committee and our consultant, ACT, Inc., is in the midst of compiling our feedback for the Task Force's further consideration. Task Force participants will meet virtually in July to make further edits to the draft based on the feedback from the Advisory Committee.

According to reports from ACT, the Law Society of Alberta Advisory Committee members who were present at the Task Force meeting, and from a few participants on the Task Force, we understand that the initial meeting was a success and the first draft is an excellent starting point.

### FOCUS GROUPS

ACT will assist the Advisory Committee in creating a series of focus groups for the purpose of providing further feedback on the draft competency profile. Each focus group will be comprised of a specific category of participants – newly called lawyers, principals/supervisors, law school faculty members, representatives from the societies' Indigenous advisory committees (or their delegates) and members of the public. For the focus group consisting of members of the public, it is anticipated that this group will be comprised of individuals who represent "law adjacent" entities, such as

representatives from social service agencies or business-related organizations. We expect that the focus groups will meet virtually in July and August and each meeting will be facilitated by ACT.

## REVIEW BY BENCHER COMMITTEES

In addition to the focus group feedback, each participating law society will be seeking input from its own benchers/bencher committees on the draft profile. Therefore, it is anticipated that we will ask the Admissions and Education Committee to meet later this summer or very early in the fall for the purpose of reviewing the draft profile.



## MEMORANDUM

**To:** Benchers  
**From:** Rennie Stonyk  
**Date:** June 13, 2023  
**Re:** Draft NCA Competency Profile - Request for Feedback

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### INTRODUCTION

As part of a comprehensive review of the National Committee of Accreditation (“NCA”) program, the Federation established the NCA Assessment Modernization Committee (“NCA AMC”) to oversee the development of a competency-based profile for candidates applying to the NCA. This competency profile is different from the “entry to practice” competency profile being developed by the Society and the other western law societies, in that the NCA competency profile is intended to cover “level 1” competencies, i.e. competencies that must be demonstrated upon entry to bar admission courses and articling. Conversely, the western entry to practice competency profile is intended to cover “level 2” competencies, i.e. competencies that must be demonstrated upon entry to practice.

As explained in detail in the attached background document, the competency profile identifies the specific competencies required of an NCA candidate when they are awarded their Certificate of Qualification. The profile will be used to develop improved assessment methodologies and tools using a competency-based assessment approach.

The NCA AMC was chaired by our own Lynda Troup, who previously confirmed that a significant amount of work at multiple levels went into the draft profile. In particular, the draft reflects the work of a task force, preliminary feedback from the focus groups and considerable refinements made by the NCA AMC members who include law society leaders and senior staff involved in the bar admission process.

### NEXT STEPS

The draft profile is also being shared with the Federation’s Indigenous Advisory Council for feedback. Once feedback from the law societies and the Federation’s Indigenous Advisory Council has been considered, the profile will be validated through a large-scale survey of members of the profession, including recently called lawyers, academics, articling principals, etc.

We are advised that the NCA AMC plans to incorporate feedback from the law societies and the Indigenous Advisory Council within the next two months followed by the validation survey. The NCA AMC will work with consultants in the fall of 2023 to finalize the profile and prepare a final report. This phase of the project should be completed by the end of 2023.

## FEEDBACK FROM THE LAW SOCIETY OF MANITOBA

Law societies have been asked to provide feedback by the end of June 2023, if possible. Given the amount of work that has gone into developing the draft, the expectation is that the feedback from law societies ought to be high level and should only identify significant gaps or issues, rather than detailed wording edits.

Given that the work on which the western law societies are collaborating is closely related to the NCA competency profile, we have discussed the benefit and effectiveness of providing a collective response to the Federation. A review by the Advisory Committee also may serve the entry-to-practice profile project because the NCA profile could influence further iterations of the entry-to-practice profile draft.

With that in mind, would you prefer to:

1. Refer the matter to the Advisory Committee to consider the draft profile and deliver a collective response to the Federation; or
2. Refer the matter to the Admissions and Education Committee for their review?

If you opt for option #2, we will advise the Federation that Manitoba's response will be provided in the fall.

ATC.





## MEMORANDUM

**To:** Benchers  
**From:** Leah Kosokowsky  
**Date:** June 5, 2023  
**Re:** Insurance Levy 2023 - 2024

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At the time the 2023-2024 budget was presented at the February 9, 2023 bencher meeting, we indicated that the projected insurance levy was an estimate only because the detailed information needed to set the insurance levy becomes available in May each year.

In the budget, we projected an annual insurance levy of \$1,625 per member, plus an additional \$80 per member for cyber insurance. Included in the \$1,625, was a \$600 per member premium to CLIA, leaving the Society with \$1,025 per member for damage and defence costs under our group deductible, operational expenses and loss prevention programs.

In April 2023 we received the CLIA assessment for Manitoba as determined by CLIA's actuary. The assessment increased \$43 over last year, from \$550 to \$593 per member. We also were advised that the premium for cyber insurance increased from \$74 to \$89 per member.

On May 22, 2023, we received the Actuarial Report from our own actuary in which he has recommended a minimum levy of \$2,014. It includes the CLIA portion of \$593 and the cyber liability coverage of \$89. The Law Society's portion of the levy is \$1,332.

When setting the Society's levy, the actuaries take into account:

- The number and severity of claims;
- Interest earned on the Fund's investments;
- The premium assessed by CLIA
- The extent to which the Claims Fund is able to subsidize the levy with investment income earned on the Fund's surplus.

The overall increase to the levy is mainly attributable to the high number of claims paid in the last year as well as the higher dollar value of the claims paid in Manitoba. Many of the claims paid arose from the new King's Bench rules resulting in civil actions being dismissed for delay. In addition, the

Fund's investments performed poorly and therefore, could not subsidize the levy with investment income.

In summary, the total professional liability insurance contribution required of each member is \$2,014, or \$309 over that budgeted:

|                   | Budget     | Actual     |
|-------------------|------------|------------|
| CLIA assessment   | \$600.00   | \$593.00   |
| PLCF Contribution | \$1,025.00 | \$1,332.00 |
| Cyber coverage    | \$80.00    | \$89.00    |
| Total             | \$1,705.00 | \$2014.00  |

Pursuant to Executive Limitation #7, the insurance levy cannot be less than the amount recommended by the actuary. Based on this limitation and the confidence we place in the advice of our actuary, we have accepted his recommendation. The difference between that budgeted and the actual levy will be reflected in the statements that you will receive over this fiscal year.



## MEMORANDUM

**To:** **Benchers**  
**From:** **Leah Kosokowsky**  
**Date:** **June 6, 2023**  
**Re:** **CLIA – Audit of Claims Files**

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In the days leading up to the May 18, 2023 bencher meeting, representatives of CLIA conducted an audit of the Professional Liability Claims Fund of Manitoba. Attached you will find a copy of the audit report, with the names of insured members redacted.

It comes as no surprise that the audit results were excellent, with very positive findings regarding our exceptional staff and their management of the files.

ATC.

Date: May 31, 2023  
Location: Law Society of Manitoba  
In Attendance: Dave Jackson, CEO  
Re: Audit of CLIA Claim Files

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**Professional Liability Claims Fund of Manitoba**

The Professional Liability Claims Fund of Manitoba (Fund) was created under the legislation ([The Legal Profession Act](#)) that governs the Law Society of Manitoba in the early 1970's. The Fund is part of the Law Society of Manitoba and is not a separate corporation. The Law Society of Manitoba joined the Canadian Lawyers Insurance Association in July 1988.

The Fund is managed by the following personnel located Winnipeg, Manitoba:

- Director of Insurance – Tana Christianson
- Inhouse Claims Counsel – Kate Craton
- Inhouse Claims Counsel – Will Barnstead
- Inhouse Claims Counsel – Jim Cox
- Administrative Assistant - Heather Vanrobaeys
- Administrative Assistant - Kristin Forbister

The Law Society of Manitoba has a Fund Committee that makes policy recommendations to the benchers regarding errors and omissions insurance issues affecting Manitoba lawyers. The Fund Committee may also consider and provide to the Canadian Lawyers Insurance Association a Manitoba perspective on proposed policy amendments. The Fund Committee meets on an as required basis. It has not met in several years.

**CLAIM FILE REPORTING PROCEDURES**

When a lawyer identifies a potential claim, they are required to inform staff at the Fund. They are encouraged to reach out by phone or email first to Tana or one of the claims counsels. They are usually directed to complete a Professional Liability Claims form which they can complete on the members portal of the Law Society website and are required to return within two weeks time.

After reviewing the claims report, Tana will assign the file to one of the three claims counsel or herself. Files are assigned based on workload, the nature of the claim, area of law, or conflicts.

The file is then returned to Heather Vanrobaeys or Kristin Forbister who open the files in Claims Manager and the document management system and do draft 'usual' letters, which are form letters that inform insureds about our coverage and process. Claims counsel will amend the draft 'usual' letter to reflect that claim.

Where possible, “The Fund” will manage claims without outside legal counsel. Claims counsel will enter a reserve for damages and defence (if required). Claims counsels are responsible for updating and maintaining the information in Claims Manager on their files, communicating with insureds and opposing parties and instructing outside counsel if applicable.

Claims counsel assigned a file will use the Claims Manager reminder system to move the file forward. They also use the reminder system to remind them to confirm the reserve is sufficient. Wholesale review of reserves and claims manager entries for every file are done for Dec 31 each year and again in March for the Fund’s actuary.

The process of claims management tends to be consultative; the Fund staff are a small closely knit and collaborative group of people, and they communicate a lot to each other. Issues are resolved in the day-to-day discussions. The Fund staff meet as a group on a formal basis as the need arises.

As of March 31, 2023, the number of reported claims (including incident reports) are set out in the following chart:

| Year               | Claims Opened in Calendar Year | Claims Closed in Calendar Year | Total Claims Activity in Calendar Year | Total Paid in Policy Year | Total Current Reserves in Policy Year |
|--------------------|--------------------------------|--------------------------------|--|---------------------------|---------------------------------------|
| 2008               | 44                             | 204                            | 248                                    | \$ 20,752,965             | \$ 7,697                              |
| 2009               | 92                             | 210                            | 302                                    | \$ 28,361,783             | \$ 51,976                             |
| 2010               | 55                             | 204                            | 259                                    | \$ 26,452,493             | \$ 1,880,577                          |
| 2011               | 56                             | 161                            | 217                                    | \$ 19,322,708             | \$ 970,527                            |
| 2012               | 58                             | 123                            | 181                                    | \$ 14,728,110             | \$ 6,149,333                          |
| 2013               | 88                             | 78                             | 166                                    | \$ 17,484,169             | \$ 2,857,809                          |
| 2014               | 54                             | 91                             | 145                                    | \$ 13,620,351             | \$ 5,563,671                          |
| 2015               | 81                             | 125                            | 206                                    | \$ 7,044,741              | \$ 5,488,559                          |
| 2016               | 97                             | 80                             | 177                                    | \$ 5,316,336              | \$ 2,777,419                          |
| 2017               | 60                             | 72                             | 132                                    | \$ 6,177,505              | \$ 2,456,415                          |
| 2018               | 60                             | 79                             | 139                                    | \$ 2,672,986              | \$ 1,642,392                          |
| 2019               | 62                             | 77                             | 139                                    | \$ 3,421,716              | \$ 4,845,281                          |
| 2020               | 42                             | 61                             | 103                                    | \$ 2,485,028              | \$ 5,430,717                          |
| 2021               | 52                             | 64                             | 116                                    | \$ 636,858                | \$ 4,084,115                          |
| 2022               | 44                             | 55                             | 99                                     | \$ 1,463,353              | \$ 3,966,941                          |
| 2023               | 8                              | 24                             | 32                                     | \$ 6,533                  | \$ 1,638,468                          |
| <b>Grand Total</b> | <b>953</b>                     | <b>1708</b>                    | <b>2661</b>                            | <b>\$ 169,947,633</b>     | <b>\$ 49,811,895</b>                  |

## FILE REVIEW

### General Observations:

During our visit to the Law Society Office in Winnipeg, we reviewed 16 open files and 2 closed files. "The Fund" have converted to a completely paperless claims operation, using Claims Manager for administrative data collection and Worldox for document and file management.

### CLAIM FILES REVIEWED

| Claim No     | Province | Law Society File Number | Insured Member LN |
|--------------|----------|-------------------------|-------------------|
| 2010-03-0003 | MAN      | 09-0049                 |                   |
| 2013-03-0001 | MAN      | 12-0125                 |                   |
| 2013-03-0002 | MAN      | 12-0094                 |                   |
| 2015-03-0002 | MAN      | 14-0085                 |                   |
| 2015-03-0004 | MAN      | 14-0053                 |                   |
| 2018-03-0004 | MAN      | 17-0037                 |                   |
| 2018-03-0003 | MAN      | 17-0059                 |                   |
| 2019-03-0004 | MAN      | 18-0144                 |                   |
| 2019-03-0005 | MAN      | 18-0140                 |                   |
| 2020-03-0003 | MAN      | 19-0066                 |                   |
| 2021-03-0001 | MAN      | 20-0034                 |                   |
| 2021-03-0002 | MAN      | 20-0101                 |                   |
| 2021-03-0003 | MAN      | 20-0148                 |                   |
| 2021-03-0004 | MAN      | 20-0089                 |                   |
| 2021-03-0005 | MAN      | 20-0075                 |                   |
| 2021-03-0006 | MAN      | 20-0040                 |                   |
| 2022-03-0001 | MAN      | 21-0109                 |                   |
| 2022-03-0004 | MAN      | 21-0074                 |                   |

Overall, the chronology, authorities, and general flow and management of the files was excellent. The files reviewed were very easy to follow and understand where the file is intended to go. In comparing the claims data to the CLIA bordereau there were no irregularities or discrepancies identified. No errors were identified in the reporting dates, or the amounts paid for defence, administration, and indemnity. All the claims information was accurately reported to the Claims Manager and to CLIA.

## **CONCLUSIONS**

- Large loss reports are provided to CLIA and are completed appropriately.
- Claims are documented to support the reserve amounts set and for payments made.
- All claims reviewed are paperless and managed in Worldox that provides a detailed chronology of the file.
- Reminder system is built into their workflow, which helps staff stay on top of things.
- Document mgmt. system captures all relevant correspondence associated with the claims file.
- All claims information was cross referenced with the CLIA bordereau.

The general results of the audit are as follows:

- The claims are in good order;
- Each file is well documented and easy to follow in chronological order;
- Continue to see that liability, damages and coverage issues are routinely considered; there was no issues in the files reviewed;
- Setting of reserves seemed reasonable based on claim file information and reviewed regularly. - There was ample documentation in the file to rationalize the reserve amounts in each claim file.
- All files have good direction-clear dialogue between all parties;

### **Discussion with Dave:**

- Need to re-format LLR documents so they are easier to complete. If there is one available in the office, Tana was encouraged to use it rather than struggle with the CLIA LLR form. The CLIA LLR form was inherited from Axxima and is not considered mandatory. CLIA is interested in the content rather than the format.



## MEMORANDUM

**To:** Benchers  
**From:** Rennie Stonyk and Richard Porcher  
**Date:** June 14, 2023  
**Re:** Fair Registration Practices in Regulated Professions Act Amendments and 2023 Registration Review

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### HISTORY AND BACKGROUND

*The Fair Registration Practices in Regulated Professions Act* (the Act) originally came into force in 2007 for the purpose of ensuring that the registration practices of regulated professions are clear and well-defined and that all applicants, including those who are educated outside of Canada, receive fair consideration. Under the control and direction of the Minister of Labour and Immigration (the Minister responsible for the Act), a fairness director is appointed to carry out the various oversight responsibilities found in the Act. The fairness director carries out these duties through the Fair Registration Practices Office (FRPO).

At the time of the enactment of this legislation and on subsequent occasions, the Law Society has raised a variety of concerns over the Act's potential encroachment on the legal profession's ability to self-regulate independently. Most recently in 2021, we established a working group to determine how we ought to respond to the government about amendments which, among other things, enables the government to issue "compliance orders" against the Law Society, if the director is of the opinion that the Society has not complied with the provisions of the Act. On the recommendation of the working group, we sought advice from Donna Miller, a retired lawyer with significant constitutional law, administrative law and government experience (she previously worked for both provincial and federal departments of justice, the University of Manitoba, and the Law Reform Commission). On her recommendation, we did not pursue legal action at that time, but instead voiced our concerns with the Minister of Justice. While we did not expect that our feedback would have an impact on the passing of the amendments, we considered it imperative to ensure that the Society's position was on record should we decide to take further action in the future. Ultimately the amendments came into force in June of 2022.

Despite our concerns regarding the intrusion into the independence of the legal profession, we have maintained a good working relationship with the FRPO and until very recently we had little worry that they would encroach upon our registration processes in any meaningful way. Accordingly, beyond voicing our concerns with both the Minister of Economic Development and Jobs and the Minister of Justice, we decided not to pursue the matter further at that time.



## 2023 REGISTRATION REVIEW

Pursuant to the Act, the FRPO conducts regular reviews of each regulated professions' registration processes to ensure compliance with the requirements under the Act. This past March, the FRPO commenced its third review of the Society's processes and issued its final report in May of 2023. While the FRPO report was largely favourable to the Law Society's practices, it did provide a recommendation:

*"Working with the National Committee on Accreditation, ensure internationally educated lawyers with academic training in Canadian law substantively equivalent to law graduates of Canadian law programs are not assigned unnecessary exams or subject to redundant academic coursework."*

The recommendation arises from the fact that the National Committee on Accreditation does not assess or recognize law courses or law programs with Canadian content that are delivered by foreign universities. We have communicated this recommendation to the NCA and are awaiting their response. However, we have obvious concerns. There could be a multitude of courses or programs from all over the world that claim to teach students Canadian law, and it is not practical or feasible for the NCA to assess these courses or programs to determine whether they would be substantively equivalent to a Canadian law program.

Despite our positive relationship with the FRPO, we are not confident that we will be able to resolve this matter without the NCA being required to make changes to their registration processes. Although it is far from certain, it is conceivable that the FRPO may issue a compliance order if they are of the view that the Society (via the NCA) is not in compliance with the legislation. In this way, we are starting to see how the previous amendments might result in challenges to our own processes as well as those of the NCA. Notably, any such challenge will not only impact the Law Society of Manitoba, but will have implications for the NCA and for other Canadian law societies.

## CONCERNS WITH THE BILL 36 AMENDMENTS

In March 2023, the Minister of Labour and Immigration introduced Bill 36 with further amendments to the Act. According to the Minister's office, these amendments *"are intended to foster expedited labour mobility and fair registration processes to improve Manitoba's competitiveness to recruit and retain skilled workers."* The two major themes of the amendments are:

1. Timely decisions, responses and reasons for domestic labour mobility applicants; and
2. Authority for government to create regulations on language proficiency testing requirements (we are advised that regulations are still in the development stage).

The introduction of Bill 36 and its subsequent passing into law all happened very quickly. The amendments came into force on May 30, 2023 but as they have not been published online, we have attached a copy of the Bill for your reference.

We have reviewed the amendments and have concerns with some of the provisions. Our overarching concern is the continued encroachment on the independence of the legal profession by ever-increasing government interference in the self-regulation of the profession. Specifically, we have the following comments:

### **Definition of Domestic Labour Applicant**

There is a potential issue with the definition of “domestic labour mobility applicant” as it refers to an individual who is currently registered in another Canadian jurisdiction. This wording is vague enough such that it could be interpreted to include inactive or non-practising members. Under the National Mobility Agreement (NMA), only those lawyers who are entitled to practice in their home jurisdiction are eligible to transfer provinces under the NMA. While the Society may have been able to address the problematic wording with the Minister’s office, the opportunity was lost with the speed with which the amendments were passed.

### **Imposition of Time Limits**

There are a number of subsections that impose specific time frames within which the regulator is to acknowledge receipt of applications and materials, to make admissions decisions, to provide reasons for the decision and within which to provide reasons for decisions in the event of an appeal.

In each case, the time frame is unlikely to present any difficulty for the Law Society given the nature of the National Mobility Agreement and the ease with which almost all applicants can transfer within Canada. Nevertheless, the imposition of specific time frames represents yet another step along the path of the government regulating the Law Society’s admissions processes.

### **Language Testing Requirements**

Of greater concern is a new provision that provides the government with the ability to set language testing requirements for English and French by regulation and to issue a compliance order that requires the regulator to amend or revoke a testing requirement if the Minister determines that a testing requirement contravenes the regulations.

While this has no immediate impact, it does have the potential to significantly affect our ability to set language testing requirements in the future. As noted, the main concern is the loss of self governance and the uncertainty as to the potential significant impact that this requirement may have as it requires compliance with regulations which are not yet drafted. Future regulations may have a significant impact on the Law Society’s ability to impose language requirements, either directly or through the NCA in the future.

This concern is not academic. The assessment of the national requirement and the statistics gathered over the first three years of the operation of CPLED 2.0 demonstrate that many foreign trained lawyers continue to struggle and have lower pass rates, despite additional measures taken to assist them in their training. Although the information is anecdotal to date, the evidence appears to demonstrate that many of the struggles are based on English language comprehension.

Imposing language testing or more stringent language testing is an option under consideration which is directly related to the Society's mandate to protect the public interest in the delivery of legal services.

## RESPONSE

Our concerns with the Act, especially with respect to the government being able to set language testing requirements, are also important and have implications for both the NCA and CPLED. We have informed them of the amendments.

In accordance with the communication strategy established after consulting with Donna Miller, we intend to continue communicating our concerns with the Minister responsible for the Act and with the official opposition.

If a compliance order issues, it may be necessary for the Law Society to bring a legal challenge to the legislation and its application to the legal profession. At this stage however, the Manitoba government is far more concerned with the medical profession and, in particular, with the obstacles to nurses being able to pursue their profession.

We will continue to keep you apprised of developments.

ATC.

**Bill 36**

**Government Bill**

**Projet de loi 36**

**Projet de loi du gouvernement**

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5<sup>th</sup> Session, 42<sup>nd</sup> Legislature,  
Manitoba,  
1 Charles III, 2023

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5<sup>e</sup> session, 42<sup>e</sup> législature,  
Manitoba,  
1 Charles III, 2023

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**BILL 36**

**PROJET DE LOI 36**

**THE FAIR REGISTRATION PRACTICES  
IN REGULATED PROFESSIONS  
AMENDMENT ACT**

**LOI MODIFIANT LA LOI SUR LES PRATIQUES  
D'INSCRIPTION ÉQUITABLES DANS LES  
PROFESSIONS RÉGLEMENTÉES**

Honourable Mr. Reyes

M. le ministre Reyes

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First Reading / Première lecture : \_\_\_\_\_

Second Reading / Deuxième lecture : \_\_\_\_\_

Committee / Comité : \_\_\_\_\_

Concurrence and Third Reading / Approbation et troisième lecture : \_\_\_\_\_

Royal Assent / Date de sanction : \_\_\_\_\_

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## EXPLANATORY NOTE

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This Bill amends *The Fair Registration Practices in Regulated Professions Act*.

Time limits are established in which a regulated profession must respond to an application for registration from an individual who has a similar registration in another Canadian jurisdiction. A regulated profession may apply to the minister for an extension of a time limit.

Regulated professions are also required to comply with any regulations respecting English or French language proficiency testing requirements for domestic and internationally educated individuals.

Compliance orders may now be made under this Act if a regulated profession fails to comply with a domestic trade agreement.

## NOTE EXPLICATIVE

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Le présent projet de loi modifie la *Loi sur les pratiques d'inscription équitables dans les professions réglementées*.

Des délais de réponse sont dorénavant imposés aux professions réglementées à l'égard des demandes d'inscription provenant de particuliers inscrits dans une catégorie semblable ailleurs au Canada. Une profession réglementée peut demander au ministre de prolonger l'un ou l'autre de ces délais.

Les professions réglementées sont aussi tenues de se conformer aux règlements relatifs aux exigences en matière d'examen de la compétence linguistique en français ou en anglais, que les particuliers aient été instruits au Canada ou à l'étranger.

Enfin, des ordres d'observations peuvent également être donnés à l'encontre d'une profession réglementée qui omet de se conformer à un accord sur le commerce canadien.

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**BILL 36**

**THE FAIR REGISTRATION PRACTICES  
IN REGULATED PROFESSIONS  
AMENDMENT ACT**

(Assented to \_\_\_\_\_ )

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

*C.C.S.M. c. F12 amended*

*1 The Fair Registration Practices in Regulated Professions Act is amended by this Act.*

*2 Section 2 is amended by adding the following definition:*

**"domestic labour mobility applicant"** means an individual who has applied for registration by a regulated profession in Manitoba and is currently registered with a corporation or association that regulates the same profession in a Canadian province or territory other than Manitoba. (« candidat à la mobilité de la main-d'œuvre nationale »)

**PROJET DE LOI 36**

**LOI MODIFIANT LA LOI SUR LES PRATIQUES  
D'INSCRIPTION ÉQUITABLES DANS LES  
PROFESSIONS RÉGLEMENTÉES**

(Date de sanction : \_\_\_\_\_ )

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative du Manitoba, édicte :

*Modification du c. F12 de la C.P.L.M.*

*1 La présente loi modifie la Loi sur les pratiques d'inscription équitables dans les professions réglementées.*

*2 L'article 2 est modifié par adjonction de la définition suivante :*

**« candidat à la mobilité de la main-d'œuvre nationale »** Particulier qui présente une demande d'inscription auprès d'une profession réglementée au Manitoba et qui est actuellement inscrit auprès d'un organisme qui réglemente la même profession dans une province ou un territoire du Canada autre que le Manitoba. ("domestic labour mobility applicant")

3 *The following is added after section 7:*

**Timely decisions, responses and reasons — domestic labour mobility applicant**

**7.1(1)** Despite sections 6 and 7, the time limits set out in this section apply in respect of an application for registration made by a domestic labour mobility applicant.

**Acknowledgement of application**

**7.1(2)** A regulated profession must, within 10 days after receiving an application for registration from a domestic labour mobility applicant, provide a written acknowledgment of receipt of the application.

**Content of acknowledgement**

**7.1(3)** The acknowledgment must include a statement as to whether the application includes the documentation and materials required by the regulated profession in respect of the application and any other information prescribed by regulation.

**Registration decision**

**7.1(4)** The regulated profession must, within 30 days after receiving the application for registration from the domestic labour mobility applicant and the required documentation and materials in respect of the application, make a registration decision.

**Notice of decision**

**7.1(5)** The regulated profession must, as soon as reasonably practicable after making the registration decision,

- (a) provide a written response to the applicant concerning the decision;
- (b) provide written reasons to the applicant for any refusal to grant registration or for granting registration subject to conditions; and
- (c) if the application is refused or granted subject to conditions, provide information to the applicant respecting their rights to any internal review or appeal, including the applicable procedures and deadlines.

3 *Il est ajouté, après l'article 7, ce qui suit :*

**Délais applicables aux demandes d'inscription des candidats à la mobilité de la main-d'œuvre nationale**

**7.1(1)** Malgré les articles 6 et 7, les délais énoncés au présent article s'appliquent à l'égard des demandes d'inscription présentées par les candidats à la mobilité de la main-d'œuvre nationale.

**Accusé de réception de la demande**

**7.1(2)** Au plus tard dix jours après avoir reçu la demande d'inscription d'un candidat à la mobilité de la main-d'œuvre nationale, la profession réglementée lui fournit un accusé de réception écrit.

**Contenu de l'accusé de réception**

**7.1(3)** L'accusé de réception comporte une mention indiquant si la demande comprend les documents et les renseignements exigés par la profession réglementée; il indique en outre tout autre renseignement réglementaire.

**Décision en matière d'inscription**

**7.1(4)** Au plus tard 30 jours après avoir reçu la demande d'inscription d'un candidat à la mobilité de la main-d'œuvre nationale ainsi que les documents et renseignements exigés, la profession réglementée prend une décision en matière d'inscription.

**Avis de décision**

**7.1(5)** Dès que raisonnablement possible après avoir pris une décision en matière d'inscription, la profession réglementée fournit au candidat :

- a) une réponse écrite énonçant sa décision;
- b) les motifs écrits de toute décision où elle refuse d'accorder l'inscription ou l'accorde sous réserve de conditions;
- c) dans les cas où l'inscription est refusée ou accordée sous réserve de conditions, des renseignements portant sur le droit du candidat de demander un réexamen ou appel interne ainsi que sur les formalités et les délais applicables.

### **Internal review or appeal**

**7.1(6)** The regulated profession must, within 10 days after making an internal review or appeal decision in respect of a domestic labour mobility applicant, provide the applicant with a written response and reasons concerning its decision on the review or appeal.

### **Provisional registration**

**7.1(7)** Nothing in this section precludes the regulated profession from provisionally registering an applicant before it receives all the documentation and materials required to make a final registration decision.

### **Extension**

**7.2(1)** A regulated profession is not required to comply with a time limit set out in section 7.1 if the minister extends the time limit in accordance with the regulations.

### **Application for extension**

**7.2(2)** The regulated profession may apply to the minister for an extension by

- (a) making an application in accordance with the procedures set out in the regulations;
- (b) submitting the appropriate supporting documents; and
- (c) providing reasons for requesting the extension.

### **Granting of extension**

**7.2(3)** The minister may grant the extension to the regulated profession and may make the extension subject to the conditions determined by the minister.

*4 The following is added after section 10 as part of Part 2:*

### **Language proficiency testing**

**10.1** A regulated profession must ensure that it complies with any regulations made under this Act respecting testing requirements for English or French language proficiency.

### **Réexamen ou appel interne**

**7.1(6)** Au plus tard dix jours après avoir pris une décision faisant suite à un réexamen ou à un appel interne à l'égard d'un candidat à la mobilité de la main-d'œuvre nationale, la profession réglementée communique par écrit la décision et ses motifs au candidat.

### **Inscription provisoire**

**7.1(7)** Le présent article n'a pas pour effet d'interdire à la profession réglementée de procéder à l'inscription provisoire d'un candidat après avoir reçu les documents et renseignements nécessaires à la prise d'une décision en matière d'inscription.

### **Prolongation**

**7.2(1)** Les professions réglementées ne sont pas tenues de respecter les délais prévus à l'article 7.1 que le ministre consent à prolonger conformément aux règlements.

### **Demande de prolongation**

**7.2(2)** Une profession réglementée peut demander une prolongation au ministre selon la procédure réglementaire; la demande doit comprendre les documents pertinents à l'appui et énoncer les motifs justifiant la demande.

### **Décision du ministre**

**7.2(3)** Le ministre peut accorder la prolongation demandée et l'assortir des modalités qu'il fixe.

*4 Il est ajouté, après l'article 10 mais dans la partie 2, ce qui suit :*

### **Examen de la compétence linguistique**

**10.1** La profession réglementée veille à se conformer aux règlements d'application de la présente loi relatifs aux exigences en matière d'examen de la compétence linguistique en français ou en anglais.



5 *Subsection 15.4(2) is replaced with the following:*

**Compliance order under Labour Mobility Act**

**15.4(2)** Nothing in this Act precludes a compliance order from being issued in respect of a failure to comply with a domestic trade agreement under *The Labour Mobility Act*.

**Order re language proficiency**

**15.4(2.1)** If the minister is of the opinion that a regulation, by-law, practice directive or policy made by a regulated profession includes a testing requirement for English or French language proficiency that contravenes the regulations made under this Act, the minister may make a compliance order under subsection (1) requiring the regulated profession to exercise any power that the regulated profession has to amend or revoke the regulation, by-law, practice directive or policy.

6 *Subsection 16(1) is amended*

*(a) in clause (b.1), by adding ", other than to domestic labour mobility applicants" at the end; and*

*(b) by adding the following after clause (b.1):*

(b.2) prescribing information that regulated professions must provide to domestic labour mobility applicants;

(b.3) governing applications for the extension of a time limit set out in section 7.2, including prescribing procedures for applying for an extension and the information to be included in an application;

(b.4) establishing and governing the testing requirements for English or French language proficiency with which regulated professions must comply, including specifying what constitutes a testing requirement for language proficiency;

5 *L'article 15.4(2) est remplacé par ce qui suit :*

**Ordre d'observation sous le régime de la Loi sur la mobilité de la main-d'œuvre**

**15.4(2)** La présente loi n'a pas pour effet d'interdire qu'un ordre d'observation soit donné sous le régime de la *Loi sur la mobilité de la main-d'œuvre* pour manquement à un accord sur le commerce canadien.

**Ordre d'observation — compétence linguistique**

**15.4(2.1)** S'il conclut qu'un règlement ou règlement administratif, une directive professionnelle ou une politique émanant d'une profession réglementée comprend une exigence en matière d'examen de la compétence linguistique en français ou en anglais qui contrevient aux règlements pris en vertu de la présente loi, le ministre peut, en vertu du paragraphe (1), donner un ordre d'observation exigeant que la profession exerce les pouvoirs dont elle est investie pour modifier ou révoquer le règlement ou règlement administratif, la directive professionnelle ou la politique.

6 *Le paragraphe 16(1) est modifié :*

*a) à l'alinéa b.1), par adjonction, à la fin, de « , à l'exception des candidats à la mobilité de la main-d'œuvre nationale »;*

*b) par adjonction, après l'alinéa b.1), de ce qui suit :*

b.2) prévoir les renseignements que les professions réglementées doivent fournir aux candidats à la mobilité de la main-d'œuvre nationale;

b.3) régir les demandes de prolongation présentées en vertu de l'article 7.2, notamment prévoir la procédure à suivre et les renseignements qu'elles doivent comprendre;

b.4) établir et régir les exigences en matière d'examen de la compétence linguistique en français ou en anglais auxquelles les professions réglementées doivent se conformer, notamment préciser ce qui constitue une exigence en matière d'examen de la compétence linguistique;

*Coming into force*

7        *This Act comes into force on the day it receives royal assent.*

*Entrée en vigueur*

7        *La présente loi entre en vigueur le jour de sa sanction.*

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The King's Printer  
for the Province of Manitoba

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L'Imprimeur du Roi  
du Manitoba



## FLSC COUNCIL REPORT

To: Benchers  
From: Lynda Troup  
Date: June 5, 2023

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Our June meeting was held in Ottawa on June 5, 2023.

Minister of Justice, David Lametti was the Council's first guest who reported on the government's justice priorities, including reconciliation efforts and bail reform. The Federation shared our key priorities, including mental health initiatives, lawyer competencies, our indigenous advisory counsel, and anti-money laundry issues. Minister Lametti also took questions from Council, including on amendments to the *Income Tax Act*, as discussed further below, and on Judicial appointments.

Our second guest was Drew Lafond from the Indigenous Bar Association. Mr. Lafond joined us from Treaty 6. The IBA advocates on behalf of the Indigenous bar, bench, and students. IBA is a not for profit organization. The organization gets a lot of pro-bono requests and the organization does what it can to provide assistance where it can. It relies heavily on donations. There are three key things the IBA is working on: a research project being undertaken by the Federal Government on how to improve the relationship between Indigenous peoples and the justice system and implement action items that have been recommended in previous reports; Indigenous citizenship – i.e., who is and is not Indigenous and, in particular, the framework to be considered; and follow-up on the United Nations declaration having regard - to Indigenous peoples – implementation of bare minimum rights of the inherent dignity of Indigenous people. This will include how the declaration can be implemented on a national level.

Chief Justice Wagner was the Council's last guest. Justice Wagner highlighted the important work of the Federation that has occurred over the years, including CanLII, mental health initiatives, Truth and Reconciliation efforts, and other cross-Canada initiatives. Justice Wagner also discussed the impact of COVID-19 on the Court, including the necessary changes that occurred and the positives and negatives that resulted and the importance of continued work on virtual processes throughout the justice system to continue the enhancement of access to justice. The Justice also discussed the work on development of cultural competencies that is occurring at the Judicial Council.

These are the highlights of the meeting:

- **National Wellness Study**

Phase II interviews with members of the legal profession have resumed as of January 2023. There are 12 reports contemplated at the conclusion of Phase II, one for each provincial law society, one for the three territories, and one national report. Some of the reports have been completed but the work is ongoing, to be completed over the next few months.

The purpose of Phase II is to dive deeper into the information that is being obtained to determine why the mental health challenges are so prevalent and, most importantly, what can be done to address these challenges.

There was a fulsome discussion about what further initiatives should be undertaken by the Federation in this area. The consensus is that mental health concepts should be top of mind in all of the work we do. Further, as different law societies are at different stages in addressing mental health initiatives, continued sharing amongst the law societies would be helpful.

Consensus was reached to establish a new committee to oversee implementation of mental health recommendations as the Federation receives them, as reports are completed and considered. Establishing one central clearing house for all of the Federation's wellness work may help to ensure that the work is well coordinated. A new committee would also provide the opportunity to build a tailor-made, regionally representative membership with the right mix of experience, knowledge and skills.

- **Indigenous Advisory Council**

The Indigenous Advisory Council ("IAC") held its second meeting on April 11, 2023 where it met with three Federation committees that were seeking input and guidance on their reconciliation initiatives. The next meeting of the IAC is scheduled to take place virtually on June 13, 2023. Members have agreed to set up a bi-monthly virtual meeting schedule for the remainder of 2023.

The joint working group of the Council of Canadian Law Deans ("CCLD") and the Federation met in late May. It is anticipated that the joint working group will review the law schools' and law societies' initiatives with respect to Calls to Action 28 and 27, respectively. It is also anticipated that they will revisit the idea of an Indigenous symposium and review the Terms of Reference to identify future priorities.

- **NCA Assessment Modernization (NCA process)**

As reported previously, the draft competency profile was circulated to the Law Societies for comment. We will be meeting in August to discuss comments sent.

- **National Requirement Review (law schools)**

The National Requirement Review Committee (NRRC) has been working to develop preliminary proposals on identified priority issues, informed in part by the input received from stakeholders in the fall and in subsequent meetings with stakeholders. It meets at least monthly to undertake its work. The extended deadline for completion of the review is December 31, 2023.

Two communiqués, providing information on the NRRC's work and inviting input, were sent to a broad range of stakeholders in September 2022 and in February 2023. Further engagement was undertaken in meetings held from March to May 2023 with the Council of Canadian Law Deans, Canadian Association of Law Teachers, Association for Canadian Clinical Legal Education, and Indigenous groups and individuals.

The NRRC met on May 29, 2023 to finalize preliminary proposals. A consultation on the proposals will be sent to stakeholders for comment in mid-June 2023, with an October 15, 2023 deadline.

- **Anti-Money Laundering Initiatives**

The English version of the online educational program is now complete and the French version is well underway. The target date for completion of the program is late June 2023. We were played some of the educational program, which is quite well done.

Work is nearing completion on new and revised guidance focusing on mitigating risk and ensuring robust compliance processes.

Proposed new discipline standards addressing identification of breaches of the anti-money laundering rules, the tracking of breaches, the ability to make referrals for breaches, and staff training are being reviewed by the Standing Committee and by members of the Discipline Administrators Steering Committee.

- **CRA Reporting Requirements –**

In late March 2023, the government introduced amendments to the *Income Tax Act* that would expand mandatory reporting of transactions that may constitute aggressive tax planning. The amendments were included in Bill C-47, the government's Budget Implementation bill, tabled on March 28, 2023. The essential requirements, expanding the circumstances in which tax advisors (including legal counsel) must report transactions to CRA, are unchanged from the proposed amendments, pre-published by the Department of Finance in February and August 2022. Significantly, the Bill includes a carve out for information reasonably believed to be protected by solicitor-client privilege. The Bill also deletes the proposed definition of solicitor client privilege, a change that has the effect of making the general definition of solicitor client privilege in the *Income Tax Act* (which includes a carve out for accounting records) not applicable to reportable or notifiable transactions. Despite the protection for solicitor-client privilege, however, explanatory notes published in February 2023 by the Minister of Finance indicated that lawyers "would nevertheless be expected to provide information for which solicitor-client privilege does not exist".

Since failure to comply with the reporting requirement is an offence and the punishment for which includes fines of up to \$100,000, the Federation is concerned that the provisions create a conflict between the duties owed to the client and a lawyer's personal interests.

The Federation and the Law Society of Ontario have been advocating against proposed amendments. This includes the deletion of a relieving provision where one person reports, all others are relieved from that obligation. The Bill is before the Senate standing committee. It is unlikely either the Federation or the LSO will be granted the ability to speak to this.

This is the second set of amendments to the *Income Tax Act*. Whether there is an ability to challenge these amendments is to be considered. An opinion has been sought. Any challenge would need to be approved by all of the law societies.

The Federation will continue to advocate on this matter.

The next meeting is in Whitehorse in October, 2023.