LAW SOCIETY of ALBERTA

700 333 - 11th Avenue SW Phone: 1.403.229.4700
Calgary, Alberta T2R 1L9 Toll Free: 1.800.661.9003

Public Agenda

Bencher Meeting #503

April 15, 2021 commencing at 8:30 a.m.

Law Society of Alberta

Videoconference

Join Zoom Meeting

Dial: 855-703-8985

Meeting ID: 990 9906 5260

Tab	Item	Purpose	Presenter
CALL TO ORDER AND INTRODUCTION			
1	Opening Remarks from the President - Committees 2021 Summary of Expectations	Introduction	Darlene Scott
2	Leadership Report	Information	Elizabeth Osler
DECISION ITEM			
3	ALIA Board Appointments	Decision	Steve Raby
STRATEGIC ITEM			
4	Audit and Finance Committee Report and Recommendations - Law Society Audited Financial Statements for the Year Ended December 31, 2020	Decision	Stacy Petriuk/ Nadine Meade
POLICY ITEM			
5	Pre-Hearing and Hearing Guideline and Rule Amendments	Decision	Shabnam Datta/ Sharon Heine/ Nancy Bains
Break			

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Tab	Item	Purpose	Presenter
INFORMATION ITEMS			
6	Pro Bono Law Alberta Introduction	Information	Karen Fellowes/ Nonye Opara
7	PREP Update	Information	Kara Mitchelmore
8	Equity, Diversity and Inclusion Committee Update	Information	Louise Wasylenko
9	Lawyer Competence Committee Update	Information	Ken Warren
10	Indigenous Initiatives Liaison Update	Information	Andrea Menard
CONSENT AGENDA			
11	11.1 February 25, 2021 Public Bencher Meeting Minutes 11.2 CPLED Board Appointment 11.3 Housekeeping Amendments re: Rules 115(1), 115(1.3) and 26		
REPORTS			
12	12.1 Alberta Law Foundation Report 12.2 Alberta Law Reform Institute Report 12.3 Alberta Lawyers' Assistance Society Report 12.4 Canadian Bar Association Report 12.5 Federation of Law Societies of Canada Report 12.6 Legal Education Society of Alberta Report 12.7 Pro Bono Law Alberta Report		Bill Hendsbee Sandra Petersson Bud Melnyk Bianca Kratt Carsten Jensen Christine Sanderman Kene Ilochonwu

LAW SOCIETY of ALBERTA

2021 Committees and Liaisons - Summary of Expectations

Our operating premise is that all of the organization's work must be strategically focussed and coordinated among the committees, staff and Benchers. Projects must not be undertaken without first considering the Law Society's prioritization of its policy inventory and resourcing limitations.

In addition to the approved Mandates and General Terms of Reference for Board and Regulatory committees, the Executive Committee has agreed to the following scope of work for 2021. Policy or operational concerns may arise through a variety of channels, for example through committee work, staff operations and Bencher meetings. Some of these issues need policy or Rule changes, staff can address others, and some may need statutory amendments. It is important that issues are aggregated in one place, to ensure that coordinated follow-up by the appropriate group is implemented. To this end, we ask that:

1. Committee Chairs look to the directions and scope of work set out below, the Mandates and Terms of Reference for Board and Adjudication Committees, the Legal Profession Act (the "*Act*"), the Rules of the Law Society (the "Rules"), and the 2021 Budget and Business Plan, in planning the ongoing committee work for the upcoming year. Issues raised by the Committee, beyond the scope of work should be discussed with the President or the Executive Director before any work is undertaken. If necessary, the scope of work may be modified following consultation with and approval of the Executive Committee or, if appropriate, the Benchers.
2. If an unresolved policy or operational issue appears to require resolution for the Committee to discharge its assigned or statutory mandate, Chairs should discuss this with the President or the Executive Director at the earliest possible opportunity so that we can develop a plan to resolve the concern.
3. If Committee Chairs identify any policy issues that need attention, they should discuss them with the President or Executive Director. If it is agreed that the issue should go to Policy counsel, a Policy Intake form is to be submitted to the Manager, Policy.

Name of Committee	Chair/Vice-chair Staff/Support	2021 Expectations	Anticipated Reporting Date
1. Board Committees			
Audit and Finance Committee	Stacy Petriuk (C) Jim Lutz (VC) Elizabeth Osler, *ex officio* Nadine Meade Christine Schreuder	• In consultation with Management, oversee and report regularly to the Benchers about the Law Society's financial status, the work of the external auditor, the direct and indirect costs of regulation and the Law Society's compliance with the Rules and policies of the Law Society and applicable financial laws and regulations. • Oversee the annual budget. • Monitor financial risks and assist the Benchers in overseeing Management's risk management practices. • Continue work in accordance with the mandate.	Reporting to the Benchers at least quarterly.
Equity, Diversity and Inclusion Committee	Louise Wasylenko (C) Stacy Petriuk (VC) Beth Aspinall Barbra Bailey Cori Ghitter Christine Schreuder	• Identify key barriers to EDI in the legal profession ensuring consideration of barriers based on gender, race, sexual orientation, place of birth, disability, family status or any other traditionally marginalized group. • Develop recommendations to address barriers to EDI considering both the proactive and reactive role of the Law Society. • Support the work of the Equity Ombudsperson and Indigenous Initiatives Liaison. • Develop EDI education and training recommendations.	
Executive Committee	Darlene Scott (C) Ken Warren (VC) Elizabeth Osler	• Through the President, maintain communication with the Policy Committee about when pre-board work is sufficiently complete for issues to be presented to	Reports to all Bencher meetings

Name of Committee	Chair/Vice-chair Staff/Support	2021 Expectations	Anticipated Reporting Date
	Cori Ghitter Ruth Corbett	and decided by the Benchers. • Provide guidance to the President, President-Elect, Chief Executive Officer & Executive Director and Board. • Oversee Board evaluation. • Continue work in accordance with Mandate. • CEO evaluation and compensation.	
Lawyer Competence Committee	Ken Warren (C) Deanna Steblyk (VC) Cori Ghitter Barbra Bailey Laura Scheuerman Rebecca Young	• Oversee implementation of Lawyer Licensing and Competence Report • Oversee implementation of Indigenous Cultural Competence Education program in conjunction with the Indigenous Advisory Committee	
Policy and Regulatory Reform Committee	Deanna Steblyk (C) Cal Johnson (VC) Elizabeth Osler Cori Ghitter Nancy Carruthers Shabnam Datta Jennifer Freund Christine Schreuder	Continue work in accordance with Mandate.	Reports to Executive Committee and Bencher meetings
Professional Responsibility Committee	Bill Hendsbee (C) Bud Melnyk (VC)	This committee consists of two members who may consult, on request, with the Chair of the Conduct Committee and the President under section 57 of the Act to determine if a matter should be re-examined (see Rule 29).	

Name of Committee		Chair/Vice-chair Staff/Support	2021 Expectations	Anticipated Reporting Date
2. Regulatory Committees				
Consolidated Regulatory Committees (Same Chair and Vice-Chair for each of these committees)	Assurance Fund Adjudications (Finance) Committee	Bill Hendsbee (C) Margaret Unsworth (VC) Elizabeth Osler Nancy Carruthers Nancy Bains Jill Sletto	• Continue work as described in the *Act*, the Rules, the Mandates and General Terms of Reference for Regulatory Committees. • The Chair, or in the Chair's absence, the Vice-chair, will assign the Committee panels and address procedural issues as provided in the *Act* or Rules. The Conduct Chair and Vice-chairs also conduct PHCs. • With the assistance of staff, the Chair will monitor the efficiency and effectiveness of the adjudication process, including the timely delivery of written decisions.	N/A
	Complaint Dismissal Appeals Committee	Bill Hendsbee (C) Margaret Unsworth (VC) Nancy Bains Sarah Roach		
	Credentials & Education Committee	Bill Hendsbee (C) Margaret Unsworth (VC) Tina McKay Brianne Mason Katie Shea		
	Trust Safety Committee	Bill Hendsbee (C) Margaret Unsworth (VC) Bernadette Charan Chioma Ufodike Anjanie Marathe		

Name of Committee	Chair/Vice-chair Staff/Support	2021 Expectations	Anticipated Reporting Date
Conduct Committee	Bill Hendsbee (C) Ryan Anderson (VC) Bud Melnyk (VC) Stacy Petriuk (VC) Louise Wasylenko (VC) Nancy Carruthers Nicholas Maggisano Meghan Thomlinson	See previous page.	N/A
Practice Review	Bud Melnyk (C) Lou Cusano (VC) Kendall Moholitny Karyn Kraemer Donna Moore Tera Yates Merry Rogers Laurie Sniher	See previous page.	N/A

Liaison	Liaison, Staff/Support	2021 Expectations	Anticipated Reporting Date
Real Estate Practice Advisory Liaison	Ryan Anderson Jesse Mackenzie Jennifer Rothery	• Consider the impact of proposed Land Titles changes to document registration; whether the protocol will be needed going forward and; if so, how it should be updated to be useful in the new environment. • Consider the recent Real Estate Bar concerns around employee theft from trust accounts and what are possible undertakings solutions for Real Estate lawyers	ongoing

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Report to Benchers

April 15, 2021

From:	Elizabeth J. Osler, CEO & Executive Director
Re:	2021 Bencher Update Report

Bencher Report

https://spark.adobe.com/page/sbkwSnisnmZL1/

What Is Included

The Bencher Update Report is divided into two sections:

- Strategic Plan Update
- Stakeholder Engagement Update

The Strategic Plan Update tracks the Law Society's progress on projects and initiatives supporting the goals of the 2020 – 2024 Strategic Plan. There is a timeline tracking strategic discussion or decision items for the 2021 Bencher meetings. We have also provided tracking by goal, featuring projects accomplished in 2020 that will impact future decisions, as well as items currently underway in 2021. This is not an exhaustive list, but a high-level overview.

The Stakeholder Engagement Update outlines the Law Society's 2021 presentations, resources (articles, webinars, podcasts), eBulletins, and other ways we have engaged with lawyers, students, and the public. The eBulletin section separates news that we have shared from the Law Society, and information that we have shared on behalf of other stakeholders such as the government or Courts.

There are links provided throughout the report so you may easily reference related materials or announcements.

How to View the Report

Click on the link above and scroll down to view the full report. The report should be viewed using the latest versions of Safari, Firefox, Chrome, and Edge. Microsoft recently launched a new version of Edge that can be downloaded here.

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Memo to Benchers

April 15, 2021

From:	**Steve Raby, QC, Chair, ALIA Executive Committee**
Re:	**ALIA Board Appointments**

Recommendation

The Alberta Lawyers Indemnity Agreement (ALIA) Executive Committee (which acts as ALIA's Nominating Committee) recommends to the Benchers that the Benchers approve the following Resolution:

RESOLVED AS A RESOLUTION OF THE BENCHERS OF THE LAW SOCIETY OF ALBERTA:

1. **The following persons are re-appointed to the ALIA Board, each for a 3-year term or their sooner resignation or removal from office:**

   Diane Brickner; effective June 12, 2021, expiring on June 12, 2024
   Sheri Epp; effective June 3, 2021, expiring on June 12, 2024
   Zoe Harrison; effective June 3, 2021, expiring on June 12, 2024; and
   Dale Spackman, effective June 3, 2021, expiring on June 12, 2024.

2. **This resolution shall be effective only if passed by the affirmative votes of at least 2/3 of the Benchers so voting and the Benchers so voting constitute a majority of the Benchers.**

Respectfully submitted,

Stephen Raby, QC

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Report to Benchers

April 15, 2021

From:	**Stacy Petriuk, QC**
Re:	**Audit and Finance Committee Update**

Please note that due to timing of submission of materials for the upcoming Bencher meeting, this report is submitted in advance of the April 13th Audit and Finance Committee meeting that will be reported on at the Bencher meeting.

At its upcoming meeting, the Audit and Finance Committee will review the year end December 31, 2020 draft audited financial statements of the Law Society. Representatives from PricewaterhouseCoopers LLP (PwC) will be attending to present their report on the 2020 audit and answer questions of the Committee.

A full report on discussions with the auditors will be provided during the Bencher meeting, including whether the auditors encountered any significant issues during their audit, received the full cooperation of Law Society management and are satisfied that the financial statements present fairly, in all material aspects, the financial position and results from operations for the year ended December 31, 2020.

The Committee will hold an *in-camera* session with the auditors as is year-end audit best practice.

It is anticipated that the Committee will recommend the following motion for approval by the Benchers and any changes as a result of the upcoming Audit and Finance Committee meeting will be reported to the Benchers.

MOTION:

That the Benchers approve the Law Society of Alberta's audited financial statements for the year ended December 31, 2020, as attached to this report.

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Other matters

The Committee received an orientation session on March 17th in advance of the upcoming Committee meeting.

Draft 2020 results suggests that the Law Society will end the 2020 fiscal year with an operating surplus in the General Fund of $4,267,509 relative to an annual budgeted surplus of $354,510. The operating surplus was primarily a result of cost savings related to the office closure, delay in hiring new positions, as well as cancellation of travel and events due to travel restrictions and social distancing requirements. In addition, the Law Society was in a position to reduce external contractor requirements of which some were one-time cost savings due to re-prioritization of initiatives in 2020 while working remotely.

The unrestricted contingency reserve in the General Fund at December 31, 2020 was $8,746,230, the Assurance Fund's contingency reserve was $3,760,540 and the Viscount Bennett scholarship reserve fund balance was $2,136,081.

Respectfully submitted,

Stacy Petriuk, QC

The Law Society of Alberta

Non-consolidated Financial Statements
December 31, 2020

DRAFT – for discussion purposes

Independent auditor's report

To the Directors of The Law Society of Alberta

Our opinion

In our opinion, the accompanying non-consolidated financial statements present fairly, in all material respects, the financial position of The Law Society of Alberta (the Society) as at December 31, 2020 and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

What we have audited
The Society's non-consolidated financial statements comprise:

- the non-consolidated balance sheet as at December 31, 2020;
- the non-consolidated statement of revenue, expenses and changes in fund balances for the year then ended;
- the non-consolidated statement of cash flows for the year then ended; and
- the notes to the non-consolidated financial statements, which include significant accounting policies and other explanatory information.

Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the non-consolidated financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Independence
We are independent of the Society in accordance with the ethical requirements that are relevant to our audit of the non-consolidated financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

Responsibilities of management and those charged with governance for the non-consolidated financial statements

Management is responsible for the preparation and fair presentation of the non-consolidated financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of non-consolidated financial statements that are free from material misstatement, whether due to fraud or error.

PricewaterhouseCoopers LLP
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In preparing the non-consolidated financial statements, management is responsible for assessing the Society's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Society or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Society's financial reporting process.

Auditor's responsibilities for the audit of the non-consolidated financial statements

Our objectives are to obtain reasonable assurance about whether the non-consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these non-consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the non-consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Society's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Society's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the non-consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Society to cease to continue as a going concern.

- Evaluate the overall presentation, structure and content of the non-consolidated financial statements, including the disclosures, and whether the non-consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Chartered Professional Accountants

Calgary, Alberta
April 15, 2021

The Law Society of Alberta

Non-consolidated Balance Sheet

As at December 31, 2020

	General Fund $	Assurance Fund $	Viscount Bennett Trust Fund $	2020 $	2019 $
Assets					
Current assets					
Cash and cash equivalents	17,254,314	935,198	240,844	18,430,356	8,489,763
Accounts receivable	277,281	21	5	277,307	6,479,552
Prepaid expenses	356,776	-	-	356,776	351,848
	17,888,371	935,219	240,849	19,064,439	15,321,163
Investments (note 3)	1,557,932	8,893,219	1,916,308	12,367,459	11,428,831
Loan Receivable (note 4)	2,246,184	-	-	2,246,184	1,746,600
Reinsurance recoverable (note 7)	-	1,142,000	-	1,142,000	1,147,000
Trust assets (note 5)	2,251,708	-	-	2,251,708	2,348,946
Capital assets (note 6)	8,839,051	-	-	8,839,051	9,362,083
	32,783,246	10,970,438	2,157,157	45,910,841	41,354,623
Liabilities					
Current liabilities					
Deferred revenue	6,525,441	-	-	6,525,441	6,496,961
Accounts payable and accrued liabilities	1,754,107	22,898	21,076	1,798,081	3,230,884
Due to related parties (note 12)	290,348	-	-	290,348	152,250
	8,569,896	22,898	21,076	8,613,870	9,880,095
Long-term liabilities					
Reserve for claims and related costs (note 7)	-	7,187,000	-	7,187,000	7,278,000
Lease liability (note 10)	6,948,503	-	-	6,948,503	5,965,142
Trust liabilities (note 5)	2,251,708	-	-	2,251,708	2,348,946
Pension plan payable (note 9)	2,723,350	-	-	2,723,350	2,602,368
	11,923,561	7,187,000	-	19,110,561	18,194,456
	20,493,457	7,209,898	21,076	27,724,431	28,074,551
Fund balances					
Invested in capital assets	3,543,559	-	-	3,543,559	3,749,115
Restricted funds (note 8)					
Contingency reserve – internally restricted	-	3,760,540	-	3,760,540	3,267,647
Scholarship reserve – externally restricted	-	-	2,136,081	2,136,081	1,990,144
Unrestricted funds	8,746,230	-	-	8,746,230	4,273,166
	12,289,789	3,760,540	2,136,081	18,186,410	13,280,072
	32,783,246	10,970,438	2,157,157	45,910,841	41,354,623

Commitments (note 11)

Approved by the Board

President **Chair of the Audit and Finance Committee**

The accompanying notes are an integral part of the financial statements.

The Law Society of Alberta

Non-consolidated Statement of Revenue, Expenses and Changes in Fund Balances

For the year ended December 31, 2020

	General Fund $	Assurance Fund $	Viscount Bennett Trust Fund $	2020 $	2019 $
Revenue					
Practice fees	27,793,654	-	-	27,793,654	27,559,175
Management fee (note 12)	3,170,600	-	-	3,170,600	2,867,000
Investment income	191,487	527,659	121,488	840,634	874,587
Enrolment and application fees	654,490	-	-	654,490	777,120
Other	265,012	-	-	265,012	250,761
	32,075,243	527,659	121,488	32,724,390	32,328,643
Expenses					
Corporate costs					
Premises operating costs	1,790,505	-	-	1,790,505	2,465,334
Amortization	1,131,920	-	-	1,131,920	1,090,422
General corporate costs	354,259	50,170	6,300	410,729	774,879
Departmental costs					
Business Technology	3,601,262	-	-	3,601,262	3,585,969
Counsel	1,922,774	-	-	1,922,774	2,250,128
Policy	1,768,493	-	-	1,768,493	1,673,615
Governance	1,635,577	-	-	1,635,577	1,878,384
Early Intervention	1,377,698	-	-	1,377,698	1,343,644
Conduct	1,324,911	-	-	1,324,911	1,325,670
Investigations	1,322,597	-	-	1,322,597	1,454,030
Membership	1,130,572	-	-	1,130,572	1,100,920
Trust Safety	1,066,926	-	-	1,066,926	1,981,906
Accounting	1,012,230	-	-	1,012,230	999,110
Practice Management	986,024	-	-	986,024	989,561
Customer Service	791,063	-	-	791,063	870,301
Custodianships	663,012	-	-	663,012	737,676
Tribunal	659,402	-	-	659,402	664,172
Information Management	658,060	-	-	658,060	678,639
Communications	589,304	-	-	589,304	834,750
Human Resources	510,016	-	-	510,016	562,439
External funding	3,703,429	-	-	3,703,429	3,270,633
Provision for claims & related costs net (note 7)	-	185,164	-	185,164	2,485,405
Scholarships	-	-	40,000	40,000	20,000
	28,000,034	235,334	46,300	28,281,668	33,037,587
Excess (deficiency) of revenue over expenses for the year before other items	4,075,209	292,325	75,188	4,442,722	(708,944)
Other items:					
Unrealized gain on investments	20,956	368,568	70,749	460,273	781,206
Recovered costs	159,037	-	-	159,037	242,929
Interfund management fees	168,000	(168,000)	-	-	-
Excess of revenue over expenses for the year	4,423,202	492,893	145,937	5,062,032	315,191
Fund balance – beginning of year	8,022,281	3,267,647	1,990,144	13,280,072	13,086,841
Pension plan remeasurements and other items	(155,694)	-	-	(155,694)	(121,960)
Fund balance – end of year	12,289,789	3,760,540	2,136,081	18,186,410	13,280,072

The accompanying notes are an integral part of the financial statements.

The Law Society of Alberta

Non-consolidated Statement of Cash Flows

For the year ended December 31, 2020

	General Fund $	Assurance Fund $	Viscount Bennett Trust Fund $	2020 $	2019 $
Cash provided by (used in)					
Operating activities					
Excess of revenue over expenses for the period	4,423,202	492,893	145,937	5,062,032	315,191
Items not affecting cash					
Amortization	1,131,920	-	-	1,131,920	1,090,422
Gain on sale of investments	-	(66,761)	(23,498)	(90,259)	(102,206)
Unrealized gain on investments	(20,956)	(368,568)	(70,749)	(460,273)	(781,206)
Provision for claims & related costs (note 7)	-	185,164	-	185,164	2,485,405
Deferred rent	1,300,837	-	-	1,300,837	352,174
	6,835,003	242,728	51,690	7,129,421	3,359,780
Change in non-cash working capital items	3,999,292	93,665	21,075	4,114,032	847,020
Claims and related costs paid – net of recoveries (note 7)	-	(271,164)	-	(271,164)	(424,406)
Pension plan remeasurements and other items	(155,694)	-	-	(155,694)	(121,960)
Increase in pension plan payable	120,982	-	-	120,982	131,540
	10,799,583	65,229	72,765	10,937,577	3,791,974
Investing activities					
Proceeds on disposal of investments	-	215,500	35,000	250,500	868,000
Purchase of investments	(90,718)	(451,006)	(96,872)	(638,596)	(1,039,937)
Purchase of capital assets	(608,888)	-	-	(608,888)	(9,092,804)
	(699,606)	(235,506)	(61,872)	(996,984)	(9,264,741)
Increase (Decrease) in cash and cash equivalents	10,099,977	(170,277)	10,893	9,940,593	(5,472,767)
Cash and cash equivalents – beginning of the year	7,154,337	1,105,475	229,951	8,489,763	13,962,530
Cash and cash equivalents – end of the year	17,254,314	935,198	240,844	18,430,356	8,489,763
Cash and cash equivalents comprised of:					
Cash	948,975	46,462	8,822	1,044,259	609,326
Cash equivalents	16,305,339	888,736	232,022	17,426,097	7,880,437
	17,254,314	935,198	240,844	18,430,356	8,489,763
Interest received	191,487	308,696	65,619	565,802	630,037

The accompanying notes are an integral part of the financial statements.

The Law Society of Alberta

Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

1 General

The Law Society of Alberta (the Law Society) operates under the authority of the *Legal Profession Act*, Chapter L-8, Revised Statutes of Alberta 2000. The Law Society administers programs to promote a high standard of legal services and professional conduct through governance and regulation of an independent legal profession. The financial statements of the Law Society are prepared on a non-consolidated basis (refer to Note 11 Related Party Transactions).

2 Summary of significant accounting policies

Basis of accounting

These financial statements are prepared in accordance with Canadian Accounting Standards for not for profit organizations (ASNPO) as issued by the Canadian Accounting Standards Board.

Use of estimates

The preparation of the financial statements in conformity with ASNPO requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities as at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from these estimates.

Comparative figures

Certain prior year figures have been reclassified to conform to current year’s presentation.

Fund accounting

The Law Society has the following funds:

General Fund

The General Fund is an unrestricted fund which provides for the administration and governance of the Law Society's regulatory operations.

Assurance Fund

The Assurance Fund is a restricted fund maintained to reimburse, at the discretion of the Board, the principal amount of losses caused by a lawyer through the misappropriation or wrongful conversion of money or other property entrusted to or received by a lawyer in their professional capacity and in the course of the lawyer’s legal practice.

The Assurance Fund was closed to claims for lawyer misappropriation of funds that occurred after June 30, 2014. Claims for lawyer misappropriation that occur subsequent to June 30, 2014 are covered though the Misappropriation Indemnity Program administered by Alberta Lawyers Indemnity Association (formerly The Alberta Lawyers Insurance Association).

The Law Society of Alberta

Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

Viscount Bennett Trust Fund

The Viscount Bennett Trust Fund is a restricted fund, the principal of which was gifted to the Law Society by the Right Honourable Viscount Bennett. The income generated by this fund is to be used for scholarships for law graduates, students-at-law or lawyers ordinarily resident in Alberta to support post-graduate legal studies.

Financial Instruments

The Law Society initially measures financial assets and financial liabilities at cost. It subsequently measures its investments at fair value. The financial assets subsequently measured at amortized cost include cash and cash equivalents, accounts receivable and accrued interest receivable. The financial liabilities subsequently recorded at amortized cost include accounts payable and accrued liabilities.

The Law Society's investments consist of equity securities, corporate bonds, and provincial and federal government bonds. The investments in equity securities which are traded on active markets are recorded at fair value. The Law Society has elected to record the investments in bonds at fair value. Changes in fair value of the investments are recorded on the statement of revenue, expenses and fund balances. The investments which are not traded on active markets are recorded at cost.

Financial assets are tested for impairment at the end of each reporting period when there are indications that the assets may be impaired.

Revenue recognition and deferred revenue

The Law Society follows the deferral method for revenue recognition. The Law Society's membership year runs from March 15 to March 15 of the subsequent year. Amounts received or receivable from the practice fee that pertain to the membership period subsequent to the year-end are deferred and recognized as revenue in the next fiscal year.

Investment income earned on investments is recognized in the fund in which the investments are maintained.

Recoveries

Recoveries from reinsurers and other third parties are recorded as revenue when they can be reasonably estimated and collectability is reasonably assured. Otherwise, the recovery is recorded when received.

Reserve and provision for claims and related costs

The provision for claims and related costs in the Assurance Fund is based upon the change from year to year in the reinsurance recoverable and reserve for claims and related costs. The reserve value is based on the actuarially determined discounted cost of possible claims and related costs as at the end of the fiscal year.

The Law Society's actuary is engaged to provide an annual valuation of the reserve for claims and related costs for the Assurance Fund in accordance with the standards of practice adopted by the Canadian Institute of Actuaries. For the purpose of this actuarial valuation, the actuary made use of certain information contained in the Law Society's financial records.

The Law Society of Alberta

Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

Reinsurance recoverable

In the normal course of business, the Law Society seeks to limit exposure to losses on large trust account misappropriation claims by purchasing reinsurance. The amounts reported in the balance sheet include estimates of amounts expected to be recovered from reinsurers on incurred losses that have not yet been paid. The provision for claims and related costs has been disclosed on a gross basis with an offsetting asset reflecting the reinsurance recoverable.

Cash and cash equivalents

Cash and cash equivalents include cash and short-term investments that are highly liquid and are readily convertible to known amounts of cash and are subject to insignificant risk of change in value.

Investment income

Investment income consists of interest, dividends, fund distributions, and gains and losses realized on the disposal of investments. Interest and dividends earned on investments are included as revenue on an accrual basis. The change in fair value of investments is recorded in the statement of revenue, expenses and fund balances as an unrealized gain (loss).

Capital assets

Capital assets are recorded at cost net of accumulated amortization. Amortization is calculated on a straight-line basis at the following annual rates:

Furniture and equipment	10%
Computer	20%
Adjudicator training program	33-1/3%
Leasehold improvements	Over the lease term (15 years)

Post-employment benefits

The Law Society maintains pension plans which provide defined benefit and defined contribution pension benefits. Pension costs and obligations for the defined benefit pension plans are determined using the projected benefit method and are charged to the statement of revenue, expense and change in fund balances based upon an actuarial valuation.

Pension plan assets of the registered pension plan (RPP) are measured at fair value and the expected return on pension plan assets is determined using market related values. The supplemental retirement plan (SRP) is an unfunded plan and does not hold any assets. The Law Society recognizes past service costs and actuarial gains and losses in the period they arise within re-measurements and other items. The Law Society measures the defined benefit obligation as of the balance sheet date using the most recently completed actuarial valuation prepared for accounting purposes.

Income taxes

The Law Society meets the qualifications of a non-profit organization as defined in the *Income Tax Act* and, as such, is exempt from income taxes.

The Law Society of Alberta

Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

Donated services

A portion of the Law Society's work is dependent on the service of many volunteers, particularly the significant contribution of the Board and committees of the Board. These services are not normally purchased by the Law Society. Due to the difficulty in determining their fair value, donated services are not recognized in these financial statements.

3 Investments

The Law Society's investments are governed by a Statement of Investment Policies and Goals approved by the Board and managed under contract with an investment manager. The Law Society's investments are carried at fair market value, subject to normal market fluctuations, and the statement of revenue, expenses, and fund balances reports both realized and unrealized gains and losses on investments. The Law Society's investments consist of bonds and equity investments at December 31, 2020 as follows:

	2020 $	2019 $
Bonds denominated in Canadian dollars:		
Corporate	2,729,774	3,468,953
Provincial government	2,418,690	1,397,529
Federal government	2,628,671	2,248,317
T-Bills	-	99,487
	7,777,135	7,214,286
Equities denominated in Canadian dollars	4,590,324	4,214,545
	12,367,459	11,428,831

4 Loans Receivable

The Law Society has agreed to participate with other Canadian law societies in a collective loan of $2 million to the Canadian Legal Information Institute (CanLII), a wholly-owned subsidiary of the Federation of Law Societies of Canada. The loan is part of the financing for the purchase by CanLII of Lexum, a corporation providing support services to CanLII for the implementation of CanLII's legal information website. The Law Society's participation is $361,494 (2019 - $294,864) and includes interest earned. The loan has a five-year term with an annual interest rate of 4.74% compounded semi-annually and payable annually. The Law Society is also committed to provide $63,973 in 2021 to finance the remaining portion of the acquisition.

The Law Society has agreed to provide financial support to the Canadian Centre for Professional Legal Education (CPLED) to cover the start-up costs related to the implementation of the new CPLED PREP program. The Law Society advanced $395,086 (2019 - $1,050,000) for a total of $1.8M in financial support over the past three years. The annual interest rate is 4% compounded annually and is included in the loan balance. In 2020, the Law Society agreed to forgive $72,000 in interest due within the June 30, 2021 loan repayment, of which $36,000 was recorded in 2020.

The Law Society of Alberta

Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

5 Trust assets and liabilities

The *Legal Profession Act* provides that lawyers' trust funds which cannot be disbursed to clients must be forwarded to the Law Society. In 2020, approximately $72,000 (2019 – $245,000) was received. The Law Society holds the funds in trust for five years, refunds amounts to claimants as appropriate, and forwards any unclaimed funds, plus interest earned, less an administration fee to the Alberta Law Foundation. The administration fee is set at 2.5% of the principal and 10% of the income on the funds forwarded in each year. Amounts forwarded to the Alberta Law Foundation during the 2020 fiscal period totalled approximately $233,200 (2019 – $167,600).

The Law Society holds funds related to custodianship trust accounts. In 2020, the Law Society held trust funds in the amount of $147,900 (2019 - $83,000). Interest earned on these funds is paid to the Alberta Law Foundation.

6 Capital assets

			2020	2019
	Cost $	Accumulated amortization $	Net $	Net $
Furniture and equipment	1,973,201	221,902	1,751,299	1,805,595
Computer	2,820,799	1,248,243	1,572,556	1,491,315
Leasehold improvements	5,923,115	420,029	5,503,086	6,024,957
Adjudicator training program	84,320	72,210	12,110	40,216
	10,801,435	1,962,384	8,839,051	9,362,083

7 Reinsurance recoverable and reserve for claims and related costs

The change in the reinsurance recoverable is summarized as follows:

	2020 $	2019 $
Reinsurance recoverable – beginning of period	1,147,000	2,605,000
Decrease due to claims experience	(5,000)	(1,458,000)
Reinsurance recoverable – end of period	1,142,000	1,147,000

The change in the reserve for claims and related costs is summarized as follows:

	2020 $	2019 $
Reserve for claims and related costs – beginning of period	7,278,000	6,675,000
Claims paid	(248,088)	(654,895)
Related costs paid and accrued	(25,276)	(38,078)
Recoveries from members and third parties	2,200	268,568
	(271,164)	(424,405)
(Decrease) Increase due to claims experience	180,164	1,027,405

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Reserve for claims and related costs – end of period	7,187,000	7,278,000
Case reserves (indemnity and external expenses)	2,586,000	3,090,000
Incurred but not reported claim reserve (indemnity and external expenses)	3,057,000	2,551,000
Provision for internal claim administration	416,000	324,000
Provision for adverse deviation	1,128,000	1,313,000
Reserve for claims and related costs	7,187,000	7,278,000

The portion of the reserve for claims and related costs expected to be paid within the next fiscal year cannot be reasonably determined and therefore has not been included in current liabilities.

In summary, the net exposure is summarized as follows:

	2020 $	**2019 $**
Reserve for claims and related costs – beginning of period	7,278,000	6,675,000
Reinsurance recoverable – beginning of period	(1,147,000)	(2,605,000)
Net exposure – beginning of period	6,131,000	4,070,000
Claims paid	(248,088)	(654,895)
Related costs paid and accrued	(25,276)	(38,078)
Recoveries from members and third parties	2,200	268,568
	5,859,836	3,645,595
Provision for claims and related costs	185,164	2,485,405
Net exposure – end of period	6,045,000	6,131,000
Reserve for claims and related costs – end of period	7,187,000	7,278,000
Reinsurance recoverable – end of period	(1,142,000)	(1,147,000)
Net exposure – end of period	6,045,000	6,131,000

The discount rate applied by the actuary at December 31, 2020 is 0.95% (2019 – 2.05%). The undiscounted reserve balance at December 31, 2020 is $4.978 million (2019 – $5.059 million).

Claims which occurred between November 1, 2001 and October 31, 2007 are insured by a $10,000,000 indemnity bond with the Law Society retaining the first $1,000,000 in claims losses. Claims which occurred between November 1, 2007 and June 30, 2014 are insured by an indemnity bond of $10,000,000 with a $1,500,000 retention. Claims for lawyer misappropriation that occur subsequent to June 30, 2014 are covered though the Misappropriation Indemnity program administered by Alberta Lawyers Indemnity Association (formerly The Alberta Lawyers Insurance Association).

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Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

8 Restricted funds

Contingency reserve

The Contingency reserve is for future liabilities that may arise as a result of significant adverse claims experience. In the current period, revenue exceeded expenses of the Assurance Fund by $492,893 and this amount, therefore, was added to the reserve (2019 – expenses exceeded revenue by $1,721,007).

Scholarship reserve

In the current period, revenue exceeded expenses by $145,937 and this amount, therefore, was added to the reserve (2019 – revenue exceeded expenses by $187,553).

9 Pension plan

	2020 $	2019 $
Registered pension plan accrued liability	403,548	392,304
Supplemental retirement plan accrued liability	2,319,802	2,210,064
	2,723,350	2,602,368

a) Registered pension plan

The Law Society provides a non-contributory defined benefit pension plan to eligible management employees based on earnings and years of service. The defined benefit pension plan was closed to management employees commencing employment after May 31, 2006.

As of December 31, 2020, and on advice of the actuary, the details of the pension plan are as follows:

	2020 $	2019 $
Reconciliation of fair value of plan assets		
Fair value of plan assets – beginning of period	4,006,075	3,667,627
Law Society contributions during period	34,600	38,292
Actual return on plan assets	406,626	508,459
Less benefits paid during period to retirees	(214,858)	(208,303)
Fair value of plan assets – end of period	4,232,443	4,006,075
Reconciliation of the accrued benefit obligation		
Accrued benefit obligation – beginning of period	4,398,379	4,050,101
Current service cost	41,264	63,866
Interest on accrued benefit obligation	131,503	151,160
Actuarial (gain) during period	279,703	341,555
Less benefits paid during period to retirees	(214,858)	(208,303)
Accrued benefit obligations – end of period	4,635,991	4,398,379

The Law Society of Alberta

Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

	2020 $	2019 $
Plan deficit	(403,548)	(392,304)
Pension cost		
Current service cost	41,264	63,866
Finance cost	12,067	15,020
Re-measurements and other items	(7,487)	(30,764)
Pension cost recognized during period	45,844	48,122
Accrued benefit asset		
Beginning balance – Accrued benefit liability	(392,304)	(382,474)
Plus contributions in the period	34,600	38,292
Less pension cost recognized during period	(45,844)	(48,122)
Ending balance – Accrued benefit liability	(403,548)	(392,304)

Plan assets

The plan assets are invested in a balanced fund that consists of the following asset mix:

	2020	2019
Fixed income	33.0%	32.1%
Foreign equities	47.0%	45.0%
Canadian equity	16.0%	16.9%
Cash and cash equivalents	4.0%	6.0%
	100%	100%

Assumptions

The actuary used the following rates in their calculations:

	2020	2019
Discount rate – beginning of period	3.05%	3.80%
Discount rate – end of period	2.40%	3.05%
Expected long-term rate of return on plan assets	2.40%	3.05%
Rate of compensation increase	3.5%	3.50%

b) Supplemental Retirement Plan

The Law Society provides to eligible management employees a non-funded Supplemental Retirement Plan (SRP). The SRP is based on earnings and years of service and has been implemented to top-up the pension payments for those whose earnings are above the Canada Revenue Agency maximum. The SRP was closed to management employees commencing employment after May 31, 2006.

The Law Society of Alberta

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For the year ended December 31, 2020

	2020 $	2019 $
Reconciliation of the accrued benefit obligation		
Accrued benefit obligation – beginning of period	2,210,064	2,088,354
Current service cost	-	3,195
Interest on accrued benefit obligation	65,633	77,360
Actuarial (gain) during period	160,432	149,494
Less benefits paid during period for retirees	(116,327)	(108,339)
Accrued benefit obligation – end of period	2,319,802	2,210,064
Pension cost		
Current service cost	-	3,195
Interest cost on accrued benefit obligation	65,633	77,360
Net actuarial (gains)	160,432	149,494
Pension cost recognized during period	226,065	230,049
Accrued benefit liability		
Beginning balance – accrued benefit liability	2,210,064	(2,088,354)
Plus contributions in the period	116,327	108,339
Less pension cost recognized during period	(226,065)	(230,049)
Ending balance – Accrued benefit liability	(2,319,802)	(2,210,064)

10 Operating Lease

The Law Society has an operating lease for its premises for 15 years and 9 months effective November 7, 2019. Under the terms of the lease agreement, the minimum annual lease payment increases over the lease term. In addition, the lessor provided the Law Society with a tenant improvement allowance. This allowance is accounted for as a reduction of the lease expense over the term of the lease.

11 Commitments

The Law Society is committed to leased office space and equipment until 2035. In addition, the Law Society has annual funding commitments to related organizations. Future minimum lease payments and funding commitments are as follows:

	$
2021	4,147,011
2022	2,468,523
2023	2,011,145
2024 and thereafter	26,036,421

12 Related party transactions

Alberta Lawyers Indemnity Association (formerly The Alberta Lawyers Insurance Association) (the Association) is a wholly-owned subsidiary of the Law Society. Share capital of $20 consists of four common shares; three shares issued to the Law Society and one share issued to the person who holds the office of Executive Director of the Law Society, as bare trustee for the Law Society.

The Association administers a program under which active members of the Law Society in private practice (indemnified lawyers) have mandatory coverage for errors and omissions (or Professional Liability Insurance) of $1,000,000 per occurrence, with an annual aggregate limit of $2,000,000. Effective July 1, 2014 the Association also administers a program under which indemnified lawyers have mandatory coverage for misappropriation from lawyer trust accounts (or Misappropriation Indemnity) of $5,000,000 per occurrence, with a profession-wide annual aggregate limit of $25,000,000.

The Law Society does not consolidate, in its financial statements, the results of the Association. A summary of the Association's financial information for the year ended December 31, 2020 is as follows:

	2020 $	2019 $
Assets	213,213,550	201,233,014
Liabilities	(149,820,461)	(138,470,729)
Net assets	63,393,089	62,762,285
Revenue	36,176,722	46,455,283
Expenses	(42,772,519)	(25,467,155)
(Deficiency) excess of revenue over expenses before the following	(6,595,797)	20,988,128
Unrealized gain (loss) on fair market value of investments	7,226,601	1,716,114
Excess of revenue over expenses	630,804	22,704,242
Cash flows from operating activities	2,811,460	15,750,460
Cash flows from investing activities	(8,584,475)	866,809
(Decrease) increase in cash and cash equivalents	(5,773,015)	16,617,269

During the year the Law Society received $2,846,600 from the Association for management fees (2019 – $2,867,000). As at December 31, 2020, $290,348 was due to the Association (2019 –$152,250) and is non-interest bearing and due on demand. These transactions are in the normal course of operations and are measured at the amount of consideration established and agreed to by the related parties.

The elected Board of the Law Society include lawyers drawn from law firms across the province. These law firms may at times be engaged by the Law Society in the normal course of business. During the year expenses of $455 were incurred with these law firms (2019 - $10,729). Board members are not involved in the retention of these firms.

13 Financial instruments

Market disruptions associated with the COVID-19 pandemic have had a global impact, and uncertainty exists as to the long-term implications. Such disruptions can adversely affect the financial instruments risks associated with the Association.

Interest rate risk

The Law Society of Alberta

Notes to Non-consolidated Financial Statements
For the year ended December 31, 2020

The Law Society is exposed to interest rate risk on its investments. The Law Society manages the interest rate risk on bonds by engaging an investment manager who is guided by the Statement of Investment Policies and Goals designed to mitigate interest rate risk.

Included in investments are bonds in the amount of $7,777,135. The maturity dates and interest rates are as follows:

	December 31, 2020		December 31, 2019	
Maturity date from balance sheet date	**Interest rate Range**	**Market value $**	**Interest rate Range**	**Market value $**
Within five years	1.25-4.29%	3,276,290	1.25 – 7.56%	2,813,838
Greater than five years but less than ten years	2.73-5.00%	2,184,457	1.90 – 5.75%	2,172,682
Greater than ten years	3.74-6.25%	2,316,388	2.00 – 6.35%	2,198,830
		7,777,135		7,185,350

Price risk

The investments of the Law Society are subject to price risk because changing interest rates impact the market value of the interest-bearing investments, general economic conditions affect the market value of equity investments and currency exchange rates impact the market value of the investments denominated in currencies other than the Canadian dollar. The risk is managed by engaging an investment manager for the long-term portfolio investments and by investing other funds in short term fixed rate securities with high credit ratings.

Credit risk

The Law Society is not exposed to significant credit risk on any of its financial assets. The Law Society manages credit risk by maintaining bank accounts with reputable financial institutions and only investing in securities that are liquid, highly rated and traded in active markets. Accounts receivable are from lawyers and reputable, credit-worthy reinsurers.

Liquidity risk

Liquidity risk is the risk that the Law Society will not be able to meet its financial obligations as they become due. The Law Society's approach to managing liquidity is to ensure that it will have sufficient cash available to meet its liabilities when due. The Law Society's strategy is to satisfy its liquidity needs using cash on hand, cash flows generated from operating activities and investing activities.

LAW SOCIETY of ALBERTA

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Memo

Hearing Rules and Pre-Hearing and Hearing Guideline

To	Benchers of the Law Society of Alberta
From	Shabnam Datta, Manager, Policy Sharon Heine, Senior Manager, Regulation Nancy Bains, Tribunal Office Nancy Carruthers, General Counsel & Director, Regulation
Date	April 1, 2021

Proposed Motions

Motion 1:
That the Benchers approve the amendments to the Rules, as proposed in Appendix A.
Motion 2:
That the Benchers approve the *Pre-Hearing and Hearing Guideline*, in Appendix B.
Motion 3:
That the Benchers rescind the *Pre-Hearing Guideline* and the *Hearing Guide*, in Appendix C.

Introduction

The Law Society's Working Group on hearing processes, comprised of staff from General Counsel, Tribunal Office, Counsel and Policy, reviewed the Law Society's hearing processes, with a view to examining the applicable rules and guidelines, and determining whether they required updates, revisions or amendments. This resulted in the Benchers reviewing the proposed new and amended hearing Rules in December 2020 and approving them in principle (Appendix A).

The Working Group also reviewed the current *Pre-Hearing Guideline* and the current *Hearing Guide* (the "current Guidelines") concurrently with the work on the hearing Rules and developed the *Pre-Hearing and Hearing Guideline* (Appendix B) for the Law Society's hearing processes set out in the new Rules.

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Advancing the Strategic Plan

The Law Society conducts its work to advance the goals of the Law Society's *Strategic Plan, 2020-2024*, which was approved by the Benchers in December 2019. The work on the hearing processes supports the goal of Innovation and Proactive Regulation, which means that the Law Society regulates the legal profession in a manner that is innovative, proactive, transparent and appropriate.

New Hearing Rules

What Issue are we Addressing?

The Rules regarding the Law Society's hearing processes, as well as the applicable guidelines, had not been extensively reviewed or updated for some time. The Executive Leadership Team directed the Working Group to review the Rules and the guidelines applicable to hearing processes to determine whether any updates or corrections were required.

Revisions to the Hearing Rules

The Working Group commenced its work in 2020, identifying the Rules applicable to hearings and determined that the Rules required an update to fully reflect the Law Society's current practices regarding hearing processes. Over the course of the year, the Working Group amended current Rules, developed new Rules and identified Rules that were unnecessary. This work resulted in a set of new and updated Rule amendments that modernize the Law Society's hearing processes.

These Rule amendments were brought to the Policy and Regulatory Reform Committee (the "Committee") at an initial meeting on September 17, 2020 to discuss some of the larger concepts the Working Group was planning to incorporate into the proposed Rule amendments. The Committee provided constructive feedback on the concepts and the Working Group incorporated that feedback as it continued the work on the Rule amendments. The Rule amendments were then brought to the Committee on three separate occasions after the initial discussion – October 22, November 6 and November 19. At each meeting, the Committee thoroughly discussed and reviewed the Rule amendments, and the Committee provided extensive input and feedback. The Working Group incorporated the feedback from those three meetings into the final draft of the proposed Rule amendments. At its final meeting in November, the Committee recommended that the Rule amendments be recommended to the Benchers for approval in principle.

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Hearing Rules Approved in Principle

The Rule amendments were brought to the December 2020 Bencher meeting, where the Benchers reviewed the Rules. The Benchers asked several questions during the presentation, but no substantive changes were made to the Rule amendments. The Benchers approved the Rule amendments in principle ("Rules approved in principle").

The Working Group worked on a new hearing Guideline concurrently with its work on the Rules approved in principle. The development of a new hearing Guideline was in part dependent on the adoption of Rules approved in principle and it was always anticipated that the Rules approved in principle could be revised or refined slightly for consistency and to ensure that the guidance set out in a new Guideline and the hearing processes captured in the Rules approved in principle are completely in alignment.

Revisions to the Hearing Rules Approved in Principle

As the Working Group continued working on a new hearing Guideline, it made a few revisions to the Rules approved in principle. Most of the revisions involve consistency of terminology, such as ensuring that the succinct term, "Society counsel", rather than "counsel for the Society" is used, in keeping with the terminology used in the Guideline. In addition, the term "chair of the pre-hearing conference" is used in some instances in the Rules, when the chair has been defined in the Rules as "pre-hearing conference chair". The incorrect references have been corrected. Other corrections include refinements to punctuation.

The revisions to the Rules approved in principle that are other than the type set out above, are set out in a table at the end of the memo. The first column shows the Rules that were approved in principle in December. The second column sets out the revisions that have been made to the Rules approved in principle. These revisions have been made to ensure the hearing process is accurately reflected in the Rules approved in principle. These are discussed below.

Hearing Processes

Rule 2.5 currently includes subrule (1.1), which provides that Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules. The Working Group determined that the subrule properly belongs in Rule 90.1, as Rule 90.1 specifically deals with pre-hearing conferences.

Rule 90.1 has been revised to include the subrule.

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Pre-Hearing Conference Requirements

Rule 90.3 (6) sets out that portions of a pre-hearing conference recording or report are admissible at a hearing. Currently the Rule provides only for the Hearing Committee's discretion to admit the report. The Rule should also provide that a panel may admit the recording or report, as pre-hearing conferences may be conducted for hearings that are heard by a panel for proceedings other than Conduct Proceedings.

Abeyances

Rule 90.5(2) provides that the pre-hearing conference chair may deny the request for an abeyance or may place a proceeding in abeyance. The intervening step of approving the request, before the proceeding can be placed in abeyance, is missing from the Rule approved in principle. This subrule has been corrected.

When Rule 90.5(3) was approved in principle, it was approved before the abeyance rule for a conduct review – Rule 89.2 – was approved. The conduct review abeyance rule fleshed out the concept of delay and prejudice more thoroughly. The Working Group determined that Rule 90.5(3) for abeyance of proceedings should follow the abeyance rule for conduct reviews. Accordingly, rather than providing that any delay in the proceeding resulting from the abeyance will be without prejudice to either party, the subrule now provides that no argument based on delay or other prejudice resulting from the abeyance may be raised at any time.

Subrule (4) has been clarified to provide that an abeyance will terminate prior to the expiration of the time specified in the abeyance order, rather than just prior to the time specified.

Witnesses, Exhibits and Authorities

In Rule 90.7(1), the Rule provided that each party shall provide to the Tribunal Office and to every other party, the contact information of each witness the party intends to call to give evidence. However, the Working Group noted that confidentiality issues may arise. The Rule has been revised to provide that contact information will be provided only to the Tribunal Office.

Rule 90.7(4) has been revised to remove the ambiguity as to whom a request to vary the timelines may be made. The revision clarifies that a request may be made through the Tribunal Office.

Admissions

Rule 90.8 has been revised to include panel, in addition to the Hearing Committee, as a panel also has the ability to admit additional evidence for hearings that it is conducting.

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New Pre-Hearing and Hearing Guideline

What Issue are we Addressing?

In addition to a review of the hearing Rules, in 2020 the Working Group conducted a thorough review of the current Guidelines for the Law Society's hearing processes. The *Pre-Hearing Guideline* was last updated in December 2014 and the *Hearing Guide* was last updated in February 2013 (both in Appendix C). The Working Group determined that these guidelines are outdated and do not provide sufficient information to the parties involved in the hearing process, including lawyers, Law Society counsel, pre-hearing chairs and Benchers. In addition, the Rules approved in principle, which modernize the Law Society's hearing processes, are not captured in the current guidelines.

New Hearing Guideline

To address these issues, the Working Group developed a new *Pre-Hearing and Hearing Guideline* (the "new Guideline") that incorporates the pre-hearing and hearing processes for many of the Law Society's hearings into one central Guideline for ease of access and reference. The new Guideline reflects the Rules approved in principle, updates the hearing processes and provides transparency and clarity for the Law Society's pre-hearing and hearing processes.

The new Guideline provides clear, detailed and updated guidance on the pre-hearing and hearing processes (the "hearing process") to lawyers, to Law Society staff and to Benchers, including those acting as pre-hearing conference chairs, and those on Hearing Committee panels. The new Guideline also gives effect to the new Rules by providing a detailed framework for the hearing steps established in the new Rules. While the new Guideline is comprehensive in that it combines in one Guideline the processes that are dealt with separately in the two current Guidelines, it also clarifies processes and provides key details for understanding the steps in the hearing process.

Committee Review

Given the scope and level of detail, the Working Group brought the new Guideline to the Committee on three separate occasions – the first half of the new Guideline on March 9, the second half on March 23 and the complete Guideline on March 30. The memos to the Committee regarding the new Guideline (dated March 5 for the March 9 meeting, dated March 19 for the March 23 meeting, and dated March 26 for the March 30 meeting) have been attached as reference documents for the Benchers (Appendix D).[1] They

[1] The paragraphs referenced in the memos may not necessarily line up with the paragraphs in the new Guideline, as revisions based on the Committee's feedback resulted in renumbering of paragraphs.

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provide more detailed information as to the sections of the Guideline, and highlight the key sections discussed by the Committee.

The Committee reviewed the new Guideline thoroughly, section by section, providing extensive and detailed comments and feedback at each meeting. The Working Group reviewed all comments and incorporated the Committee's feedback into the final version of the new Guideline.

Much of the Committee's feedback with respect to several sections sought clearer language and specificity. The Committee also focused on several key sections of the new Guideline for discussion and further clarification. These sections are highlighted below.

Authenticity of Documents (paragraph 37)

During the discussion about authenticity of documents, the Committee asked about what is meant by an original of an electronic record, and whether it would be necessary to see the "wet ink" signature on the original document. Further guidance was added at paragraph 37 in the Guideline for determining the authenticity of an electronic record.

Abeyance (paragraph 61)

The Committee requested clarification as to the obligations of the parties when a proceeding is placed in abeyance. That is, what if anything would they be required to do. Further information has been added at paragraph 61 that when a proceeding is in abeyance, neither party will take a step or compel the other party to take a step that is otherwise required by the Rules.

Hearing – Guiding Principles (paragraph 104)

The Committee discussed the efficiency of the Law Society's hearing processes, and determined that additional guiding principles should be added to clearly provide that hearings should attempt to be conducted in an expeditious manner, while remaining committed to a fair, efficient and transparent hearing process

Burden of Proof – Trust Money or Property (paragraph 108)

The Committee requested guidance as to the burden of proof when it is alleged that a lawyer has not properly dealt with trust money or property. The Working Group added additional guidance at paragraph 108 that when there is such an allegation, the Law Society will bring evidence of the receipt of trust money or property, with the onus of the burden of roof shifting to the lawyer.

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***Solicitor-Client Privilege* (paragraphs 137-143)**

Section 78 of the Act provides that conduct hearings are held in public unless some or all of the hearing is to be held in private. Section 112(2) of the Act requires that all parts of a hearing during which reference will be made to privileged evidence must proceed in private. Questions arose as to whether the making of a complaint is an express waiver of privilege. The Committee requested and further clarification and guidance as to the concept of solicitor-client privilege and private hearings has been added.

***Oath or Affirmation* (paragraphs 165-167)**

Originally, the framing of the section on oaths or affirmation suggested that an oath was the preferred method of swearing a witness. If a witness objected to an oath or was objected to as incompetent to take an oath, then the chair of the Hearing Committee would have to be satisfied before allowing a witness to make an affirmation. The inference was that an affirmation was "second rate". Based on the Committee's feedback, paragraph 165 states that a witness may choose which method they preferred.

***Determining that Conduct is Deserving of Sanction* (paragraphs 181-182)**

In the merits phase, the Hearing Committee determines whether the lawyer is guilty of conduct deserving of sanction. The Committee was of the view that section 49 of the Act, which states when conduct is deserving of sanction, provided insufficient guidance. The Working Group reviewed the principle, and added additional guidance that conduct is deserving of sanction where the lawyer's conduct is incompatible with the best interests of the public and the reputation of the legal profession.

***Reprimands* (paragraphs 194-195)**

The Committee discussed the section on reprimands and advised that it is sometimes unclear as to what is expected of a reprimand and that additional guidance on sanctioning a lawyer using reprimands would be appreciated. The Working Group has added information as to what a reprimand should entail.

***Penalty* (paragraphs 196-197)**

Section 72(2)(b) of the Act provides that in addition to ordering a disbarment, suspension or reprimand, the Hearing Committee may also order the payment of a penalty not exceeding $10,000 per citation. The Committee asked for additional information as to when a penalty would be appropriate, which has been added.

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***Integrity* (paragraphs 203-205)**

The Guideline includes a discussion on integrity as a factor to consider for determining the appropriate sanction. The Committee requested that integrity as it relates to personal conduct be included, in addition to integrity as it relates to the practice of law. Additional guidance on dishonourable conduct in a lawyer's private life has been added to the Guideline.

***Similar Misconduct* (paragraph 207)**

The Committee discussed whether the determination of sanction should consider whether the prior misconduct was of a similar nature, or whether it was sufficient that there was prior misconduct. The Committee was of the view that the prior misconduct need not be of a similar nature to warrant increasingly serious sanction on the lawyer.

***Ordering Costs* (paragraphs 222-223)**

The Committee discussed ordering costs when a lawyer is found guilty of conduct deserving of sanction, and the import of doing so. The Committee approved language in paragraph 223 in the Guideline regarding the appropriateness of ordering costs.

***Deadline for Payment of Costs* (paragraph 224)**

When a Hearing Committee orders the payment of costs, it may also set a deadline for the payment. The Committee sought additional guidance as to the factors a Hearing Committee may consider when setting a deadline for payment, and this guidance was added to the Guideline.

***Referrals to the Minister* (paragraphs 233-235)**

The Guideline provides that a Hearing Committee must direct the Executive Director to send a copy of the hearing record when it is of the opinion that there are grounds to believe a lawyer has committed a criminal offence. The Committee was of the view that it would be helpful to set out in the Guideline the obligations of Law Society counsel in these circumstances, particularly with respect to the requirement of Law Society counsel to make submissions and the content of those submissions.

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Policy and Regulatory Reform Committee Recommendation

The revisions to the Rules approved in principle were flagged for the Committee and brought to the Committee on March 30 for review. The Committee reviewed the revisions and recommends to the Benchers that they approve the Rules at Appendix A.

The Committee reviewed all of the revisions to the complete Guideline at the March 30 meeting. The Committee recommends to the Benchers that they approve the *Pre-Hearing and Hearing Guideline*, at Appendix B. This new Guideline has been developed to replace the *Pre-Hearing Guideline* and the *Hearing Guide*. The Committee recommends that the Benchers rescind these two Guidelines.

Recommendation

The Rules are set out in Appendix A in two columns. The first column sets out the original version of the Rules prior to the December Bencher meeting. The second column sets out the new and amended Rules that were approved in principle by the Benchers in December, with the minor revisions that are discussed above, as well as the revisions involving punctuation and consistency of terminology, already incorporated in the second column. It is recommended that the Benchers approve the Rule amendments in Appendix A.

It is recommended that the Benchers approve the proposed new *Pre-Hearing and Hearing Guideline* at Appendix B. The proposed new Guideline has been developed to replace the *Pre-Hearing Guideline* and the *Hearing Guide*, and it is recommended that the Benchers rescind these two Guidelines, in Appendix C.

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Revisions to the Rules Approved in Principle

Rule Approved in Principle	Revision to that Rule
Hearing Processes	**Hearing Processes**
2.5 (1) A hearing under the Act and these Rules shall proceed as an oral hearing by video-conference.	**2.5 (1)** A hearing under the Act and these Rules shall proceed as an oral hearing by video-conference.
(1.1) Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules.	~~**(1.1)** Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules.~~
(2) Notwithstanding subrule (1), a hearing shall proceed by means other than a video-conference where:	**(2)** Notwithstanding subrule (1), a hearing shall proceed by means other than a video-conference where:
[…]	[…].

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Rule Approved in Principle	Revision to that Rule
Pre-Hearing Conferences **90.1(1)** A pre-hearing conference must be held, by telephone or video-conference, (a) before a hearing under section 59, section 75 or section 76 of the Act commences, unless both parties agree to waive the pre-hearing conference; and (b) before any hearing, other than under section 59, section 75 or section 76, commences when […]	**Pre-Hearing Conferences** **90.1(1)** A pre-hearing conference must be held, by telephone or video-conference, (a) before a hearing under section 59, section 75 or section 76 of the Act commences, unless both parties agree to waive the pre-hearing conference; and (b) before any hearing, other than under section 59, section 75 or section 76, commences when […] **(1.1)** Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules. […]

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Rule Approved in Principle	Revision to that Rule
Pre-Hearing Conference Requirements […] **90.3 (6)** At the Hearing Committee's discretion, portions of a recording under subrule (4) or a report under subrule (5) that set out: (a) directions made by the pre-hearing conference chair, and (b) failures to comply with directions of the pre-hearing conference chair, are admissible at a hearing conducted in relation to the same proceeding.	**Pre-Hearing Conference Requirements** […] **90.3(6)** At the panel's or the Hearing Committee's discretion, portions of a recording under subrule (4) or a report under subrule (5) that set out: (a) directions made by the pre-hearing conference chair, and (b) failures to comply with directions of the pre-hearing conference chair, are admissible at a hearing conducted in relation to the same proceeding.

Rule Approved in Principle	Revision to that Rule
Abeyances […] **90.5 (2)** The pre-hearing conference chair will make an order, either: (a) denying the request; or (b) placing a proceeding in abeyance for a period not exceeding one year. **(3)** When a proceeding is placed in abeyance in accordance with subrule (2), […] (b) any delay in the proceeding resulting from the abeyance will be	**Abeyances** […] **90.5 (2)** The pre-hearing conference chair will make an order, either: (a) denying the request; or (b) approving the request and placing a proceeding in abeyance for a period not exceeding one year. **(3)** When a proceeding is placed in abeyance in accordance with subrule (2), […] (b) ~~any delay in the proceeding resulting from the abeyance will be without prejudice to either~~

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without prejudice to either party. **(4)** An abeyance will terminate, (a) upon expiration of the time specified in the abeyance order; or (b) prior to the time specified in the abeyance order: (i) by consent of both parties; or (ii) by order of the pre-hearing conference chair upon application by either party.	~~party~~no argument based on delay or other prejudice resulting from the abeyance may be raised at any time. **(4)** An abeyance will terminate, (a) upon expiration of the time specified in the abeyance order; or (b) prior to the expiration of the time specified in the abeyance order: (i) by consent of both parties; or (ii) by order of the pre-hearing conference chair upon application by either party.

Rule Approved in Principle	Revision to that Rule
Witnesses, Exhibits and Authorities **90.7(1)** Not less than 14 days before the date set for the commencement of the hearing, each party shall provide to the Tribunal Office and every other party: (a) the name of each witness that the party intends to call to give evidence at the hearing, as well as the witness' contact information; (b) a list of authorities the party anticipates it will rely upon at the hearing; and	**Witnesses, Exhibits and Authorities** **90.7(1)** Not less than 14 days before the date set for the commencement of the hearing, each party shall provide: (a) to the Tribunal Office and every other party: (~~a~~i) the name of each witness that the party intends to call to give evidence at the hearing~~, as well as the witness' contact information;~~,

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(c) copies of all documents that the party intends to introduce into evidence at the hearing.	(~~b~~ii) a list of authorities the party anticipates it will rely upon at the hearing~~:~~, and (~~c~~iii) copies of all documents that the party intends to introduce into evidence at the hearing~~.~~; and (b) to the Tribunal Office, the contact information of each witness that the party intends to call to give evidence at the hearing.

Rule Approved in Principle	Revision to that Rule
Witnesses, Exhibits and Authorities **90.7 (4)** A party may make a request to vary the time to comply with subrules (1) - (3).	**Witnesses, Exhibits and Authorities** **90.7 (4)** A party may make a request through Tribunal Office to vary the time to comply with subrules (1) - (3).

Rule Approved in Principle	Revision to that Rule
Hearing Committee **90.8** Notwithstanding Rules 90.6 and 90.7, a Hearing Committee may admit additional evidence upon any terms and conditions it deems appropriate.	~~**Hearing Committee**~~ **Admissions** **90.8** Notwithstanding Rules 90.6 and 90.7, a panel or a Hearing Committee, as applicable, may admit additional evidence upon any terms and conditions it deems appropriate.

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HEARING RULES

Current Rule	New Rule or Amended Rule
	Tribunal Office **2.4 (1)** The Tribunal Office is established. **(2)** The Tribunal Office shall support the Society's independent adjudicative processes with respect to all Society hearings. **(3)** The Tribunal Office shall: (a) manage the hearing process, including, (i) providing administrative support, and (ii) scheduling pre-hearing conferences, hearings and complaint dismissal appeals; (b) support the operations of the Society's independent tribunals and adjudicators; and (c) issue and publish hearing decisions and outcomes on behalf of the Executive Director. **(4)** The Tribunal Office employees are employees of the Society.

Hearing Processes	**Hearing Processes**
2.4 (1) A hearing under the Act and these Rules shall proceed as an oral hearing by video-conference.	**2.~~4~~5 (1)** A hearing under the Act and these Rules shall proceed as an oral hearing by video-conference.
(2) Notwithstanding subrule (1), a hearing shall proceed by means other than a video-conference where:	**(2)** Notwithstanding subrule (1), a hearing shall proceed by means other than a video-conference where:
(a) the Rules specify that a hearing will proceed based on written submissions only;	(a) the Rules specify that a hearing will proceed based on written submissions only;
(b) the President exercises his or her authority under the Act or the Rules and determines that the hearing will proceed by means other than video-conference;	(b) the President exercises his or her authority under the Act or the Rules and determines that the hearing will proceed by means other than video-conference;
(c) the parties agree that a hearing may proceed by means other than video-conference; or	(c) the parties agree that a hearing may proceed by means other than video-conference; or
(d) a chair of a pre-hearing conference in accordance with Rule 90.1, or a panel or Hearing Committee, grants an application to allow part or all of a hearing to proceed by means other than video-conference.	(d) ~~a chair of~~ a pre-hearing conference chair in accordance with Rule 90.~~1~~2, or a panel or Hearing Committee, grants an application to allow part or all of a hearing to proceed by means other than video-conference.
(3) If subrules (2)(b), (c) or (d) apply, then a hearing may proceed, in whole or in part, as:	**(3)** If subrules (2)(b), (c) or (d) apply, then a hearing may proceed, in whole or in part, as:
(a) an oral hearing that is:	(a) an oral hearing that is:
(i) in-person, or	(i) in-person, or
(ii) by teleconference; or	(ii) by teleconference; or
(b) a hearing based on written submissions.	(b) a hearing based on written submissions.
(4) Where a public hearing is required under section 78 of the Act, the requirement to conduct a public hearing may be satisfied by	**(4)** Where a public hearing is required under section 78 of the Act, the requirement to conduct a public hearing may be satisfied by

making the public parts of the hearing record, as defined in the Act, available for inspection upon request.	making the public parts of the hearing record, as defined in the Act, available for inspection upon request.
(5) This Rule applies to all matters that proceed to a hearing after the date of enactment.	**(5)** This Rule applies to all matters that proceed to a hearing after the date of enactment.
(6) This Rule will be in force until June 30, 2021, unless otherwise determined by the Benchers.	**(6)** This Rule will be in force until June 30, 2021, unless otherwise determined by the Benchers.

Pre-Hearing Conferences	**Pre-Hearing Conferences**
48.5 (1) The applicant/appellant or counsel for the Law Society may request the Chair of the Committee to convene a pre-hearing conference, by telephone or video-conference, by submitting a written request to the Executive Director.	**48.5** **Repealed April 2021.** ~~**(1)** The applicant/appellant or counsel for the Law Society may request the Chair of the Committee to convene a pre-hearing conference, by telephone or video-conference, by submitting a written request to the Executive Director.~~
(2) Upon receiving a request the Executive Director shall send a letter to both parties setting the date, time and place of an initial pre-hearing conference and providing instructions for accessing the pre-hearing conference by telephone or video-conference.	~~**(2)** Upon receiving a request the Executive Director shall send a letter to both parties setting the date, time and place of an initial pre-hearing conference and providing instructions for accessing the pre-hearing conference by telephone or video-conference.~~
(3) The purpose of the pre-hearing conference is to resolve issues and move matters towards hearings or appeals in accordance with the rules and guidelines.	~~**(3)** The purpose of the pre-hearing conference is to resolve issues and move matters towards hearings or appeals in accordance with the rules and guidelines.~~
(4) The applicant/appellant or the applicant's/appellant's counsel and counsel for the Law Society must attend pre-hearing conferences. The chair of the Committee may make orders on any conditions, and may impose or set a plan and schedule for the completion of any steps by either or both parties to be completed before the hearing or appeal.	~~**(4)** The applicant/appellant or the applicant's/appellant's counsel and counsel for the Law Society must attend pre-hearing conferences. The chair of the Committee may make orders on any conditions, and may impose or set a plan and schedule for the completion of any steps by either or both parties to be completed before the hearing or appeal.~~
(5) The chair of the Committee may direct the parties to attend a future pre-hearing conference and if so, shall give directions generally including the time, date and place at which that conference will be held. These directions govern the process until the commencement of the hearing or appeal unless the parties agree to dispense with further pre-hearing conferences.	~~**(5)** The chair of the Committee may direct the parties to attend a future pre-hearing conference and if so, shall give directions generally including the time, date and place at which that conference will be held. These directions govern the process until the commencement of the hearing or appeal unless the parties agree to dispense with further pre-hearing conferences.~~
(6) The chair of the Committee who is involved in a pre-hearing	

conference may participate in a later hearing or appeal unless either the member or counsel for the Law Society objects to such participation.	~~**(6)** The chair of the Committee who is involved in a pre-hearing conference may participate in a later hearing or appeal unless either the member or counsel for the Law Society objects to such participation.~~

Committee/Panel Process	**Committee/Panel Process**
49 (1) To commence a hearing under this part the Executive Director shall serve: (a) the applicant or appellant, and (b) any other person who the Executive Director believes may have an interest in relation to the matter, with a Letter of Appointment of the Committee.	**49 (1)** To commence a hearing under this ~~p~~Part, the ~~Executive Director~~Tribunal Office shall serve: (a) the applicant or appellant, and (b) any other person who the Executive Director believes may have an interest in relation to the matter, with a Letter of Appointment of the Committee.
(2) When an oral hearing is requested, the Executive Director shall serve the parties in subrule (1) with a notice stating the time and place at which the appeal will be heard.	**(2)** When an oral hearing is requested, the ~~Executive Director~~Tribunal Office shall serve the parties in subrule (1) with a notice stating the time and place at which the appeal will be heard.
(3) The Committee shall make its decision on a matter on the basis of: (a) the materials that were before the Executive Director, (b) the written reasons for the decision of the Executive Director, (c) any additional materials (i) requested by the Committee from the applicant or appellant, or the Society, and (ii) provided to the Committee by the applicant or	**(3)** The Committee shall make its decision on a matter on the basis of: (a) the materials that were before the Executive Director~~,~~; (b) the written reasons for the decision of the Executive Director~~,~~; (c) any additional materials (i) requested by the Committee from the applicant or appellant, or the Society, and (ii) provided to the Committee by the applicant or

appellant, by any other person who may have an interest in relation to the matter or by the Society, and	appellant, by any other person who may have an interest in relation to the matter or by the Society~~,~~ and
(d) if an oral hearing is held, any evidence received by the Committee during the hearing.	(d) if an oral hearing is held, any evidence received by the Committee during the hearing.
(4) The Committee hearing the matter shall	**(4)** The Committee hearing the matter shall
(a) determine the process to be followed in accordance with the Act, the Rules, the principles of natural justice and the circumstances of the matter, and	(a) determine the process to be followed in accordance with the Act, the Rules, the principles of natural justice and the circumstances of the matter~~,~~ and
(b) in the event of an oral hearing, comply with Rule 98 as to persons present at the hearing, exhibits and records of the Society.	(b) in the event of an oral hearing, comply with Rule 98 as to persons present at the hearing, exhibits and records of the Society.
(5) An oral hearing shall be a private proceeding unless the Committee, on application, directs that all or part of the hearing is to be public.	**(5)** An oral hearing shall be a private proceeding unless the Committee, on application, directs that all or part of the hearing is to be public.
(6) On completing its hearing and deliberations, the Committee shall provide a written decision and written reasons for its decision to the Executive Director.	**(6)** On completing its hearing and deliberations, the Committee shall provide ~~a~~ its written decision ~~and written reasons for its decision~~ to the ~~Executive Director~~Tribunal Office.
(7) On receipt of the written decision and written reasons under subrule (6), the Executive Director shall within a reasonable time provide a copy of the written reasons to the applicant or appellant.	**(7)** On receipt of the written decision ~~and written reasons~~ under subrule (6), the ~~Executive Director~~Tribunal Office shall within a reasonable time provide a copy of the written ~~reasons~~ decision to the applicant or appellant.
(8) The decision of the Committee is final.	**(8)** The decision of the Committee is final.

Appeal of Complaint Dismissal **86 (1)** An appeal of a dismissal of a matter pursuant to section 53(4)(a) of the Act must be: (a) in the form specified by the Society, and (b) made within 30 days after the date the written notice of the dismissal is deemed to have been received by the complainant. **(2)** The Chair of the Appeal Committee may extend the time under subrule (1)(b) in appropriate circumstances.	**Appeal of Complaint Dismissal** **86 (1)** An appeal of a dismissal of a matter pursuant to section 53(4)(a) of the Act must be: (a) in the form specified by the Society~~,~~; and (b) made within 30 days after the date the written notice of the dismissal is deemed to have been received by the complainant. **(2)** The Chair of the Appeal Committee may extend the time under subrule (1)(b) in appropriate circumstances.
(3) After receiving an appeal under subrule (1), the member will be provided: (a) notice that an appeal has been received, (b) a copy of the complainant's appeal form, and (c) notice that a reply can be sent within 30 days in the form specified by the Society. **(4)** The Appeal Committee may sit in three-member panels appointed by the Chair of the Appeal Committee for the purpose of hearing appeals under this Rule. One member of each panel shall be designated by the Chair of the Appeal Committee as the Chair of the panel.	**(3)** After receiving an appeal under subrule (1), the Tribunal Office will provide to the member ~~will be provided~~: (a) notice that an appeal has been received~~,~~; (b) a copy of the complainant's appeal form~~,~~; and (c) notice that a reply can be sent within 30 days in the form specified by the Society. **(4)** The Appeal Committee may sit in three-member panels appointed by the Chair of the Appeal Committee for the purpose of hearing appeals under this Rule. One member of each panel shall be designated by the Chair of the Appeal Committee as the Chair of the panel.
(5) All 3 members of a panel of the Appeal Committee constitute a quorum at a meeting or hearing of the panel.	**(5)** All ~~3~~three members of a panel of the Appeal Committee constitute a quorum at a meeting or hearing of the panel.

(6) An appeal under this rule proceeds on the basis of written materials unless the Appeal Committee determines that exceptional circumstances warrant an oral hearing or oral submissions.	**(6)** An appeal under this rule proceeds on the basis of written materials unless the Appeal Committee determines that exceptional circumstances warrant an oral hearing or oral submissions.
(7) The Appeal Committee panel shall determine if the dismissal of a complaint was reasonable by reviewing: (a) the written record considered when the complaint was dismissed pursuant to section 53 of the Act, (b) the appeal form and any reply to the appeal form submitted under this rule, and (c) any new evidence, if it is relevant and material and was not reasonably available prior to the dismissal of a complaint.	**(7)** The Appeal Committee panel shall determine if the dismissal of a complaint was reasonable by reviewing: (a) the written record considered when the complaint was dismissed pursuant to section 53 of the Act~~,~~; (b) the appeal form and any reply to the appeal form submitted under this rule~~,~~; and (c) any new evidence, if it is relevant and material and was not reasonably available prior to the dismissal of a complaint.
(8) The member and the complainant, if any, will be provided a copy of any Appeal Committee decision.	**(8)** The member and the complainant, if any, will be provided a copy of any Appeal Committee decision.

Notices **90 (1)** Where the Conduct Committee, pursuant to section 59(1)(a) of the Act, directs that the conduct of a member is to be dealt with by a Hearing Committee, (a) the chair of the Conduct Committee shall appoint the Hearing Committee, and (b) the Executive Director shall give to the member notice of (i) the date or dates of the hearing; and (ii) the acts or matters regarding the member's conduct to be dealt with, with reasonable particulars of each act or matter.	**Notices** **90 (1)** Where the Conduct Committee, pursuant to section 59(1)(a) of the Act, directs that the conduct of a member is to be dealt with by a Hearing Committee, (a) the chair of the Conduct Committee shall appoint the Hearing Committee~~,~~; and (b) the ~~Executive Director~~Tribunal Office shall give to the member notice of (i) the date or dates of the hearing~~,~~; and (ii) the acts or matters regarding the member's conduct to be dealt with, with reasonable particulars of each act or matter.
(2) The date of commencement of the hearing, given under subrule (1)(b)(i) shall be at least 30 days after the date on which the notice referred to in subrule (1)(b) is given to the member, unless the member or the member's counsel waives the insufficiency of the notice, or consents to an earlier hearing date.	**(2)** The date of commencement of the hearing, given under subrule (1)(b)(i) shall be at least 30 days after the date on which the notice referred to in subrule (1)(b) is given to the member, unless the member or the member's counsel waives the insufficiency of the notice, or consents to an earlier hearing date.
(3) The member shall file with the Executive Director a completed Notice of Intention to Act in Person in Form 3-1, or a completed Notice of Intention to be Represented by Counsel in Form 3-2, within 10 days after receiving the notice referred to in subrule (1).	**(3)** **Repealed April 2021.**~~The member shall file with the Executive Director a completed Notice of Intention to Act in Person in Form 3-1, or a completed Notice of Intention to be Represented by Counsel in Form 3-2, within 10 days after receiving the notice referred to in subrule (1).~~

(3.1)	Counsel who has agreed to represent a member and subsequently wishes to withdraw, requires permission to do so from the chair or vice chair of the Conduct Committee or the chair of the Hearing Committee.	**(3.1)**	**Repealed April 2021.** ~~Counsel who has agreed to represent a member and subsequently wishes to withdraw, requires permission to do so from the chair or vice chair of the Conduct Committee or the chair of the Hearing Committee.~~
(4)	If the member fails to file one of the completed forms required by subrule (3), the Hearing Committee (a) may proceed with the hearing despite the member's failure, or the hearing may be adjourned pursuant to Rule 97(2) or (3), and (b) may, regardless of the result of the hearing, require the member to pay any additional costs caused by the member's failure.	**(4)**	**Repealed April 2021.** ~~If the member fails to file one of the completed forms required by subrule (3), the Hearing Committee~~ ~~(a) may proceed with the hearing despite the member's failure, or the hearing may be adjourned pursuant to Rule 97(2) or (3), and~~

Pre-Hearing Conferences	**Pre-Hearing Conferences**
90.1 (1) A pre-hearing conference must be held, by telephone or video-conference, before a hearing or an appeal from a hearing commences when directed by the chair of the Conduct Committee, and may be held before any other adjudicated proceeding when directed by the chair of the relevant committee;	**90.1 (1)** A pre-hearing conference must be held, by telephone or video-conference, ~~before a hearing or an appeal from a hearing commences when directed by the chair of the Conduct Committee, and may be held before any other adjudicated proceeding when directed by the chair of the relevant committee;~~ (a) before a hearing under section 59, section 75 or section 76 of the Act commences, unless both parties agree to waive the pre-hearing conference; and (b) before any hearing, other than under section 59, section 75 or section 76, commences when (i) requested by the member or Society counsel, or (ii) directed by the chair of the applicable committee.
	(1.1) Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules.
(2) When the chair of the Conduct Committee, or the chair of any other adjudicative committee, directs a pre-hearing conference under subrule (1), the chair will: (a) appoint the chair of the pre-hearing conference; and (b) direct that the member and counsel for the Law	**(2)** ~~When the chair of the Conduct Committee, or the chair of any other adjudicative committee, directs~~Where a pre-hearing conference is conducted under subrule (1), the chair of the applicable committee will~~:~~ ~~(a)appoint the chair of the pre-hearing conference; and~~

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Society be notified of the following: (i) the date and time of the pre-hearing conference, (ii) instructions for accessing the pre-hearing conference by telephone or video-conference, (iii) the identity of the chair of the pre-hearing conference, and (iv) that the pre-hearing conference may proceed in the absence of the member, pursuant to subrule (6).	~~(b)~~ direct that the member and Society counsel ~~for the Law Society~~ be notified of the following: (~~i~~a) the date and time of the pre-hearing conference~~,~~; (~~ii~~b) instructions for accessing the pre-hearing conference by telephone or video-conference~~,~~; (~~iii~~c) the identity ~~of the chair~~ of the pre-hearing conference chair~~,~~; and (~~iv~~d) that the pre-hearing conference may proceed in the absence of the member, pursuant to ~~subrule (6)~~Rule 90.3(2).
(3) "Chair of the pre-hearing conference" means the chair or vice-chair of the Conduct Committee or any other Bencher appointed by the Benchers to preside as a chair of a pre-hearing conference.	~~**(3)** "Chair of the pre-hearing conference" means the chair or vice-chair of the Conduct Committee or any other Bencher appointed by the Benchers to preside as a chair of a pre-hearing conference.~~
(4) When the Law Society is notified that the member has retained counsel, (a) all subsequent notices and communications to the member respecting pre-hearing conferences will be served on or given to the member's counsel, and (b) such service shall be good and sufficient service on the member, unless the member's counsel advises the Law Society that he or she has ceased to act or is unable to contact the member or the member advises the Law Society	**(43)** When the ~~Law~~ Society is notified that the member has retained counsel, (a) all subsequent notices and communications to the member respecting pre-hearing conferences will be served on or ~~given~~ provided to the member's counsel~~,~~; and (b) such service shall be good and sufficient service on the member until~~,~~: (i) ~~unless~~ the member's counsel advises the ~~Law~~ Society that he or she has ceased to

that he or she is no longer represented by counsel.	act or is unable to contact the member, or (ii) the member advises the ~~Law~~ Society that he or she is no longer represented by counsel.
(5) The member or the member's counsel, and counsel for the Law Society, must attend pre-hearing conferences, unless otherwise directed by the chair of a pre-hearing conference.	**~~(5)~~** ~~The member or the member's counsel, and counsel for the Law Society, must attend pre-hearing conferences, unless otherwise directed by the chair of a pre-hearing conference.~~
(6) If the member fails to attend a pre-hearing conference, either personally or by counsel, and the chair of the pre-hearing conference confirms that the member had notice of the pre-hearing conference, the pre-hearing conference may proceed in the member's absence.	**(~~12~~4)** Whether or not a pre-hearing conference has been held, the ~~h~~Hearing ~~c~~Committee or the appeal panel may proceed with the hearing ~~or appeal~~.
(7) When the chair of the pre-hearing conference directs counsel for the Law Society and the member or the member's counsel to attend additional pre-hearing conferences, the chair will: (a) Set the time, date and place at which the additional pre-hearing conferences will be held, and (b) specify the purpose of the additional pre-hearing conferences.	
(8) The chair of the pre-hearing conference may: (a) make directions as to materials to be prepared for the hearing or appeal; (b) order that the date for a hearing or appeal be set;	

	(c) grant an adjournment of a pre-hearing conference; (d) grant adjournments of hearings that have not commenced; (e) permit or direct amendments or withdrawal of citations where the amendments or withdrawal does not result in discontinuance of conduct proceedings referred to a hearing; (f) permit or direct severance or consolidation of citations; (g) permit or direct particulars or issues lists; (h) determine disputes regarding disclosure; (i) set a schedule for the completion of hearing preparation; (j) before a hearing commences, facilitate mediation or settlement between the Law Society and the member, with any resulting agreement to be ratified by the hearing committee, and; (j.1) make directions regarding the appropriate mode of the hearing in accordance with Rule 2.4(2)(d); and (k) make directions regarding any other matters to facilitate the hearing or appeal. **(9)** Through the pre-conference hearing process, the member or member's counsel and counsel for the Law Society may serve on either party a notice to admit facts or exhibits.	

(10) The chair of a pre-hearing conference (a) is not delegated the authority of the chair of the Conduct Committee under the Act, or the authority of the chair of any other adjudicative committee; and (b) may not determine the order of proceedings, or the admissibility, relevance, materiality or weight of evidence at a hearing before a hearing committee or an appeal panel. **(11)** The chair of a pre-hearing conference may not participate in any subsequent hearing or appeal related to the same matter unless there are exceptional circumstances and the member or the member's counsel, and counsel for the Law Society, consent to such participation. **(12)** Whether or not a pre-hearing conference has been held, the hearing committee or the appeal panel may proceed with the hearing or appeal.	
	Pre-Hearing Conference Chair **90.2(1)** "Pre-hearing conference chair" means: (a) the chair or vice-chair of the Conduct Committee, or any other Bencher appointed by the chair of the Conduct Committee, for hearings commenced under this Part; or (b) a Bencher appointed by the chair of the applicable committee for hearings

	commenced other than under this Part. **(2)** The pre-hearing conference chair may: (a) make directions as to materials to be prepared for the hearing; (b) order that the date for a hearing be set; (c) grant an adjournment of a pre-hearing conference; (d) grant adjournments of hearings that have not commenced; (e) permit or direct the amendment or withdrawal of citations where the amendment or withdrawal does not result in discontinuance of conduct proceedings referred to a hearing; (f) permit or direct severance or consolidation of citations; (g) permit or direct particulars or issues lists; (h) make determinations regarding disclosure in accordance with Rule 90.6; (i) set a schedule for the completion of pre-hearing steps; (j) before a hearing commences, canvass the member and Society counsel regarding, (i) potential for agreement on any

	matters between the parties, or (ii) interest in mediation, with a mediator to be agreed upon by the parties; (k) make directions regarding the appropriate mode of the hearing in accordance with Rule 2.5(2)(d); (l) determine the mode by which a witness may give evidence in a hearing, whether in person, by teleconference or by video-conference; (m) direct that a matter be placed in abeyance in accordance with Rule 90.5; and (n) make directions regarding any other matters to facilitate a timely and effective hearing. **(3)** The pre-hearing conference chair (a) is not delegated the authority of the chair of the Conduct Committee under the Act, or the authority of the chair of any other adjudicative committee; and (b) may not determine, (i) the order of proceedings, or (ii) the admissibility, relevance, materiality or weight of evidence at a hearing.

	(4) The pre-hearing conference chair may not participate in any subsequent hearing related to the same proceeding unless the member or the member's counsel, and Society counsel, consent to such participation. **Pre-Hearing Conference Requirements** **90.3 (1)** Where a pre-hearing conference will take place under Rule 90.1, the member or the member's counsel, and Society counsel, must attend unless otherwise directed by the pre-hearing conference chair. **(2)** If the member fails to attend a pre-hearing conference, either personally or by counsel, and the pre-hearing conference chair confirms that the member had notice of the pre-hearing conference, the pre-hearing conference may proceed in the member's absence. **(3)** When the pre-hearing conference chair directs Society counsel and the member or the member's counsel to attend additional pre-hearing conferences, the chair will direct the Tribunal Office to set the date and time at which the additional pre-hearing conferences will be held. **(4)** Pre-hearing conferences will be recorded. **(5)** The Tribunal Office will provide each party with a report that summarizes the proceedings. **(6)** At the panel's or Hearing Committee's discretion, portions of a recording under subrule (4) or a report under subrule (5) that set out:

	(a) directions made by the pre-hearing conference chair, and (b) failures to comply with directions of the pre-hearing conference chair, are admissible at a hearing conducted in relation to the same proceeding.
	Notice to Admit **90.4 (1)** This Rule applies to hearings commenced under section 59 of the Act. **(2)** Not less than 45 days before a hearing is scheduled to begin, the member or Society counsel may serve on the other party a notice to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document. **(3)** A notice served under subrule (2) must (a) be made in writing in a document marked "Notice to Admit" and served in accordance with Rule 4; (b) include a complete description of the fact, the truth of which is to be admitted or denied; and (c) attach a copy of the document, the authenticity of which is to be admitted or denied. **(4)** A party may serve more than one notice under subrule (2).

	(5) A party who receives a notice pursuant to subrule (2) must respond within 21 days by serving a response on the other party in accordance with Rule 4. **(6)** The time for response under subrule (5) may be extended by agreement of the parties or by a direction of the pre-hearing conference chair prior to the expiry of the 21-day response period. **(7)** A response under subrule (5) must contain: (a) an admission or denial of the truth of each fact contained in the notice; or (b) an admission or denial of the authenticity of each document listed in the notice. **(8)** If a party who has been served with a notice does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the facts and the authenticity of the documents described in the notice. **(9)** Notwithstanding an admission made under this Rule, the Hearing Committee shall determine whether the admitted facts or authenticated documents support a finding of conduct deserving of sanction. **(10)** When exercising its discretion in the calculation of costs, a Hearing Committee may consider whether a party denied the truth of a fact or the authenticity of a document under this Rule that was subsequently proven at the hearing.

	(11) A party may amend or withdraw an admission or denial (a) with the consent of the other party; or (b) with permission granted on an application, (i) before the hearing has started, to the pre-hearing conference chair, or (ii) after the hearing has started, to the Hearing Committee. **(12)** Notwithstanding subrule (8), the Hearing Committee may relieve a party from a deemed admission.
	Abeyances **90.5(1)** The member or Society counsel may make a request to the pre-hearing conference chair that a proceeding be placed in abeyance, (a) by application; or (b) by consent of both parties. **(2)** The pre-hearing conference chair will make an order, either: (a) denying the request; or (b) approving the request and placing a proceeding in abeyance for a period not exceeding one year. **(3)** When a proceeding is placed in abeyance in accordance with subrule (2),

	(a) no further steps are required to be taken by either party while the proceeding is in abeyance; and (b) no argument based on delay or other prejudice resulting from the abeyance may be raised at any time. **(4)** An abeyance will terminate, (a) upon expiration of the time specified in the abeyance order; or (b) prior to the expiration of the time specified in the abeyance order: (i) by consent of both parties; or (ii) by order of the pre-hearing conference chair upon application by either party.
	Disclosure of Documents in the Possession of the Society **90.6 (1)** As soon as practicable after conduct is directed to a hearing by the Conduct Committee under section 59 of the Act, Society counsel shall provide disclosure to the member in accordance with procedures established by the Society. **(2)** A member may apply to the pre-hearing conference chair for additional disclosure or further particulars of the member's alleged misconduct.

	Witnesses, Exhibits and Authorities **90.7(1)** Not less than 14 days before the date set for the commencement of the hearing, each party shall provide: (a) to the Tribunal Office and every other party: (i) the name of each witness that the party intends to call to give evidence at the hearing, (ii) a list of authorities the party anticipates it will rely upon at the hearing, and (iii) copies of all documents that the party intends to introduce into evidence at the hearing; and (b) to the Tribunal Office, the contact information of each witness that the party intends to call to give evidence at the hearing. **(2)** Each party must provide to every other party, no later than 60 days before it will be entered into evidence, a copy of the written report of every expert witness the party intends to call and a summary of their qualifications. **(3)** Within 14 days of receiving a report under subrule (2), the receiving party must notify the other party whether it intends to provide a rebuttal expert report. **(4)** A party may make a request through Tribunal Office to vary the

	time to comply with subrules (1) - (3).
	Admission **90.8** Notwithstanding Rules 90.6 and 90.7, a panel or a Hearing Committee, as applicable, may admit additional evidence upon any terms and conditions it deems appropriate.

Admission of Guilt **91 (1)** A statement of admission of guilt referred to in section 60 of the Act shall be submitted to (a) the Executive Director, if it is submitted before the day on which a Hearing Committee is appointed, or (b) the Hearing Committee, if it is submitted on or after the day on which the Hearing Committee is appointed. **(2)** When a Hearing Committee is required to proceed with a hearing pursuant to section 60(5) of the Act, the member concerned shall be given notice of the time and place at which the hearing will commence and, subject to subrule (3), Rule 90 applies to the notice. **(3)** If the statement of admission of guilt is submitted to the Hearing Committee after the commencement of its hearing, but before the Committee makes its findings regarding the member's conduct, the Committee shall proceed with its hearing under section 60(5) of the Act without further notice to the member, unless it grants an adjournment of the proceedings.	**Admission of Guilt** **91 Repealed April 2021.** ~~**(1)** A statement of admission of guilt referred to in section 60 of the Act shall be submitted to~~ ~~(a) the Executive Director, if it is submitted before the day on which a Hearing Committee is appointed, or~~ ~~(b) the Hearing Committee, if it is submitted on or after the day on which the Hearing Committee is appointed.~~ ~~**(2)** When a Hearing Committee is required to proceed with a hearing pursuant to section 60(5) of the Act, the member concerned shall be given notice of the time and place at which the hearing will commence and, subject to subrule (3), Rule 90 applies to the notice.~~ ~~**(3)** If the statement of admission of guilt is submitted to the Hearing Committee after the commencement of its hearing, but before the Committee makes its findings regarding the member's conduct, the Committee shall proceed with its hearing under section 60(5) of the Act without further notice to the member, unless it grants an adjournment of the proceedings.~~

Amendment of Hearing Notice **94 (1)** Where the Hearing Committee, on its own initiative or on application by the Society's counsel, proposes to consider dealing with an additional matter regarding the member's conduct and a consequent amendment of the notice, the Hearing Committee shall not proceed to consider dealing with the additional matter, if the member objects. **(2)** If the Hearing Committee decides to deal with the additional matter regarding the member's conduct, the Committee shall comply with section 65 of the Act and shall, on request, grant to the member an adjournment of the hearing for the purpose of permitting the member a sufficient opportunity to prepare an answer respecting the amendment or the additional matter regarding the member's conduct.	**Amendment of Hearing Notice** **94 Repealed April 2021.** ~~**(1)** Where the Hearing Committee, on its own initiative or on application by the Society's counsel, proposes to consider dealing with an additional matter regarding the member's conduct and a consequent amendment of the notice, the Hearing Committee shall not proceed to consider dealing with the additional matter, if the member objects.~~ ~~**(2)** If the Hearing Committee decides to deal with the additional matter regarding the member's conduct, the Committee shall comply with section 65 of the Act and shall, on request, grant to the member an adjournment of the hearing for the purpose of permitting the member a sufficient opportunity to prepare an answer respecting the amendment or the additional matter regarding the member's conduct.~~

Notice to Attend as a Witness **95** **(1)** A notice issued under section 69(5) of the Act requiring a person to attend as a witness before a Hearing Committee shall be in Form 3-3. **(2)** Where a notice is issued under section 69(5) of the Act requiring a person to attend as a witness before an appeal panel of the Benchers when it receives fresh evidence, the notice shall be in Form 3-3, but varied accordingly. **(3)** Notwithstanding subrules (1) and (2), where a notice is issued under section 69(5) of the Act to the member whose conduct is to be dealt with at the hearing, the notice shall be in a form prescribed by the Executive Director.	**Notice to Attend as a Witness** **95** **Repealed April 2021.** ~~**(1)** A notice issued under section 69(5) of the Act requiring a person to attend as a witness before a Hearing Committee shall be in Form 3-3.~~ ~~**(2)** Where a notice is issued under section 69(5) of the Act requiring a person to attend as a witness before an appeal panel of the Benchers when it receives fresh evidence, the notice shall be in Form 3-3, but varied accordingly.~~ ~~**(3)** Notwithstanding subrules (1) and (2), where a notice is issued under section 69(5) of the Act to the member whose conduct is to be dealt with at the hearing, the notice shall be in a form prescribed by the Executive Director.~~

Notice Respecting Private Hearing	**Notice Respecting Private Hearing**
96 (1) In this Rule, "private hearing application notice" means a notice respecting	**96** ~~**(1)** In this Rule, "private hearing application notice" means a notice respecting~~
(a) the right to apply to a Hearing Committee under section 78(2) of the Act for a direction that all or part of a hearing before the Committee is to be held in private, and	~~(a) the right to apply to a Hearing Committee under section 78(2) of the Act for a direction that all or part of a hearing before the Committee is to be held in private, and~~
(b) the right under section 112(2) of the Act to require that all or part of a hearing before a Hearing Committee be held in private.	~~(b) the right under section 112(2) of the Act to require that all or part of a hearing before a Hearing Committee be held in private.~~
(2) If a matter regarding a member's conduct is to be dealt with at a hearing before a Hearing Committee,	~~**(2)** If a matter regarding a member's conduct is to be dealt with at a hearing before a Hearing Committee,~~
(a) the Executive Director shall give the following persons a private hearing application notice prior to the commencement of the hearing:	~~(a) the Executive Director shall give the following persons a private hearing application notice prior to the commencement of the hearing:~~
(i) a person who is given a notice to attend as a witness;	~~(i) a person who is given a notice to attend as a witness;~~
(ii) the complainant, if any;	~~(ii) the complainant, if any;~~
(iii) the member whose conduct is the subject of the hearing;	~~(iii) the member whose conduct is the subject of the hearing;~~
(iv) an interested party who has made known to the Executive Director an intention to apply to have the hearing held in private;	~~(iv) an interested party who has made known to the Executive Director an intention to apply to have the hearing held in private;~~

(b) the Executive Director may give a private hearing application notice prior to the commencement of the hearing to any other person who in the Executive Director's opinion is or may be an interested party. **(3)** The person responsible for giving a private hearing application notice is (a) the person issuing the notice to attend as a witness, where the private hearing application notice is given pursuant to subrule (2)(a)(i), or (b) the Executive Director, in any other case. **(4)** A private hearing application notice shall contain a statement in Form 3-4. **(5)** If a private hearing application notice is given to a person otherwise than as part of a notice to that person to attend as a witness at a hearing before a Hearing Committee or an appeal panel of the Benchers, the notice shall also state the time and place at which the hearing will commence.	~~(b) the Executive Director may give a private hearing application notice prior to the commencement of the hearing to any other person who in the Executive Director's opinion is or may be an interested party.~~ The Benchers may establish guidelines to be followed by the Executive Director when providing notice to the individuals entitled to make a private hearing application in accordance with section 78(2) of the Act of their right to make such an application.

Hearings	**~~Hearings~~Adjournments**
97 (1) Prior to the commencement of a hearing, the chair of the Conduct Committee, the chair of the pre-hearing conference where a pre-hearing conference has been directed, or the chair of the Hearing Committee may adjourn the hearing date to any other time or place on any conditions they may impose.	**97 (1)** ~~Prior to the commencement of a hearing, the chair of the Conduct Committee, the chair of the pre-hearing conference where a pre-hearing conference has been directed, or the chair of the Hearing Committee may adjourn the hearing date~~Before a hearing begins, the hearing may be adjourned, (a) by the pre-hearing conference chair in accordance with Rule 90.2(2)(d), or (b) by the Hearing Committee, to any other time or place, on any conditions they may impose.
(2) On or after the commencement of the hearing, the Hearing Committee may adjourn the hearing to any other time or place on any conditions it may impose.	**(2)** On or after the commencement of the hearing, the Hearing Committee may adjourn the hearing to any other time or place, on any conditions it may impose.

Member's Obligations in Appeal Proceedings **100.2** When a member appeals a decision of the Hearing Committee to the Benchers pursuant to section 75 of the Act: **(a)** the member must, within 60 days of being provided with the cost of preparing the hearing record as set out in rule 100.1(2): (i) pay the cost, or (ii) make an application to the Benchers pursuant to section 74(6) of the Act to waive payment of the cost; **(b)** if the member makes an application as set out in subparagraph (a)(ii), the member must, if the Benchers order full or partial payment of the cost of preparing the hearing record, pay the ordered cost by the deadline specified by the Benchers; **(c)** the member must, within 60 days of being served with the hearing record: (i) provide written appeal submissions to Society counsel; or (ii) apply to the chair of the pre-hearing conference for an extension of time to provide written appeal submissions to Society counsel, pursuant to rule 90.1(8);	**Member's Obligations in Appeal Proceedings** **100.2** When a member appeals a decision of the Hearing Committee to the Benchers pursuant to section 75 of the Act: (a) the member must, within 60 days of being provided with the cost of preparing the hearing record as set out in rule 100.1(2): (i) pay the cost, or (ii) make an application to the Benchers pursuant to section 74(6) of the Act to waive payment of the cost; (b) if the member makes an application as set out in subparagraph (a)(ii), the member must, if the Benchers order full or partial payment of the cost of preparing the hearing record, pay the ordered cost by the deadline specified by the Benchers; (c) the member must, within 60 days of being served with the hearing record: (i) provide written appeal submissions to Society counsel; or (ii) apply to ~~the chair of~~ the pre-hearing conference chair for an extension of time to provide written appeal submissions to Society counsel, pursuant to rule 90.~~1~~2(~~8~~2);

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(d) if the member makes an application as set out in subparagraph (c)(ii), the member must provide written appeal submissions by the deadline specified by the chair;	(d) if the member makes an application as set out in subparagraph (c)(ii), the member must provide written appeal submissions by the deadline specified by the chair;
(e) the member must comply with any directions imposed on the member by the chair of a pre-hearing conference in accordance with Rule 90.1; and	(e) the member must comply with any directions imposed on the member by the ~~chair of a~~ pre-hearing conference chair in accordance with Rule 90.~~1~~2; and
(f) the member must comply with any other requirements imposed on the member by the Benchers.	(f) the member must comply with any other requirements imposed on the member by the Benchers.

Order Related to Indictable Offence	**Order Related to Indictable Offence**
103 (1) If a suspension order is made against a member under section 83(2) of the Act, the Executive Director shall forthwith notify the member of the order and its effective date and, if the notice is not initially in writing, shall send a letter to the member confirming the order and its effective date.	**103 (1)** If a suspension order is made against a member under section 83(2) of the Act, the ~~Executive Director~~Tribunal Office shall forthwith notify the member of the order and its effective date and, if the notice is not initially in writing, shall send a letter to the member confirming the order and its effective date.
(2) If the Benchers propose to hold a meeting to consider the making of an order against a member under section 83(4) of the Act, the Executive Director shall serve the member, at least 10 days before the day on which the meeting is to be held, with a notice	**(2)** If the Benchers propose to hold a meeting to consider the making of an order against a member under section 83(4) of the Act, the Executive Director shall serve the member, at least 10 days before the day on which the meeting is to be held, with a notice
(a) showing the time and place at which the meeting is to be held;	(a) showing the time and place at which the meeting is to be held;
(b) stating the intention of the Benchers to consider at that meeting the making of an order under section 83(4) of the Act and describing in general terms the indictable offence conviction on which the proceedings are based; and	(b) stating the intention of the Benchers to consider at that meeting the making of an order under section 83(4) of the Act and describing in general terms the indictable offence conviction on which the proceedings are based; and
(c) stating that the member and the member's counsel may	(c) stating that the member and the member's counsel may
(i) make oral or written representations to the Benchers at the meeting, or	(i) make oral or written representations to the Benchers at the meeting, or
(ii) submit written representations to the Benchers before the meeting,	(ii) submit written representations to the Benchers before the meeting,
respecting the matter to be considered at the meeting.	respecting the matter to be considered at the meeting.

(3) When a meeting referred to in subrule (2) commences, the panel chair shall, unless the panel has decided on its own motion that the meeting will be held in private, invite applications under section 83(6) of the Act to have the proceedings at the meeting held in private.	**(3)** When a meeting referred to in subrule (2) commences, the panel chair shall, unless the panel has decided on its own motion that the meeting will be held in private, invite applications under section 83(6) of the Act to have the proceedings at the meeting held in private.
(4) During any period at which the proceedings under section 83(5) of the Act are held in private, the only persons permitted to attend the proceedings are (a) the member, the member's counsel and the Society's counsel, and (b) any other persons authorized by the panel to attend.	**(4)** During any period at which the proceedings under section 83(5) of the Act are held in private, the only persons permitted to attend the proceedings are (a) the member, the member's counsel and the Society's counsel~~.~~; and (b) any other persons authorized by the panel to attend.
(5) If the panel of Benchers is satisfied that subrule (2) has been complied with, but neither the member nor the member's counsel appears at the meeting of the panel, the panel may continue and conclude the proceedings in their absence.	**(5)** If the panel of Benchers is satisfied that subrule (2) has been complied with, but neither the member nor the member's counsel appears at the meeting of the panel, the panel may continue and conclude the proceedings in their absence.
(6) If following its proceedings the panel makes an order under section 83(4) of the Act, the Executive Director shall within a reasonable time notify the member or the member's counsel of the order and its effective date and, if the notice is not initially in writing, the Executive Director shall send a letter to the member confirming the order and its effective date.	**(6)** If following its proceedings the panel makes an order under section 83(4) of the Act, the ~~Executive Director~~Tribunal Office shall within a reasonable time notify the member or the member's counsel of the order and its effective date and, if the notice is not initially in writing, the ~~Executive Director~~Tribunal Office shall send a letter to the member confirming the order and its effective date.
(7) If the panel of Benchers makes an order under section 83(4) of the Act or decides not to make an order under that section, the panel shall also terminate any suspension order then in effect	**(7)** If the panel of Benchers makes an order under section 83(4) of the Act or decides not to make an order under that section, the panel shall also terminate any suspension order then in effect

under section 83(2) of the Act against the same member.	under section 83(2) of the Act against the same member.

Order Related to Extraprovincial Disciplinary Action	**Order Related to Extraprovincial Disciplinary Action**
104 (1) If a suspension order is made against an Alberta member under section 84(2) of the Act, the Executive Director shall forthwith notify the member of the order and its effective date and, if the notice is not initially given in writing, shall send a letter to the member confirming the order and its effective date.	**104 (1)** If a suspension order is made against an Alberta member under section 84(2) of the Act, the ~~Executive Director~~Tribunal Office shall forthwith notify the member of the order and its effective date and, if the notice is not initially given in writing, shall send a letter to the member confirming the order and its effective date.
(2) If the Benchers propose to hold a meeting to consider the making of an order against an Alberta member under section 84(3) of the Act, the Executive Director shall serve the Alberta member, at least 10 days before the meeting is to be held, with a notice	**(2)** If the Benchers propose to hold a meeting to consider the making of an order against an Alberta member under section 84(3) of the Act, the Executive Director shall serve the Alberta member, at least ~~10~~ ten days before the meeting is to be held, with a notice
(a) stating the time and place at which the meeting is to be held;	(a) stating the time and place at which the meeting is to be held;
(b) stating the intention of the Benchers to consider at that meeting the making of an order under section 84(3) of the Act and describing in general terms	(b) stating the intention of the Benchers to consider at that meeting the making of an order under section 84(3) of the Act and describing in general terms
(i) the order made against the Alberta member by a disciplinary body of the extraprovincial law society, or	(i) the order made against the Alberta member by a disciplinary body of the extraprovincial law society, or
(ii) the fact of the resignation of the Alberta member as a member of an extraprovincial law society in lieu of having disciplinary proceedings by a disciplinary body of that society continue against the member,	(ii) the fact of the resignation of the Alberta member as a member of an extraprovincial law society in lieu of having disciplinary proceedings by a disciplinary body of that society continue against the member,

as the case may be, and	as the case may be~~,~~; and
(c) stating that the member and the member's counsel may	(c) stating that the member and the member's counsel may
(i) make oral or written representations to the Benchers at the meeting, or	(i) make oral or written representations to the Benchers at the meeting, or
(ii) submit written representations to the Benchers before the meeting,	(ii) submit written representations to the Benchers before the meeting,
respecting the matter to be considered at the meeting.	respecting the matter to be considered at the meeting.
(3) When a meeting referred to in subrule (2) commences, the panel chair shall, unless the panel has decided on its own motion that the meeting will be held in private, invite applications under section 84(7) of the Act to have the proceedings at the meeting held in private.	**(3)** When a meeting referred to in subrule (2) commences, the panel chair shall, unless the panel has decided on its own motion that the meeting will be held in private, invite applications under section 84(7) of the Act to have the proceedings at the meeting held in private.
(4) During any period at which the proceedings under section 84(5) of the Act are held in private, the only persons permitted to attend the proceedings are	**(4)** During any period at which the proceedings under section 84(5) of the Act are held in private, the only persons permitted to attend the proceedings are
(a) the member, the member's counsel and the Society's counsel, and	(a) the member, the member's counsel and the Society's counsel~~,~~; and
(b) any other persons authorized by the panel to attend.	(b) any other persons authorized by the panel to attend.
(5) If the panel is satisfied that subrule (2) has been complied with, but neither the member or the member's counsel appears at the meeting of the panel, the panel may continue and conclude the proceedings in their absence.	**(5)** If the panel is satisfied that subrule (2) has been complied with, but neither the member or the member's counsel appears at the meeting of the panel, the panel may continue and conclude the proceedings in their absence.
(6) If, following its proceedings the panel makes an order under section 84(3) of the Act, the panel chair or the Executive Director shall within a reasonable time	**(6)** If, following its proceedings the panel makes an order under section 84(3) of the Act, the ~~panel chair or the Executive Director~~Tribunal Office shall within

notify the member or the member's counsel of the order and its effective date and, if the notice is not initially in writing, the Executive Director shall send a letter to the member confirming the order and its effective date.	a reasonable time notify the member or the member's counsel of the order and its effective date and, if the notice is not initially in writing, the ~~Executive Director~~Tribunal Office shall send a letter to the member confirming the order and its effective date.
(7) If the panel of Benchers makes an order under section 84(3) of the Act or decides not to make an order under that section, the panel shall also terminate any suspension order then in effect under section 84(2) of the Act against the same member.	**(7)** If the panel of Benchers makes an order under section 84(3) of the Act or decides not to make an order under that section, the panel shall also terminate any suspension order then in effect under section 84(2) of the Act against the same member.

Panel Process	**Panel Process**
119.15 (1) To commence a hearing under this part the Executive Director shall serve the applicant with a Letter of Appointment of the panel and notice of the materials to be provided to the panel to decide the matter.	**119.15 (1)** To commence a hearing under this ~~p~~Part, the ~~Executive Director~~Tribunal Office shall serve the applicant with a Letter of Appointment of the panel and notice of the materials to be provided to the panel to decide the matter.
[…]	[…]
(5) The panel shall provide a written decision and written reasons for its decision to the Executive Director.	**(5)** The panel shall provide a written decision and written reasons for its decision to the ~~Executive Director~~Tribunal Office.
(6) On receipt of the written decision and reasons, the Executive Director shall provide a copy of the written decision and reasons to the applicant.	**(6)** On receipt of the written decision and reasons, the ~~Executive Director~~Tribunal Office shall provide a copy of the written decision and reasons to the applicant.
(7) The decision of the panel shall be final.	**(7)** The decision of the panel shall be final.

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142.1(1) To commence a hearing under this Part the Executive Director shall serve on (a) the claimant, (b) the member concerned, and (c) any other person who the Executive Director believes may have an interest in relation to the claim, a Letter of Appointment of claims panel, notice of the materials to be provided to the panel to decide the matter, and notice of the right to request an oral hearing.	**142.1(1)** To commence a hearing under this Part, the ~~Executive Director~~Tribunal Office shall serve on (a) the claimant, (b) the member concerned, and (c) any other person who the Executive Director believes may have an interest in relation to the claim, a Letter of Appointment of the claims panel, notice of the materials to be provided to the panel to decide the matter, and notice of the right to request an oral hearing.
(2) A request for an oral hearing must be made in writing within the period specified by the Executive Director. Where an oral hearing is requested, the Executive Director shall serve the parties in subrule (1) a notice stating the time and place at which the hearing will be held.	**(2)** A request for an oral hearing must be made in writing within the period specified by the ~~Executive Director~~Tribunal Office. **(2.1)** Where an oral hearing is requested, the ~~Executive Director~~Tribunal Office shall serve the parties in subrule (1) a notice stating the time and place at which the hearing will be held.
[…]	[…]
(4) If any information referred to in subrule (1) contains information which may be subject to a claim of solicitor-client privilege by a party other than the claimant, the Executive Director shall edit the material provided to any party in advance of the hearing to ensure no information is disclosed which may be subject to a claim of solicitor-client privilege.	**(4)** If any information referred to in subrule (1) contains information ~~which~~ that may be subject to a claim of solicitor-client privilege by a party other than the claimant, the ~~Executive Director~~Tribunal Office shall edit the material provided to any party in advance of the hearing to ensure no information is disclosed ~~which~~ that may be subject to a claim of solicitor-client privilege.
[…]	[…]

(7) On completing its hearing and deliberations, the panel shall provide written reasons for its decision to the Executive Director.	**(7)** On completing its hearing and deliberations, the panel shall provide written reasons for its decision to the ~~Executive Director~~Tribunal Office.
(8) The Executive Director, on receipt of the written reasons under subsection (7) and with respect to written reasons issued by the Executive Director pursuant to Rule 141.2(5), shall within a reasonable time: (a) give a copy of the reasons to the member or the member's counsel, the President and the Chair of Finance; and (b) subject to subsection (9), provide a copy of the reasons to the claimant and any other person recognized by the claims panel at the hearing or by the appeal panel at the appeal as an interested party and shall make the reasons available to the public.	**(8)** The ~~Executive Director~~Tribunal Office, on receipt of the written reasons under ~~subsection~~ subrule (7) and with respect to written reasons issued by the Executive Director pursuant to Rule 141.2(5), shall within a reasonable time: (a) give a copy of the reasons to the member or the member's counsel, the President and the Chair of Finance; and (b) subject to subsection (9), provide a copy of the reasons to the claimant and any other person recognized by the claims panel at the hearing or by the appeal panel at the appeal as an interested party and shall make the reasons available to the public.
[…]	[…]

LAW SOCIETY of ALBERTA

Pre-Hearing and Hearing Guideline

April 15, 2021

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LAW SOCIETY of ALBERTA

Pre-Hearing and Hearing Guideline

Introduction

1. The Law Society of Alberta (the "Law Society") conducts several types of hearings as part of its regulatory mandate. The Law Society's Tribunal Office provides administrative support for all hearings.

2. This *Pre-Hearing and Hearing Guideline* provides guidance to the Benchers, Adjudicators and lawyers on the conduct pre-hearing and hearing processes carried out under Part 3 of the *Legal Profession Act* (the "Act") and Part 3 of the *Rules of the Law Society of Alberta* (the "Rules") ("Conduct Proceedings") once conduct is directed to a hearing and citations are issued pursuant to section 56 of the Act.

3. The Guideline addresses matters that commonly arise prior to and during Law Society conduct hearings. This Guideline may be applied by analogy to other Law Society hearing processes where it does not conflict with existing Rules or Guidelines applicable to those hearings.

4. Applicable guidelines for other types of hearings are as follows:

    a. the *Resignation Guideline* applies to:

        i. resignations in the face of discipline under section 32 of the Act, and
        ii. resignations under section 61 of the Act;

    b. the *Reinstatement of Disbarred Persons Guideline* applies to reinstatement applications from former members who were disbarred or resigned in the face of discipline;

    c. the *Credentials and Education Hearings Guideline* applies to hearings before the Credentials and Education Committee under Part 2 of the Rules and Part 2 of the Act;

    d. the *Appeals Guideline* applies to appeals to the Benchers under section 75 and 76 of the Act; and

    e. the *Assurance Fund Claims Guideline* applies to hearings under Part 6 of the Rules.

5. Nothing in this Guideline supersedes or replaces any provision of the Act or the Rules.

Definitions and Interpretation

6. In this Guideline:

   a. "hearing" means a hearing as defined by Rule 1(1)(h.2);

   b. "Hearing Committee" is defined in section 1(d) of the Act, and means a three-member Hearing Committee or a Single Bencher Hearing Committee;

   c. "panel" means an adjudicative panel of any committee, the Benchers or a panel or committee of Benchers, other than a Hearing Committee;

   d. "lawyer"

      i. has the same meaning as "member" in the Act and the Rules and includes a student-at-law, and

      ii. includes the lawyer's counsel, where applicable;

   e. "party" or "parties" means the lawyer and the Law Society;

   f. "proceeding" includes a Conduct Proceeding or a matter other than a Conduct Proceeding;

   g. "Single Bencher Hearing" means a hearing presided over by a single Bencher, in accordance with section 60(3) of the Act.

Pre-Hearing Issues and Proceedings

Notice of Hearing

7. Once a conduct matter is directed to hearing, the Tribunal Office will send the lawyer a notice, in accordance with Rule 90, indicating the lawyer's conduct has been directed to hearing ("Notice of Hearing"), a list of citations and an initial pre-hearing conference ("PHC") notification.

8. The parties may be represented by counsel at any stage of the proceedings, in accordance with section 64 of the Act. If the Tribunal Office is advised that the party is represented by counsel, then all further communication will be sent to counsel until the Tribunal Office is notified otherwise.

9. No party, representative, witness or interested party may communicate directly with the PHC chair or the Hearing Committee outside of the PHC or hearing. All communications outside a PHC or hearing must be in writing, through the Tribunal Office.

Pre-Hearing Conferences

10. For hearings under section 59 of the Act, the Tribunal Office will schedule a PHC after the matter has been directed to be dealt with by a Hearing Committee, unless both parties agree to waive a PHC (Rule 90.1(1)(a)).

11. For conduct hearings before a Single Bencher Hearing Committee, or for any other type of hearing under the Act or Rules, a PHC will be scheduled by the Tribunal Office:

    a. at the request of either party; or

    b. by direction of the chair of the applicable committee.

12. A PHC notification sent by the Tribunal Office will include instructions for participating in the PHC. Most PHCs will take place by telephone and in some cases by videoconference.

13. A PHC will be chaired by a Bencher appointed by the chair of the applicable committee, depending on the type of hearing. Generally, for hearings under sections 59 and 75 of the Act, the Chair or a Vice-Chair of the Conduct Committee will chair the PHC.

14. If a PHC is scheduled, the attendance of the lawyer or the lawyer's counsel, and Law Society counsel at a PHC is mandatory. Pursuant to Rule 90.3(2) the PHC may continue in the absence of the lawyer and the lawyer's counsel once the PHC chair confirms that the lawyer or the lawyer's counsel was given notice of the PHC.

15. In accordance with Rule 90.3(4), the PHC is recorded by the Tribunal Office for the purpose of preparing a written report after each PHC ("PHC report"). The PHC report will include any deadlines or directions issued by the PHC chair. Each party will receive a copy of the PHC report. If a party notes any significant inaccuracies in the PHC report, they must notify the Tribunal Office immediately.

16. The recording of the PHC will not be made available to the parties and will be destroyed after all appeal periods have expired, or all appeals have concluded, including any appeal to the Court of Appeal.

17. Rule 90.3(6) provides that the portions of the recording of the PHC or the PHC report that set out directions made by the PHC chair, and failures to comply with those directions, are admissible at a hearing related to the same proceeding, at the discretion of the Hearing Committee.

18. A Hearing Committee may consider admitting all of or a portion of a PHC report based on the submission that it is relevant to an issue that will be considered by the Hearing Committee.

Powers and Limitations of the PHC Chair

19. The powers of the PHC chair are set out in Rule 90.2(2).

20. The PHC chair may permit or direct amendments to citations or may permit the withdrawal of citations, provided the amendment or withdrawal does not result in the discontinuance of Conduct Proceedings respecting the lawyer.

21. The PHC chair may not decide that a matter will be heard by a Single Bencher Hearing Committee, nor appoint a Hearing Committee. Those are decisions of the Chair of the Conduct Committee under section 59 and section 60(3) of the Act.

22. The PHC chair may not determine that a statement of admission of guilt of conduct deserving of sanction ("Admission") is in an acceptable form. That is a decision for either the Conduct Committee or the Hearing Committee, pursuant to section 60 of the Act.

23. The PHC chair may not approve or ratify an agreement with respect to sanction. That is a decision for the Hearing Committee.

24. The PHC chair may not participate in any subsequent hearing or appeal related to the same matter unless the lawyer and Law Society counsel consent to the PHC chair's participation, subject to the discretion of the Chair of the Conduct Committee (Rule 90.2(4)).

Mediation and Dispute Resolution

25. Pursuant to Rule 90.2(2), the PHC chair may canvass the lawyer and Law Society counsel as to whether they may be interested in mediation. However, the PHC chair may not act as mediator.

26. The parties may enter into without prejudice mediation or dispute resolution discussions during the pre-hearing stage of the proceedings to try to reach agreement on facts or sanction, or to narrow the issues to be determined at the hearing.

27. Either party may initiate informal resolution discussions. Such discussions may result in a statement of admitted facts or a joint submission on sanction or both. Any agreement that is reached must be accepted by either the Conduct Committee or the Hearing Committee, as the case may be. Specific guidance is provided in the sections "Statement of Admission of Guilt" at paragraphs 46-53, and "Joint Submission on Sanction", at paragraphs 209-217.

28. The parties may pursue formal mediation or dispute resolution. Both parties must explicitly agree to participate in any formal resolution process, including an agreement about responsibility for payment of the associated costs. A formal mediation or dispute resolution can be discontinued at any time by either party.

29. The parties must mutually agree on a mediator or facilitator for resolution discussions. The Tribunal Office may assist the parties to identify an appropriate mediator, upon request.

30. Any matters that remain unresolved after mediation or resolution discussions will be decided by the Hearing Committee.

Disclosure and Particulars

31. As soon as is practicable after a matter has been directed to a hearing under section 59 of the Act, Law Society counsel will disclose to the lawyer a copy of the relevant documents in the Law Society's possession, in accordance with Rule 90.6(1) and the *Pre-Hearing Disclosure Protocol.* Disclosure will be provided in electronic form.

32. Law Society counsel will provide particulars of the citations to the lawyer upon request, in accordance with section 59(1) of the Act, Rule 90(1)(b)(ii) and the *Pre-Hearing Disclosure Protocol*.

33. Law Society counsel will advise the lawyer as soon as practicable if a suspension or disbarment is being sought.

34. The lawyer may apply to the PHC chair for additional disclosure or further particulars in accordance with Rule 90.6(2).

Notice to Admit Facts and Authenticity of Documents

35. Not less than 45 days before a hearing under section 59 of the Act is scheduled to begin, the lawyer and Law Society counsel may serve the other party with a Notice to Admit the truth of facts and the authenticity of documents ("Notice to Admit"), pursuant to Rule 90.4(2).

36. The Notice to Admit must be in writing, setting out the specific facts and attaching a copy of the documents for which an admission is requested.

37. For the purpose of Rule 90.4, "authenticity" means:

a. a document that is said to be an original was printed, written, signed and executed as it purports to have been;

b. a document that is said to be a copy is a true copy of the original;

c. if a document purports or appears to have been transmitted, the original was sent by the sender and received by the addressee; and

d. in the case of an electronic record, an original or copy of a document that has been created, recorded, transmitted or stored in digital form, in the usual and ordinary course of business and in accordance with acceptable standards that support the integrity of the record and its original format and contents.

38. A party who is served with a Notice to Admit must reply in writing within 21 days of service unless that time is extended by agreement of the parties or by a direction of the PHC chair.

39. The reply must admit or deny each fact or the authenticity of each document for which an admission is requested.

40. For any denials, parties must include reasons that fairly meet the substance of the requested admission.

41. In accordance with Rule 90.4(8), if a party fails to respond to a Notice to Admit within the specified time frame, the party is deemed to admit the truth of the facts or the authenticity of documents set out in the Notice to Admit, unless otherwise directed by the Hearing Committee in accordance with Rule 90.4(12). A decision to relieve a party of a deemed admission is within the sole discretion of the Hearing Committee.

42. An admission of the authenticity of a document does not constitute an admission of the truth of the contents of the document.

43. In accordance with Rule 90.4(9), admissions made in response to a Notice to Admit do not constitute an admission of conduct deserving of sanction. The Hearing Committee must determine whether the admission supports a finding of conduct deserving of sanction.

44. If the facts or the authenticity of documents are denied and later proven at the hearing, the Hearing Committee may consider this factor when determining hearing costs, in accordance with Rule 90.4(10).

45. If a party has made an admission or a denial, they may amend or withdraw it provided the other party consents, or if they have been granted permission to do

so on application to the PHC chair or the Hearing Committee, as the case may be (Rule 90.4(11)).

Statement of Admission of Guilt

46. Section 60 provides that before a Hearing Committee makes its findings, a lawyer may submit an Admission, which must be approved as being in an acceptable form by either the Conduct Committee or the Hearing Committee.

47. To be in an acceptable form, the Admission must:

    a. include the facts necessary to support a finding of guilt on the essential elements of the citation;

    b. include the lawyer's confirmation that the lawyer:

        i. is making the Admission freely and voluntarily,
        ii. unequivocally admits guilt to the essential elements of the citations describing the conduct deserving of sanction,
        iii. understands the nature and consequences of the Admission, and
        iv. understands that if there is a joint submission on sanction, while the Hearing Committee will show deference to it, the Hearing Committee is not bound by any joint submission; and

    c. be signed by the lawyer.

Approval by the Conduct Committee

48. The Conduct Committee may consider an Admission if it is submitted before a Hearing Committee is appointed. The Conduct Committee must decide whether the Admission is in an acceptable form before it can be acted upon.

49. If the Admission is accepted by the Conduct Committee, the Hearing Committee is deemed to have made a finding that the admitted conduct is conduct deserving of sanction. As a result, the Hearing Committee does not have jurisdiction to make further findings with respect to the admitted conduct.

50. The chair of the Conduct Committee may appoint either a three-member Hearing Committee or a Single Bencher Hearing Committee to determine the appropriate sanction.

51. A Single Bencher Hearing Committee is appointed only where:

    a. an Admission has been accepted by the Conduct Committee; and

    b. the proposed sanction is not suspension or disbarment.

Approval by the Hearing Committee

52. If the Admission is submitted on or after the day on which a Hearing Committee is appointed, the Hearing Committee will consider it. An Admission that is in a form acceptable to the Hearing Committee is deemed to be a finding that the admitted conduct is conduct deserving of sanction.

53. The hearing will then focus on the appropriate sanction for the admitted conduct.

Abeyances

54. Law Society proceedings must be conducted in a timely manner in fairness to the lawyer and in the public interest. Law Society proceedings may be subject to an abeyance, which is a temporary suspension of proceedings.

55. Section 49(7) of the Act makes it clear that Conduct Proceedings may be commenced, maintained or concluded even if the conduct at issue is the subject of other proceedings under any other Act. However, there may be exceptional circumstances for placing the Conduct Proceeding in abeyance.

56. The lawyer or Law Society counsel may make a request to the PHC chair for an abeyance of the proceeding by consent or by application where there is no consent. A request for an abeyance is set out in a written application.

57. The written application must set out why a request is being made to place the proceeding in abeyance, and will include the following:

    a. the circumstances that give rise to the request for abeyance, including any supporting documentation such as medical reports or other relevant documents where applicable;

    b. where the parties agree to an abeyance, confirmation that both parties consent;

    c. the specified period of the abeyance that is requested;

    d. a written waiver in a form acceptable to the PHC chair executed by the lawyer acknowledging that they may not raise any argument based on delay or other prejudice resulting from the abeyance at any time; and

e. any other information that is relevant to the request for an abeyance.

58. In considering an application to hold the proceeding in abeyance, the PHC chair may consider:

a. whether the lawyer's personal circumstances or health issues impede the lawyer's ability to participate fully in the hearing process;

b. if the lawyer is engaged in a parallel proceeding in another forum, its benefit to the proceeding with respect to particular factors, including the specialization of the other tribunal and the evidence in that proceeding, and whether there is a reasonable expectation that the parallel proceeding will conclude in a timely manner;

c. whether the circumstances are such that placing or not placing a proceeding in abeyance will either prejudice or benefit the lawyer or the hearing process;

d. whether measures are necessary and have been taken to protect the public interest in the interim;

e. whether steps other than an abeyance may be taken to address the circumstances that give rise to a request for an abeyance;

f. whether conduct has been directed to a hearing by the Conduct Committee, but the Tribunal Office has not been able to effect service on the lawyer;

g. whether it would be appropriate to consolidate proceedings that are in various stages;

h. whether the proceeding was previously placed in abeyance;

i. the overall delay that may occur in the final adjudication of the proceeding; and

j. other circumstances that may be deemed relevant.

59. The PHC chair will review the request for an abeyance and will make a decision to either deny or approve the request. When the lawyer and Law Society counsel consent to a request for an abeyance, the PHC chair will give deference to the request.

60. If the PHC chair agrees to an abeyance request, the PHC chair will place the proceeding in abeyance for a period not exceeding one year. The PHC chair will issue a written order either denying the request or approving the request and placing the proceeding in abeyance.

61. If a proceeding is placed in abeyance, neither party will take a step or compel the other party to take any steps required by the Rules. Neither the lawyer nor Law Society counsel may subsequently raise an argument based on delay or other prejudice resulting from the abeyance.

62. If the proceeding was placed in abeyance due to the lawyer's involvement in parallel proceedings, the lawyer shall provide both timely and regular updates as to the progression of the parallel proceedings and, as soon as is practicable following the conclusion, the outcome of the proceedings to Law Society counsel.

63. Requests for additional abeyances of the same proceeding may be made not more than one month before the expiration of the current abeyance period. In each case, the process and the factors considered will be the same as for the initial application.

64. The abeyance of a proceeding will terminate once the period of the abeyance has expired.

65. Notwithstanding paragraph 64, an abeyance may terminate before the period of the abeyance has expired either by consent of the lawyer and Law Society counsel, or upon application by either party.

Discontinuances

66. Either party may make an application for discontinuance. In accordance with section 62 of the Act, Conduct Proceedings may be discontinued by a resolution of the Conduct Committee or a Hearing Committee if the applicable Committee is satisfied that the circumstances of the conduct do not justify the continuation of the proceedings.

67. If a hearing has not yet commenced and there is sufficient time prior to the hearing to do so, a written application for discontinuance may be made to the Conduct Committee. If a hearing is imminent or has commenced, an oral application for discontinuance may be made to the Hearing Committee.

68. The process for such an application is set out in the *Conduct Committee Guideline.* When considering whether Conduct Proceedings should be discontinued, the Conduct Committee or the Hearing Committee should apply the threshold test set out in the *Threshold Test Guideline* to determine whether the circumstances of the conduct justify the continuation of the proceedings respecting that conduct.

69. If a Hearing Committee discontinues Conduct Proceedings, a resolution setting out the reasons for the decision shall be provided in accordance with section 62.

70. All Conduct Proceedings relating to a lawyer will automatically be discontinued:

    a. when the lawyer resigns pursuant to section 61 of the Act, subject to any conditions prescribed by the Benchers pursuant to section 61(3)(a) of the Act;

    b. when the lawyer resigns in the face of discipline pursuant to section 32 of the Act; or

    c. upon the lawyer's death.

Scheduling a Hearing

71. Hearings are scheduled at the request of one of the parties during a PHC. The parties should be prepared to advise the PHC chair regarding:

    a. whether there will be any preliminary applications, and the nature of those applications;

    b. the number of hearing days requested;

    c. the number of witnesses, including expert witnesses;

    d. whether the parties expect to have an agreement on exhibits and plan to prepare and enter one, joint set of exhibits ("Agreed Exhibit Book");

    e. any requested accommodations (e.g., interpretation, accessibility concerns); and

    f. any other matters that may impact hearing dates.

72. When the hearing is scheduled, Tribunal Office will provide the parties with:

    a. a Notice setting out the time, date and location of the hearing, and a private hearing application notice, where applicable (section 78 of the Act); and

    b. a Letter of Appointment confirming the Hearing Committee or panel composition.

Mode of Hearing

73. Virtual hearings are governed by the *Video-conference Hearings Pilot Project Guideline*.

74. In-person hearings will be held at the Law Society's office. The PHC chair or the Hearing Committee may, in their sole discretion, determine that there are circumstances that warrant a different mode of hearing.

75. In determining the mode of hearing, the PHC chair or the Hearing Committee may consider:

    a. the convenience of the parties and witnesses;
    b. the cost, efficiency and timeliness of the hearing;
    c. the avoidance of delay;
    d. fairness to the parties;
    e. public accessibility to the hearing;
    f. public health and safety;
    g. the public interest; and
    h. any other factor relevant to ensuring the just and expeditious determination of the matter.

Hearing Readiness

Hearing Materials

76. A party must provide to the Tribunal Office and to every other party, not less than 14 days before the date set for the commencement of the hearing, copies of all documents that the party intends to introduce into evidence at the hearing (Rule 90.7(1)(c)).

77. The parties may work together to prepare an Agreed Exhibit Book containing the exhibits on which both parties intend to rely at the hearing. The parties may agree that the exhibits contained in the Agreed Exhibit Book are authentic and admissible. It is not necessary for the parties to agree as to the truth of the contents of the exhibits.

78. Rule 90.7(1)(b) requires each party to provide a list of the case law and other authorities to be relied on at the hearing to the Tribunal Office and the other party 14 days in advance of the hearing.

79. Copies of case law and other authorities that are referred to in written submissions or argument must be provided with the submission or argument.

80. Notwithstanding the above, if the case law or other authorities are included in the electronic *Tribunal Office Book of Authorities* ("Book of Authorities"), then the parties may refer to the Book of Authorities, rather than providing copies to the Tribunal Office.

81. If the parties are providing written submissions or argument prior to a hearing (e.g., in an appeal or regarding a preliminary application), the PHC chair may establish deadlines for the exchange of the submissions between the parties.

82. The Hearing Committee retains discretion to consider any additional case law submitted during the hearing or during closing submissions.

Witnesses

Notice to Attend

83. The parties may serve Notices to Attend on their respective witnesses, in accordance with section 69(5) of the Act.

84. The parties may obtain a Notice to Attend template from the Tribunal Office website or by contacting the Tribunal Office.

85. Any witness, other than the lawyer, is entitled to be paid fees, expenses and allowances ("Witness Expenses") as are payable to witnesses in an action in the Court of Queen's Bench, in accordance with section 69(6) of the Act. Each party is responsible for paying Witness Expenses to their own witnesses. The lawyer may be responsible for the cost of the Law Society's witnesses in the event the lawyer is found guilty of conduct deserving of sanction.

Provision of Witness Lists

86. Pursuant to Rule 90.7(1)(a), no later than 14 days before the hearing is scheduled to begin, the parties will provide to the Tribunal Office and the other party, the name of each witness that the party intends to call to give evidence at the hearing.

87. In cases where the witness will be giving evidence remotely, the witness' contact information must also be provided to Tribunal Office 14 days in advance of the hearing. If either party wants the other party's witnesses' contact information, they may contact Tribunal Office, which will determine whether the contact information can be released.

88. If expert witnesses are testifying, Rule 90.7(2) requires that the parties must exchange the experts' qualifications and reports no later than 60 days in advance of when it will be entered into evidence. Within 14 days of receiving an expert witness report, the receiving party must notify the other party whether it intends to provide a rebuttal expert report. In accordance with Rule 90.7(3), the rebuttal report must be provided to the Tribunal Office and the other party not less than 14 days before the hearing date.

89. The parties may attempt to reach agreement on the witnesses' qualifications to provide expert testimony and the scope of their expertise.

Use of Interpreters

90. When a witness is unable to provide oral evidence in the language in which a hearing is to be conducted, the party calling that witness must provide an interpreter.

91. The party whose witness requires an interpreter must notify the Tribunal Office and the other party as early as possible and provide the name of the proposed interpreter.

92. An interpreter must be competent and independent from the witness and the parties. Any concerns regarding the competence or independence of the interpreter must be raised as early as possible with the other party and the Tribunal Office, or the Hearing Committee if the hearing has commenced.

93. Before the witness is called, the interpreter for that witness must take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and the witness' answers.

Request for Accommodation

94. A party or witness will notify the Tribunal Office as early as possible if they require accommodation during the hearing process. This means providing appropriate supports and resources for parties and witnesses who require additional assistance to participate in the hearing.

Remote Participation of Witnesses and Affidavit Evidence

95. Witness testimony must be given orally before the Hearing Committee whenever possible. Subject to the discretion of the Hearing Committee and the mode by which the hearing is proceeding, oral testimony may be given in person, by video-conference or, in exceptional circumstances, by telephone.

96. Parties may apply for a determination regarding the mode by which a witness may give evidence to:

    a. the PHC chair, in accordance with Rule 90.2(2)(l); or

    b. the Hearing Committee, in accordance with section 68 of the Act.

97. In considering the application, the PHC chair or the Hearing Committee may consider whether exceptional circumstances exist, including but not limited to:

    a. the costs, efficiency and timeliness of the hearing;

    b. the avoidance of delay;

    c. fairness to the parties;

    d. public health and safety concerns, including public health advisories;

    e. an inability to attend (e.g., due to extreme weather, unexpected family obligations, illness);

    f. the convenience of the parties and the witness(es); and

    g. where the Hearing Committee is considering the application, the PHC chair's decision.

98. By application to the Hearing Committee, a party may seek to enter affidavit evidence in cases where it is not possible or practical for a witness to give oral evidence.

Limitations on Calling Practice Advisors as Witnesses

99. Pursuant to Rule 31.1(5), staff of the Law Society's Office of the Practice Advisor cannot be called by the Law Society to give evidence in a Conduct Proceeding unless the lawyer has either put into issue communications between the lawyer and the Office of the Practice Advisor, thereby waiving confidentiality, or has consented to the staff being called.

Varying the Timelines for Hearing Materials and Witnesses

100. Any request to vary the deadlines set out in Rule 90.7(1) to (3) in accordance with Rule 90.7(4) must be submitted to the Tribunal Office with a copy to the other party. The Tribunal Office will direct the request to the PHC chair, or the Hearing Committee based on the proximity of the request to the hearing date.

101. The PHC chair or the Hearing Committee may grant permission to vary the deadlines set out in Rule 90.7. Pursuant to Rule 90.8, the Hearing Committee may do so subject to terms or conditions and may also make an order directing an adjournment of the hearing for such time as the Hearing Committee considers reasonable.

Hearing

Guiding Principles

102. The purpose of disciplining lawyers is to protect the public interest and maintain public confidence in the legal profession. By enforcing ethical and professional standards, the Law Society is fulfilling its regulatory mandate and supporting the rule of law, the proper administration of justice and the independence of the legal profession.

103. The Law Society is committed to a hearing process that is fair, efficient, transparent, proportionate, principled and proactive, while at the same time addressing the harm caused by lawyers who fail to meet the standards or whose conduct diminishes the standing of the legal profession generally.

104. In addition, the Law Society has an obligation to be prudent and efficient in its management of the resources required to support its conduct processes and hearings. To the extent possible, the parties will be expected to conduct hearings expeditiously and to cooperate in their efforts to shorten the time required for hearings.

Rules of Evidence, Burden of Proof and Standard of Proof

105. As an administrative tribunal, a Hearing Committee is not bound by the common law rules of evidence that apply in court proceedings. A Hearing Committee has the discretion to admit evidence in any manner it considers proper in accordance with section 68 of the Act and Rule 90.8.

106. Generally, Law Society counsel has the burden to prove the citations on a balance of probabilities.

107. In accordance with section 67 of the Act, if it has been established or admitted that the lawyer has received money or other property in trust, the lawyer has the burden to prove that the money or other property has been properly dealt with, on a balance of probabilities.

108. In practice, where there is an allegation that trust funds have not been properly dealt with, Law Society counsel will bring evidence that the lawyer has received money or property in trust. The onus then shifts to the lawyer to prove that they complied with the Act, Rules and Code of Conduct. Where applicable, they may be required to bring evidence to establish that they exercised an appropriate standard of care in dealing with the money or property received in trust. The burden of proof is not on the Law Society, but it may bring evidence that the lawyer dealt with the money or property in a manner that breaches the Act, the Rules or the Code of Conduct.

Quorum and Appointment

109. The chair of the Conduct Committee appoints the Hearing Committee in accordance with the provisions of the Act, the Rules and the *Adjudicative Panel Appointment Guideline*.

110. The Hearing Committee consists of three or more persons, one of whom must be a Bencher or former Bencher. Certain exceptions to the constitution of the Hearing Committee are permitted by section 59(2) of the Act.

111. If an Admission has been accepted by the Conduct Committee prior to the appointment of a Hearing Committee, the chair of the Conduct Committee may appoint:

    a. three or more persons, at least one of whom must be a Bencher or former Bencher (section 59(1)(b)); or

    b. a Single Bencher Hearing Committee.

112. A Single Bencher Hearing Committee will decide on sanction, conditions, and costs.

113. In accordance with section 66(3) of the Act, if, after the commencement of a hearing, any member of a Hearing Committee is unable to continue, the remaining members may continue to act if at least two members, including at least one Bencher or former Bencher, remain.

Preliminary Applications

Generally

114. A party who anticipates that a significant preliminary, evidentiary, procedural or substantive issue will arise should notify the other party as soon as possible. Issues should be resolved prior to the commencement of the hearing whenever possible.

115. A preliminary application that is in writing must be served on the other party and filed with the Tribunal Office to be considered by either the PHC chair or the Hearing Committee. The PHC chair or the Hearing Committee, as the case may be, may consider an oral preliminary application.

116. A party may bring an application before the PHC chair if a Hearing Committee has not yet been appointed and the PHC chair has authority under Rule 90.2 to deal with the matter.

117. If the PHC chair does not have authority to deal with the application, then the application must be considered by the Hearing Committee.

118. The PHC chair or the Hearing Committee may direct the manner in which the application is to be brought, set deadlines and make any other directions necessary for the efficient handling of the application.

119. Material in relation to the application, if provided in writing, must be filed with the Tribunal Office and served on the other party within the deadlines set by the PHC chair or the Hearing Committee, as the case may be.

120. The PHC chair's ruling will be included in the PHC report. If the Hearing Committee finds that the PHC chair's ruling is relevant to any issues it must decide (e.g., costs), then the PHC report may be entered into the hearing record.

Adjournments

121. Rule 97 provides that before a hearing begins, a request for an adjournment may be made:

    a. to the PHC chair; or

    b. to the chair of the Hearing Committee.

122. The PHC chair should decline to hear a request for adjournment if the Hearing Committee has been appointed and it would be more appropriate for the Hearing Committee to hear the request, having regard to the timing of the request in relation to the hearing date.

123. On or after the day the hearing begins, a request for an adjournment may be made only to the Hearing Committee.

124. A request for an adjournment is to be made as soon as practicable. Where the party seeking the adjournment relies on case law or other authorities to make its request, they must be provided to the Tribunal Office and to the other party in advance of the date the request is heard. The other party will have an opportunity to respond and is expected to do so as soon as practicable.

125. In deciding whether to grant an adjournment, the PHC chair or the Hearing Committee may consider the following:

    a. prejudice to any person affected by the delay;
    b. the timing of the request, prior requests, and adjournments previously granted;
    c. the terms and conditions of any adjournments previously granted;
    d. the public interest;
    e. the costs to the Law Society and the other participants of an adjournment;
    f. the availability of the parties, counsel, and witnesses;
    g. the efforts made to avoid the adjournment;
    h. the requirement for a fair hearing; and
    i. any other relevant factors.

126. Hearings may be adjourned to any other time and on any conditions that may be imposed by the PHC chair or the Hearing Committee, as the case may be.

Private Hearing Application Notices

127. In accordance with section 78 of the Act, a conduct hearing will be held in public unless the Hearing Committee determines, on its own motion or on the application of the lawyer, the complainant, a potential witness or any other interested person, that some or all of the hearing will be held in private.

128. Notice of the right to bring a private hearing application is provided to the lawyer, the complainant, any witnesses and other interested parties, in accordance with section 78(2). It is the responsibility of the lawyer or Law Society counsel, as applicable, to provide such notice.

129. The parties must notify the Tribunal Office and the other party as soon as they become aware that a private hearing application will be made. The person making a private hearing application must establish that it is warranted.

130. If an application for a private hearing is made, the Hearing Committee will allow the parties an opportunity to make submissions regarding the application.

131. In considering whether some or all of the hearing is to be held in private, the Hearing Committee must consider both necessity and the principles of transparency and accountability.

132. With respect to necessity, the Hearing Committee considers whether granting a private hearing is necessary to prevent a serious risk to an important interest and whether alternative measures would be sufficient to protect the interest at stake. The Hearing Committee also considers whether the risk is real, substantial and supported by evidence. Alternative measures include but are not limited to the policies and procedures adopted by the Society for the purpose of protecting such interests.

133. In accordance with the *Publication and Redaction Guideline for Adjudicators*, regardless of whether the hearing is held in public or private, the hearing report will be redacted to protect the personal and confidential information of complainants and third parties, solicitor-client privilege and other sensitive information.

134. With respect to the principles of transparency and accountability, the Hearing Committee may consider the following factors:

    a. the public interest and the Law Society's regulatory commitment to transparency in open and accessible hearings;

    b. the impact on public confidence in the ability of the profession to self-regulate;

    c. general deterrence for the profession;

    d. the effectiveness and efficiency of the hearing process; and

    e. the detrimental effect on the applicant.

135. If some or all of a hearing is conducted in private, only the lawyer and the lawyer's counsel, Law Society counsel, the court reporter, Tribunal Office staff and those authorized by the Hearing Committee may attend those portions of the hearing held in private.

136. If some or all of a hearing is conducted in private, section 74(3.1) of the Act governs the release of the hearing report to the complainant.

Solicitor-Client Privilege

137. The protection of solicitor-client privilege is fundamental to the administration of justice and the independence of the legal profession. There are exceptions in professional legal regulation as law societies are entitled to access privileged information in order to perform their regulatory functions. Disclosure of privileged information to a law society does not result in a waiver or loss of privilege and client privilege must be protected in administrative proceedings.

138. Section 112(1) of the Act provides that a lawyer may not refuse to answer inquiries, provide documents or give evidence on the ground of solicitor-client privilege, when the evidence is material to the proceedings.

139. Privilege must, however, be protected in Law Society hearings that proceed under Part 3 or 4 of the Act and, pursuant to common law, under any other provisions of the Act or Rules. The lawyer, Law Society counsel and the Hearing Committee should be cognizant of the requirement to take all steps necessary to protect solicitor-client privilege as it arises in the course of a hearing.

140. Section 112(2) requires that all parts of a hearing during which reference will be made to privileged evidence must proceed in private and the public may not have access to the hearing record that contains the privileged information. Protection of solicitor-client privilege and confidentiality are compelling privacy interests in Law Society hearings. Privilege must be protected unless expressly waived by the person who has the right to claim privilege. Privilege is not waived by the making of a complaint or the failure to make an application for a private hearing.

141. Unless the party to whom the privilege is owed waives the privilege, the Hearing Committee must protect privileged information by making a private hearing order and directing that the public be refused access to the hearing record that contains the privileged information. The party claiming privilege may apply or the Hearing Committee may make this determination on its own initiative, after notifying the parties and allowing them to consider their position and make submissions.

142. The Hearing Committee must first determine that the documents or evidence are privileged. The Committee must consider the relevant case law and submissions of the parties. For guidance, the following factors will usually be considered in making any finding of privilege:

    a. whether the communication was between a lawyer and client;

    b. whether the communication involves the seeking or giving of legal advice;

    c. whether the parties intended the communication to be confidential;

    d. whether there is an express waiver of privilege, or there has been a voluntary disclosure or release of the information to a third party or it has otherwise become publicly available.

143. In the absence of a private hearing application, privileged and confidential information is protected by the *Publication and Redaction Guideline for Adjudicators*.

Bias Applications

144. A party seeking to disqualify a member of a Hearing Committee based on an allegation of bias or a reasonable apprehension of bias must make an application (bias application) at the earliest opportunity and, if possible, prior to the commencement of the hearing.

145. The party making a bias application must notify the other party and provide the basis of the application to the Tribunal Office. The Tribunal Office will take the necessary steps to schedule the application in front of the appropriate committee.

146. In accordance with section 59(5)(a) of the Act, the chair of the Conduct Committee will consider an allegation of bias that is raised before the hearing. Section 59(5)(b) provides that the Hearing Committee will deal with an allegation of bias raised at or after the commencement of the hearing unless the Hearing Committee refers the matter to the chair of the Conduct Committee.

147. The bias application may be heard in any manner that the chair of the Conduct Committee or the Hearing Committee deems appropriate, including in writing, by videoconference or in person.

148. The relevant factors for a bias application include, but are not limited to:

    a. it is a fundamental principle of procedural fairness that an adjudicator must be disinterested and impartial;

    b. this principle extends beyond actual bias and holds that there cannot be even a reasonable apprehension of bias;

    c. the common law test for finding a reasonable apprehension of bias is whether a reasonable and informed person, viewing the issue realistically and practically and having thought the matter through, would conclude that there is a reasonable apprehension of bias; and

    d. adjudicators are presumed to be impartial, and the threshold for finding real or perceived bias is high:

        i. an apprehension of bias must be reasonable, and
        ii. the grounds for an application for disqualification must be serious and substantial, and not based on a mere suspicion.

149. Oral or written reasons for the decision will be rendered. If only oral reasons are to be provided, a transcript of the reasons must be made and maintained until any appeals are decided, including an appeal to the Court of Appeal.

150. If a bias application is determined by the chair of the Conduct Committee and a member of the Hearing Committee is disqualified, the member will be replaced pursuant to sections 59(4) and (5).

151. If the Hearing Committee decides the bias application and a member of the Hearing Committee is disqualified, then the Hearing Committee may continue with the two remaining members pursuant to section 66(3) of the Act.

152. If a member of a panel is disqualified, the member will be replaced if required to maintain quorum.

Order of Proceeding at an Oral Hearing

Jurisdiction

153. The jurisdiction of the Hearing Committee is established through the following exhibits:

    a. Letter of Appointment of the Hearing Committee;

    b. Notice to Attend to the lawyer; and

    c. Certificate of Status of the lawyer.

154. The Hearing Committee will ask whether there are any objections to its composition or jurisdiction. If objections are raised, the Hearing Committee will determine them before proceeding.

155. In accordance with section 70(2) of the Act, a Hearing Committee may proceed with a hearing in the absence of the lawyer if it is satisfied that a Notice to Attend was served on the lawyer pursuant to Rule 4.

Private Hearing Applications

156. In accordance with section 78(2) of the Act, the Hearing Committee will ask if there are any private hearing applications. Both parties will confirm to whom private hearing application notices have been sent and will advise whether anyone wants to make an application.

157. If there are any private hearing applications, they will be heard, and a decision made as to whether some or all of the hearing will be held in private before proceeding with the hearing. See paragraphs 127-143 for further guidance.

Exclusion of Witnesses

158. The Hearing Committee will determine whether to exclude witnesses, other than the lawyer, from the hearing room before those witnesses testify.

Opening Statements

159. Law Society counsel will make their opening statement, if any.

160. The lawyer may make an opening statement at the start of the hearing or wait until the start of the defence case to make an opening statement, if any.

Documentary Evidence

161. When marking exhibits:

a. if there is an Agreed Exhibit Book, the documents are to be tabbed, and each tab marked as an exhibit in numerical sequence;

b. a document referred to in the hearing, but not authenticated or admitted in accordance with Rule 90.4, are to be marked by letter as an Exhibit for Identification (e.g., Exhibit “A” for Identification);

c. if an exhibit marked for identification is later authenticated and admitted into evidence, it is to be marked as the next exhibit in numerical sequence;

d. if an exhibit marked for identification is not authenticated or admitted during the hearing, the exhibit remains an Exhibit for Identification only and will not be considered by the Hearing Committee in making its decision but will form part of the hearing record.

162. In deciding whether to admit additional evidence that was not provided to the Tribunal Office and the other party in accordance with Rules 90.6 and 90.7, a Hearing Committee may consider whether:

a. the opposing party consents to admitting the evidence;

b. the failure to provide the evidence was inadvertent or unavoidable;

c. the evidence was not in the possession of the party at the time that production was required by the Rules; or

d. for any other compelling reason, it would be manifestly unfair to exclude the evidence.

163. Rule 90.8 provides that a Hearing Committee may admit additional evidence that was not exchanged or provided in compliance with Rule 90.7, on any terms and conditions it deems appropriate.

164. If a party does not comply with Rule 90.7 and intends to rely on the discretion of the Hearing Committee to admit additional exhibits at the hearing pursuant to Rule 90.8, the proposed exhibits:

a. must be provided to the other party and the Tribunal Office as soon as possible prior to the hearing;

b. will not be provided to the Hearing Committee in advance of the hearing;

c. the Tribunal Office will make the proposed exhibit available to the Hearing Committee when it is presented in evidence and it will be marked as an exhibit after the Hearing Committee has ruled on its admissibility;

d. if provided in hard copy at an in-person hearing:

i. must be provided by the party seeking to enter the exhibit(s) in sufficient copies for each party and Adjudicator, the court reporter, and Tribunal Counsel (i.e., a minimum of six copies if there are only two parties and it is a three-member Hearing Committee); and

ii. must be provided in electronic form to the Tribunal Office as soon as possible if they are admitted into evidence by the Hearing Committee;

e. if provided at a video-conference hearing, must be submitted in electronic form to the Tribunal Office before entering the exhibits.

Witnesses

Oath or Affirmation

165. A court reporter administers an oath or affirmation to the witness, based on the witness's stated preference. An oath may be administered to a witness in accordance with section 15, or the witness may be affirmed in accordance with section 17, of the *Alberta Evidence Act*.

166. An oath is not restricted to oaths using particular words or incorporating the Bible, Qur'an or other religious text. An oath may be made in any form using any ceremony that acknowledges the solemnity of the occasion and the importance of truth-telling, provided the witness declares that such an oath is binding on the conscience of the witness. For example, a party may wish to undertake a private or public smudging ceremony prior to providing evidence or hold an eagle feather or other sacred object when providing evidence.

167. If a witness wishes to incorporate the use of any particular words, object or practice, other than an oath on the Bible or Qur'an, the Scottish Oath, an eagle feather or the use of an affirmation, the party calling the witness must provide the Tribunal Office and the other party with notice of the intended wording, object or practice, as well as information regarding the appropriate protocols to be employed, as early as possible in advance of the hearing.

Witness Evidence

168. Law Society counsel will call their first witness for direct examination.

169. Once direct examination is completed, the lawyer has an opportunity to cross-examine the witness.

170. After cross-examination, Law Society counsel has an opportunity to re-examine the witness only for the purpose of addressing any new matters raised in cross-examination.

171. The same process is followed for each subsequent witness. Once Law Society counsel has called all of their witnesses, the lawyer will then call the lawyer's first witness and the same steps will apply.

172. In accordance with section 69 of the Act, the lawyer is a compellable witness. If the lawyer does not give direct testimony in defence, Law Society counsel may cross-examine the lawyer.

173. After the last defence witness, Law Society counsel may request the opportunity to present rebuttal evidence to reply to any new issues raised by the lawyer. The lawyer may cross-examine any rebuttal witness. Law Society counsel has an opportunity to re-examine the rebuttal witness only for the purpose of addressing any new matters raised in cross-examination.

174. Before any witness is excused, the Hearing Committee may also have questions for the witness.

175. If new issues arise as a result of the Hearing Committee's questions, the parties will be provided an opportunity to ask further questions of the witness.

Argument

176. Law Society counsel presents argument first, followed by the lawyer's argument. The Law Society then has an opportunity to respond to the issues raised in the defence argument.

177. The Hearing Committee may ask questions of the parties during argument. Following oral argument, the Hearing Committee may request written submissions on an issue or point of law.

Hearing Phases – Merits and Sanction

178. There are two phases of a hearing – the merits phase and the sanction phase. The two phases may be heard consecutively at a single hearing or may be heard separately. Whether heard together or separately, the hearing is not concluded until the Hearing Committee determines the merits and, if applicable, the sanction.

Merits Phase

179. In the merits phase of the hearing, the Hearing Committee determines whether the lawyer is guilty of conduct deserving of sanction. In order to make such determination, the Hearing Committee must find that:

    a. the lawyer committed the alleged conduct; and, if so,

    b. the conduct is conduct deserving of sanction in accordance with section 49 of the Act.

180. In cases where an Admission pursuant to section 60 of the Act has been accepted as set out in paragraphs 46-53 of the Guideline, the Admission is deemed to be a finding that the lawyer is guilty of conduct deserving of sanction. In cases not involving an Admission, the Hearing Committee must make a finding as to whether the lawyer is guilty of conduct deserving of sanction pursuant to section 71(1).

181. Pursuant to section 49(1) of the Act, conduct is deserving of sanction when it:

    a. is incompatible with the best interests of the public or members of the society; or

    b. tends to harm the standing of the legal profession generally.

182. Section 49 obliges the Hearing Committee to review the effect of the conduct on the best interests of the public and the profession, and on the reputation of the legal profession. The Hearing Committee must find conduct deserving of sanction where the lawyer's conduct is incompatible with those interests, regardless of whether the conduct arises in relation to the lawyer's practice and whether the conduct occurs in Alberta.

183. If there is no finding of guilt, the citations are dismissed, and the hearing is concluded. If there is a finding of guilt, the hearing proceeds to the sanction phase.

Sanction Phase

184. At the discretion of the Hearing Committee, the sanction phase may commence immediately following the merits phase of the hearing.

185. Alternatively, the Hearing Committee may adjourn the hearing in order to render a written decision on the merits. If the Hearing Committee makes a finding of conduct deserving of sanction, the hearing will be scheduled to reconvene for the sanction phase of the hearing.

Sanction

Evidence on Sanction

186. The lawyer's disciplinary record, if any, will be entered into evidence by Law Society counsel.

Determining the Appropriate Sanction

Purpose of Sanction

187. The fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession. These fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.

188. Other purposes of sanctioning include:

    a. specific deterrence of the lawyer;

    b. where appropriate to protect the public, preventing the lawyer from practising law through disbarment or suspension;

    c. general deterrence of other lawyers;

    d. ensuring the Law Society can effectively govern its members; and

    e. denunciation of the misconduct.

189. Sanctioning must be purposeful. The factors that relate most closely to the fundamental purposes outlined above carry more weight than others.

Type of Sanction

190. Section 72(1) of the Act requires a Hearing Committee, on finding a member guilty of conduct deserving of sanction, to disbar, suspend or reprimand the member. The type of sanction must be determined with reference to the purposes of sanctioning.

191. Each type of sanction fulfills the dual purposes of specific deterrence for the individual lawyer and general deterrence for the profession. The sanction imposed in each case informs the profession and the public that the lawyer's conduct is unacceptable and will not be tolerated.

192. Disbarment is appropriate in the most serious cases where the lawyer's right to practice law must be terminated to protect the public against the possibility of a recurrence of the conduct, even if that possibility is remote. Where any other result would undermine public confidence in the integrity of the profession, the lawyer's right to practice may be terminated regardless of extenuating circumstances and the probability of recurrence. The reputation of the profession is more important than the impact of sanctioning on any individual lawyer.

193. Suspension is appropriate for the denunciation of serious or repeated misconduct where it is reasonable to believe that temporarily removing the lawyer from the profession will result in compliance with professional standards in the future. Aggravating and mitigating factors may be recognized in determining the length of the suspension.

194. A reprimand is appropriate when it is not necessary to limit a lawyer's right to practise. A reprimand is delivered orally at the hearing and is meant to express the profession's denunciation of the lawyer's conduct.

195. An effective reprimand will:

    a. state what is expected of a lawyer;
    b. explain how the lawyer fell below expected standards;
    c. iterate that the misconduct reflects poorly on the lawyer and the profession; and
    d. address either the lawyer's acceptance of responsibility or the lawyer's need for further reflection.

196. In addition to ordering disbarment, suspension or reprimand, the Hearing Committee may order one or more of the following:

    a. conditions on the lawyer's practice or suspension (section 72(2)(a));
    b. the payment of a penalty not exceeding $10,000 per citation by a specified deadline (section 72(2)(b)); and
    c. the payment of costs of the Conduct Proceedings by a specified deadline (section 72(2)(c)).

197. Payments of penalties are generally imposed when a reprimand alone is insufficient as a sanction but a suspension is excessive. For example, this may occur when a lawyer has already been reprimanded for previous conduct and the Hearing Committee is of the view that there is a need for a step-up in sanction.

198. Examples of conditions that may be imposed on a lawyer's practice or suspension include but are not limited to the following:

    a. precluding the lawyer from acting as a responsible lawyer on a trust account or having signing authority;
    b. precluding the lawyer from practising in a specific area of law or as a sole practitioner;
    c. requiring the lawyer to practice under the supervision of another lawyer;

d. requiring the lawyer to engage and cooperate with practice management; and

e. in the case of a suspension, requiring the lawyer to complete specific tasks prior to being reinstated.

199. A Hearing Committee must refrain from imposing conditions that would take effect only upon the lawyer's reinstatement. Such conditions are within the jurisdiction of a reinstatement panel and are best considered at the time of reinstatement taking into account all the relevant circumstances, including circumstances that may arise after a conduct hearing and before reinstatement.

Factors for Consideration in Determining Appropriate Sanction

200. The prime determinant of the appropriate sanction is the seriousness of the misconduct. The seriousness of the misconduct may be determined with reference to the following factors:

a. the degree to which the misconduct constitutes a risk to the public;

b. the degree to which the misconduct constitutes a risk to the reputation of the legal profession;

c. the degree to which the misconduct impacts the ability of the legal system to function properly (e.g., breach of duties to the court, other lawyers or the Law Society, or a breach of undertakings or trust conditions);

d. whether and to what extent there was a breach of trust involved in the misconduct;

e. the potential impact on the Law Society's ability to effectively govern its members by such misconduct;

f. the harm caused by the misconduct;

g. the potential harm to a client, the public, the profession or the administration of justice that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would likely have resulted from the lawyer's misconduct;

h. the number of incidents involved; and

i. the length of time involved.

201. The appropriate sanction may vary depending on whether the member acted intentionally, knowingly, recklessly or negligently. In some cases, the need to protect the public or maintain public confidence in the legal profession may require a particular sanction regardless of the state of mind of the lawyer at the time of the misconduct.

202. The ability of the Law Society to govern the profession is essential to self-governance. Certain types of misconduct undermine the Law Society's regulatory function and must be strongly denounced. Such misconduct includes but is not limited to:

    a. failing to respond to communications from the Law Society;
    b. failing to be candid with the Law Society;
    c. failing to cooperate with the Law Society;
    d. breaching an undertaking to or a condition imposed by the Law Society;
    e. refusing to participate in Conduct Proceedings;
    f. inappropriate communications with the Law Society, including those that are offensive, abusive or harassing; and
    g. practising law while suspended or inactive.

203. Integrity is the most important attribute of any lawyer. Lawyers must discharge all duties owed to clients, the court, other members of the profession and the public with integrity. Integrity on the part of lawyers is essential to the effective operation of the legal system and the regulation of the legal profession.

204. Dishonourable conduct by a lawyer in either professional practice or private life reflects adversely on the public's perception of the integrity of the profession and the administration of justice. If the conduct would bring the public's perception of the legal profession into disrepute, impair a client's trust in the lawyer or otherwise bring into question the lawyer's integrity, the Law Society may take disciplinary action.

205. Lawyers who by their conduct have proven to be lacking in integrity may lose their right to practise law. The professional obligation to act with integrity is violated by the following types of serious misconduct:

    a. misappropriation or wrongful conversion of client funds or property;
    b. intentional interference with the administration of justice;
    c. intentional misrepresentation to a client, the court or the Law Society;
    d. false swearing (e.g., of an affidavit or in commissioning an affidavit);
    e. fraud, theft or extortion; or
    f. any misconduct involving dishonesty or deceit.

206. The Hearing Committee may consider additional factors that have either an aggravating or mitigating effect on the appropriate sanction. These factors include the following, without limitation:

a. prior discipline record;

b. length of time the lawyer has been in practice;

c. acknowledgment of wrongdoing including self-reporting and admission of guilt;

d. level and expression of remorse;

e. level of cooperation during the Conduct Proceedings such as attendance at PHCs, adherence to the pre-hearing Rules, etc.;

f. medical, mental health, substance abuse or other personal circumstances that impacted the lawyer's conduct;

g. restitution made, whether partial or in full;

h. rehabilitation since the time of the misconduct;

i. the extent to which the lawyer benefitted from the misconduct; and

j. whether the misconduct involved taking advantage of a vulnerable party.

207. The sanctions imposed for conduct deserving of sanction are cumulative and prior misconduct will result in increasingly serious sanctions. The time that has elapsed between previous and current misconduct is a relevant consideration.

208. Although Hearing Committees are not bound by precedent, undue disparity with the sanctions imposed in other cases is to be avoided. When reviewing previous decisions, the Hearing Committee may consider whether the factors referred to in this Guideline were addressed by the prior Hearing Committee. The Hearing Committee may wish to place more emphasis on recent decisions as they may more accurately reflect regulatory trends in sanctioning.

Joint Submissions on Sanction

Background and the Public Interest Test

209. A lawyer and Law Society counsel may agree to jointly recommend a particular sanction. If a joint submission on sanction is presented, the parties require a high degree of certainty that the sanction recommendation will be accepted by the Hearing Committee. Accordingly, the Hearing Committee must give significant deference to the joint submission on sanction.

210. The lawyer must acknowledge that if there is a joint submission on sanction, while the Hearing Committee will show deference to it, the Hearing Committee is not bound by any joint submission.

211. A joint submission benefits both the lawyer and the Law Society in the following ways:

    a. it is a more efficient means of concluding the proceedings, saving time, costs and resources;

    b. it provides the parties with certainty regarding the outcome, particularly in cases where either party faces challenging evidentiary issues;

    c. complainants and other witnesses are spared from having to testify publicly;

    d. complainants may perceive the lawyer's Admission as an important acknowledgement of responsibility or an expression of remorse;

    e. an Admission and a joint submission on sanction provides the lawyer with an opportunity to demonstrate accountability for their conduct.

212. The Supreme Court of Canada sets out a test for assessing the acceptability of joint submissions in the criminal law context. The "public interest test" states that a judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The judge should consider the following questions in applying the public interest test:

    a. Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the offence and the offender that the joint submission would be viewed as a break down in the proper functioning of the criminal justice system?

    b. Would the joint submission cause an informed and reasonable public to lose confidence in the institution of the courts?

    c. Is the joint submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down?

213. The Supreme Court of Canada recognized that the test sets an "undeniably high threshold" but held it was justified given the importance of joint submissions to the proper functioning of the justice system. If the Hearing Committee finds that the test is met, it can reject the joint submission.

214. The public interest test has been widely adopted by professional discipline tribunals across Canada. The case law confirms that the test is appropriate and should be applied in Law Society Conduct Proceedings.

Hearing Procedure for Joint Submissions on Sanction

215. If the parties wish to make a joint submission on sanction, it must be presented on the public record at the hearing. Given the obligation on the Hearing Committee to give significant deference to the joint submission, counsel have a corollary obligation to justify their position at the public hearing of the matter. The lawyer and Law Society counsel will provide a comprehensive factual and legal analysis regarding the lawyer's conduct and any other relevant factors in support of any joint submission on sanction.

216. This obligation does not mean that the parties are required to inform the Hearing Committee of the details of the discussions leading up to the agreement to present a joint submission. Rather, the parties' submissions must satisfy the Hearing Committee that the proposed sanction does not bring the administration of justice into disrepute and is not otherwise contrary to the public interest.

217. If, after hearing the parties' submissions and applying this high threshold, the Hearing Committee is considering rejecting a sanction recommended in a joint submission, it must notify the parties of the nature of its concerns and provide the parties with an opportunity to enter additional evidence and make further submissions to address the Hearing Committee's concerns. If necessary, in the interests of fairness, the Hearing Committee may grant an adjournment.

Costs

218. If a lawyer is found guilty of conduct deserving of sanction, the Hearing Committee may order the lawyer to pay all or part of the costs of the Conduct Proceedings pursuant to section 72(2)(c) of the Act and Rule 99. The Hearing Committee may also determine the deadline for payment of costs.

219. Costs may be determined at the conclusion of the sanction hearing, or at a separate hearing at the discretion of the Hearing Committee.

Procedure at Hearing

220. Law Society counsel will provide the lawyer and the Tribunal Office with an estimated Statement of Costs prior to or as soon as possible after the conclusion of the hearing. The estimated Statement of Costs will be entered as an exhibit at the conclusion of the sanction phase of the hearing.

221. The parties will have the opportunity to make submissions on the amount and deadline for payment of the costs. Submissions may address the impact of any

adjournments or issues arising from the provision of materials and witness lists, or responses to a Notice to Admit.

Determination of Hearing Committee

222. In addition to the considerations set out in Rule 99, in assessing costs the Hearing Committee may consider:

a. whether facts or evidence set out in a Notice to Admit Facts or Authenticity of Documents, served under Rule 90.4, were:

i. disputed by the lawyer and subsequently proven by the Law Society, or
ii. admitted by the lawyer, thereby narrowing the issues to be considered at the hearing, and

b. the extent to which:

i. the lawyer complied with PHC chair directions or deadlines,
ii. the lawyer complied with the requirement under Rule 90.7 to provide a list of witnesses, exhibits and authorities to be relied on at the hearing,
iii. there were citations that were withdrawn or not proven, and
iv. the lawyer cooperated with the Law Society during the complaint, investigation and hearing process,

which may be considered either aggravating factors with the potential to increase an order for costs or mitigating factors with the potential to decrease an order for costs.

223. It is the Law Society's default position that when a lawyer is found guilty of conduct deserving of sanction, the actual costs of the hearing should be paid by the lawyer. This position is based on the proposition that the hearing expenses incurred in the exercise of the Law Society's statutory obligations are appropriately charged to the lawyer whose conduct is under scrutiny.

224. If the Hearing Committee orders costs, Law Society counsel will prepare a finalized Statement of Costs and submit it to the Tribunal Office to be signed by the Hearing Committee pursuant to Rule 99(4). The Tribunal Office will provide a copy of the signed Statement of Costs to the parties. The Hearing Committee may consider the financial circumstances of the lawyer and any proposed instalment arrangement when setting a deadline for payment of costs.

Disputes on Accuracy of Costs After the Hearing

225. A lawyer who disputes the accuracy of a signed Statement of Costs must, within 15 days of receipt of the Statement of Costs, provide the Tribunal Office with a request for a review by the Hearing Committee setting out the reasons for the dispute.

226. The Law Society must submit any response to the Tribunal Office within ten days of receipt of the request.

227. The Hearing Committee will review the Statement of Costs and may amend or replace it in accordance with Rule 99(6).

228. In accordance with section 79 of the Act, if a lawyer does not pay the costs within the deadline ordered by the Hearing Committee, the lawyer's membership with the Law Society will be automatically suspended.

Conclusion of Hearing

Publication Orders

229. At the conclusion of the hearing, the Hearing Committee will invite submissions and make directions about the publication and redaction of the decision and the hearing record, including transcripts and exhibits.

230. Privacy, confidentiality and privilege are protected by the Law Society in accordance with the *Publication and Redaction Guideline for Adjudicators.*

231. The decision and the hearing record related to any portion of a hearing that is held in private is confidential and will not be made available to the public.

Notices to the Profession

232. Section 85(1) of the Act requires a notice to be issued when a suspension or disbarment is ordered by the Hearing Committee. Section 85(3) affords the Hearing Committee the ability to make discretionary orders regarding publication of notices. The *Publication and Redaction Guideline for Adjudicators* provides further guidance.

Referrals to the Minister of Justice and Solicitor General

233. Law Society counsel will advise the Hearing Committee whether they are seeking a referral to the Minister of Justice and Solicitor General ("Minister") pursuant to section 76(8) of the Act. If they are seeking a referral, they will make submissions, including identifying the relevant sections of the *Criminal Code of Canada*, and the elements necessary to establish the alleged offence. The lawyer may make submissions in response.

234. If the Hearing Committee is of the opinion that there are reasonable and probable grounds to believe that the lawyer has committed a criminal offence, the Hearing Committee must direct the Executive Director to send a copy of the hearing record to the Minister.

235. If the Hearing Committee determines that a referral to the Minister is warranted, section 78(7) of the Act sets out the information and records that must be provided to the Minister, and the relevant exceptions including the compelled statements of the lawyer and information that may be subject to solicitor-client privilege or client confidentiality.

Decision and Reasons

236. Generally, the Hearing Committee will reserve its decision and endeavour to issue a written Hearing Committee report with its decision and reasons within 90 days of the hearing.

237. In its sole discretion, the Hearing Committee may issue its decision orally, with written reasons to follow.

Hearing Committee Order for Single Bencher Hearing

238. If a sanction hearing is being heard by a Single Bencher Hearing Committee, the decision and reasons may be set out in an order. In cases where there is a joint submission on sanction, Law Society counsel will prepare a draft form of order for review by the lawyer prior to the hearing.

239. The Hearing Committee may accept or amend the proposed form of order or issue a written decision instead of an order.

Hearing Committee Report

240. The Hearing Committee report will contain the decision and the reasons for the decision, as well as any required orders or conditions.

241. If a dissent is issued, it will be appended to and issued with the Hearing Committee report.

242. A Hearing Committee may issue separate decisions on the merits and sanction phases, or it may issue a single decision on both.

Issuance and Publication of Decisions

243. The Tribunal Office will issue the Hearing Committee report or order to the parties once it is finalized. The appeal period runs from the date that the Hearing Committee report or order on sanction is provided to the lawyer or to the lawyer's counsel, as applicable.

244. The Tribunal Office will publish the Hearing Committee report or order on the Law Society's website and on CanLII and QuickLaw. The Hearing Committee report or order is generally published within one week after the decision is issued to the parties.

Appendix C - 2018 Pre-Hearing Guideline

Law Society of Alberta

Pre-Hearing Guideline

September 27, 2018

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Pre-Hearing Guideline

I. The Nature of this Guideline

1. This guideline focuses on the process after a Conduct Committee Panel directs a matter to a hearing and before the hearing commences, and addresses matters that may arise during that interval.

2. The Executive Director will provide this guideline to the lawyer when the lawyer is advised that a hearing has been directed by a Conduct Committee Panel.

3. References to the Executive Director in this guideline include the Executive Director's delegates.

4. References to a lawyer in this guideline include the lawyer's counsel, if applicable.

II. Representation

5. The lawyer may be represented by counsel (section 64 of the *Legal Profession Act*, RSA 2000, c L-8 (the "Act")). The lawyer is encouraged to retain counsel at the earliest opportunity.

6. The Law Society maintains a list of lawyers who have appeared as counsel before Law Society panels and are familiar with the regulatory process. A lawyer may request this list from the Law Society.

7. The Executive Director will send Notices of Intention to be completed by the lawyer. The Notice indicates whether the lawyer intends to retain counsel and, if so, the name of the lawyer's counsel. The lawyer should complete and return the Notice as soon as possible.

III. Disclosure

8. When a matter has been directed to a hearing, counsel for the Law Society has a general obligation to provide disclosure to the lawyer as required by law and the *Code of Conduct*.

9. **Obligation to disclose relevant evidence.** Law Society counsel's obligation is limited to providing relevant evidence that has been gathered in the course of reviewing or investigating the matter in question, subject to the points outlined below.

10. **Determination of relevance.** Relevance is determined according to the citations directed to hearing and the issues anticipated to arise in that hearing.

11. **Work product.** Evidence is required to be disclosed, while work product, which is privileged and confidential, is exempt from disclosure. Work product includes notes, memos, briefs, opinions, correspondence and other material prepared in contemplation of a hearing.

12. **Discretion to withhold.** Counsel for the Law Society has discretion to withhold evidence if there are concerns about the potential misuse of information or if there is an expectation of privacy, subject to any direction made by the chair of the Conduct

Committee or the Hearing Committee. Counsel shall notify the lawyer if anything is withheld on this basis.

13. **Limitation on use of information disclosed.** Information provided by the Law Society in the course of disclosure shall be used only to enable the lawyer to make full answer and defence in the Law Society proceedings and for no other purpose. Material disclosed in Law Society disciplinary proceedings is private and confidential subject to s. 78 of the Act, which governs whether proceedings and related records are private or public, as well as Rule 45, which governs the confidentiality of records in the possession of the Law Society.

14. **Disclosure issues in dispute.** Disputes regarding disclosure issues may be determined by the chair of a pre-hearing conference (see "Pre-Hearing Conferences", below). Where disclosure issues remain in dispute after pre-hearing conferences, an application may be made to the Hearing Committee. Applications should be initiated at the earliest opportunity by contacting counsel for the Law Society to arrange a date to consider the application. Disclosure issues that arise after the commencement of the hearing must be determined by the Hearing Committee.

15. Disclosure issues may include relevance, expectation of privacy and/or potential misuse of disclosure information. In resolving disputes, the ability to make full answer and defence must be balanced against confidentiality and potential privacy or misuse interests. A hierarchical approach to these interests is to be avoided. No single principle is absolute and capable of trumping the others; all must be defined in light of competing claims: ***R v Mills***, [1999] 3 SCR 668 at paragraphs 17 and 61.

16. There may be a reasonable expectation of privacy even when material has been provided to the Crown in criminal proceedings. Privacy interests in modern society include the reasonable expectation that private information will remain confidential to the persons to whom and restricted to the purposes for which it was divulged: ***Mills, supra*** at paragraph 108.

17. Constitutional standards developed in the criminal context cannot automatically be applied in a regulatory context: ***Minister of Employment and Immigration v Chiarelli***, [1992] 1 SCR 711 ("***Chiarelli***"). Law Society proceedings are not fully comparable to the criminal or the civil system. Unlike those systems, the mandate of the Law Society depends on the gathering of information, which is often privileged, or involves some other expectation of privacy. The Act (ss. 78, 112 and 115(4)) and *The Rules of the Law Society of Alberta* (rules 39 and 45), include a number of provisions dealing with the privacy of information gathered by the Law Society. Those who provide information to the Law Society have a reasonable expectation of privacy in relation to that information and a reasonable expectation that the information provided will be used only in the context of the proceedings in which it was provided. The provision of information to the Law Society shall not be construed as a waiver of privilege or confidentiality in relation to any party outside of the Law Society. These factors impact what should be disclosed, and what use should be made of the information that is disclosed. See generally, ***Chiarelli***.

18. The application of these principles may impact the disclosure process in a number of ways:

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a) If the records to which the lawyer seeks access are not part of the case to meet, privacy considerations may mean that access is denied: ***Mills, supra*** at paragraph 71.

b) If a record is of low probative value or relates to a peripheral issue and the privacy right in the record is strong, access may be denied on the basis that non-disclosure will not prejudice the lawyer's right to full answer and defence: ***Mills, supra*** at paragraph 131.

19. Similar concerns may lead to evidence being redacted or summarized before being disclosed. Interested parties may need to be notified and given an opportunity to be heard in relation to their interests. The chair of the Conduct Committee or the Hearing Committee may need to review the evidence without providing a copy to the lawyer. Conditions may need to be imposed on the use of any information that is ultimately disclosed. See ***Mills, supra; R v O'Connor***, [1995] 4 SCR 411; ***M(A) v Ryan***, [1997] 1 SCR 157; and ***Smith v Jones***, [1999] 1 SCR 455.

IV. Pre-Hearing Conferences

20. Pre-hearing conferences, as set out in Rule 90.1, are a key step in the Law Society's hearing process. If directed by the chair of the Conduct Committee, a pre-hearing conference shall be held before a hearing commences.

21. The purpose of a pre-hearing conference is for the lawyer and counsel for the Law Society to consider resolution of the matter by alternative measures or to resolve preliminary issues so that the matter may move forward in a timely manner and result in an expeditious and efficient hearing.

A. Attendance

22. When a pre-hearing conference is directed by the chair of the Conduct Committee, the chair will order that the date, time and place or mechanism of the pre-hearing conference be set, and that the lawyer and counsel for the Law Society be advised of these particulars.

23. The chair of the pre-hearing conference may determine that additional pre-hearing conferences are required in order to case manage the matter. In this case, the chair will set the date, time and place or mechanism for the additional pre-hearing conferences and will notify the parties and specify the purpose of holding additional pre-hearing conferences.

24. The lawyer's attendance at a pre-hearing conference, either in person or represented by counsel, is mandatory. If the lawyer fails to attend the pre-hearing conference, and the chair of the pre-hearing conference confirms the lawyer had notice of the particulars of the pre-hearing conference, the pre-hearing conference may proceed in the lawyer's absence.

B. Powers of the Chair of the Pre-Hearing Conference

25. The chair of a pre-hearing conference has the power to order, direct or permit that steps be taken to attempt to resolve the matter or to resolve preliminary issues for the timely, efficient and expeditious conduct of a hearing.

26. The powers of the chair of a pre-hearing conference are set out in Rule 90.1 and include:

- granting adjournments of a pre-hearing conference or a hearing that has not commenced;
- ordering a date for a hearing be set;
- permitting or directing amendment, withdrawal, severance or consolidation of citations;
- making directions as to the materials to be prepared for the hearing;
- setting a schedule for completing steps in preparation for the hearing;
- determining disputes regarding disclosure;
- permitting or directing particulars or issues lists;
- facilitating mediation or settlement between the Law Society and the lawyer (if mediation or settlement discussions result in an agreement with respect to guilt, sanction or both, the agreement will be reviewed by the Hearing Committee for approval and ratification); and
- making any other directions to facilitate the hearing.

27. The chair of a pre-hearing conference is not delegated any of the powers that the chair of the Conduct Committee has under the Act. Further, the chair of a pre-hearing conference may not make orders that would fetter the discretion of the Hearing Committee including, without limitation, the order of proceedings, or the admissibility, relevance, materiality or weight of evidence.

C. Mediation or Settlement

28. The chair of a pre-hearing conference has the power to facilitate mediation or settlement between the lawyer and the Law Society during the pre-hearing conference process in order to attempt to resolve issues and disputes before the hearing commences.

29. The lawyer and counsel for the Law Society must consent to mediation or settlement discussions. If a party decides during the discussions that he or she no longer consents, the party shall notify the chair of the pre-hearing conference in writing. The mediation or settlement discussions will end immediately.

30. Mediation or settlement discussions are without prejudice and shall not be raised by either party at the hearing except to the extent necessary to respond to any questions or concerns raised by the Hearing Committee regarding an agreement presented for ratification.

31. The pre-hearing conference chair may not participate in a hearing that follows from the pre-hearing conference unless there are exceptional circumstances and the lawyer and counsel for the Law Society consent.

i. Agreement Reached

32. If the pre-hearing conference results in a mediated agreement or settlement agreement to which both parties agree and which resolves the entire matter, the chair of the pre-hearing conference will write a memo to the Hearing Committee regarding the process followed and any other information the chair may deem relevant. Counsel for the Law Society will submit this memo to the Hearing Committee together with an Agreed Statement of Facts.

33. The Hearing Committee shall review and ratify the agreement under section 60 of the Act if it is satisfied that it is reasonable and not contrary to the public interest.

34. If the agreement resolves some but not all the issues, then the chair of the pre-hearing conference will direct that the matter proceed to hearing on those issues that remain contentious. The issues that have been resolved will be dealt with in a similar manner, as described in paragraphs 32 and 33, during the hearing.

35. The chair of the pre-hearing conference does not have the authority to approve or ratify the agreement.

ii. No Agreement Reached

36. If the mediation or settlement discussions do not result in an agreement that resolves the matter, the chair of the pre-hearing conference shall direct that the matter proceed to hearing.

D. Notice to Admit Facts or Exhibits

37. Before or during the pre-hearing conference process, the lawyer and counsel for the Law Society may serve the other party with a Notice to Admit facts or exhibits.

38. A Notice to Admit requests that the party on whom it is served admit certain facts or exhibits. A Notice to Admit must be in writing and set out the specific facts or exhibits for which an admission is requested.

39. Upon being served with a Notice to Admit, the party on whom it is served must reply within 15 days after the date of service. The reply must admit, deny or object to each fact or exhibit for which an admission is requested. If a fact or exhibit is being denied or objected to, the reply must specifically state the reasons why each fact or exhibit is being denied or objected to.

40. If the party who is served with the Notice to Admit fails to serve a written reply or denies or objects to the facts or exhibits for which an admission was requested, and those facts or exhibits are later admitted, proven or entered at the hearing, the Hearing Committee may consider this factor when determining hearing costs.

V. Exhibits

41. The parties shall endeavour to prepare a book of agreed exhibits, which will be distributed to the Hearing Committee prior to the commencement of the hearing.

42. If either party intends to submit exhibits to the Hearing Committee that are not in the book of agreed exhibits, those exhibits should be provided to the other party as soon as possible prior to the hearing.

43. The failure of a party to provide copies of an exhibit to the other party prior to the hearing shall not prevent the Hearing Committee from receiving the exhibit into evidence at the hearing.

44. Any exhibits objected to will not be distributed to the Hearing Committee prior to the hearing. The Hearing Committee will rule on the admissibility of the exhibit at the hearing.

VI. Advising the Other Party of Issues Anticipated

45. **General Rule**. A party who anticipates that a significant preliminary, evidentiary, procedural or substantive issue will arise will notify the other party as soon as possible. Issues should be resolved prior to the commencement of the hearing whenever possible. Such issues may be determined during pre-hearing conferences or by preliminary application to the Hearing Committee with notice to the other party.

46. **Expert Evidence**. If either party anticipates calling expert or opinion evidence, the other party shall be notified in advance of the hearing to allow sufficient time to obtain rebuttal expert or opinion evidence. The information provided to the other party will include the witness' name and *curriculum vitae*, the areas in which the witness will be sought to be qualified, the substance of the opinion to be tendered in as much detail as possible and any report prepared by the witness.

47. **Incompetence**. If counsel for the Law Society anticipates that the competence of the lawyer will be in issue, counsel for the Law Society shall notify the lawyer in writing at the earliest opportunity. In this context, the question is whether incompetence was the cause of any conduct deserving of sanction.

48. **Likely Sanction**. When counsel for the Law Society seeks a lengthy suspension or disbarment, counsel for the Law Society shall notify the lawyer in writing at the earliest opportunity.

49. **Referral to the Minister of Justice and Solicitor General**. When counsel for the Law Society anticipates the matter could result in a referral to the Minister of Justice and Solicitor General pursuant to section 78 of the Act, counsel for the Law Society shall notify the lawyer in writing at the earliest opportunity.

VII. Adjournments

50. Rule 97(1) allows the chair of the pre-hearing conference, the Conduct Committee or the Hearing Committee to adjourn the hearing prior to the commencement of the hearing, "on any conditions they may impose".

51. Adjournment applications should be made at the earliest opportunity by advising counsel for the Law Society of the application. Counsel for the Law Society will then arrange a conference call with the appropriate decision-maker. Reference should be made to the Hearing Guide for costs arising from adjournment applications.

VIII. Objections to Composition of Hearing Committee - Bias

52. An allegation of bias raised before the commencement of the hearing will be dealt with by the chair of the Conduct Committee (s. 59(5)(a)). If the chair of the Conduct

Committee is of the opinion that there are reasonable grounds to revoke the appointment of a member of a Hearing Committee, the chair may do so and may appoint a replacement (s. 59(4)).

53. If an allegation of bias is raised at or after the commencement of the hearing, it will be dealt with by the Hearing Committee unless the Hearing Committee refers the matter to the chair of the Conduct Committee (s. 59(5)(b)).

54. If the lawyer wishes to pursue an application for apprehension of bias (regarding one or more members of the Hearing Committee), the application should be made at the earliest opportunity and prior to the commencement of the hearing.

55. The hearing of the application is arranged by advising counsel for the Law Society of the objection. Arrangements will be made for the chair of the Conduct Committee to hear the application by video conference or in person. A court reporter will transcribe these proceedings.

56. The Hearing Committee has jurisdiction to address apprehension of bias concerns. These applications are time-consuming and should be made to the chair of the Conduct Committee at the earliest opportunity whenever possible.

IX. Custodianships

57. If a hearing results in a suspension or disbarment, the Hearing Committee has an obligation to consider the effect on the lawyer's clients.

58. The Law Society may obtain a court order appointing a formal custodian to manage or wind up the lawyer's practice. Costs are incurred in the process and the Law Society may recover these costs from the lawyer.

59. An alternative approach is for the lawyer to make his or her own arrangements with another lawyer of the Law Society to manage the practice. The lawyer who will manage the practice must be:

- a member in good standing with the Law Society of Alberta,
- prepared to take custody of the files of the lawyer,
- prepared to report to the Law Society as required, and
- prepared to give a written undertaking to the Executive Director in this regard.

Further details must be provided upon request. The Hearing Committee may impose additional specific terms or conditions.

60. The outcome of a hearing is not predictable. All lawyers who have been notified that they may be facing a potential suspension or disbarment are encouraged to make arrangements with another lawyer to manage their practice before the hearing in case a suspension or disbarment is ordered.

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X. Holding Matters in Abeyance

61. Law Society proceedings should proceed in a timely manner and not be held in abeyance. However, in some cases, the lawyer or the Law Society may seek to have the Law Society proceeding held in abeyance pending the outcome of related proceedings (civil or criminal) or for other compelling reasons.

62. An abeyance application is made in writing to the chair or vice-chair of the Conduct Committee. The application will be provided to the other party who may reply to the application. Any reply is provided to the applicant. The application and reply will be provided to the chair or vice-chair, who will provide written reasons for the decision regarding the application.

XI. Discontinuance Applications

63. Section 62 of the Act permits either party to apply to discontinue proceedings. While the Act permits these applications to be made to either a Conduct Committee Panel or the Hearing Committee, the application should be made to a Conduct Committee Panel whenever possible.

64. The Threshold Test should be applied. This test, and guidance on its application, can be found in the *Threshold Test Guideline*. It provides guidance on when a Conduct Committee Panel should direct matters to a hearing and when a matter should be dismissed and can be used for guidance with respect to discontinuance applications.

Appendix C - 2013 Hearing Guide

Law Society of Alberta

Hearing Guide

February 2013

Format updated April 2016

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Hearing Guide

I. The Nature of this Guide

1. This guide addresses matters which commonly arise during the course of conduct hearings. It is intended to guide and assist all of those involved in the hearing process to identify, understand and apply the relevant principles.

2. The guide begins with procedural guidelines which set out the basic procedure to be followed in every hearing, as prescribed by the *Legal Profession Act* and the Rules of the Law Society.

3. The guide then addresses issues which can arise in certain hearings (adjournments, proceeding in the absence of the member, amending the citation and so on). The relevant rules and/or practices are identified and summarized.

4. The guide then addresses the issues of burden and standard of proof, what is conduct deserving of sanction and the sanctioning (sentencing) process. In general, the material set out in these sections consists of principles set out in case law, the Code of Conduct, the *Act*, legal publications and related material.

II. Procedural Guidelines

A. Preliminary Matters

References: *Legal Profession Act*, R.S.A. 2000, c. L-8 (Part 3).
Rules of the Law Society (Part 3).

5. **Quorum.** A Hearing Committee may consist of one current or former Bencher (s. 60(3)) or three or more persons, one of whom must be a Bencher or former Bencher (s. 59(1)(b)). If, after the commencement of a hearing, one or more of the members are unable to continue, the remaining members of the Hearing Committee may continue to act if at least two members, including a Bencher or former Bencher, remain (s. 66(3)).

6. **Representation.** The member and the Law Society may be represented by counsel (s. 64). The Chair should determine if the member has counsel, does not want counsel or wants an adjournment to obtain counsel. If the member does not have counsel, the Chair should confirm that the member has received a copy of the list of counsel willing to act for members before Hearing Committees on a pro bono basis.

7. **Jurisdiction.** For the purposes of establishing jurisdiction, counsel for the Law Society submits the following exhibits:

   a) Letter(s) of Appointment.

   b) Notice(s) to Solicitor.

   c) Notice to Attend (to Solicitor).

   d) Certificate of Standing of Member.

e) Certificate of Exercise of Discretion pursuant to rule 96(2)(b) which says that the Executive Director may give a private hearing application notice prior to the commencement of the hearing to any person "who in the Executive Director's opinion is or may be an interested party."

f) Affidavit(s) of Service on Interested Parties plus any other exhibits that have been agreed upon by counsel for the Law Society and counsel for the member, including, where applicable, an agreed statement of facts or a statement of admission of guilt.

8. **Bias.** At the hearing, member's counsel should be asked if there is any objection to the membership of the Committee based on an apprehension of bias or for any other reason. If there is an objection, the Hearing Committee member should not disqualify herself or himself unless reasonable grounds exist.

a) An allegation of bias which is raised before the commencement of the hearing is to be dealt with by the chair of the Conduct Committee (s. 59(5)(a)).

b) An allegation of bias which is raised at or after commencement of the hearing, is to be dealt with by the Hearing Committee unless the Hearing Committee refers the matter to the chair of the Conduct Committee (s. 59(5)(b)).

c) Where the chair of the Conduct Committee is of the opinion that there are reasonable grounds for so doing, he/she may revoke the appointment of a member of a Hearing Committee before or during a hearing, and may appoint a replacement for a member of a Hearing Committee who ceases to be a member or whose appointment is revoked (s. 59(4)).

9. **Open Hearing.** When the hearing commences, the Chair shall invite applications to have the whole or part of the hearing in private (r. 98(1) and s. 78(2)).

a) In the interests of transparency, hearings should be open to the public – except to the extent required to protect compelling privacy interests.

b) To the extent possible, an application for a private hearing should be made in public, with the applicant providing a general outline as to why the hearing should be held in private.

c) Protection of legal privilege and solicitor-client confidentiality are compelling privacy interests which must be protected unless they are expressly waived by the appropriate person(s). Neither the making of a complaint to the Law Society, nor failure to respond to a Private Hearing Application Notice constitutes an express waiver.

d) Where a Hearing Committee decides that privacy should be protected, that may be accomplished by closing the necessary portions of the hearing or taking other appropriate measures. If the hearing is closed, rule 98(2) then governs who shall be present. The Hearing Report must also be prepared in a manner that protects the identity of the client, which requires use of generic references (e.g. Client A) and may require additional steps in some cases. Release of that report is governed by s. 74(3.1) of the LPA.

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10. **Adjournments.** Rule 97(2) says that the Hearing Committee may, on or after the date of a hearing, adjourn the hearing to any other time or place on any conditions it may impose. In deciding whether or not to grant an adjournment, the Hearing Committee, in order to comply with its duty of fairness, may consider any or all of the following:

    a) prejudice to any person affected by the delay;

    b) the timing of the request, prior requests, and adjournments previously granted;

    c) the public interest;

    d) the costs to the Law Society and the other parties of an adjournment;

    e) the availability of the parties, counsel, and witnesses;

    f) the efforts made to avoid the adjournment;

    g) the requirement for a fair hearing; and

    h) any other relevant factor.

    The considerations apply to all requests for adjournment, including those made after a finding of guilt and before the commencement of the sanction phase of a hearing.

B. Opening Statements, Evidence and Submissions

11. **Opening Statement - Law Society.** Opening statement by counsel for the Law Society. If it is apparent at this stage that incompetence is in issue, that counsel for the Law Society perceives the case to be one which may warrant disbarment or a lengthy suspension or one in which a referral to the Attorney General may result, that should be stated.

12. **Exclusion of Witnesses.** Generally, witnesses other than the complainants should be excluded until they have given their evidence. Witnesses who are complainants generally should be allowed to remain in the hearing room unless there is a reason to exclude them, such as where evidence is to be given in a private portion of the hearing and the complainant is not entitled to hear it.

13. **Evidence** is then called, if applicable, by counsel for the Law Society.

14. **Oaths.** A member of the Hearing Committee may administer an oath to a witness (s. 68(2)). Pursuant to Section 15 of the *Alberta Evidence Act*, the person taking the oath holds the Bible or New Testament or Old Testament in the case of an adherent of the Jewish religion in his or her uplifted hand and the officer administering the oath shall say: "You swear that the evidence you give touching the matters in question shall be the truth, the whole truth and nothing but the truth so help you God?"

15. **Affirmation** in lieu of oath is governed by Section 17 of the *Alberta Evidence Act*. If the person objects to taking an oath, and the Hearing Committee is satisfied the person objects to being sworn:

    a) from conscientious scruples,

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b) on the ground of his or her religious belief, or

c) on the ground that the taking of an oath would have no binding effect on his or her conscience

the witness may make an affirmation which is of the same effect as an oath. The officer administering the affirmation shall say, "You affirm that the evidence you give touching the matters in question shall be the truth, the whole truth and nothing but the truth?"

16. **Opening Statement** by counsel for the member.

17. **Admission of Guilt.** If a Statement of Admission of Guilt has been tendered, the Hearing Committee decides if it is in a form acceptable to it (s. 60) and, if so, then it is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the member is deserving of sanction.

18. Before accepting an admission of guilt, the Hearing Committee may consider whether or not: (1) the member is making the admission voluntarily and free of undue coercion; (2) the member unequivocally admits guilt to the essential elements of the citations describing conduct deserving of sanction; (3) the member understands the nature and consequences of the admission; and (4) the member understands that the Hearing Committee is not bound by any submission advanced jointly by the member and the Law Society counsel. The Hearing Committee may require the member, in person or in writing, to confirm their positive response to each of the foregoing conditions.

> The requirement that the accused understand the nature and consequences of a guilty plea is not a requirement to canvass every conceivable consequence which may result or may be foregone. Such a requirement would be a practical impossibility…[T]he accused should be aware of the probable direct consequences of the plea.

R v Hoang, 2003 ABCA 251 at para 36.

19. A Hearing Committee, having completed the above enquiry, should then give serious consideration to a jointly tendered admission of guilt, should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.

Rault v. Law Society of Saskatchewan, 2009 SKCA 81, *R. v. Tkachuk*, 2001 ABCA 243, and *Law Society of Alberta v. Pearson*, 2011 ABLS 17.

20. **Defence Evidence.** Evidence is then called, if applicable, by counsel for the member. The member is a compellable witness (s. 69(1)). If the member has not voluntarily offered to be a witness, the Hearing Committee may consider whether or not it wishes to call the member.

21. **Submissions Regarding Guilt.** Counsel shall make their closing arguments. Counsel for the Law Society is first, followed by counsel for the member (or the member personally if unrepresented), which may be followed with a rebuttal from counsel for the Law Society.

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C. Decision Regarding Guilt, and Matters Ensuing

22. **Decision Regarding Guilt.** In cases not involving a Statement of Admission of Guilt, the Hearing Committee shall make a finding under s. 71(1) on whether or not the conduct is deserving of sanction. If not, the Hearing Committee must still make an Exhibits Order (see paragraph 30). If the conduct is deserving of sanction, the Hearing Committee proceeds to the next step.

23. **Record.** The Hearing Committee then hears the record of the member, if any (s. 71(3)(a)), if counsel for the Law Society applies to have it admitted.

24. **Incompetence.** If requested to do so by a member of the Hearing Committee or either counsel, the Committee then hears representations from counsel as to whether or not the member's conduct arose from incompetence (s. 71(3)(b)) and makes a finding on this issue.

25. **Argument Regarding Sanction/Costs.** The Hearing Committee then hears representations from both counsel about costs and proposed dispositions.

26. **Decision Regarding Sanction/Costs.** The Hearing Committee then orders a reprimand, suspension or disbarment (s. 72(1)). In addition, the Committee can order the member to pay fines of up to $10,000.00 per citation and/or all or part of the costs (s. 72(2) and r. 99(1)). Time to pay shall be specified. The membership of the member is automatically suspended until payment is made in full on time, unless otherwise directed (s. 76). In addition to the previously recoverable costs for counsel fees, court reporter charges, witness expenses and the like assessed when a member's conduct has been found to be deserving of sanction, the Benchers have resolved that the following costs should be assessed for all adjournments which take place and all hearings which are held after February 6, 1998:

Hearings:	$500.00 for each day in excess of 4 hours of hearing; $250.00 for each day up to and including 4 hours of hearing.	
Adjournments:	Seven (7) days prior to hearing	$200.00
	Under seven (7) days to hearing	$350.00
	At the hearing	$500.00

27. **Time to Pay.** The time for payment specified in a Hearing Committee's order for costs should be dependent upon the date that the statement of costs is forwarded by the Executive Director and the amount of costs should be set at the actual costs rather than the estimated costs unless the Hearing Committee has ordered a lesser maximum amount.

28. **Practice Review Referral.** Where the Hearing Committee refers a member to the Practice Review Committee, the Hearing Committee should consider the wording of that referral. While it is always helpful for the Hearing Committee to identify any areas of special concern, it is important that the referral be broad enough to permit Practice Review to pursue areas which are revealed through the gathering of further information and through the expertise of the Committee. Further, the Hearing Committee should specify whether the member is simply required to cooperate with Practice Review on an ongoing basis, or whether the member is required to meet certain conditions before being reinstated to practice. It is generally helpful if the referral is worded as follows, and then amended according to the circumstances:

To cooperate with the Practice Review Committee and to satisfy any conditions which may be imposed upon the member by the Practice Review Committee, which conditions will [might] include, but not be limited to, the following: [specify any conditions; specify whether these must be met prior to reinstatement.]

29. **Custodian.** If the member is suspended or disbarred, a Benchers' Guideline (Convocation, February 1992) states that the Hearing Committee shall take steps to see that the practice of the member is looked after.

30. **Exhibits.** The Committee invites submissions on whether exhibits should be made available for inspection and whether the public should be able to obtain a copy (r. 98(3)). Where the Hearing Committee determines that an exhibit will be available for inspection, it will also be made available for copying unless the Hearing Committee specifically directs otherwise (r. 98(3)) and, therefore, copying should be specifically dealt with at the time of the hearing.

31. **Publication.** The Committee decides if an order should go directing the Executive Director to publish a notice pursuant to rule 107.

32. **Referral to Attorney General.** If, following the hearing, the Hearing Committee is of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, it shall direct the Executive Director to send a copy of the hearing record to the Attorney General (s. 78(5)).

33. **Report.** On completing its hearing and deliberations, a Hearing Committee shall

    a) prepare a written report that is complete, but concise, written in plain language, that sets out

        (i) each of its decisions and the reasons for its decisions,

        (ii) the findings of fact and the conclusions of law, if any, and

        (iii) any order made by the Hearing Committee,

    b) prepare the report in a manner that, to the extent possible, protects privilege, solicitor-client confidentiality and closed portions of the hearing (see paragraph 9 of this guide), and

    c) give a copy of the report to the chair of the Conduct Committee and to the Executive Director.

34. **Dissenting Report.** If a Hearing Committee has found the member guilty of conduct deserving of sanction but any of its decisions in respect of its finding, determination or order is not unanimous, the dissenting member or members of the Committee shall

    a) prepare a written report respecting the dissent that is complete, but concise, written in plain language, that sets out the reasons for the dissent,

    b) prepare the report in a manner that, to the extent possible, protects privilege, solicitor-client confidentiality and closed portions of the hearing (see paragraph 9 of this guide), and

c) give a copy of the report to the chair of the Conduct Committee and to the Executive Director.

35. The reports prepared by the Hearing Committee (including those in dissent) are public, and should be prepared with a view to their being read not only by the member, but also the complainant, the profession, and the public. The reports must include reasons which confirm the decision and the process of arriving at it. The reasons should be comprehensive, articulate, and logical.

Bencher Minutes, November 25 & 26, 2004.

36. The Hearing Committee's reasons must explain why the Committee decided as it did, must account to the public, and must permit effective appellate review. These purposes are met if the reasons, read in the context of the evidence and relevant issues in the hearing, set out why the Committee made the decision it did.

> The reasons must be sufficient to fulfill their functions of explaining why the [Hearing Committee convicted or acquitted], providing public accountability and permitting effective appellate review…. These purposes are fulfilled if the reasons, read in context, show why the judge decided as he or she did. The object is not to show how the judge arrived at his or her conclusion…it is rather to show why the judge made that decision.

R v REM, 2008 SCC 51.

37. If credibility is an issue, the Hearing Committee must clearly set out its findings on the credibility of a witness or authenticity of a document. Those findings must be supported by an analysis which serves the purposes set out above of explanation, accountability, and effective appellate review.

III. Other Procedural Issues

38. **Adjournments.** Rule 97(2) allows the Chair of the Conduct Committee or the Hearing Committee to adjourn the hearing date prior to the date set for a hearing, "on any conditions they may impose".

39. **Amendment of Citation.** The Hearing Committee may amend the citation at any time during a hearing and shall allow the member sufficient time to prepare an answer to the amended citation (s. 65 and r. 94(2)).

40. **New Matters Arising.** The Hearing Committee can deal with other conduct of the member that arises in the course of the hearing after announcing its intention to do so and providing ample time to the member to prepare his answer for it (s. 65 and r. 94(1)).

41. **Suspension of the Member.** The Hearing Committee may suspend or impose conditions on the member, pending its decision on guilt or sanction, pursuant to sections 63(3) and 63(6) (refer to the Interim Suspension/Conditions Guideline).

42. **Absence of Member.** On proof of service of a Notice to Attend on the member, the hearing may proceed in the absence of the member. (s. 70(2)).

43. **Practice Advisor and Practice Management Advisor.** At their Convocation in April, 1994 the Benchers approved a motion that a general principle be incorporated in the

Hearing Guidelines that the Practice Advisor and Practice Management Advisor will not be called by the Law Society to give evidence in a conduct proceeding against a member. The only exception to the general principle will be when a member has put in issue communications between the member and the Practice Advisor or Practice Management Advisor thereby waiving confidentiality.

44. **"Off the Record" Discussions.** Off the record discussions are to be discouraged.

IV. Evidentiary Principles

A. Burden and Standard of Proof

45. At Law Society hearings, Law Society counsel bears the burden of proving, on evidence that is clear, convincing, and cogent, the Member's guilt on a balance of probabilities. There is no sliding or shifting scale of probability within that standard, and although the Member is not entitled to a presumption of innocence, the Law Society must still prove its case.

> In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

FH v McDougall, 2008 SCC 53, [2008] 3 SCR 41.

46. The standard of proof on a balance of probabilities has been confirmed as the correct standard for professional regulatory discipline hearings by the Alberta Court of Appeal.

> But the law is now clear that there is only one civil standard of proof at common law. That is proof on a balance of probabilities. There is no "clear, convincing and cogent" standard, whatever that floating standard might have meant.

Moll v College of Alberta Psychologists, 2011 ABCA 110.

B. Assessing Credibility

47. The Hearing Committee should consider and may take into account the seriousness of the allegations and potential consequences of the matter at hand and the probability or improbability that the alleged misconduct may have occurred. However, such considerations must not alter the standard of proof.

FH v McDougall, 2008 SCC 53, [2008] 3 SCR 41.

48. The Hearing Committee should assess the credibility of each witness with regard to all relevant evidence before them, and believe the evidence which is consistent with the preponderance of the probabilities which a practical and informed person would recognize as reasonable given the factual circumstances and the issues in the hearing.

> In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Faryna v Chorny, [1951] BCJ No 152 at para 11.

49. The Hearing Committee should be cautious about assessing credibility on the basis of the demeanor of a witness alone, or the interests of a witness in the outcome, but these remain relevant factors to consider within the totality of the evidence before the Committee.

> I judge a witness to be unreliable if his evidence is, in any serious respect, inconsistent with the undisputed or indisputable facts, or of course if he contradicts himself on important points. I rely as little as possible on such deceptive matters as his demeanour.

Sir Brian MacKenna, "Discretion" (Paper delivered at University College, Dublin, 21 February 1973), (1974) 9 Ir Jur 1, adopted in *R v Pelletier*, 1995 ABCA 128 at para 18.

C. Reverse Onus – Trust Funds

50. Where it is established that a member has received any money or other property in trust, the burden of proof that the money or other property has been properly dealt with lies on the member (s. 67).

V. What Is Conduct Deserving Of Sanction?

51. The *Legal Profession Act* sets out the general definition of conduct deserving of sanction (section 49(1)):

> 49(1) For the purposes of this *Act*, any conduct of a member, arising from incompetence or otherwise, that
>
> (a) is incompatible with the best interests of the public or of the members of the Society, or
>
> (b) tends to harm the standing of the legal profession generally,
>
> is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

52. In *Pearlman v. The Manitoba Law Society Judicial Committee*, (1991) 84 D.L.R. (4th) 105, Iacobucci J., speaking for the Supreme Court of Canada said:

> As for the jurisdiction of the Benchers to hear the disciplinary proceedings, I note that courts have recognized that Benchers are in the best position to determine issues of misconduct and incompetence. For example, in *Re Law Society of Manitoba and Savino* (1983), 1 D.L.R. (4th) 285 (Man. C.A.) the Court of Appeal said (at pp. 292-93): 'No one is better qualified to say what constitutes professional misconduct than a group of practicing barristers who are themselves subject to the rules established by their governing body'.

53. In *Stevens v. Law Society (Upper Canada)* (1979), 55 O.R. (2d) 405 at 410 (Div. Ct.), Justice Cory, as he then was, stated:

> What constitutes professional misconduct by a lawyer can and should be determined by the discipline committee. Its function in determining what may in each particular circumstance constitute professional misconduct ought not be unduly restricted. No one but a fellow member of the profession can be more keenly aware of the problems and frustrations that confront a practitioner. The discipline committee is certainly in the best position to determine when a solicitor's conduct has crossed the permissible bounds and deteriorated into professional misconduct. Probably no one could approach a complaint against a lawyer with more understanding than a group composed primarily of members of his profession.

54. In *Wilson v. Law Society of British Columbia* (1986), 33 D.L.R.(4th) 572, 9 B.C.L.R. (2d) 260 the British Columbia Court of Appeal upheld a finding of misconduct for violating a Rule of the Law Society:

> What is and what is not professional misconduct is a matter for the benchers to determine, and the court must be very careful not to interfere with the decision of the benchers for their decision is, in theory, based on a professional standard which only they, being members of the profession, can properly apply....

VI. The Sanctioning Process

55. Pursuant to *Philion v. The Law Society of Alberta* (January 1999) unreported (Alta. C.A.), this section of the Hearing Guide is to be applied only to cases where the conduct in question occurred after the Benchers adopted this section of the Hearing Guide (February 5, 1998).

56. If a submission on sanction is made jointly by the member and Law Society counsel, the Hearing Committee should give serious consideration to the joint submission, and accept it unless they consider it unfit or unreasonable or contrary to the public interest.. This Hearing Committee, however, is not bound by the submission, and may determine the more appropriate sanction, but only do so after the member and Law Society counsel are given an opportunity to speak to the matter.

R. v. Tkachuk, 2001 ABCA 243 and Law Society of Alberta v. Pearson, 2011 ABLS 17.

A. The Purposeful Approach

57. The primary purpose of disciplinary proceedings is found in section 49(1) of the *Legal Profession Act* (set out above): (1) the protection of the best interests of the public (including the members of the Society) and (2) protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

> It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. . . . In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an

> order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceedings to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

Bolton v. Law Society, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court.

58. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at page26-1):

> The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.
>
> In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes. . . .
>
> The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practise will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practise will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

59. *Regulation of Professions in Canada*, by James T. Casey at page 14-4.

> Given that the primary purpose of the legislation governing professionals is the protection of the public, it follows that the fundamental purpose of sentencing for professional misconduct is also to ensure that the public is protected from acts of professional misconduct.

60. *McKee v. College of Psychologists, etc.*, [1994] 9 W.W.R. 374 at 376 (B.C.C.A.).

> In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practise his profession.

61. The American Bar Association, Center for Professional Responsibility, Standards for Imposing Lawyer Sanctions, 1991 Edition, states:

> The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. (At p.5).
>
> The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession. (At p.7).

62. The sanctioning process should involve a purposeful approach. In doing so, those factors which relate most closely to the fundamental purposes outlined above will be weighed more heavily than other factors. Further, the final sanction must be one which is consistent with the fundamental purpose of the sanction process.

63. The *Legal Profession Act*, s. 72(1) requires a Hearing Committee, on finding a member guilty of conduct deserving of sanction, to disbar, suspend, or reprimand the member.

64. Unlike a disbarment or suspension, a reprimand does not limit a member's right to practice. It is, however, a public expression of the profession's denunciation of the lawyer's conduct. In addition, a reprimand should deter future misconduct by the member or otherwise within the profession, in accordance with the Law Society's duty to protect the public.

Law Society of Alberta v. Westra, 2011 CanLII 90716.

65. The reprimand should be worded, keeping in mind both its individual and general purpose. The individual purpose is to address the specific misconduct being sanctioned, but there is also a general purpose in educating and informing the profession and the public that such misconduct is unacceptable in view of s. 49(1).

B. Relevant Factors

66. In each case, the Hearing Committee will consider various factors in determining what sanction to impose. Some of these factors are identified below. In deciding what weight to give to the various factors, the following must be kept in mind:

> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity

> and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

Bolton v. Law Society, [1994] 1 W.L.R. 512 at 519 (C.A.); applied in Law Society of Upper Canada v. Jacobs, [1995] L.S.D.D. No.151 at p.18.

67. The privilege of self-governance is accompanied by certain responsibilities and obligations. The impact of any misconduct on the individual and generally on the profession must be taken into account.

> This public dimension is of critical significance to the mandate of professional disciplinary bodies." "The question of what effect a lawyer's misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing . . . .

Adams v. The Law Society of Alberta, [2000] A.J. No.1031 (Alta. C.A.)

68. See also all of the material referred to under the "Integrity" heading below.

69. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.

    a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.

    b) Specific deterrence of the member in further misconduct.

    c) Incapacitation of the member (through disbarment or suspension).

    d) General deterrence of other members.

    e) Denunciation of the conduct.

    f) Rehabilitation of the member.

    g) Avoiding undue disparity with the sanctions imposed in other cases.

    In one way or another each of these factors is connected to the two primary purposes of the sanctioning process: (1) protection of the public and (2) maintaining confidence in the legal profession.

70. More specific factors may include the following.

    a) The nature of the conduct:

        (i) Does the conduct raise concerns about the protection of the public?

(ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?

(iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)

(iv) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?

b) Level of intent: the appropriate sanction may vary depending on whether the member acted intentionally, knowingly, recklessly or negligently. In some cases, the need to protect the public or maintain the public confidence in the legal profession may require a particular sanction regardless of the state of mind of the member at the time.

c) Impact or injury caused by the conduct.

d) Potential injury, being the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.

e) The number of incidents involved.

f) The length of time involved.

g) Whether and to what extent there was a breach of trust.

h) Any special circumstances (aggravating/mitigating) including the following:

- prior discipline record
- risk of recurrence
- member's reaction to the discipline process (acknowledgement of wrongdoing, guilty plea, self-reporting, refusal to acknowledge wrongdoing, etc.)
- restitution made, if any
- length of time lawyer has been in practice
- general character
- whether the conduct involved taking advantage of a vulnerable party.
- a dishonest or selfish motive
- personal or emotional problems
- full and free disclosure to those involved in the complaint and hearing process or cooperative attitude toward proceedings

- physical or mental disability or impairment
- delay in disciplinary proceedings
- interim rehabilitation
- remorse
- remoteness of prior offences

71. Reference may be made to various authorities on these issues: *Regulation of Professions in Canada*, by James T. Casey; *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie; *Camgoz v. College of Physicians and Surgeons of Saskatchewan* (1993), 114 Sask. R. 161 (Q.B.); *Jaswal v. Newfoundland Medical Board* (1996), 138 Nfld. & P.E.I.R. 181 (Nfld. S.C.); *Standards for Imposing Lawyer Sanctions*, 1991 Edition, American Bar Association Center for Professional Responsibility.

72. *Law Society of Alberta v. Estrin* (1992) 4 Alta. L.R. (3d) 373 (C.A.) at p. 374:

> ...the penalties imposed for conduct deserving of sanction are cumulative and future offences will attract progressively more severe penalties.

73. *Law Society of Upper Canada v. Jacobs*, [1995] L.S.D.D. No.151 at p.16 [From the report of the Discipline Committee which recommended disbarment; Convocation then permitted the solicitor to resign.]:

> Simply put, bad lawyers endanger the public, destroy public confidence in the legal profession and through doing so, endanger the independence of the profession. Benchers will not tolerate this; such are our standards.

C. Precedential Value

74. When a member has been found guilty of conduct deserving of sanction, and the Hearing Committee is addressing the question of what sanction to impose, previous decisions may be referred to. Where previous decisions are considered on the issue of sanction, the following principles apply:

a) The decisions of one Hearing Committee are not binding on other Hearing Committees: *R. v. Bonneteau* (1994), 93 C.C.C. (3d) 385 (Alta. C.A.).

b) The decisions of one Hearing Committee may be considered persuasive by another Hearing Committee: *R. v. Bonneteau* (1994), 93 C.C.C. (3d) 385 (Alta. C.A.).

c) A previous decision of the Benchers (as a whole) does not bind the Hearing Committee to impose the same sanction.

d) There is no single correct sanction: *R. v. Shropshire* (1995), 102 C.C.C. (3d) 193 at paragraph 48 (S.C.C.).

e) Where a Hearing Committee is faced with a previous decision of the Benchers, the Hearing Committee should review that decision to see whether the factors

referred to in this guide were addressed by the Benchers in that decision. If they were not, that may limit the value of the decision as a precedent. If they were, then the Hearing Committee must acknowledge that the sanction imposed in that case was a reasonable one in those circumstances. However, the Hearing Committee is not bound to find that the sanction imposed in that case is the only reasonable one in those circumstances.

D. Where Integrity is an Issue

75. Preface of the Code of Conduct:

> Two fundamental principles underlie this Code and are implicit throughout its provisions. First, a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Second, a lawyer's conduct should be above reproach.

76. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie, at pages 23-2 to 23-3 [These comments made in the context of good character hearings as opposed to the sanctioning portion of disciplinary proceedings]:

> The requirement that lawyers must be of good character finds expression also in what is in most jurisdictions not coincidentally the first rule of professional conduct: lawyers must discharge with integrity all duties owed to clients, the court, the public, and other members of the profession. 'Integrity", the first commentary to this rule says, 'is the fundamental quality of any person who seeks to practise as a member of the legal profession.'
>
> Lawyers who by their conduct have proven to be lacking in integrity are likely to lose their right to practise. . . .
>
> The requirement that applicants be of good character is preventative, not punitive. It recognizes that character is the well-spring of professional conduct in lawyers. By requiring lawyers to be of good character, law societies protect the public and the reputation of the profession from potential lawyers who lack the fundamental quality of any person who seeks to practise as a member of the legal profession, namely, integrity.

77. Marvin J. Huberman in his article "Integrity Testing for Lawyers: Is it Time?" (1997), 76 Canadian Bar Review 47 at pp. 53-54:

> The costs of lack of integrity, and the perception of absent [sic] of integrity, are significant. When lawyers act without integrity, people are injured, whether financially or emotionally. The individual lawyer suffers a loss of reputation, the profession's reputation suffers damage, and the justice system is diminished. Mr. Justice La Forest has explicitly stated that lawyers must possess the qualities of honesty and integrity for the justice system to function properly. Lawyers are individuals' representatives within the legal system. People rely on them to serve their interests, to carry out the tasks required of them, and to do so in a principled fashion. Lawyers 'may be entrusted with the liberty, confidences, property, well-being and livelihood of a client'. Likewise, judges rely upon the integrity of the lawyers who appear before them. Judges expect to be able to rely upon lawyers' statements, research and undertakings. If judges cannot assume that the

> representations made by lawyers are true and accurate, the system cannot function.
>
> Integrity on the part of lawyers is therefore essential to the effective operation of our legal system. . . .
>
> . . . Even further, the integrity of the legal profession is necessary in order to maintain a free and democratic society. In essence, then, a lawyer's integrity is important for reasons going far beyond the interests of his or her clients; it has implications for our overall legal and social order. Lawyers thus have an obligation to their clients, to the judiciary, to other lawyers and to the public to act, at all times, with integrity.

78. The American Bar Association Guidelines:

> The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers engage in illegal conduct. (At p.36).
>
> A lawyer who engages in any of the illegal acts listed above [intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, theft, anything involving dishonesty, fraud, deceit and so on] has violated one of the most basic professional obligations to the public, the pledge to maintain personal honesty and integrity. This duty to the public is breached regardless of whether a criminal charge has been brought against the lawyer. In fact, this type of misconduct is so closely related to practice and poses such an immediate threat to the public that the lawyer should be suspended from the practice of law immediately pending a final determination of the ultimate discipline to be imposed.
>
> In imposing final discipline in such cases, most courts impose disbarment on lawyers who are convicted of serious felonies. (At p.36).

79. *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court.

> The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceedings to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

80. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie, at page 26-45, referring to the unreported decision of *Re Milrod*, report of discipline hearing panel adopted by Convocation, January 30, 1986 (Ontario):

> In cases involving fraud or theft, in spite of evidence of prior good character and financial or other pressures, lawyers are almost certain to be disbarred. . . . Thus the profession sends an unequivocal message in the interest of maintaining public trust and the reputation of the profession.

81. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie, at page 26-46, noting various unreported Ontario cases in support of this point:

> Discipline hearing panels have frequently held that acts of misappropriation should result in disbarment unless exceptional extenuating circumstances exist. An order of disbarment in such cases is made to preserve public confidence, to protect the public, and to deter other lawyers from breaching the trust of their clients.

82. *Bolton v. Law Society*, [1994] 2 All ER 486 at 491-2 (C.A.), per Sir Thomas Bingham MR:

> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust.

83. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie, at page 26-1:

> The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practise will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practise will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

84. *R. v. Manolescu* (July 24, 1997) unreported (Alta. Prov. Ct.) per Judge R.A. Jacobsen at pp. 6-7:

> The demand upon, and the standard expected of a lawyer in respect of his or her trust accounts is very high. The standard is virtually one of perfection. The Law Society of Alberta acknowledges that innocent human or machine error can occur, but it does not tolerate the results and insists on immediate rectification. Dishonesty in respect of trust accounts is not to occur. In practical terms, other peoples' monies are to be treated by lawyers as a sacred trust.

E. Matters Going to the Ability of the Law Society to Govern the Profession

85. The Preface to the Code of Conduct states:

> The legal profession is largely self-governing and is therefore impressed with special responsibilities. For example, its rules and regulations must be cast in the public interest, and its members have an obligation to seek observance of those rules on an individual and collective basis.

86. The ability of the Law Society to govern the profession is essential. Without that ability, the self-governing aspect of the profession is put at risk. Various types of conduct undermine the ability to govern the profession. These include (but are not limited to):

- failing to respond to those involved in the Law Society process
- failing to be candid with those involved in the Law Society process
- failing to cooperate with those involved in the Law Society process
- breaching an undertaking given to those involved in the Law Society process
- practising while suspended or inactive

87. The following precedents indicate that this type of conduct should be treated as serious misconduct.

88. *Law Society of Manitoba v. Ward*, [1996] L.S.D.D. No.119 at p.5:

> In our view, the right to practice law carries with it obligations to the Law Society and to its members. The minimum obligations in our view are, compliance with rules and communication with the Society as might reasonably be expected. Ward has persistently failed to comply with the rules and to communicate with the Society. This is all without any explanation or excuse of any kind whatsoever. The justification for self government is at least partly based on the assumption that the Society will in fact govern its members and that members will accept governance. Ward has demonstrated through his behaviour that he does not accept governance.
>
> We regard this as a serious matter. . . .
>
> [Mr. Ward was declared to be an ungovernable member and was disbarred. The Law Society of Manitoba adopted this excerpt in another case: *Law Society of Manitoba v. Levine*, [1996] L.S.D.D. No.120 in which the solicitor was also disbarred.]

89. *Law Society of Upper Canada v. Hollyoake*, [1995] L.S.D.D. No.196. In this case the member failed to cooperate with the Law Society in a variety of ways, causing the Benchers to make the following comments:

> Today, as a result of the Solicitor's actions, the Law Society of Upper Canada has been totally frustrated in their attempt to investigate serious allegations of

> wrong-doing which may well have involved -- although we have no idea whether they really did -- the Solicitor in a defrauding of two members of the public. . . .
>
> . . . Our primary obligation is to the public of Ontario. The Solicitor has, by his actions, left us in a position where the Society is unable through its investigatory arm to assure the public that this Solicitor, like all other solicitors, is amenable to our discipline and acts with propriety and acts responsibly.
>
> We therefore recommend to Convocation that he be disbarred with the understanding that the object of this disbarment is not to punish the Solicitor but to protect the public. The Law Society's credibility always depends on being seen to be able to act to discipline its members. In this case, we are no longer able to assure the public that this is so.

[He was disbarred.]

90. *Law Society of Upper Canada v. Squires*, [1994] L.S.D.D. No.156. In this case, the member failed to reply to written and telephone communications from the Law Society regarding four complaints against him. He did not attend for the hearing either. There is no indication of any record. He was disbarred. These comments were made:

> The Solicitor repeatedly breached his duty under Commentary 3 of Rule 13 to reply promptly to communications from the Society. He would appear to have deliberately adopted and maintained over a lengthy period of time a policy of flouting the administrative requirements of the Society. The Society cannot perform its function of governing the profession in the interest of the public if it tolerates such conduct.

91. *Law Society of Upper Canada v. Bronstein*, [1994] L.S.D.D. No.10 at p.19:

> Deliberate breaches of an undertaking to the Law Society, involving a lack of cooperation with the professional governing body and the unauthorized practice of law, cannot be tolerated if the Law Society is to regulate its members in the public interest.

F. Costs

92. The Alberta Court of Appeal has made the following comments on an appeal from costs imposed in disciplinary proceedings regarding a veterinarian and an allegation that the veterinarian failed to provide adequate care for a cat.

> Counsel also criticizes the amount of the costs, $8,451. That is one half, in recognition of the appellant's acquittal on some other charges. As those other charges arose late, they cannot have affected the investigation, and must have lengthened the hearing by little. So the split was very fair to the appellant.
>
> No one suggests that $16,902 was not actually spent. If the appellant did not pay his half, then all the members of the respondent would pay them, in the long run. Such expenses will not disappear by wishing them away or ignoring them. They were incurred in the exercise of a statutory duty, not hobby litigation. One must also keep up with the shrinking value of a dollar. $8,500 was once a large sum of money, but it does not buy nearly so much today. We cannot call the sum unreasonable.

> Nor is this a fine or other punishment; it is simply what it says: costs. In other words, reimbursement of (half) of the actual expense of the proceeding.
>
> Therefore, we also affirm the costs order.

Carteledge v. Alberta Veterinary Medical Association, [1999] A.J. No. 458 (C.A.).

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Memo

Appendix D

Pre-Hearing and Hearing Guideline

To	Policy and Regulatory Reform Committee
From	Shabnam Datta, Manager, Policy Sharon Heine, Senior Manager, Regulation Nancy Bains, Tribunal Office
Date	March 5, 2021

Introduction

The Law Society's working group on hearing processes, comprised of staff from General Counsel, Tribunal Office, Counsel and Policy, reviewed the Law Society's hearing processes, with a view to examining the applicable rules and guidelines, and determining whether they required updates, revisions or amendments. This resulted in the Benchers reviewing the proposed new and amended hearing Rules in December 2020 and approving them in principle (the "new Rules").

The working group also reviewed the current *Pre-Hearing Guideline* and *Hearing Guide* (the "current Guidelines") concurrently with the work on the hearing Rules and developed a Guideline for the Law Society's hearing processes set out in the new Rules.

Advancing the Strategic Plan

The Law Society conducts its work to advance the goals of the Law Society's *Strategic Plan, 2020-2024*, which was approved by the Benchers in December 2019. The work on the hearing processes supports the goal of Innovation and Proactive Regulation, which means that the Law Society regulates the legal profession in a manner that is innovative, proactive, transparent and appropriate.

What Issues are we Addressing?

The current Guidelines regarding the Law Society's hearing processes are outdated and need to be updated. The *Pre-Hearing Guideline* was last updated in December 2014 and the *Hearing Guide* was last updated in February 2013.

In addition, the new Rules include both new Rules and amended Rules and modernize the Law Society's hearing processes. These Rule changes are not captured in the current Guidelines.

To address these issues, a new *Pre-Hearing and Hearing Guideline* (the "new Guideline") has been developed that incorporates the pre-hearing and hearing processes for many of the Law

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Society's hearings into one central Guideline. The new Guideline reflects the new Rules, updates the hearing processes and provides transparency and clarity for the Law Society's pre-hearing and hearing processes.

The new Guideline is a comprehensive document. For the purposes of the Policy and Regulatory Reform Committee, the new Guideline will be considered over two meetings to provide sufficient opportunity for review, discussion and feedback. Approximately the first half of the new Guideline is attached as Exhibit A to this memo. The latter section of the new Guideline will be brought to the Committee at the next meeting for review, discussion and feedback. The complete new Guideline will then be a decision item for recommendation to the Benchers.

Key Areas of the New Guideline

The new Guideline provides clear, detailed and updated guidance on the pre-hearing and hearing processes (the "hearing process") to lawyers, to Law Society staff and to Benchers, including those acting as pre-hearing conference chairs, and those on Hearing Committee panels. The new Guideline also gives effect to the new Rules by providing a detailed framework for the hearing steps established in the new Rules. While the new Guideline is comprehensive in that it combines in one Guideline the processes that are dealt with separately in the two current Guidelines, it clarifies processes and provides the key details for understanding the steps in the hearing process.

The key aspect of the new Guideline is that it applies to all hearing processes at the Law Society, other than those that have their own guideline, as set out in paragraph 3 of the new Guideline. However, where the Guidelines in paragraph 3 do not set out a specific hearing process, then the new Guideline applies. For example, the *Credentials and Education Hearings Guideline*, referenced at paragraph 3.c. of the new Guideline, does not set out the process for pre-hearing conferences. In this case, the new Guideline's section on pre-hearing conferences will apply.

The discussion below provides a high-level overview of the new Guideline. It highlights key pieces of the hearing process and discusses where processes have been expanded on or changed due to the new Rules. Components

Pre-Hearing Processes

The key enhancements to the pre-hearing process, set out in the new Guideline, are discussed below.

Pre-Hearing Conferences (PHC) (Paragraphs 12-32)

The Guideline supports the Pre-Hearing Conference (PHC) Rules by providing that the Tribunal Office will record the PHC, and the recording will be retained until all appeals have concluded or all appeal periods have expired. The PHC is recorded for the purpose of preparing a written PHC Report, which will include deadlines and directions of the PHC chair. The portion of the PHC Report that sets out the PHC chair's directions and failures to comply with those directions will be admissible at a hearing in relation to the same matter, at the Hearing Committee's discretion.

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Rule 90.2 sets out the powers of the PHC chair, which were revised slightly. Rather than determining disputes regarding disclosure, the PHC chair may make determinations about disclosure in accordance with Rule 90.6, which provides that a lawyer may apply to the chair for additional disclosure or further particulars of the lawyer's alleged misconduct.

The Guideline provides support for the Rule regarding mediation during a PHC. The PHC chair may canvass the parties to see whether there may be a potential to agree on some matters, or to see whether the parties would be interested in mediation. However, the PHC chair does not conduct any mediation between the parties.

Disclosure and Particulars (Paragraphs 33-36)

The Law Society provides disclosure to the lawyer in electronic form in accordance with Rule 90.6 and the *Pre-Hearing Disclosure Protocol*. The lawyer has the ability to apply for additional disclosure or further particulars regarding the lawyer's alleged misconduct.

Notice to Admit Facts and Authenticity of Documents (Paragraphs 37-47)

New Rule 90.4 provides for a notice to admit facts and authenticity of documents. For clarity, the Guideline provides a definition of "authenticity" for the purpose of the Rule. The Guideline also provides that a party who denies a fact or the authenticity of a document should provide reasons that fairly meet the substance of the requested admission. The Guideline clarifies that an admission of the authenticity of a document does not constitute an admission of the truth of the contents of the document, and that an admission does not constitute an admission of conduct deserving of sanction.

Statement of Admission of Guilt (paragraphs 48-55)

The Guideline sets out the process for submitting and considering a lawyer's statement of admission of guilt and provides the parameters for what is an acceptable form of the statement. The statement may be submitted before a Hearing Committee is appointed, in which case the Conduct Committee may consider it, or it may be submitted on or after the day on which a Hearing Committee is appointed, in which case the Hearing Committee will consider it. The Guideline then sets out the process for the respective Committee.

Abeyances (Paragraphs 56-67)

New Rule 90.5 gives the PHC chair the authority to place a matter that has been directed to hearing in abeyance if there are exceptional circumstances. The Guideline provides more detailed guidance on the abeyance process than the *Pre-Hearing Guideline* and includes the exceptional circumstances that may be considered. The abeyance process is similar to the abeyance process for conduct matters under review, before they are dismissed or directed to hearing, which was recently approved by the Benchers.

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Discontinuances (paragraphs 68-73)

The Guideline provides for an application for discontinuance of proceedings, which may be made to the Conduct Committee if a hearing has not yet commenced and there is sufficient time before the hearing. The application is made to the Hearing Committee where a hearing has commenced or is imminent. The Guideline sets out the circumstances that give rise to an automatic discontinuance.

Scheduling a Hearing (Paragraphs 74-78)

The Guideline sets out the process for scheduling a hearing. A hearing is scheduled at the request of a party during a PHC, and the Guideline sets out the information the parties should provide to the PHC chair. The Guideline provides information on the mode of the hearing and notes virtual hearings as one mode. If a hearing is to be held in-person, it will be held at the Law Society's office. It may be necessary to have an alternative mode of hearing, in which case, the Guideline lists the factors the PHC chair may consider when determining the mode of the hearing.

Custodianship

Custodianship was included in the *Pre-Hearing Guideline* but is not included in the Guideline. The circumstances determine whether a custodian is required and is either arranged by the lawyer or appointed by a court order obtained by the Law Society. It is not an issue that arises for the PHC chair, the Conduct Committee or the Hearing Committee.

Hearing Readiness

This part of the Guideline sets out the steps that take place prior to the commencement of the hearing.

Hearing Materials (paragraphs 79-84)

Rule 90.7(1) provides that parties must provide their hearing materials not less than 14 days before the hearing starts. The Guideline provides direction on the ability of parties to prepare an Agreed Exhibit Book.

Witnesses (paragraphs 85-100)

The Guideline provide details regarding witnesses, including witness expenses, and the provision of witness lists in accordance with Rule 90.7(1)(a). Guidance is also included regarding the use of experts, requiring that experts' qualifications and reports are to be exchanged no later than 60 days before it will be entered into evidence, and rebuttal expert reports must be provided not less than 14 days before the hearing.

The Guideline also provides detail regarding the use of interpreters for witnesses and a witness' request for accommodation. Witnesses must give oral testimony and the mode by which it may be given will be subject to the discretion of the Hearing Committee. The Guideline sets out the exceptional circumstances which may be considered to determine the mode of oral testimony.

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Although Rule 90.7 sets deadlines for the provision of hearing materials, the deadlines may be varied upon request by a party (Rule 90.7(4)), and the Hearing Committee may admit additional evidence upon terms and conditions it deems appropriate (Rule 90.8). The Guideline includes the terms or conditions the Hearing Committee may impose, and circumstances to help the Hearing Committee determine whether it should admit additional evidence.

Varying Timelines (Paragraphs 101-102)

The new Guideline provides the process for requesting a variation of the timelines set out in Rule 90.7(1) to (3), for the provision of witness lists, expert reports, authorities and documents intended to be relied on at the hearing.

Hearing

The Guideline provides comprehensive information on the hearing processes. The key areas are highlighted below.

Guiding Principles (Paragraphs 103-104)

The Guideline sets out the guiding principles for the Law Society's hearing processes.

Rules of Evidence and Burden and Standard of Proof (Paragraphs 105-107)

The Guideline provides that a Hearing Committee may hear, receive and examine evidence in any manner it considers proper, and that it is not bound by any rules of evidence in judicial proceedings in accordance with section 68 of the *Legal Profession Act*.

Preliminary Applications

General (Paragraphs 108-114)

This section of the Guideline discusses general matters related to preliminary matters, including that preliminary issues of a significant evidentiary, procedural or substantive issue should be resolved in advance, and that such applications must be brought by way of a written application.

Adjournments (Paragraphs 115-120)

A hearing may be adjourned by a PHC chair or the Hearing Committee before the hearing commences, and by the Hearing Committee once the hearing commences. The Guideline provides clarity on the adjournment process, setting out the factors that a PHC chair or Hearing Committee may consider in granting an adjournment.

Private Hearing Applications for Conduct Hearings (Paragraphs 121-130)

Section 78 of the Act provides that conduct hearings are held in public unless the Hearing Committee determines that all or a portion of the hearing will be held in private. The Guideline provides guidance to the parties as to how to proceed with an application for a private hearing.

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The Guideline provides the Hearing Committee with several relevant considerations, as well as the factors to take into account on an application.

Solicitor-Client Privilege (Paragraphs 131-136)

The Guideline provides that in accordance with section 112 of the Act, the lawyer or the person claiming solicitor-privilege may make an application to have all or a portion of the hearing be held in private. The Guideline also provides that not making a private hearing application does not constitute an express waiver of privilege.

Bias Applications (Paragraphs 137-144)

A party may object to the constitution of the Hearing Committee based on bias. The Guideline provides information as to the factors that may be considered to determine whether recusal is necessary.

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Memo

Pre-Hearing and Hearing Guideline – Part 2

To	Policy and Regulatory Reform Committee
From	Shabnam Datta, Manager, Policy Sharon Heine, Senior Manager, Regulation Nancy Bains, Tribunal Office Nancy Carruthers, General Counsel & Director, Regulation
Date	March 19, 2021

Introduction

This memo attaches the second half of the proposed *Pre-Hearing and Hearing Guideline* for the Policy and Regulatory Reform Committee's review. Part 2 of the Guideline commences from the point where the Committee concluded its review of the first half of the Guideline. The staff working group will incorporate the Committee's feedback on the first half of the Guideline from the previous meeting, along with feedback on the second half of the Guideline, into a final version of the Guideline and will bring the complete Guideline to the Committee as a decision item for recommendation to the Benchers.

Key Areas of the Guideline

The Guideline provides clear, detailed and updated guidance on the pre-hearing and hearing processes to lawyers, Law Society staff and Benchers, including those acting as pre-hearing conference chairs, and on Hearing Committees. The Guideline also gives effect to the hearing Rules approved in principle in December by providing a detailed framework for the hearing steps established in the Rules. Key sections of part 2 of the Guideline are highlighted below.

HEARING

Quorum and Appointment *(paragraphs 110-114)*

At the Committee meeting on March 9, the Committee had commenced reviewing the main heading of 'Hearing' and completed reviewing the subheadings of Guiding Principles; Rules of Evidence, Burden of Proof and Standard of Proof; and Preliminary Applications, to the end of Bias Applications.

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As the staff working group reviewed the second half of the Guideline, it determined that the section on 'Quorum and Appointment' properly belongs in the first half of the Guideline, under the main 'Hearing' heading, rather than in the second half. The Quorum and Appointment section deals with the appointment, composition and quorum of the Hearing Committee.

Order of Proceeding at an Oral Hearing *(paragraphs 154-187)*

This part of the Guideline sets out the order of the various steps at an oral hearing.

Jurisdiction (paragraphs 154-156), Private Hearing Applications (paragraphs 157-158), Exclusion of Witnesses (paragraph 159) and Opening Statements (paragraphs 160-161)

This section sets out how the Hearing Committee's jurisdiction is established and how it determines any objections that may be raised regarding its composition. The section on Private Hearing Applications provides that the Hearing Committee enquires as to whether there are any applications and, if so, considers them. This section of the Guideline states that the Hearing Committee will determine whether witnesses should be excluded from the hearing prior to their testimony. The Guideline also provides information on the order of opening statements.

Documentary Evidence (paragraphs 162-165)

This section discusses the marking of exhibits. It also focuses on the admission of additional evidence and the factors that the Hearing Committee may take into consideration to allow it. If the evidence is admitted, the Guideline sets out the obligations of the party seeking to admit the additional evidence.

Witnesses (paragraphs 166-178)

The procedure for administering an oath to a witness is set out in this section. It provides that an oath does not need to be given using a religious text, but that it may be in the form of a ceremony that acknowledges the solemnity of the occasion and the importance of truth-telling, if the witness declares that such an oath is binding on their conscience. A witness may make an affirmation if they object to taking an oath or are objected to as incompetent to do so, pursuant to the *Alberta Evidence Act*.

This section also discusses the examination and cross-examination of witnesses, as well as the opportunity to present rebuttal witnesses.

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Argument (paragraphs 179-180)

This section of the Guideline sets out the order of final argument. It also discusses that the Hearing Committee may request written submissions on an issue or point of law.

Hearing Phases – Merits and Sanction (paragraphs 181-187)

This section of the Guideline provides information on the two phases of a hearing and provides that they may be heard separately or together. During the merits phase, the Hearing Committee determines whether the lawyer is guilty of conduct deserving of sanction and sets out the factors to make that determination. The hearing concludes if there is no finding of guilt. The hearing proceeds to the sanction phase if there is a finding of guilt. The Guideline provides that the Hearing Committee may proceed immediately to the sanction phase or adjourn and then reconvene to consider sanction.

Sanction *(paragraphs 188-217)*

Determining the Appropriate Sanction (paragraphs 190-209)

The Guideline provides information on the purpose of sanction, which includes the protection of the public and the confidence of the public in the legal profession. The Guideline also includes information on the different types of sanction, as well as the conditions and other orders that a Hearing Committee may impose on the lawyer in addition to the sanction. The Guideline provides comprehensive factors that a Hearing Committee may consider for determining the appropriate sanction in the circumstances.

The issues of lawyers' integrity and governability are also discussed in this section, which sets out the type of serious misconduct that may call into question the integrity or governability of a lawyer. This section of the Guideline also provides that there may be factors that have a mitigating or aggravating effect on the appropriate sanction.

Joint Submissions (paragraphs 210-217)

This section discusses submissions for a specific sanction made jointly by the lawyer and Law Society counsel, and that the Hearing Committee should accord significant deference to joint submissions. The benefits of a joint submission are set out, as is the public interest test for assessing the acceptability of joint submissions.

At a hearing, in support of a joint submission on sanction, the lawyer and Law Society counsel provide a comprehensive analysis regarding the lawyer's conduct and relevant factors. The Hearing Committee must be satisfied that the proposed sanction does not bring the administration of justice into disrepute and is not otherwise contrary to the public interest. The Hearing Committee must notify the parties if it is considering rejecting the

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joint submission so that the parties have an opportunity to provide additional evidence and make further submissions.

COSTS *(paragraphs 218-227)*

If a lawyer is found guilty of conduct deserving of sanction, the lawyer may be ordered to pay costs, which is determined at the end of the sanction hearing or at a separate hearing. The Guideline sets out the factors that a Hearing Committee may consider in assessing costs against the lawyer, which may be either aggravating or mitigating. The section on costs also sets out the process if a lawyer disputes the accuracy of a Statement of Costs after it is signed by the chair.

CONCLUSION OF HEARING (*paragraphs 228-234)*

At the conclusion of the hearing, the Hearing Committee will invite submissions and makes directions about the publication and redaction of the written decision and the hearing record, including transcripts and exhibits. In addition to the mandatory Notice to the Profession in the event of a suspension or disbarment, the Hearing Committee may make a discretionary order regarding the publication of a Notice. More comprehensive guidance is set out in the *Publication and Redaction Guideline for Adjudicators.*

The Guideline provides guidance to the Hearing Committee regarding a referral to the Minister of Justice and Attorney General where the Committee is of the opinion there are reasonable and probable grounds to believe that the lawyer has committed a criminal offence.

DECISION AND REASONS *(paragraphs 235-243)*

The Guideline provides that the Hearing Committee will endeavour to issue a written Hearing Committee report with its decision and reasons within 90 days of the hearing. The Hearing Committee report includes the decision and reasons, as well as any other orders or conditions directed by the Hearing Committee. Any dissent will be appended to and issued with the report.

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Memo

Pre-Hearing and Hearing Guideline

To	Policy and Regulatory Reform Committee
From	Shabnam Datta, Manager, Policy Sharon Heine, Senior Manager, Regulation Nancy Bains, Tribunal Office Nancy Carruthers, General Counsel & Director, Regulation
Date	March 26, 2021

Proposed Motions

Motion 1:
To recommend to the Benchers that they approve the Rules, as proposed in Appendix A.
Motion 2:
To recommend to the Benchers that they approve the *Pre-Hearing and Hearing Guideline*, in Appendix B.
Motion 3:
To recommend to the Benchers that they rescind the *Pre-Hearing Guideline* and the *Hearing Guide.*

Introduction

This memo attaches the complete version of the proposed *Pre-Hearing and Hearing Guideline*. The staff working group reviewed the Committee's feedback on the first half and the second half of the Guideline from the previous meetings, and incorporated, where possible, the comments, suggestions and feedback into the attached Guideline.

In addition, Appendix A attaches the Rules that were approved in principle by the Benchers in December. These Rules have been revised to ensure consistency throughout and to be in alignment with processes set out in the Guideline.

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Revisions to the Guideline

The Guideline has been revised and the revisions include those suggested by the Committee, as well as revisions that were made by the working group after going through the Guideline in response to the Committee's feedback. For the Committee's benefit, the memo flags the substantive changes that have been made to the Guideline. The memo does not flag the tracked changes that are non-substantive in nature, including references to Rules, changes to grammar and punctuation, capitalization, substitution of words for clarity that do not change the context, and so on.

INTRODUCTION (paragraphs 1-5)

Paragraph 2 was broken into two separate paragraphs – paragraphs 2 and 3, to delineate the subject matter.

Based on the Committee's feedback that part of the new paragraph 3, and old paragraphs 4 and 5 were unclear, the working group remedied this by clarifying in paragraph 3 that the Guideline may be applied by analogy to other Law Society hearing processes. This addition made the end of paragraph 4, and old paragraphs 4 and 5 unnecessary, and they have been deleted.

DEFINITIONS AND INTERPRETATION (paragraph 6)

The Committee requested that the definition of "panel" be clarified to distinguish it from "Hearing Committee", and that the definition of "lawyer" include the provision from the interpretation section.

The working group added the definition of "proceeding", as that term is used throughout the Guideline.

PRE-HEARING ISSUES AND PROCEEDINGS

Pre-Hearing Conferences

Paragraph 15 – In response to the suggestion to define "PHC report", the Guideline has been amended to define it within the pre-hearing conference section.

Paragraph 16 – The Guideline has been amended to clarify that the recording of the PHC conference will not be made available to the parties.

Paragraph 18 – The Committee requested that this paragraph should also state that a portion of the PHC report may be admitted.

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Paragraph 27 – The word "agreed" was removed from the statement of facts, as the Committee deemed it unnecessary.

Disclosure and Particulars

Paragraph 33 – The Committee was of the view that the lawyer should be advised if a suspension is being sought, regardless of whether it is lengthy, which resulted in deleting "lengthy" from the paragraph.

Notice to Admit Facts and Authenticity of Documents

Paragraph 37d. – The Committee asked a question about what an original is considered to be and whether it must be a wet ink signature. Paragraph 37d. has been revised to provide further clarification.

Abeyances

Paragraph 57 – The Committee determined that an applicant who is seeking an abeyance must, not should, set out why an abeyance is being requested.

Paragraph 57d. – The Committee was of the view that the lawyer's written waiver on an abeyance application should be in a form, rather than in some informal format, to convey the seriousness of the requirement.

Paragraph 59 – When a lawyer and Law Society counsel consent to an abeyance, the PHC chair will give deference to the request, but the paragraph has been revised based on the Committee's feedback that the PHC chair should retain discretion and not be directed to place the proceeding in abeyance. Otherwise, the PHC chair's discretion is fettered.

Paragraph 61 – The Committee requested clarification of what steps, if any, the lawyer or Law Society counsel could take when a proceeding is placed in abeyance. The paragraph has been revised to provide that no one will take a step or compel the other party to take a step required by the Rules.

Scheduling a Hearing

Paragraph 71b. – An issue was raised about the efficiency of hearings, and that the expertise and knowledge of the PHC chair should be relied upon to determine the number of days that may be required for a hearing. Accordingly, this paragraph was revised to provide that the parties should advise the PHC chair as to the number of hearing days requested.

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Paragraph 71d. – Based on the Committee's feedback, Agreed Exhibit Book has been defined.

Paragraphs 72 and 75 – The working group continued reviewing the Guideline after the Committee's feedback and determined that the paragraphs required clarification that a private hearing application could be applicable to other hearings, not just a conduct hearing; clarification that a Letter of Appointment would also indicate the composition of a Hearing Committee, not just a panel; and clarifying the decision-makers.

HEARING READINESS

Witnesses

Paragraph 84 – The Committee requested additional guidance that if a lawyer is found guilty of conduct deserving of sanction, they may be liable for the costs of the Law Society's expert witnesses.

Paragraph 87 – The paragraph was revised to accurately reflect the Rule that parties must exchange the experts' qualifications and reports no later than 60 days in advance of when it will be entered into evidence.

Paragraph 88 – This paragraph was added to reflect the Committee's feedback that the parties may try to reach agreement on the qualifications and scope of expertise of each other's expert witnesses.

Paragraph 93 – The meaning of "accommodation" of a witness was clarified in response to the Committee's feedback.

Paragraph 96g. – The Committee agreed with the working group's assessment that the Hearing Committee should include the PHC chair's decision as an exceptional circumstance in determining the mode of a hearing.

HEARING

Guiding Principles

Paragraph 103 – The Committee discussed the concept of efficiency in the context of conduct hearings. New language has been added in this paragraph to reflect the import of this concept.

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Rules of Evidence, Burden of Proof and Standard of Proof

Paragraph 107 – The Committee requested guidance regarding the lawyer's burden of proof with respect to trust money or property.

Quorum and Appointment

Paragraph 110b. – In response to the Committee's comment, Single Bencher Hearing has been defined.

Solicitor-Client Privilege

Paragraphs 136-142 – The Committee had a lengthy discussion on solicitor-client privilege, focusing on whether parties require us to protect privilege, whether making a complaint equates to a waiver of privilege, and that the provisions of section 112 of the Act may need further explanation. The working group took these discussion points into consideration and has included revisions at these paragraphs to provide guidance and clarification.

Bias Applications

Paragraphs 143-151 – The Committee provided feedback that bias applications should also extend to proceedings in addition to conduct proceedings. The revisions made to this section reflect that feedback.

Documentary Evidence

Paragraph 160d. – The Committee provided feedback that an exhibit marked for identification that is not authenticated or admitted will form part of the hearing record.

Witnesses – Oath or Affirmation

Paragraph 164 – The Committee provided feedback that the phrasing of this section appeared to indicate that an oath would be the default, with an affirmation a second choice. The discussion also concerned the inability of the witness to choose at the outset which method they preferred. The section has been revised to remove the inherent preference for an oath, and instead leaves it to the witness to make the decision.

The last two paragraphs in this section have been deleted as they reinforced the view that an oath is preferred and that those who wish to make an affirmation must "prove" why they cannot give an oath.

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Witness Evidence

Paragraph 172 – The Committee noted that this paragraph regarding rebuttal witnesses did not include a provision regarding re-examination of those witnesses. The revisions rectify that omission.

Argument

Paragraphs 175-176 – The section on argument has been fleshed out in accordance with the Committee's feedback that the Hearing Committee should have guidance on this process. The ability of the Hearing Committee to ask questions during argument has been added.

Merits Phase

Paragraph 181 – The Committee requested some guidance as to how a Hearing Committee could determine that conduct is deserving of sanction. Additional language has been added here.

Evidence on Sanction

Paragraph 180 (old – after para 185) – the working group determined that the order for evidence and argument is discussed previously in the Guideline and would be repetitive to include it here.

Type of Sanction

Paragraph 191 – The Committee provided feedback that where any other result would undermine public confidence in the profession, the lawyer's right to practise may be, not should be, terminated.

Paragraph 192 – The paragraph provided for "meticulous" compliance, which the Committee determined was an unnecessarily high threshold. The paragraph has been revised to remove "meticulous".

Paragraph 194 – Additional guidance for the Hearing Committee regarding a reprimand has been added, in response to the Committee's request.

Paragraph 196 – A paragraph setting out the factors for imposing a fine has been added in response to the Committee's request for guidance on this issue.

Paragraph 197 – The Committee has requested that the conditions that may be imposed on a lawyer should also include that a lawyer be precluded from operating a trust account.

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Paragraph 192 (old – after paragraph 198) – The Committee concluded that the paragraph on incompetence could be struck.

Factors for Consideration in Determining Appropriate Sanction

Paragraph 199 – The working group reviewed 199e. and determined it is distinguished from paragraph 201 and has been left in the Guideline.

Paragraph 201d. – The Committee requested that the misconduct that undermines the legal profession should also include a breach of conditions imposed by the Law Society.

Paragraphs 203 – Paragraph 203 has been added to reflect the feedback that personal conduct should also be included in the section on integrity.

Paragraph 206 – The paragraph has been revised to reflect the Committee's feedback that the lawyer's prior misconduct does not need to be of a similar nature in order to result in increasingly serious sanctions.

Paragraph 207 – In accordance with the feedback from the Committee, this paragraph has bene revised to provide that Hearing Committees are not bound by precedent.

Background and Public Interest Test on Joint Submissions

Paragraph 209 – This paragraph has been added to provide that a lawyer acknowledges that a Hearing Committee is not bound by a joint submission.

Paragraph 212 – The paragraph has been revised to incorporate the Committee's feedback that the paragraph should reflect a Hearing Committee can reject the joint submission if the public interest test is met.

Costs – Determination of Hearing Committee

Paragraph 221 – The Committee discussed including in 221b.iii. citations that are withdrawn. The working group has added citations that are permitted to be withdrawn by the Hearing Committee. The Law Society does not have the authority to unilaterally withdraw citations.

Paragraph 222 – The paragraph has been revised to reflect the Committee's request for guidance regarding the setting of a deadline for payment of costs.

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Referrals to the Minister of Justice and Solicitor General

Paragraph 231 – The Committee requested clarification on the issue of submissions regarding a referral to the Minister. The paragraph has been revised to clarify that Law Society counsel will advise the Hearing Committee if they are seeking a referral. If they are, they will make submissions, and the lawyer may make submissions in response.

General Revisions

During a Committee meeting, the Committee provided feedback indicating that the term "should" had been used throughout the Guideline. The working group advised it would review the Guideline for such usage and determine whether different terms were more accurate. The working group assessed the use of "should" and has made changes were appropriate. There are instances where "should" is appropriate as it sets the expectation, not the requirement, for that particular issue or matter, and is used to delineate a best practice.

Recommendation Regarding the Guideline

It is recommended that the Policy and Regulatory Reform Committee recommend to the Benchers that they approve the proposed *Pre-Hearing and Hearing Guideline*; and rescind the *Pre-Hearing Guideline* and the *Hearing Guide*.

Revisions to the Rules Approved in Principle

In December 2020, the Benchers approved in principle the new and amended hearing Rules. Before the Benchers reviewed and approved the Rules in principle, the Policy and Regulatory Reform Committee conducted three separate and thorough reviews of the Rules. Extensive and substantive feedback was provided and the working group incorporated all of it into the final version of the Rules that were at the December Bencher meeting.

As the working group continued working through the Guideline, and reviewed and considered the Committee's feedback and suggestions, the working group noted that the Rules approved in principle could be revised or refined slightly for consistency and to ensure that the Guideline and the Rules are completely in alignment.

Most of the revisions to the Rules involve consistency of terminology, such as ensuring that the succinct term, "Society counsel", rather than "counsel for the Society" is used, in keeping with the terminology used in the Guideline. In addition, the term "chair of the pre-hearing conference" is used in some instances in the Rule, when the chair has been defined in the Rule as "pre-hearing conference chair". The incorrect references have been corrected. Other corrections include refinements to punctuation.

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Revision to the Rules, other than of the type set out above, are set out in a table at the end of the memo. The first column shows the Rules that were approved in principle in December. The second column sets out the revisions that have been made to the Rules approved in principle. These revisions have been made to ensure the correct hearing process is accurately reflected in the Rules. These are discussed below.

Hearing Processes

Rule 2.5 currently includes subrule (1.1), which provides that Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules. The working group determined that the subrule properly belongs in Rule 90.1, as Rule 90.1 specifically deals with pre-hearing conferences.

Rule 90.1 has been revised to include the subrule.

Pre-Hearing Conference Requirements

Rule 90.3 (6) sets out that portions of a pre-hearing conference recording or report are admissible at a hearing. Currently the Rule provides only for the Hearing Committee's discretion to admit the report. The Rule should also provide that a panel may admit the recording or report, as pre-hearing conferences may be conducted for hearings that are heard by a panel for proceedings other than Conduct Proceedings.

Abeyances

Rule 90.5(2) provides that the pre-hearing conference chair may deny the request for an abeyance or may place a proceeding in abeyance. The intervening step of approving the request, before the proceeding can be placed in abeyance, is missing from the Rule approved in principle. This subrule has been corrected.

When Rule 90.5(3) was approved in principle, it was approved before the abeyance rule for a conduct review – Rule 89.2 – was approved. The conduct review abeyance rule fleshed out the concept of delay and prejudice more thoroughly. The working group determined that Rule 90.5(3) for abeyance of proceedings should follow the abeyance rule for conduct reviews. Accordingly, rather than providing that any delay in the proceeding resulting from the abeyance will be without prejudice to either party, the subrule now provides that no argument based on delay or other prejudice resulting from the abeyance may be raised at any time.

Subrule (4) has been clarified to provide that an abeyance will terminate prior to the expiration of the time specified in the abeyance order, rather than just prior to the time specified.

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Witnesses, Exhibits and Authorities

In Rule 90.7, the Rule inadvertently provided that each party shall provide to the Tribunal Office and to every other party, the contact information of each witness the party intends to call to give evidence. The Rule has been corrected to provide that contact information will be provided only to the Tribunal Office.

Recommendation Regarding the Rules

The Rules that are set out in Appendix A are the Rules that the Committee is being asked to recommend to the Benchers for approval as Motion 1. These Rules set out two columns of Rules. The first column sets out the original version of the Rules prior to the December Bencher meeting. The second column sets out the new and amended Rules that were approved in principle by the Benchers in December, with the minor revisions that are discussed above already reflected in the second column. These minor revisions will also be flagged for the Benchers at the April Bencher meeting, so that they understand the revisions from the December meeting.

It is recommended that the Policy and Regulatory Reform Committee recommend to the Benchers that they approve the Rules in Appendix A.

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Revisions to the Rules Approved in Principle

Rule Approved in Principle	Revision to that Rule
Hearing Processes **2.5 (1)** A hearing under the Act and these Rules shall proceed as an oral hearing by video-conference. **(1.1)** Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules. **(2)** Notwithstanding subrule (1), a hearing shall proceed by means other than a video-conference where: […]	**Hearing Processes** **2.5 (1)** A hearing under the Act and these Rules shall proceed as an oral hearing by video-conference. ~~**(1.1)** Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules.~~ **(2)** Notwithstanding subrule (1), a hearing shall proceed by means other than a video-conference where: […].

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Rule Approved in Principle	Revision to that Rule
Pre-Hearing Conferences **90.1(1)** A pre-hearing conference must be held, by telephone or video-conference, (a) before a hearing under section 59, section 75 or section 76 of the Act commences, unless both parties agree to waive the pre-hearing conference; and (b) before any hearing, other than under section 59, section 75 or section 76, commences when […]	**Pre-Hearing Conferences** **90.1(1)** A pre-hearing conference must be held, by telephone or video-conference, (a) before a hearing under section 59, section 75 or section 76 of the Act commences, unless both parties agree to waive the pre-hearing conference; and (b) before any hearing, other than under section 59, section 75 or section 76, commences when […] **(1.1)** Rules 90.1-90.3, respecting pre-hearing conferences, apply to any hearing conducted under the Act and these Rules. […]

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Rule Approved in Principle	Revision to that Rule
Pre-Hearing Conference Requirements […] **90.3 (6)** At the Hearing Committee's discretion, portions of a recording under subrule (4) or a report under subrule (5) that set out: (a) directions made by the pre-hearing conference chair, and (b) failures to comply with directions of the pre-hearing conference chair, are admissible at a hearing conducted in relation to the same proceeding.	**Pre-Hearing Conference Requirements** […] **90.3 (6)** At the panel's or the Hearing Committee's discretion, portions of a recording under subrule (4) or a report under subrule (5) that set out: (a) directions made by the pre-hearing conference chair, and (b) failures to comply with directions of the pre-hearing conference chair, are admissible at a hearing conducted in relation to the same proceeding.

Rule Approved in Principle	Revision to that Rule
Abeyances […] **90.5 (2)** The pre-hearing conference chair will make an order, either: (a) denying the request; or (b) placing a proceeding in abeyance for a period not exceeding one year. **(3)** When a proceeding is placed in abeyance in accordance with subrule (2), […] (b) any delay in the proceeding resulting from the abeyance will be	**Abeyances** […] **90.5 (2)** The pre-hearing conference chair will make an order, either: (a) denying the request; or (b) approving the request and placing a proceeding in abeyance for a period not exceeding one year. **(3)** When a proceeding is placed in abeyance in accordance with subrule (2), […] (b) ~~any delay in the proceeding resulting from the abeyance will be without prejudice to either~~

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without prejudice to either party. **(4)** An abeyance will terminate, (a) upon expiration of the time specified in the abeyance order; or (b) prior to the time specified in the abeyance order: (i) by consent of both parties; or (ii) by order of the pre-hearing conference chair upon application by either party.	~~party~~no argument based on delay or other prejudice resulting from the abeyance may be raised at any time. **(4)** An abeyance will terminate, (a) upon expiration of the time specified in the abeyance order; or (b) prior to the expiration of the time specified in the abeyance order: (i) by consent of both parties; or (ii) by order of the pre-hearing conference chair upon application by either party.

Rule Approved in Principle	Revision to that Rule
Witnesses, Exhibits and Authorities **90.7(1)** Not less than 14 days before the date set for the commencement of the hearing, each party shall provide to the Tribunal Office and every other party: (a) the name of each witness that the party intends to call to give evidence at the hearing, as well as the witness' contact information; (b) a list of authorities the party anticipates it will rely upon at the hearing; and	**Witnesses, Exhibits and Authorities** **90.7(1)** Not less than 14 days before the date set for the commencement of the hearing, each party shall provide: (a) to the Tribunal Office and every other party: (~~a~~i) the name of each witness that the party intends to call to give evidence at the hearing~~, as well as the witness' contact information;~~,

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(c) copies of all documents that the party intends to introduce into evidence at the hearing.	(~~b~~ii) a list of authorities the party anticipates it will rely upon at the hearing~~;~~, and (~~c~~iii) copies of all documents that the party intends to introduce into evidence at the hearing~~.~~; and (b) to the Tribunal Office, the contact information of each witness that the party intends to call to give evidence at the hearing.

Rule Approved in Principle	Revision to that Rule
Hearing Committee	~~**Hearing Committee**~~ **Admissions**
90.8 Notwithstanding Rules 90.6 and 90.7, a Hearing Committee may admit additional evidence upon any terms and conditions it deems appropriate.	**90.8** Notwithstanding Rules 90.6 and 90.7, a panel or a Hearing Committee, as applicable, may admit additional evidence upon any terms and conditions it deems appropriate.

Pro Bono Law Alberta

Paths to possibilities

PRESENTATION TO BENCHERS OF THE LAW SOCIETY OF ALBERTA

Karen Fellowes, QC (Board President)
Nonye Opara (Executive Director)

PRO BONO LAW ALBERTA

AGENDA

HISTORICAL CONTEXT

IMPACT

PANDEMIC RESPONSE

FUTURE OUTLOOK

Mission & Vision

Vision

All Albertans have fair and equitable access to justice

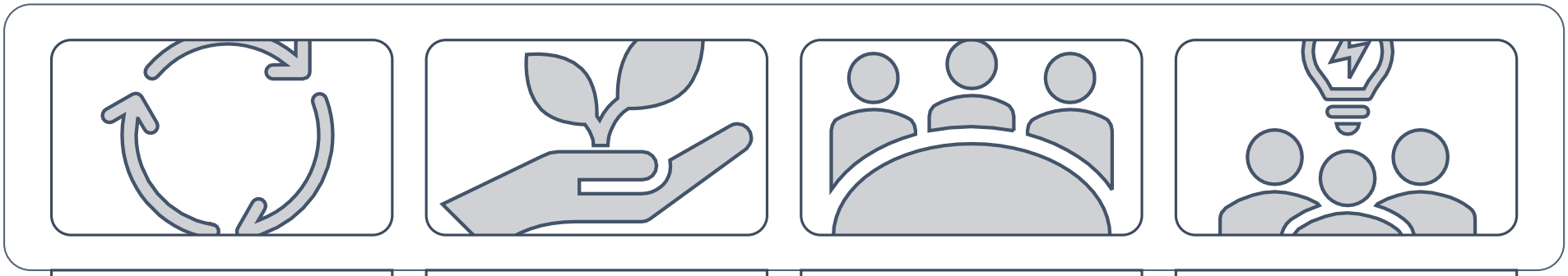
Mission

To engage the legal community and leverage their skills and resources in pro bono services that facilitate access to justice for Albertans

To achieve its mission, PBLA is directing engagement efforts to:

- Law firms
- In-house Organizations
- Alberta Justice System
- Member of the legal community
- Other pro bono agencies
- General public

PBLA – Journey Through the Years



Development

- Establishes Grande Prairie Legal Guidance (2008)
- Assumed administration of the Volunteer Lawyer Services (VLS) Roster program (volunteer lawyer matching service) from the CBA

Growth

- Launched the CCDC Project in Calgary (2011) and Edmonton (2013)
- Launched the QB Amicus program in Calgary (2013) and Edmonton (2015)

Sustainability

- Led the development and continues to steward the Access to Justice Collaborative of Pro Bono organizations (2016 – date)
- Brokered 8 partnerships between law firms and community agencies (2009-2016)

Innovation

- Relaunch of Court-Based Programs using a virtual modality (2020)
- New Strategic Direction (2021)
- Digitization of operations and increased adoption of technology in project development (2018 – date)

PBLA – Governance and Operations

PBLA – Board of Directors

Karen Fellowes, QC | President
- Senior Counsel Stikeman Elliott (Canada) LLP (Calgary)

Ed Ma, QC | Vice-President
- Senior Strategy Advisor, Suncor Energy Inc. (Calgary)

Jana Neal | Treasurer
- CEO, SFG Investments Ltd. (Calgary)

Kene Ilochonwu | LSA Bencher Representative
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- Twinn and Philp Barristers (Edmonton)

Brett Anderson | Director
- Partner, Felesky Flynn LLP (Calgary)

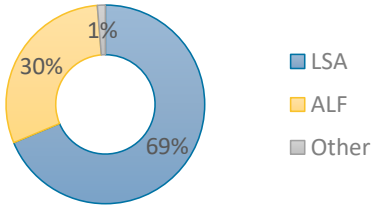
Marija Bicanic | Director
- Senior Legal Counsel & Privacy Officer, Shell Canada Ltd. (Calgary)

Eleanor Carlson | Director
- Associate, Carbert Waite LLP (Calgary)

Judith Hanebury, QC | Director

Shay J. Vanderschaeghe | Director
- Canadian Drug Policy Coalition

PBLA's funding



PBLA has three physical locations in Alberta:
- Head Quarters – Calgary
- Calgary Programs Office – Calgary Courthouse Center
- Edmonton Programs Office – Edmonton Law Courts Center

PBLA – Operational Team

Executive Director	Nonye Opara
Director of Projects and Engagement	Alex Montiel
Finance and Administrative Coordinator	Marilou Stegmeier
Communications and Development Coordinator	Jolisa Odagwe
VLS & Programs Coordinator for Edmonton	La Salette Encarnacion
Programs Coordinator for Calgary	Hanif Hasham

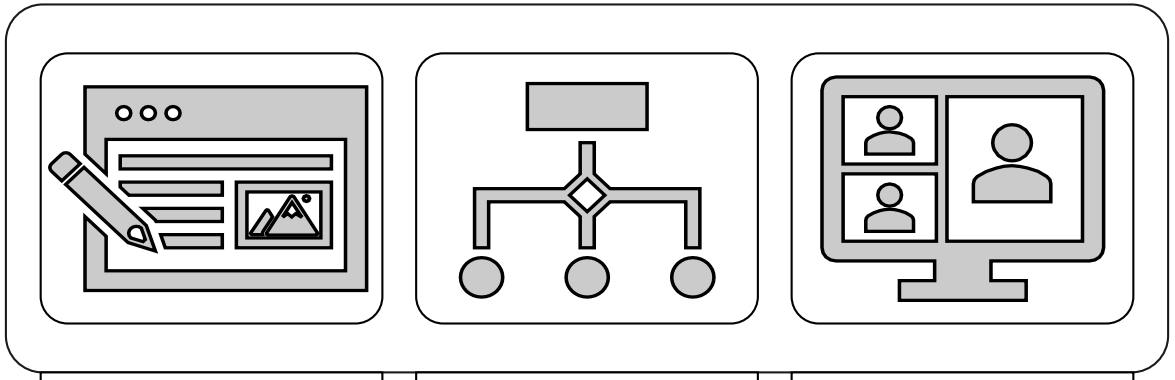
PRO BONO LAW ALBERTA

5

Virtual Court-Based Programs

While the mandate of the court-based programs remain unchanged, key changes were made to program processes in December 2020 to facilitate virtual access and delivery.

PBLA anticipates a shift to some form of hybrid program delivery in the long term



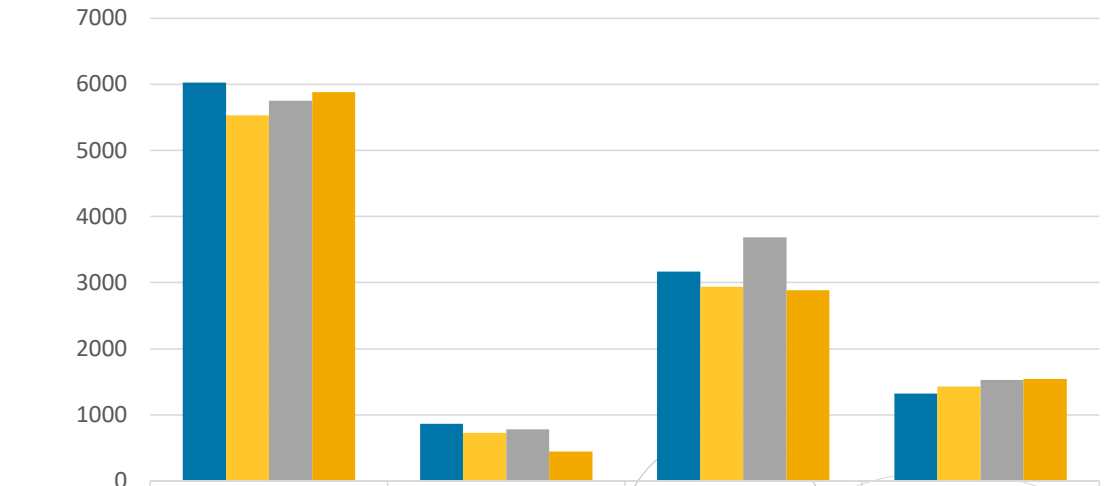
Change from a walk-in and in-person intake to an application and appointment-based process

Introduction of:

- pre-shift conflict management process
- Digital signing of waiver and ToS
- Document sharing on dedicated portal

Change from in-person meetings between clients and volunteer lawyers to advice sessions by phone and video conference

Impact of Court-Based Programs



	Total People Seen	Total Shift Reported (VL)	Total Pro Bono Hrs (VL)	Total Pro Bono Hrs (VS)
2016-2017	6027	863	3164.5	1323
2017-2018	5530	729	2935	1425
2018-2019	5754	781	3685	1530.5
2019-2020	5879	443	2881.5	1544.6

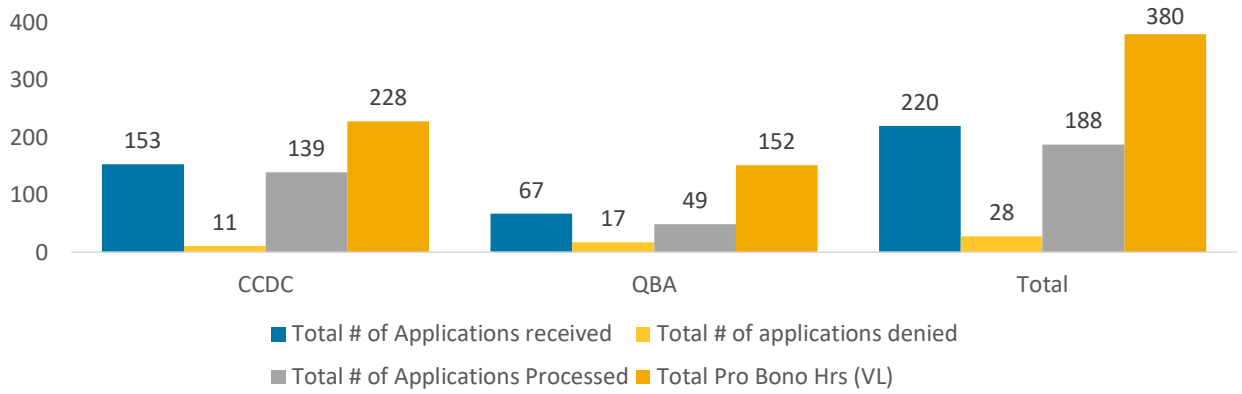
Between April 2016 and March 2020, The Court-Based Programs have assisted more than **23,000 Self-Represent Litigants** and offered a platform for thousands of lawyers and students to donate more than **12,500 Pro Bono hours**

Between 2007 and early 2020 PBLA offered the Court-Based Programs in-person at the Courthouses of Calgary and Edmonton.

In December 2020, the Court-Based Programs were relaunched virtually. Volunteer Lawyers and Self-Represent Litigants from any part of the province are now connected though digital platforms.

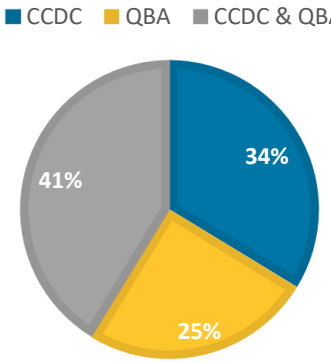
Program Outputs – vCBPs and VLS Roster

vCBPs – Operational summary (Feb-Mar 2021)



Since relaunching the virtual court-based programs, PBLA has delivered **27 virtual** training sessions and onboarded **172** Volunteer Lawyers into the vCBPs:

ONBOARDED VOLUNTEERS BY PROGRAM

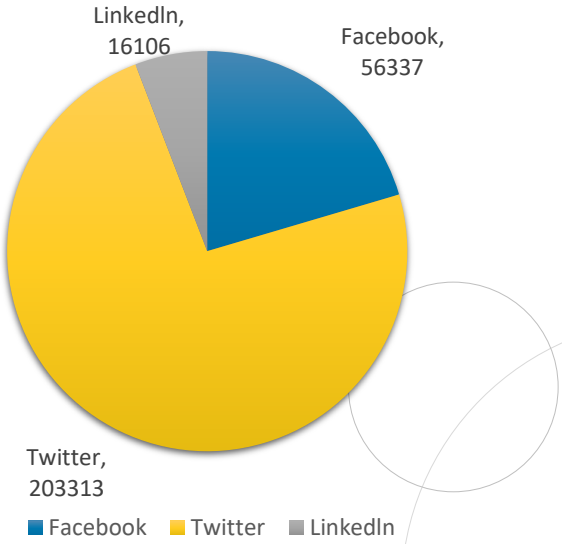


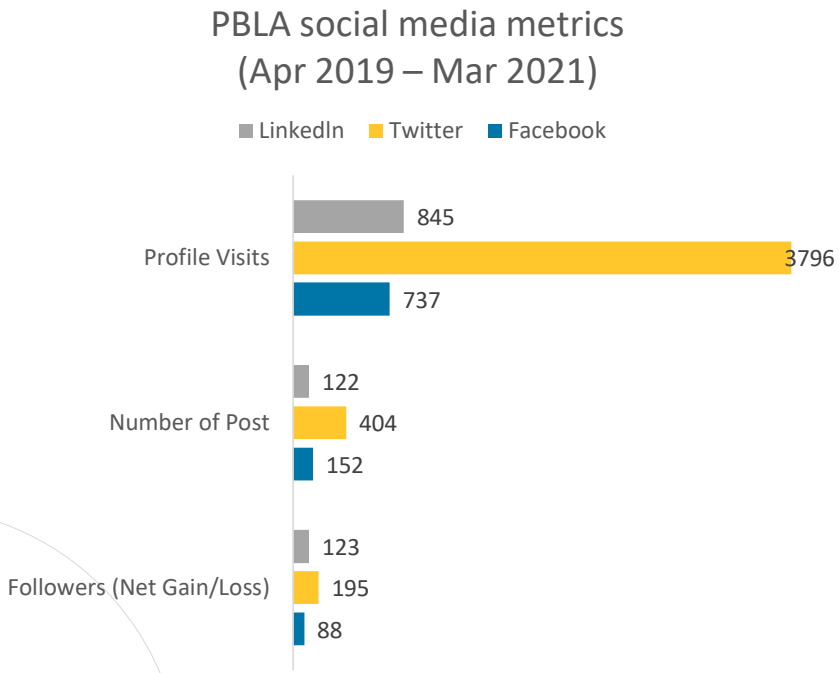
VLS Roster (Jan-Mar 2021)

Month	Files received	F. Distributed	F. Matched	F. awaiting match	F. Closed	Ineligible app.
Jan 2021	5	5	1	3	1	0
Feb 2021	4	3	2	2	0	0
Mar 2021	2	2	0	2	0	0

Social Media and Community Engagement

PBLA's social media presence has been constantly increasing. Between Apr 2019 - Mar 2021 our social media messages have generated over **275 thousand impressions**





PBLA AND ITS RESPONSE TO THE COVID-19 PANDEMIC

Program shut down

- COVID-19 pandemic – (**March 2020)**

Ideation

- Design, relaunch plan development, Feasibility Testing **(April – May 2020)**

Stakeholder consultation

- Court, Firm and Volunteer Discussions on proposals for virtual relaunch **(May - June 2020)**

Platform Development

- Working with Web Developers to design, demo and test several platform iterations **(July – November 2020)**

vCBPs Relaunch

- Stakeholder Consultation
- Pilot Phases 1 and 2 **(December 2020 – January 2021)**
- Fully operational vCBPs (**Feb 2021 – Date**.) Focus on increasing volunteer commitment and shift levels, finalizing schedule, training.

Optimalization

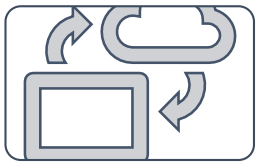
- **Apr 2021 - Ongoing**
- Focus on learning implementation, integration of a new program management platform and technology optimization.

PBLA in 2021

PBLA is onboarding a process of modernization and diversification aimed at expanding and improving its impact in the Alberta legal community and general public. As part of this journey, the organization has set milestones that includes:

Technological Transformation

Implementing of a robust volunteer and program management system for compiling clients' applications, hosting volunteers' profiles, promoting improved collaboration between staff and volunteers, and building a pro bono resource repository



Document Assembly Support Service (DASS)

- Implement a document assembly system that will assist SRLs with:
  - Completing documents pertaining to their civil claim
  - How to access court forms, or where to go for help with document completion

Pro Bono Engagement Survey

- Follow-up survey to 2016 survey of pro bono engagement in the legal profession

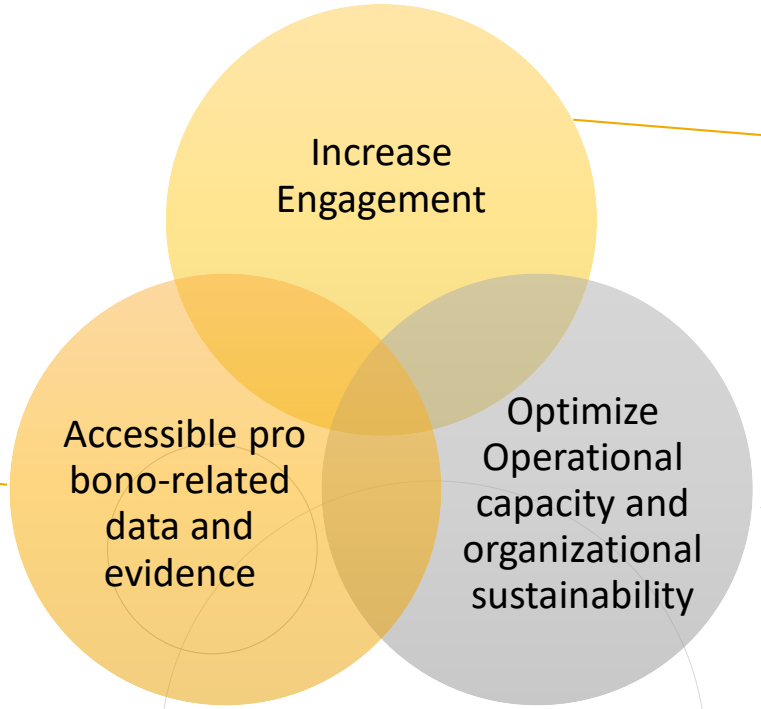
Pro Bono Conference

- Conference planning for the rescheduled 2022 National Pro Bono Conference

FUTURE OULOOK

6

Ensure PBLA is positioned as a hub for pro bono initiatives, projects, community-based research and best practices.



Offer innovative opportunities for pro bono engagement by members of the Alberta Legal community

Strengthen governance structure, funding diversification, staff development and adopting evidence-based approaches to operations

PRO BONO LAW ALBERTA

QUESTIONS?

Nonye Opara
Executive Director
nonye@pbla.ca

Pro Bono Law Alberta
Paths to possibilities

@probonolawab
@probonolawalberta
Pro Bono Law Alberta

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Report to Benchers

April 15, 2021

From:	**Dr. Kara Mitchelmore**
Re:	**CPLED – PREP Update**

Purpose

This document provides an overview of how CPLED gathers and applies stakeholder feedback on the Practice Readiness Education Program (PREP). This memo is for information purposes only.

Background Information

Stakeholder Feedback Objectives

CPLED collects feedback and implements suggestions for improvement to:

1. enhance students' and external contractors' PREP[1] experience
2. bolsters the efficiencies and effectiveness of CPLED's business processes

CPLED gathers feedback from various stakeholder groups[2] throughout the year. Once collected, feedback is reviewed and then categorized into common themes and solutions. Solutions are then earmarked as immediate, short-term, mid-term and long-term changes.

Alberta Student Demographics

CPLED offers PREP twice a year with program start dates in June and December. Alberta represents the largest student population among the four participating jurisdictions[3] at 65% of the total student population with a total of 623 students registered collectively in the June 2020 and December 2020 intakes.

The following graph presents a breakdown of the number of articling versus non-articling students and a comparison of this year's Bar admission enrollment numbers compared to prior year's (i.e., the last year when the CPLED legacy program was offered).

[1] CPLED's Bar admission program is called the Practice Readiness Education Program (PREP)
[2] Stakeholders include students, external contractors (assessors, facilitators, practice managers, and simulated clients), principals and firms, and participating law societies.
[3] The four participating jurisdictions are Alberta, Saskatchewan, Manitoba and Nova Scotia.

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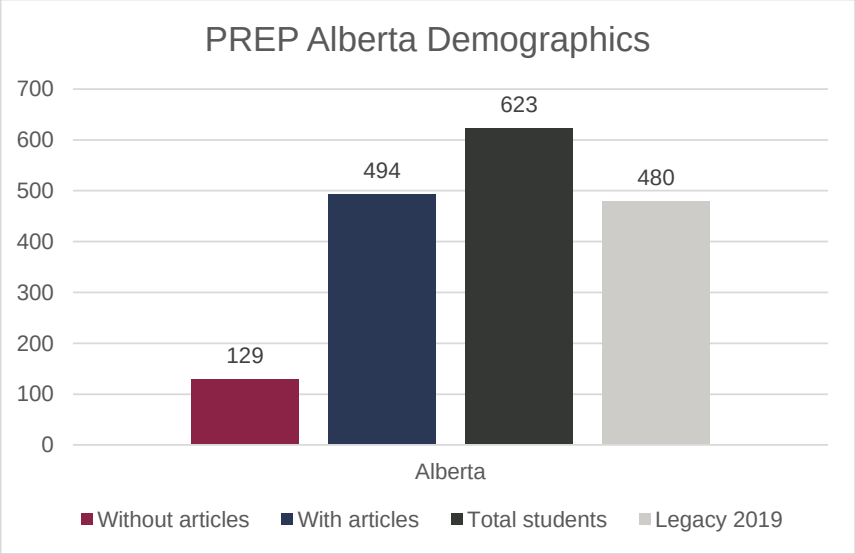

Enhancing Student Experience

Students are required to complete surveys at the end of each PREP phase. With four PREP phases and over 750 students enrolled in the June 2020 PREP intake alone, CPLED has collected a wealth of student feedback. To date, students' comments and suggestions have resulted in improvements in how students interact with:

- **content** – e.g., even though the program was reviewed by Indigenous law society workgroups and two pilot groups, students have voiced concerns about how marginalized groups were presented in the Indigenous Law, Cultures and People Foundation Module and the Technology and Skills Module. To respond, CPLED hired an EDI consultant to review PREP in its entirety to identify areas that may trigger negative responses and to recommend changes. This includes building components within PREP that further explores unconscious bias and cultural competency.
- **practice managers –** e.g., improved scheduling appointments with practice managers eliminating CPLED as the "middle-person" thereby improving timeliness and efficiency for booking appointments.
- **CPLED** – e.g., implemented a late registration policy due to feedback from NCAs because of delayed Federation exam results.

Enhancing Contractor Experience

CPLED employs approximately 300 external contractors to deliver PREP across the four participating jurisdictions. External contractors include Assessors, Practice Managers, Facilitators, and Simulated Clients. CPLED regularly collects external contractor feedback throughout PREP through surveys and focus groups. Survey results have led to adjustments and improvements to calibration meetings and

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assessment processes. Improving external contractors' experience will result in higher retention rates and helps support recruitment efforts.

Continuous Improvement and Operational Excellence

Gathering feedback is a key component of CPLED's drive towards continuous improvement and operational excellence because it identifies opportunities to further improve business processes. For example, a review of the nature and types of student questions has allowed CPLED to develop comprehensive Frequently Asked Questions (FAQs) to address student queries promptly. In addition, FAQs promote employee efficiency because employees can refer to the FAQs when addressing students' questions and this also helps to promote consistent messaging. Finally, CPLED has applied feedback to further improve and update its D2L and MemberPro[4] systems.

Process for Collecting and Applying Feedback

The following table lists the tools and methods that CPLED has used to collect and apply feedback. The table also summarizes enhancements implemented to date.

Data Collection Methods	Application and Improvements
Focus groups, examples include: • develop PREP	• used information gathered from firms/principals, legacy instructors, law societies, newly called lawyers, and SMEs to build PREP
• assess demand for a 3-month Accelerated PREP	• hosted focus groups with firms/principals to determine the demand for an accelerated program
• identify improvements to current PREP	• met with facilitators after Foundation Workshops to improve technology training • will host future focus groups with assessors to improve processes and implement efficiencies • moving forward, CPLED will host focus groups with recently called Bar students to gather information about their PREP experience
Pilot Programs (Alberta and Manitoba PREP pilot programs)	PREP has been scaled up from two pilot programs consisting of 30 students each to 800 students at the June 2020 full launch. CPLED collected feedback from its PREP pilot programs and implemented updates and improvements before full launch.
Student and external contractor surveys	CPELD reviews and compiles all student and external contractor feedback at the end of each PREP phase,

[4]D2L is the learning management platform used to deliver PREP. MemberPro is CPLED's student registration program.

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Data Collection Methods	Application and Improvements
completed at the end of each PREP phase (mandatory surveys)	identifying and categorizing themes and trends (not personal, one-off choices), these are then reviewed during PREP phase debrief meetings, and opportunities for improvement are discussed.
Psychometrician reports	These reports are used to assess how students perform in each Capstone and identifies where students struggle. Report results are used to develop programs and services to further support students (e.g., development of supplemental course materials such as legal research and writing assignments and detailed assessor feedback).
Consult with User Group[5]	CPLED shares all student and external contractor survey results with the User Group. In addition, User Group members share questions and concerns that they are receiving from students. During the User Group meetings, CPLED leadership and User Group members discuss solutions to student concerns and share best practices.
Review student questions and concerns received through the CPLED admin mailbox and the D2L Discussion Boards	CPLED keeps track of common student requests and concerns, making appropriate changes to processes/systems and future iterations of PREP.
Unsolicited feedback from stakeholders (students, firms/principals, law societies)	CPLED logs concerns and these are discussed and resolved at team meetings.

Challenges Experienced and Lessons Learned

CPLED has encountered a few challenges in the collection of student feedback. This section explains these challenges and lessons learned.

1. Changes to Discussion Board

CPLED delivers its programs and courses through D2L. Initially, to promote and encourage student discussion as well as provide a medium for students to share common content questions, CPLED opened up Discussion Boards in D2L. The June 2020 offering includes nine PREP courses, all with multiple Discussion Boards that require constant monitoring by CPLED staff. Additionally, there are separate Practice Manager, Assessor, and Facilitator D2L courses with multiple Discussion Boards.

To date, the Education Manager has been monitoring these Discussion Boards as many of the inquiries are content-related and require a lawyer to respond. A concern with the

[5]The User Group includes representatives from law societies including those who were involved with the CPLED legacy program.

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current process is the workload placed on the Education Manager and the potential for burnout, resulting in the risk of not addressing inquires within CPLED's 24-hour response time policy.

Moving forward, CPLED will restrict the D2L Discussion Boards to content-specific activities. This will reduce public two-way communication and student discussions. Reducing the time required to monitor Discussion Boards will free up the Education Manager to focus on escalated matters. Students will continue to communicate with CPLED through the CPLED administration email account. A series of FAQs will be developed and posted to D2L to address common student questions and concerns.

2. Feedback Received not Civil or Constructive

Despite CPLED encouraging two-way student communication via the Discussion Boards, a small number of students started venting their frustrations on the Discussion Boards which incited other students to vent as well. These negative postings unfortunately have resulted in students using the Discussion Boards in a non-academic and unprofessional manner.

As noted above, CPLED will restrict D2L Discussion Board use. However, CPLED will continue to provide students with opportunities to submit constructive feedback through surveys while immediate concerns will be addressed through the CPLED admin email account.

3. Timing of Feedback Implementation

At times, CPLED can implement changes immediately when feedback is received. For example, CPLED changed the staggered release of assignments in the Virtual Law Firm to allow students to complete their assignments at their own pace rather than wait for assignments to be released on pre-set dates.

However, there are instances where change may not occur until the next iteration of PREP because depending on the change, it can be a lengthy process to update and review course materials, and upload to D2L.

Students frequently expect an immediate response to their feedback and concerns. CPLED understands and sympathizes with the stresses that students are under due to their workload and the COVID-19 pandemic. However, CPLED is not able to change the portion of PREP that students have already gone through or experienced.

4. Managing Student Expectations

Sometimes students do not like or agree with feedback or assessments received from external contractors. CPLED will investigate students' concerns and will make adjustments if needed. Students are reminded that Assessors are provided with a detailed rubric for assessing and undergo calibration training.

Capstone – Process and Feedback

Students enrolled in the June 2020 PREP will be writing their 4-day Capstones from mid- to the end of March. The Capstone is the final assessment in PREP where

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students must demonstrate their skills and competencies in one final simulated transaction to successfully complete the program.

If LSA Benchers receive feedback or calls from students about the Capstone, please direct students to CPLED so that we can address their questions and concerns. Please see Appendix A for an overview of the Capstone assessment process.

Summary

CPLED will continue to use surveys and focus groups to gather feedback to continuously improve PREP content and program delivery and to meet stakeholder needs and expectations.

Respectfully submitted,

Dr. Kara Mitchelmore

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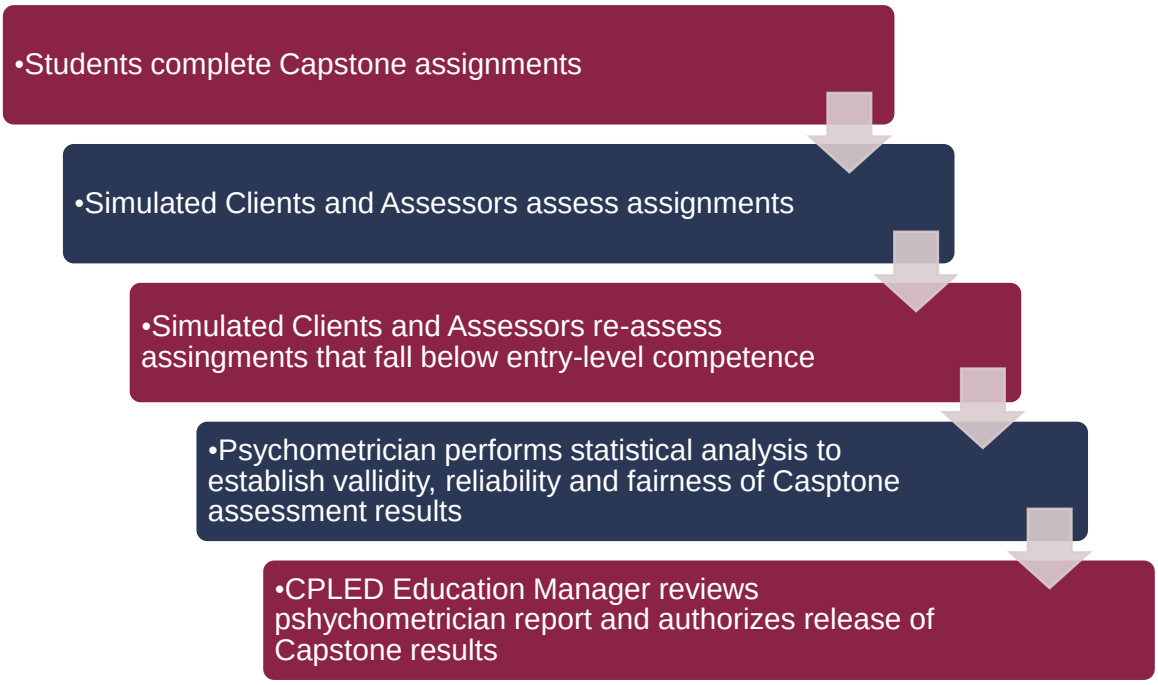
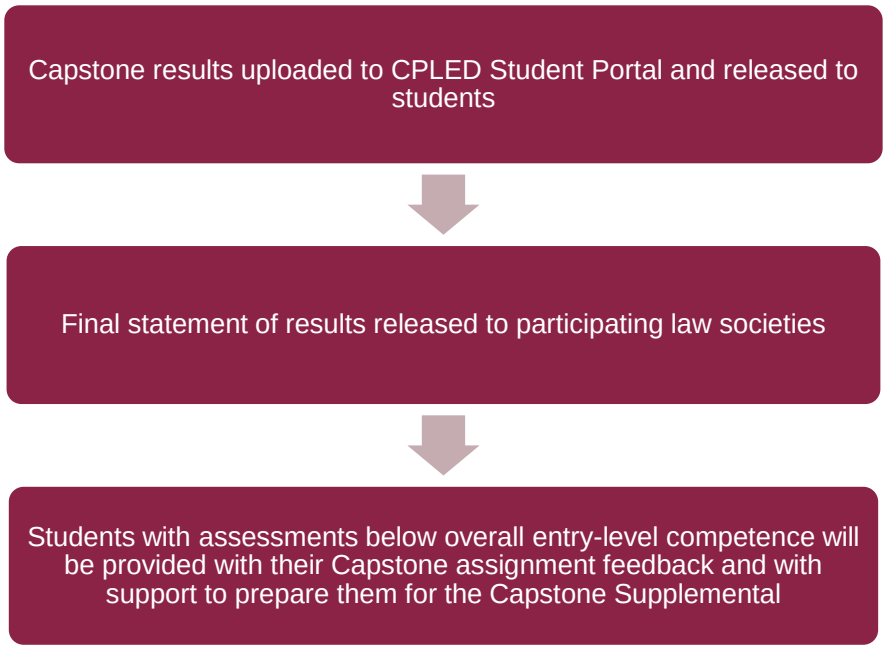
Appendix A. Capstone Assessment Process



Capstone Results Release Day



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Report to Benchers

April 15, 2021

From:	Louise Wasylenko, Chair
Re:	Equity Diversity and Inclusion Committee (EDIC) Update

8

The newly constituted EDIC met on March 17, 2021. This meeting served as an orientation for the new committee members to the committee's mandate as well as an opportunity for an update on several projects. A draft work plan, outlining anticipated consultation with the EDI Advisory Committee and reporting to the Benchers, was also reviewed.

Specific updates were provided on the following initiatives:

1. My Experience Project
2. Respectful Workplace Guide
3. Articling Placement Protocol

It was noted that we are in a period of implementation right now where much of last year's work is either being rolled out or in the final stages of development.

Specifically, the Respectful Workplace Guide was communicated to the profession in an eBulletin on March 18th and the My Experience Project was launched on March 30th.

In the coming weeks, ongoing work on the Articling Placement Protocol will be finalized and the committee will start to consider additional projects in support of its mandate.

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Report to Benchers

April 15, 2021

From:	**Ken Warren, QC**
Re:	**Lawyer Competence Committee Update**

The newly constituted Lawyer Competence Committee (LCC) met on March 3, 2021 for an orientation session. In that session we conducted a high-level review of Jordan Furlong's Lawyer Licensing and Competence in Alberta Report and reviewed the draft 2021 workplan for the committee.

The first regular meeting of the LCC was held on March 17th. Dr. Kara Mitchelmore attended the meeting and provided a presentation on CPLED's draft proposal for the development of a Principal Training program. The LCC responded favourably to the presentation. Further policy discussions on whether the program should be mandatory for Principals will occur over the next several meetings with the goal of presenting a recommendation to the Benchers in June.

The LCC also heard an update on the development of a Lawyer Competency Framework. Discussions are underway with an external consultant to assist in this work and more clarity on timelines should be available in April.

Both the development of Principal Training and a Lawyer Competency Framework will require engagement with the profession. The goal is to coordinate these engagements wherever possible.

Finally, the Path, our Indigenous Cultural Competence Education program for Alberta lawyers, is set to launch on April 21. A tremendous amount of work has gone into the development of the Alberta content and it is exciting to see this program come to fruition.

The Path is being offered at no additional cost to Alberta lawyers and the Law Society has negotiated reduced rates for non-lawyer groups or organizations that wish to take the course.

We will be monitoring feedback.

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Report to Benchers

April 15, 2021

From:	**Andrea Menard, Indigenous Initiatives Liaison**
Re:	**Indigenous Initiatives Liaison (IIL) Update**

Since the last report to the Benchers the following Indigenous initiatives have been advancing:

1. The mandatory Indigenous cultural competency training for lawyers across Alberta called, **"The Path"** The Path - Your Journey Through Indigenous Canada will be launched in **April , 2021**. Over the past year, the IIL has worked on Alberta-specific modules with Canada's leading Indigenous consulting firm, NVision Insight Group Inc., based out of Ottawa and Iqaluit.

2. The **Indigenous Law Mentorship Program** for Indigenous law students and Indigenous lawyers was launched in October 2020. We now have over 30 Indigenous mentors and Indigenous mentees matched. Throughout November and December 2020, they met each other virtually one-on-one. A virtual large group meeting was held in March 2021 with everyone as a large group. Next, the mentors and mentees will virtually meet one-on-one. This new Indigenous program created by the IIL uniting Indigenous lawyers with Indigenous law students will run yearly.

3. The **Indigenous Summer Student Program (ISSP)** has approximately 23 firms (including LSA and ALIA) registered that are interested in hiring Indigenous law students and has 35 Indigenous law students (9-1L's and 26-2L's) registered (with more being expected).

4. The IIL is successfully building a relationship with the **University of Calgary (U of C) Faculty of Law**, and meeting regularly with **Dean, Ian Holloway**, as well as the Vice Provost of Indigenous Engagement, **Dr. Michael Hart,** to strengthen Indigenous student recruitment and retention and Indigenous cultural competency at the law school using the TRC Calls to Action.

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a. Presently, the Faculty of Law:

   i. Is hiring a Coordinator of Indigenous Initiatives and Reconciliation: Coordinator Indigenous Initiatives Job Description

   ii. Has created a new Indigenous student law webpage: UCalgLaw-Indigenous Initiatives

5. The IIL is successfully building a relationship with the **University of Alberta (U of A), Faculty of Law**, and met with **Dean Barbara Billingsley** on March 4, 2021 to discuss strengthening Indigenous initiatives using the TRC Calls to Action.

   i. Presently the U of A, Law has hired the Indigenous Support Manager, Tamara Pearl on a part-time basis to take over from Apryl Gladue to assist Indigenous law students at school academically, culturally and career-wise.

6. The IIL collaborated with **ASSIST** to facilitate an Indigenous cultural education session with elder John Bigstone, from Bigstone Cree Nation. He conducted a virtual Cree teaching on March 3, 2021 with over twenty volunteers in attendance to learn about the Cree culture as well as the impacts of Indian Residential School on a survivor.

Respectfully submitted,

Andrea Menard, LLB. LLM

Indigenous Initiatives Liaison

Law Society of Alberta

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Draft Bencher Public Minutes

Public Minutes of the Five Hundred and Second Meeting of the Benchers of the Law Society of Alberta (the "Law Society")

February 25, 2021

Videoconference

8:30 am

Benchers present	Kent Teskey, outgoing President Darlene Scott, President Ken Warren, President-Elect Sony Ahluwalia Ryan Anderson Lou Cusano Ted Feehan Corie Flett Elizabeth Hak Bill Hendsbee Kene Ilochonwu Cal Johnson Jim Lutz Sandra Mah Barb McKinley Bud Melnyk Sandra Petersson Stacy Petriuk Deanna Steblyk Moira Vánë Grant Vogeli Cora Voyageur Louise Wasylenko
Regrets	Margaret Unsworth Salimah Walji-Shivji
Executive Leadership Team members present	Elizabeth Osler, CEO and Executive Director Cori Ghitter, Deputy Executive Director and Director, Policy and Education Nancy Carruthers, General Counsel and Director, Regulation Nadine Meade, Chief Financial Officer

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	Andrew Norton, Chief Information Officer and Director, Business Operations David Weyant, President and CEO, Alberta Lawyers Indemnity Association
Staff present	Sharon Allard, Executive Assistant to the Deputy Executive Director and Director, Policy and Education Barbra Bailey, Manager, Education Nancy Bains, Tribunal Counsel & Privacy Officer Catherine Bennett, Executive Assistant to the CEO and Executive Director Colleen Brown, Manager, Communications Ruth Corbett, Governance Administrator Shabnam Datta, Manager, Policy Jennifer Freund, Policy Counsel Sharon Heine, Senior Manager, Regulation Yvonne Ladouceur, Senior Manager, Operations, Alberta Lawyers Indemnity Association Tina McKay, Senior Manager, Business Operations Andrea Menard, Indigenous Initiatives Liaison Kendall Moholitny, Senior Manager, Professionalism Noria Neuhart, Conduct Counsel Stephen Ong, Business Technology Len Polsky, Manager, Legal Technology and Mentorship Laura Scheuerman, Governance Assistant Christine Schreuder, Governance Coordinator
Guests present	Barbara Billingsley, Dean, University of Alberta Glen Buick, former Bencher Arman Chak, former Bencher Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society Carsten Jensen, Law Society representative, Federation of Law Societies of Canada Bianca Kratt, Vice-President, Canadian Bar Association Alberta Linda Long, former Bencher Nonye Opara, Executive Director, Pro Bono Law Alberta Walter Pavlic, former Bencher Lou Pesta, former Bencher Corinne Petersen, former Bencher Robert Philp, former Bencher Kathleen Ryan, former Bencher Christine Sanderman, Executive Director, Legal Education Society of Alberta Joylyn Teskey, guest of outgoing President

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

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Ms. Scott called the meeting to order and delivered the Indigenous land acknowledgement statement for Alberta. Ms. Scott welcomed new and returning Benchers, outgoing Benchers, former lay Bencher Mr. Glen Buick, guests and staff.

Tab	Item
1	**Remarks from the Outgoing President** Mr. Teskey provided his final remarks as President, reflecting on his years as a Bencher and President. He encouraged the Benchers to lead with urgency, courage, humility, persuasion and decisiveness, to make mistakes, listen, respect the work that has gone before, and enjoy the experience.
2	**Remarks from the President** Ms. Scott provided her opening remarks, expressing her appreciation to Mr. Teskey on behalf of the Benchers for his passion for the profession and the Law Society and his courage to lead through difficult and unprecedented times. Ms. Scott personally thanked Mr. Teskey for his mentorship during her term as President-Elect. Mr. Teskey left the meeting. Glen Buick, Arman Chak, Linda Long, Walter Pavlic, Lou Pesta, Corinne Petersen, Bob Philp, Kathleen Ryan, and Joylyn Teskey left the meeting. Ms. Moholitny and Ms. Bains joined the meeting. Ms. Scott invited half of the Benchers to introduce themselves to the table and the remaining Benchers provided their introductions at the beginning of the *In Camera* portion of the meeting.
3	**Leadership Report** The Leadership Report was made up of a Bencher Update on the Strategic Plan and Stakeholder Engagement and a Year in Review report summarizing the Law Society's strategic and operational work over the last year. Ms. Osler highlighted the Law Society's activities in response to the pandemic, including changes to the budget cycle; a reduced practice fee; adjustments to payment options and administrative deadlines; an increased subsidy for the Canadian Centre for Professional Legal Education (CPLED) students; shortening the articling term; and a pilot project for virtual hearings. Law Society leadership also carried out an internal reorganization to support the strategic work. Ms. Osler emphasized the Law Society's commitment to innovation and using the pandemic as a platform to proactively tackle operational and strategic decisions.
4	**2021 Committees, Task Forces, and Liaisons** Documentation for this item was circulated with the meeting materials. Ms. Scott outlined the annual Nominating Committee (NC) process. She added that the NC plans to begin moving experienced volunteers out to make room for new volunteers, to address the annual issue of there being few positions for so many applications.

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	Motion: Wasylenko/Warren **To appoint the 2021 committees, advisory committees, liaisons and representatives to "other bodies" as set out in the 2021 Committees, Advisory Committees, Liaisons and Other Bodies list; and** **To continue the term of appointment for any person on a 2020 committee involved in any ongoing adjudicative matter until such time as a report or decision is rendered on the matter in which they are involved.** **Carried unanimously**
5	**Bencher Election Task Force (BETF) Report and Recommendations** Documentation for this item was circulated with the meeting materials. Ms. Scott advised the Benchers that the report is for information. She commended the BETF for the progress made towards increasing diversity at the Bencher table. Ms. Petriuk presented the report, highlighting the BETF's mandate and accomplishments for the 2020 Bencher election. Ms. Moholitny left the meeting.
6	**Board Relations Guideline and In-Camera Guideline - Annual Reviews** Documentation for this item was circulated with the meeting materials. Ms. Scott provided the Benchers with background information on the development of the documents in 2018. Mr. Warren presented both guidelines, highlighting their purpose in optimizing the functioning of the Board. Ms. Scott reminded the Benchers not to broadcast decisions made at the Bencher table before the Communications Department has reported publicly on meetings.
7	**Bencher Vacancy Policy (BVP)** Documentation for this item was circulated with the meeting materials. Ms. Osler advised the Benchers that the purpose of the BVP is to operationalize changes that were made to Rule 17 in 2019 with respect to filling Bencher vacancies. It will guide the NC on the process for the application of Rule 17 and provide the NC with the ability to consider factors such as diversity and competencies. Ms. Osler clarified that Appendix A, the Bencher Information Form, currently includes Bencher information that would not be required if a vacancy were being filled. In the event of a vacancy, Appendix A would be revised and approved by the Executive Director, in accordance with the BVP. The Benchers discussed the importance of ensuring candidates understand the time commitment required and ways to ensure the recruitment process encourages applicants. Ms. Osler confirmed that the recruitment process would include more indepth education on the role of the Bencher and the time commitment required. She acknowledged that the process would be slower than the historical "next in line" practice; however, it will support and further the Law Society's strategic commitment to a diverse and competency-based board.

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	Motion: Hendsbee/Vane **That the Benchers approve the Bencher Vacancy Policy, as proposed.** **Carried unanimously** Ms. Menard joined the meeting.
8	**Articling Term and PREP Update** Documentation for this item was circulated with the meeting materials. Ms. Ghitter provided background information on enhancements to the articling program, most recently the Executive Committee's decision to maintain the abridged articling term and confirm that the new compressed PREP program will not extend students' articling terms. The Benchers discussed issues and questions around the impact of the court system on articling; the expectation that articling work is full-time and whether the Law Society should consider defining what that is; and how CPLED can assist students with resumes and job seeking. Ms. Ghitter advised that discussion of these issues will form part of the review later in 2021. Ms. Ladouceur joined the meeting.
9	**Audit and Finance Committee (AFC) Report** Documentation for this item was circulated with the meeting materials. Mr. Warren presented the AFC report, highlighting the external independent investment review of the Law Society and the Alberta Lawyers Indemnity Association (ALIA) investment portfolios and policies and the consultant's recommendations for changes to the asset mix. Mr. Warren explained that the AFC will wait for the ALIA Board's decision before considering a recommendation for changes to the Law Society's portfolio, since the ALIA portfolio represents 85% of the total investment assets held between the two organizations. Ms. Meade added that the ALIA Board requested a second opinion and liquidity review from its actuary before determining any changes to the asset mix.
10	**Abeyance Rule and Abeyance of a Review Guideline** Documentation for this item was circulated with the meeting materials. Ms. Scott advised the Benchers that the proposal was reviewed and recommended by the Policy and Regulatory Reform Committee (PRRC). Ms. Datta and Ms. Neuhart presented the proposed new rule, intended to provide authority and detail for the abeyance process, and a new guideline to provide a framework and clarity for the abeyance process. In response to questions about transparency, particularly with respect to complainants, Ms. Datta advised that the Conduct Department ensures complainants are kept informed throughout the complaint process. It was also confirmed that the Law Society allows abeyances only for one year and that an application for each additional abeyance may be made not more than one month before the current abeyance expires.

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	The three motions were approved concurrently. **Hendsbee/Ahluwalia** **Motion 1:** **To approve the new Rule, 89.2.** **Motion 2:** **To approve the new Abeyance of a Review Guideline.** **Motion 3:** **To rescind the Holding Matters in Abeyance Guideline.** **Carried unanimously**
11	**Equity, Diversity and Inclusion (EDI) Committee Update** Documentation for this item was circulated with the meeting materials. Ms. Scott thanked Ms. Wasylenko for her stewardship of the EDI Committee.
12	**Equity, Diversity and Inclusion Advisory Committee (EDIAC) Update** Documentation for this item was circulated with the meeting materials. Ms. Scott commended former Bencher Ms. Ryan for her stewardship of EDIAC.
13	**Lawyer Competence Committee Update** Documentation for this item was circulated with the meeting materials.
14	**Indigenous Initiatives Liaison Update** Documentation for this item was circulated with the meeting materials. Ms. Menard left the meeting.
15	**ALIA Trend Report** Documentation for this item was circulated with the meeting materials. Mr. Weyant responded to questions from Benchers about loss prevention activities and he highlighted recent governance changes, including the implementation of the Enhancing Efficiency and Effectiveness project, that allow for information sharing between ALIA and the Law Society where historically this was not permitted. Ms. Ladouceur and Mr. Eamon left the meeting.
16	**Tribunal Office Update** Documentation for this item was circulated with the meeting materials.
17	**Consent Agenda** The consent agenda items were circulated with the materials and presented for approval concurrently. There were no requests to remove any items from the consent agenda.

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	Motion: Steblyk/Petriuk **17.1 To approve the December 3, 2020 Public Bencher Meeting Minutes.** **17.2 To approve the Law Society 2021 Annual General Meeting Date.** **17.3 That the Benchers re-appoint PricewaterhouseCoopers (PwC) as auditors for the Law Society of Alberta for the fiscal year ending December 31, 2021.** **17.4 That the Benchers approve the update to the Transferring Lawyers Required Reading List as proposed in the meeting materials.** **17.5 Motion 1: That Rule 164(5) be amended to strike "70" and insert "69" in its place. Motion 2: That Rule 165.1(1) be amended to insert " 67.4," after "67.3," Motion 3:That Rule 167(1)(b) be amended to insert " 67.4," after "67.3" and to insert " 149.7," after "149.2,".** **Carried unanimously**
18	**Reports for Information** The following reports were included with the meeting materials for information: 18.1 Alberta Lawyers' Assistance Society report 18.2 Canadian Bar Association report 18.3 Federation of Law Societies of Canada Report 18.4 Legal Education Society of Alberta report 18.5 Pro Bono Law Alberta report
19	**Other Business** There being no further business the public meeting was adjourned at 11:45 a.m.

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Memo to Benchers

April 15, 2021

From:	**Darlene Scott, QC, Chair, Nominating Committee**
Re:	**Canadian Centre for Professional Legal Education (CPLED) Board Reappointment**

MOTION:

That the Benchers approve the reappointment of Bud Melnyk, QC, to the Canadian Centre for Professional Legal Education (CPLED) Board for a two-year term.

Bud Melnyk's initial two-year appointment to the CPLED Board expires on April 25, 2021. The Nominating Committee is recommending that the Benchers approve the reappointment of Bud Melnyk, QC, to the CPLED Board for another two-year term.

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Memo

Correction to Rules

To	Benchers
From	Jennifer Freund, Policy Counsel
Date	April 15, 2021

Proposed Motions

MOTION 1: That Rule 115 subrules (1) and (1.3) be amended to insert " 67.4," after "67.3," and to insert " 149.7," after "149.2,".

MOTION 2: That Rule 115 subrule (1) be amended to strike "3 months" and insert "fifteen days" in its place.

MOTION 3: That Rule 26 clause (1)(e) be amended to insert "or completion of their eligible terms" after "resignation" and to insert ", who shall not be entitled to vote at any meeting of the Committee" after "President".

Introduction

In December 2020, at the Bencher meeting, a number of amendments were made to the membership rules in the *Rules of the Law Society of Alberta* (Rules). These were made in response to necessary membership rule amendments, ALIA transaction levy amendments and CPD amendments.

Additional amendments were identified following this meeting and brought to the February Bencher meeting. One additional Rule has since been identified for amendment.

Additionally, a review of past Bencher minutes noted a drafting error in the Rule regarding the composition of the Executive Committee which is to be corrected.

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Rule Amendment – Motions 1 and 2

As a result of the numerous amendments made for three different reasons at the December Bencher meeting, the addition of Rule 67.4, the new CPD rule and 149.7, the new ALIA levy rule, were overlooked in Rule 115. Additionally, the change from three months to reinstate following an administrative suspension to fifteen days was not made in Rule 115.

These issues have been identified as a concern with the complexity of the Rules and the significant cross-referencing that can occur for one item. This will be considered in future reviews and amendments of the Rules.

The proposed amendments are in red text, as follows:

Application for Reinstatement in cases not involving Disbarment

115(1) Any

(a) inactive member who seeks reinstatement to active status,

(b) active but not practising member who seeks reinstatement to practising status,

(c) suspended member, other than a member suspended under Rules 67.3, 67.4, 119.30, 147, 149.2, 149.7 or 165, who seeks to be reinstated to any other status,

(d) student-at-law who

(i) has not worked as an articling student for the past twelve months and

(ii) seeks to be enrolled as a member or to resume articling

must apply to the Executive Director by submitting a completed Application Form. Suspended members may initiate their applications prior to the conclusion of the suspension so that any conditions imposed may be met prior to the conclusion of the suspension.

(1.1) Before the Society will begin to process an application under this Rule, an Application Form must be completed and submitted and the prescribed reinstatement application fee must be paid.

(1.2) Notwithstanding subrule (1.1), an applicant who seeks reinstatement to active status and provides an undertaking acceptable to the Executive Director to provide legal services exclusively through a pro bono provider approved by the Executive Director is exempt from the payment of the prescribed reinstatement application fee.

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(1.3) Notwithstanding subrule (1.1), a member suspended under Rules 67.3, 67.4, 119.30, 147, 149.2, 149.7 or 165 who seeks to be reinstated within fifteen days ~~3 months~~ of the date of suspension must comply with the requirements of Rule 165.1.

Rule Amendment – Motion 3

As a result of a review of past Bencher minutes, a drafting error was noting in Rule 26 regarding the authority of the immediate past President as a member of the Executive Committee.

The Benchers were clear that the immediate past President should not be a sitting member of the Bencher table and was not to be a voting member of the Committee.

Wording to note that the immediate past President does not have voting rights has been added. Additional clarity has also been added to identify that an immediate past President may no longer be part of the current Bencher table not only through resignation but also through completing their term of office as an elected Bencher.

The proposed amendments are in red text, as follows:

Executive Committee
26 (1) The Executive Committee is established.

(2) The Executive Committee shall consist of

(a) the President, who shall be its chair;
(b) the President-Elect, who shall be its vice-chair;
(c) four other Benchers from among the elected Benchers;
(d) one lay Bencher; and
(e) upon resignation or completion of their eligible terms as a Bencher, the immediate past President, who shall not be entitled to vote at any meeting of the Committee.

Recommendation

It is recommended that the Benchers make the above noted amendments to the Rules.

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Report to Benchers

March 26, 2021

From:	**Bill Hendsbee**
Re:	**Alberta Law Foundation Update**

The most recent Alberta Law Foundation (ALF) Board meeting was held via Zoom from March 14-15, 2021. The following matters were dealt with:

1. **Governance**

   The ALF Board is comprised of 7 members. The Board confirmed the re-appointment by the LSA of the following members:

   -Bill Hendsbee, to February 2024

   -Paul Chiswell, to February 2024

   The terms of three of the remaining Board members expire in May 2021. All of those positions are appointed by the Government of Alberta (GOA). One of those Board members, Cindy Lang, a lawyer with Alberta Justice, has decided to resign from the Board. She will be replaced by another Alberta Justice lawyer.

   A GOA decision on the renewal of the remaining two Board members, Karen Gallagher-Burt and Monica Kreiner, remains pending. The Foundation has written to the GOA on a number of occasions to ask that their terms be renewed but, to date, has received no response.

2. **Finances**

   The Foundation's financial situation continues to present challenges due to ongoing issues related to the oil & gas industry, the weak Alberta economy, the COVID-19 pandemic, drastically reduced interest rates and severe reductions in provincial government funding to the justice sector.

   Revenue from interest on lawyers' trust accounts (IOLTA) - the primary source of ALF's annual revenue – continues to be forecasted to drop from $32 million in fiscal 2020 to just under $6 million by the end of fiscal 2021. Further, the Foundation's requirement to provide Legal Aid Alberta (LAA) with special funding over the next three years in the amount of $34.4 million in addition to

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the Foundation's annual statutory funding to LAA of 25% of IOLTA, continues to place financial strains on the Foundation.

In anticipation of continued low interest rates, declining trust account activity and the ongoing special funding commitment to LAA, the Foundation projects the complete depletion of its Strategic Reserve Fund (which stood at $12 million at the end of 2019) by the end of fiscal 2022. Even with staged reductions in grant levels over the next three years, the Foundation expects its Grant Stabilization Fund to fall from $45 million to just under $29 million by the end of fiscal 2023 in order to allow for ongoing support to deserving organizations within the justice sector.

3. Grants

Grants were approved for the following organizations:

- Calgary Youth Justice Society CPS Youth Awareness Project
- Wahkohtowin Law and Governance Lodge
- Calgary 7th Step Society
- Canadian Institute of Resources Law
- Student Legal Assistance (Calgary)
- Calgary Legal Guidance
- Lethbridge Legal Guidance

Respectfully submitted,

Bill Hendsbee, QC

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Report to the Meeting of the
Benchers of the Law Society of Alberta
15 and 16 April 2021
Virtual Meeting

Introduction to ALRI

ALRI was established by agreement among the Attorney General, the Law Society of Alberta and the University of Alberta in 1967. This agreement was and is an innovative, made in Alberta approach to law reform that has served the province well for 54 years. The Alberta approach to law reform has been adopted in other Canadian provinces and several Australian states.

We have a small staff of lawyers who undertake comparative research to develop policy recommendations to improve the laws of Alberta. We are constantly expanding our consultation networks to make sure that our recommendations will be practical and beneficial. Consultation also promotes community awareness ahead of government adoption of recommendations for reform.

Over the decades, our work has covered a wide range of topics with the dominant focus on private civil law within provincial jurisdiction. Key examples of our work include:

- *Family Property Act* – which sets out the property rights of 1.5 million married Albertans and since January 2020, a further 320,000 Albertans in common law relationships
- *Business Corporations Act* which governs 39,000 businesses that incorporate in Alberta every year
- *Alberta Rules of Court* which govern every action filed in the Court of Queen's Bench

ALRI is funded by the Alberta Law Foundation and the Department of Justice and Solicitor General – both of which are under extreme economic pressure. ALRI has a small operating reserve intended to cover the loss of one year of Justice funding. We will be drawing on that reserve this fiscal to cover a $400,000 drop in annual Justice funding.

There hasn't been a Canadian study on the economic impact of law reform. However, an independent study released last year concluded that the economic impact of the English Law Commission exceeded $5 billion (CAN) over a 7-year period. The return on investment for

government funds was 107 fold – for every $100,000 invested in law reform, the benefit to the community is $10.7 million.

ALRI also has the ability to leverage volunteer contributions from senior experts and judges in the profession. Our extensive engagement with top practitioners in a variety of areas means that we can call on them quickly. For example, last spring we quickly saw that Covid-19 restrictions made it impossible in many instances for Albertans to make valid wills, personal directives and enduring powers of attorney, as all three of these documents required the maker to sign in person with one or two witnesses. We brought together a group of highly experienced wills and estates practitioners to put together proposals for how such key documents could be made using video technology while maintaining safeguards against fraud and duress. Our proposals were implemented by government, first as a ministerial order and then as amendments to legislation when the Legislature resumed. That work was possible due to our previous involvement in developing the *Wills and Succession Act*, the *Estate Administration Act* and the *Trustee Act*.

Standing in the Place of a Parent: Family Maintenance and Support

In November, ALRI published a Report for Discussion that reviews the obligation that a person who stands in place of a parent has or should have towards a child that they treat as their own.

To be standing in the place of a parent, a person must meet two conditions under the *Family Law Act*. First, the person must be the spouse or partner of the child's parent. In other words, the person must be the child's step-parent. Second, the step-parent must have "demonstrated a settled intention to treat the child as the person's own child." There are several factors a court may consider to determine whether a step-parent has demonstrated that settled intention. Those factors set a threshold that is far more than simply having the status of step-parent. ALRI is reviewing this area of the law as children are treated differently under Alberta legislation.

The *Family Law Act* applies when a couple separates. Under the *Family Law Act*, a child can apply for and may be entitled to support from a step-parent who meets the legal requirements for standing in the place of a parent. A child support order made while the step-parent was alive will usually bind the estate of the step-parent, meaning the child will continue to receive support if the step-parent dies.

The *Wills and Succession Act* applies when a person dies. The *Wills and Succession Act* includes protections for certain family members of a deceased person. If a spouse, partner, or child does not inherit enough to meet their needs, they may apply to court for family maintenance and support from the estate. A child to whom the deceased was a step-parent and who met the legal requirements for standing in the place of a parent is not one of the

family members who can apply. This means that the child has no chance of receiving family maintenance and support from the step-parent's estate, no matter how great the child's need.

ALRI's preliminary view is that the difference between the two statutes is not justified. It is in the best interests of a child to have the opportunity to apply for support, regardless of whether the step-parent standing in the place of a parent is living or dead.

ALRI has proposed changing the law to allow a child to apply for family maintenance and support from the estate of a step-parent who stood in the place of a parent. It should be noted that family maintenance and support would not be granted automatically. A court may order it only if the child requires support and the estate has not provided support that is adequate in the circumstances.

We are currently reviewing the consultation responses we have received. We commissioned two separate surveys with 400 responses each, including targeted participation from 200 respondents with step-parent backgrounds. Generally speaking, the responses appear to support ALRI's proposed recommendations. However, we are coding and analysing the responses closely before making final recommendations.

You can access our report and a short video at https://www.alri.ualberta.ca/portfolio-items/standing-in-place-of-a-parent-child-support/.

Personal Property Security Law

In December, ALRI published a report for discussion on *Personal Property Security Law*. Alberta's *Personal Property Security Act* [PPSA] originally came into force in October 1990. Its enactment transformed secured transactions law in Alberta by sweeping away many of the restrictions and limitations that impeded the use of secured credit. It replaced the piecemeal approach that formerly governed with a comprehensive and rational system that fostered certainty, transparency and flexibility. Every Canadian province and territory, except for Quebec, has enacted personal property security legislation. Although there are minor variations across jurisdictions, these statutes are substantially uniform.

Although the PPSA produced a significant improvement in the law, experience with the legislation over the course of the last three decades has revealed several instances where improvements or clarifications are desirable. In some cases, the need for reform is driven by technological advances. When the PPSA was first enacted, electronic banking and electronic commerce were in their infancy. In other cases, judicial decisions have revealed ambiguities in the legislation that have produced uncertainty. Further, the statute simply did not anticipate the kinds of controversies that would be litigated in the future, and therefore did not provide rules for the resolution of these types of disputes.

The Canadian Conference on Personal Property Security Law [CCPPSL] is an organization of provincial and territorial government officials and academics. It has played a leading role in the design of the PPSA model that is used in Alberta. In 2017 the CCPPSL issued *Proposals for Changes to the Personal Property Security Acts*. These proposals have now been fully implemented in Saskatchewan and partially implemented in British Columbia and Ontario. Other provinces will likely be guided by the CCPPSL Report and it is timely for Alberta to update its PPSA.

ALRI has reviewed the changes proposed by the CCPPSL and their adoption in Saskatchewan, British Columbia and Ontario. ALRI recommends that the CCPPSL changes should be adopted in Alberta with slight modification as necessary. The major areas of reform are as follows:

- The rules that govern negotiable property are rationalized and expanded to address electronic transfer of funds.
- The concept of electronic chattel paper is introduced to facilitate paperless transactions where this form of property is sold or used as collateral.
- The rules that govern purchase-money security interests are clarified and expanded to provide greater guidance on this crucial form of financing. The changes enhance the ability of secured parties to claim purchase-money security interests in inventory, and preserve purchase-money security interest status in a refinancing.
- The rules governing the transfer of collateral to buyers and others are rationalized and improved.
- Secured financing is facilitated through amendments that clarify that valuable assets such as licences may be used as collateral, that eliminate red tape requirements that unnecessarily increase the administrative costs of secured finance, and that improve the ability of secured parties to take steps to protect their interest.
- The rights of account debtors asserting set-off against secured parties are clarified and strengthened.
- A number of uncertainties in the rules that determine priorities between secured parties and other competing claimants are clarified so as to produce greater certainty and predictability.
- The choice of law rules are revised, and the method for determining the location of the debtor is changed so as to align with the new approach adopted in British Columbia, Saskatchewan and Ontario. This produces greater certainty in the law and avoids the deleterious effects of forum shopping that will inevitably arise if provinces and territories employ different choice of law rules.
- The registration provisions are improved to better achieve the underlying goals of the registry system, namely the publication of information in a manner that will allow effective risk-assessment by affected parties.

ALRI also recommends that parallel provisions in the *Civil Enforcement Act* should be amended alongside the PPSA.

You can access our report at https://www.alri.ualberta.ca/2020/12/personal-property-security-act/. ALRI will be discussing PPSA reform at the CBA Creditor Debtor (North) section on April 7.

Dower

The *Dower Act* has been part of Alberta law for more than 100 years but it has not changed substantially since 1948. The Act is the only significant piece of Alberta legislation that applies to married couples but not adult interdependent partners. The Act also throws up a range of practical problems. ALRI is carrying out a thorough review to determine whether the provisions of the Act should be reformed or repealed.

As noted, the Act only applies to married spouses. Where the "homestead" is owned only by one spouse [the owner spouse] the Act provides two key protections to the other spouse [the dower spouse].

- Consent to disposition: The owner spouse cannot dispose of a homestead without the consent of the dower spouse. Disposition includes a transfer, long-term lease, or mortgage. If the owner spouse disposes of a homestead without consent, they may be subject to a penalty and liable to pay damages to the dower spouse.

- Life estate: The dower spouse is entitled to a life estate in the homestead after the death of the owner spouse.

The definition of "homestead" applies to a curious range of property which does not reflect the range of housing available to Albertans. Notably, it does not provide any protection to renters which makes it inconsistent with other Alberta legislation. For example, the *Family Law Act*, the *Wills and Succession Act* and the *Family Property Act* all have definitions of "family home" that are more inclusive than the dower definition of "homestead". Further, a homestead includes any property where the owner spouse had resided which makes it broader than the concept of "family home".

ALRI is preparing recommendations on whether the key features of the Act continue to serve a valid purpose in Alberta law. Our report for discussion in this area will be published in the spring.

ALRI will be discussing dower at the following CBA section meetings:

- 5 May – Creditor Debtor (North) section
- 11 May – Wills and Estates (North) section
- 12 May – Real Property (North) section
- 9 June Residential Real Property (South) section

Sandra Petersson
Executive Director

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Assist
Alberta Lawyers' Assistance Society

Report to Benchers

Alberta Lawyers' Assistance Society

From:	Bud Melnyk, QC
Date:	4/15/2021

12

Assist is a charitable society with the following mission:

Enhancing the immediate and long-term well-being of Alberta lawyers, articling and law students, and their dependent families through confidential and non-judgmental psychological assistance, peer support, education and community.

Twenty-five years of supporting lawyers

Assist was incorporated as a society on April 19, 1996, making this year our 25th anniversary of supporting the Alberta legal profession. Over the last 25 years, we have evolved from providing counselling services at first only to lawyers and articling students, to also including law students and dependent family members of lawyers, articling students and law students. We expanded to provide a best-practices peer support program in 2010, and to offer community-building programs in 2018 as isolation and loneliness can be harbingers of more serious mental health challenges.

We do not know the total number of people who have used our programs. However, our current psychological services provider maintains a running tally of use by lawyers to the number of lawyers in Alberta. More than 21% of Alberta lawyers have accessed professional counselling through Assist since 2008.

Assist is grateful for the support of the Law Society over the last 25 years. The Law Society has provided sustainable funding for our core programs throughout this period. We supplement this sustainable funding through additional fundraising so that we can also provide proactive programs. Assist became a registered charity for income tax purposes in 2007.

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As we celebrate our 25th anniversary, we are encountering a challenging fundraising climate created by the pandemic and economic recession. However, we plan to combine awareness and education with innovative fundraising activities to ensure that we meet our budget.

First, we will be increasing our outreach to large law firms, who have been largely silent to our fundraising efforts. We know that some large firms provide an allowance for mental health and counselling expenses (as high as $5000 per lawyer per year), but lawyers from large firms account for almost one-third of Assist's counselling cases. We believe that this is because our counsellors have, on average, at least 10 years of clinical experience before joining our roster, and they understand common issues, dynamics and stressors in our profession.

We believe that we need to recalibrate the dollar value of our support level from large firms. We have used the same ask since 2013 ($5000) but believe that asking more firms for a lower amount ($2500) will be a more successful strategy. We will also ask Assist supporters from those firms to walk our request letter to their managing partners' offices as it easy for requests to slide.

Support from mid-size and small firms has been strong. We will continue our education and awareness initiatives in this demographic.

Secondly, we have three new fundraising activities which we hope will be well-received in the legal community:

- Assist has partnered with the purveyor of high-end giftboxes to offer lawyers and law firms a selection of four packages for Administrative Professionals Day (April 28th). Assist will receive a donation of between $10 and $17 per box. We hope to raise $1000 through this project in 2021 and that it will expand as awareness spreads.
- Assist will be holding a "$25,000 for 25 Years" silent auction in June, which will be online so that lawyers can bid regardless of their location.
- Assist will be sponsoring a Well-being Olympics event in September which will have virtual/individual activities as well as in-person activities if allowed. We will seek law firm sponsors as well as having an entry fee for individuals and teams (a portion of which will be eligible for a tax receipt.)

In our funding application, approved by the Law Society in December of 2020, we committed to raise $101,500 during 2021. This can be broken down as follows:

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Activity	Amount
Law Firm Campaign	$30,000
Silent Auction	$25,000
Well-being Olympics	$10,000
Admin Professionals Gifts	$1,000
Canadian Bar Association	$25,000
Individual donations	$ 9000
Nunavut Bar Association*	$ 1500
	$101,500

* We provide counselling services to lawyers in Nunavut in exchange for this contribution.

We are looking forward to raising awareness of lawyer mental health challenges, encourage well-being strategies and providing professional counselling, peer support and community to all of our peers in 2021.

Respectfully submitted,

Bud Melnyk, QC

THE CANADIAN BAR ASSOCIATION
Alberta Branch

REPORT TO
Bencher Meeting
April 15 – 16, 2021

Committee Name:
Canadian Bar Association Alberta Branch

Chair or Representative:
Bianca Kratt, Vice-President, CBA Alberta Branch

CBA Alberta Board and Secretary Election
The nomination period for the board of directors and secretary elections will run from April 1 – 26. This year, we are recruiting four board positions – one south lawyer (from outside of Calgary), one north young lawyer and two directors at large – and the executive committee secretary who must reside in north Alberta. More information, including nomination forms, is now available on our website at www.cba-alberta.org/Elections.

New Mentor Program
In 2020, the CBA Alberta board of directors struck a mentoring task force that was charged with providing a recommendation about the implementation of a new mentoring program that would meet the needs of our members as identified through personal experience, staff feedback and surveys of young lawyers conducted in the fall. The task force recommended a mentoring circle program, in which three young lawyers within their first five years of practice would be grouped with one mid-level and one senior-level lawyer, with the goal of helping the young lawyers build community and benefit from the insight of experienced practitioners. We expect this program to launch in the 2021-22 membership year, and more details will be forthcoming.

Anti-Racism and Diversity Webinar Series
Throughout the spring, the CBA Alberta Equality, Diversity & Inclusion Committee will be running a three-part webinar series on anti-racism and diversity in the legal profession. The series will include anti-racism training, a panel on allyship in the profession, and bystander training. These webinars will be open to both CBA members and non-members. Registration details will be available shortly.

CBA Community
We have recently launched "Community", an online discussion platform for CBA members to gather and connect. We have passed the initial stages of rolling the platform out to CBA Alberta members where we targeted specific Sections and have now opened the platform to the rest of our membership. We are pleased to see regular participation by those already

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Alberta Branch

on the platform and look forward to welcoming further participation in the coming months. CBA Alberta members can access the platform by clicking the "Log in to Community" link at www.cba-alberta.org.

Fall 2020 Legislative Review Summary

The CBA Alberta Legislation & Law Review Committee has released the Legislative Summary for the fall 2020 sitting of the legislature, which is now available on the CBA Alberta website at https://cba-alberta.org/Publications-Resources/Legislative-Summary.

We thank the Alberta Law Foundation for their ongoing support of our Legislation & Law Reform Committee, as well as our committee chairs Omolara Oladipo (North) and Bernard Roth (South), and all our committee members.

Law Matters

The CBA Alberta Editorial Committee has been releasing some excellent content on our new digital platform, and we invite members of the profession to visit and read the work of our contributors:

- Canada's new privacy regime in Alberta, by Marc Yu and Lyndon Bolanac
- Protecting privacy in the era of AI, by Ryan Phillips and Matthew Scott
- A conversation with Justice Gaylene Kendell, by Lulu Tinarwo
- The wage subsidy's mixed result, by Shaira Nanji
- Code of conduct, by Elizabeth Aspinall

Watch for weekly content coming from our Editorial Committee and contributors at www.nationalmagazine.ca/LawMatters.

For information on these or other CBA initiatives, please contact Maureen Armitage at 403-218-4315, Bianca Kratt at 403-294-7000, or any other member of the Alberta Executive.

David Hiebert, President
Amanda Lindberg, Treasurer
Frank Friesacher, Past President
Bianca Kratt, Vice-President
Indra Maharaj, Secretary
Maureen Armitage, Executive Director

Respectfully submitted,
Bianca Kratt
Vice-President, CBA Alberta Branch

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LAW SOCIETY of ALBERTA

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Report to Benchers

March 29, 2021

From:	**Carsten Jensen**
Re:	**Federation of Law Societies of Canada**

I am pleased to present this report to the Benchers on the work of the Federation.

My report on activities is as follows:

1. **Federation Council Meeting March 2, 2021**:

    a. **Anti-Money Laundering** - Council received a report from the Anti-Money Laundering Working Group.

    Previous amendments to the model anti-money laundering rules, adopted by Council in October 2018, have now been adopted by 10 of the 14 law societies, and the others are working through their approval process.

    Draft further amendments to the model anti-money laundering rules will be completed in sprint 2021. One of the issues under consideration is whether the exemption for electronic fund transfers should be maintained.

    The Working Group has prepared further educational materials on the rules which are available on the Federation's public website.

    The joint Federation - Government of Canada working group met in December 2020 to keep lines of communication open.

    b. **Reconciliation Initiatives** - In December 2020, Council discussed three options for moving the Federation's reconciliation work forward and ensure appropriate accountability for that work. The three options included maintaining the existing Advisory Committee but with a new mandate, establishing a new committee with a new mandate, or establishing an Indigenous Advisory Council comprised exclusively of Indigenous representatives. The Executive Committee continues to consult with respect to these and other options, and Council will consider this further at a special meeting to be held May 10, 2021.

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c. **National Well Being Study** - work on this study continues as planned, with the expectation that the national survey will be ready to launch in May or June 2021.

d. **NCA Assessment Modernization Committee -** The mandate of this committee is to make recommendations to Council for the development and implementation of a competency-based assessment system for candidates applying to the National Committee on Accreditation. Cori Ghitter is involved in this work which has been supported by the LSA. The Committee is continuing its work with the consultants who have been engaged on the project.

e. **National Requirement** - the National Requirement sets out the competencies that graduates of Canadian common law programs must have, and the learning resources that law schools must provide. This is a companion piece of work to the NCA Assessment work, as the required competencies must effectively be the same. A review of the National Requirement review must be completed by the end of June 2022 (every 5 years). The Executive Committee is proposing that this review project start as soon as possible. This will be the subject of a further discussion at the special meeting of Council to be held May 10, 2021. I understand that alberta supports this review, and I propose to coordinate with Liz and Cori as needed.

f. **Budget** - I had previously reported on the Federation's proposed budget and Law Society Levy (which is modestly decreased), all of which has now been approved by Council.

2. **Standing Committee on the Model Code of Professional Conduct**:

a. As previously reported, I am continuing as a member of this Committee, and now serve as Vice-Chair. Nancy Carruthers is also a member of this Committee.

b. We have completed a series of meetings to consider consultation feedback on two of our projects - new language for the Model Code on Discrimination and Harassment and on *ex-parte* communications. We expect to circulate revised language for further consultation in the coming weeks.

c. We are also continuing with the early stages of development of a Model Code requirement for indigenous cultural competence. We are aware of Alberta's educational requirement and its adoption of The Path as a

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learning tool and are of the view that an educational requirement fits well with an ethical requirement in the Code. We are in the early stages of outreach and consultation on this project, and there will be more to report on this as we move forward.

Respectfully submitted,

Carsten Jensen

Legal Education Society of Alberta

Christine Sanderman
Executive Director

Legal Education Society of Alberta
www.lesa.org

March 26, 2021

Report to: **The Law Society of Alberta Benchers, April 2021**

The Legal Education Society of Alberta (LESA) serves the spectrum of educational and professional development needs of Alberta's lawyers, articling students, and their staff. LESA extends its sincere gratitude to those in the legal community who volunteer their time, talent, and energy to support our important educational initiatives.

Continuing Education Update

We are in the final stages of publication on a brand-new addition to our Practice Manual series, the first in over 5 years! The ***Alberta Business Law Practice Manual*** will be published in 2021 and will provide in-depth coverage of corporate-commercial law and practice.

Our online **LESA Library** continues to be updated with LESA's program papers and publications. We are currently working on an update to the LESA Library which will improve user accessibility. We anticipate providing new subscription options, including offering subscriptions by individual area of law. The new library will launch in 2021.

LESA continues to run webinars through the spring. We are monitoring gathering restrictions and plan to return to in-person programming when permitted. The following programs are scheduled until the end of June:

- Civil Litigation Series | 10-part webinar series (each 1-hour) | January – April, 2021 (starting January 14, 2021)
- Criminal Law Series | 6-part webinar series (each 1-hour) | April – June 2021 (starting April 9 2021)
- Mindfulness and Lawyer Well-Being | 1-hour webinar | April 12, 2021
- Franchising Essentials | full-day program | April 14 & 21, 2021
- Stick to the Status Quo? Parenting and Family Law | 1-hour webinar | April 19, 2021
- Family Property Act for Legal Support Staff | 3-hour webinar | April 22, 2021
- Family Law Appeals | full-day program | May 5 & 12, 2021
- Debtor/Creditor Disputes Part 1 | 3-hour webinar | May 11, 2021
- Alberta Legal Technology Conference | 9-part webinar series (each 1.5-hours) | May – June, 2021 (starting May 13, 2021)
- Debtor/Creditor Disputes Part 2 | 3-hour webinar | May 18, 2021
- Advanced Legal Writing Part 1 | 3-hour webinar | June 7, 2021
- Advanced Legal Writing Part 2 | 3-hour webinar | June 14, 2021

- Builders' Liens | full-day program | June 15 & 17, 2021

LESA's annual Refresher program, typically held in early May, has been cancelled for the 2021 year. The 53rd Annual Refresher: Wills & Estates had been postponed from 2021 and we are looking at alternate formats for this program in the fall. We look forward to welcoming attendees back to our annual Refresher program in May 2022 where we will be hosting the program in Banff.

LESA's week-long Intensive Advocacy course, typically held in June, has been postponed to October 2021.

Acknowledgement

We are extremely grateful to the Benchers and staff of the Law Society of Alberta for their exceptional support. We appreciate the ongoing opportunity to work collaboratively with the Law Society to promote professionalism, competence, and excellence in the Alberta legal community.

pbla.ca

Pro Bono Law Alberta
Paths to possibilities

Committee Name:	Pro Bono Law Alberta
LSA Bencher Representative:	Kene Ilochonwu
Date Submitted	March 26, 2021

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A. Court-Based Programs

Virtual Court-Based Programs Relaunch

The Civil Claims Duty Counsel (CCDC) Project and Queen's Bench Court Assistance Program ("QB Amicus) administered by PBLA resumed virtually on December 16, 2020. With the transition to virtual service delivery, volunteer lawyers now provide self-represented litigants with summary legal advice and assistance via telephone and video conference.

The objective and scope of the court programs have not changed with the shift to virtual delivery – the programs remain vehicles of engagement designed to provide lawyers and students with opportunities for pro bono service.

A key feature of the virtual modality is the development of a dedicated document sharing portal that allows lawyers and clients to privately share documents before and shortly after their virtual session. Unlike the pre-pandemic framework for program delivery, clients are now expected to book appointments for virtual assistance.

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Following a successful pilot, the virtual delivery of the court-based programs entered its operational phase on February 3, 2021. Below are highlights of client and volunteer engagement outputs between February 1 and March 19, 2021:

FEBRUARY 1 – MARCH 19, 2021						
Client Uptake	**CCDC**			**QBA**		
	Calgary	**Edmonton**	**Other^**	**Calgary**	**Edmonton**	**Other^**
Applications Received	72	49	10	33	10	14
Applications Denied	5	2	1	9	2	3
Application Processed^^	67	47	9	23	8	11
No-show clients	0	1	-	1	0	-

Program Outputs – Feb 1 – Mar 19, 2021	***CCDC***	***QBA***
Total People Seen*	40	26
Total Claims	47	26
Total Docs	16	16
Total Referrals	14	19
Total Representation	7	16
Total Pro Bono Hrs (Volunteer Lawyers)	140	100

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^ Outputs for program clients who apply from areas other than Calgary and Edmonton are reported under Calgary or Edmonton outputs, based on the location of the volunteer lawyer.
^^ Variance between applications processed and outputs for clients assisted is due to missing Daily Report Forms.
* The number of clients assisted is estimated based on the number of daily report forms completed and submitted by volunteers. The total number of individuals assisted is higher as Daily Report Forms were not submitted by volunteers for 19 CCDC shifts and 13 QB Amicus shifts during the report period.

❖ Lawyer and Law Firm Engagement

PBLA delivered 21 training sessions and onboarded 145 volunteer lawyers on the court-based programs during the report period. Trainings continue to be provided to volunteer lawyers.

PBLA welcomed Stikeman Elliott LLP to the QB Amicus program in Calgary.

Shift uptake by law firms and individual volunteers for the 2021 program calendar has been significantly positive. The table below summarizes shift uptake by law firms, in-house legal and government legal departments, and individual volunteer lawyers.

Program	Total Shifts for 2021*	Open shifts	Shift open that already passed	Percentage of shift intake
CCDC CGY	400	27	7	**93.2%**
CCDC EDM	180	61	11	**66.1%**
QBA CGY	262	8	6	**97%**
QBA EDM	44**	0	0	**100%**

* Includes January 2021 pilot shift and excludes statutory holidays and judicial seminars.

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❖ IT Platform for Court-Based Programs Delivery

PBLA continues to work towards optimizing the existing web-based platform for program delivery with a view to developing a permanent IT platform as soon as funding is found for same.

B. Community Initiatives and Collaborations

I. Collaboration on Joint Recruitment Drive

PBLA continues to collaborate with Calgary Legal Guidance, the Public Interest Law Clinic and Judith Hanebury, QC on a joint recruitment initiative to boost volunteer capacity to address anticipated increase in consumer debt matters.

C. 2021 Virtual Volunteer Appreciation Event

PBLA is hosting its first virtual volunteer appreciation event on Thursday, April 22, 2021 from 11: 30a.m – 1p.m. The event will recognize and celebrate the pro bono contributions of Alberta lawyers to the legal response to COVID-19 and highlight efforts by other community partners working to advance access to justice in Alberta. The vent will be held during National Volunteer Week (April 18 – 24) and is one of many activities planned to raise awareness about pro bono volunteering in the month of April.

D. Administrative Matters

Majority of PBLA operations continue to be conducted remotely and staff continue to be productive.

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PBLA's Board has completed its Strategic Planning exercise and approved a new set of goals and objectives for the organization. A comprehensive strategic plan for 2021- 2024 with activities is expected to be finalized in the Spring.

PBLA will continue to monitor developments around the COVID-19 pandemic to inform its program and operational recovery strategy.

Respectfully submitted,

Kene Ilochonwu

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