

Special Meeting Frequently Asked Questions

On January 13, 2023, the Law Society of Alberta's Executive Director received a petition signed by 51 lawyers to call a Special Meeting of the Society to vote on a resolution to repeal Rule 67.4 of the [Rules of the Law Society of Alberta](#). A subsequent review of the petition resulted in one of the lawyers being removed from the list because they were inactive (which did not affect the required number).

Section 28(1) of the Legal Profession Act requires the Executive Director to call a Special Meeting of the Law Society within 30 days of receipt of the petition.

1. What is the Special Meeting on February 6 about?

The central issue at hand is the authority of the Law Society Benchers to mandate specific professional development activities for Alberta lawyers in the public interest.

The Law Society is committed to ensuring a fair and transparent meeting format. We encourage active lawyers to review the Special Meeting rules in the [Rules of the Law Society of Alberta](#), Rule 33, in advance of the meeting.

2. How do I attend and vote in the Special Meeting?

The Special Meeting will be held virtually on Monday, February 6 at 11 a.m. **Only active Alberta lawyers are permitted to attend the Special Meeting.** Notice of the Special Meeting, the accompanying petition and registration were sent to active lawyers on Thursday, January 26.

To attend the Special Meeting and vote, an active lawyer must:

- a. Pre-register using the information included in the notice by no later than Friday, February 3 at 11 a.m.
- b. Log in on the day of the Special Meeting using their unique Zoom link that will be sent to them on February 3. Registrants **must** login by 10:45 a.m. to attend and vote. The virtual meeting 'door' will open at 10 a.m. and will then automatically lock at precisely 10:45 a.m., preventing further admission to the meeting regardless of whether the member has registered or not.

Active lawyers attending the Special Meeting will vote on the resolution in the petition. Proxy voting is not permitted.

3. What are the potential outcomes of the Special Meeting?

The resolution will pass if a **majority** of the active lawyers present at the Special Meeting and voting vote in favour of it.

If the Resolution Passes

- o The passing of the resolution at the Special Meeting is not binding on the Law Society or Benchers. However, if the resolution passes it must be considered by the Benchers at

their next meeting, which is on February 23, 2023 (section 29(1) of the *Legal Profession Act* (LPA)).

- Should the Benchers decide to implement the resolution, it requires a 2/3 vote of the Benchers as it is an amendment to the Rules of the Law Society of Alberta.
- If the Benchers do not implement the resolution, active lawyers may submit a second petition requesting the Benchers to have a vote of all active members on the resolution.
- The Law Society will hold the vote by electronic means, similar to the last Bencher election.
- If at least two-thirds of those voting vote in favour of the resolution, the Benchers must implement the resolution to the extent that they are by law able to do so (section 29(2) of the LPA).

If the Resolution Does Not Pass

- No further action is required by the Law Society.

4. When was Rule 67.4 enacted and why?

The Benchers adopted Rule 67.4 in December 2020 to allow Benchers to, from time to time, prescribe specific continuing professional development (CPD) requirements to be completed by members, in a form and manner, as well as time frame, acceptable to the Benchers. This was following the Benchers approving a motion in October 2020 to mandate [Indigenous cultural competency education](#) through a course called The Path (Law Society of Alberta) – Your Journey Through Indigenous Canada for all active Alberta lawyers.

The Benchers decided to make The Path mandatory in response to the [Truth and Reconciliation Commission's \(TRC\) Calls to Action](#), which specifically called for law societies to ensure that lawyers receive Indigenous cultural competence training (Call to Action #27). This decision was also consistent with our [Strategic Plan](#) goals of Lawyer Competence & Wellness and Equity, Diversity & Inclusion.

The Benchers thoughtfully debated the issue of whether The Path should be mandatory or not. The decision to make the program mandatory was not taken lightly, particularly given that an administrative suspension was the consequence of non-compliance. The Benchers appreciate the significance of mandating education for Alberta lawyers and are cautious to make sure this is done in the public interest.

As was the case when mandating The Path, any future education under Rule 67.4 would be fully vetted and carefully considered by the Benchers. The Benchers can apply this rule if they deem an area of competency as foundational to the core of lawyer competency requirements.

5. How does Rule 67.4 support the mandate of the Law Society and self-regulation?

CPD is essential to protecting the public interest by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity, knowledge and professionalism. In this regard, we are not alone. It is common for regulators of professions to have and exercise the authority to require their members to take specified professional

development courses, as a result of thoughtful consideration. Rule 67.4 supports this approach to CPD.

As a self-regulating profession, the core mandate of the Law Society is to protect the public interest. It does so in part by promoting and enforcing standards of professional and ethical conduct by Alberta lawyers. A legal profession regulated in the public interest is fundamental to a free and democratic society. We believe this is best achieved by way of an independent and independently regulated legal profession. Ensuring competency within the profession is a key component of our ability to maintain the privilege of self-regulation, a principle that is fundamental to Alberta lawyers.

Self-regulating professions continue to be under intense scrutiny with public policy makers concerned as to whether regulatory bodies are sufficiently focused on the public interest as opposed to member interests. The Law Society must ensure that we are continuing to discharge our duties using the lens of the public interest in everything we do, including setting standards for competence.

6. What is the Law Society's authority to mandate specific continuing education?

The Law Society sought and received legal advice confirming the Benchers' authority to enact Rule 67.4, allowing continuing education to be mandatory and enforced through administrative suspensions. An external legal opinion was provided by Jim Casey, KC, and Katrina Haymond, KC, of Field Law.

The analysis with respect to the Law Society's authority is summarized as follows:

- a. The wording of Rule 67.4 is sufficiently broad to provide authority for the Law Society to require the completion of The Path and other specific professional development courses. Therefore, the central legal issue is the authority of the Benchers to adopt Rule 67.4.
- b. While the LPA does not expressly indicate that the Benchers may establish a mandatory CPD program, the Law Society had the implicit authority to do so.
- c. The Rules of the Law Society are a type of subordinate legislation. The validity of subordinate legislation is assessed using the conceptual framework in a series of Supreme Court of Canada cases: *Katz Group/Catalyst/Green*. Under this conceptual framework the issue is whether the CPD requirements in Rule 67.4 are consistent with the scope of the Law Society's mandate having regard to the purpose and objects of the LPA. In other words, does Rule 67.4 conform to the rationale for the statutory regime established by the legislature?
- d. While the LPA does not include a purpose or objects statement, it is universally acknowledged in the case law and academic analysis that the statutory purpose of self-regulating professional organizations is to protect and advance the public interest. This is consistent with the Law Society's 2019 Statement of Regulatory Objectives.
- e. The Supreme Court of Canada in *Green v. Law Society of Manitoba* recognized that CPD programs advance and protect the public interest by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity, knowledge and professionalism. As noted by the SCC in *Green* (para. 3), most Law Societies in Canada have implemented compulsory CPD programs. In *Green*, the SCC



upheld the Law Society of Manitoba's mandatory CPD program and administrative suspensions for non-compliance.

- f. The Benchers have very broad rule making authority in section 7(1) of the LPA to make rules for the governance of the Law Society, the management and conduct of its business and affairs and for the exercise or carrying out the powers and duties conferred or imposed on the Law Society or the Benchers under the LPA or any other Act. The specific rule-making authority in section 7(2) is stated as being without restricting the generality of section 7(1).
- g. The SCC in *Green* and other courts have confirmed that the rule-making authority of regulators is to be construed broadly so that the regulator can take steps to advance and protect the public interest. As noted in *Morris v. Law Society of Alberta*, the Law Society has an "expansive mandate and regulatory authority."
- h. CPD programs are consistent with the public interest objective of the Act.
- i. Therefore, the Benchers had the authority to enact Rule 67.4.
- j. With respect to the specific requirement to take The Path, this program is a type of CPD as referenced in Rule 67.4. In the current era, cultural competence is viewed as being an important component of overall professional competence.

7. What is the Law Society's legal authority to impose administrative suspensions for non-compliance?

The Law Society's legal authority to impose administrative suspensions for non-compliance is as follows:

- a. Rule 67.4(3) provides that every active member who does not complete the requirements under Rule 67.4(1) within the specified time frame shall stand automatically suspended.
- b. Therefore Rule 67.4(3) provided the Law Society with explicit authority to administratively suspend active members who did not complete The Path.
- c. The Law Society Benchers had authority to enact Rule 67.4(3). Section 7(2)(g) of the LPA provides that the Benchers may make Rules respecting the imposition of a suspension if a member does not file a document or do any act by the time specified or determined in accordance with the Rules. Therefore, the Benchers had express statutory authority to enact Rule 67.4(3).

8. Is there any other specific education that the Law Society requires?

Two other examples of mandatory education required by the Law Society are three online courses that Responsible Lawyers must take before being approved by the Law Society, as well as our Principal Training Course.

It is in the public interest to ensure that Alberta lawyers do not pose a risk to the public related to the handling of trust money and trust property. The Law Society has the responsibility to set standards for approving members to become a Responsible Lawyer and qualify to open, operate and maintain a Trust Account. The Law Society, in conjunction with the Legal Education Society of Alberta (LESA), has developed three complimentary online courses that a Responsible Lawyer must complete before being approved.

The Principal Training Course was developed in response to the 2019 articling survey. The results raised concerns about inconsistent articling experiences from the perspectives of both students and principals. These concerns included varying quality of the articling experience and a lack of training or resources for principals.

The course is a one-time requirement for all lawyers who want to be principals, regardless of previous experience. The course is designed to be completed on-demand so lawyers can work through the material at their own pace. The Law Society has worked with LESA to keep the cost of the course reasonable (registration fee of \$125 to cover LESA's costs to deliver the course).

9. Are there other plans to mandate specific education?

The Law Society does not currently have other courses identified that it intends to require active lawyers to take.

10. Why is it important for the Benchers to continue to have this authority?

The flexibility to retain the authority granted in Rule 67.4 is critically important so that if certain specific education courses are identified that are necessary to protect and advance the public interest, then the Benchers would have the ability to mandate their completion.

11. Have the Benchers taken a position on the resolution of the petition?

The Benchers oppose the resolution. Please read the [Benchers' Letter to the Profession](#) regarding the Special Meeting of the Society to learn about their position on the matter.

12. What does this mean for continuing professional development as a whole?

The petition does not oppose the Law Society's overall approach to CPD, established under Rules 67.1 to 67.3 of the Rules. The challenge is being made specifically to section 67.4 of the Rules.

Work is currently underway to rebuild a CPD model that aspires to empower and equip lawyers to provide the best legal services they can to Albertans. **The new CPD program retains significant autonomy for lawyers to direct their own learning and does not include specific course requirements or a minimum hours threshold.**

Our goal with rebuilding the CPD program is to establish a program that considers experience, existing education programs and stage of career.

The Law Society's [Professional Development Profile](#) for Alberta Lawyers (the Profile) is a first step in the redevelopment of the CPD program for Alberta lawyers as it sets out the competencies the Law Society believes are important to maintain a safe, effective and sustainable legal practice in Alberta today.

The Profile is designed to provide guidance to all Alberta lawyers, regardless of experience or practice area. The Profile is not intended to be a checklist and lawyers are not required to demonstrate competency in every area of the Profile each year. It is meant to provide

guidance when lawyers are selecting areas for professional development that are meaningful to them and their practice.

The Profile does not include substantive areas of law, but broad areas of knowledge, skills and abilities that lawyers practising in all areas might look to develop or expand. As always, lawyers are encouraged to pursue CPD specific to their practice areas in addition to the areas in the new Profile.

13. Where can I direct questions?

Active lawyers with registration or process-related inquiries that are not covered in the notice or this FAQ may email specialmeetingsupport@lawsociety.ab.ca.