LPBC Transition Board and Transition Indigenous Council

Joint Meeting

Agenda

Meeting Date: March 19, 2025

Meeting Time: 1:00 PM – 5:00 PM PST

Meeting Location: Society of Notaries Public BC: Unit 700- 625 Howe Street, Vancouver, BC

Attendees:

Board Members

Bruce LeRose KC (Chair)
Johanne Blenkin
Katrina Harry KC
Elizabeth Kollias
Scott Simpson
Sarah Westwood KC

Indigenous Council Members

John Borrows
Christina J. Cook
Andrea Hilland KC
Carly Teillet

Advisory Committee Members

Paul Craven
John Mayr
Josh Paterson KC
Adam Whitcombe KC

#	Discussion Points	Lead	Est. Time	Materials
1	Welcome and Acknowledgements	Bruce	5 mins	
Consent Agenda				
2	Minutes of February 19, 2025 Meeting			Draft Minutes
Discussion/Decision				
3	Finalize Transitional Website	Bruce	10 min	
4	Unauthorized Practice	Advisory Committee	30 mins	Policy Report
5	Practice Advice	Advisory Committee	30 mins	Policy Report
6	Custodianships	Advisory Committee	30 mins	Policy Report
Break				
Updates				
7	Project Director Update	Advisory Committee	5 mins	
8	Indigenous Lawyer/Advisor Update	Indigenous Council	5 mins	
For Information				
9	Updated Work Plan			Work Plan
In-Camera *(Transition Board and Transition Indigenous Council only)*				
10	Other Business			

SLR Board and Indigenous Council

Minutes of Meeting

Meeting Date: February 19, 2025

Meeting Time: 13:00

Meeting Type: Hybrid

Meeting Location: Law Foundation Board Room

Board Members in Attendance:

Bruce LeRose, KC (Chair)
Johanne Blenkin
Brian Dybwad
Katrina Harry
Elizabeth Kollias
Scott Simpson
Sarah Westwood

Indigenous Council Members in Attendance:

John Borrows
Christina J. Cook
Regrets: Carly Teillet
Andrea Hilland, KC

Advisory Committee Members in Attendance:

Paul Craven
John Mayr
Josh Paterson, KC
Adam Whitcombe, KC

Staff and Observers:

SLR Staff	**Guests**	**Observers**
Maddie Holm-Porter	Christine Tam	Kerryn Holt
		Jeff Hoskins, KC
		Cary Ann Moore

1.0 Welcome and Acknowledgements

The meeting was called to order at 12:58

The Chair welcomed the Board, Indigenous Council, and members of the advisory committee and delivered a territorial acknowledgement.

2.0 Introductions

The Board and Indigenous Council welcomed Katrina Harry, who was appointed by the Law Society to succeed Lindsay LeBlanc as a director. General introductions followed.

3.0 Approval of Agenda

The agenda was approved as presented.

4.0 Approval of Minutes from the previous meeting

The draft Minutes of the January 15, 2025 meeting were approved with the following revisions:

a) the members of the Board and Indigenous Council requested that the names of observers be included in the Minutes,
b) consideration of the Oath of Office was deferred to a later date

5.0 Code of Conduct and Duty

The Advisory Committee proposed a Code of Conduct that included a conflicts of interest policy and oath of office. After discussion the members of the Board and Indigenous Council agreed to table consideration of a Code of Conduct, including provisions related to a complaint about a director, and a proposed oath of office, to a later date. There was consensus among the board and the Indigenous council that the conflict of interest policy on page 9 should be adopted now.

Motion: To adopt the conflict of interest provisions from the draft Code of Conduct as the conflict of interest policy of the Board and Indigenous Council.

Carried by Consensus

6.0 Remuneration Policy

The Chair presented the reimbursement and remuneration policy. There was a discussion about whether the remuneration provided for in s. 6 applied to time spent in preparing for meetings. There was a consensus among the board and the Indigenous council that subsections (b) through (e) applied to time spent in preparing for meetings as well as attending meetings. The requirement to present a boarding pass as evidence of travel in s.7(a) was to be removed. Reimbursement of the cost of pet care while attending to SLR business was to be included in s.5.04.

Motion: To adopt the Remuneration and Expense policy as amended.

Carried by Consensus

7.0 Communication and Transparency Policy

The Advisory Committee presented a report on communication and transparency. The issue of the Indigenous council attending *in-camera* meetings of the Board was raised. It was agreed to amend the draft policy to add that the Indigenous council are entitled to attend all meetings of the Transitional Board including in-camera meetings.

Motion: To adopt the Communication and Transparency policy as amended.

Carried by Consensus

8.0 Transitional Website review

Christine Tam, Director of Communications at the Law Society of BC demonstrated the LPA Transition website to the Board and Indigenous council. Members of the Board and the Indigenous Council commented on various aspects of the website. Members of the Board and the Indigenous Council were to be provided with the URL and password to the demo site and were encouraged to provide any feedback to SLR staff by email.

9.0 Transitional Workplan

The members of the Advisory Committee delivered an update on the transitional workplan. Looking ahead, the intent is that a number of policy papers regarding the rules will be brought to the Board and Indigenous council over the next few meetings. It is hoped that the papers will form the basis for policy discussions, including but not limited to registration and licensing, professional conduct and discipline, and the recognition and incorporation of Indigenous legal traditions.

Paul Craven reiterated his offer to arrange times for a review of the *Legal Professions Act* (2024) for members of the Board and Indigenous Council to provide a general review but also to identify Rules issues that may be relevant to the first Rules.

10. Project Director position

It was previously agreed that a Project Director should be engaged to assist in the transitional activities. A draft role description was presented by the Advisory Committee. There was discussion as to whether the position should be an independent contractor or an employee and the conclusion was that a contract position was the better option. The posting should also provide that the requirements include knowledge about diversity, equity and inclusion, and familiarity with Indigenous rights and culture. The posting for the position is to make clear that the position reports to the Board and not any agency that pays the salary.

11. Indigenous Lawyer/Legal Advisory position

The Indigenous Council and Board engaged in a discussion about the Indigenous Lawyer/Legal Advisor. Many of the same concerns that were part of the discussion about the project director were raised. It was noted that it is important to retain the legal advisor to the Indigenous council soon so that they can be involved in the development of the policy papers. Further discussion between the Advisory Committee with members of the Indigenous Council are to be scheduled to discuss advertising, promotion and recruiting for this position.

12. Open Session Adjourned

The open session of the meeting adjourned at 4:40

13. *In Camera* Session

The members of the Board and the Indigenous Council met without the members of the Advisory Council and staff in attendance.

Transitional Board and Transitional Indigenous Council

Unauthorized Practice

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
From:	**Advisory Committee**
Date:	**March 19, 2025**

Background

1. This policy report provides the transitional board and the transitional Indigenous council with consideration of some of the overarching issues for the rules required for Legal Professions BC to effectively enforce compliance with section 37 of the *Legal Professions Act*. This paper does not discuss any differences in the scope of practice between the professions and any issues that arise when practising outside your licence scope, nor does it discuss the use of restricted titles. Those will be topics of discussion for the transitional board and transitional Indigenous council at a future date.

2. Section 37 provides that a person must not practise law in British Columbia unless the person holds a licence issued under Division 4, or if the person is a non-practising licensee, a licensee whose licence is suspended, or a person who, for disciplinary reasons, is suspended or prohibited from practising law in another jurisdiction. However, these prohibitions are subject to the exceptions in section 38.

3. The exceptions in section 38 include persons permitted to practise law under an enactment of British Columbia or Canada, a person employed by a licensee or law firm acting under the supervision of a licensee, a person who practises law for free, a person authorized to practise law in another jurisdiction, and persons prescribed by regulations under section 212.

4. Section 37 and its companion section 38 define one of the public interest purposes of the Act: to ensure that no one practises law other than a person who has met and continues to comply with the regulatory standards and programs for their education, training, competence, practice and conduct.

5. To provide assurance that this purpose is being met, Legal Professions BC will require an operational program to prevent those who are not licensees, and who do not fall into an exception set out in section 38, from practising law.

6. Both the current *Legal Profession Act* and the *Notaries Act* provide for the enforcement of the prohibition on who can practise law, and both the Law Society and the Notaries Society currently take steps to enforce the limitations on who can practise law or act as a notary public.

7. Although the Notaries Society writes cease and desist letters when the unauthorized practice of notarial services arises, it is more likely to refer the matter over to the Law Society when someone is practising law without a licence. Over the last few years, the Notaries Society has only issued two such letters. The complaints that arise most often for the Notaries Society is when a lawyer uses the notary public title without declaring that they are licensed as a lawyer, but the issue of restricted titles is adjacent to the unauthorized practice of law considerations in this policy paper.

8. The Law Society has a complaint-driven program that receives complaints from the public, the profession, and the judiciary. The Law Society employs a full-time staff lawyer responsible for its program, which uses a progressive-discipline model. The general approach is for the Law Society to send a letter to the person engaged in the unauthorized practice of law informing them that they are contravening the *Legal Profession Act*. The next step is asking the actor to sign a written commitment stating that they acknowledge the law and that they will stop acting against it. The next step is to seek an injunction. If the actor fails to abide by the injunction, the last step is an application to hold the actor in contempt of court.

9. Although the *Legal Profession Act* provides that it is an offence for a person to contravene section 15 and permits the executive director or a person authorized by the Benchers to lay an information alleging an offence against the Act, the Law Society has never done so.

10. The Law Society receives approximately 100-150 complaints or inquiries per year respecting unauthorized practice; however, due to the progressive discipline process outlined above, a proceeding reaching the contempt stage is rare (just two in the last five years).

Authority respecting unauthorized practice

11. The *Legal Professions Act* does not expressly provide for the creation of an unauthorized practice of law program for Legal Professions BC. However, the development or continuation of such a program is envisioned in the powers granted to the regulator and CEO throughout the Act.

12. Section 198(2)(a) provides that a person commits an offence if the person contravenes section 37 (unauthorized practice of law), 40 (reserved titles) or 41 (false representation).

Section 198(4) provides that an information alleging an offence under the Act may be laid in the name of the regulator on oath by the CEO or by a person authorized by the board.

13. Section 203 provides that the CEO may apply to the Supreme Court for an interim or permanent injunction restraining a person from contravening this Act or the rules if the CEO is satisfied that the contravention would pose a significant risk of harm to the public.

14. Finally, section 204 provides a court before which a person represents another person in contravention of section 37 (unauthorized practice of law) may hold the representing person in contempt of court on application by either the regulator or a person interested in the proceeding in which section 37 was contravened.

15. Of note is the fact that taking the enforcement action provided for in sections 198 or 204 does not need to satisfy the qualification set out in section 203: that the contravention poses a significant risk of harm to the public. The significant risk of harm to the public is a consideration discussed in further detail in this paper.

Discussion

Indigenous perspective

16. We acknowledge that an Indigenous perspective and participation is required across the rules and code development, and we note that in the development of this policy paper, an Indigenous perspective remains to be provided. We acknowledge that historically the unauthorized practice of law has been approached as a colonial construct, defining who may and may not provide legal services for compensation.

17. We expect that the Indigenous advisor that the Indigenous council will hire will help the Indigenous council bring this perspective to the work being provided to the transitional board and the transitional Indigenous council. Until that person has been hired, we hope that the Indigenous council can surface any issues or considerations that need to be considered in respect of unauthorized practice and, in particular, whether there needs to be rules to implement that advice.

Provision of legal information

18. One of the most significant developments in the *Legal Professions Act* relating to the unauthorized practice of law is the direction in section 36 that a person does not practise law only because the person provides legal information to another person. However, the Act does not provide a definition of legal information.

19. For more than two decades now, the distinction between providing legal information and providing legal advice has been a subject of discussion among academics and lawyers.

20. In a 1995 paper, John Graecen observed that "When you enter the clerk's office in any state or federal courthouse, in any part of the United States, you are likely to encounter a sign saying, 'Clerk's office staff are prohibited from giving legal advice,' or equivalent language. Most deputy clerks are taught from their first day on the job that they cannot give legal advice. They dutifully follow this rule, as they understand it, throughout their careers."[1] In a follow up paper 25 years later, Graecen observed "Over the past 25 years, it has become clear that court policies explicitly authorizing staff to provide certain types of legal information to court patrons exempt court staff from unauthorized-practice-of-law rules or statutes. The services may fall within the definition of actions that, if performed by a private citizen or a paralegal, would constitute the unauthorized practice of law under the decisions of a particular state. But when court policies specifically authorize court staff to perform them, they cannot be the unauthorized practice of law."[2]

21. In 2018, the Saskatchewan government amended section 30(3) of their *Legal Profession Act* to add "Nothing in this section affects the ability of a person or entity to provide members of the public with information of a general nature about the law and legal procedures or any other legal information as defined in the rules."

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[1] John Graecen, "No Legal Advice from Court Personnel: What Does That Mean?" (1995) 34 Judges' Journal 10 at page 10.

[2] John Graecen, "Legal Information vs. Legal Advice: A 25-Year Retrospective" (2022) 106:2 Judicature 48 at page 51.

22. The Law Society of Saskatchewan rules define legal information to mean "the provision of legal information of a general nature about the law and legal procedures to members of the public."[3]

23. In BC, the current *Legal Profession Act* does not distinguish between legal advice and legal information. Rather, the relevant distinction has been whether the services are provided for compensation from the person receiving the service. The BC courts have interpreted "legal advice" under the *Legal Profession Act* broadly, to include general information that a person could look up themselves, procedural advice, or even which court form should be used. This advice would only qualify as the "practice of law" if done for a fee. The court clerk example given above would be exempted from the definition of the "practice of law" under the *Legal Profession Act* because the person receiving the service is not paying the court clerk for the information or advice.

24. In recent years there have been increases in legal coaching services. Although often directed at lawyers as a means of expanding the types of services lawyers provide, organizations such as the Legal Coaches Association have advocated for the recognition of legal coaching as a means of providing legal information from persons who are not licensed lawyers but who have legal training as a way to assist the public in navigating their legal issues. As an example of this, the Law Society's Innovation Sandbox has provided "no-action" letters to eight individuals who intend to provide legal coaching as part of their practice.[4]

25. Respecting the topic of unauthorized practice of law and the Law Society's Innovation Sandbox, it is anticipated that the discussion of this matter will be included in the policy papers for the transitional board and transitional Indigenous council on licensing, due to the relationship between scopes of practice and the practice areas of those currently in the Innovation Sandbox.

26. The transitional board and transitional Indigenous council may or may not need to address the provision of legal information in the rules for Legal Professions BC. A working

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[3] *Law Society of Saskatchewan Rules*, Rule 1001, Definitions and Interpretation, "legal information".
[4] Law Society of British Columbia, "Approved Participants" (2025) online.

definition, contained in a policy or rule, may be beneficial to provide both the public and licensees guidance on what the regulator considers is onside with section 36 of the Act.

Prosecutorial discretion

27. Section 37 of the Act provides unequivocally that a person must not practise law in British Columbia unless the person holds a licence issued by Legal Professions BC, subject to the exceptions listed in section 38. As with any prosecutorial authority, whether to prosecute a particular instance of non-compliance with section 37 is a matter of discretion.

28. In recognition of this discretion, in September 2020, the Benchers formalized an existing policy providing that the Law Society would not act against persons who are apparently engaged in unauthorized practice unless there is a significant risk of harm to a person or the public.[5]

29. Section 203 of the new *Legal Professions Act* is consistent with the Law Society's policy, in that it provides the CEO with the authority to seek an interim or permanent injunction restraining a person from contravening the Act or the rules if satisfied that the contravention would pose a significant risk of harm to the public.

30. A policy of only pursuing contraventions that would pose a significant risk of harm to the public is also consistent with the guidelines in section 7(d)(iii) which, while directed at regulating those within the legal professions, states that the regulator must have regard to regulating in a manner that is proportionate to the risk of harm to the public posed by the practice.

31. In addition, there is no requirement that a "contravention would pose significant risk of harm to the public" on the CEO's ability to lay an information in response to a contravention of the Act. However, at that point, the responsibility for deciding whether to pursue a prosecution would shift to the BC Prosecution Service, who would need to be

[5] Minutes: Benchers meeting September 25, 2020, page 10.

satisfied of (1) whether there is a substantial likelihood of conviction; and, if so, (2) whether the public interest requires a prosecution.[6]

32. The transitional board and the transitional Indigenous council should consider whether a policy or rule is required for the operation of an unauthorized practice of law program for Legal Professions BC to guide the prosecutorial direction of the program.

33. In addition, the transitional board and transitional Indigenous council may want to consider drafting a rule that the filing of an information by the CEO requires some measure of risk of harm to the public beyond simply engaging the unlicensed practice of law, similar to the requirement in respect of seeking an injunction as provided in section 203.

Facilitating and preventing the unauthorized practice of law

34. The only rule respecting the unauthorized practice of law in the Law Society Rules relates to prohibiting a lawyer from facilitating the unauthorized practice of law.[7] There is a provision in the *Code of Professional Conduct* (the "Code") that requires a lawyer to prevent the unauthorized practice of law.[8] The Notaries Society does not have any equivalent provisions in its rules, but Principle 12 in its Code of Conduct includes a prohibition against employing a notary or lawyer who is under suspension or who has been terminated or permitted to resign as a result of discipline.

35. The harm that a rule limiting a licensee from facilitating the unauthorized practice of law is intended to address is when a licensee assists a suspended or disbarred (or cancelled under the terminology of the new Act) licensee to provide legal services. For example, a lawyer may enable a suspended or cancelled lawyer to practise by standing in as a proxy and signing documents prepared by the suspended or cancelled lawyer. This assistance skirts the discipline consequences intended for the suspended or cancelled licensee and limits the regulator's ability to protect the public from that licensee's actions.

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[6] BC Prosecution Services, Crown Counsel Policy Manual (2021) online, page 2.
[7] Law Society Rules, Rule 2-14, "Unauthorized practice of law".
[8] *Code of Professional Conduct for British Columbia*, Code rule 7.6-1, "Preventing unauthorized practice".

36. As mentioned, there is also the provision in the Code that requires a lawyer to prevent the unauthorized practice of law. The requirement has raised the question about what "prevent" means in practice. Clarity around the scope of the obligation to "prevent" unauthorized practice is required if this obligation is retained in the new Code.

37. The transitional board and transitional Indigenous council may want to consider whether there is utility in having two similar provisions respecting a licensee's approach to the unauthorized practice of law, or if it would be better to combine the obligations or restrict the obligation to one concept.

38. The transitional board and transitional Indigenous council may also consider whether it is better to include any obligation in the new rules or in the code of conduct, or both. There may be value in having both the rules and code speak to certain actions, in that it reinforces the expectations of licensee behaviour; however, exact duplications of obligations may be superfluous and extend the length of both documents.

Requirements to report to regulator

39. Section 84(2)(c) of the *Legal Professions Act* provides that the board may make rules specifying the circumstances and manner in which a licensee or trainee must make a report to the regulator respecting another licensee, trainee or law firm. This rule-making power does not specify reporting on those who are not licensees, trainees or law firms; however, the rule-making power in the new Act is permissive. The transitional board and the transitional Indigenous council may want to consider whether a rule is warranted in this area.

40. One of the issues when considering any requirement for a duty to report is the consequences if a licensee fails to report. In terms of failing to report the unauthorized practice of law conducted by another person or entity, which the licensee presumably does not facilitate, there may not be much value in pursuing a disciplinary response to such a failure. The regulatory burden of then having to prove a licensee's knowledge of the unauthorized practice of law and failure to report it may also not warrant a requirement to report such action.

41. When considering whether recommending that a rule be drafted that obligates a licensee to report to the regulator, the transitional board and transitional Indigenous council may

want to consider whether a proposed obligation reflects the policy intention and direction toward the risk of harm caused by the unauthorized practice of law as indicated by the new Act and the discussion items in this policy paper.

Privacy and confidentiality of unauthorized practice of law actions

42. Section 66 of the *Legal Professions Act* allows for the board to make rules authorizing the CEO to disclose to the public certain information if it is in the public interest to do so. Although the provision relates to information pertaining to a licensee, trainee or law firm, it is in the public interest to provide information respecting the unauthorized practice of law.

43. The Notaries Society does not have a strict practice of when to publish information respecting the unauthorized practice of law; however, if someone were wrongfully to hold themselves out to be acting as a notary public, the Society would communicate that to all members. In extraordinary circumstances, the Notaries Society would release a communication on its website addressing the topic. As mentioned above, the Notaries Society will often refer complaints of unauthorized practice to the Law Society to address.

44. The Law Society has a practice of posting information about unauthorized practice once it reaches the level of a commitment letter or beyond in its progressive-discipline program. Currently, the notices are posted indefinitely, but if a person requests to have it removed, the Law Society will do so if there has not been a complaint against that person in the last seven years and the person proactively requests for the removal. The Law Society receives approximately two to three such requests every five years.

45. The transitional board and transitional Indigenous council may want to consider whether the regulator or CEO is required to make public information respecting unauthorized practice of law actions, and if so, what information. In addition, the transitional board and transitional Indigenous council may want to consider whether a rule requiring the disclosure of this information is required. A broader discussion of Legal Profession BC's transparency and information requirements in general will be provided in a future policy paper for the transitional board and transitional Indigenous council.

Questions for consideration and direction

46. In summary, the main discussion and decision items for the transitional board and transitional Indigenous council are:

    a. Should there be a rule or policy providing guidance on the provision of legal information?

    b. Should there be a rule or policy respecting the prosecutorial discretion of Legal Professions BC's unauthorized practice of law program?

    c. If yes, should there be a rule respecting the circumstances of when the CEO may lay an information in response to the unauthorized practice of law?

    d. Should there be a rule or a code provision respecting a licensee's facilitation of the unauthorized practice of law?

    e. Should there be a rule or a code provision respecting a licensee's prevention of the unauthorized practice of law?

    f. Should there be a rule requiring licensees to report to the regulator respecting the unauthorized practice of law by others?

    g. Should there be a rule requiring the CEO to publish information on the unauthorized practice of law actions taken by Legal Professions BC?

47. Following the advice and recommendations provided by the transitional board and transitional Indigenous council, staff will return with any draft rules and policies for consideration at a future date.

Transitional Board and Transitional Indigenous Council

Practice Advice

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
From:	**Advisory Committee**
Date:	**March 19, 2025**

Background

1. One of the duties of the Law Society set out in section 3(e) of the current *Legal Profession Act* is to support and assist lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia, in fulfilling their duties in the practice of law.

2. Over 30 years ago, the Law Society created the staff position of practice advisor and established a more formal program for the provision of advice to lawyers. Over the years and commensurate with the growth in the number of practising lawyers, the practice advice program at the Law Society has expanded its services to the point where currently, the practice advisors respond to over 4,000 requests for advice each year.[1]

3. While the *Notaries Act* does not provide an explicit obligation to assist notaries public in fulfilling their duties in providing legal services, the Notaries Society has a formal program known as the Practice Advice Line ("PAL") with two staff assigned to the program. PAL receives more than 1,000 inquiries each quarter.

4. In addition to the formal practice advice program at the Law Society, there is a practice of Benchers making themselves available to provide confidential advice to lawyers. In doing so, the Benchers are often referred to as "trusted advisors". This practice stemmed from a time when the profession was much smaller, and the in-house practice advice program was not yet created. While some have questioned whether the Benchers, who make the Law Society Rules, approve the *Code of Professional Conduct for BC*, sit on credential and discipline committees, and are adjudicators on hearing panels for the Tribunal, should also be providing confidential advice to individual lawyers, most Benchers continue to make themselves available to provide advice to lawyers.

5. Section 72 of the *Legal Professions Act* provides that the board may take any steps it considers advisable to promote and improve the standard of practice by licensees and trainees, including maintaining programs to assist licensees and trainees in managing or avoiding personal, emotional or health issues and programs to assist licensees and trainees with issues arising from their practice of law.

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[1] For a comprehensive description of the Law Society practice advice program, see Practice Advice.

6. It is expected that Legal Professions BC will continue a practice advice program that will provide advice and information to lawyers, notaries, and regulated paralegals about how to meet their professional obligations.

Discussion

Indigenous perspective

7. We acknowledge that an Indigenous perspective and participation is required across the rules and code development, and we note that in the development of this policy paper, an Indigenous perspective remains to be provided. In terms of a practice advice program, we recognize that a program designed to assist licensees will undoubtedly benefit from the provision of an Indigenous perspective and participation in the program.

8. We expect that the Indigenous advisor that the Indigenous council is looking to hire will help the Indigenous council bring this perspective to the work being provided to the transitional board and the transitional Indigenous council. Until that person has been hired, we hope that the Indigenous council can surface any issues or considerations that need to be considered in respect of practice advice and, in particular, whether there needs to be rules to implement that advice.

General authority and rationale for a practice advice program

9. Neither the Law Society Rules nor the Notaries Society by-laws, rules or regulations specifically provide for a practice advice program. Given the authority provided to the board in section 72 of the Act, a specific rule is not required to establish and maintain a practice advice program such as currently maintained by the Law Society and the Notaries Society.

10. Both the Notaries Society and the Law Society provide practice advice programs to their members as part of their commitment to protecting the public from potential harm due to a lawyer's or notary public's mishandling of a professional responsibility. Trustworthy advice from trained professionals in an easy to access manner helps the professions avoid costly mistakes and supports licensees to provide professionally responsible client service. By potentially avoiding such mistakes and providing responsible service, licensees can comply with the regulator's obligations and reduce future claims for negligence through the indemnity program.

Directors as trusted advisors

11. While the Law Society identifies one of the responsibilities of Benchers is to act as trusted advisors to lawyers with respect to the Law Society Rules and *Code of Professional Conduct for BC*, neither the current *Legal Profession Act* nor the *Notaries Act* or the rules, regulations, or by-laws of either organization specifically requires or prohibits Benchers or directors from providing advice to lawyers or notaries public about how they might meet their professional obligations.[2]

12. Benchers providing ethical advice to lawyers has been the subject of discussion in the past. In its 2012 Interim Report, the Governance Review Task Force observed that the Law Society appears to be the only law society in Canada that actively encourages lawyers to contact a director for ethical advice. In addition, the Task Force recognized that the practice inevitably creates the potential for the Benchers to be setting the standards for professional practice, advising individual members about those standards, and sitting in judgment on whether those standards have been met in individual cases. While the Benchers may be careful to avoid conflicts, the practice invariably involves a blending of roles.

13. In the most recent 2021 Law Society governance review, Harry Cayton observed that no one he spoke to could tell him if the confidential advice given by Benchers to lawyers or by the practice advisors had reduced the number or nature of complaints, nor did it appear that the data from these inquiries is used to improve the Law Society's guidance to lawyers.[3] He also noted that Benchers providing confidential advice to members was a practice fraught with ethical conflicts and recommended that Benchers should cease doing so.[4]

14. In response to the recommendations, the Benchers observed that the Law Society practice advisors are not available at all hours, and that sometimes lawyers find themselves in difficulties outside usual working (or even waking) hours and need immediate advice. In these cases, Benchers note that they provide the most easily

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[2] Bencher Code of Conduct, paragraph 20.
[3] Harry Cayton, *Report of a Governance Review of the Law Society of British Columbia (2021),* page 22, paragraph 6.5 ("*Cayton Report*").
[4] *Cayton Report*, page 28, paragraph 7.5.1.

identifiable source of advice and guidance and frequently the only source available to the lawyer.[5]

15. Although both Law Society governance reviews have questioned the practice of Benchers providing advice to lawyers, Benchers continue to do so. In addition, the *Code of Professional Conduct for BC* advises that lawyers should be aware that discussion of ethical questions with Benchers, Law Society practice advisors, the Law Society's Ethics Committee or other experienced and trusted colleagues is the approach most likely to identify a reasonable course of action consistent with lawyers' ethical obligations.[6] Lawyers may also disclose confidential information to another lawyer to secure legal or ethical advice about the lawyer's proposed conduct.[7]

16. At the Notaries Society, two practice advisors are responsible for providing professional guidance, with some inquiries being referred to the Secretary and CEO for response. Like lawyers, notaries may contact each other for advice, which is encouraged by the Society, so current directors may provide this form of mentorship. The difference between the two organizations is that the Notaries Society does not represent to its members that directors are available for such advice, and any after-hour service would be provided through the network of connections amongst notaries and lawyers.

17. In consultation with staff from the Notaries Society and Law Society, the issue of data and record control over ethical inquiries to the Benchers was raised. As noted in Harry Cayton's report, there is little, if any, data collected from Benchers in terms of numbers of inquiries received, topic of advice, and response given.

18. Staff also raised the consideration of liability implications when a licensee relies on advice from a director that may lead to a discipline investigation or negligence claim. In addition, inconsistent record-keeping practices may lead to compliance risks under an organization's *Freedom of Information and Protection of Privacy Act* obligations. Further research on director and organizational liability and obligations in such scenarios may be warranted, but for the purposes of the transitional board and transitional Indigenous council's policy direction, it should be noted.

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[5] Bencher meeting minutes, April 22, 2022, pages 16-17.
[6] *Code of Professional Conduct for British Columbia*, Introduction to the BC Code, paragraph 6.
[7] *Code of Professional Conduct for BC*, Code rule 3.3-6.

19. To address the concern of 24-hour availability, Legal Professions BC may wish to maintain a list of volunteer lawyers, notaries and regulated paralegals who have sufficient practice experience and knowledge of the ethical obligations of each profession, and to make that list available to licensees and trainees for urgent, after-hour professional responsibility advice. The National Friends Panel provided by the New Zealand Law Society is a good example of this option.[8] Training may be provided for volunteer licensees to ensure advice is consistently provided. In addition, the Law Society's Advice Decision-Making Assistant allows for licensees to schedule a call at any time of the day, although the call itself will be during business hours.[9]

20. It is also worth noting the new *Legal Professions Act* provides that a current director is not eligible to be appointed to the licensing committee (should one be created), the discipline committee or as a tribunal member, evidencing an intention under the new Act to keep the directors separate from the regulatory work of the regulator.[10]

21. The transitional board and the transitional Indigenous council should consider whether the directors of Legal Professions BC may be held out as trusted advisors following amalgamation. The decision not to hold out directors as trusted advisors would not mean that a licensee who is also a director would be prohibited from providing advice should they personally choose to do so, but that decision to do so is not contingent on their role as director of Legal Professions BC.

22. If the conclusion is that acting as a trusted advisor is an appropriate role for directors, the transitional board and the transitional Indigenous council should consider developing a policy on how directors should fulfill this role, including training on giving advice and keeping appropriate records should the advice become a future issue. The training would be like that suggested above with the idea of a 24-hour volunteer list but would include the extra consideration of avoiding a conflict of interest in acting as director and trusted advisor.

Confidentiality of practice advice program

23. One of the considerations in implementing a practice advice program is how to deal with disclosure by a licensee of facts and circumstances that evidence a breach of the rules or

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[8] New Zealand Law Society, National Friends Panel (2025) online.
[9] Law Society of British Columbia, Advice Decision-Making Assistant (2025) online.
[10] *Legal Professions Act*, sections 51(3), 89(3) and 98(4).

constitute professional misconduct. The frank disclosure by licensees to practice advisors or directors providing advice would be compromised if those practice advisors or directors were then required to disclose that information to the regulator or other entities as part of a discipline investigation or external proceeding.

24. The Law Society represents to those seeking advice from the practice advisors that all communications between lawyers and the practice advice team are confidential, except in cases of trust shortages. The only other exception to confidentiality is if the lawyer consents to disclosure. For example, a practice advisor may ask a lawyer if they have their permission to speak with another department in the Law Society, such as the Lawyers Indemnity Fund or Registration and Licensing Services, to assist the lawyer and the Law Society through the resolution of the issue raised. The confidentiality of the advice, and the exceptions to that confidentiality, are not currently contained within the Law Society Rules except when the advice is provided by the Law Society's equity advisor.[11] The equity advisor provides advice on discrimination and harassment, and there is a rule that provides for the confidentiality of that advice.[12] There is no policy distinction between the advice provided by the equity advisor and the other practice advisors, and the reason for the difference in treatment in the Law Society Rules stems from the developmental history of the programs.

25. The Notaries Society does not use any information provided by a notary public to a practice advisor as part of their discipline investigation or process. However, if an extreme case were to arise, such as a notary public disclosing to a practice advisor that they are on the verge of bankruptcy, the advisor would refer the matter to either the Secretary or CEO to handle instead.

26. The transitional board and transitional Indigenous council may want to consider a rule that provides confidentiality for the practice advice program of Legal Professions BC, with some potential exceptions specified in the rule.

27. One advantage of a confidentiality rule is that Legal Professions BC will be regulating an entirely new type of licensee for the first time with regulated paralegals. The BC Paralegal Association does not provide formal ethical advice in the same manner that the Notaries Society and Law Society do. Currently, paralegals rely on ad hoc advice from other

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[11] Law Society of British Columbia, Law Society Equity Advisor (2025) online.
[12] Law Society Rules, Rule 10-2.1, Communication with Equity Advisor confidential.

paralegals or their supervising lawyers. Ensuring confidentiality of the advice provided by a practice advisor to the newly licensed regulated paralegals may help to gain the trust of the licensees, and provide the benefits to the public, licensees, and regulator of such a program.

28. Another advantage in having a confidentiality rule for the practice advice program is that it will ensure that the practice advisors themselves are on the right side of their own ethical obligations to the regulator. For example, under the Law Society's current *Code of Professional Conduct for BC*, lawyers have a duty to report to the regulator in certain situations.[13] Should a similar duty to report rule exist in the new code of conduct for Legal Professions BC, the licensees who work in the practice advice program would need to be exempt from such an obligation.

29. The transitional board and transitional Indigenous council may want to consider exceptions to any rule on confidentiality and to be clear in the rule what are the exceptions. There may be certain circumstances when a practice advisor must disclose to the regulator or others the information received from a licensee. Clarity around these exceptions helps not only the practice advisors, but it would also demonstrate to the public that the regulator takes serious certain actions by a licensee.

30. As mentioned above, the current confidentiality exceptions to the Law Society's practice advice program are when a lawyer reports a trust shortage and when the lawyer consents to disclosure. The Notaries Society would consider a report of bankruptcy, money laundering or criminal activity such as stealing trust money as qualifying to a potential exception to their advice and would result in a referral of the matter to the Secretary or CEO in practice.

31. Another exception that the transitional board and transitional Indigenous council may want to consider is when a licensee discloses a real risk of imminent harm, either to themselves or others, and disclosure is necessary to prevent that harm. This issue has arisen with the practice advisors at the Law Society who have received calls from lawyers who were in distress and may have a risk of harm. While thankfully those calls have been successfully resolved by the practice advisor either de-escalating the individual and

[13] *Code of Professional Conduct for British Columbia*, Code rule 7.1-3, Duty to report.

assessing the risk as not imminent or through obtaining their consent to contact emergency services.

32. When considering whether to enumerate exceptions to any confidentiality rule for a practice advice program of Legal Professions BC, the transitional board and transitional Indigenous council may want to address the exceptions as mentioned above or others.

Questions for consideration and direction

33. In summary, the main discussion and decision items for the transitional board and transitional Indigenous council respecting practice advice are:

    a. Should the directors of Legal Professions BC be held out as trusted advisors?

    b. If yes, then should a policy be developed to assist the directors in providing advice, avoiding a conflict of interest and record keeping?

    c. Should there be a rule to provide confidentiality to the practice advice program (and directors if held out as trusted advisors)?

    d. If yes, then what exceptions, if any, should be included in the rule? Some exceptions to consider are a trust-shortage, clear criminal behaviour, including money laundering, bankruptcy, real risk of imminent harm to self or others and, consent of the licensee.

34. Following the advice and recommendations provided by the transitional board and transitional Indigenous council, staff will return with any draft rules and policies for consideration at a future date.

Transitional Board and Transitional Indigenous Council

Custodianships

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
From:	**Advisory Committee**
Date:	**March 19, 2025**

Background

1. For a number of decades now, if a lawyer or a notary public has been unable to continue to practise because of physical or mental illness, death, retirement, disappearance or neglect or abandonment or abscondment of a law practice, suspension or disbarment or revocation of the right to practice, both the Law Society and the Notaries Society have been able to apply to the court for the appointment of someone to act as a caretaker for the practice, which includes determining the status of, managing, and arranging for the conduct of the practice, and when appropriate, winding up the practice. A notary public or lawyer may also consent to a custodianship order.[1]

2. The Law Society website provides information about the role of the custodian and what to do when a custodian contacts you.[2] The Notaries Society also provides when it arises a "what to do" document for custodians.

3. Part 10 of the new *Legal Professions Act* provides for the appointment of a custodian to take custody or control of all or part of the property of the licensee, and determine the status of, manage, arrange for the conduct of, and if appropriate, terminate the practice of the licensee.

4. The language of Part 10 is virtually the same as the language in Part 6 of the current *Legal Profession Act* with some variations in terminology but not very much difference in either the process for appointment or the authority of the custodian. Section 43 of the *Notaries Act* is less detailed, but the requirements and the authority granted to a custodian to wind up a notarial practice are not substantively different from those in the *Legal Professions Act*.

5. One difference between the current and new legislations is that in the current *Legal Profession Act*, section 55 specifically provides that the Benchers may make rules regarding custodianships, including rules imposing duties on a lawyer whose practice is the subject of a custodianship. There is no equivalent provision in the new *Legal Professions Act.* Section 27(1) of the new Act does provide the board with the broad general rule-making authority to make any rules that it considers necessary or advisable

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[1] *Legal Profession Act*, section 50; *Notaries Act*, section 43.
[2] Law Society of British Columbia, "Custodianships: When lawyers can no longer run their practice" (2025) online.

for the performance of the duties of the regulator. However, section 25(d) of the new *Legal Professions Act* states that the rules are only binding on former licensees to the extent specified in the rules, so the transitional board and transitional Indigenous council will need to specify the application of any rules on custodianships to former licensees for them to be subject to the rules.

6. It is worth noting how exceptional within the BC professional regulatory environment is the provision of custodial services by and at a cost to the Law Society and the Notaries Society. For example, the BC College of Physicians and Surgeons requires that doctors have a plan for interruptions in practice, whether due to an emergency, a sudden need for retirement or a health leave, or even death, but it does not intervene or assist in winding up a doctor's practice.[3] The BC College of Oral Health Professions does not appear to provide the direction to its registrants that the BC College of Physicians and Surgeons provides.[4] The College of Healthcare and Professionals of BC requires psychologists to include provisions in their will to provide instructions respecting their records and practice to an executor in case of death.[5] However, custodial programs are common across legal regulators in Canada.[6]

Discussion

Indigenous perspective

7. We acknowledge that an Indigenous perspective and participation is required across the rules and code development, and we note that in the development of this policy paper, an Indigenous perspective remains to be provided. In terms of a custodianships program, we recognize that a program that protects the public from harm caused due to a need for a custodianship order will be improved through the incorporation of Indigenous legal traditions and Indigenous practices.

8. We expect that the Indigenous advisor that the Indigenous council will hire will help the Indigenous council bring this perspective to the work being provided to the transitional

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[3] College of Physicians and Surgeons of BC, Planning for unexpected absence (2025) online.
[4] BC College of Oral Health Professionals, Practice Resources – CDAs, Dental Therapists, Dentists (2025) online.
[5] College of Health and Care Professionals of BC, Planning for retirement, relocation or extended absence from practice (2016) online.
[6] For example, a custodianship program is run by the Law Society of Alberta.

board and the transitional Indigenous council. Until that person has been hired, we hope that the Indigenous council can surface any issues or considerations that need to be considered in respect of custodianships and, in particular, whether there needs to be rules to implement that advice.

Custodianships

9. The language in the *Act* is permissive in that the regulator *may* apply to the court to take custody or control of all or part of the property of the licensee, and determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the licensee.

10. Both the Notaries Society and Law Society offer custodial services to protect the public and ensure the orderly conduct of a practice. The Notaries Society actively encourages notaries public to plan for the succession of their practice; however, it will seek a custodianship order when necessary, such as in the face of discipline or when there is no successor named or able to take over. The Notaries Society seeks approximately four to eight orders over the past several years.

11. The Law Society provides a similar service to the public as the Notaries Society. Other than a few operational differences between the two programs, the only notable difference between the Law Society and the Notaries Society is the volume of custodianship orders, of which the Law Society seeks approximately 10 to 25 per year.

12. The Notaries Society notes that it has seen some limited success in its custodianship program through the encouragement of notaries public to make succession plans, especially for notaries working in rural or remote areas. At the moment, the Notaries Society is considering pursuing a By-Law change to make the planning mandatory. The Law Society has also considered whether it would be appropriate to make succession plans mandatory. This requirement is one that the transitional board and transitional Indigenous council may want to mark for future consideration by Legal Professions BC to implement the requirement either through a rule or policy.

Cooperation in conduct of custodianship

13. One of the most important requirements for effective custodianship conduct is the licensee's cooperation. The current Law Society Rules provide that a lawyer who is the subject of a custodianship order must (a) cooperate with the custodian in the conduct of

the custodianship, and (b) deliver to the custodian property, documents and information that may be reasonably necessary to facilitate the conduct of the custodianship.[7] Law Society staff have identified the need for such a rule and suggest a further expansion in specifying the exact information, records and documents required for cooperation. Although the language in the new Legal Professions Act is broad, staff have found that having a more specific rule would be helpful when faced with the circumstances of a licensee who does not want to cooperate with the custodianship order, such as when the custodianship arises from a discipline process.

14. The current Notaries Society Rules require that a member must ensure that, in the event of a custodianship, the custodian will be able to access the records.[8] This rule specifically requires that notaries public must make available or keep available access to their accounts, including passwords to email addresses, software programs and online platforms. For example, by providing a sealed envelope to a trusted colleague in case of emergency, or through another password safe program. The Notaries Society has found that this version of a rule on cooperation beneficial, as one of the challenges to a timely and effective custodianship is gaining timely access to a licensee's email and other online accounts. The Law Society does not currently have a similar rule but is supportive of the idea.

15. The transitional board and transitional Indigenous council may want to consider similar cooperation rules for custodianship orders, that combine the current practices of the Law Society and Notaries Society, by providing more specifics about what content a custodian will need access to, and a plan for gaining that access to secured platforms.

Duty to report to the regulator and report of possible claim

16. Section 84(2)(c) gives the board the general power to make rules respecting complaints and investigations, including specifying the circumstances and manner of when a licensee or trainee must make a report to the regulator respecting another licensee, trainee or law firm. This is sometimes referred to as a "duty to report" rule. There are a few examples of different duties to report across the Law Society and Notaries Society.

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[7] Law Society Rules, Rule 6-1 "Co-operation in conduct of custodianship".
[8] Rules of the Society, Rule 5.07 "Ensure access to records for custodial purposes".

17. Currently, the Notaries Society does not have a duty to report rule respecting possible claims due to error, omission or in negligence specific to its custodianship program. However, a notary public must give notice to the Society of any proceeding, event or development, which in the reasonable judgment of the member, might result in an indemnification claim.[9]

18. In comparison, the Law Society Rules specifically require that a custodian must report to the Executive Director any act or omission caused by the lawyer which may render the lawyer in the lawyer's professional capacity, liable, or any circumstance that the custodian reasonably expects to be the basis of a claim or suit against the lawyer.[10]

19. These requirements are separate from the Law Society's *Code of Professional Conduct* (the "Code"), which also provides for a mandatory duty to report to the regulator in specific circumstances, including the abandonment of a law practice, conduct that raises a substantial question as to honesty, trustworthiness or competency of a lawyer, and any other situation in which a lawyer's clients are likely to be materially prejudiced.[11] At this stage of the rule development project, the question for the transitional board and transitional Indigenous council is whether a specific rule requiring a custodian to report is required, and if so, under what circumstances. Discussion by the transitional board and transitional Indigenous council of the Code in general, and the specific duty to report rule applicable to licensees under it, will occur at a future date; however, the Code's widespread application to all licensees should be kept in mind.

20. Under section 84(2)(c) there is the potential to expand the current Law Society and Notaries Society practice to require a custodian to report in more circumstances other than when notified of a potential indemnification issue or when required under their broader professional responsibility obligations as provided by the Code to all licensees.

21. However, there may not be a specific need for such an expansion in the rules on custodianship. First, custodians perform a specialized practice and service to the public by protecting the client's interests in either temporarily or permanently taking over a practice. Custodians are not investigators, and their purpose in entering a practice and receiving documents and records is to ensure that any time sensitive actions are taken care of, and to provide continuity in service. Should a custodian encounter a breach of the

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[9] Rules of the Society, Rule 3.11 "Notice of action against a member to Society".
[10] Law Society Rules, Rule 6-2 "Report of possible claim".
[11] *Code of Professional Conduct for British Columbia*, Code rule 7.1-3, "Duty to report".

licensee's professional or ethical obligations, for example by noticing a discrepancy in the trust accounting records, the custodian will provide that information to their organization's professional conduct department, as part of their general obligations to report. The difference is at the core of the custodial program – a custodian is there to step into the shoes of the licensee, not to investigate. As a licensee themselves, custodians will be subject to any Code requirements to report a professional conduct matter.

22. There is rationale for having a specific rule requiring a custodian to report respecting indemnification matters. Reporting an error, omission or action that may give rise to a claim is a requirement under the indemnification policies of the Notaries Society and Law Society. A custodian, in stepping into the shoes of the licensee, may not be obliged under that licensee's indemnification plan to report. A specific rule that requires a custodian to make such a report solidifies the permissive "may" found in section 147(f) that states that a custodian may report to an insurer.

23. The transitional board and transitional Indigenous council may want to consider directing that a rule requiring a custodian to report a possible error, omission or actions giving rise to a potential claim in liability to the indemnifier. The transitional board and transitional Indigenous council may also wish to consider expanding the duty to report requirements of licensees in the rules, or may decide to defer that consideration to when the Code is discussed.

Custodian may not act for clients of custodial practice or acquire the practice

24. The Law Society currently has two rules that limit a custodian's ability to act on behalf of a lawyer's client and to acquire the lawyer's law practice.[12] The Notaries Society does not have an equivalent limitation to their custodianship program.

25. The origin of the Law Society's rules on this topic stemmed from concerns that at one time, there was a perception of favouritism when the Law Society requested external counsel to act as a custodian of a lawyer's practice. That risk has been removed by moving the custodianship program in house.

[12] Law Society Rules, Rule 6-3, Acting for lawyer's clients, and Rule 6-4, Acquiring lawyer's practice.

26. The Notaries Society does not specifically prohibit external notaries public to acquire the clients and practice of notaries under a custodianship order. This ability has been especially helpful for rural or remote practices, as there may only be one or two other notaries available to take on the work of custodian in those communities.

27. Section 147(c) of the new *Legal Professions Act* states that a custodian may represent a client of a licensee, in place of the licensee, in any cause or matter in respect of which the licensee was acting at the time the custodian was appointed, to the extent necessary to protect the interests of the client. Although section 147 is permissive in the use of "may", a rule that prohibits a custodian's ability to act on behalf of a client runs counter to the permission granted by the Act to do just that.

28. The transitional board and transitional Indigenous council may want to consider directing that there should not be a rule limiting the ability of a custodian to take over the practice or act for a client for Legal Professions BC. Alternatively, the transitional board and transitional Indigenous council may consider codifying the permissive language found in section 147, by directing that a rule specifies that the custodian is allowed to act in such a manner. However, unlike the reporting requirement discussion respecting indemnification above, it may not be necessary to have a rule directing a custodian to do so when there is permission in the Act.

Privacy and confidentiality of custodianship actions

29. Under section 66 of the *Legal Professions Act*, the transitional board and transitional Indigenous council may make rules respecting disclosure in the public interest, which would allow for the drafting of a rule respecting the disclosure of a custodianship order. Section 61 of the *Legal Professions Act* also states that a public registry must be maintained, which includes, amongst other items, information on a licensee's suspension, cancellation or disbarment, as well as any additional information required by the rules.

30. The Notaries Society does not publish its custodianship orders. Instead, it updates the contact details for the notary public in its Notary Listing website to be the contact information for the Notaries Society.[13] The result is that if someone was to look up the contact details for a notary, then the Notaries Society would be connected to that person and able to help them respecting the custodianship. It is the Notaries Society's practice to

[13] Society of Notaries Public of British Columbia, Notary Listing (2025) online.

provide a copy of the custodianship order to anyone who may request it, but it does not actively publish that information.

31. The Law Society has a similar practice where, in lieu of publication of the order, the Law Society updates its Lawyer Directory to provide the contact information for the custodian who is responsible for a lawyer's practice.[14]

32. Both the Notary Listing and the Lawyer Directory are similar to what is envisioned as a registry under section 61 of the new Legal Professions Act. However, section 61 does not specify any information respecting when a custodianship may occur but does leave open the ability to make a rule requiring disclosure. The transitional board and transitional Indigenous council may want to consider recommending that a rule be drafted requiring the inclusion of any custodial information as part of the licensee registry for Legal Professions BC.

Consideration of administrative suspensions and impact of new *Legal Professions Act*

33. Both the existing act, in section 50(3), and the new Act, in section 145(3), enumerate grounds upon which the Court may grant a custodianship order. One difference between the two is that the current Act indicates broadly that it is sufficient grounds "if a lawyer…is suspended from the practice of law", whereas the new *Legal Professions Act* in section 145(3) sets out specific types of suspensions as being sufficient grounds (i.e. "when a licensee's licence is suspended under section 59 (summary orders), Part 6 (Professional Conduct, Competence and Discipline) or Part 8 (Tribunal Proceedings)"). A concern is that the types of suspensions listed in section 145(3) does not include administrative suspensions imposed by the Law Society's Trust Assurance department or by the Notaries Society when a notary public fails to pay a fee or comply with a trust account audit and rules, and as envisaged under the new Act in section 171(3)(i) which states that the board may make rules authorizing the chief executive officer to suspend the licence of a licensee for failure to comply with a trust account audit. There may be a possibility to draft the new rules respecting administrative suspensions imposed from all of Legal Professions BC's departments to fit under the summary order power of section 59, however, further consideration of this possibility is required.

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[14] Law Society of British Columbia, Lawyer Directory (2025) online.

34. This concern may be mitigated in two ways. The first is recognizing that the granting of a court order is within the court's discretion, which section 145(3)(e) expressly states that it does not limit. The other way to mitigate this concern is to address it in the rules. The transition board and transition Indigenous council may want to recommend drafting a rule that allows the regulator to seek an order granting a custodianship in the situation of an administrative trust suspension.

Questions for consideration and direction

35. In summary, the main discussion and decision items for the transitional board and transitional Indigenous council are:

    a. Should Legal Professions BC require its licensees to have a succession plan?

    b. Should there be a rule that requires a licensee's cooperation with a custodianship order?

    c. If yes, should that rule specify what is required for cooperation? Should the rule include a requirement for a licensee to securely store passwords to their programs, including email?

    d. Should there be a rule requiring a custodian to report to the indemnifier a possible error, omission or action that may give rise to a claim in liability?

    e. If yes, should that rule require a custodian to report on any other matters, including professional conduct (in addition to any duty to report requirements to be considered in discussion of the Code)?

    f. Should there be a rule permitting or limiting a custodian from acting for a client of the licensee on any client matter the licensee acted upon?

    g. Should there be a rule requiring that any custodianship information be included in what will be the Legal Professions BC's licensee registry?

    h. If yes, how much information is necessary? Is contact information of the custodian sufficient, or should it include posting of or linking to custodianship order?

36. Following the advice and recommendations provided by the transitional board and transitional Indigenous council, staff will return with any draft rules and policies for consideration at a future date.

Legal Professions BC

Work Plan

Introduction

The *Legal Professions Act* requires that the transitional Indigenous council and the transitional board collaborate in the development of the first rules of Legal Profession BC. In addition, the Act provides in s. 70 that the board must establish a code of professional conduct for licensees.

This draft workplan sets out the required work and the timing necessary to complete the work involved in creating the first rules and the code within the expected 18-to-24-month timeframe.

Goal

The creation of first rules and a code of professional conduct for Legal Professions BC that:

1. Permit the effective and efficient regulation of the legal professions in the public interest.

2. Are consistent with the duties of Legal Professions BC and developed with regard to the following guiding principles:

    a. facilitating access to legal services;

    b. supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;

    c. identifying, removing or preventing barriers to the practice of law in British Columbia that have a disproportionate impact on Indigenous persons and other persons belonging to groups that are under-represented in the practice of law;

    d. regulating the practice of each legal profession in a manner that is transparent, timely, and proportionate to the risk of harm to the public posed by the practice.

3. Provide for regulation of the professions and the standards and programs for the education, training, competence, practice and conduct of applicants, trainees, licensees and law firms that are equivalent, unless a difference is required by the nature or scope of practice of that profession.

Project scope

In-Scope	1. Identify and draft the first rules that Legal Professions BC must have in order to regulate by amalgamation date 2. Work with the transitional tribunal chair to ensure compatibility of the first tribunal rules and the first rules 3. Prepare a code of professional conduct to reflect the professional responsibilities of lawyers, notaries and regulated paralegals
Out-Of-Scope	1. Operational considerations and policies for Legal Professions BC (e.g. communications, staffing, website) 2. Other considerations and approvals of the transitional Indigenous council and the transitional board as required by the *Legal Professions Act* (e.g. remuneration policy, hiring a transition manager) 3. Rules required for tribunal processes only

Deliverables

1. The first rules approved by amalgamation day; and
2. A code of professional conduct inclusive of lawyers, notaries public and regulated paralegals, approved by amalgamation day.

Milestones

Milestone	Date completed
Completion of consultations with staff and representatives	
Consultation brought forward by transitional Indigenous council on barriers in current rules and code	
Obtain high level direction from transitional Indigenous council and transitional board on approach to rules and code	
Policy reports created for every regulatory program or process that will require rules or reference to the code of professional conduct	

Transitional Indigenous council and transitional board approval of policy reports in principle	
First rules drafted	
Code drafted	
First rules approved by transitional Indigenous council and transitional board	
Code approved by transitional Indigenous council and transitional board	
Complete public engagement	
Final rules and code approved by transitional Indigenous council and transitional board	

Phases

(see Gantt chart DM4617646)

	Estimated time	Status	Date completed
Phase 1: Consultation	**4 months**		
1. Review LSBC, SNPBC, PABC rules and bylaws. 2. Compare new LPA and current SNPBC and LSBC rules and identify rules which do not have corresponding authority in new LPA.	January 2025	Complete	February 2025
3. Prepare consultation summaries and questions for: SNPBC, BC Paralegal Association, LSBC departments, and other legal stakeholders. 4. Schedule consultation sessions with representatives.	Jan-Feb 2025	In progress	
5. Review brought forward by transitional Indigenous council on barriers in current rules and code of SNPBC and LSBC.	Continuous	Pending	
6. Consult with representatives from above listed groups on regulatory	Mar-Apr 2025	In progress	

requirements for new rules and code.			
7. Create list of subject areas requiring rules and priority issues.	Jan-Apr 2025	In progress	
8. Present high level reports seeking direction for rules and code to transitional Indigenous council and transitional board.	Mar-Apr 2025	In progress	
9. Report to transitional Indigenous council and transitional board on project progress.	April 2025		
Phase 2: Policy reports	**4 months**		
10. Develop policy reports for each subject area and priority issues.	Mar-Jul 2025	In progress	
11. Consult with representatives on draft policy reports.	Apr-Jul 2025	In progress	
12. Present policy reports to transitional Indigenous council and transitional board for approval in principle:	Mar-Jul 2025	In progress	
a. Unauthorized Practice	March 2025		
b. Custodianships	March 2025		
c. Practice Advice	March 2025		
d. Policy (broad)	April 2025		
e. Indemnification	April 2025		
f. Complaints and Investigations	April 2025		
g. Discipline	May 2025		
h. Discipline – Alternative Resolutions	May 2025		
i. Discipline – Practice Reviews	May 2025		
j. Licensing and Enrolment	June 2025		
k. Continuing Competence and Education	June 2025		
l. Trust Accounts	July 2025		
m. Governance	July 2025		

13. Report to transitional Indigenous council and transitional board on project progress.	July 2025		
Phase 3: Draft rules	**12 months**		
14. Draft rules and code informed by policy reports approved in principle.	June-Nov 2025		
15. Present draft rules and code, *in parts*, for transitional Indigenous council and transitional board feedback. 16. Review feedback with representatives.	Nov 2025-April 2026		
a. Unauthorized Practice	June 2025		
b. Custodianships	June 2025		
c. Practice Advice	June 2025		
d. Policy (broad)	July 2025		
e. Indemnification	July 2025		
f. Complaints and Investigations	September 2025		
g. Discipline	October 2025		
h. Discipline – Alternative Resolutions	October 2025		
i. Discipline – Practice Reviews	October 2025		
j. Licensing and Enrolment	November 2025		
k. Continuing Competence and Education	November 2025		
l. Trust Accounts	December 2025		
m. Governance	January 2026		
n. Other rules	February 2026		
o. Code of conduct	Mar-Apr 2026		
17. Receive transitional Indigenous council and transitional board approval of draft rules and code.	April 2026		

18. Report to transitional Indigenous council and transitional board on project progress.	November 2025 **and** April 2026		
Phase 4: Engagement	**6 months**		
19. Publish draft rules and code for feedback.	May 2026		
20. Hold engagement sessions with key stakeholders and partners.	June 2026		
21. Report to transitional Indigenous council and transitional board on feedback received.	July 2026		
22. Amend rules and code, if necessary.	Jul-Oct 2026		
23. Present revised draft rules to transitional Indigenous council and transitional board for final approval prior to amalgamation date.	Oct-Dec 2026		