LPBC Transitional Board and Transitional Indigenous Council

Joint Meeting

Agenda

Meeting Date: May 14, 2025

Meeting Time: 1:00 PM – 5:00 PM PST

Meeting Location:

Attendees:

Board Members

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

Indigenous Council Members

John Borrows
Christina J. Cook KC
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 April 16, 2025 Meeting			Draft Minutes
Discussion/Decision				
3	General policy on approach to drafting the rules and code of professional conduct	Advisory Committee	30 min	Policy Report
4	General policy on drafting the code of professional conduct	Advisory Committee	15 min	Policy Report
Break				
5	Complaints	Advisory Committee	30 mins	Policy Report
In-Camera *(Transitional Board and Transitional Indigenous Council only)*				
6	Other Business			

SLR Board and Indigenous Council

Minutes of Meeting

Meeting Date: April 16, 2025

Meeting Time: 13:00

Meeting Type: Hybrid

Meeting Location: Law Foundation of British Columbia

Board Members in Attendance:

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

Indigenous Council Members in Attendance:

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

Advisory Committee Members in Attendance:

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

Staff:

Maddie Holm-Porter

Observers

Name	Organization	Name	Organization
Katie Armitage	Ministry of AG	Claire Marchant	Staff, LSBC
Gigi Chen-Kuo	CEO, LSBC	Marcia McNeil	Bencher, LSBC
Su Forbes, KC	COO, LIF	Cary Ann Moore	Staff, LSBC
Ravi Hira, KC	Bencher, LSBC	Michael Mulhern	Staff, LIF
Jeff Hoskins, KC	Staff, LSBC	Michèle Ross	Bencher, LSBC
Michael Johnston	Indigenous Advisor	Lesley Small	Senior Director, LSBC
Joan Letendre	Staff, SNPBC	Thomas Spraggs	Bencher, LSBC
Jamie Maclaren KC	ED, Access Pro Bono	Jaxxen Wylie	Indigenous Advisor

1.0 Welcome and Acknowledgements

The meeting was called to order at 13:03

The Chair welcomed the Board, Indigenous council, and members of the Advisory Committee and delivered a territorial acknowledgement.

The Chair also welcomed Jeevyn Dhaliwal, KC as the newest member of the transitional Board.

2.0 Approval of Minutes from the previous meeting

The March 19, 2025 meeting minutes were approved.

3.0 Indigenous Council Presentation

The Indigenous Council delivered their presentation highlighting the challenges faced by Indigenous peoples in the context of becoming lawyers, remaining as lawyers, and receiving services from lawyers and legal regulators.

4.0 Access to Justice Presentation

Johanne Blenkin presented on the topic of legal information and the intersection of legal information and unauthorized practice, and issues relates to access to justice.

5.0 BC Paralegals Association Presentation

Elizabeth Kolias provided an overview of paralegal education, practice, and the nature of their work.

6.0 Society of Notaries Public of BC Presentation

John Mayr and Scott Simpson provided an overview of the regulatory functions of the SNPBC in the context of the regulated practice of Notaries Public.

7.0 Law Society of BC Presentation

Bruce LeRose, Sarah Westwood, and Adam Whitcombe provided an overview of the regulatory functions of the LSBC in the context of the regulated practice of Lawyers in British Columbia.

8.0 Project Director Update

An update on the engagement of a Project Director was provided to the Board and Indigenous council. Discussions are currently underway with various individuals and consultants.

9.0 Indigenous Advisor Update

The Indigenous council advised that they have found two candidates that they wish to extend offers to. Contract preparation is underway, and they hope to engage the two advisors shortly.

10. Updated Workplan

Updates to the workplan were presented.

11. Open Session Adjourned

The open session of the meeting adjourned at 17:15

12. *In Camera* Session

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

Transitional Board and Transitional Indigenous Council

General Policy on Approach to Drafting the Rules and Code of Professional Conduct

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
From:	**Advisory Committee**
Date:	**May 14, 2025**

Background

1. The new *Legal Professions Act* provides in section 27 that the board may make different rules for different legal professions, make different rules for different licenses, persons, entities, things, activities, transactions or circumstances and for different classes of licensees. Both the Law Society and the Notaries Society have not had to consider the drafting of rules pertaining to more than one legal profession.[1]

2. Affecting this consideration is the role of section 216 of the Act, which states that any commercial paper, lease, licence, permit or other instrument or document signed by the Law Society of British Columbia or the Society of Notaries Public of British Columbia is deemed to be a reference to the regulator. This means that, for example, the Law Society's agreement to the National Mobility Agreement with the Federation of Law Societies of Canada and the thirteen law societies in Canada and the Notaries Society agreement with the Financial Transactions and Reports Analysis Centre of Canada will become an agreement of Legal Professions BC.[2]

3. The individual agreements and impacts of the Law Society and Notaries Society may be reviewed by the transitional board and transitional Indigenous council later in this transition process. For the purposes of this paper and the direction required from the transitional board and transitional Indigenous council, it is important to note that those agreements, as they currently stand, impact some of the current rules of the respective institutions (for example, rules on the mobility of lawyers across Canada). This impact does not prevent the drafting of a single set of rules and a single code of professional conduct for the legal professions but is one factor to keep in consideration when discussing some of the differences that may be maintained between the professions going forward.

Issue

4. The Act provides the authority to establish different rules for the regulated professions and even for classes of licensees within the regulated professions. The issue for consideration is whether, in developing the rules and the code of professional conduct, there should be a

[1] The provisions in the current Law Society Rules for additional qualifications for lawyers acting as family law mediators and arbitrators are an example of a difference in regulation among a class of professionals.

[2] The subject of trust accounts, anti-money laundering and the role of FINTRAC will be the subject of a future policy paper for the transitional board and transitional Indigenous council to consider. The agreement here is listed purely as an example.

single set of rules and a single code for the legal professions with differences in the rules and code only when required by the different circumstances of each profession, or whether the distinct history and culture of the currently regulated professions should be reflected in the development of a discrete set of rules and code for each profession.

Discussion

The public

5. The public should be entitled to expect that, regardless of which legal professional they choose to provide legal advice and assistance within an area of legal practice, the competence and professional obligations of the licensee should be equivalent. While there may be instances where some differentiation is required, we do not expect there will be many of these instances, and they should be made both clear and available to the public. An example might be the application of any rules respecting the pathway to licensure for each profession.

Licensees

6. Outside of specific instances when a difference in treatment between the professions is required, there is no principled reason why, for example, a notary public should be held or want to be held to a different standard of practice or treatment by the regulator than a lawyer or regulated paralegal who may be practising in the same area of law.

7. A single standard also clarifies the standard that licensees can expect from each other, across the professions. This allows for the professions to work together in a more collaborative way while also providing better clarity of when the differences between the professions arise in relation to the rules and the code of professional conduct. This will provide better accountability of each licensee between the professions as harmonization mostly means that licensees will know inherently what is required of another as it is the same requirements for them.

The regulator

8. A single set of rules and a single code of professional conduct benefits the regulator through efficiency in service delivery. For example, application processes can be simplified if the rules provide for harmonization and parity between the professions in terms of deadlines, supporting documents, etc.

9. Another benefit for the regulator relates to administrative fairness. Since the new Act provides that all licensed legal professionals practice law, any differentiation in treatment by the regulator must be justifiable. The transitional board and transitional Indigenous council will be presented with papers of when a difference in how the regulator treats the three legal professions may be justified. For example, rules relating to education or competency requirements respecting pathways to licensure. But for most of the regulator's interactions with the three legal professions, a separate set of rules or code provisions for each may cause questions of procedural or administrative fairness. This is especially so when considering the regulator's disciplinary and alternative resolution processes.

Potential for future legal professions

10. Drafting a single set of rules and a single code of professional conduct will also allow for the future creation of more types of legal professions or for classes of a legal profession. If the rules and the code of professional conduct are drafted to provide for parity between the professions as much as possible, then the addition of a new legal profession or class of profession should be more streamlined as the standard is already established.

Drafting considerations, current and future

11. A single set of rules and a single code of professional conduct provides for a better drafting experience, both from the transition perspective, but also into the future. From a transition perspective, drafting one single set of rules and one code of professional conduct for amalgamation date may be more straightforward than trying to draft three separate versions of both for each profession.

12. A single set of rules may be longer than an individual set specific to one legal profession. However, going forward, revisions and amendments would be much more straightforward than having to consider each profession's own individual set of rules. If judging by the standard of length alone, at least three separate sets of rules and three separate codes of conduct will be more complicated and lengthier than any single, all-encompassing version. Three separate sets of rules and codes will also mean a considerable amount of repetition in each document.

13. In addition, if the goal of harmonization across the legal professions is achieved, where possible, then any future amendments to the rules or the code of professional conduct will mean that, in general, policy considerations and amendments will focus on the delivery of legal services by all legal professionals (with exceptions where required). This outcome is supported by the *Legal Professions Act*, which sets out that the legal professions all engage

in the practice of law, and in its own statutory language, envisions the relationship between the regulator and the legal professional as one of "licensee" or "law firm."

Disadvantages

14. There is one main drawback in approaching the drafting of a single set of rules and code of professional conduct for the legal professions, which relates to the historical differences between the two currently regulated professions, and the impact of section 216 of the *Legal Professions Act*. Through section 216, those agreements become that of Legal Professions BC on amalgamation date. There is a chance that the other contracting parties to the agreements with the current Law Society or Notaries Society may prefer if the rules respecting lawyers and notaries public remain separate and distinct from each other, as well as the newly created regulated paralegal. That preference, and the impact, if any, it may have on the future of those agreements, is unknown at this stage. There is also the chance that there may be more variance required between the professions and the treatment of them by the regulator than currently anticipated.

15. These disadvantages can be mitigated in two ways. The first is through addressing the unknown but ensuring that the transitional board and transitional Indigenous council approaches the considerations of those agreements that may impact the drafting of the first set of rules and code of professional conduct earlier on in the process towards transitioning to Legal Professions BC. The second is that during the drafting process anticipated by the work plan, if it becomes evident that a separate set of rules and code of professional conduct is required for each profession, the advisory committee may revisit this discussion with the transitional board and transitional Indigenous council and ask for further direction.

Question for consideration and direction

16. In summary, the main discussion and direction item for the transitional board and transitional Indigenous council respecting the drafting of the first set of rules and code of professional conduct is:

    1) Should a single set of rules and a single code of professional conduct inclusive of the legal professions be drafted, with differences in the rules and code only when required by the different circumstances of each profession?

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

Transitional Board and Transitional Indigenous Council

General Policy on Drafting the Code of Professional Conduct

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
From:	**Advisory Committee**
Date:	**May 14, 2025**

Background

1. Section 70 of the new *Legal Professions Act* requires that a code of professional conduct must be established. To ensure continuity in maintaining the standards of professional responsibility and legal ethics expected by the public of notaries and lawyers, and establishing those standards for regulated paralegals, a code of professional conduct needs to be drafted and approved for amalgamation day.

2. Section 27 also provides that the board may adopt by reference, in whole or in part, a regulation, code, standard or rule enacted under the law of another jurisdiction or set by a provincial, national or international body.

3. Section 226 of the Act provides that on the amalgamation date, a reference to the Law Society or the Society of Notaries Public is deemed to be a reference to Legal Professions BC in any commercial paper, lease, licence, permit or other instrument or document.

The Law Society

4. The Law Society is party to several agreements relating to its regulation of lawyers and has adopted and incorporated other documents for the purposes of regulating the practice of law in the province. For example, the Law Society is the signatory to the National Mobility Agreement and Territorial Mobility Agreement, the terms of which are adopted in the rules for the purposes of authorizing interjurisdictional practice.

5. The Law Society has also used the Federation of Law Societies of Canada's Model Code of Professional Conduct as the general basis for its *Code of Professional Conduct for British Columbia* since 2013.

The Notaries Society

6. The Notaries Society incorporates some standards of professional conduct into its Rules of the Society, and has a separate code called the Principles and Guidelines for Ethical and Professional Conduct. The genesis of the Society's code is related to the model of professional association codes of ethics, meaning that the principles and guidelines are aspirational in nature as opposed to use as a regulatory tool, and are used to assist in interpreting the standards of professional conduct found in the Rules. The Notaries Society is not party to any agreement that may impact a code of professional conduct and ethical responsibilities for a notary public.

The need for early direction

7. As part of the work plan approved by the transitional board and transitional Indigenous council, the advisory committee is beginning its process of commencing work to draft a code of professional conduct for the licensees of Legal Professions BC.

8. The transitional board and transitional Indigenous council will have opportunities to provide feedback and review the drafted code of professional conduct subject matter as envisioned in the work plan. However, at this stage of development, the advisory committee needs an early direction from the transitional board and transitional Indigenous council in terms of the approach to take in drafting the code of professional conduct. The reasons for the need for this direction are discussed in more detail below, along with an analysis of the options. The advisory committee is seeking permission to use the Federation of Law Societies of Canada's Model Code for lawyers as a starting point for this work.

9. This decision is related to another paper before the transitional board and transitional Indigenous council at its May 2025 meeting, discussing the approach to drafting the first set of rules and code of professional conduct for the legal professions. The decision the transitional board and transitional Indigenous council makes on how to approach the drafting of rules and the code for the professions will impact how the code of professional conduct drafting process unfolds.

Discussion

10. As stated in the work plan, the transitional board and transitional Indigenous council need to consider and approve the drafting of a code of professional conduct for amalgamation day. It is anticipated that the work to do so will take 12 to 18 months. The advisory committee wants to start that work using the Federation of Law Societies' Model Code as a starting point for the following reasons.

Drafting timeline

11. One reason why the advisory committee is seeking early direction from the transitional board and transitional Indigenous council is to avoid a situation where 12 to 18 months of significant research and drafting efforts has been expended to write a code of professional conduct using the Model Code as a starting point, only to discover that the transitional board and transitional Indigenous council feel strongly that should not have occurred. This does not mean that the time spent will have necessarily been wasted, but we may avoid delay in the delivery of this product if we can agree on the approach to its work at an early stage.

12. A second reason why the advisory committee is seeking permission to use the Model Code as a starting point is that by using an already existing document, the work to review and revise it as necessary can begin in earnest, as opposed to having to start the drafting from scratch to then review and revise. The advisory committee anticipates that time will be saved if using this approach, which means that the transitional board and transitional Indigenous council can begin reviewing the code's provisions at a much earlier date.

13. To compare the processes, the first draft rules that will be considered by the transitional board and transitional Indigenous council will be drafted new. Other existing rules from other regulators in BC and other jurisdictions, including the existing Law Society Rules and Notaries Rules, will be consulted as part of the drafting process, but neither will be used as the starting template on which to draft and revise from. This is due to the significant changes in the regulation of the legal professions provided by the *Legal Professions Act*. The professional and ethical responsibility of those professions, however, are not as significantly, if at all, impacted by the Act.

Current approaches to professional responsibility by the Notaries Society and Law Society

14. As mentioned above, the Notaries Society incorporates a notaries' professional and ethical duties into its Rules of the Society. The Law Society separates those duties into its Code of Professional Conduct, which is based on the Federation of Law Societies' Model Code.

15. If the transitional board and transitional Indigenous council provide the direction to draft one single code of professional conduct (that direction is the subject of another paper), then the advisory committee recommends that the Federation of Law Societies' Model Code be used as the starting point for the drafting for the following reasons.

Differences between standards of professional responsibility

16. As mentioned in the supporting policy paper on drafting a single set of rules and a single code of conduct, there is no principled reason for different standards of professional or ethical responsibility to exist between the professions, with the few exceptions of when it may be necessary.

17. Any current differences between a notary's and a lawyer's current professional responsibilities will be reviewed as part of the work in drafting the code of professional conduct, in addition to how those standards will impact regulated paralegals. If there is a justifiable reason as to a difference must be maintained, that difference will be

distinguished through drafting. Using the Model Code as a starting point does not negate the ability of the drafters to ensure that any required distinctions are preserved.

National mobility requirements

18. Lawyers in British Columbia can work in the other provinces and territories of Canada through the Federation of Law Societies' National Mobility Agreement. One core component of that ability is that the standard of professional responsibility for lawyers is unified across the jurisdictions by the Model Code. If the transitional board and transitional Indigenous council were to move away from the use of the Model Code as the template for the code of professional conduct for Legal Professions BC for lawyers, then there is a risk that the mobility rights that lawyers currently enjoy may be negatively impacted. The extent of that risk requires further determination, but at this point, the transitional board and transitional Indigenous council should note that it is there.

Using the Model Code does not limit the possibilities

19. The Law Society's current practice toward the Model Code is a good example of how it may work in this drafting process and in the future for Legal Professions BC. When first adopted by the Law Society of BC, the Law Society reviewed the Model Code and made amendments before adopting it as its Code of Professional Conduct. Those amendments were intended to reflect the standards of professional and ethical responsibility expected of lawyers in British Columbia. When the Federation of Law Societies issues an amendment to the Model Code, the Law Society of BC considers those amendments, and can accept, reject, or further amend as it sees fit.

20. The idea is for the transitional board and transitional Indigenous council to have the advisory committee approach the work of drafting the new code of professional conduct in a comparable way. However, in addition to reviewing the Model Code for the standards of professional responsibility in British Columbia, additional work will be done to ensure that those standards are the same across the three (or potentially more) legal professions, that distinctions between the professions are maintained when necessary, and that the incorporation of Indigenous legal traditions and Indigenous practices is completed.

21. If the Model Code is reviewed and revised as envisioned above, there is also a chance that the other law societies and legal regulators across Canada, including the Federation of Law Societies, may look to Legal Professions BC's code of professional conduct as a way to amend their own codes to reflect Indigenous legal traditions and Indigenous practices, amongst other considerations.

Law Society of Ontario

22. The Law Society of Ontario is the only other legal regulator in Canada that regulates more than one legal profession. It has one code of conduct for lawyers, and one code of conduct for paralegals. Ontario lawyers follow the Rules of Professional Conduct, which is based on the Model Code. Ontario paralegals instead follow the Paralegal Rules of Conduct, which contains nine overarching rules. In addition, Ontario paralegals also have the Paralegal Professional Conduct Guidelines, to assist paralegals in interpreting their rules of conduct. There are 23 guidelines.

23. There are historical reasons as to why lawyers and paralegals in Ontario have separate standards of professional responsibility. The first is that the Law Society of Ontario, as the existing regulator of lawyers, was tasked with regulating paralegals as part of its ongoing operations. This is distinct from what is happening in BC, where the government is ceasing the existing legal regulators of the Law Society and Notaries Society, amalgamating them into one entity called Legal Professions BC, and incorporating regulated paralegals from the outset of that new entity.

24. Another reason for the distinction in Ontario is contained in the *Law Society Act*. In general, lawyers in Ontario "practise law," while paralegals "provide legal services." Under BC's *Legal Professions Act*, all the licensed legal professions are engaged in the practice law, with the distinctions between the professions based on scope of practice based on the license type.

25. As mentioned in this paper and in other papers before the transitional board and transitional Indigenous council at its May 2025 meeting, there is no principled reason why the core of the professional and ethical responsibilities of one of the legal professions needs to be separate or distinct from the others. The reasons for why the Law Society of Ontario may have chosen to do so do not exist in British Columbia or for Legal Professions BC.

Question for consideration and direction

26. In summary, the main discussion and direction item for the transitional board and transitional Indigenous council respecting the drafting of the code of professional conduct is:

    1) May the advisory committee start its work on the code of professional conduct by using the Federation of Law Societies' Model Code as a starting point from which to review, revise, and incorporate the needs in British Columbia of the three legal professions, and Indigenous legal traditions and Indigenous practices?

27. Following the advice and recommendations provided by the transitional board and transitional Indigenous council, staff will return with policy papers and draft code provisions for consideration at a future date.

Transitional Board and Transitional Indigenous Council

Complaints

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
From:	**Advisory Committee**
Date:	**May 14, 2025**

Background

1. Both the Notaries Society and the Law Society have long established complaints processes that, in practice, largely match each other. Both organizations initiate their complaints process through receiving a complaint from the public, the judiciary, another licensee, or from an internal source, such as through an audit. Both organizations have also created flexible and adaptive procedures for receiving a complaint.

2. Given the volume of complaints handled by the Law Society, it has also created some additional accommodation and pathways to assist with the complaint process. Staff use a triage sheet to determine the seriousness of the matter, and whether the complainant requires special assistance. The Law Society uses its own staff or will hire a translator to assist a complainant when needed. Staff also assist those with sensory disabilities to make a complaint by providing screen readers or other similar tools. All staff in the complaints intake department receive trauma-informed training. In addition, a distinct process has been created for complaints related to discrimination, bullying, harassment, and sexual harassment, in which the complaint is received through a direct phone line and a direct email to the Director of Investigations, Early Resolution and Practice Standards, with the files given priority.

3. The Law Society has also introduced the role of an Indigenous navigator to assist Indigenous complainants and witnesses throughout their experience with the regulator. The creation of the Indigenous navigator role was a direct result of the Indigenous Engagement in Regulatory Matters Task Force's recommendation.[1]

4. What the above description briefly highlights is that, although the Notaries Society has a rule requiring the complaint be in writing[2] and the Law Society has a rule that states that a person may deliver a written complaint,[3] both organizations' approach to the complaints process is much more flexible, adaptive, and supportive of a complainant's needs.

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[1] Law Society of British Columbia, "Report of the Indigenous Engagement in Regulatory Matters Task Force" (July 2023), Recommendation 3.2.

[2] Society of Notaries Public of British Columbia Rules, Rule 9.01, Preliminary inquiry.

[3] Law Society Rules, Rule 3-2, Complaints.

Authority

5. Part 6 of the *Legal Professions Act* covers Professional Conduct, Competence and Discipline. Division 2 sets out the provisions on the complaints and investigations powers and processes. As the starting point for the matters covered in Part 6, this policy paper covers the complaints process.

6. Section 76 of the Act provides a person may make a complaint if the person believes that a licensee, trainee or law firm may have committed a professional conduct violation or practised law incompetently. A complaint must also be made in accordance with the rules, establishing the requirement that rules must be drafted respecting the complaints process.

7. Under section 76(3), the chief executive officer may dismiss a complaint if the complaint is frivolous, vexatious, trivial, not made in good faith or if the complaint is not within the regulator's jurisdiction or does not contain allegations that, if admitted or proven, would constitute a professional conduct violation or the incompetent practice of law.

8. If the complaint leads to an investigation, then section 76(4) requires that the chief executive officer must provide the complainant with regular updates about the progress of the investigation, as well as the final resolution of the complaint.

9. Section 84 provides the board with the general authority to make rules respecting complaints and specifically provides that the board may make rules respecting complaints including establishing a process for making a complaint, authorizing a variation of the complaint process to accommodate individual circumstances of a complainant, and establishing the circumstances of when a licensee must make a report to the regulator respecting other licensees.

10. In addition to the provisions in Part 6, Division 2, section 61 of the *Legal Professions Act* sets out the requirement that the board must establish a registry containing specific licensee information, such as name, business address and type of licence and identifies the information that must be made available as the result of the complaint, investigation and discipline process. The board may also include additional information in the registry through the rules (section 61(h)). The board may also make rules respecting disclosure in the public interest through section 66 of the Act.

Discussion

Indigenous perspective

11. An Indigenous perspective and participation is required in the development of the rules and code, and we note that in the development of this policy paper, an Indigenous perspective remains to be provided. We anticipate that the recent engagement of two Indigenous legal advisors will assist both the transitional Indigenous council and the transitional board in bringing this perspective to the development of the rules and code. The application of that perspective may impact the consideration and resolution of the issues covered in this policy paper and require further consideration by the transitional board and the transitional Indigenous council in the future.

Process for making a complaint

12. Section 76(2) of the new *Legal Professions Act* states that a complaint must be made in accordance with the rules. Having a rule that sets out the complaints process is important. In drafting rules, the transitional board and the transitional Indigenous council ensure that there is compliance with the statutory expectation as required by section 76(2) of the Act. If a complaints process is not established in the rules, the regulator may face a potential legal challenge from a licensee if a complaint against them was not made in accordance with the statutory requirement established by section 76(2). While section 76(2) of the *Legal Professions Act* requires that the transitional board and transitional Indigenous council must draft rules for making a complaint, in keeping with the guideline in section 7(d)(iii), any rules should ensure the regulation is proportionate to the risk of harm to the public. In addition, section 84(2)(b) of the Act suggests that the board may make rules that allow for the variation of the process established to accommodate the individual circumstances of a complainant. It is open to the transitional board and transitional Indigenous council to recommend drafting a rule that meets the statutory need for such a rule but is reflective of the need for flexibility and accommodation of an individual complainant's circumstances.

Requirement to inform the complainant

13. Section 76(4) of the new *Legal Professions Act* sets out the requirement that the chief executive officer must provide regular updates to a complainant if the complaint leads to an investigation and inform the complainant of the final resolution of the complaint. This

provision is largely the codification in the legislation of the current Law Society Rule 3-9 on notice to a complainant.

14. The inclusion in the legislation of this mandatory requirement for notice negates the need for a rule to allow for the regulator to do so. It is a fundamental drafting principle that rules should not duplicate powers or processes set out in the legislation.

Confidentiality and publication of a complaint

15. Section 61 specifically provides that the chief executive officer must provide on a publicly available website a notation of any limits or conditions imposed on a licence; a notation of each suspension or cancellation of a licence under this Act; a notation of each suspension or disbarment under the *Legal Profession Act*, and of each suspension or termination of membership under the *Notaries Act*, in relation to a licensee, if the suspension, disbarment or termination was made public before the coming into force of this section; and a notation of each disciplinary action, other than an action described in paragraph (f), taken in relation to a licensee under the *Legal Profession Act* or the *Notaries Act*, if the information was made public before the coming into force of this section.

16. These requirements largely mirror the current practice of both the Law Society and the Notaries Society. However, section 61 also provides that the chief executive officer may publish any additional information required by the rules. There is a question, through this provision, as to whether more information about the complaint, investigation and discipline process should be made public.

17. Both the Notaries Society and the Law Society do not publish complaints against their licensees before a citation is issued. The Law Society has a rule (Rule 3-3) that allows the executive director to disclose the existence of a complaint and its subject matter if the complaint has become known to the public. This rule is in response to a situation where the media may have knowledge of a complaint or potential investigation involving a lawyer. This power given through this rule is also now codified through section 66 of the new Act. The Notaries Society does not have a corresponding rule, but in general, they do not receive media inquiries about licensees to the same extent that the Law Society does.

18. Publishing information about a complaint prior to the completion of an investigation or disciplinary outcome would allow the public to be aware that there may be a forthcoming issue with their legal professional that may be relevant to them. For example, while the investigation of a potential misappropriation of client funds is still under way, the current

practice does not permit disclosure of that investigation. The result is that clients may continue to provide funds in trust to the legal professional or firm under investigation and subsequently find that those funds have been misappropriated.

19. For those licensees who receive a high volume of complaints that are never substantial enough to give rise to disciplinary conduct, the publication of the complaints may act as a deterrent or at least provide an awareness to the public about the previous behaviour by the licensee. For example, while nearly 63% of currently practising lawyers have received no complaints at all, about 1% of currently practising lawyers have received between 20 and 79 complaints during their career. While roughly 80% of these complaints resulted in no disciplinary action being taken, the obverse is also true: that 20% of the complaints did result in some further action against the lawyer.

20. Like the Notaries Society and the Law Society, most professional regulators take the position that a complaint should not be made public during the investigation process until at least the equivalent of a disciplinary outcome is reached (such as a consent agreement) or the citation stage for the following reasons.

21. The first reason against publishing a complaint is due to procedural fairness. A complaint is an accusation, and not yet proven. To take the position that all complaints against licensees should be published before an outcome or citation means that complaints which are not substantiated or not proven will be in the public realm. This goes against the idea of procedural fairness by not allowing the licensee the possibility to respond or defend prior to the information becoming public. With today's technology, once something is published on the internet, it never disappears, and the ongoing harm that may be caused by such a publication may outweigh any benefit in publishing it.

22. Some complaints may be made in bad faith, but the regulator is not able to dismiss the complaint outright as it needs to investigate to confirm the conduct. For example, it is foreseeable that in a hotly contested family law proceeding a licensee may unduly experience a complaint by the other party motivated by the underlying stress of the case on the parties. The regulator will still need to investigate that complaint but publishing it during an investigation stage may cause undue hardship on the licensee and on the public who may have otherwise retained the licensee but for those accusations. The privacy interests of all concerned during an investigation outweigh the public interest in transparency. Premature publication or disclosure of a complaint may compromise the investigation itself. Once an investigation is concluded, even though the allegations have not been proven, if the citation approval process has determined that a citation is justified,

the public interest in the transparency of the hearing process outweighs the privacy interests of the licensee involved.

23. It is open for the transitional board and transitional Indigenous council to consider whether there is a need for the registry of licensees to include information respecting a complaint prior to a discipline outcome or citation being issued. If the transitional board and transitional Indigenous council decide that there is a need for such disclosure, then a rule should be drafted requiring the regulator to publish that information. However, the transitional board and transitional Indigenous council may prefer to maintain the flexibility and discretion provided through section 66 that allows for the regulator to determine when it is in the public interest to disclose the existence and content of a complaint, as opposed to a rule that requires the disclosure of such information for all licensees.

Complainants' request to review

24. The *Legal Professions Act* does not require or suggest that the board establish a process to provide a complainant whose complaint has been dismissed by the chief executive officer (or their delegate) with an avenue to have that decision reviewed. However, it is common for regulators of the professions to either establish a process internally or refer to a process externally to address the need of a complainant to feel heard.

25. Currently, the Notaries Society does not have a formal process for reviewing a dismissed complaint. This is due to the multi-stage process for a disciplinary proceeding against a notary, and the constraints of the current *Notaries Act*. If a complainant's matter is closed without action, the Society will refer the complainant to the BC Ombudsperson as a matter of practice.

26. As a comparison, the Law Society has facilitated a review of a dismissed complaint through the Complainants Review Committee for the last 30 to 40 years. The Committee meets two to four times per month, and reviews approximately 65 requests for review each year. The purpose of the Committee is to review the initial staff decision, and either confirm the decision to not proceed with a complaint, refer the complaint directly to the Discipline Committee (or other currently existing committees) or return the complaint for further investigation.

27. The review process by the Committee is extremely time-consuming and labour intensive, both for the committee members and the staff responsible for supporting its work. In addition, the timeline required for a review means that a complainant will not receive the

Committee's decision for several months. The vast majority (upward of 97%) of the Committee's decisions confirm the initial staff decision to dismiss the complaint. Some complainants who may still be dissatisfied with the result will then take their request to review to the BC Ombudsperson. In general, the BC Ombudsperson upholds the decision of the Complainants Review Committee.

28. Under section 9(3) of the new *Legal Professions Act*, the board may establish a committee to assist the board. The omission of a requirement or a suggestion in the new Act does not mean that the possibility of it is abolished. It is possible for the board to create a similar committee to the Law Society's current Complainants Review Committee, should the transitional board and transitional Indigenous council decide to do so.

29. However, the transitional board and transitional Indigenous council may want to consider whether an alternative process for the review of a dismissed complaint may be created or recommended.

30. One alternative is that a dismissed complaint may be reviewed by another senior staff member of the regulator, who was not originally involved in the initial decision respecting the complaint. This would allow for a quality-review step to be built into the complaints process. A staff member may be in a dedicated role for such a review (like a registrar position), or it may be another senior staff member responsible for a different departmental area. Using the Law Society's current statistics as an example, if 97% of complaints referred to the Complainants Review Committee confirm the initial staff decision, having an internal process that replicates that review without a committee may be a more timely and effective way to reach the same outcome. Another advantage of this internal process is that it is efficient and low-cost to operate. The main disadvantage is that it lacks the perceived independence from the regulator that a complainant may desire.

31. Another alternative is the creation of a complaint resolution office, external and independent of the regulator. The commissioner would be responsible for the review of dismissed complaints. The Law Society of Ontario has such a process.[4] The advantage of this process is that the review is completed by someone outside of the organization, which gives the impression of impartiality and independence. The disadvantage of this process is that the organization would be responsible for funding the commissioner, at unknown costs at this time, but at a minimum assuming the full-time salary of an experienced legal

[4] Law Society of Ontario, "Office of the Complaints Resolution Commissioner".

practitioner and administrative support to the that person. If the transitional board and transitional Indigenous council are interested in this as a possibility, the advisory committee may return with a policy paper providing a deeper policy analysis including financial considerations.

32. Another process is using one that is already in existence, which is that a decision to dismiss a complaint may be reviewed by the BC Ombudsperson.[5] Complainants dissatisfied by a decision of the chief executive officer at Legal Professions BC may apply for their complaint to be reviewed by the BC Ombudsperson. This process already exists for the Law Society for complainants who want to review the decision of the Complainants Review Committee. The Notaries also refer dismissed complaints to the BC Ombudsperson. The advantages of a review of the BC Ombudsperson are that the review process is already well established, is independent, and does not pose a significant cost to the regulator. The disadvantage is that if a secondary review process is not established for Legal Professions BC, and the only avenue for review is to the BC Ombudsperson, the Ombudsperson process may return more decision for further consideration by the regulator. At the moment, the Law Society's Complainant Review Committee provides detailed written reasons for dismissing a complaint, which is of great assistance to the Ombudsperson on review of that decision.

33. Another avenue for review is that a dissatisfied complainant may apply for judicial review of the regulator's decision not to proceed with a complaint. This possibility already exists for the Law Society; however, it has not been pursued much to date due to the existence of the Complainants Review Committee. Should a committee not exist for Legal Professions BC, then the transitional board and transitional Indigenous council may anticipate that there will be an increase in the use of this review process through the courts. The benefit of judicial review is that it is a long existing, independent process with precedents available for complainants. The disadvantages of the judicial review process are that it can be complicated for complainants to navigate on their own, it has a higher cost associated with the filing and court fees and is another legal process they must face amid having their complaint against a legal professional dismissed.

34. Whichever direction that the transitional board and transitional Indigenous council wishes to proceed respecting a complaints review process, it is important to note two things. The first is that, if there is a decision to move away from the creation of a review committee, then another process should be identified or established by the amalgamation date, to

[5] Ombudsperson British Columbia, "About us".

ensure that there is continuity in providing the public with a service that it has come to expect in relation to complaints against lawyers for the last several decades.

35. The second point to note is that whatever process is selected (or not selected) at this stage does not preclude the creation of a new or additional process post-amalgamation date. For example, if the transitional board and transitional Indigenous council decide to forego the creation of a committee or an external commissioner, and instead choose the easier to enact process of an internal review by a different senior staff member followed by Ombudsperson for amalgamation date, this does not mean that, post-amalgamation date, the board and Indigenous council could not reflect on whether that process is working using data and feedback from the new regulator.

36. The transitional board and transitional Indigenous council may want to consider whether, at this stage, it is necessary for there to be a process for the review of a dismissed complaint, and if so, what that process may entail.

Questions for consideration and direction

37. In summary, the main discussion and direction items for the transitional board and transitional Indigenous council respecting complaints are:

    1) Should there be a rule that establishes the general process for making a complaint which incorporates flexibility to fit the specific circumstances of individual complainants?

    2) Should there be a policy drafted to address the requirement to inform a complainant of the progress and final resolution of their complaint?

    3) Should there be a process for a complainant to request a review of a dismissed complaint?

    4) If yes, then what should that process be for amalgamation date? Options to consider include an internal review by another senior staff member (who may be dedicated for such reviews or process them as part of their overall job responsibilities), the creation of a committee for review, the creation of an external commissioner for review, and the use of the BC Ombudsperson.

5) Should a rule be drafted that requires the mandatory disclosure of information respecting a complaint against all licensees to be published in the public registry?

38. 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.