LPBC Transitional Board and Transitional Indigenous Council

Joint Meeting

Agenda

Meeting Date: November 19, 2025

Meeting Time: 9:00 AM – 4:00 PM PST

Meeting Location: Society of Notaries Public of BC: 700-625 Howe St, Vancouver, V6C 2T6

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

Participants and Attendees:

Michael Johnston	Legal Advisor to the Indigenous Council
Jaxxen Wylie	Legal Advisor to the Indigenous Council
Cary Ann Moore	Legislative Counsel
Jared Friedman	Project Management
Lindsey Ogilvie	Project Management
Maddie Holm-Porter	Project Support

#	Discussion Points	Lead	Est. Start Time	Est. Time	Materials
1	Welcome and Acknowledgements	Board Chair	9:00AM	5 min	
	Consent Agenda				
2	October 22, 2025 Meeting Minutes	Board Chair	9:05AM	5 min	Draft Minutes
	Updates				
3	Update from the Project Director	Project Director	9:10AM	5 min	
4	Update on Regulated Paralegal Working Group	Board Chair	9:15AM	5 min	
	Discussion/Decision				
5	Licensing & Enrolment – Business Structure	Cary Ann Moore Jaxxen Wylie	9:20AM	30 min	Policy Paper

6	Discipline	Adam Whitcombe Michael Johnston	9:50AM	60 min	Policy Paper
	Break		10:50AM	15 min	
7	Discipline – Alternative Resolutions	Adam Whitcombe Michael Johnston	11:05AM	30 min	Policy Paper
8	Discipline – Practice Reviews	Adam Whitcombe Michael Johnston	11:35AM	30 min	Policy Paper
	Lunch		12:05PM	**55 Mins**	
9	General Policy – Privilege	Cary Ann Moore Jaxxen Wylie	1:00PM	35 min	Policy Paper
10	Independence of Licensees	John Mayr Michael Johnston	1:35PM	35 min	Policy Paper
11	Drafting Guidelines	Cary Ann Moore	2:10PM	20 min	Guidelines
	Break		2:30PM	15 min	
	In-Camera *(Transitional Board and Transitional Indigenous Council only)*				
12	Other Business				

DRAFT

SLR Board and Indigenous Council

Minutes of Meeting

Meeting Date: October 22, 2025

Meeting Time: 9:00

Meeting Type: Hybrid

Meeting Location: Society of Notaries Public of BC

Board Members in Attendance:

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

Indigenous Council Members in Attendance:

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

Advisory Committee Members in Attendance:

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

Participants and Attendees:

Michael Johnston	Legal Advisors to the Indigenous Council
Jaxxen Wylie	Legal Advisors to the Indigenous Council
Cary Ann Moore	Policy Development
Jared Friedman	Project Management
Lindsey Ogilvie	Project Management
Maddie Holm-Porter	Project Support

Observers:

Name	Organization	Name	Organization
Alan Treleaven	SNPBC, Director	Kerryn Holt	COO, LSBC
Alexander Burton	Staff, LSBC	Lesley Small	Senior Director, LSBC
Brook Greenberg, KC	President, LSBC	Michael Lucas	Staff, LSBC
Carrie Robinson	Staff, LSBC	Michèle Ross	Bencher, LSBC
Claire Marchant	Staff, LSBC	Shanti Reda	Staff, LSBC
Derek LaCroix, KC	ED, LAPBC	Tara McPhail	CLO, LSBC
Jess F	CBABC	Terry Becker	Okanagan College

Name	Organization	Name	Organization
Kerry Simmons	CBABC	Thomas L. Spraggs	Bencher, LSBC

1.0 Welcome and Acknowledgements

The meeting was called to order at 9:03am.

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

2.0 Approval of Minutes from the previous meeting

The September 17, 2025 meeting minutes were approved.

3.0 Update from the Project Director

The Cascadia Partners project director delivered a brief update on policy and rule development progress and process, as well as updates on activities of Communications and Hiring sub-committees.

Policy Paper Reviews

The process for the current Board meeting will be different than previous Board meetings, based on requests from the Transition Team. The co-drafters of the policy papers will present a summary of the paper and provide key issues and questions for discussion. The Board chair will then facilitate the discussion of the key issues amongst Transition Team members. The discussion will focus on guidance for policy updates and rules options, not seeking formal approval of recommendations.

4.0 Investigations

The policy drafters introduced the policy paper and led the discussion respecting investigations. The paper presented several questions for consideration:

a. Initiation of an investigation – What situations, if any, should the CEO be allowed to treat information from any source as a complaint about potential professional misconduct or incompetence?
    - This topic was discussed at the previous board meeting on October 22, 2025, where it was noted that the CEO should be allowed to treat any and all information, regardless of source, as a complaint and initiate an investigation.
b. Limits and conditions for CEO entry and inspection without warrant – What circumstances, if any, should limits or conditions be placed on the CEO's use of the section 78 entry and inspection powers?

- This topic was discussed at the previous board meeting on October 22, 2025. At that time, it was discussed that the CEO should have limitless entry and inspection powers. However, it was noted that this approach differed from the recommendations put forth by the legal advisors to the Indigenous Council, which suggested that warrantless entry and seizure powers may not be culturally appropriate where Indigenous practitioners, places or items of sacred import are concerned.

c. Dismissal of a complaint post-investigation – Do you prefer to seek a legislative amendment, rely on statutory interpretation, or draft a rule to ensure CEO has this power?
   - This topic was discussed at the previous board meeting on October 22, 2025. It was noted by the Transition Team that the CEO should have the authority to dismiss a complaint following an investigation. It was acknowledged that this authority is currently missing from the legislation.
   - The Transition Team discussed that the best approach would be to establish a rule granting the CEO this power until a legislative amendment can be made to formally incorporate it into the Act.

The legal advisors to the Indigenous Council also presented discussion questions for consideration:

a. The risk of systemic bias is inescapable when a single decision-maker exercises discretion over the launch of investigations and dismissal of complaints and matters involving Indigenous peoples. These gatekeeping functions of the disciplinary process should be vested in a standing committee with reserved seats for Indigenous members.
   - There was broad discussion on interpretation of the Act and the specific roles of the Board and the Indigenous Council post amalgamation, and their respective involvements in operational matters.
   - The Transition Team did not express support for establishing a separate committee.

b. Indigenous legal tradition must be recognized in a constructive and substantive manner by the regulator. Indigenous law includes places, objects, and knowledge that are subject to traditional protocols that may result in conflict between Indigenous law and powers assumed by the regulator to enter Indigenous spaces and seize and retain Indigenous objects and records.
   - This issue is corollary to the previous issue and will be addressed through the draft rules.

c. As recognized by the IERM Task Force, Indigenous people in British Columbia are historically underserved by the profession owing to living in remote areas, language barriers, lack of cultural competence in the regulator, opaque and poorly understood processes, statistically worse outcomes and matters before the legal system, lack of trust in the legal system, lack of resources and low numbers of Indigenous legal professionals. In this context, it is noted that disciplinary actions against Indigenous licensees or licensees serving Indigenous clients can have a disproportionate impact on Indigenous clients and communities. Processes involving Indigenous complainants may require alternative steps to resolution that accommodate unique circumstances of Indigenous peoples and communities, particularly regarding intake, giving evidence, and providing notice. And lastly, developing trust in the regulator and legal system by Indigenous peoples will require implementing the IRM Task Force report recommendations fully and openly, taking all measures necessary.
    - The Transition Team indicated they would like to see these issues addressed in a first draft of the rules.

5.0 Public Disclosure

The policy drafters introduced the policy paper and led the discussion respecting public disclosure. The paper presented a question for consideration:

a. Do you prefer prescriptive rules or permissive rules for public disclosure of certain information when in the public interest?
    - The Transition Team discussed a hybrid approach to public disclosure that would allow for both permissive and prescriptive rules, and the need to provide examples outlining when each approach would apply.

The legal advisors to the Indigenous Council also presented discussion questions for consideration:

a. Should the regulator consider the unique circumstances of Indigenous communities and the historical impacts of lack of access to legal services on Indigenous peoples when drafting rules around public disclosure?
    - The Transition Team suggested that research be conducted to examine how other jurisdictions are approaching this issue.
b. Should the regulator adopt a granular levels-based approach to public disclosure that maintains confidentiality in matters that are pending or minor and increases disclosure as matters become more determinate or serious or should the regulator adopt a simpler approach based on broad public disclosure?

- The Transition Team discussed public disclosure, including provisions outlined in section 85 of the Act.

6.0 Pathways to Licensure

The policy drafters introduced the policy paper and led the discussion respecting pathways to licensure. The paper presented several questions for consideration:

a. Current existing pathways – How should we approach the question of recognizing existing pathways to licensure for lawyers and notaries for amalgamation date?
   - This question was discussed in conjunction with question C from the legal advisors to the Indigenous Council, presented below.
   - It was acknowledged that existing licensing pathways for lawyers and notaries should be maintained in the single legal regulator to protect the interests of prospective licensees currently progressing through the requirements.

b. Opportunities to standardize
   Education, training, experience and other qualifications
   i. What are your thoughts on the different standards to experiential training time between lawyers and notaries?
      - The Transition Team discussed that it would likely not be feasible for notaries to match the current experiential training period required for lawyers, given the limited availability of notaries willing to take on students.

c. Alternative pathways
   - This topic was discussed in conjunction with question C from the legal advisors to the Indigenous Council, presented below.

d. Trainee-specific considerations
   Re-enrolment:
   a. What are your thoughts on a more flexible approach to re-enrolment (i.e., more time allowed, multiple exam attempts)?
      - The Transition Team discussed providing a flexible approach to re-enrolment.
      - It was suggested that reconsidering the order of requirements so that candidates may complete PLTC prior to articling may lower barriers to entering the profession.

e. Limited practice licensees
   a. In what way can the use of limited practice licenses be shaped to serve the needs of licensees and the public?

- This question was discussed in conjunction with question E from the legal advisors to the Indigenous Council, presented below.
- The Transition Team discussed leveraging limited practice licenses to increase access to legal services across the province by licensing individuals to practice in specific areas rather than across the full scope of law.

f. Non-practicing licenses
    a. What do you think about the use of time as a measure of competency in assessing return to practice?
        - The Transition Team discussed adopting a permissive rule for individuals returning to practice.

g. Returning to the profession

    Cancelled license:
    a. How should we approach decisions about whether and when someone can reapply for a license after a cancellation?
        - The Transition Team discussed restricting individuals with cancelled licenses from immediately reapplying and asked the drafting team to consider appropriate time periods before reapplication would be permitted.
        - The Transition Team discussed individuals whose licenses have been cancelled and their eligibility to apply for a different type of license (e.g., a disbarred lawyer applying to become a licensed paralegal).

    Former judge / associate judge:
    a. How should we balance the need to protect the public from the perception of bias or influence of a former judge/associate judge returning to practice against the need for more experienced legal professionals to serve the public?
        - The Transition Team discussed return-to-practice timelines for provincially and federally appointed judges, as well as requirements for those seeking to act as mediators.

h. Limits and conditions on a licence
    a. What are your thoughts on the use of limits or conditions on a license?
        - The Transition Team discussed the need for a permissive rule allowing limits and conditions to be placed on licenses, and how those limits are disclosed to the public.

The legal advisors to the Indigenous Council also presented discussion questions for consideration:

a. Should the rules refer an Indigenous person's application for entry into the profession as a matter for collaboration with the Indigenous Council?
   - The Transition Team indicated they would like to review and consider a draft of this rule.

b. Should the rules empower the Indigenous Council to direct Indigenous and Aboriginal law learning materials on the pathways to licensure, tailored to each class of licensee?
   - The Transition Team noted that the Indigenous Council should provide direction on Indigenous and Aboriginal law learning materials, but that developing and administering the course(s) would fall outside of their purview.

c. Should the rules require that the regulator "must implement" alternative pathways to licensure, based on previous recommendations and research?
   - The Transition Team discussed the known issues and concerns with current licensing pathways (status quo) as well as establishing alternative licensing pathways.
   - Concern was expressed about what is required to establish an operational regulator by the amalgamation date of January 1, 2027, and the need to prioritize a limited number of critical items necessary to ensure full functionality by that date.
   - Concern was also raised about establishing rules that may limit the discretion of the future Board, particularly since any such rules could simply be repealed by that Board.
   - The Transition Team indicated they would like to review and consider potential options for a draft version of a rule.

d. Should "Suitability" to practice law do away with intangible standards for suitability and instead codify grounds for disqualification based on suitability?
   - The Transition Team discussed developing a general list of factors or concerns to consider when determining suitability, rather than prescribing a specific list of offences that would automatically result in disqualification.
   - Concern was expressed about the potential for an excessive number of rules. It was noted that the current LSBC Code Rules have accompanying commentary to support interpretation. Using commentary or developing a policy paper to accompany the rules could help prevent the creation of an overly lengthy set of rules.

e. Should the rules permit the decision maker to authorize flexible acceptance into the profession and authorize entry into the profession with limited licenses?

- The Transition Team expressed interest in exploring limited licenses to facilitate entry into the profession and enable lawyers to practice within areas of specific training and qualification.

f. Should the rules permit the regulator to authorize part-time or flexible options in the experiential portions of the pathways to licensure?
   - This question was discussed in conjunction with the questions above, presented by the Advisory Committee, related to Opportunities to Standardize – Education, training, experience, and other qualifications.

g. Should the rules for re-entry into the practice be codified, or determined on a case-by-case basis?
   - This question was discussed in conjunction with the questions above, presented by the Advisory Committee, related to Returning to the Profession – Cancelled License.

7.0 Continuing Competence and Education

The policy drafters introduced the policy paper and led the discussion respecting continuing competence and education. The paper presented several questions for consideration:

a. Continuing competence and education – What are your thoughts on mandatory annual CPD requirements?
   - It was acknowledged that CPD should continue to be mandatory and that the requirements should be consistent across all classes of licensees.

b. Mandatory course for first year licensees – What are your views on a similar idea of a mandatory course for first year licensees for lawyers and regulated paralegals?
   - The Transition Team discussed mandatory courses for first year licensees. There was not support for establishing a mandatory course for lawyers.

The legal advisors to the Indigenous Council also presented discussion questions for consideration:

a. Should the rules refer the Indigenous Cultural Competency training to the Indigenous Council for their direction, with the power to tailor learning materials to each class of licensee?
   - The Transition Team discussed extending the existing Indigenous cultural competency training required for lawyers to all licensees.
   - The Transition Team discussed whether the Act establishes the Indigenous Council's authority over Indigenous learning, and if a related rule would be redundant. It was noted that while the Act references Indigenous cultural

competency requirements, it does not expressly refer these to the Indigenous Council's oversight.
    - The Transition Team acknowledged that the Indigenous Council should be empowered to provide direction on the content of the course or training, while developing and delivering the course would be outside of their capacity.

b. Should the rules require the regulator to provide free options for Continued Professional Development courses?
    - This question was discussed in conjunction with question A, presented above by the Advisory Committee, related to Continuing Competence and Education.
    - It was noted that any discussion about the regulator potentially providing CPD courses directly to licensees would need to include the BC branch of Canadian Bar Association and other Continuing Legal Education (CLE) providers.
c. Should the rules require a practice management course be completed in similar circumstances to the Law Society of BC?
    - It was discussed that courses currently required by LSBC for certain licensees (e.g., Practice Management course) should continue to be required under the same circumstances by the new regulator.

8.0 Business Structures

Discussion of this topic was deferred to the November board meeting.

9.0 *In Camera* Session

Transitional Board and Transitional Indigenous Council

Licensing and Enrolment – Business Structures – Policy Report

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**October 22, 2025**
Version:	**V1**

I. Context and background

Background

1. Business structures refer to four entities under the new *Legal Professions Act*: law firms, law corporations, limited liability partnerships ("LLPs") and alternative business structures. Some of these business structures are required for day one of amalgamation to ensure continuity of practice and will need rules to support the application, issuing, renewal and cancellation of permits or authorizations. Others are more complicated to implement and may be better addressed after amalgamation date.

2. The Notaries Society currently permits law corporations and limited liability partnerships but does not have rules regulating notary firms or authorizing alternative business structures. Like the Notaries Society, the Law Society also permits law corporations and limited liability partnerships. In addition, the Law Society requires the registration of law firms and authorizes one model of an alternative business structure through a multi-disciplinary practice. Further details regarding the current practices of the two amalgamating regulators and the need for continuity under Legal Professions BC will be discussed in the relevant sections of this paper.

II. Alignment to the Act

3. Part 14 of the *Legal Professions Act* addresses business structures. Under the legislation the terms "law firm", "law corporation", and "limited liability partnerships" are applicable to lawyers, notaries, and regulated paralegals. For example, a law firm regulated by Legal Professions BC may be an entity with only notaries, lawyers, regulated paralegals or a combination. Section 238 of the *Legal Professions Act* provides a transition provision and establishes that a law corporation (lawyer) or notary corporation (notary) that holds a permit immediately before the amalgamation date is deemed to hold a law corporation permit issued under section 192.

4. Sections 191 and 192 are provisions respecting law corporations and are connected to the limits and conditions for corporations in the *Business Corporations Act*.[1] Section 193 provides that liability for an individual licensee's own professional negligence is not affected

[1] SBC 2002, c. 57.

if the licensee is practising law as an employee, shareholder, officer, director, or contractor of a law corporation or on its behalf, or through a limited liability partnership. Section 193 states that a licensee's fiduciary, confidentiality, and ethical duties, including rights and obligations respecting professional communications and undertakings, exist regardless of whether the provision of legal services is provided through a law corporation or limited liability partnership.

5. Section 194 allows the board to make rules respecting law firms, including as suggestions in subsection (2) rules respecting registering or obtaining a permit for a law firm, establishing application procedures, requiring a law firm to designate a practising licensee as a contact person, specifying information to be provided, and establishing permit fees. The section is a permissive rule-making authority, not a mandatory requirement.

6. Section 195 is a similar permissive rule-making power that allows the board to make rules respecting law corporations. The section includes the general provisions suggesting rules on application, issuance, renewal, and cancellation of a law corporation permit, as well as authorizing the CEO to impose limits or conditions on a permit. For law corporations, section 195(2)(d) also suggests rules respecting the naming conventions and approval of a law corporation and the disposition of shares.

7. Section 196 addresses limited liability partnerships and provides that the board may make rules respecting the practice of law through a limited liability partnership, including rules establishing the requirements, limits and conditions for licensees and law corporations to practise law through a limited liability partnership.

8. Section 197 concerns alternative business structures, which are entities other than a sole proprietorship, a law corporation, or a partnership where the practice of law is carried out. Subsection (2) includes suggested rules the board may wish to consider, including authorizing licensees to practise law through an alternative business structure, authorizing an alternative business structure to include persons who are not licensees, and establishing limits and conditions of any authorizations.

9. Alternative business structures are included in the definition of "law firm" at s. 1. The s. 1 definition includes a sole proprietorship, law corporation, partnership, or any other business structure, arrangement or legal entity through which one or more licensees practice law. Without permissive rules however, there are gaps between what persons the different law firms are permitted to "carry on the business of the practice of law through".

10. Section 191(1)(b) allows law corporations to practise law through persons referred to in s. 38(1)(b), (c), (f), or (g) who are employees at the law corporation.[2] However, there is no similar clause for other law firms generally, and none specifically in the clauses for LLPs, and alternative business structures. This brings in the principle of statutory interpretation *exclusio unius est exclusio alterius* or "the inclusion of one thing is the exclusion of the other". The exclusionary rule means that law firms, LLPs and alternative structures are not inherently permitted to practice through persons referred to at s. 38(1)(b), (c), (f), or (g) who are employees, although law corporations are.[3] Permissive rules would need to be drafted that allow law firms, LLPs and alternative business structures to practice law through persons referred to in s. 38(1)(b), (c), (f) or (g) who are employed there to make these structures equal to law corporations. This would build the regulator so it does not create a two-tiered system of business structures that puts law corporations above other business structures and prevents a potential disproportionate barrier against Indigenous-led business structures made pursuant to their unique institutional and economic rights (see further in this paper).

11. The rules for alternative business structures could help with facilitating access to legal services, the implementation of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") and reconciliation with Indigenous peoples, removing and preventing barriers to Indigenous peoples, and meeting that mandate in a manner that is proportional to the risk to the public.

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[2] This referentially incorporates the following in s. 38:

38 (1) Section 37 does not apply to any of the following persons:

(b) a trainee who practises law as permitted by the rules;

(c) a person who

(i) is employed by a licensee, a law firm, a law corporation or the government,

(ii) acts under the supervision of a practising licensee, and

(iii) practises law as permitted by the rules;

(f) a person authorized to practise law in another jurisdiction who is authorized, in accordance with the rules, to practise law in British Columbia and who practises law in accordance with the rules;

(g) a practitioner of foreign law who is authorized, in accordance with the rules, to practise law in British Columbia and who practises law in accordance with the rules;

[3] Sullivan, Ruth. "Statutory Interpretation in a New Nutshell." (2003) Canadian Bar Foundation. Online: LINK ; see also see *Winters v. Legal Services Society,* 1999 Canlii 656(SCC), 3 SCR 160, at para. 48. Online: LINK; citing in *Rizzo & Rizzo Shoes ltd.(re),* 1998 Canlii 837 (SCC) 1 SCR 27. Online: LINK.

III. Discussion

Law firms

12. Under many of the provisions of the *Legal Professions Act*, law firms carry the same professional responsibility obligations and face the same disciplinary consequences as individual licensees and trainees. For example, section 71(1) states that a licensee, law firm, or trainee must practise law in accordance with all applicable requirements of professional conduct established in the Act and rules, and the code of professional conduct. Section 71(2) states that a licensee, law firm, or trainee must not engage in conduct that constitutes professional misconduct or conduct unbecoming a professional, or practise law incompetently. This section allows for regulation of the legal professions at a law firm's level. There are benefits to holding law firms accountable to the same standards of professional responsibility and ethics required from individual licensees. Examples include breaches of the regulator's rules respecting a law firm's trust account or when the law firm is wilfully blind to instances of harassment and discrimination within the law firm.

13. As mentioned above, since 2018 the Law Society has required law firms, other than government, in-house counsel and law corporations that provide legal services as part of another law firm, to register with the regulator. Continuation of a similar registration process should be straightforward under Legal Professions BC, including expanding the requirement to future law firms of any configuration of legal professionals (e.g. notary law firms; future regulated paralegal law firms). The benefit of registration is that it allows for Legal Professions BC to collect data respecting law firms and for the law firm to provide a contact person through which the regulator may communicate. The topic of interjurisdictional law firms and their needs will be discussed as part of a policy paper on mobility considerations.

14. In terms of rules required for amalgamation and continuity in practice settings after amalgamation date, the transitional board and transitional Indigenous council may wish to establish a registration process for law firms outside of specific exemptions such as government, in-house or law corporations providing legal services within another law firm, for amalgamation date including drafting rules to support registration. Further options, such as permits and reporting requirements, may be better explored after the amalgamation date.

15. Law firms are not explicitly authorized to practice law through persons referred to in s. 38(1)(b), (c), (f), and (g) like law corporations are at s. 191(1)(b).[4] The *exclusio unius exclusio alterius* rule of statutory interpretation means that law firms would need to be empowered by a rule to allow them to have the same persons permitted to practice law as s. 191(1)(b) permissions to law corporations.[5]

Recommendation

1) The rules should require the registration of law firms contemplated by section 194. Those rules should consider and specify exemptions for certain types of firms.

2) The rules should authorize law firms to practice law through persons referred to in s. 38(1)(b), (c), (f), and (g) who are employees at the law firm, to mirror the permission given to law corporations at s. 191(1)(b).

Law corporations

16. Section 195(1) of the *Legal Professions Act* states that the board may make rules respecting law corporations. The Act defines a "law corporation" as a corporation that holds a law corporation permit issued under section 192. Section 238 of the Act also provides that a corporation immediately before the amalgamation date is deemed to hold a law corporation permit under the *Legal Professions Act* if it is a law corporation issued under section 82 of the *Legal Profession Act*, or a notary corporation under section 58 of the *Notaries Act*. This transitional provision means that there will be law corporations at

[4] 191(1)(b) permits law corporations to practice law through:

(b) a trainee who practises law as permitted by the rules;

(c) a person who

(i) is employed by a licensee, a law firm, a law corporation or the government,

(ii) acts under the supervision of a practising licensee, and

(iii) practises law as permitted by the rules;

(f) a person authorized to practise law in another jurisdiction who is authorized, in accordance with the rules, to practise law in British Columbia and who practises law in accordance with the rules;

(g) a practitioner of foreign law who is authorized, in accordance with the rules, to practise law in British Columbia and who practises law in accordance with the rules;

[5] *Winters v. Legal Services Society,* 1999 Canlii 656(SCC), 3 SCR 160, at para. 48. Online: LINK; citing in *Rizzo & Rizzo Shoes ltd.(re),* 1998 Canlii 837 (SCC) 1 SCR 27. Online: LINK.

amalgamation date. Rules are required to ensure continuity of the law corporation permit process.

17. Law corporations are explicitly authorized to carry on the practice of law through persons referred to in s. 38(1)(b), (c), (f), or (g), under s. 191(1)(b). The same explicit permission is not stated for the other "law firms" in the s. 1 definition.

18. The transitional board and transitional Indigenous council should note that the issuing of a law corporation permit is a multi-step process that requires applications to the Registrar of Companies to reserve a corporate name, approval of that corporate name from the regulator in accordance with the rules and code of professional conduct, registering the law corporation with the approved name with the Registrar of Companies, and then application and issuing of a law corporation permit from the regulator.[6] This process is best captured as a policy, with rules drafted to support this process, including rules on the issuing, amending, renewing,[7]. Examples of existing rules and processes may be found in the current rules for the Notaries Society.[8]

Recommendation

3) The rules should provide for issuing a permit for law corporations, including rules respecting names and approval of names, listing a person of contact, and issuing, amending, renewing, and cancelling of permits.

Limited liability partnerships

19. Section 196 of the *Legal Professions Act* provides that the board may make rules respecting limited liability partnerships. Section 190 defines "limited liability partnership" as a partnership registered under Part 6 of the *Partnership Act*.[9] Like law corporations, both the Notaries Society and Law Society have issued permits respecting LLPs. Unlike law corporations, there is no provision in the *Legal Professions Act* for the transition of LLPs to the new regulator. Rules are required to authorize licensees to carry on the practice of law through LLPs for amalgamation date, to ensure the continuity of already existing LLP

[6] For example, please see: Law Society of British Columbia, "Law Corporation Permit" (2025) https://www.lawsociety.bc.ca/for-lawyers/registration-and-licensee-services/law-corporation-permit/.
[7] Notaries Rules, Rules 7.19 to 7.51.
[8] Law Society Rules, Rules 9-1 to 9-11.
[9] RSBC 1996, c. 348.

arrangements and to provide the option for all licensees to practise under such an arrangement.

20. Section 196 does not explicitly authorize LLPs to practice law through persons referred to in s. 38(1)(b), (c), (f), or (g) who are employees there, though that permission is given to law corporations at s. 191(1)(b).[10] The *exclusio unius exclusio alterius* rule of statutory interpretation means a rule would need to be created to permit LLPs the same permissions as law corporations.[11]

21. Similar to the discussion above on law corporations, the issuing of a LLP permit is a multi-step process, involving reserving a proposed business name with the Registrar of Companies, having the name approved by the regulator in accordance with the rules and code of profession conduct, registering the LLP with the Registrar of Companies in accordance with the *Partnership Act*, and finally registering the LLP with the regulator.[12] Like law corporations, this process is best captured by a policy with rules drafted to support this process including rules requiring the disclosure of LLP status to the public. The Notaries Society[13] and the Law Society[14] have examples of rules and processes as both organizations permit their members to practise through LLPs.

Recommendation

[10] 191(1)(b) permits law corporations to practice law through:

(b) a trainee who practises law as permitted by the rules;

(c) a person who

(i) is employed by a licensee, a law firm, a law corporation or the government,

(ii) acts under the supervision of a practising licensee, and

(iii) practises law as permitted by the rules;

(f) a person authorized to practise law in another jurisdiction who is authorized, in accordance with the rules, to practise law in British Columbia and who practises law in accordance with the rules;

[11] *Winters v. Legal Services Society,* 1999 Canlii 656(SCC), 3 SCR 160, at para. 48. Online: LINK; citing in *Rizzo & Rizzo Shoes ltd.(re),* 1998 Canlii 837 (SCC) 1 SCR 27. Online: LINK.

[12] For example, see: Law Society of British Columbia, "Limited Liability Partnerships" (2025) https://www.lawsociety.bc.ca/for-lawyers/registration-and-licensee-services/limited-liability-partnership-(llp)-registration/.

[13] Notaries Rules, Rules 7.19 to 7.51.

[14] Law Society Rules, Rules 9-12 to 9-20.

4) The rules should authorize the practice of law through a limited liability partnership, including rules respecting names and approval of names, listing a person of contact, and issuing, amending, and dissolving a partnership, and disclosure of LLP status.

5) The rules should permit LLPs to practice law through persons referred to in s. 38(1)(b), (c), (f), and (g) who are employees there, to mirror the permission given to law corporations at s. 191(1)(b).

Alternative business structures

22. Section 197 of the *Legal Professions Act* provides that the board may make rules respecting business structures other than a sole proprietorship, a law corporation, or a partnership, through which the business of the practice of law is carried out. These "alternative business structures" ("ABS") models may include persons who are not licensees under section 197(2)(b). There are numerous examples of ABS models, including co-ownership across the regulated legal professions (e.g. a business structure comprising of an ownership model between lawyers, notaries and regulated paralegals); multi-disciplinary practices (e.g. a business structure comprising an ownership model between a legal professional and other regulated professional like an accountant or engineer); and non-legal professional ownership (e.g. outside investors, including publicly traded or employee-owned organizations). Since the mid-2000s, states in Australia, and England and Wales have allowed for some level of ABS models.

23. Currently, the Law Society allows lawyers to practise in a multi-disciplinary practice setting,[15] but there are restrictions on the practice due to lawyers having obligations provided by the *Code of Professional Conduct*, including confidentiality requirements,[16] space sharing considerations,[17] and a prohibition on splitting fees with any person other than a lawyer.[18] The Law Society does not allow for other forms of business structures such as non-lawyer owned companies. There are currently only a few lawyers practising through an MDP. The Notaries Society does not allow alternative business structures.

[15] Law Society Rules, Rules 2-38 to 2-49.
[16] *Code of Professional Conduct for British Columbia*, Code rule 3.3-1.
[17] *Code of Professional Conduct for British Columbia*, Code rule 3.4-42.
[18] *Code of Professional Conduct for British Columbia*, Code rule 3.6-7.

24. The recognition of ABS models involves consideration of multiple other professional regulation areas, including a review of the code of professional conduct for legal professionals required for amalgamation date. In addition, decisions such as trust accounting, privilege, and indemnification need to be addressed prior to any consideration of authorizing ABS models. Other than the need to recognize already existing permits for lawyers that carry-over from the Law Society to Legal Professions BC, the transitional board and transitional Indigenous council may wish to recommend that the consideration of ABS's occurs after amalgamation date. For amalgamation date, rules authorizing the already existing multi-disciplinary practices from the Law Society are the only ones needed for continuity purposes.

25. Additionally, the transitional board and transitional Indigenous council may wish to approach the authorization of ABS's in a similar manner to that of limited practice licences through rules like those drafted to support an innovation sandbox. If requested, then rules would be drafted that allow for consideration of any ABS model on a case-by-case basis on amalgamation date. The benefit of this approach is that it allows for the full spectrum of business structures envisioned by the *Legal Professions Act*, and for the regulator to collect data on what types of models are seeking authorization. The downside is that applicants may not be motivated to apply unless more surety for authorization is provided. However, this may be considered a "transition" rule until further research and development of ABS models is conducted after amalgamation date.

26. As was decided at the September 17 Board Meeting, the transitional board and transitional Indigenous Council should take consideration for how permissive rules can facilitate the mandate of the Guiding Principles and the role of the Indigenous Council. Permissive rules that allow the authorization of alternative business structures could help to ensure the regulator is not built to be a barrier to facilitating access to legal services, supporting reconciliation with Indigenous peoples and the implementation of UNDRIP, and removing and preventing barriers faced by Indigenous peoples. By using subclauses in the rules that require inclusion of the Indigenous Council for advice and collaboration with the CEO and Board when relevant, the rules can allow the Indigenous Council to fulfill their s. 30 role on the implementation of UNDRIP, the incorporation of Indigenous legal traditions and practices, and the systemic challenges faced by Indigenous peoples that require action.

27. The new *Legal Professions Act* at s. 7 brings in a statutory requirement to have regard for the implementation of UNDRIP, to be informed by advice and collaboration with the

Indigenous Council, as per their role at s. 30. This means that legal regulation must have regard for the following:

a. Article 3 which states that Indigenous people have the right to pursue their economic, social, and cultural development;
b. Article 5, which states that Indigenous people have the right to maintain and strengthen their distinct political, social, economic, social, and cultural institutions but also participate in the political, economic, social, and cultural institutions of the state;
c. Articles 18 and 20 which state their rights to shape their economic and social institutions and participate in decision-making that effects their rights;
d. Article 23 which states that Indigenous people have the to developing and determining priorities and strategies for economic and social programmes affecting them;
e. Article 33 which states that Indigenous people have the right to determine the structures and membership of their institutions in accordance with their own procedures; and
f. Article 43 which states that the rights in UNDRIP are the minimum standards for the survival, dignity, and well-being of Indigenous peoples.

These articles speak to economic and institutional developmental rights that Indigenous peoples have. To have regard for the s. 7 Guiding Principles, the rules should ensure that the regulator is not built with inherent barriers to these rights in this transitional time.

28. Section 197(a) allows the board to make rules authorizing alternative business structures. For coherence with the above UNDRIP rights, the rules should permit the decision-maker to authorize alternative business structures. This would create an entry point for alternative business structures made by Indigenous peoples who have chosen to exercise their rights to self-determination in structuring their economic and social development entities using Canadian and BC laws. This would not mean every alternative business structure gets approved but instead ensures that the regulator is not built with an inherent barrier to recognizing alternative business structures.

29. Increasingly in BC, Indigenous peoples use Canadian legal entities like business associations that reflect governance or legal interests in their legal tradition.[19] As the rules will be unable

[19] For example, Cowichan Tribes uses a legal entity under their *Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu Shhw'a'luqwa'a' i' Smun'eem [Laws of the Cowichan People for Families and Children]* that incorporate governance

to capture all potential structures across BC and should not interfere with the practice of Indigenous legal traditions, the rules should be permissive to potentially authorize alternative business associations developed by and for Indigenous peoples.

30. For coherence with the Indigenous economic and institutional self-determination rights in UNDRIP, the Guiding Principles at s. 7 and the Role of the Indigenous Council at s. 30, the rules should require advice from and collaboration with the Indigenous Council in the decision-making related to alternative business structures pursuant to the Indigenous considerations in the new *Legal Professions Act*. This would build in regulation that has regard for the risk to the public. The Indigenous Council can help to ensure that Indigenous-based alternative business structures do not face disproportionate barriers and are also not used as a backdoor around the legal oversights for the practice of law through other business structures. Moreover, advice from and collaboration with the Indigenous Council is a mechanism for protecting the public by ensuring that the new regulator does not encroach on regulating Indigenous peoples practicing their own legal traditions.

31. Section 197(b) permits the board to make rules authorizing business structures that include non-licensees. There should be a permissive rule that empowers the decision-maker to authorize a business structure that includes non-licensees. This would allow a potential entry point for Indigenous-led corporate entities that does not inherently present a barrier to persons exercising Indigenous economic rights to structure their for-profit or revenue

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and decision making to be led by *sul-hween* (Elders). This is a new entity made pursuant to Bill C-92, *An Act Respecting First Nations, Inuit and Metis children youth and families* which recognized Cowichan Tribe's inherent rights and recognized new Indigenous-led legal entities that Indigenous Nations could use in Canadian Law. The new legal entity can use their cultural protocols for decision-making. Cowichan Tribes, *Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu Shhw'a'luqwa'a' i' Smun'eem [Laws of the Cowichan People for Families and Children]* (11 June 2024), online: Cowichan Tribes <https://ourchildlaw.cowichantribes.com/wp-content/uploads/2024-06-11-Cowichan-CFS-Law-FINAL-Approved-by-Council-003.pdf>.

Another example is the Aboriginal Coalition to End Homelessness,a non-profit society created under the BC *Societies Act* which incorporates Coast Salish Big House teachings into their institutional governance and mission statement. The development of legal entities made in BC and Canadian law that reflect Indigenous legal principles is a rapidly growing area of the Law in BC, as the University of Victoria just graduated their first cohort in their Masters of Business Administration in Advancing Reconciliation in partnership with the British Columbia Association of Aboriginal Friendship Centres.
Aboriginal Coalition to End Homelessness Society, *Aboriginal Coalition to End Homelessness* (2025), online: <https://acehsociety.com/>.

generating ventures. Under s. 191(6), a person may not vest a voting right attached to shares in a law corporation if the person is not a practicing licensee or a law corporation. Also, under s. 195(f) there may be rules related to the disposition of shares when a shareholder of a law corporation ceases to be a licensee. These clauses present a baseline in the legislation that shareholders of a law corporation to vote and make agreements through a licensee, or that a shareholder will need to be a licensee. This was the case for lawyers under the previous *Legal Profession Act*, at s. 82 where only a lawyer or law corporation could hold a voting share, and a non-voting share could only be held by a lawyer, a law corporation, a person or relative who resides with a lawyer, or a trust with lawyers and law corporations as beneficiaries.[20] As well, previously for a law corporation, all the directors and the president had to be practising lawyers. Unilaterally importing a similar structure that only permits licensees for all business structures would create a barrier to Indigenous groups exercising their rights to economic and institutional self-determination.

32. Many Indigenous groups use corporate entities in Canadian and BC law to provide services to their members and to generate income. The rules should be permissive under s. 197(b) to prevent a barrier to Indigenous peoples exercising their UNDRIP rights to economic and institutional self-determination. This would allow an Indigenous created entity that has non-licensee shareholders, permits those people to exercise their interests by entering into shareholder's agreements, voting agreements, and to vote via a proxy, in a way that they cannot under s. 191(6), are assumed not to be able to vote under s. 195(f), and could not under the previous *Legal Profession Act*. It would also allow for-profit ventures that have non-licensee directors, which may be the desire of an Indigenous government or group of licensees. An Indigenous group may provide other comprehensive community services that they may be barred from as a law corporation under s. 191(3). Without creating a potential entry point to develop their own business structures, the regulator would have a built-in barrier to the exercise of UNDRIP rights to self-determination in economic ventures, shaping institutions and developing social programming.

33. If a permissive rule is created that allows the decision-maker to approve business structures that include persons who are not licensees, as with the rules that generally permit alternative business structures, there should be an additional rule that requires advice and collaboration with the Indigenous Council in decision-making when the alternative structure is requested pursuant to the Indigenous considerations in the s. 7 Guiding Principles to

[20] *Legal Profession Act*, RSBC 1998 c 9 s. 82. Online: Legal Profession Act.

discharge the s. 30 role of the Indigenous Council. This will allow regard for the inclusive elements of the Guiding Principles but also protect the public by ensuring the regulator does not encroach on regulating Indigenous legal orders. Instead, the regulator should only be regulating Indigenous entities built for the practice of Canadian and Provincial law using state law mechanisms that the Indigenous peoples willingly opted-into.

34. Section 197(c) states that the Board may make rules establishing requirements, limits, and conditions for licensees to carry on the practice of law through the business structure described in paragraph (a). As with the recommendations for other business structures, the rules should allow alternative business structures to practice law through persons referred to in s. 38(1)(b), (c), (f), or (g) who are employees there to give them equal permissions as those given to law corporations.[21] Where necessary, limits can be imposed to ensure regulation proportional to the risk to the public. However, restraint should be used when giving limits, conditions, and requirements, so that the conditional permits do not render alternative business structures as inherently second-class entities to the other permitted business structures. Otherwise, there could be a discriminatory effect disproportionately impacting Indigenous people exercising their rights to develop their own social and economic institutions in Canadian law.

35. Alternative business structures are an opportunity to facilitate governance that is coherent with the mandate of the s.7 Guiding Principles and the s. 30 role of the Indigenous Council. Given that the CEO is the decision-maker for issuing permits, the Indigenous Council can exercise their advisory and collaborative responsibility to the CEO and the Board if the rules necessarily incorporate them into decision-making. Certain applications for alternative business structures should be a matter referred for advice from and collaboration with the Indigenous Council to fulfill their s. 30 role with the CEO and Board. The rules should trigger this advisory and collaborative role when the purpose of an alternative structure is to better facilitate access to legal services for Indigenous peoples, to aid in the implementation of

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[21] 191(1)(b) permits law corporations to practice law through:

(b) a trainee who practises law as permitted by the rules;

(c) a person who

(i) is employed by a licensee, a law firm, a law corporation or the government,

(ii) acts under the supervision of a practising licensee, and

(iii) practises law as permitted by the rules;

(f) a person authorized to practise law in another jurisdiction who is authorized, in accordance with the rules, to practise law in British Columbia and who practises law in accordance with the rules;

UNDRIP and reconciliation with Indigenous peoples, or to remove and prevent barriers faced by Indigenous peoples to entering the practice of law.

Recommendations

6) The rules should authorize the existing multi-disciplinary practices to transition to Legal Professions BC.

7) The rules should allow for the application and consideration of an ABS of any type on a case-by-case basis.

8) The rules for alternative business structures should be permissive, that the decision-maker "may":
    a. authorize licensees to carry on the practice of law through a business structure other than a sole proprietorship, a law corporation, or a partnership;
    b. authorize the business structures described in (a) to include persons who are not licensees; and
    c. may place requirements, limitations, or conditions on the practice of the employees at the business.

    This should also have a conditional clause that says:

    > "If a business structure that is not a sole proprietorship, a law corporation, or a partnership, is authorized for the practice of law, it may carry on the business of practicing law through the persons referred to in s. 38(1)(b), (c), (f), and (g) who is an employee of the business".

    Alternatively, another way to phrase these rules that achieve the same end would work. These rules would allow ABS to be equal to law corporations once they are approved. This would prevent a built-in discriminatory effect that is disproportionately against Indigenous-led ABS.

9) If permissive rules for alternative business structures are created, they should have an accompanying rule that refers the matter for advice and collaboration with the Indigenous Council when deciding on an alternative business structure that implicates the Indigenous considerations of the s. 7 Guiding Principles or if it is another matter in the advisory and collaborative role of the Indigenous Council at s. 30. This would facilitate the role of the Indigenous Council, would work to ensure ABS's are not a way around the obligations for other business structures, and ensure that the regulator does not encroach on regulating Indigenous legal orders.

IV. Decisions required

36. In summary, the main discussion and direction items for the transitional board and transitional Indigenous council respecting business structures are:

1) The rules should require the registration of law firms contemplated by section 194. Those rules should consider and specify exemptions for certain types of firms.

2) The rules should authorize law firms to practice law through persons referred to in s. 38(1)(b), (c), (f), and (g) who are employees at the law firm, to mirror the permission given to law corporations at s. 191(1)(b).

3) The rules should provide for issuing a permit for law corporations, including rules respecting names and approval of names, listing a person of contact, and issuing, amending, renewing, and cancelling of permits.

4) The rules should authorize the practice of law through a limited liability partnership, including rules respecting names and approval of names, listing a person of contact, and issuing, amending, and dissolving a partnership, and disclosure of LLP status.

5) The rules should permit LLPs to practice law through persons referred to in s. 38(1)(b), (c), (f), and (g) who are employees there, to mirror the permission given to law corporations at s. 191(1)(b).

6) The rules should authorize the existing multi-disciplinary practices to transition to Legal Professions BC.

7) The rules should allow for the application and consideration of an ABS of any type on a case-by-case basis.

8) The rules for alternative business structures should be permissive, that the decision-maker "may":
   a. authorize licensees to carry on the practice of law through a business structure other than a sole proprietorship, a law corporation, or a partnership,
   b. authorize the business structures described in (a) to include persons who are not licensees; and
   c. may place limitations or conditions on the practice of the employees at the business.

This rule should also have a conditional clause that says:

> "If a business structure that is not a sole proprietorship, a law corporation, or a partnership, is authorized to practice law, it may carry on the business of practicing law through the persons referred to in s. 38(1)(b), (c), (f), and (g) who are employed at the business".

Alternatively, another way to structure these rules to achieve the same end would work. These rules would allow ABS to be equal to law corporations and other law firms once their structure is approved by the decision-maker. It would also ensure the regulator does not have a built-in discriminatory effect that is disproportionately against Indigenous-led ABS.

6) If permissive rules for alternative business structures are created, they should have an accompanying rule that refers the matter for advice and collaboration with the Indigenous Council when deciding on alternative business structures in a way that implicates the Indigenous considerations of the s. 7 Guiding Principles or as a matter in the advisory role of the Indigenous Council at s. 30. This would facilitate the s. 30 role of the Indigenous Council, work to ensure ABS's are not a way around obligations for other business structures, and prevent the regulator from encroaching on regulating Indigenous legal orders.

37. Following the advice and recommendations provided by the transitional board and transitional Indigenous council, staff will return with follow-up paper for discussion and decision at a future date.

Transitional Board and Transitional Indigenous Council

Discipline

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**November 19, 2025**

Background

1. The enactment of the *Legal Professions Act* (Bill 21, 2024), (the *Act*), consolidates the regulation of lawyers, notaries, and paralegals in British Columbia within a single statute. Part 6, Division 3 establishes the new disciplinary regime, replacing the earlier rules for the legal profession formulated under the *Legal Profession Act* and the *Notaries Act*.[1] This regulatory consolidation also includes statutory commitments to reconciliation with Indigenous peoples and to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*,[2] mandated by section 7 of the *Act*.[3] Notably, this establishes a more risk-based approach to regulation and discipline, and marks a shift from the existing prescriptive regime.

2. In thinking about a discipline process, and particularly a discipline committee, it is worth recognizing that the discipline process is a continuum ranging from initial dismissal (section 76) to interim orders during an investigation (section 85) to entry into a consent agreement (section 91) or an alternative resolution (section 92) to actions following an investigation (section 86) to submission of a citation to the Discipline committee (section 90) and following that to a hearing under Part 8.Throughout most of the continuum, the Act specifically authorizes the chief executive officer to exercise the necessary authority. This report will deal with issues relating to establishing a discipline committee and its processes and those discipline actions that fall within the continuum between the start of an investigation until the start of a proceeding.

3. We will also consider the Discipline provisions of the Act with regard to the following principles: a) public interest and professional independence; b) reconciliation with Indigenous peoples and implementation of UNDRIP; and c) historical continuity with the rules of prior legal professional societies.

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[1] *Notaries Act*, RSBC 1996, c 334, discipline provisions, e.g., notice of inquiry and procedure, ss 27–31, see esp s 27 and following. See also *Bill 21, Legal Professions Act*, 5th Sess, 42nd Parl, British Columbia, 2024, Part 6, Div 3, ss 85–94.

[2] United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295, 2 October 2007, arts 5, 18, 40.

[3] *Bill 21 – 2024: Legal Professions Act*, s 7(b). See also *Declaration on the Rights of Indigenous Peoples Act*, [SBC 2019], ss 3-4.

4. An effective disciplinary regime is central to the public legitimacy of the new regulator, but the authority to suspend, condition, or terminate a license is justified only insofar as it protects the public interest while respecting procedural fairness and constitutional rights.[4] Where Indigenous practitioners are concerned, the stakes are often higher, particularly outside urban centres where a single Indigenous lawyer may be the only culturally competent advocate in rural communities. The practical effect of an interim order or a published citation against a local Indigenous licensee can be career-ending in these small communities and subsequently have a significant negative impact on access to justice for Indigenous clients and other people served by the respondent licensee. Part 6, Division 3 should then be read with attention paid to systemic risks faced by Indigenous peoples and to the incorporation of Indigenous legal traditions within the disciplinary process.

5. Section 6 of the *Act* requires the regulator to act in the public interest while preserving professional independence. Historically, the Law Society's disciplinary framework has emphasized prompt public protection together with fairness for respondents. The single legal regulator that will now cover three professions must include access to justice for Indigenous communities and the incorporation of Indigenous legal traditions as part of the public interest. While professional independence facilitates professional self-regarding governance, such independence must be structured in the public interest and demonstrated by transparent and fair disciplinary processes that inspire public confidence.[5]

6. Section 7 of the *Act* requires the regulator to support reconciliation and to give effect to *UNDRIP* in its work. *UNDRIP* recognizes the rights of Indigenous peoples to maintain and strengthen their institutions and legal traditions, to participate in decision-making in matters affecting them, and to have just and fair procedures consistent with their customs.[6] The Truth and Reconciliation Commission further called on law societies to provide cultural competence education and to reform processes that replicate colonial harms.[7] Discipline is one of the settings where these commitments can move from aspiration to practice.

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[4] Alice Woolley, "Rhetoric and Realities, What Independence of the Bar Requires of Lawyer Regulation," *SPP Research Papers* 4:8, University of Calgary, June 2011 at 1–3, 24–33.
[5] Woolley, *supra* note 4 at 24–33; Richard F Devlin & Porter Heffernan, "The End(s) of Self-Regulation?" (2008) 45:5 *Alberta Law Review* 169 at 169–173, 190–193.
[6] UNDRIP, *supra* note 2, arts 5, 18, 40.
[7] *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg, Manitoba: Truth and Reconciliation Commission of Canada, 2015), calls 27, 47.

7. Under the *Notaries Act*, discipline committees enjoyed broad discretion to inquire into competence and conduct with limited external oversight. The existing Law Society Rules, for their part, provide for a discipline committee, which is focused on efficiency balanced by procedural safeguards. The *Act* integrates these traditions and, importantly, requires Indigenous participation within the Discipline Committee and throughout the regulator's governance, via the Indigenous Council.[8] The mandates of the *Act* effectively respond to the Law Society's *Indigenous Engagement in Regulatory Matters* task force, which advocated structural changes to LSBC's processes to promote cultural safety and early resolution.[9]

Indigenous Dimensions

8. The IERM Task Force was convened following public concern with the Law Society's handling of harm to Indigenous survivors. The IERM Report documents distrust of adversarial, formal processes and recommends decolonizing and Indigenizing regulatory work, including alternatives to cross-examination, increased opportunities for apology, and early resolution pathways. *UNDRIP* requires participation of Indigenous peoples in decision-making and access to fair procedures that consider Indigenous customs. The enactment of DRIPA confirms that these are statutory mandates, not merely aspirations, and should shape every stage of the disciplinary process, from investigations to potential sanctions. The regulator should report on measures taken to incorporate Indigenous legal principles, including metrics on cultural competence, the use of Indigenous-led alternatives, and anonymized outcomes for matters involving Indigenous identity.

Discussion

A discipline committee

9. Section 89 (1) provides that the board *must* establish a discipline committee for the purpose of reviewing citations proposed to be issued against a licensee, trainee or law firm.

10. Section 30 provides that one of the responsibilities of the Indigenous council is advise the board on the appointment of Indigenous members to, inter alia, the discipline committee.

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[8] *Bill 21, Legal Professions Act*, *supra* note 3, ss 29–31 and 89. See the Indigenous Council role and appointment criteria.

[9] Law Society of British Columbia, *Indigenous Engagement in Regulatory Matters, Report of the Task Force* (approved 14 July 2023) at Preface and Executive Summary, and Recs 1.0–4.0.

11. The Act also provides that the membership of the discipline committee *must* not include a former director until one year after the date on which the former director ceases to be a director.[10]

12. Finally, the Act requires that the board *must* appoint a chair of the discipline committee from among the members appointed to the committee.

13. While the Act does not mandate the creation of rules regarding the establishment of the discipline committee and the appointment of the chair, the recommendation is that the transition team should adopt rules setting out a process for fulfilling the board's responsibilities in establishing discipline committee and selecting a chair.

Term

14. The practice of both the Law Society and the Notaries Society is to make annual appointments to their discipline committees. In practice, appointments have generally been made with some continuity from year to year. However, this need not be the case. The same comments apply to the term of the chair.

15. A reasonable term for membership on the disciplinary committee is 2 to 3 years, with the possibility of renewal for an additional term. This provides sufficient time for members to gain experience with the committee's procedures and the relevant rules and allows for meaningful experience in reviewing citations, particularly considering the likelihood that there are not that many citations to be reviewed. A term of 2 to 3 years does justify the investment in training members of the committee.

16. The term for the chair could be the same as for committee membership. However, it may be appropriate to provide a shorter term for the chair, as the chair's workload is greater. However, if the number of citations remains consistent with the experience of the Law

[10] The actual wording of section 89(3) is "A director is not eligible to be appointed as a member of the discipline committee until one year after the date on which the director ceases to be a director. Act" which requires that the first and second references to "director" be read as "former director". Section 51(4) provides for the appointment of former directors to a licensing committee, if created, and has the correct wording "A former director is not eligible to be appointed as a member of the licensing committee until one year after the date on which the former director ceased to be a director."

Society and the Notaries Society in 2024, there may not be that much work for the discipline committee or the chair.

17. Permitting one renewal term does retain experienced members while avoiding perpetual membership. Staggering the initial terms for the inaugural discipline committee will permit staggering renewals and ensure institutional continuity as some members rotate off.

18. Overall, providing for terms of 2 to 3 years with staggered appointments fills the need for experienced, knowledgeable committee members while providing for regular renewal and fresh perspectives.

Recommendation
The rules should provide for a three-year term for members of the discipline committee with the possibility of one renewal term. The term for the chair should also be three years but no provide for a renewal term. The initial appointments on amalgamation day should be staggered to ensure that there is not a significant turnover in each subsequent year.

Committee Size

19. The Act requires that discipline committee *must* include at least one member of the public, at least one Indigenous person and for each legal profession whose total membership is 50 or more, at least one person who is licensed to practise that legal profession. The Act recognizes four legal professions (section 3): lawyers, notaries public, regulated paralegals and professions designated by regulation. As a result, the long-term minimum size of the discipline committee is six.

20. In addition, the discipline committee must have enough members to maintain quorum in the face of recusals arising from conflicts and to ensure a diversity of views but not so large as to make it difficult to reach a decision. In addition, unless a significant increase in the number of citations is anticipated, there may not be that many citations for the committee to review.[11]

[11] The 2024 annual report of the Law Society notes that there were 9 citations issued in 2024.

21. The Law Society discipline committee currently has 12 members, including the chair. The Notaries Society discipline committee had 5 members in 2023 – 2024.

22. A single Indigenous seat on the discipline committee risks being perceived as tokenism and practically may result in the sole Indigenous member being unavailable to sit on citation review panels as necessary. To avoid the appearance of tokenism, if the size of the discipline committee would render a lone Indigenous voice ineffective, in the determination of the Board and Indigenous Council, the regulator should seat more than the statutory minimum requirement of a single Indigenous member on the discipline committee, such that there is a meaningful ratio of Indigenous members to the total membership of the discipline committee

Recommendation
Expand Indigenous participation - s 89: The rules should provide for greater Indigenous membership on the Discipline Committee beyond a single seat, to a ratio deemed appropriately representative by the Board and Indigenous Council.

Recommendation
Discipline committee size – s 89: The rules should establish a discipline committee of 8 to 10 members.

Citation Review Panels

23. Section 89(5) provides that the chair of the discipline committee may appoint panels for the review of citations and subsection (6) provides that a panel must include at least 3 members, one of whom must be a person who is not licensed to practise the same legal profession as that of the licensee, trainee or law firm against whom a citation is proposed to be issued.

24. Although the Act does not say why authority is given to the chair to appointment panels, most likely the purpose is to permit the chair to manage the workload by assigning the review of citations to a subset of larger discipline committee.

25. In light of the relatively small number of citations issued by the Law Society last year and the relatively small number of discipline matters issued by the Notaries Society in 2023 –

2024, it seems unlikely that there will be a need to manage the workload by assigning review of citations to citation review panels.

26. There is no explicitly stated requirement for Indigenous representation on discipline committee panels, however section 123 of the *Act* does require tribunal panels to have at least one Indigenous member at the final hearing if a matter has an Indigenous respondent or claimant. The legislature has provided multiple mandates within the *Act* ensuring Indigenous representation throughout the regulator's structure, so it seems unlikely that the Legislature's intention was to exclude Indigenous membership on discipline committee panels. The IERM Task Force Report also urges increases in Indigenous representation and early-stage Indigenous participation in Law Society processes.

27. As it is within the Discipline Committee chair's authority under paragraphs 89(5) and 89(6) to name the panel members, the rules should require that a discipline committee panel hearing a matter involving an Indigenous practitioner or conduct that affects Indigenous clients, should include at least one Indigenous member for all hearings on the matter.

Recommendation
Discipline Committee panels - s 89: The Discipline Committee must ensure an Indigenous representative on any panel considering a matter involving an Indigenous practitioner or Indigenous complainants include at least one Indigenous member.

Breach of a consent agreement

28. Section 91(1) provides that, at any time between the start of an investigation and the start of a proceeding under Part 8 [Tribunal Proceedings], the CEO may enter into a consent agreement with the licensee, trainee or law firm that is the subject of the investigation.

29. Section 91(3) provides that, once a consent agreement has been reached, no further discipline or tribunal action may be taken in relation to the facts on which a consent agreement is based. However, there is an exception in that section 94(2)(c) provides that the board may make rules specifying the actions the CEO may take if a licensee, trainee or law firm breaches a term of a consent agreement under section 91.

30. The Law Society rules provide that if a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

a. Treat the breach as a complaint under this division;

b. Reopen investigation of the complaint that gave rise to the consent agreement;

c. Refer the matter to a committee or the chair of the Discipline Committee under Rule 3-8 [Action on a complaint]; and

d. Enter into an amended consent agreement under Rule 3-7.3 [Amending consent agreement].

Interim Orders, s 85

31. Section 85 of the *Act* permits the Chief Executive Officer to make interim orders where necessary in the public interest, including limits and conditions on licences, suspensions, and, at paragraph 85(1)(g), compulsory medical examinations to assess capacity. Such orders have a maximum duration of three months, with review rights and tribunal oversight on extension. Interim suspension is a serious measure, that should only be imposed where targeted, less disruptive remedial steps have been tried and found inadequate to protect the public. In small and rural Indigenous communities, the impact can be even more exaggerated, where a temporary suspension can be perceived as conclusive proof of untrustworthiness, creating lasting reputational harm even if the matter is later resolved.

32. We propose two safeguards that could mitigate these potential harms without weakening public protection.

33. First, the written reasons required for an interim order by section 85(3)(b) should include a proportionality assessment that demonstrates the interim order comprises the least restrictive means of achieving the disciplinary objective, and also considers the availability of alternatives that advance the cultural competence of the individual and professions.

34. Second, when ordering a medical examination or an interim suspension of an Indigenous practitioner, it has been suggested that the CEO should inform the Indigenous Council or its delegate, and record how UNDRIP principles were considered.[12] However, while recording how the UNDRIP principles were considered in the written reasons may be appropriate, the

[12] UNDRIP, *supra* note 2, arts 18 and 40; *Bill 21* s 30, Indigenous Council's advisory role.

obligation to inform the Indigenous council would involve engaging the Indigenous council in individual regulatory operations.

Question
Culturally competent interim orders - s 85: Should the rules require that the CEO inform the Indigenous council when issuing a s. 85 interim order suspending an indigenous licensee or ordering a medical examination of an Indigenous licensee and provide written proportionality reasons that record how culturally-responsive, restorative, and non-medical supports were considered?

Actions After Investigation, s 86

35. After an investigation, the CEO may issue a professional conduct order for non-egregious violations, may proceed by citation for misconduct or conduct unbecoming, or may address competence by order or citation.[13] This gives the CEO a considerable range of discretion. To reduce the risk that culturally distinct practices are mischaracterized as "conduct unbecoming", when a professional conduct order is issued for an Indigenous licensee, the CEO should inform the Indigenous Council or its delegate. The CEO should also publish reasons that address cultural context, the availability of restorative options, and the possible role of Indigenous legal processes in remediation. A requirement for short reasons, coupled with periodic, reporting of professional conduct orders, would also inspire public confidence.[14]

36. Constance Backhouse shows that gatekeepers have historically deployed the nebulous qualifiers of "good character" and "good repute" to police political dissent and bulwark class, gender, racial and religious lines. Gordon Martin's exclusion from the British Columbia bar for being a communist is an example of how the "good character" requirement can be weaponized. Other examples include the earlier exclusions of women, Black and Indigenous applicants, as well as Asians barred through voter-eligibility rules.[15] The lived experiences of

[13] *Bill 21, Legal Professions Act*, *supra* note 3, s 86.

[14] Devlin & Heffernan, *supra* note 5 at 190–193; Lorne Sossin, "Designing Administrative Justice" (2017) 34 *Windsor YB Access Just* 87 at 88–93, 108–111.

[15] Backhouse, Constance, "Contesting the legal culture of professionalism" (2017) 24:1 International Journal of the Legal Profession 55–58.

these demographics warn that vague charges of "conduct unbecoming" could replicate the same biases against Indigenous licensees unless disciplinary decisions are based on clear standards and evidence, written reasons, and input from the Indigenous Council when Indigenous people or communities are materially involved.[16]

Question
Should the rules provide that when a professional conduct order is issued in a matter involving an Indigenous licensee or materially affecting an Indigenous community, the CEO should take the following steps? a. Inform the Indigenous council b. Prepare brief written reasons for addressing cultural context and proportionality; and c. Publish periodic summaries to support consistency and public confidence.

Professional Conduct Orders, s 87

37. If the CEO determines that there has been professional conduct violation other than professional misconduct or conduct unbecoming a professional, section 87 of the *Act* authorizes reprimands, practice reviews, remedial programs, fines, and licence conditions. The licensee must be notified, is allowed to make submissions, and request a review of the sanctions. The maximum fines of up to 10,000 dollars for a first violation and 20,000 dollars for subsequent violations, while not unreasonable, may be a disproportionate burden on Indigenous practitioners serving under-resourced communities. Under paragraph 87(1)(f), the *Act* permits "any other action" that is appropriate in the circumstances , except suspension or cancellation. In the spirit of incorporating Indigenous legal traditions as contemplated by paragraph 30(a)(i) of the *Act*, the regulator should recognize Elder-guided undertakings, community service obligations benefiting affected Indigenous communities, and Indigenous circles as permissible "other actions".

38. When Indigenous clients are involved, or the licensee is primarily serving Indigenous clients, the CEO should also consider Indigenous cultural competency training as a potential

[16] *Ibid*, p 56-59.

remedial program under paragraph 87(1)(c). Prior to issuing a professional conduct order for an Indigenous licensee, the CEO should also consult with the Indigenous Council or its delegate.

Question
Equity-based fines - s 87: Should the rules require panels to consider ability to pay, practice context, and community impact before imposing monetary penalties, particularly against Indigenous licensees, with reasons required showing how the sanction protects the public without exacerbating historic disparities?

Recommendation
Restorative sanctions when appropriate - s 87: The regulator should treat Elder-guided undertakings, circles, community service benefiting affected Indigenous communities, and supported practice arrangements as "other actions" under s 87(1)(f). Where Indigenous clients are affected, include Indigenous cultural competency training as a remedial program condition.

Competence Orders, s 88

39. Section 88 allows orders for practice reviews, remedial programs, counselling or medical treatment, conditions on practice, and suspensions in specified forms. There is a risk that competence concerns, particularly for Indigenous practitioners facing chronic, systemic challenges, could be disproportionately flagged as a medical concern. When ordering treatment or counselling for an Indigenous practitioner, the CEO's reason should explain why non-medical supports, such as mentoring by a more senior Indigenous licensee, guidance by an Elder, or other supported practice arrangements were deemed insufficient. The IERM recommendations on developing intercultural competence and trauma-informed expertise provide a useful framework for competence orders that avoid pathologizing problems that could be resolved in less stigmatizing ways.

Question
Medical/counselling orders - s 88: Should the rules provide that, when ordering treatment or counselling for an Indigenous practitioner, the CEO's reasons should explain why non-medical supports, such as mentoring by a more senior Indigenous licensee, guidance by an Elder, or other supported practice arrangements were deemed insufficient?

Citations, s 90

40. Per section 90 of the *Act*, the CEO submits a proposed citation to the Discipline Committee, which must approve before the matter proceeds to a hearing. Once a hearing is set, the CEO must give notice and may advise that the tribunal can proceed in the respondent's absence. If the committee does not approve the citation, the CEO may issue a professional conduct order or competence order under 90(6).

41. In rural areas, an Indigenous licensee may be the only available practitioner considered culturally competent by local Indigenous clients, even if other culturally competent practitioners are available. Similarly, in rural areas, a non-Indigenous licensee may serve a primarily Indigenous base of clients. In both circumstances, the premature publication of information regarding the licensee under investigation could undermine local trust in the licensee and the profession prior to the outcome of the matter being determined. Indigenous clients may choose not to be represented at all rather than retain a licensee with a poor reputation in the community. The potential damaging effects of publication could thus extend beyond the licensee's practice and negatively impact access to justice for Indigenous peoples in the area.

Question
Citations - s 90: Should the rules require that, when submitting a citation that involves an Indigenous licensee, a licensee serving primarily Indigenous clients, or an Indigenous client, the CEO should also inform the Indigenous council or its delegate, to ensure that a citation is a warranted and appropriate response in the context of the matter?

Consent Agreements, s 91, and Alternative Resolution, s 92

42. Section 91 authorizes consent agreements from the start of an investigation until a tribunal proceeding commences. Section 92 authorizes alternative resolution processes, and section 94(3) specifies that rules regarding alternative resolution processes may reflect or be influenced by Indigenous practices, subject to collaboration with and approval by the Indigenous Council. These provisions create pathways for the integration of Indigenous legal traditions within discipline processes, including alternate resolution processes like circles, Elder-guided undertakings, and community-centred reparations, as appropriate. The IERM Report calls for more opportunities for apology without further adverse consequences and for inquisitorial, trauma-informed procedures recognized by many Indigenous legal traditions.

43. Recommendations regarding alternative resolutions will be offered in a separate paper.

Disciplinary Record, s 93

44. Under section 93, the CEO may consider prior disciplinary records when making new orders. Without careful consideration, simple review of prior records could propagate disparities if Indigenous licensees have been subject to higher complaint rates for reasons not related to their professional performance.

Question
Review of prior disciplinary records - s 93: When a matter involves an Indigenous licensee, should the CEO consider prior findings in their context, including verifying that earlier processes included cultural competence, and give reasons for how the use of prior records in the matter balances cultural competence, fairness and the public interest?

Rule-Making Power, s 94

45. Section 94 authorizes the Board to make rules for discipline in general. Section 94(2)(a) specifically provides for rules to protect the privacy of a licensee under investigation and 94(2)(e) allows for rules respecting the use of alternative resolutions.

46. In rural areas, an Indigenous licensee may be the only available practitioner considered culturally competent by local Indigenous clients, even if other culturally competent practitioners are available. Similarly, in rural areas, a non-Indigenous licensee may serve a primarily base of clients. In both circumstances, the premature publication of information regarding the licensee under investigation could undermine local trust in the licensee and the profession prior to the outcome of the matter being determined. Indigenous clients may choose not to be represented at all rather than retain a licensee with a poor reputation in the community. The potential damaging effects of publication could thus extend beyond the licensee's practice and negatively impact access to justice for Indigenous peoples in the area. The board and Indigenous Council should create rules that identify and protect the privacy of Indigenous licensees and licensees serving primarily Indigenous clients until a determination has been made about a matter under investigation.

47. Subsection 94(3) requires that rules reflecting Indigenous practices be developed in collaboration with and approved by the Indigenous Council. "Collaboration" could entail a spectrum of activity, from the Indigenous Council merely providing input on rules drafted by other parties, to personally drafting wholesale any rules regarding Indigenous practices or laws. The most efficacious interpretation is somewhere in between. The Indigenous Council should approve all such rules, to ensure meaningful Indigenous participation in rules development and fidelity in the incorporation of Indigenous legal traditions.

Recommendation
Publication practices - s 94: The regulator should 2. Defer publication of information regarding investigations until the outcome of matters being investigated have been determined; and 1. Publish anonymized disaggregated data on complaints, interim orders, citations, and outcomes for Indigenous practitioners, together with annual reporting on the use and outcomes of Indigenous-informed alternative resolutions, balancing the public interest with culturally competent processes for Indigenous licensees and clients.

Question
Should the publication of citations until a panel screening or reasons are prepared to provide context

Recommendation
Disciplinary rules designed for public confidence - s 94: The regulator should build public confidence in its processes by designing operational aspects of disciplinary procedures that treat users with dignity and prioritize intelligibility, accessibility, and accountability to the public, particularly Indigenous publics who have been historically underserved.

Summary of Recommendations and Questions

1. **Recommendation -** The rules should provide for a three-year term for members of the discipline committee with the possibility of one renewal term. The term for the chair should also be three years but no provide for a renewal term. The initial appointments on amalgamation day should be staggered to ensure that there is not a significant turnover in each subsequent year.

2. **Recommendation - Expand Indigenous participation - s 89:** The rules should provide for greater Indigenous membership on the Discipline Committee beyond a single seat, to a ratio deemed appropriately representative by the Board and Indigenous Council.

3. **Recommendation - Discipline committee size – s 89:** The rules should establish a discipline committee of 8 to 10 members.

4. **Recommendation - Discipline Committee panels - s 89:** The Discipline Committee must ensure an Indigenous representative on any panel considering a matter involving an Indigenous practitioner or Indigenous complainants include at least one Indigenous member.

5. **Question - Culturally competent interim orders - s 85:** Should the rules require that the CEO inform the Indigenous council when issuing a s. 85 interim order suspending an indigenous licensee or ordering a medical examination of an Indigenous licensee and provide written proportionality reasons that record how culturally-responsive, restorative, and non-medical supports were considered?

6. **Question -** Should the rules provide that when a professional conduct order is issued in a matter involving an Indigenous licensee or materially affecting an Indigenous community, the CEO should take the following steps? Inform the Indigenous council Prepare brief written reasons for addressing cultural context and proportionality; and Publish periodic summaries to support consistency and public confidence.

7. **Question - Equity-based fines - s 87:** Should the rules require panels to consider ability to pay, practice context, and community impact before imposing monetary penalties, particularly against Indigenous licensees, with reasons required showing how the sanction protects the public without exacerbating historic disparities?

8. **Recommendation - Restorative sanctions when appropriate - s 87:** The regulator should treat Elder-guided undertakings, circles, community service benefiting affected Indigenous communities, and supported practice arrangements as "other actions" under s 87(1)(f). Where Indigenous clients are affected, include Indigenous cultural competency training as a remedial program condition.

9. **Question - Medical/counselling orders - s 88:** Should the rules provide that, when ordering treatment or counselling for an Indigenous practitioner, the CEO's reasons should explain why non-medical supports, such as mentoring by a more senior Indigenous licensee, guidance by an Elder, or other supported practice arrangements were deemed insufficient?

10. **Question - Citations - s 90:** Should the rules require that, when submitting a citation that involves an Indigenous licensee, a licensee serving primarily Indigenous clients, or an Indigenous client, the CEO should also inform the Indigenous council or its delegate, to ensure that a citation is a warranted and appropriate response in the context of the matter?

11. **Question - Review of prior disciplinary records - s 93:** When a matter involves an Indigenous licensee, should the CEO consider prior findings in their context, including verifying that earlier processes included cultural competence, and give reasons for how the use of prior records in the matter balances cultural competence, fairness and the public interest?

12. **Recommendation - Publication practices - s 94:** The regulator should:

    a. Defer publication of information regarding investigations until the outcome of matters being investigated have been determined; and

    b. Publish anonymized disaggregated data on complaints, interim orders, citations, and outcomes for Indigenous practitioners, together with annual reporting on the use and outcomes of Indigenous-informed alternative resolutions, balancing the public interest with culturally competent processes for Indigenous licensees and clients.

13. **Question -** Should the regulator defer publication of citations until a panel screening or reasons are prepared to provide context?

14. **Recommendation - Disciplinary rules designed for public confidence - s 94:** The regulator should build public confidence in its processes by designing operational aspects of disciplinary procedures that treat users with dignity and prioritize intelligibility, accessibility,

and accountability to the public, particularly Indigenous publics who have been historically underserved.

DRAFT

Transitional Board and Transitional Indigenous Council

Alternative Resolutions

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**November 19, 2025**

Background

1. In one sense, to describe an approach to a professional conduct matter as an alternative implies a conventional or non-alternative approach, which in the case of legal regulation is generally an approach that mirrors the criminal law process: the issuance of a citation and a hearing before a panel.[1]

2. In thinking about the resolution of matters within the discipline process, we should recognize that the process is a continuum ranging from:

    a. outright dismissal (section 76),

    b. interim orders during an investigation (section 85),

    c. entry into a consent agreement (section 91) or an alternative resolution (section 92),

    d. actions following an investigation (section 86),

    e. submission of a citation to the Discipline committee (section 90) and following that to a hearing under Part 8.

3. Over the last decade, there has been an increasing recognition that the conventional process of complaint, investigation, citation, and hearing meets some of the objectives of a professional discipline program but not all. In particular, where the conduct in question has arisen as a result of a health issue, particularly a mental health issue, the conventional process fails to meet what has become a reasonable expectation about the result of the process.[2]

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[1] Zacharias FC. The purposes of lawyer discipline. Wm. & Mary L. Rev.. 2003;45:675 provides a useful consideration of the purposes for which we might implement professional discipline

[2] For a review of the role of mental health in the law society regulatory processes, see Keenan K. Rationalizing professional misconduct: An examination of techniques of neutralization in lawyer discipline proceedings: Arts & Social Sciences: School of Criminology; 2019 at p. 110ff. Keenan noted that "Nearly thirty-seven percent (n=144) of disciplined lawyers cited a mental health condition or substance use problem as a defence or explanation for their professional misconduct. The main types of impairment in these cases were depression (n=79), anxiety (n=23), and gambling disorder (n=9), with six percent of lawyers alleging cooccurring psychiatric disorders ... Drug and/or alcohol dependence problems also featured prominently in the disciplinary cases. Roughly 10 percent of lawyers in the study (n=39) reported problematic alcohol use as the reason for their misconduct, and two percent (n=9)

4. Section 92 provides that at any time between the start of an investigation and the start of a proceeding under Part 8 [Tribunal Proceedings], the chief executive officer may, in accordance with any rules made under section 94 (2) (e), resolve a discipline or competence matter using an alternative resolution process.

5. Section 94(2)(e) provides the board may make rules as follows ... respecting the use of alternative resolution processes in the resolution of discipline and competence matters.

6. Section 94(3) provides that rules made under subsection (2)(e) may include rules that reflect or are influenced by Indigenous practices in relation to dispute resolution, which rules must be developed in collaboration with and approved by the Indigenous council. By this section, the *Act* provides a statutory co-development mechanism that could substantially influence the design and acceptance of more non-adversarial disciplinary processes.[3]

7. An alternative resolution entered under section 92 is subject to rules made under section 94(2)(e), which may themselves incorporate Indigenous dispute resolution practices as a result of collaboration with and approval by the Indigenous Council mandated by section 94(3). The statutory structure of the *Act* makes reconciliation with Indigenous peoples a core tenet of the new professional regulations, rather than a marginal policy goal.[4] This paper considers section 92's relationship to consent agreements, the rule-making power in section 94 of the Act, and British Columbia's *DRIPA*[5] commitment to implement the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.[6] The paper will inspect an alternative resolution process that would be both effective and just for Indigenous licensees as well as Indigenous communities that depend on them for culturally competent legal services.

8. The Indigenous Engagement in Regulatory Matters Task Force of the Law Society of British Columbia documented distrust of disciplinary processes among Indigenous complainants

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reported that abuse of drugs played a role in their disciplinary problems. And, nearly ten percent of lawyers (n=38) showed evidence of comorbid conditions, such as mood, anxiety, and substance
use disorders." (p. 110)

[3] *Legal Professions Act,* SBC 2024, s 94(3).

[4] *Ibid*, s 7.

[5] *Declaration on the Rights of Indigenous Peoples Act*, 2019, ss 3-4.

[6] United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295, 2 October 2007.

and witnesses, and recommended the adoption of "flexible, culturally relevant, and trauma-informed options and resources" for them.[7] This recommendation should guide the implementation of section 92 of the *Act* and the content of rules drafted under section 94. The IERM Task Force also emphasized that the perceived legitimacy of the Law Society and its processes with Indigenous peoples relied on building trust, relationships, and the visibility of Indigenous people within the regulator.[8] By the same guidance, the alternative resolution process should be designed and delivered in partnership with Indigenous people and in recognition of their legal traditions.

9. UNDRIP recognizes the rights of Indigenous peoples to maintain and strengthen their legal institutions and to have access to fair procedures that consider their customs, traditions, rules, and legal systems. These internationally recognized principles have been given domestic effect by British Columbia's Declaration on the Rights of Indigenous Peoples Act (DRIPA), which requires measures to ensure provincial laws are consistent with UNDRIP and contemplates implementation through an Action Plan created in cooperation with Indigenous peoples.[9]

10. Under section 91 of the *Act*, the Chief Executive Officer may enter into a consent agreement at any time between the start of an investigation and the start of tribunal proceedings. The agreement may include any requirement, fine, limit, or condition available through professional conduct or competence orders, including, in some cases, suspension or cancellation. Subject to rules created under section 94(2)(c), no further action may be taken under Parts 6 or 8 of the *Act* in relation to the same facts.[10] The IERM Report's discussion of the *Bronstein* matter, in which a consent agreement was accepted by the majority of the hearing panel but dissented to by the sole Indigenous panel member as being too lenient, exemplifies the need for transparent standards in reaching consent agreements and for Indigenous guidance in such agreements.[11]

11. Under the *Notaries Act,* the discipline committee and directors have wide powers to initiate inquiries, to impose interim suspension once an inquiry decision is made, and to

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[7] Law Society of British Columbia, *Indigenous Engagement in Regulatory Matters, Report of the Task Force* (approved 14 July 2023), Rec 4.3, p 29.
[8] *Ibid*, p 20.
[9] *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, ss 3-4.
[10] *Supra* note 3, LPA, s 91(3).
[11] *Supra* note 7, IERM Report, pp 8-9.

recommend or impose penalties.[12] This structure provides for a formal inquiry largely in the control of the directors and discipline committee. The *Notaries Act* does not consider negotiated or culturally specific alternatives to the normal disciplinary process. Sections 91 to 94 of the *Legal Professions Act* are thus a marked expansion over the existing regimes of the regulator's ability to appropriately shape disciplinary action to the context of a matter.

12. The balance of this paper will address the opportunity to create rules regarding the use of alternative resolution processes in the resolution of discipline and competence matters.

Discussion

13. Currently, the Law Society has rules regarding an alternative to the conventional discipline process where the lawyer has a health issue that may have contributed to an alleged discipline violation by the lawyer where the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division. Rule 3-9.1(3).

14. As a matter of practice, this alternative is implemented by way of a consent agreement under the current Law Society rules.

15. Most recently, the Law Society has approved extending its alternative resolution process to include competency matters in addition to the discipline matters covered by the existing rules. It has also agreed to adopt an Alternative Resolution Measures (ARM) Framework that would address non-health related conduct issues where a resolution or a remedial approach is in the public interest.

16. The implementation of alternatives to the more traditional prosecutorial approach has been shown to be successful in other jurisdictions[13] and implementation of consent agreements

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[12] *Notaries Act*, [RSBC 1996] CHAPTER 334, ss 25-37.

[13] See Ellis DM. A decade of diversion: Empirical evidence that alternative discipline is working for Arizona lawyers. Emory LJ. 2003;52:1221.| Brown JG, Wolf LG. The Paradox and Promise of Restorative Attorney Discipline. Nev. LJ. 2011;12:253. | Gomberg JR. Regulating Lawyers with Mental Illness and/or Addiction: Toward a Comprehensive Law Framework and Discipline Reform by the Law Society of Ontario. Windsor Rev. Legal & Soc. Issues. 2024;45:71.| Levin LC, Fortney SS. " They Don't Know What They Don't Know": A Study of Diversion in Lieu of Lawyer Discipline. Geo. J. Legal Ethics. 2023;36:309

and the alternative disciplinary pathway by the Law Society has made a significant difference in the outcomes of serious complaints.[14]

17. As noted above, the Act provides for rules that reflect or are influenced by Indigenous practices in relation to dispute resolution. It is expected that the Indigenous council and its advisors will give consideration to what Indigenous practices might be adopted in the rules to further the opportunity to create a better discipline process for the new regulator.

Models of Alternative Resolution

18. The IERM Report recommends increasing opportunities for consent based and alternative processes and minimizing unnecessary formalities that alienate participants.[15] This suggests a spectrum of possible alternative resolutions that can be generally structured by the rules and more specifically guided by Indigenous law when appropriate. Relational approaches, recognized in the IERM Report as attempting to minimize conflict rather than assuming it[16], should be favoured when crafting alternative resolutions.

19. A fundamental requirement for an alternative resolution must be the willingness of both the claimant and the respondent in a matter to accept the alternative resolution process chosen as appropriate in the context. This responds to the recommendations of the IERM Task Force geared toward building and sustaining the legitimacy of the legal system and regulator in the eyes of Indigenous people. If either side of a matter feels an alternative resolution is inadequate or unjust, the ameliorative and rehabilitative effects of the resolution will not be perceived by the parties most affected. The appropriateness of any alternative resolution being considered for an Indigenous licensee, or licensee serving an Indigenous complainant, should also be reviewed by the Indigenous Council or its designate. These preconditions should be considered as met in the following examples.

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[14] Of the complaints concluded after investigation in 2024, 18 were based on consent agreements and 19 were concluded through the alternative resolution program. As a result, only 10 complaints were concluded with a citation and 25 conduct reviews order compared with 41 citations and 83 conduct reviews in 2020, the last year prior to the introduction of consent agreements.

[15] *Supra* note 7, IERM Report, Recs 1.3 and 1.5.

[16] *Supra* note 7, IERM Report, p 19.

20. British Columbia has an incredible diversity of Indigenous peoples with 7 unique Indigenous language families found only in the province[17], and 202 First Nations.[18] With such a large number of distinct traditions, there will be few one-size-fits-all solutions. Successful alternative resolutions will need to be culturally aware and context sensitive, however the importance of positive relationships, honesty, trust, responsibilities, obligations, and respect for Elders are features of most, if not all, Indigenous cultures in BC. This leads us to some general examples of alternative resolutions that could be tailored to the specific circumstances of a matter.

21. A first example of an alternative resolution for Indigenous licensees, or licensees primarily serving Indigenous clients, could take the form of Elders circles, enabling complainants and respondents to articulate perceived harm and identify corresponding obligations raised by the harm. The Elders circle could, for example, safeguard against perceived coercion in the proceedings, and also articulate the potential consequences if undertakings are not fulfilled by the licensee. Where licensee competence or conduct deficiencies are identified, participation in an Elders circle could be ordered as a remedial action, or "other action" under sections 87(1)(d) or (f) and 88(1)(d) or (f) of the *Act*.

22. A second alternative resolution could be Elder-guided undertakings, including apologies to complainants, cultural education, and mentorship plans for respondent licensees, all of which may also be incorporated into supervised practice arrangements, ensuring both licensee accountability and learning. This is especially important in matters and contexts where the public interest, including that of underserved Indigenous communities, is better served by engaging the licensee in successful remediation rather than exclusion from practice.

23. Third, community accountability measures could form part of an alternative resolution, such as respondents offering services to Indigenous legal organizations, or participation in anti-racism or trauma-informed practice training. The specific measures should be proportionate to the seriousness of the violation being addressed by the alternative

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[17] Canada, Government of Canada; Indigenous Services, "Indigenous Peoples in British Columbia" (10 June 2021), online: <https://www.sac-isc.gc.ca/eng/1623334709728/1623335671425>.

[18] Canada, Government of Canada; Indigenous Services, "British Columbia region" (22 December 2008), online: <https://www.sac-isc.gc.ca/eng/1100100021003/1612465942223>.

resolution and tailored to address systemic harms such as those documented by the IERM Task Force.[19]

24. These examples are not intended to be inclusive of all the possibilities that alternative resolutions offer. The regulator's duties of professional regulation, standards and independence in service of the public interest[20] and principles of access to justice, reconciliation, and removing barriers to Indigenous licensees[21] are well-served by creative and judicious use of alternative resolutions rather than more proscriptive disciplinary measures that further curtail legal practice and consequent opportunities for licensee development.

25. Although Canadian legal culture has limits of translation to Indigenous legal traditions, and vice versa, outcomes will be more successful and seen as legitimate when the parties involved can articulate and hear reasons in their own legal terms of art, even if a resolution includes points of respectful disagreement. Well-designed alternative resolutions are an opportunity for multi-juridical legal reasoning, which is precisely the kind of outcome envisaged by BC's commitments to *UNDRIP* (as seen in *DRIPA*[31]) to cooperative and good-faith processes that respect Indigenous institutions and decision-making.[22]

26. To best meet the mandates of sections 6 and 7 of the *Act*, to protect the public interest and advance reconciliation with Indigenous peoples, the rules regarding alternative resolutions under sections 92 and 94, should recognize Indigenous law as law and take Indigenous self-government and decision-making authority seriously. Indigenous legal traditions contain relevant principles and precedents for responsibility, remedy, and reintegration; the disciplinary process should thus be community-engaged and flexible enough to work with Indigenous institutions, elders, or councils as decision makers or advisors in reaching an appropriate alternative resolution.

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[19] *Supra* note 5, IERM Report, pp 14-21. Following the explication of 4 key issues, the Task Force identified intercultural competence and trauma informed practice as preventive measures that can be built into outcomes.
[20] *Supra* note 3, LPA, s 6.
[21] *Supra* note 3, LPA, s 7.
[22] United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous People: resolution / adopted by the General Assembly* (2 October 2007). See arts 18–19, 34, regarding Indigenous decision-making institutions and good-faith consultation.

Consent and Voluntariness

27. Alternative resolution must be voluntary in both form and substance, which means that: a respondent should have access to independent legal advice; any agreement must be informed and not extracted by threats of disproportionate sanction; and there should be a right to withdraw prior to finalization without prejudice to the merits, subject to reasonable protections against strategic delay. These principles can be embedded in rules under section 94(2)(e), read with section 94(3), and are consistent with *UNDRIP*'s insistence on the participation of Indigenous peoples in decision making in matters that affect their rights.[23] The IERM Report's emphasis on Indigenous navigators, trauma informed communication, and culturally competent options for giving evidence supports a design in which consent is built into the alternative resolution process.[24]

Publication, Privacy, and Learning

28. Because alternative resolution is ideally a less adversarial process, the rules should specify what information about the matter is to be published, when, and how, and should balance the public interest in transparency with the interests of complainants and respondents. This is particularly important in rural Indigenous communities where reputational harm can be lasting and where a successful community-based resolution may be undermined by premature publicity. The current Law Society rules already protect the confidentiality of conduct meetings by excluding their records from the professional conduct record of a licensee[25], which suggests that similar guidelines could be adapted for section 92 outcomes, including anonymization and aggregate reporting of matters resolved by alternate resolution. The IERM Report also recommends that unnecessary formalities be minimized and the Law Society create processes to improve Indigenous participation.[26] The IERM recommendations would be met in part by a publication policy that leads institutional learning through anonymized summaries of disciplinary data, while preserving the ability of the regulator to publish more detail when it is in the public interest.

Oversight and Governance

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[23] *Supra* note 3, LPA, s 94. *Ibid*, *UNDRIP,* art 18.

[24] *Supra* note 7, IERM Report, recs 1.3(iii), regarding evidentiary options, and 3.2 regarding the Indigenous navigator role.

[25] Law Society of British Columbia, *Law Society Rules*, 2015, s 4.10(3).

[26] *Supra* note 7, IERM Report, recs 1.5, 2.2 and 3.3.

29. Section 94(3) mandates that rules reflecting Indigenous practices must be developed in collaboration with and approved by the Indigenous Council. The *Act* signals a legislative intention to move beyond consultation to shared design, in which the Indigenous Council's reasons are published alongside the board's reasons when rules are made or amended. The IERM Report recommended hiring an Indigenous navigator, requiring intercultural competence training, and developing mechanisms to evaluate the experiences of Indigenous complainants while respecting privacy concerns.[27] Altogether these recommendations describe strategies for building trust in Indigenous communities and continuous improvement in the regulator's processes.

30. Comparatively, the *Notaries Act* places inquiry and sanction almost wholly within the authority of directors and the discipline committee, whose powers include orders for interim suspensions and further summary action against licensees convicted of indictable offenses. There is no statutory mandate in the *Notaries Act* for alternative resolutions. The *Legal Professions Act*'s explicit authorization in section 92, and the co-development paragraph of section 94(3) are an opportunity for the profession that should be leveraged to create disciplinary processes that are culturally informed, procedurally robust, and responsive to the needs of the profession and the public.

Recommendations

31. **Provision for discipline alternatives** – **s.94(2)(e)** The rules should provide for alternatives to the traditional prosecutorial approach to discipline as contemplated by the Act, and that those rules should reflect Indigenous cultural and historical dispute resolution practices.

32. **Rule making mandate - s 94(3)**: The board should commit to presenting a comprehensive alternative resolution code within twelve months of amalgamation, to be developed jointly with and approved by the Indigenous Council under section 94(3). For clarity, the alternate resolution code should include eligibility criteria, initiation pathways, respondent and complainant supports, consent requirements, publication rules, and evaluative metrics.

33. **Integration of Indigenous processes - s 94(3)**: The rules should enumerate a non-inclusive list of recognized Indigenous legal processes, such as Elder guided circles and community undertakings, in collaboration with and approved by the Indigenous Council that may be incorporated into alternate resolution plans. The rules should specify when Indigenous legal

[27] *Supra* note 7, IERM Report, recs 3.2, 4.1 and 5.3.

processes, whether enumerated or not, may be used in an alternate resolution plan; how Indigenous authority to participate in an alternate resolution is recognized; how non-compliance with an alternate resolution is addressed; how the informed consent of complainants and respondents to alternative resolution is to be guaranteed; and how community consent is to be guaranteed where community processes are implicated.

34. **Indigenous participation - s 94(3):** In matters involving an Indigenous respondent or complainant the rules should: codify the role of the Indigenous person hired under section 22 in the alternate resolution process; specify any accommodations for Indigenous people giving evidence; and allow the use of victim impact statements where appropriate, consistent with the IERM recommendations.

35. **Evaluation and data - s 92:** The regulator should collect aggregated data on the initiation, completion, and outcomes of section 92 processes, including measures of participant satisfaction and recidivism, as urged by the IERM Report's implementation recommendations, so that rules can be refined over time.

36. **Publication policy - s 92:** Section 92 alternate resolution outcomes should be summarized and reported in anonymized, aggregate form on a periodic schedule, with qualitative narratives and quantitative metrics that enable institutional learning without compromising cultural competence. The CEO should retain the authority to publish the specifics of a matter when necessary to protect the public, with written reasons. In matters involving an Indigenous respondent or complainant, the CEO should consult with the Indigenous Council on potential community impacts prior to publication of the specifics of the matters.

37. **Grounding in Indigenous law scholarship**. In the interest of meeting the statutory mandate to incorporate Indigenous legal traditions into the regulator's processes, training for discipline counsel, panels, and staff who implement alternative resolution agreements consideration and entrenchment of material on: methods for researching and operationalizing Indigenous legal traditions; the application of Indigenous law in contemporary governance; the legal foundations of Indigenous self government; and cultural differences between Indigenous and Canadian legal norms be included.

Conclusion

38. The alternate resolution provision of section 92 offers an opportunity to build a professional disciplinary system that protects the public interest while recognizing and respecting Indigenous legal traditions. The regulator can implement processes that are seen as fair by

Indigenous people who have long been alienated from the regulator. The text of the *Act*, read with attention to sections 91 and 94, provides a framework for detailed rules to be constructed in collaboration with the Indigenous Council. The IERM Report provides practical guidelines for alternate resolution policies and rules, including consent-based participation, trauma informed systems, and ongoing evaluation. Taking account of Indigenous law and cultural differences can help the regulator design disciplinary processes that are principled, effective, and culturally cognizable to Indigenous practitioners and the Indigenous public.

39. It should be noted that the discipline transition provisions (Part 18 Division 5) in the Act provide for the continuation of investigations and practice reviews initiated before the amalgamation date but not concluded but does not specifically reference how to manage alternative resolutions, consent agreement or complaints. It is likely that on the date of the amalgamation, there will be complaints, alternative resolution matters and consent agreements being considered, investigated or negotiated. Some attention should be given to this issue, perhaps with amendments to the Act.

DRAFT

Transitional Board and Transitional Indigenous Council

Practice Reviews

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**November 19, 2025**

Background

1. Harry Arthur's commented that *"law societies have exhibited an invincible repugnance to the idea that they should use their knowledge and power to discipline incompetent lawyers, the very group that professional self-government is designed to suppress."*[1]

2. Both the Society of Notaries Public of British Columbia (Notaries Society) and the Law Society of British Columbia (Law Society) have implemented practice review programs.

3. The Law Society operates a program of practice review and remediation under the authority of section 27 of the Legal Profession Act and rule 3-17. The program identifies lawyers with potential competency concern, authorizes an assessment of their practice requiring the lawyer to address any issues which are identified. Practice reviews are ordered by the Practice Standards Committee which has the authority to order a practice review under rule 3-17(3) or if the lawyer consents to the review.

4. Generally, the Law Society's Practice Standards committee considers lawyers by way of referral from complaints and investigation. Since data on referrals to Practice Standards began being recorded in 2000, referrals to the Practice Standards committee have accounted for an average of 28 complaints a year or roughly 2% of all complaints received annually. Since 2000, around 380 lawyers or less 1% of the profession have been referred to the Practice Standards committee by the professional conduct program. Of these, just under 50% have been referred more than once and two lawyers have been referred to the Practice Standards committee 11 times.

5. The Notaries Society conducts practice inspections on all newly commissioned notaries in their first year of practice, schedules inspections with 20-25% of other members, and conducts inspections at the request of the CEO, or discipline committee. While the purpose of the practice inspection process is not disciplinary, a member who fails to address issues or concerns is often referred to discipline. These matters may proceed by way of alternative dispute resolution.

[1] Arthurs HW. The dead parrot: Does professional self-regulation exhibit vital signs. Alta. L. Rev.. 1994;33:800 at p. 801

6. Under section 74(3)(iii) of the *Legal Professions Act* (the *Act*)[2], the Chief Executive Officer may order a licensee or firm to undergo a practice review to "deficiencies in the practice, conduct or competence"[3], subject to the practice review provisions of section 73. Section 73 empowers the chief executive officer to direct a licensee's cooperation with the review by replying to inquiries and supplying requested records of the firm. The CEO may also direct an assessor to prepare a practice review report, and impose limits or conditions on a license or law-firm permit, including the application of practice restrictions, professional oversight, and additional training. A practice review report may additionally trigger an investigation. If a disciplinary order is made against a licensee or firm, the CEO may order that the costs of a review be paid by the licensee.

7. The Act has two companion sections that are relevant to a discussion of practice reviews. First, per section 60, a licensee under investigation or subject to a professional conduct order or citation may not surrender their license. Second, sections 125 and 126 provide that the tribunal may order the costs of an investigation triggered by a practice review report prepared under section 73 are recoverable as a debt due to the regulator. Together, differential-impact questions when applied to small Indigenous-serving practices.

8. The regulator should consider the context of an Indigenous licensee's practice, or of a licensee's practice on Indigenous clients, the systemic challenges they face, the downstream effects on Indigenous clients of any limits or conditions, and the ability to pay before issuing a costs order that might be onerous in a small community setting. Constraints on the exercise of these powers would be consistent with the statutory commitment of Declaration on the Rights of Indigenous Peoples Act (DRIPA).[4]

9. *DRIPA* commits the province to applying the principles of the United Nations Declaration of the Rights of Indigenous Peoples (*UNDRIP)*[5] and requires the Province, "in consultation and cooperation with Indigenous peoples," to take all measures necessary to ensure that provincial laws are consistent with *UNDRIP* and to implement an action plan[6]. Rules created

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[2] *Legal Professions Act*, Bill 21 – 2024.
[3] *Ibid*, s 74(3)(iii).
[4] *Declaration on the Rights of Indigenous Peoples Act*, 2019.
[5] United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295, 2 October 2007.
[6] *Supra*, *DRIPA*, ss 3-4.

to implement the conduct of practice reviews under sections 73 and 74 must be drafted consistent with that statutory duty.

Discussion

10. A distinguishing feature of the new Legal Professions Act is the extent to which the authority and capacity to regulate licensees, trainees and law firms is given to the CEO.

11. In the case of practice reviews, the Act sets out a detailed description of the actions the CEO may take in a practice review (section 73).

12. As noted above, the Law Society's practice review program involves a relatively small number of lawyers compared with the total volume of complaints in any given year. Yet, the opportunity for addressing competence issues through practice reviews under the new Act is significant.[7] This is particularly so as the regulatory regime under the Act embraces the opportunity to regulate law firms.

13. The authority of the CEO to conduct practice reviews for the purpose of routinely or randomly determining the competence of licensees or law firms and their compliance with this Act, the rules and the code of professional conduct is contingent on rules made in accordance with section 74(3)(b)(iii).

14. A practice review is a state-authorized process that may lead to a restriction in professional autonomy. Article 40 of UNDRIP provides that Indigenous peoples have the right to access "prompt decisions through just and fair procedures"[8] for dispute resolution, with due consideration to their customs, traditions, rules, and legal systems, as well as a right to effective remedies. With this in mind, the practice review process should be designed, implemented and recorded to show due consideration for Indigenous legal traditions.

15. Articles 1 to 5 of UNDRIP further declare Indigenous rights of equality, freedom from discrimination, self-determination, and the right to maintain and strengthen Indigenous

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[7] See the discussion in MacKenzie G. Regulating Lawyer Competence and Quality of Service. Alta. L. Rev.. 2007;45:143.at p. 147; Also see Fortney SS. Keeping Lawyers' Houses Clean: Global Innovations to Advance Public Protection and the Integrity of the Legal Profession. Geo. J. Legal Ethics. 2020;33:891; Schneyer T. The case for Proactive Management-Based regulation to improve professional self-regulation for US lawyers. Hofstra L. Rev.. 2013;42:233 and Salyzyn A. From colleague to cop to coach: Contemporary regulation of lawyer competence. Can. B. Rev.. 2017;95:489.

[8] *Supra*, *UNDRIP*, art 40.

legal institutions.[9] These principles should be considered when limits or conditions imposed on an Indigenous licensee under s. 73(1)(c) of the Act restrict an Indigenous licensee's ability to serve their community.

16. The IERM Task Force report documents systemic barriers experienced by Indigenous complainants and witnesses and calls for decolonizing and Indigenizing the regulatory processes of the legal profession.[10] The report also recommends that the regulator take steps to improve intercultural competence in the legal profession, to build trust with Indigenous people. The recommendations of the IERM Task Force to achieve these ends include allowing inquisitorial questioning by panel members, victim impact statements in appropriate circumstances, and flexible evidence modes such as videoconference and privacy screens; minimizing unnecessary formalities in regulatory processes, and providing a navigator to guide Indigenous participants.[11]

17. The IERM report identified the impact on Indigenous communities when regulatory responses to Indigenous complainants are perceived as inadequate and when regulatory processes do not incorporate Indigenous legal principles or provide "culturally safe"[12] participation for Indigenous people. In response to the IERM report's recommendations, practice reviews should include intercultural competence and trauma-informed approaches.

Recommendation
Rules created by the Board under 74(3)(b) authorizing the CEO to conduct practice reviews should require the CEO to consult with the Indigenous Council, or its delegate, when conducting a practice review of an Indigenous licensee, to ensure that the recommendations of the IERM report are being met.

[9] *Supra*, *UNDRIP*, arts 1-5.

[10] McPherson, Christopher A et al, *Report of the Indigenous Engagement in Regulatory Matters Task Force*, by Christopher A McPherson et al (Law Society of British Columbia, 14 July 2023), recs 1.0 and 2.0, inclusive of sub-recommendations.

[11] *Ibid*, recs 1.5 and 2.2.

[12] Ibid, Objections of the IERM Task Force Report, p 10.

18. Indigenous licensees often serve Indigenous clients in rural or remote areas, in financially constrained communities, and may be the preferred or only culturally competent legal representation locally available. The licensee may also undertake community obligations that are not readily captured by conventional billing or documentation models. A practice review requiring substantial document disclosure, or an intrusive on-site review may disrupt legal service to vulnerable Indigenous clients and decrease billable time that the practice cannot easily make up. If a review leads to conditions, such as oversight or restricted practice, the effect may be a reduction in an Indigenous community's access to legal services. While practice reviews are a necessary and laudable function of the regulator, practice review processes that disenfranchise Indigenous clients from their preferred representation would contradict UNDRIP's recognized rights to Indigenous legal traditions and institutions. Practice reviews that remain incognizant of the unique circumstances of Indigenous licensees would also be inconsistent with DRIPA's mandate for laws to be consistent with UNDRIP.

Recommendation
Rules made by the Board under section 74(3)(b) of the Act, authorizing the CEO to conduct practice reviews, should require the CEO, when conducting a practice review of an Indigenous licensee or practice, to prepare a written practice review plan that considers the risk of the review requirements on the public interest and Indigenous clients and is tailored to the unique context of the Indigenous practice.

19. Section 73(3) permits the regulator to recover the costs of a review when the review later leads to a disciplinary order against the licensee or practice, with costs enforceable as a debt due to the regulator. A significant cost award against a small Indigenous or Indigenous-serving practice could reduce their ability to provide services, or even lead the practice to close, which could limit an Indigenous community's access to preferred counsel.

Recommendation
Before seeking costs for practice reviews against an Indigenous or substantially Indigenous-serving practice, the CEO should assess the practice's ability to pay and the potential community impact of issuing a cost order.

20. The Act contains several sections that are consistent with the DRIPA mandate. Section 8 requires that at least one member of the Board must be Indigenous. Section 22, for example, authorizes reconciliation initiatives, including the appointment of an Indigenous employee to lead reconciliation initiatives. Section 29 creates the Indigenous Council. Section 51 requires that at least one member of the licensing committee must be Indigenous. Section 89 provides that at least one member of the Discipline Committee must be Indigenous. Section 98 requires that at least two members of the tribunal must be Indigenous. Section 123 requires that where a respondent or a complainant is Indigenous, at least one tribunal hearing panel member must be Indigenous. Altogether this supports the clear legislative intention to ensure Indigenous participation in the regulator. This should also be reflected in practice reviews of Indigenous or substantially Indigenous-serving practices.

Recommendation
When conducting a review of an Indigenous or substantially Indigenous-serving practice, at least one of the assessors must be Indigenous.

Recommendation
The rules provide that the CEO is authorized to direct the conduct practice reviews in accordance with the requirements set out in sections 73 and 74 of the Act.

Recommendations

1. Rules created by the Board under 74(3)(b) authorizing the CEO to conduct practice reviews should require the CEO to consult with the Indigenous Council, or its delegate, when conducting a practice review of an Indigenous licensee, to ensure that the recommendations of the IERM report are being met.

2. Rules made by the Board under section 74(3)(b) of the Act, authorizing the CEO to conduct practice reviews, should require the CEO, when conducting a practice review of an Indigenous licensee or practice, to prepare a written practice review plan that considers the risk of the review requirements on the public interest and Indigenous clients and is tailored to the unique context of the Indigenous practice.

3. Before seeking costs for practice reviews against an Indigenous or substantially Indigenous-serving practice, the CEO should assess the practice's ability to pay and the potential community impact of issuing a cost order.

4. When conducting a review of an Indigenous or substantially Indigenous-serving practice, at least one of the assessors must be Indigenous.

5. The rules provide that the CEO is authorized to direct the conduct of practice reviews in accordance with the requirements set out in sections 73 and 74 of the Act.

DRAFT

Transitional Board and Transitional Indigenous Council

General Policy on Privilege

To:	**Transitional Board**
	Transitional Indigenous Council
Purpose:	**Discussion**
Date:	**November 19, 2025**
Version:	**V1**

I. Context and background

Background

1. The transitional board and transitional Indigenous council need to provide direction respecting solicitor-client privilege, and whether when drafting the first set of rules and code of professional conduct, that privilege, after amalgamation date, applies to notaries public and regulated paralegals.[1]

General description of solicitor-client privilege

2. Solicitor-client privilege is the protection of communications between a lawyer and client. It is more specific than the professional ethical responsibility of confidentiality. Communications may be confidential but not privileged, but all privileged communications are confidential. It is in the public's interest that clients' privileged material is protected wherever possible, and that clients are kept informed about situations that may impact their privileged material.

3. In *Lavallee, Rackel & Heintz v. Canada (Attorney General)*,[2] Justice Arbour, for the majority, emphasizes that solicitor-client privilege "belongs to the client and can only be asserted or waived by the client or through his or her informed consent."[3]

4. Solicitor-client privilege has developed from an evidentiary rule when originally examined to become a principle of fundamental justice that invokes constitutional considerations. The courts have stated that solicitor-client privilege is fundamental to the proper functioning of our legal system.[4] However, the courts have also stated that the legislature is able to

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[1] For the purposes of this discussion, this paper will use the term "solicitor-client privilege" only when referring to the privilege as it currently exists between lawyer and client. For all other discussion, the term "privilege" will be used for readability.

[2] *Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink*, 2002 SCC 61 ("*Lavallee*").

[3] *Lavallee*, paragraph 39.

[4] For reference, see *Lizotte v. Aviva Insurance Company of Canada,*2016 SCC 52 (Canlii) 2 SCR 521, which cites that: "... the unique and foundational importance of solicitor-client privilege, which is 'fundamental to the proper functioning of our legal system'" and that "the privilege is a 'fundamental policy of the law'", at para. 60. The SCC also cited this principle in *Alberta (Information and Privacy Commissioner) v. University of Calgary,* 2016 SCC 53 (Canlii), 2 SCR 555 at para. 20.

abrogate solicitor-client privilege when using legislation with "express language" that permits a party to order the production of privileged records. [5] The discretionary power to order the disclosure of privileged records is given to the regulator via the new *Legal Professions Act*.

5. Because privilege is a fundamental right that clients of legal services have, the regulation of a disclosure of privilege should be structured with regard for the transparency requirements in the *Legal Professions Act* s. 7 Guiding Principles.

6. Additionally, there should be clauses in the rules to address the fact that a disclosure of privilege could disproportionately impact Indigenous clients. Indigenous persons may not have the same trust in legal proceedings that other members of the BC public might have. Moreover, privileged material for Indigenous clients may include sensitive cultural material given to a licensee based on permission given within their Indigenous legal order. Disclosure of privilege without cultural competency for Indigenous peoples could seriously injure Indigenous client's opinion of the practice of law in BC. Ultimately, however, the damage that disclosure of privileged documents could do without transparency with clients could be felt as a negative impact from members of the public from any background.

II. Alignment to the Act

7. Under section 7(a) of the *Legal Professions Act*, one of the guiding principles of the regulator is to facilitate access to legal services, and this guiding principle informs any decision respecting privilege for notaries public and regulated paralegals.

8. Section 35(1) of the *Legal Professions Act* establishes that a person practises law if the person, for the benefit of or at the request of another person, performs an activity that involves the application of legal principles and legal judgment to the circumstances or objectives of the other person and also requires the knowledge and skill of a person trained in the law. Subsection (2) lists activities that are included in the definition of the practice of law without limiting that definition. The key takeaway from this definition is that under the *Legal Professions Act*, lawyers, notaries and regulated paralegals all practise law. It is noteworthy that, under section 36, the provision of legal information is not the practice of

[5] Supra note 6 *Alberta (Information and Privacy Commissioner)* 2016 at paras. 128-132

law, and accordingly, the below discussion respecting privilege does not impact the provision of legal information.

9. Section 209 of the *Legal Professions Act* sets out the requirements respecting confidential and privileged information, with subsection (1) defining "privilege" to include solicitor-client privilege for the purposes of sections 209 and 210.[6] The legislation leaves open the question of whether privilege will apply to notaries and regulated paralegals after amalgamation date.

10. There are other requirements of the regulator under the legislation and forthcoming rules, code of conduct, and policies that rely on a determination of privilege. For example, operations of trust accounts, disclosure to law enforcement, processes for searches of a law firm's office, and exceptions to a duty to report all invoke privilege considerations.

11. Equally importantly, there are a considerable number of statutory requirements to produce information to government agencies that provide exceptions for privileged information. Lawyers are professionally obliged not to produce privileged information. Legal service providers regulated by Legal Professions BC who are not lawyers will need to know whether those professional requirements bind them as well.

III. Discussion

Need for direction

12. At its May 2025 meeting, the transitional board and transitional Indigenous council directed that, when possible, the rules and code of conduct should strive for uniformity in professional responsibility considerations and treatment by the regulator across lawyers, notaries and regulated paralegals.

13. As mentioned above, there are many instances across the rules, policies and code of conduct that require a decision, before drafting, on whether to assert that clients of notaries and regulated paralegals should have the benefit of the same privilege that exists for clients of lawyers. In keeping with the transitional board and transitional Indigenous

[6] Section 210 mandates that the CEO must make security arrangements to protect confidential and privileged information.

council's direction, this means that for drafting purposes, the presumption is that privilege will extend to notaries and regulated paralegals after amalgamation date.

Legal considerations

14. Solicitor-client privilege is a common law doctrine, and accordingly, the judiciary is able to determine whether privilege exists for notaries and regulated paralegals. It is expected that the position that communications with notaries (who do not now consider notary-client communications to be bound by privilege) and regulated paralegals are protected by solicitor-client privilege will be litigated following amalgamation date.

15. While there is very little law on this question, the Ontario Superior Court of Justice provides some guidance in somewhat analogous circumstances respecting licensed paralegals in Ontario. In *Chancey v. Dharmadi*,[7] a Master of the Court concluded that if a licensed paralegal providing legal services was regulated to the same standards as a lawyer providing the same services, then there was no principled reason to expect that the communications between a client with both should not be privileged, because the rationale for the privilege should logically extend to both.[8] In addition, the Master stated that "the failure of the court to protect as confidential communications between paralegal and client sends a message to the public that there is a "two-tier" justice system in effect."[9]

16. As an alternative, the Master also noted that the privilege could be extended on a case-by-case basis through the application of the *Wigmore* test if there was no class privilege that could be extended to paralegals.[10] The *Chancey* decision seems to be the only reported decision on this topic across Canada. On that basis, it is expected that a court will recognize a privilege for notaries and regulated paralegals either on a case-by-case basis through the

[7] 2007 CanLII 28332 (ON SC), https://canlii.ca/t/1s60z ("*Chancey*").

[8] *Chancey*, paragraph 34.

[9] *Chancey*, paragraph 37.

[10] *Chancey*, paragraphs 40-57.

Wigmore test,[11] or through extension or creation of a class privilege.[12] The new regulator has the discretion to order the disclosure of privileged material as is required by the Act and the Rules. [13] Rules that permit disclosure of privileged material should be intentional to serve a purpose in the public interest, such as to investigate licensees, so as not to erode this fundamental right.

Options going forward

Presume privilege will exist for notaries and regulated paralegals

17. The best option for the transitional board and transitional Indigenous council is to presume that the courts will recognize that privilege should extend to client communications with notaries and regulated paralegals. This presumption allows all the legal professions to be treated the same across the rules, policies and code of conduct when those issues intersect with privilege. This means that all regulated legal professions with similar competency,

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[11] See: *R. v. McClure*, 2001 SCC 14 at paragraph 29:
The Wigmore test, containing four criteria, has come to govern the circumstances under which privilege is extended to certain communications that are not traditionally-recognized class privileges (Wigmore, *supra*, at p. 527):

> (1) The communications must originate in a confidence that they will not be disclosed.
> (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
> (3) The relation must be one which in the opinion of the community ought to be sedulously fostered.
> (4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation. [Emphasis deleted.]

[12] See R. v. *Gruenke*, [1991] 3 SCR 263 paragraph 26:
[Class privilege is] used to refer to a privilege which was recognized at common law and one for which there is a *prima facie* presumption of inadmissibility (once it has been established that the relationship fits within the class) unless the party urging admission can show why the communications should <u>not</u> be privileged (i.e., why they should be admitted into evidence as an exception to the general rule). Such communications are excluded not because the evidence is not relevant, but rather because, there are overriding policy reasons to exclude this relevant evidence. Solicitor-client communications appear to fall within this first category (see: *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353 and *Solosky v. The Queen*, [1980] 1 S.C.R. 821).
[Emphasis in original].

[13] Reasonable protection against the unauthorized access, collection, use, disclosure, or disposal of confidential or privileged information in custody of the regulator is the CEO's responsibility under s. 210 of the *Legal Professions Act*.

ethical and professional responsibility obligations will be overseen by one unified legal regulator that is responsible for establishing and upholding those obligations.

18. If the transitional board and transitional Indigenous council do not presume privilege applies to notaries and regulated paralegals on amalgamation date, then there is the risk of creating a two-tiered access to legal services system, which conflicts with the section 7(a) guiding principle in the *Legal Professions Act* of facilitating access to legal services. Although only the judiciary may determine whether a privilege exists for notaries and regulated paralegals, it sends a strong signal if Legal Professions BC takes the position that it will.

19. In addition, a presumption that privilege will exist for notaries and regulated paralegals would be consistent with the intention behind the creation of Legal Professions BC, and some of the opportunities presented by the Act. For example, under the *Legal Professions Act*, the definition of "law firm" includes entities in which one or more licensees practise law. This means that lawyers are permitted to practise alongside notaries and regulated paralegals as a law firm. If privilege is presumed not to apply to notaries and regulated paralegals upon amalgamation date, then that baseline concept of law firm becomes more difficult to operate and considerations such as trust account operations, firewalls and space sharing arrangements arise.

Recommendation

1) The rules should presume that privilege will be extended to clients of notaries public and regulated paralegals.

Judicial reference, test cases and litigation

20. One of the greatest risks respecting privilege is that since the judiciary is the body responsible for determining whether privilege exists for notaries and regulated paralegals, there is a risk of litigation for both a notary and a regulated paralegal after amalgamation date, regardless of the position that the transitional board and transitional Indigenous council takes respecting the drafting of the rules, policies and code of conduct.

21. One option for discussion by the transitional board and transitional Indigenous council is to request that the Lieutenant Governor in Council to refer the question under section 1 of the

Constitutional Question Act[14] to the Court of Appeal for British Columbia to provide an opinion. There are benefits to having a judicial opinion prior to the amalgamation date on this subject matter, the main one being that it would remove the uncertainty on the subject.

22. Conversely, there are also potential downsides to this approach. There is high potential for additional legal costs and costs for the transition to the new regulator if the timeline for the transition is extended as the transition team waits for an opinion from the Court. There could be an issue of public perception, as the public may be concerned with the Provincial government appealing for a reference of its new legislation on the matter of client privilege. The public may not understand that s. 209 is an import of the previous *Legal Profession Act* nor that the regulator maintains independence from the Provincial government. This could lead to preventable concerns from the public about the transition to the single legal regulator about perceived overreach against solicitor-client privilege, and perceptions of expensive project inefficiency and problems about the language of the statute.

23. In the alternative, the other options for the transitional board and transitional Indigenous council involve litigation, either through challenging the presumption of privilege through a test case or waiting for the issue to arise on its own, and applying as an intervenor. Either option may be pursued after the amalgamation date, with varying degrees of the regulator being involved in the litigation.

24. The change to Legal Professions BC and a single legal regulator is unprecedented across Canada, and the impact of a decision respecting privilege for notaries and regulated paralegals is significant, especially given the history of litigation on the subject matter involving lawyers. At this stage of the move toward Legal Professions BC, the transitional board and transitional Indigenous council only need to provide direction respecting privilege for drafting purposes, and a judicial reference, test case, or litigation discussion may return as a subject for consideration at a later date.

Addressing the potential risk to the public and regulating the profession with transparency

25. Solicitor-client privilege is a fundamental right for clients of legal services. The new Legal Professions Act empowers the regulator to create rules that require licensees to provide

[14] RSBC 1996, c. 68.

information or records that are privileged and confidential. The Supreme Court of Canada has stated that express language from the legislature can override common law solicitor-client privilege.[15]

26. The CEO is responsible for making reasonable security arrangements against unauthorized access, collection, use, disclosure, or disposal of confidential and privileged information.[16] Any rules that permit an order for the disclosure of privileged materials should be created intentionally with a purpose that fulfills the public's interest. For example, the regulator needs this power to investigate based on a complaint to ensure that licensees are held accountable. Conversely, rule-making discretion should not be used to give a decision-maker the power to order a disclosure without a good reason, as it could put clients and licensees at risk of personal vendettas or the whims of a bad-faith actor.

27. While it is an offence to improperly disclose confidential information in the new *Legal Professions Act*, that may not necessarily insulate the public from harm or build in transparency with clients throughout the process.[17] A disclosure of privileged documents could be a situation that damages a member of the public's trust in their legal services, regardless of whether the new party holding the material is also bound by privilege or if it was given pursuant to an order by the regulator.[18] Furthermore, clients' faith in their licensee or their interests in a legal proceeding could be damaged by a licensee breaching their duty to maintain privilege and then not being required to act transparently with the client afterwards.

28. The s. 7 Guiding Principles state that the regulator must have regard for regulating the profession with transparency. Transparency with clients should be required in the event of a breach of licensee-client privilege. Communication with clients could also be built into the event of a disclosure from an order by the regulator, though such a rule would need to be decided with considerations on the structure so that the regulator can function.

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[15] Supra note 8 *Alberta (Information and Privacy Commissioner)* 2016 SCC 53.

[16] Section 210 of the *Legal Professions Act*.

[17] Offences at s. 198(2)(c) of the *Legal Professions Act*

[18] For example, Indigenous persons who have selected a licensee and trusted them with confidential cultural or personal information may have done so based on personal traits of the licensee or the licensee's relationship with their community, and they may not have wished for, or had permission to give in their legal order, the information in the possession of the regulator without their prior knowledge that this was a possible outcome of accessing legal services.

29. The Guiding Principles and potential concern from clients mean the rules should require transparency with clients by:

    1) Requiring the licensee to explain to the client in the retainer agreement or at the first meeting that there may be situations where privileged information is required to be disclosed to the regulator but that the regulator is also bound by a duty to maintain privilege;

    2) Requiring licensees to explain in the retainer agreement or at the first meeting that it is an offence under s. 198(2)(c) for a licensee, another person, or the regulator to use or improperly disclose confidential information; and

    3) Requiring notification in writing to clients when their confidential material is disclosed to another party as a breach of the licensee's duty to maintain solicitor client privilege.[19]
        a. There could also be a rule that requires notification to a client that their information has been disclosed pursuant to an order from the regulator, which is separate as it would not be considered a breach under s. 209. If one is created, it would need to be purely to notify clients, and not to allow them to decline, to allow the regulator to perform its investigative function.

30. The first two examples above can be addressed when the Transitional Team discusses Fees and Agreements at a future board meeting. Required notification to clients regarding a disclosure of their confidential material could include:

    (a) the date and time of the communication in which the disclosure was made;

    (b) the context that led to the disclosure or the requirement to disclose the confidential information; and

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[19] The structure of this could mirror the requirements to alert clients in the *Protocol Between the Law Society of British Columbia and the Office of the Registrar, Security Services Act With Respect to Issues Relating to the Protection of Solicitor-Client Privilege in Connection with Investigations Carried Out in Accordance with the said Act.*

(c) the content of the communication, the method of communication used, and the party the information was disclosed to.

31. The highest degree of potential concern for clients is in disclosure of privileged information at s. 114 which requires public Tribunal hearings. While the hearing panel in a Tribunal proceeding "may" exempt privileged information from public disclosure, there is still a risk present to public faith in licensee-client privilege. The permissive phrasing of s. 114 does not guarantee that a client's privileged information is not shared with the public. Frequent disclosure of privileged information could harm the public's opinion of their rights when accessing legal services, which would likely have a disproportionate negative impact on Indigenous clients. This could exacerbate negative outcomes for Indigenous persons and other marginalized persons if they are discouraged from getting the legal supports they are entitled to. The Transition Team is limited in its ability to address the procedures of the Tribunal because it is independent, but they could support an effort to build rules that protect Indigenous clients by recommending to the Tribunal that there be Indigenous inclusion during this transition time in drafting the Tribunal rules.

32. The potential for confidential material coming into the possession of the regulator and possibly being publicly disclosed in a Tribunal hearing could have a disproportionate negative impact on Indigenous members of the public.[20] To address this risk, the Transitional team should consider rules that permit consultation with, or guidance from, the Indigenous Council or their chosen delegated person for handling confidential materials of Indigenous peoples in a culturally competent manner.

Recommendations

2) The Transitional Team and drafters should ensure that rules that permit the disclosure of privileged material to the regulator intentionally serve a prescribed purpose for the public interest (such as an investigation).

[20] Indigenous people for example may have trusted cultural material to their licensee based only on permission from their Indigenous legal order, and were not authorized to share it with the regulator or Tribunal. For example, an Indigenous group pursuing a title case may have put confidential cultural materials in the possession of their lawyer, that were not intended to be shared with the broader public without permission from their Indigenous legal orders. As well, Indigenous people generally may not have the same degree of trust in legal proceedings as other members of the public and could have their faith in the regulator shaken if there is a disclosure of their privileged information. For more information see: Law Society of BC (2023), *Report of the Indigenous Engagement in Regulatory Matters Task Force,* online: Benchers approve IERM report recommendations to improve Indigenous cultural safety

3) The Transitional Team should direct that when the topic of fees and agreements is visited, rules are drafted that require that retainer agreements provide information to clients that their confidential information could be shared with the regulator in the event of an order to the licensee. This rule should also require that retainer agreements alert clients that it is an offence for anyone to improperly use and disclose privileged confidential material.

4) The Transitional Team should also direct the creation of rules that require reporting to clients, in writing, when the client's confidential material is disclosed to a third party in breach of the licensee's obligation to maintain privilege.
    a) There could also be a rule that requires notification to clients when their information will be disclosed to the regulator based on an order, which is not a breach under s. 209. If it was created, it would need to be purely for notification to allow the regulator to perform its investigative and professional conduct function.

5) Given that Indigenous clients may have unique relationships to legal services or have information or confidential materials that are protected under their legal order, the Transitional team should consider rules that permit consultation with or guidance from the Indigenous Council or their chosen delegated person, on navigating disclosure of Indigenous person's privileged information.

V. Decisions required

27. In summary, the main discussion and direction items for the transitional board and transitional Indigenous council respecting privilege is:

1. The rules should presume that privilege will be extended to clients of notaries public and regulated paralegals.

2. The Transitional Team and drafters should ensure that rules that permit the disclosure of privileged material to the regulator intentionally serve a prescribed purpose for the public interest (such as an investigation).

3. The Transitional Team should direct that when the topic of fees and agreements is visited, rules are drafted that require that retainer agreements provide information to clients that their confidential information could be shared with the regulator in the

event of an order to the licensee. This rule should also require that retainer agreements alert clients that it is an offence for anyone to improperly use and disclose privileged confidential material.

4. The Transitional Team should also direct the creation of rules that require reporting to clients, in writing, when the client's confidential material is disclosed to a third party in breach of the licensee's obligation to maintain privilege.
    a. There could also be a rule that requires notification to clients when their information will be disclosed to the regulator based on an order, which is not a breach under s. 209. If it was created, it would need to be purely for notification to allow the regulator to perform its investigative and professional conduct function.

5. Given that Indigenous clients may have unique relationships to legal services or have information or confidential materials that are protected under their legal order, the Transitional team should consider rules that permit consultation with or guidance from the Indigenous Council or their chosen delegated person, on navigating disclosure of Indigenous person's privileged information.

28. Following the advice and recommendations provided by the transitional board and transitional Indigenous council, staff will return with a follow-up paper for discussion and draft rules at a future date.

Transitional Board and Transitional Indigenous Council

Independence of Licensees

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**November 19, 2025**

Background

1. Section 6 of the *Legal Professions Act* (the *Act*) sets out the regulator's core duties, including regulating the practice of law, establishing standards and programs on education, training, competence, practice and conduct, and ensuring the independence of licensees, all to be exercised in the public interest.[1]

2. This is a collection of duties that is better read as conjoint obligations, rather than isolated ones. The public interest mandate is the overarching guide to regulatory action, while the independence clause, section 6(1)(c), provides an essential constraint that protects a licensee's professional judgment from coercion that would vitiate her commitment to a client's cause. Licensee independence can be compromised by dominant culture regulation and conduct codes that appear neutral but in operation discourage culturally grounded advocacy. This tendency was observed by the IERM Task Force as a significant barrier to Indigenous participation in the legal system.[2] Independence should functionally protect licensees from coercive forces that would dissuade them from providing their own competent professional judgment. In practice, licensees should be free of coercion from any actor or structure capable of distorting judgment, including the state and its investigative powers, the courts as institutional authorities, the regulator acting through vague or unevenly applied standards, employers and partners, litigation funders, insurers, referral networks, media and social pressure, and, for Indigenous licensees, professional expectations that could deny or penalize culturally grounded provision of legal services.[3]

Provincial reform context and policy baseline

3. The 2022 Ministry of Attorney General's Intentions Paper described the reform project then launched that led to the *Legal Professions Act*. The guiding principles were improving access to legal services, greater protection of the public interest, and improving efficiency, effectiveness and flexibility of the regulatory framework; the Ministry's stated objectives

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[1] "Bill 21 – 2024: Legal Professions Act", SBC 2024, c 6, s 6; see also BC Ministry of the Attorney General, *Legal Professions Regulatory Modernization, Ministry of Attorney General Intentions Paper*, by BC Ministry of the Attorney General (September 2022) at p 5.
[2] Law Society of British Columbia, *Indigenous Engagement in Regulatory Matters, Report of the Task Force* (approved 14 July 2023) at pp 18-19.
[3] Alice Woolley, "Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation," UBC Law Review 45:1 (2012), see intro and Part I.

were to improve access to legal services and modernize regulation of legal service providers; and the Paper emphasized that the independence of the bar is critical to a free, democratic society.[4]

4. The Ministry also stressed that reconciliation with Indigenous peoples was of particular importance in the eradication of systemic racism in the new regulator. Read against section 6 of the *Act*, these principles sustain the essential functional independence of licensees in a manner faithful to the public interest and vigorous client advocacy but also make reconciliation part of the regulator's interpretation of "public interest" and "independence". This clarification is important considering the Ministry's observation of earlier warnings that the existing frameworks for self-regulation of licensees retained features of membership associations, thereby risking public confusion about whose interests are being served, the professions' or the public's.[5]

Independence and public-interest objectives

5. Discussions of regulatory design show that "independence" should not be conflated with self-regulation per se, and that the public interest can be advanced through frameworks that safeguard professional judgment while also introducing lay oversight, consumer-facing objectives, and accountability disciplines. Alice Woolley, in the *UBC Law Review*, explains how the Legal Services Board of England and Wales supervises approved regulators under a statute that explicitly lists regulatory objectives which include improving access to justice, protecting the public interest, and fostering an independent, robust, diverse and effective profession, while also highlighting professional principles such as acting with independence and integrity and in the best interests of clients.[6]

State-driven coercion

6. Canadian constitutional and professional-governance scholarship recognizes independence of the bar as a principle that protects clients and the administration of justice by insulating counsel from becoming an arm of the state or other influential interests. In *Law Society of*

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[4] BC Ministry of the Attorney General, *Legal Professions Regulatory Modernization, Ministry of Attorney General Intentions Paper*, by BC Ministry of the Attorney General (September 2022) at pp 9-10 and p 5
[5] BC Ministry of the Attorney General, *Legal Professions Regulatory Modernization, Ministry of Attorney General Intentions Paper*, by BC Ministry of the Attorney General (September 2022) at p 17.
[6] Woolley, Alice, "Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation" (2012) 4:8 UBC Law Review at pp 179-180.

British Columbia v Canada (Attorney General), the court stated that new regulations requiring lawyers to report suspicious client financial transactions to the government was an "unprecedented intrusion" on the solicitor-client relationship.[7] The regulations effectively enlisted licensees as informants, thereby distorting their judgment in their fiduciary role.[8]

Indigenous public interest

7. The public interest duty should be interpreted as including the public's interest in access to legal services that are culturally competent, trauma-informed, and responsive to Indigenous legal traditions, languages, and community protocols.[9] The MAG Intentions Paper explicitly identified an opportunity to embed guiding principles in statute and called out reconciliation as a regulatory aim, supporting the view that the regulator must address Indigenous conceptions of justice and client service, rather than treating a single, historically dominant professional culture as the baseline. If the regulator's philosophy is that of the dominant professional culture only, seemingly neutral rules or codes of conduct can create barriers for Indigenous licensees whose practices are rooted in other epistemologies and community obligations, such as Indigenous clients' expectations about relational accountability and methods of resolving disputes.[10]

8. John Pearson, reviewing the Law Society of Upper Canada's (LSUC) 1994 role statement noted how public-facing concerns such as the cost of legal services, delay, and the regulator's opaque disciplinary processes were under-addressed in its rhetoric about self-regulatory independence. LSUC has evolved into the Law Society of Ontario, but that historical analysis suggests reading s. 6's public-interest mandate as including measurable

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[7] *Law Society of British Columbia v Canada (Attorney General)*, 2001 BCSC 1593 (CanLII), 207 DLR (4th) 705, [2002] 3 WWR 455, 98 BCLR (3d) 282, at para 108.
[8] Roy Millen, The Independence of the Bar: An Unwritten Constitutional Principle, 2005 84-1 *Canadian Bar Review* 107, 2005 CanLIIDocs 130, <https://canlii.ca/t/2ch3> at pp 124-127.
[9] IERM Report, see "Issue 3: Trust and Relationships" at p 20, and Recommendations 2.3, 2.4, 4.0.
[10] BC Ministry of the Attorney General, *Legal Professions Regulatory Modernization, Ministry of Attorney General Intentions Paper*, by BC Ministry of the Attorney General (September 2022) at p 6; See also Noel Semple, *Legal Services Regulation in Canada: Plus ça change?*, [Source not specified], 2016 CanLIIDocs 4140, <https://canlii.ca/t/sk6j>, retrieved on 2025-11-01 at pp 4-8.

commitments to access, timely process, and meaningful scrutiny, with specific attention to culturally competent services for Indigenous communities.[11]

9. The regulator should create and maintain rules and a code of conduct that explicitly protect acting in the best interests of clients with independence. The regulator should also self-audit periodically to ensure these principles are realized in practice rather than mere aspirations. The objective is not to immunize the profession from accountability, it is to keep external demands on licensees from displacing their professional judgment and loyalty. Standards about advocacy style, client-screening, communication, or "civility" require attention to the Indigenous cultural context, to avoid penalising Indigenous ways of speaking, gathering information, or engaging with community authorities. Otherwise, the standards could become effectively coercive and erode the functional independence of licensees.[12]

10. Section 6's "public interest" duty must be congruent with the province's policy commitments expressly naming reconciliation as a regulatory goal. The Intentions Paper proposed that the statute being considered (at that time, now the *Act*) include guiding principles such as supporting reconciliation and protecting the ability of professionals to provide committed representation to all clients.[13] The regulator's mandate to "ensure the independence of licensees" should give section 6 substantive meaning by explicitly recognizing in the rules and code of conduct that independence for Indigenous licensees may require the latitude to engage with Indigenous laws, ceremonies, community authorities, and knowledge-keepers as part of the competent and ethical practice of law. The regulator should ensure that professional standards and programs do not convert those Indigenous practices and law into disciplinary risks.

11. The Intentions Paper observes that the *Notaries Act*[14] has not been substantively revised in decades, lacks a mandate provision, and reflects an era in which professional associations

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[11] John Pearson, Canada's Legal Profession: Self-Regulating in the Public Interest?, 2015 92-3 *Canadian Bar Review* 555, 2015 CanLIIDocs 230, <https://canlii.ca/t/776>, retrieved on 2025-11-01 at p 571.
[12] Woolley, Alice, "*Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation*" (2012) 4:8 UBC Law Review at pp 147.
[13] BC Ministry of the Attorney General, *Legal Professions Regulatory Modernization, Ministry of Attorney General Intentions Paper*, by BC Ministry of the Attorney General (September 2022) at p 5.
[14] *Notaries Act*, [RSBC 1996] Chapter 334.

disciplined their own members rather than modern public regulators.[15] If the only named committee in the *Notaries Act* is a discipline committee and if authority for other functions is obscure, then self-regulation for notaries is effectively focused on punishment rather than on standard-setting, practice support, and culturally competent service design. Section 6 of the *Legal Professions Act* is an opportunity for modernization, for all licensees. The regulator, in the public-interest, can establish the standards and programs supporting functional independence for all licensees, preventing coercive distortions, including those that flow from regulatory gaps and dominant culture bias.

Institutional Perspectives

12. One of the duties of Legal Professions BC, as set out in section 6(1)(c) is to ensure the independence of licensees.

13. In the 2022 Ministry of Attorney General Intentions paper, the government stated:

> *The importance of an independent bar to the functioning of a free and democratic society cannot be overstated. The Ministry is not proposing, and has no intention of implementing, changes that would interfere with the ability of a lawyer (or other legal service provider) to fearlessly advocate for their client and provide independent legal advice to their client, even, and especially, when their client is at odds with government.*

14. The language in section 6(1)(c) recognizes that independence in the provision of legal advice and assistance is not a function of the professional designation of "lawyer" but a function of the relationship between the provider of legal advice and assistance and the recipient of that advice. As the Intentions paper noted, independence is the ability and the autonomy for those who provide legal advice and assistance to fearlessly advocate for their client and provide independent legal advice to their client, even, and especially, when their client is at odds with government.

15. Much has been written about the importance of lawyer independence both in Canada and in other jurisdictions and the degree to which government action does or does not interfere with that independence, most notably about legal regulation in the United States, the

[15] BC Ministry of the Attorney General, *Legal Professions Regulatory Modernization, Ministry of Attorney General Intentions Paper*, by BC Ministry of the Attorney General (September 2022) at p 10.

United Kingdom and Australia. Almost all of the literature has focused and discussed the importance of the independence of lawyers.

Public Interest

16. Noel Semple has observed that traditional lawyer regulation in North America aims to protect the interests of clients and the public, by upholding important "core values" in what he describes as the public interest theory of traditional lawyer regulation. The public interest theory is an account of why current lawyer regulation is in the interest of clients and the public. He goes on to describe the four: (i) self-regulation; (ii) regulatory maintenance of a single occupation of lawyer, (iii) insulation of law firms from non-lawyer ownership, and (iv) ethical focus on the individual practitioner. He observes that American and Canadian common law jurisdictions uphold all of these; other wealthy common law countries have gradually abandoned them since the 1970s.[16]

Judicial Expression

17. The oft quoted comment by Justice Estey in *Canada (Attorney General) v. Law Society of B.C., [1982] 2 S.C.R. 307* is taken as support for the independence of lawyers from government oversight:

> *The independence of the Bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally. The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community.*

18. However, Justice Estey went on to note:

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[16] Semple N. Core values: Professionalism and independence theories in lawyer regulation. p.2

> *Having said all that, it must be remembered that the assignment of administrative control to the field of self-administration by the profession is subject to ... the legislative need of some or all of the authority granted to the Law Society. In any case this decision is for the province to make.*

19. It also worth noting that the Justice Estey's comment was made in a case involving the steps taken by the Benchers of the day to discipline Donald Jabour for "conduct unbecoming a member" arising from his advertising of fixed fees for personal legal services with the introduction "*Donald E. Jabour barrister & solicitor wishes to announce the opening of a new concept of law office legal services at prices middle income families can afford*"

Consumer Concerns

20. Gordon Turriff wrote and spoke passionately and extensively about the importance of maintaining and supporting lawyer independence. In considering the growing conception of legal regulation as consumer protection, Turriff said:

> *It would be perverse to suggest that people who need lawyers will not be concerned about the availability of legal services, about the prices to be paid for them or about the way in which the services are performed. These are fundamental matters pertaining to what is fluidly called 'access to justice' but which is really access by people to concrete legal information and advice and, where necessary, to skilled advocates. Because the work lawyers do in countless individual cases acutely affects people's lives and because the sum of all lawyers' work contributes to order and efficiency in all our communities, the individual interests of consumers of legal services in accessibility, which sounds in cost, competency and trust, cannot be ignored. Those individual interests have important public interest implications. The question posed in this paper is whether the public interest in consumerism need trump the public interest in the maintenance of lawyer independence, a universally accepted instrument for keeping government in check. This is a policy question for which, by definition, there are at least two answers. This author's answer is that lawyer independence is a value that should not and need not be diminished. His view is that lawyer independence and consumer protection can co-exist.*[17]

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[17] Gordon Turriff, "The Consumption of Lawyer Independence" (2010) 17:3 Int'l J Legal Prof 283 at 284

21. Turriff went on to list what he considered was required of lawyer regulators to effectively address consumer interests and regulate in the public interest. They must:

    (a) not promote lawyers' interests

    (b) not claim or try to defend a monopoly of work to benefit lawyers

    (c) accept responsibility for the consequences of lawyer misconduct

    (d) remember that they are not disciplining their 'own' when they discipline lawyers, because their only 'own' are the members of the public they have pledged to serve

    (e) do everything they do as promptly as the circumstances permit, publicly (except where legitimate privacy interests must prevail) and well

    (f) not oppose oversight of their self-regulatory activity as long as the overseers are themselves independent of government and have no authority to dictate regulatory action by lawyers

    (g) have regard to, and publicly demonstrate that they have considered, suggestions made to them by competition authorities and consumer protection agencies, although they must not be subject to direction by those authorities and agencies

    (h) accept judicial review of their administrative decisions

22. Alice Woolley has written thoughtfully about the independence of the bar choosing to define it as ensuring access to the advocacy, advice and arguments of legal counsel, and preventing unwarranted state interference with the availability of that advocacy, advice and argument.[18]

Regulatory Design

23. The presence of professional judges of conduct such as the regulator's officers and staff, and the Legal Professions Tribunal [19], by itself, should not be assumed to secure public confidence. Semple's research into discipline processes suggested that systems in which

[18] Woolley A. Lawyers and the Rule of Law: Independence of the bar, the Canadian constitution and the law governing lawyers p. 2 -3

[19] "Bill 21 – 2024: Legal Professions Act", SBC 2024, c 6, s 6 at Parts 7 & 8.

licensees judge their own may fail to address the issues of greatest concern to the public and may not track consumer-facing objectives such as costs or accessibility. Semple argued that a modern regulator should specify concrete objectives and performance expectations, including the maintenance of independence, while still addressing equity and access concerns.[20] Semple also described the English reforms that separated representation from regulation, introduced a supervisory Legal Services Board, and articulated statutory objectives, without sacrificing the professional principle of acting with independence and integrity in the client's best interests.

24. The regulator's duty to ensure independence can be operationalized in multiple ways that matter for Indigenous practitioners and the Indigenous public. First, the rules, the code of conduct and licensee programs should be built with the explicit objective of guarding the licensee against coercive distortions of judgment from any direction, and should identify examples of coercion that are likely to arise for Indigenous licensees, such as pressures to avoid community-responsive strategies or to eschew effective Indigenous legal traditions solely to meet the expectations of dominant culture legal processes.[21]

25. Second, the rules and code of conduct should avoid vague or discretionary language importing dominant cultural expectations, which in turn can produce disparate impacts on Indigenous peoples when those standards are applied to Indigenous practices that integrate law, community authority, ceremony, and language. The regulator can proactively adopt an outcomes-focused approach to developing these standards that anticipates the risks and appropriate measures required to prevent minor or culturally grounded variations in professional practice from being treated as misconduct.

26. Third, the regulator should design and implement mechanisms to monitor whether the Act's section 2(1)(c) independence clause is being realized in practice. This includes preferably public reporting that tracks whether disciplinary or bar admissions processes or decisions disproportionately burden Indigenous licensees, and whether associated remediation opportunities incorporate Indigenous legal traditions. Regulatory structures

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[20] Noel Semple, *Legal Services Regulation in Canada: Plus ça change?*, [Source not specified], 2016 CanLIIDocs 4140, <https://canlii.ca/t/sk6j>, retrieved on 2025-11-01 at pp 4-8, where he contrasts Canada's self-regulatory model (i.e., lawyers judging lawyers) with the UK structure in which the Legal Services Board supervises the frontline regulators against statutory regulatory objectives.
[21] MAG, Intentions Paper (2022), at pp 5-6.

that discourage the practice of Indigenous forms of legal process are an erosion of the independence of Indigenous licensees.

27. Fourth, accepting that regulatory secrecy rules and self-protection can erode confidence while failing to address the sort of misconduct that actually matters to the public, the regulator should develop confidentiality or disclosure rules in a consumer- and community-facing conception of the public interest that includes Indigenous peoples as distinct communities. This perspective is compatible with client-solicitor privilege and client-first loyalty, and discourages procedure from evolving to insulate the profession from scrutiny.[22]

28. Altogether, independence is not a metaphor for professional insulation, but instead a principled, functional precondition of professional service in the public interest, that preserves undistorted professional judgment, including the judgment required to provide culturally competent representation to Indigenous clients and communities. In a Canadian context, it has been academically concluded that when the state seeks to recruit licensees into investigative functions or otherwise subordinate client loyalty and confidentiality, the principle of independence of the bar supplies a reasoned basis for judicial and regulatory resistance.[23] Regulatory standards that discourage Indigenous licensees from using effective Indigenous legal practices should similarly be avoided as being contrary to functional independence.

29. Comparative governance literature also shows that independence can be adopted as a professional principle within a modern, publicly accountable regulatory system with stated objectives and associate performance metrics, and that such a system can meaningfully accommodate reconciliation goals and culturally competent practice rather than treating them as outlying concerns.

30. The reform record in British Columbia recognized these possibilities and invited a statute that instructs the regulator to support reconciliation and to protect the ability of legal professionals to provide committed representation. Those layered aspirations, ultimately enshrined in the *Act*, and read with section 6's express duty to ensure independence, provide the sustained doctrinal and policy foundation for an implementation of licensee

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[22] MAG, Intentions Paper (2022), see the guiding principles at p 5, and discussions of "Modernized Governance Framework" at pp 10-13, and an "Enhanced Focus on Public Interest" at p 17. See also Semple (2016) for a discussion of outcomes-focused regulation and accountability at pp 14-17.
[23] Roy Millen, "*The Independence of the Bar: An Unwritten Constitutional Principle*," *Canadian Bar Review* 84 (2005) at pp 121–23.

independence that is culturally competent and responsive to the unique needs of the Indigenous public.[24]

Discussion

31. The government, the Law Society, the Canadian Bar Association BC Branch, the Trial Lawyers Association of BC, the Notaries Society and any number of other legal organization all accept and support the importance of the independence of those licensed to provide legal advice to the public as feature of the rule of law. If there is disagreement, it is over what amounts to interference with that independence and whether any interference is acceptable.

32. The transitional board and the transitional Indigenous council should not be concerned or engage with the allegations of the Law Society of British Columbia in its current litigation that Bill 21 is designed to and does eliminate the independent bar in British Columbia,

33. However, in considering and approving the first rules and implementing the transition to Legal Professions BC, the transitional board and the transitional Indigenous council should discuss and, if necessary, provide direction about what is necessary to support the independence of licensees. In particular, the transitional board and the transitional Indigenous council should consider something not much discussed: whether the rules and the code of professional conduct and other regulatory requirements imposed on the legal professions themselves interfere with the independence of the legal professions and whether that interference is justified.

34. For example, Rule 3.2-4 of the Law Society's Code of Professional Conduct provides that a lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings. The direction certainly interferes with the lawyer's independence in providing advice to a client about the conduct of litigation. Is it justified? Almost all would agree that it is. But not all such interference may be justified and the transitional board and the transitional Indigenous council will need to be mindful of the

[24] MAG, Intentions Paper (2022), at pp 4-5.

degree to which they impose obligations and requirements about the legal professions and whether they unduly interfere with the independence of the legal professions.

Transitional Board and Transitional Indigenous council

Drafting guidelines

Purpose

These guidelines are designed to support the clear, effective and consistent drafting of the first rules of Legal Professions BC.

The primary purpose of the rules under the *Legal Professions Act* (the "Act") is to give reliable effect to the regulatory policy decisions of Legal Professions BC.

Rules must be:

- transparent and accessible to the public, applicants, licensees, enforcement bodies, Legal Professions BC staff, the Tribunal and the courts;
- drafted in plain language; and
- drafted in accordance with the guiding principles as set out in section 7 of the Act.

General principles of drafting

Preliminary considerations

Before drafting begins, consider:

- whether a rule is needed;
- the appropriate level of detail in a rule;
- the potential impact on Reconciliation, in consultation with the Indigenous council; and

- the need for consultation with other relevant groups, either before or after drafting.

Legal status and style

Rules are legally binding enactments, as defined in the *Interpretation Act*.

To reflect this legal status, the rules must:

- follow the drafting, formatting, style and vocabulary conventions consistent with BC legislation and regulations;
- accordingly, follow the conventions outlined in the "Principles of Legislative Drafting," used by the Government of BC's legislative counsel, and influenced by the Uniform Law Conference of Canada's "Drafting Conventions"; and
- apply standards such as:
    - section number aligned with legislative norms;
    - gender-neutral and non-binary language; and
    - Canadian spelling and usage.

Interpretation and consistency

The rules are guided by and subject to principles of statutory construction.

Some of the key principles of statutory construction include:

- Words are interpreted in context and according to their ordinary meaning.
- Vocabulary is used consistently to avoid unintended variations in meaning.
- Repetition within the rules or between the Act and the rules is avoided.

Plain language

The rules are drafted in plain language to provide transparency and promote accessibility.

Some of the key principles in plain language drafting include:

- Use ordinary and familiar words.
- Draft with shorter sentences.
- Avoid embedded clauses and complex grammatical constructions.
- Use positive declarative sentences, when possible.
- Use thoughtful paragraphing and tabulating.

Structure and organization

The structure and order of the rules improve the accessibility and understanding of the rules.

Some of the key principles on how the rules are structured and organized include:

- Each rule should focus on a single topic.
- Subrules are a single sentence with the appropriate level of detail.
- Related provisions are grouped logically and consistently with the structure of the Act.
- Navigational aids are included, such as:
    - descriptive headings or marginal notes; and
    - cross-references to related rules or section of the Act, if helpful.

Definitions

Definitions are used to control the meaning of terms throughout the rules.

Definitions must:

- only define terms where necessary to extend or restrict the ordinary meaning of a word;
- maintain consistency with the definitions provided in the Act and *Interpretation Act*; and
- be drafted last, after the rule content is otherwise complete.

Resources

British Columbia, Office of Legislative Counsel, Ministry of Justice, *Part 2 – Principles of Legislative Drafting* (2013).

Interpretation Act, RSBC 1996, c 238.

K. Barber, ed, *The Canadian Oxford Dictionary*, 2nd ed (Oxford University Press, 2004).

Legal Professions Act, SBC 2024, c26.

R. Sullivan, ed, *The Construction of Statutes*, 7th ed (LexisNexis Canada, 2022).

Uniform Law Conference of Canada, *Uniform Law Drafting Conventions* (2023).