LPBC Transitional Board and Transitional Indigenous Council

Joint Meeting

Agenda

Meeting Date: December 10, 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
Jamie Maclaren KC	Legal Advisor to the BC Paralegal Association
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	November 19, 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	Cost Report	Board Chair	9:15AM	5 min	
5	Update on Regulated Paralegal Working Group	Board Chair	9:20AM	5 min	
	Discussion/Decision				
6	Governance – General	Adam Whitcombe Indigenous Council	9:25AM	50 min	Policy Paper
	Break		10:15AM	15 min	
7	Governance – Director Elections and Appointments	Adam Whitcombe Indigenous Council	10:30AM	45 min	Policy Paper
8	Governance – Committees & Task Forces	Adam Whitcombe Indigenous Council	11:15AM	45 min	Policy Paper
	Lunch		12:00PM	**60 Mins**	
9	Trust Accounts	Cary Ann Moore Indigenous Council	1:00PM	60 min	Policy Paper
	Break		2:00PM	15 min	
	In-Camera *(Transitional Board and Transitional Indigenous Council only)*				
10	Other Business				

SLR Board and Indigenous Council

Minutes of Meeting

Meeting Date: November 19, 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	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	Legislative Counsel
Jared Friedman	Project Management
Lindsey Ogilvie	Project Management
Maddie Holm-Porter	Project Support

Observers:

Name	Organization	Name	Organization
Alan Treleaven	Director, SNPBC	Kerryn Holt	COO, LSBC
Brook Greenberg, KC	President, LSBC	Leanne Wood	Staff, LIF
Carrie Robinson	Staff, LSBC	Michael Welsh	Staff, LSBC
Claire Marchant	Staff, LSBC	Michael Mulhern	Staff, LIF
Derek LaCroix, KC	ED, LAPBC	Michèle Ross	Bencher, LSBC
James Legh	Bencher, LSBC	Shanti Reda	Staff, LSBC
Jeannette McPhee	CFO, LSBC	Sherry Small	Staff, LSBC
Joyce Johner	Staff, LSBC	Su Forbes	COO, LIF

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 October 22, 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 the Communications and Hiring sub-committees.

It was noted that the Hiring Committee will oversee the hiring process for two positions: a Transition Manager, who will become the first CEO of LPBC (per s. 223 & 231), and a Tribunal Chair, who will develop the first tribunal rules (per s. 227 & 234).

4.0 Update on Regulated Paralegal Working Group

The Chair provided an update on the Regulated Paralegal Working Group's progress in developing a scope of practice for regulated paralegals.

Policy Paper Reviews

The co-drafters of the policy papers presented a summary of each paper and provided key issues and questions for discussion. The Board chair facilitated the discussion of the key issues amongst Transition Team members. The discussion focused on guidance for policy updates and rules options, not formal approval of recommendations.

5.0 Licensing & Enrolment – Business Structure

The Legislative Counsel introduced the policy paper and led the discussion respecting business structures. The paper presented several questions for consideration:

a. Law firms – What are your thoughts on continuing or expanding the requirement to register a law firm?
    - The Transition Team discussed maintaining existing requirements for registering a law firm to ensure consistency post-amalgamation.
b. Law corporations – Do you prefer to address the permitting process for law corporations through rules or a policy?

- The Transition Team acknowledged the need to provide clarity to all professions on permitting requirements and processes, including clear guidance for legal clinics and not-for-profit lawyers.

c. Limited liability partnerships – Do you prefer to address the permitting process for limited liability partnerships through rules or a policy?
    - This question was addressed in discussion of previous questions.
d. Alternative business structures – How should we approach the question of permitting alternative business structures for amalgamation date?
    - This question was discussed in conjunction with question 'B' below, posed by the legal advisors to the Indigenous Council.
    - The Transition Team discussed establishing a process for permitting alternative business structures on a case-by-case basis.

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

a. Should the rules allow Law Firms, Limited Liability Partnerships, and Alternative Business Structures to practice law through the same persons as Law Corporations?
    - This question was presented but not discussed.
b. Should the rules allow the decision-maker to authorize Alternative Business Structures on a case-by-case basis, potentially including structures in Canadian or BC Laws made by Indigenous governments or Indigenous persons?
    - This question was discussed in conjunction with question 'D' above, presented by the Legislative Counsel.
c. If the decision-maker is empowered to authorize Alternative Business Structures, should the rules refer the matter for collaboration with the Indigenous Council when an Alternative Business Structure is proposed to facilitate access to services for Indigenous peoples, implement UNDRIP to promote Reconciliation, or to remove barriers for Indigenous people to enter the practice?
    - Discussion of this question topic was deferred.

6.0 Discipline

The Advisory Committee introduced the policy paper and led the discussion respecting discipline:

- It was noted that the process for selecting members to the Discipline Committee will be discussed as part of a separate policy paper on Committees and Appointments.
- The Transition Team discussed the size of the Discipline Committee, with general support for 11 members, including the Chair.
- The Transition Team also discussed the term of Discipline Committee members, with general support for two year terms, with up to two term renewals (for a total of 6 years). The Transition Team also discussed a staggered renewal schedule to minimize annual turnover of members.
- The Transition Team acknowledged that the Act requires the Discipline Committee to include at least one Indigenous person, who may be a licensee or a member of the public (s. 89). The Transition Team expressed general support for the Discipline Committee to include no less than two Indigenous members, to ensure appropriate representation.

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

a. 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.
    - The Transition Team discussed the ability of the Chair of the Discipline Committee to appoint panels for the review of citations (s. 89(5)) and the inclusion of an Indigenous member on these panels when the citation being considered concerns an Indigenous licensee, firm, or complainant.
b. 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?
    - Discussion of this question was deferred.
c. 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?
    - Discussion of this question was deferred.

d. Equity-based fines (s. 87) – Should the rules require the CEO 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?
    - The Transition Team discussed whether the rules should require the CEO to consider ability to pay, practice context, and community impact before imposing monetary penalties, particularly where an Indigenous licensee is concerned.
    - Concern was raised about establishing rules that regulate the staff of the legal regulator, rather than the licensees themselves.
    - The Transition Team indicated they would consider this topic further when reviewing the draft rules.
e. 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.
    - The Transition Team discussed whether this issue should be addressed directly in the rules or through supporting policy and guidance.
f. 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?
    - The Transition Team indicated they would consider this topic further when reviewing the draft rules.
g. 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?
    - The Transition Team indicated they would consider this topic further when reviewing the draft rules.
h. 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?

- The Transition Team indicated they would consider this topic further when reviewing the draft rules.

i. Publication practices (s. 94) – It was suggested that the regulator should:
   i. Defer publication of information regarding investigations until the outcome of matters being investigated have been determined; and
   ii. 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.
      - The Transition Team indicated they would consider this topic further when reviewing the draft rules.

j. Should the regulator defer publication of citations until a panel screening or reasons are prepared to provide context?
   - The Transition Team indicated they would consider this topic further when reviewing the draft rules.

k. 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.
   - The Transition Team indicated they would consider this topic further when reviewing the draft rules.

7.0 Discipline – Alternative Resolutions

The Transition Team requested that the Alternative Resolutions paper be revised to consider the Law Society's current alternative resolution process, which has recently been updated, identifying any potential enhancements to or remaining gaps in the existing process.

8.0 Discipline – Practice Reviews

The Advisory Committee and legal advisors to the Indigenous Council introduced the policy paper and led the discussion respecting practice reviews. The paper presented several questions for consideration:

a. 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.

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

The Transition Team indicated they would consider these topics further when reviewing the draft rules.

9.0 General Policy – Privilege

The Legislative Counsel introduced the policy paper and led the discussion respecting privilege. The paper presented a question for consideration:

a. What are your thoughts on approaching the rules, Code of Conduct, and policy drafting under the presumption that privilege applies to notaries public and regulated paralegals after the amalgamation date?
    - The Transition Team expressed general support for extending privilege to notaries and paralegals.
    - It was noted that extending privilege to notaries would create conflicts with current FINTRAC reporting requirements.
    - It was also noted that any decision to exempt notaries and regulated paralegals from FINTRAC reporting requirements rests with the courts.

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

a. 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).

- The Transition Team discussed whether this issue is already addressed within the Act.

b. When the topic of fees and agreements is revisited, should there be direction to create rules that require telling clients in the retainer or at the first meeting that their information could be ordered to be disclosed to the regulator, and that it is an offence for anyone to use and deliberately disclose confidential information contrary to s. 209?
    - The Transition Team did not express support for establishing a rule requiring licensees to tell clients in a retainer or at the first meeting that their information could be disclosed to the regulator.

c. Should the rules require licensees to notify clients in writing when their confidential information has been disclosed to a third party in breach of the licensee's obligation to maintain privilege?
    - The Transition Team discussed that licensees may already have a duty to notify clients when their confidential information has been inadvertently disclosed to a third party under the provisions in Section 7.8 of the Code, related to informing the client of errors or omissions.

d. Should the rules require licensees to notify clients in writing when their confidential information will be disclosed to the regulator as part of an investigation?
    a. As this is not a breach under s. 209 it will not be captured under question b. above and should only be a notification and not an option to allow the client to decline the disclosure, so that the regulator can serve its regulatory purpose.
        - The Transition Team noted that establishing this rule may place licensees in a challenging position, caught between their duty to maintain privilege for their clients and their obligation to provide information to the regulator.
        - The Transition Team indicated they would consider this topic further when reviewing the draft rules.

e. Given that Indigenous peoples have unique relationships to their confidential information and their legal services providers, should the rules permit the regulator to consult with or receive guidance from the Indigenous Council or their delegated person, on navigating the disclosure of an Indigenous person's confidential material with cultural competency?
    - The Transition Team indicated they would consider this topic further when reviewing the draft rules.

10.0 Independence of Licensees

The Advisory Committee and legal advisors to the Indigenous Council introduced the policy paper on independence of licensees.

11.0 Drafting Guidelines

The Legislative Counsel introduced the guidelines for drafting the first rules and Code of Conduct of the single legal regulator.

12.0 *In Camera* Session

DRAFT

Transitional Board and Transitional Indigenous Council

Governance

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**December 10, 2025**

Background

1. One of several significant differences between the Legal Profession Act, the Notaries Act and the Legal Professions Act (the Act) is the governance of the regulator.

2. The Act provides for a first board of 17 directors consisting of 9 elected and 8 appointed directors, with three distinct electorates and two sources of appointments. There is a separate paper on the electoral and appointment rules that need to be made to establish the first board.[1]

3. Under the Act, the board is charged with supervising the management of the affairs of the regulator and may exercise the powers conferred on it under the Act. Notably, the Act also provides that, on behalf of the regulator, the board exercises the powers and performs the duties of the regulator. Those duties include regulating the practice of law in British Columbia; establishing standards and programs for the education, training, competence, practice and conduct of applicants, trainees, licensees and law firms; and ensuring the independence of licensees. In doing so, the board assumes the responsibility of the regulator to exercise its powers and perform its duties in the public interest and to be guided by the principles in section 7.

Discussion

Governance matters

4. The transitional board and the transitional Indigenous council will make rules and requirements that will significantly impact the professional lives of licensees, the legal advice and assistance that clients receive, and the confidence the public has in the legal professions. Ensuring decisions about the rules and requirements of practice and the operations of Legal Professions BC are made well and in the public interest is critical to achieving the mandate of the regulator.

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[1] Section 230(2) provides that the first board of Legal Professions British Columbia consists of the members of the transitional board immediately before its dissolution and section 230(6) provides that no later than 6 months after the amalgamation date, (a) the first board must hold elections for the purposes of section 8 (1) (a), (b) and, if applicable, (c) (ii), and (b) the directors to be appointed under section 8 (c) (i), if applicable, and section 8 (1) (d) must be appointed.

5. While the Act is prescriptive about several governance issues, there remain some areas where the transitional team and the transitional Indigenous council may make rules to establish an effective governance structure.

The Chair

6. Although both the rules of the Law Society2 and the by-laws of the Society of Notaries Public recognize the position of president, the Legal Professions Act makes no reference to a president of the regulator and makes not provision for the appointment of one. Instead, section 9(2) of the Act provides that the board must appoint a chair from among the directors and section 28(h) provides that the board may make rules establishing procedures for the appointment of a chair and specifying the term of office, powers and duties of the chair.

7. Apart from perhaps the hiring of a Chief Executive Officer, there is no more significant governance decision than selecting the right chair.[3]

> *"The chair is crucial to the success of a board. It is the chair's responsibility to ensure that good governance practices are in place, that board members are engaged, and that the board is functioning properly. The chair must ensure that the strategy is brought to the board, and that every board member has input into it.*
>
> *'The Chair needs to have the time to devote to the job and a passion for the cause. He or she also needs to have a clear mandate and clear motivation to make the board work. It's much more than setting up committees and calling and chairing meetings. It's building a team. It's like building a hockey team where you can't put in all the fancy scorers without having a good defense or without having a tough guy go into the corners and dig the puck out.' (Dr. David Leighton)*

[2] The Legal Profession Act specifically provides for the office of President, along with the offices of First Vice-President and Second Vice-President. The Notaries Act does not mention the office of President.

[3] Bugg G, Dallhoff S. NATIONAL STUDY OF BOARD GOVERNANCE PRACTICES IN THE NON-PROFIT AND VOLUNTARY SECTOR IN CANADA at page 49

Election?

8. The position of chair in most regulatory organizations in British Columbia is commonly held by the president and made by a vote of the members of the board.[4] While this is not the only option, the alternatives tend to be either an external body such as government appointing the chair or the membership, registrants or licensees electing the chair.

9. The transitional board and the transitional Indigenous council may wish to consider whether the rules should provide that the method for appointing the chair is something other than a majority vote of the board.

Majority Vote?

10. Assuming the chair is selected by a vote, should the chair be elected by a bare majority of 50% +1? While we should not assume that the five directors elected by the lawyer licensees and the four lawyer directors appointed by a majority of other directors will necessarily vote as a bloc, if they did, they could always form a majority of the board for the purposes of the election of the chair.

11. The transitional board and the transitional Indigenous council may wish to consider whether the proportion of directors voting to elect the chair should be a simple majority or some other proportion?

Eligibility?

12. The Law Society rules provide that a bencher appointed by the Lieutenant Governor in Council is not eligible to hold the position of president, first vice-president or second vice-president. As a result, only the elected lawyer benchers are eligible to be the second vice-president-elect.

[4] For example, the by-law 1-5 of the College of Physicians and Surgeons of British Columbia provides that 1-5 at its first meeting in April of each year, or as soon after as is convenient, the board must elect a president, vice-president and treasurer, from among the board members and by-law 1-21(9) provides that the president, or a board member chosen by the president, shall be the presiding officer for board meetings.

13. The by-laws of the Society of Notaries Public do not prescribe which directors may stand for election as president, although in practice the President has always been a member of the Society of Notaries Public.

14. In general, in BC the rules and by-laws of regulatory organizations such as the College of Physicians and Surgeons of BC and Engineers and Geoscientists BC do not require that the president be a member of the regulated profession. For example, the current vice-president of College of Physicians and Surgeons of BC is not a member.

15. Given the diversity on the board being those directors elected by each of the three professions and the directors appointed by the board itself and government, are all the directors eligible to be elected as chair?

16. The transitional board and the transitional Indigenous council may wish to consider whether to limit the candidacy for the chair to a subset of the directors, and if so, what would be the membership of that subset?

Term?

17. The President of the Law Society and the President of the Society of Notaries Public both serve one-year terms, although both have experience as vice-presidents prior to becoming the president. The one-year term is typical of the Canadian law societies, although in practice the Treasurer of the Law Society of Ontario has generally been elected for a second one-year term.

Powers and duties of the chair?

18. Defining a specific set of duties and responsibilities for the chair is dependent on both the requirements of the organization and the role the chair is expected to have with respect to the chief executive officer. However, the following are some of the duties and responsibilities that might be provided for in the rules:

    a) provide leadership to the Board and ensure the effective governance of Legal Professions BC
    b) call and preside over all meetings of the board
    c) establish the agenda for board meetings in consultation with the chief executive officer
    d) call special meetings of the board when necessary or when requested in accordance with the bylaws

e) serve as the primary liaison between the board and the chief executive officer
f) ensure clear communication of Board decisions and directions to management
g) conduct the performance evaluation of the chief executive officer in accordance with Board policy
h) serve as the official spokesperson for the Board, unless the Board designates another person for specific purposes
i) ensure that all Board committees have appropriate terms of reference and are functioning effectively
j) lead the Board in developing and monitoring the strategic plan

19. In addition to the specific duties that may be included in the rules, a position description would include expectations such as:

a) ensuring that the Board fulfills its governance responsibilities under the Legal Professions Act and the rules
b) monitoring the Board's compliance with its policies and procedures
c) facilitating effective communication among Board members
d) promoting collegiality and constructive working relationships among Board members
e) address any conflicts or disputes among Board members in a timely and appropriate manner
f) representing Legal Professions BC at public events, ceremonies, judicial welcomes and other formal occasions
g) communicating the Board's positions and decisions to members, stakeholders, and the public
h) foster positive relationships with government, the judiciary, other regulators, and stakeholders
i) identify emerging issues and opportunities for Board consideration
j) ensure that the Board engages in long-term planning for the organization
k) promote the ongoing development of Board members' governance skills and knowledge
l) conduct regular assessments of Board effectiveness
m) address any performance issues with individual Board members in accordance with Board policy

Governance Policies

20. The Act requires that the board establish an oath of office, a code of conduct and rates for the remuneration of directors and provide for reimbursement of reasonable travel expenses and out-of-pocket expenses of directors.

21. At the February meeting, the transitional board and the transitional Indigenous council had for consideration a proposed oath of office, a code of conduct and reimbursement and remuneration policy. The minutes of the February meeting indicate the transitional board and the transitional Indigenous council agreed to table consideration of a Code of Conduct, including provisions related to a complaint about a director, and a proposed oath of office to a later date. The minutes also indicate that the conflict-of-interest policy at page 9 of the Code was adopted by consensus.

22. Section 11 of the Act provides that the board must establish an oath of office for directors that must include a commitment to act in the public interest and that before taking office as a director, a person elected or appointed as a director must take and sign the oath of office.[5]

23. Section 18 of the Act provides that the board must establish a code of conduct for directors and must establish policies and procedures respecting conflicts of interest in relation to directors, including policies and procedures for the identification and disclosure of conflicts of interest and the actions to be taken if a conflict of interest is identified.

24. Section 19 of the Act requires that the board must establish rates for the remuneration of directors and provide for the reimbursement of reasonable travel expenses and out-of-pocket expenses of directors. Section 32 provides that the regulator must remunerate members of the Indigenous council at the rates established by the board for the remuneration of directors and reimburse them for reasonable travel expenses and out-of-pocket expenses.

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[5] Section 230(8) grants the time to establish an oath of office for directors no later than the earlier of the following: (a) the date that is 3 months after the amalgamation date; (b) the earliest date a director elected under section 8 (a), (b) or (c) (ii) or appointed under section 8 (c) (i) or (d) takes office as a director. There is, however, no time like the present.

25. The transitional board and the transitional Indigenous council have previously considered and approved a reimbursement and remuneration policy, a copy of which is attached.

26. Attached is the draft code of conduct included in the February agenda. The code includes a proposed oath of office and also includes procedures respecting conflicts of interest.

27. As the meeting is considering the future governance of Legal Professions BC, the transitional board and the transitional Indigenous council are invited to discuss and provide direction with respect to the required code of conduct and any further consideration of the reimbursement and remuneration policy.

Expense Reimbursement and Remuneration Policy

Legal Professions BC

March 2025

Table of Contents

1. Policy

As a member of the transitional board, Indigenous council, or advisory committee, you are entitled to be reimbursed and remunerated for reasonable expenses incurred in the performance of your duties under the Legal Professions Act. The following guidelines ensure transparency and consistency, and that Legal Professions BC is compliant with the regulations of the Canada Revenue Agency and the Income Tax Act.

2. Purpose

The purpose of this Policy is to:

a. Ensure accountability and transparency and promote cost-effective use of organizational resources.

b. Provide clear guidance on reimbursable expenses.

c. Promote fiscal responsibility and transparency.

d. Support the operational requirements of the Law Society and Notaries Society.

e. Ensure compliance with annual audit and CRA requirements.

3. Scope

This Policy applies to all board, council, and advisory committee members performing duties under the Legal Professions Act. It does not cover contractors or consultants unless specifically stated in their agreements. The amounts for expenses and remuneration are based on Treasury Board Directives. This policy will be reviewed annually and the amounts adjusted to reflect the current Treasury Board Directive for Remuneration Guidelines for Appointees to Administrative Tribunals and Regulatory Boards.

4. Responsibilities

Board, council and committee members are responsible for:

a. Submitting timely, detailed, original receipts along with the completed Expense Reimbursement Claim Form (see Appendix A).

b. Apportioning expenses between Legal Professions BC duties and other business where applicable.

c. Using electronic submissions when possible, for efficiency.

The advisory committee is responsible for:

a. Providing guidance to board, council and committee members on appropriate types and levels of expenses.

b. Designating one or more members eligible to approve expenses and remuneration including exceptions to this Policy, where guidelines have been exceeded due to extenuating circumstances.

c. Communicating those decisions to those responsible for issuing the payment.

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5. Allowable Expenses

The following are reimbursable expenses related to the performance of duties under the *Legal Professions Act*:

5.01 Travel

A. Airfare:

1. Members are encouraged to book early and to take advantage of seat sales to minimize costs.
2. Flights under 6 hours should be booked as Economy Class. Flights of more than 6 hours, if no coupons are available to upgrade to Executive Class, may be booked as Business Class when traveling on official Legal Professions BC business. Pre-approval by a designated member of the Advisory Committee for airfare exceeding $5,000 is required.
3. When booking an Economy fare, the purchase of a preferred seat and/or Wi-Fi will be covered to accommodate working on the flight.
4. Any in-flight food and beverage purchases are considered part of the daily per diem.
5. Travel insurance is mandatory for all international travel and optional but recommended for domestic travel. Please ensure the credit card used to book the flights provides this coverage.
6. Last-minute flight changes are often subject to a fee. These fees do not fall under allowable expenses unless they are a result of circumstances outside the traveler's control.
7. Any reservations or bookings that are missed due to circumstances within the control of individual (such as missed flight due to sleeping in) may not be reimbursed.
8. Care should be taken seeking to ensure that no more than 3 board, council or committee members are traveling on the same flight.

9. If a trip is extended for personal reasons, the expenses for meals, accommodation and transportation for those additional days are not eligible for reimbursement under this policy.

B. Ground Transportation:

1. Transportation options include ferries, public transit, parking, taxis, ride shares etc. (including gratuity) to and from the airport, hotel, residence, or meeting locations.

C. Personal Vehicle:

1. Use of a personal vehicle for business travel will be reimbursed on a per-kilometer basis at CRA's current rate.
2. The following information must be provided on the expense report:
    a. Purpose of the trip
    b. Date and location
3. Mileage log and/or a Google map attachment
4. Actual or reasonable parking expenses are eligible for reimbursement (for example, parking at an airport while flying and for the duration of the approved days related to the business trip) and tolls.
5. Legal Professionals BC will not be responsible for any fines related to parking or local traffic violations.

D. Sustainability:

1. Members are encouraged to purchase carbon offsets for flights or use eco-friendly transportation where feasible.

E. Emergency Procedures:

In the event of unforeseen circumstances requiring emergency changes to travel or other arrangements, the following procedures apply:

a. **Handling Emergency Expenses**

Expenses incurred due to emergencies, such as last-minute flight changes, extended accommodation stays, or additional transportation, will be reimbursed provided they are:

i. Directly related to the performance of duties under Legal Professions BC.

ii. Necessary and unavoidable due to the circumstances (e.g., canceled flights, urgent rescheduling).

b. **Documentation Requirements**

To claim emergency-related expenses, the following documentation must be submitted with your reimbursement request:

i. Detailed receipts for all incurred expenses.

ii. A brief explanation of the emergency, including why the expense was unavoidable.

iii. Approval from a designated member of the Advisory Committee if the expenses exceed standard policy limits.

c. **Travel Insurance and Assistance**

i. Where applicable, utilize any available travel insurance or assistance services to manage emergency situations efficiently (eg. the airline help desk).

ii. Reimbursement will only apply to expenses not covered by insurance.

d. **Pre-Approval for Non-Urgent Adjustments**

i. If the adjustment is not urgent but still necessary, it is recommended that pre-approval from a designated member of the Advisory Committee is sought before incurring additional costs.

5.02 Accommodation

1. Where an overnight stay is necessary, hotel accommodation will be reimbursed for a standard single room equivalent at one of the pre-approved hotels at corporate rates. Please follow the instructions on the corporate hotel listing to ensure the Legal Professions BC corporate rate is obtained. Airbnb or other alternatives are eligible if more cost-effective.

   Appendix B contains further details on corporate hotel rate information and will be updated and published by Legal Professions BC periodically.

2. Coverage includes one night per meeting day unless earlier arrival is necessary.

3. If the traveler opts to stay with a personal contact on a business trip, the Organization will offer a per diem of $50/night.

5.03 Meals and Beverages

a. **Daily Meal Limits**:

   Breakfast $25
   Lunch $35
   Dinner $50
   (Total $110 per day including tips and tax)

b. Itemized restaurant receipts must be provided, not just the total.

c. If a meal is already provided (breakfast, lunch or dinner), additional meal or beverage costs should not be claimed for these meals - i.e. if lunch was paid for by an outside party, the eligible dinner amount is still $50, not $85.

d. For all meals other than group meals, meals should be paid for and expensed by each individual separately with the corresponding meal and beverage expense receipts.

e. At group meals, reasonable meal and beverage costs will be reimbursed, and the most senior director or Indigenous council member in attendance should pay and submit the claim for the group meal. A group meal is any meal or dinner where there are six or more directors or Indigenous council member attendees.

f. The cost of non-alcoholic beverages is reimbursable. The cost of alcoholic beverages is not.

5.04 Childcare, Pet Care, and Dependent Care

a. Covers additional reasonable expenses incurred for care during meeting hours, and travel time.

b. Reasonable childcare, pet care, and/or dependent adult care expenses incurred during the hours of scheduled board or Indigenous council meetings; while performing duties for Legal Professions BC*;* and/or during the time taken to travel to and from such meetings will be reimbursed when they are in addition to what would normally be incurred.

c. Please indicate the number of hours and hourly rate and attach receipts to the Expense Claim Form (eg. for a childcare provider).

5.05 Other Reimbursable Expenses

a. **Communication Costs**: Long-distance calls, cellular charges, eSIM purchases, and teleconferences.

b. **Administrative Costs**: Postage, courier, or meeting materials (more eco-friendly digital formats are preferred).

c. **Gifts**: Reasonable business-related gifts may be eligible for reimbursement on occasion.

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6. Remuneration

a. Directors and Indigenous council members are eligible to receive per diems for attending meetings based on the Treasury Board Directive.

b. $225 for an hour or less of time spent within a given calendar day;

c. $390 for more than an hour and up to and including three hours of time spent within a given calendar day ("half day"); and

d. $645 for more than three hours of time spent within a given calendar day ("full day").

e. A maximum of one full day may be claimed for remuneration on any calendar day, including travel time.

f. T4's/T4A's will be issued for all per diems paid during the year.

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7. Submission of Expense Claims

a. Original, legible, detailed receipts must be submitted with a completed Expense Claim Form. Credit card statements alone are not sufficient. The Expense Claim Form may be submitted electronically along with scanned receipts to expenses@lpatransition.ca

b. Include the purpose of expenses and, for meals, indicate the reason for the meeting and names of attendees.

c. Original detailed receipts must be submitted along with expense reimbursement claims. Digital versions can be submitted with the expense claim form. Note that hardcopy original receipts may be required to follow by mail.

d. There are some exceptional cases where receipts are not provided (e.g. parking meters, public transit tickets/tokens). In these cases, expenses may be claimed without a receipt. Details and an explanation for these cash expenses must be provided. These should be limited to small amounts and only when a receipt is not provided.

e. Individuals will be reimbursed in Canadian dollars. If you have purchased something in a currency other than Canadian, upload an excerpt of your credit card statement to show the currency conversion rate that was used at the time of purchase. If that information is not provided, the exchange will be calculated using the daily exchange rate.

f. No member can approve their own expense claim. Claims are to be submitted to and approved by a designated member of the Advisory Committee.

g. Claims must be submitted within 30 days of incurring the expense to ensure prompt processing. Claims submitted past 90 days may not be reimbursed.

h. Claims will be processed by Legal Professions BC within 30 days of approval.

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8. Environmental and Social Responsibility

a. Members are encouraged to reduce unnecessary travel by utilizing virtual meeting technology.

b. When travel is necessary, preference should be given to eco-friendly options and accommodations.

c. Adopt digital practices as much as possible to minimize the environmental impact of printed materials.

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9. Policy Updates

This Expense Policy will be reviewed annually to ensure alignment with evolving organizational needs, regulatory requirements, inflation adjustments and the latest governance best practices and to align the amounts with Treasury Board Directives.

Appendix A – Expense Claim Form

Electronic submission of your expense claim is preferred. Please include additional details around meal and entertainment expenses and submit this form and digital copies of receipts to expenses@lpatransition.ca within 30 days of incurring the expense. Original receipts can follow by mail.

Notes:

(1) Please submit one event per form.

(2) Fill in the shaded areas.

Event Date	
Event Description	
Place of Event	
Name of Airline	
Name of Hotel	
Currency	

DESCRIPTION (add detail where appropriate)		**NET**	**GST**	**TOTAL**
Meals & Entertainment (60025)		0.00	0.00	0.00
Airfare (60010)		0.00	0.00	0.00
Hotel (60015)		0.00	0.00	0.00
Taxi Fare (60010)		0.00	0.00	0.00
Parking (60010)		0.00	0.00	0.00
Ferry (60010)		0.00	0.00	0.00
Car Rental (60010)		0.00	0.00	0.00
Car Mileage (60010)(To/From)	km @ $0.63/km	0.00	0.00	0.00
Telephone (60040)		0.00	0.00	0.00
Photocopying/Fax (60040)		0.00	0.00	0.00
Courier/Postage (60040)		0.00	0.00	0.00
Per Diem (62205)	None	0.00	0.00	0.00
Per Diem (62205)	None	0.00	0.00	0.00
Per Diem (62205)	None	0.00	0.00	0.00
Per Diem (62205)	None	0.00	0.00	0.00
Other:		0.00	0.00	0.00
Other:		0.00	0.00	0.00
TOTAL		$0.00	$0.00	**$0.00**

Name of Payee _____

Signature of Payee _____

Approval _____

Appendix B - Corporate hotel rates

The following is a list of hotels, rates and discount codes which directors should consider first in booking accommodation while performing the duties of the transitional board.

To be developed

Transitional Code of Conduct (DRAFT)

Introduction

The purpose of this Code of Conduct is to establish clear expectations for the behavior and responsibilities of the members of the board. By adhering to this Code, board members ensure the integrity, accountability, and effectiveness of their role in preparing for and facilitating the transition from the operation of the former Acts to the operation of the Legal Professions Act. The Code also helps to promote a culture of trust, respect, and professionalism among board members.

Core Principles

Integrity: Board members must act honestly and in good faith, prioritizing support for the process for transitioning to the new Legal Professions BC over personal interests.

Accountability: Board Members are accountable for their actions and decisions to each other.

Transparency: Decisions and operations must be conducted openly whenever possible, ensuring the trust and confidence of the public and those who will be regulated under the *Legal Professions Act*.

Respect: Board members should engage respectfully with others, fostering a collaborative and inclusive environment.

Equity and Diversity: Board members are expected to consider diversity, equity and inclusion in all decision-making processes and organizational policies.

Scope, Compliance and Enforcement

Application

This Code of Conduct applies to all board members. By adopting and adhering to this Code of Conduct, and signalling the same by signing the Statement of Understanding and Agreement, board members commit to upholding the highest standards of governance and conduct in all organizational activities and decisions as set out in this Code of Conduct.

Complaint Against a Director[1]

If a board member is notified that a complaint has been opened against them by the regulatory body responsible for the regulation of that board member, the board member must promptly disclose the fact of the complaint to the Chair.

On being made aware of a complaint against a board member, the Chair must consider whether to ask the board member to provide information about the nature and seriousness of the complaint and t consider any information provided by the board member about the complaint. If the Chair seeks and obtains information about the complaint, the Chair must determine whether nature and seriousness of

[1] Based on s.14 of the Legal Professions Act

the complaint in light of any information provided by the board member requires bringing the complaint to the attention of the board.

Should the Chair determine that the complaint is of a sufficiently serious nature to warrant notifying the board, the board must consider whether to prohibit the board member from exercising the powers and performing the duties of a director until the disposition of the complaint.

Removal of Director[2]

If a board member:

a. contravenes their oath of office or this Code of Conduct;

b. becomes bankrupt; and

the board may remove the director if, after reasonable notice to the director, the board considers the circumstances sufficiently serious to justify the director's removal.

Oath of office

Board members are expected to swear or affirm the following oath of office before taking office and signify their commitment by signing a copy of the oath.

> *I, _____, will abide by the Legal Professions Act and its regulations, and the policies approved by the transitional board, and in the performance of my duties as a member of the board, I will act always in the public interest and in accordance with the laws of the Province of British Columbia and the laws of Canada, including the Constitution, which recognizes and affirms the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.*

Roles and Responsibilities

Each board member is expected to act with integrity, participate actively, and fulfill their specific roles and commitments and to keep themselves informed about the transition process and their role in the process and make decisions based on informed judgment.

Board members are expected to support collective decisions, even if they personally disagreed during discussions.

The board as a whole is responsible for the organization’s governance and strategic direction.

The board has a collective responsibility to make decisions that support the transition from the operation of the former Acts to the operation of the Legal Professions Act, evaluating the progress towards the amalgamation provided for in s.5 of the *Legal Professions Act* and ensuring that stakeholders are engaged where appropriate and kept aware of progress.

[2] Based on s.13 of the Legal Professions Act

Fiduciary Duties

Board members must act with the level of care, diligence, and skill that a reasonably prudent person would exercise in similar circumstances. This includes staying informed about the organization's activities, attending meetings, and actively participating in decision-making processes.

Board members are responsible for ensuring the implementation of the transition remains consistent with the *Legal Professions Act* and any regulations.

Ethical Standards

Board members must act with honesty and integrity in all their dealings on behalf of the organization.

This includes:

a. Ensuring that their actions are guided by the best interests of the organization rather than personal interests.

b. Upholding the organization's reputation and maintaining trust with stakeholders.

Avoiding any conduct that could undermine the integrity of the board or the organization.

Board members are expected to:

a. Be truthful and transparent in communications and decision-making.

b. Avoid deceptive or misleading practices, even in challenging circumstances

Conflicts of Interest and Duty

What constitutes a conflict of interest and duty?

Directors may experience a conflict of duty and interest or of interest and interest where the director has a personal interest, either pecuniary or non-pecuniary, not shared by others, in the outcome of a particular decision or in fulfilling their duty to the prepare for and facilitate the transition from the operation of the former Acts to the operation of the new Act.

A conflict may be:

a. Actual, where a direct conflict where a board member's decisions or actions could result in personal gain or benefit.

b. Potential, where a conflict could arise in the future based on a board member's roles, relationships, or activities.

c. Perceived, where it appears that a board member's interests might impair their objectivity, even if no actual conflict exists.

Disclosure

If a conflict of interest and duty arises, whether actual, potential or perceived, the director should disclose the conflict of interest to the board.

Disclosures should be made in writing and recorded in the meeting minutes.

Assessment of Conflicts

The board must review any conflict disclosed to assess the severity and implications of the conflict. The assessment should consider whether the conflict impairs the director's ability to act in the organization's best interests.

Resolution of Conflicts

If the board concludes that a conflict impairs the member's ability to act in the organization's best interests, the board may require the director to:

a. Recuse themselves from discussions and votes related to the matter or circumstance creating the conflict; or

b. Resign from the board if the conflict is ongoing and cannot be mitigated.

The consideration and conclusion should be documented and made known to the director to ensure accountability.

Review and Training

The transitional board should regularly review the conflict of interest and duty policy and provide training to directors to ensure understanding and compliance.

Confidentiality

Board members have a duty to protect the confidentiality of information that is made available to them in confidence and not to disclose the information unless required to do so by law. Information expected to be kept confidential should be clearly identified as such prior to it being made available.

Commitment to a Diverse, Equitable, Inclusive and Respectful Environment

We all have a right to work and associate in a respectful, professional environment free from discrimination, harassment, violence and retaliation and where the well-being of all is safe guarded, equity, diversity and inclusion is encouraged and welcomed, it is safe to discuss what is working and not working, and inappropriate or disrespectful behaviour is not tolerated.

Board members are expected to foster an equitable, diverse, inclusive and safe environment that reflects the organization's values.

This commitment includes:

a. Supporting equity, diversity and inclusion in board composition and staff;

b. Promoting policies and practices that advance equity, diversity and inclusion and remove systemic barriers.

Review

The board should review this Code of Conduct at least annually to ensure that if continues to reflect the conduct and compliance expected of board members.

Acknowledgment and Commitment

Board members will acknowledge and agree to abide by this Code of Conduct by signing a Statement of Understanding and Agreement.

Appendices

*Conflict of Interest Disclosure Form**

*Statement of Understanding and Agreement template (for signature) **

*** to be drafted following adoption by the board***

DRAFT

Transitional Board and Transitional Indigenous Council

Director Elections and Appointments

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**December 10, 2025**

Background

1. Section 8 provides that the board of directors for Legal Professions BC will consist of 17 directors elected and appointed as shown in the following table.

	Lawyers	Notaries Public	Regulated Paralegals	Public	
Elected	5 directors elected by and from among lawyers	2 directors elected by and from among notaries public who are not also lawyers	2 directors elected by regulated paralegals or appointed if there are not 50 or more regulated paralegals		9
Appointed	4 lawyer directors, at least one of whom must be Indigenous, appointed after a merit-based process, by a majority of the other directors holding office.	1 notary public director who is not also a lawyer, appointed after a merit-based process, by a majority of the other directors holding office		3 directors appointed by the Lieutenant Governor in Council, of whom at least one must be an individual of a First Nation	8
	9	3	2	3	17

2. Section 28(1) states that the board may make rules respecting directors. In particular, section 28(2) provides the board may make rules regarding:

   (a) establishing a process for the screening of candidates in the election of directors;

   (b) establishing a process for the screening and nomination of persons to be appointed under section 8 (1) (e);

   (c) establishing regions for the election of directors;

(d) respecting terms of office for elected directors, including the staggering of terms of office; and

(e) respecting terms of office for directors appointed under section 8 (1) (c) (i) and (e), including the staggering of terms of office.

3. Section 230(2) provides that the first board of Legal Professions British Columbia consists of the members of the transitional board immediately before its dissolution.

4. Section 230(6) provides that: no later than 6 months after the amalgamation date,

(a) the first board must hold elections for the purposes of section 8 (1) (a), (b) and, if applicable, (c) (ii), and

(b) the directors to be appointed under section 8 (c) (i), if applicable, and section 8 (1) (d) must be appointed.

5. Section 230(7) provides that: the terms of office of the directors appointed under section 8 (1) (c) (i), if applicable, and section 8 (1) (d) must not begin before the date the terms of office of the directors elected under section 8 (1) (a), (b) and, if applicable, (c) (ii), begin.

Discussion

Regional elections

6. The Act permits the board to make rules establishing regions for the election of directors. The question is whether the board should.

7. In the 2012 Governance Review report to the Benchers, Watson Advisors noted:

> *The current election model (whereby Benchers are elected from various regions around BC) has a long history and many Benchers feel that it is important that Benchers continue to be elected in this manner so that all regions have a voice. However, many external stakeholders observed that the geographic model is problematic because it suggests to members (and indeed even Benchers) that they are there to "represent" the interests of a particular constituency when in fact they are there to regulate all lawyers in the public interest.*

8. In his 2021 report, Cayton noted:

Neither election nor appointment guarantees competence, nor does it guarantee a balance of skills on a board. In Canada regulatory bodies are hampered by legislation which limits their ability to have board members chosen on merit and against published competencies. That this is so implies no disrespect for the individuals who are elected or appointed to boards. Where possible boards should use any powers available to them to ask for appointed members to be chosen to compensate for deficiencies, for instance lack of financial or regulatory expertise. Some regulators have set up nominations committees (see para 4.17 below) to identify and recommend candidates standing for election, others have introduced mandatory training for potential board members.

9. As Cayton noted, the election of Benchers from electoral districts around the province provides regional diversity. However, elections based on the regions of the province do reinforce the notion that elected Benchers have constituencies and constituents, simply by fact of having been elected by members of their community. And even if the elected Benchers understand their principal responsibility to act in the public interest, those who elect them do not necessarily share that understanding in voting for their preferred candidate.

10. Unlike the electoral model reflected in the current Law Society rules which provides for 25 elected Benchers and 9 electoral districts, the Act provides that only five directors are to be elected by and from among lawyers. As a result, the maximum number of electoral districts is limited to five. In the case of elections from among notaries public licensees and regulated paralegal licensees, only two electoral districts each could be created.

11. Assuming some degree of adherence to proportional representation and the existing geographic divisions that could be used to define the electoral districts, it likely that in the case of each profession, at least one and as many as three director positions in the case lawyer licensees would be filled by a lower mainland electoral district. This would leave one further position in the case of the notaries public licensees and regulated paralegals licensees for a electoral district consisting of the rest of the province. In the case of lawyer licensees, two electoral districts for the rest of the province.

12. Rather than rely on election regions to ensure diversity, a nominating committee could be required to consider geographic diversity in recognizing candidates for election.

13. Some BC professional regulatory organizations hold regional elections for the board positions while most others do not. The BC professional regulatory bodies with the largest membership are the BC College of Nurses and Midwives, Engineers and Geoscientists BC,

the College of Physicians and Surgeons BC and the College of Oral Health Professions. The College of Physicians and Surgeons BC has regional elections, but board elections for the other three professional regulatory organizations are based on the registrants' profession, not geography. As the transitional board and transitional Indigenous council are likely aware, the Law Society does have regional elections while the Society of Notaries Public does not.

Question

Should the rules provide for regional elections for the elected board positions? If so, some options for the subdivision of the province to establish the regions will be provided at a future meeting.

Term of Office

14. The Act provides that the board may make rules respecting terms of office for elected and appointed directors, including the staggering of terms of office.

15. The length of a director's term of office is circumscribed by the Act at a maximum duration of three years per term and six years in total.1 Assuming an annual term of office, the options available to the transition team are a term of one, two or three years.

16. A one-year term of office is likely too short. A one-year term would mean that Legal Professions BC could be faced annually with the risk of a significant turnover of its board, not to mention the administrative resources required to conduct full-scale elections and appointments annually, particularly if the transitional board and the transitional Indigenous council accept that there should be a nomination committee and a screening process. There would also be no means of staggering the elections.

17. A two-year term likely provides the minimum reasonable term of office. It provides sufficient time between elections and appointments to permit the directors to become familiar enough with the board and Legal Professions BC to participate in decision-making. However, a two-year term still has a turnover risk, and it may deter potential candidates who feel they cannot commit to two years.

[1] Section 12

18. A three-year term provides the greatest stability to the board and permits directors to become familiar with the board and Legal Professions BC. It allows directors to grow into the role and contribute to the long-term strategic direction of the regulator. Three-year terms also provide the greatest opportunity to stagger the initial elections, as it could provide that only one-third of the board rotates each year. However, potential candidates may be hesitant to commit to a longer term, and this may exclude otherwise qualified candidates from running.

Question

What term of office for directors would the transitional board and the transitional Indigenous council like to see in the rules?

Staggered Terms

19. Section 230(6) provides that no later than 6 months after the amalgamation date, the first board must hold elections for the purposes of section 8 (1) (a) [elected lawyers], (b) [elected notaries public] and, if applicable, (c) (ii) [elected regulated paralegals], and the directors to be appointed under section 8 (c) (i) [appointed regulated paralegals], if applicable, and section 8 (1) (d) [government appointees] must be appointed.

20. As the terms of the appointed directors must not begin before the terms of office of the elected directors, the staggered election and appointment procedure may naturally result in the staggering of terms for elected and appointed directors. In particular, the implementation of a merit-based process to select the appointed directors means that the selection of the appointed directors is not likely to take much less time than the entire six months afforded by the transition provisions.

21. If the transitional board and the transitional Indigenous council consider that an initial staggering of elections and appointments is beneficial to the governance of Legal Professions BC, it will mean that for the elected and appointed directors, the first term for some will not be commensurate with the full term of office, unless the transitional board and the transitional Indigenous council determine that the term of office is one year.

Question

Should the rules provide for staggering of the director terms to avoid a substantial turnover of directors in any given year?

Different Terms

22. As the Act provides separate authority for setting the term for elected directors and for setting the term for appointed directors, the transitional team may wish to consider whether there should be different terms for elected and appointed directors.

23. At first glance, it seems obvious that all directors should have the same term of office regardless of whether they were elected or appointed. However, the requirement that some appointed directors are to be appointed by the other directors holding office after a merit-based process, means that after the initial cycle of elections contemplated by section 230, the elected directors must be in place prior to the selection of the appointed directors.

24. In addition, section 230(7) provides that the terms of office of the two directors appointed under section 8 (1) (c) (i) [regulated paralegal appointees] and the three directors to be appointed under section 8 (1) (d) [Lieutenant Governor in Council appointees] must not begin before the date the terms of office of the directors elected under section 8 (1) begin.

Question

Should the rules permit that, at least for the first appointments to the board, that the elected directors' term of office need not be the same as the appointed directors' term of office?

Eligibility

25. Section 28(2)(a) provides that the board may make rules establishing procedures for the election of directors under section 8 (1) (a), (b) or (c).

26. Eligibility takes two forms; eligibility to stand for election and eligibility to vote in an election.

Eligibility to stand for election

27. The eligibility requirements in the Law Society rules and the Society of Notaries Public by-laws for members seeking to be elected are straightforward; essentially they must complete a nomination form, they must be members in good standing of their respective society and

in the case of the Law Society stand for election in the right electoral district and in the case of the Society of Notaries Public, have practised for five years prior to standing for election.[2]

28. At the extreme other end of eligibility requirements are characterized by the current by-laws of the College of Oral Health Professions which provide that candidates:

    a) must be a registrant or eligible to become one,

    b) must ordinarily reside in British Columbia,

    c) must be in good standing and must not be in default of payment of any fine, fee, debt or levy owing to the college under the Act.

    d) must not be the subject of an ongoing investigation by the inquiry committee under section 33 of the Act, named in a citation, be the subject of a hearing, either pending or underway, in British Columbia or another jurisdiction, that could result in the person's entitlement to practise a profession or provide the services of a certified dental assistant being cancelled, revoked or suspended,

    e) must not have given an undertaking or consent under section 36 of the Act not to practise,

    f) must not have had an entitlement to practise a profession or provide the services of a certified dental assistant cancelled, revoked or suspended in British Columbia or, another jurisdiction, for any reason other than late payment or non-payment of fees,

    g) must not have voluntarily relinquished an entitlement to practise a profession or provide the services of a certified dental assistant in British Columbia or another jurisdiction, with the effect of preventing the commencement or completion of an investigation, review or other proceeding that could have resulted in that entitlement to practise or provide services being cancelled, revoked or suspended, been convicted of an offence in British Columbia or another jurisdiction,

[2] Law Society Rule 1-22 and Society of Notaries Public by-law 5.03. The requirements for election as a bencher of the Law Society of Alberta and the Law Society of Ontario are similar.

h) must not been suspended or removed from office as a board member, or the equivalent of a board member of another college under the Act or any other body, in British Columbia or another jurisdiction, that regulates a profession,

i) must not be an undischarged bankrupt,

j) must not be the subject of an order of or finding by any court, in Canada or another jurisdiction, that the person is incapable of managing the person's own affairs,

k) must not be an employee of the college,

l) must not be an employee, board officer, board member, or committee chair at, or holds any other position of responsibility with, a professional association,

m) must not at any time in the 3 years preceding the date that a nomination for the board election must be received, has been an employee, board officer, board member or committee chair at, or held any other position of responsibility with, a professional association,

n) must not on being elected, would have a conflict of interest by virtue of having competing fiduciary obligations to the college and to another person or organization, or

o) must not have been an elected board member during each of the 5 years immediately preceding the date that a nomination for the board election must be received.[3]

29. While the extent of the College of Oral Health Professions requirements and exclusions may be excessive, the extent is attributable to the criticism of the predecessor body, the College of Dental Surgeons, in a report by Harry Cayton evaluating the governance of that former regulatory organization.[4] However, some of the requirements are worth considering, particularly those that preclude election where the would-be candidate is subject to investigation or discipline.

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[3] Bylaws of the British Columbia College of Oral Health Professionals Health Professions Act, RSBC 1996, c. 183, by-law 2.03.

[4] Cayton, H An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act December 2018

Question

What do the transitional board and the transitional Indigenous council think are the appropriate requirements to stand for election to the board?

Eligibility to vote

30. Defining the electorate for the various elections provided for in the Act is important. This is particularly so if the transitional board and the transitional Indigenous council determine that there should be electoral districts as where someone votes will matter.

31. The Law Society rule 1-25 requires only that an individual be a member of the Society in good standing to vote in a bencher election and may only vote for candidates entitled to stand for election in the electoral district to which the member is assigned by the rule. There is provision in the rule for the Executive Director to place a member on a voter list for a district other than the one required by the rule where the Executive Director is satisfied that the member has a significantly greater connection to the electoral district in which the member wishes to vote. There is also a right of appeal to the Executive Committee regarding the decision of the Executive Director.

32. The Society of Notaries Public requires that to be eligible to vote in director elections, members must be in good standing. As elections for directors of the Society of Notaries Public are province-wide, there are no regional election provisions.

33. The underlying principle for participation in director elections is generally that voting should be limited to licensees or registrants who are in good standing and compliant with rules.

34. Past experience at the Law Society suggests there are two issues that merit some consideration.

35. The first is how to treat non-resident members. Rule 1-25(3) provides that a non-resident member may vote in the district in which the member was last eligible to vote as a resident member, or if paragraph (a) does not apply, in District No. 1 (Vancouver). If the transitional board and the transitional Indigenous council indicate that there should be regional elections, then a similar rule should be drafted.

36. The second issue is members who believe they have a closer connection with an electoral district other than the one to which they would be allocated based on the rules. Rule 1-25(5) provides that the Executive Director may, on an application by or with the consent of

a member, place the member on the voter list for a District other than the one required by this rule where satisfied that the member has a significantly greater connection to the District in which the member wishes to vote. Rule 1-25(6) provides members with the right to have the Executive Director's decision reviewed by the Executive Committee. If the transitional board and the transitional Indigenous council indicate that there should be regional elections, it may be that a similar rule should be drafted.

Question

Should the rules set eligibility requirements for participation in director elections beyond a general requirement that the licensee be in good standing?

Appointments

37. Section 8(1)(e) of the Act requires that the board include 5 directors appointed, after a merit-based process, by a majority of the other directors holding office, of whom 4 must be lawyers, one must be a notary public who is not also a lawyer, and at least one must be an Indigenous person.

38. Section 8(1)(d) of the Act requires that the board include 3 directors appointed by the Lieutenant Governor in Council, of whom at least one must be an individual of a First Nation and that these 3 directors must be appointed on the recommendation of the Attorney General made after a merit-based process. Before making recommendations, the Attorney General must consult the board respecting the desired skills, attributes and experience of persons to be appointed, and, for the purpose of the appointment of a director who is an individual of a First Nation, seek nominations by First Nations.

39. Section 230(6) provides that no later than 6 months after the amalgamation date, the directors to be appointed under section 8 (c) (i), if applicable, and section 8 (1) (d) must be appointed.

40. Section 230(7) provides that the terms of office of the directors appointed under section 8 (1) (c) (i), if applicable, and section 8 (1) (d) must not begin before the start of the terms of office of the elected directors.

Question

Should the rules set out or define the process and timeline for developing the criteria respecting the desired skills, attributes and experience of persons to be appointed?

DRAFT

Transitional Board and Transitional Indigenous Council

Committees and Task Forces

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion/Direction**
Date:	**December 10, 2025**

Background

1. The Law Society currently has 13 committees and task forces. The Society of Notaries Public currently has 9 committees. The largest law society in Canada, the Law Society of Ontario, currently has 21 committees, task forces and working groups, including a Restaurant Working Group.

2. In his review of Law Society governance, Harry Cayton made the following observations:

   Not-for-profit bodies seem obsessed with committees and working groups and taskforces. The meetings and administration that these committees generate consume considerable resources, postpone decisions and rarely add value to performance commensurate to the voluntary, staff and financial resources expended on them. It is often suggested that because committees are comprised of unpaid volunteers, they are a cost-effective way of making decisions but in fact they involve many costs; each committee has to have a staff team dedicated to it, travel and accommodation expenses build up and committees tend to generate a life of their own often living on well beyond the period of their usefulness.

   Many regulatory bodies are hampered in achieving efficiency by a legal requirement for statutory committees that they must establish and on which board members must sit. The functions of some of these committees may be desirable, even essential but whether a committee is needed to carry them out is another matter. Boards should carefully consider the establishment of additional committees; are they necessary, will they add something the board cannot do itself, how will they be resourced, will they be advisory or decision-making, will they be time-limited, how will they report to the board?

3. The Act provides that Legal Professions BC must have a discipline committee[1] and the transitional board and the transitional Indigenous council have determined that a licensing committee should be established.[2] The Act also provides that the board may establish an executive committee[3] and, as required, that the board must also establish a committee

[1] Section 89

[2] Section 51(1)

[3] Section 10

whose role is to, by consensus, to nominate persons for the purpose of appointing the CEO.[4]

4. Beyond the required committees, the Act provides that the board may establish committees to assist the board, and that the board may not delegate its authority to establish committees.[5]

Discussion

An Executive Committee

5. The transition team has the option of establishing an executive committee for the new regulator. Both the rules of the Law Society and the by-laws of the Society of Notaries Public provide for an executive committee.

6. The Law Society executive committee has a variety of powers and duties as set out in Rule 1-51, including:

    a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;

    b) authorizing the execution of documents relating to the business of the Society

    c) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to the Executive Director

    d) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;

    e) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;

    f) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources; and

[4] Section 20(2)

[5] Sections 9(3) and 9(4)(a)

g) recommending to the appointing bodies on Law Society appointments to outside bodies.

7. The executive committee of the Society of Notaries Public is comprised of the Secretary, the Past President, the President, the First Vice President, and the Second Vice President, who shall deal with day-to-day issues of the Society between Board meetings.

8. Typically, executive committees:

   a) act on behalf of the full board between regular board meetings when time-sensitive matters arise that can't wait for the next scheduled meeting;

   b) help shape the agenda for full board meetings, ensuring the board focuses on the most important strategic, governance and oversight matters;

   c) assist with strategic oversight and refine strategic initiatives before presenting them to the full board;

   d) review major transactions, and capital allocation decisions that need attention between full board meetings; and

   e) coordinate the work of other board committees and ensure information flows effectively between committees and the full board.

9. While an executive committee can assist the full board by ensuring that more routine matters are dealt with in a time and efficient matter, there are disadvantages:

   a) It may create a divide between "inner circle" directors on the executive committee and other board members, which can lead to feelings of exclusion and diminished engagement from non-executive committee directors;

   b) executive committee members often have access to more detailed information and context, which can make full board discussions less effective if other directors feel they're receiving pre-digested conclusions rather than participating in real deliberation;

   c) it can be unclear whether the executive committee or full board bears ultimate responsibility for decisions, potentially creating governance gaps or confusion about oversight; and

d) executive committees can become self-perpetuating, with the same directors serving repeatedly, concentrating power and potentially limiting fresh perspectives.

10. With a 17-person board, an executive committee may be necessary to ensure oversight of matters such as entry into agreements, coordination of decisions involving appointments and coordination of issues and items for the board agenda. It may be possible to avoid some of the more obvious disadvantages by ensuring appropriate terms of reference and full board oversight of the decisions being made by the full board.

11. It should be noted that the Act is prescriptive with respect to the size and membership of the executive committee; providing that it must consist of 5 members being the chair of the board, a director who is a lawyer, a director who is a notary public, a director who is a regulated paralegal, and a director appointed by the Lieutenant Governor in Council. The Act also sets quorum at 4 of the 5.

Question

Should the rules provide for the establishment of an executive committee and prescribe requirements for its composition and powers and duties?

A Finance and Audit Committee

12. The Law Society has a finance and audit committee with a mandate to provide oversight over the financial affairs of the Law Society. The committee provides recommendations on the annual fees, reviews the annual budgets, and periodically reviews the financial and investment results as needed. In addition, the committee oversees the external audit process, recommends the approval of the audited financial statements to the Benchers, and provides oversight over the internal controls and enterprise risk management of the Law Society.

13. The Society of Notaries Public has a finance committee with a mandate to supervise the financial affairs of the Society.

14. A finance and audit committee can provide focused oversight and expertise in relation to the annual audit process and to the financial health of the regulator. In particular, a finance and audit committee can:

a) provide deeper scrutiny of financial matters than the full board could during regular meetings;

b) liaise with external auditors, ensuring independence and that audit findings are addressed promptly. They can also oversee internal audit functions and ensure recommendations are implemented;

c) help identify and mitigate financial risks and enterprise risks, ensuring proper internal controls and enterprise risk management plans are in place;

d) Oversee the development of the annual budget and make recommendations regarding annual fees and other charges.

15. As finance and audit committees typically include board members with accounting, finance, or audit backgrounds, this expertise ensures that complex financial matters are reviewed by people who truly understand them, leading to better decision-making.

16. There are some disadvantages to delegating financial oversight to a committee, including:

a) Other board members may defer entirely to the committee, assuming financial oversight is "handled" and not maintaining their own fiduciary responsibility;

b) The committee might operate too independently, making decisions or forming perspectives without adequate input from the broader board or without considering how financial matters connect to programmatic goals; and

c) The committee can become too influential, potentially overshadowing the executive director's financial management role or creating an inappropriate power dynamic within the board.

17. These disadvantages can be mitigated through clear terms of reference, regular reporting to the full board, rotation of committee members, and ensuring all directors maintain basic financial literacy.

Question

Should the rules provide for the establishment of a finance and audit committee and prescribe requirements for its composition and powers and duties?

A Governance Committee

18. There is an increasing focus on good corporate governance. Several recent provincial reviews of governance in professional regulatory organizations, including one commissioned by the Law Society, have highlighted opportunities for improvement in governance. Ensuring that the governance of Legal Professions BC keeps pace with the changing governance landscape is an important function of the board.

19. A governance committee can assist the board by:

    a) Regularly developing and updating governance policies systematically;

    b) Reviewing and making recommendations about board composition, recruitment, and succession planning;

    c) Ensuring regular and consistent evaluation of board performance and individual director contributions;

    d) Providing oversight of governance-related risks;

    e) Clarifying roles and responsibilities between board and staff; and

    f) Supporting board education and onboarding programs.

20. While a governance committee could assist the board, the board is likely small enough that it could retain the responsibility for ensuring Legal Professions BC has good and effective governance. It may also be that rather than establishing a separate governance committee, the board could delegate responsibility for governance to the executive committee if one is created. And some governance functions (like board evaluation) may work better at the full board level.

Question

Should the board retain responsibility for effective oversight and accountability for its governance or establish a governance committee to assist?

A Nominating Committee

21. There are two governance tasks where the assistance of a nominating committee[6] may be useful.

Elections

22. The first is the screening of candidates for election and appointment to the board. The Act specifically provides that the board may establish processes for screening candidates in the election of directors and for the screening and nomination of persons to be appointed under section 8 (1) (e). In addition, the Act mentions the requirement that the five board appointments made by the board must implement a merit-based process and that the three appointments to be appointed by the Attorney General must be made after a merit-based process.

23. The Act requires that there be merit-based processes for the selection of the five directors to be appointed by a majority of the board and the three directors to be appointed by the Lieutenant Governor in Council. The result is that 8 of the 17 directors are to be selected based on merit. The remaining 9 directors are to be elected.[1]

24. The reference in section 28 to establishing processes for screening candidates reflects similar provisions in the Professional Governance Act[7] and other provincial statutes.[8] For example, Engineers and Geoscientists BC has a well-defined process for screening

[6] Both the phrase "nominating committee" and "nomination committee" are used to describe a board committee responsible for making recommendations about suitable candidates for election to the board, the more common phrase is "nominating committee" and this phrase will be used in this paper.

[7] **26** (1)The board of each regulatory body must, in accordance with section 23 (4), establish a nomination committee to administer the nomination of registrants who are qualified to be nominated for election to the board in accordance with the process and selection principles referred to in section 25 (1), the bylaws and applicable regulations.

[8] Credit Union Directors Election Regulation — BC Reg 308/90, Safety Authority Act — SBC 2003, c. 38, s.9, and Business Practices and Consumer Protection Authority Act — SBC 2004, c. 3, s.7

candidates for election to the board.[9] Similarly, Forest Professionals BC has comprehensive terms of reference for its nomination committee. [10]

25. Neither the Law Society nor the Society of Notaries Public screen candidates for election. The Law Society does encourage women lawyers, Indigenous lawyers, racialized lawyers, 2SLGBTQI+ lawyers, lawyers with (dis)abilities, young lawyers, and those practising predominantly in solicitors' fields to stand for election, as these groups continue to be underrepresented among elected Benchers.

26. For the benchers appointed by the Attorney General, the Crown Agency and Board Resourcing Office (CABRO) has a process for evaluating candidates for appointment.

27. There are several options available to the transitional team.

28. The first is not to make rules for screening candidates. Screening necessarily filters and perhaps disallows candidates, potentially undermining the principle that those being regulated should have a direct voice in choosing their regulators. Screening candidates may also eliminate voices that challenge conventional wisdom or represent underrepresented segments of the profession. The selection process may also unconsciously favor candidates from similar backgrounds, networks, or ideological perspectives perpetuating existing power structures and reduce diversity of thought, experience, and demographics on the board.

29. The second option is to encourage candidates to self-select through the communication of a skills matrix and board requirements, including a commitment to acting in the public interest. The Law Society already takes this approach to some extent, stating in its communications about bencher elections that the Law Society particularly encourages women lawyers, Indigenous lawyers, racialized lawyers, 2SLGBTQI+ lawyers, lawyers with (dis)abilities, young lawyers, and those practising predominantly in solicitors' fields to stand for election, as these groups continue to be underrepresented among elected Benchers. As the Law Society acknowledges, certain voices continue to be underrepresented, despite its efforts.

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[9] The EGBC Bylaw Part 4 Nominations and Election of the Board sets out the legal requirements and a overview of the committee is available at Role and Overview of the Nomination Committee

[10] FPBC nomination committee Terms of Reference

30. A third option is to establish a nominating committee that evaluates candidates based on criteria, well understood and agreed to by all, which could help address the difficult dynamic created by permitting licensees to elect members of the board. A nominating committee can help ensure that directors have the skills needed to oversee complex regulatory functions, financial management, and legal oversight of Legal Professions BC. It can identify gaps in board composition and actively recruit candidates with complementary skills, backgrounds, and expertise. It can also proactively seek out qualified candidates from underrepresented groups, different practice areas, geographic regions, and career stages which can result in more inclusive representation than popularity-based elections might achieve. Establishing a nominating committee would go some considerable way to harmonizing the electoral process with those appointments to the board that must be merit-based. However, a nominating committee for screening candidates necessarily suffers from the disadvantages noted in paragraph 10. To mitigate these, the board could ensure that the nominating committee membership does not include any current directors, that it has a diverse composition, including Indigenous membership, it employs transparent and consistent criteria that would apply equally to the appointment process, would provide for broad candidate searches, and have term limits for committee members.

31. In general, screening candidates for election to the board can assist in ensuring an effective board.

32. A nominating committee will assess candidates' qualifications, ensuring board members possess necessary legal, regulatory, governance, and public interest expertise relevant to overseeing the regulation of the professions.

33. A nominating committee can mitigate pressures from legal professional associations, law firms, or special interest groups that might seek to influence board composition.

34. A structured nomination process enables intentional consideration of diverse perspectives, including gender, race, practice areas, and critically, public/non-lawyer members who represent consumer interests rather than the profession's self-interest.

35. A nominating committee can plan for term expirations, identify skill gaps, and ensure appropriate balance between lawyers and public members, creating a more cohesive and strategically composed governing body.

36. However, there are potential disadvantages to establishing a nominating committee:

37. The members of the nominating committee may implicitly favour candidates from their own networks or similar professional backgrounds, potentially excluding qualified candidates from smaller practices, rural areas, or non-traditional legal backgrounds.

38. Committees can operate behind closed doors with subjective criteria, making it difficult for stakeholders to understand why certain candidates were advanced or rejected, potentially breeding distrust.

39. If the nominating committee is dominated by licensees without sufficient public representation or external oversight, it may simply institutionalize professional self-interest rather than genuine public protection priorities.

40. Maintaining an active nominating committee requires resources, coordination, and time, potentially slowing board recruitment when quick appointments are needed due to resignations or vacancies.

41. While establishing a nominating committee breaks with the practice of both the Law Society and the Society of Notaries Public, the transitional board and the transitional Indigenous council may wish to keep in mind comments made in two Law Society governance reviews.

42. In the 2012 Interim Report of the Governance Review Task Force[11], Watson Consulting observed:

> *A nominating committee is usually tasked with overseeing board recruitment, nomination and election processes. This committee may also be assigned responsibility for processes relating to committee appointments. It may also play a role in overseeing the nomination and succession planning processes of board officers. Some boards combine their governance and nominating committees into one committee.*
>
> *There are several tasks that could be assigned to a Bencher Nominating Committee, including: overseeing the Bencher election process, including pre-information election sessions and the process for electing "at large" Benchers; recommending Committee appointees to the Executive Committee for approval; and overseeing the Second Vice-President nomination and election process.*

[11] It should be noted that the chair of the transitional board was the chair of the Law Society 2012 Governance Review Task Force.

43. In his 2021 report on Law Society governance, Harry Cayton commented:

> *Just as a registrant needs to demonstrate their competence to practice their profession, those seeking a leadership role within a regulator should demonstrate their competence to lead. Some regulators have introduced induction days for potential candidates prior to elections to ensure they are aware of the responsibilities and requirements of the role. A nominations committee may review candidates, assessing knowledge and competence before recommending a candidate for election. A nominations committee is usually independent of an existing board and fulfils a similar role to the short-listing process for candidates for a job.*[12]

Question

Does the transitional board and the transitional Indigenous council support the idea of a nominating committee for the purpose of identifying and vetting candidates for election and appointment enough to see draft rules for this?

Committees

44. The Legal Professions Act, s.9 provides that the benchers may establish committees in addition to those established by the Act and also provides that the benchers may make rules providing for the appointment and termination of appointments of persons to committees. In keeping with that authority, Rule 1-49 provides that, subject to these rules, the President may appoint any person as a member of a committee of the benchers and terminate the appointment.

45. In practice, the incoming president of the Law Society appoints the membership of the committees, task forces and working groups for the coming year, usually in December of the preceding year. There are guidelines with respect to the appointments to some of the committees but, in general, the incoming president has a broad discretion to make the appointments.

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[12] Harry Cayton, Report of a Governance Review of the Law Society of British Columbia November 2021 at p.13 paragraph 4-17. Cayton recommended that the Law Society should introduce an induction day for all candidates for election prior to them deciding whether to stand for election and consider creating a nominations committee p.28 paragraph 7.4.4

46. The by-laws of the Society of Notaries Public provide that the President shall within 30 days following every Annual General Meeting, appoint from the Directors a Chair, Vice-Chair, at least one Member, and Non-Members to all standing committees to serve for one year or until their successors have been appointed, with power of the Chair of the Committee to add additional Members.[13]

47. In practice, the Society seeks expressions of interest from members asking them to identify three committees on which they would be interested in participating. A number of committees have defined memberships that effectively limit membership to directors. The President appoints members on an ad hoc basis given that there is no criteria or competency framework.

48. As noted above, the Act provides that the board may establish committees to assist the board, and that the board may not delegate its authority to establish committees. The Act is silent about who makes the appointments, although the Act does provide direction about the membership of both the discipline committee and the licensing committee.

49. The transitional board and the transitional Indigenous council may wish to consider three possible options.

50. Option one: Continue the practice of both the Law Society and the Society of Notaries Public and have the chair of the board make the appointments.

51. Option two: Have the entire board participate in making the appointments, establish whatever criteria it considers necessary, including any merit-based requirements for the appointments, review the candidates and whatever material is provided in support of the appointments and making the decisions about appointments.

52. Option three: Have a nominating committee review the candidates against criteria established by the board and whatever material is provided in support of the appointments and make recommendations to the board about the appointments.

53. The benefits and possible disadvantages of the first option are likely obvious to the transitional board and the transitional Indigenous council. However, the benefits and disadvantages of options 2 and 3 may require some explication.

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[13] Society of Notaries Public of BC, by-law 8.03

54. Having the entire board review the candidates, their qualifications and how they align with the board's need for assistance has some benefit:

55. All of the directors gain a shared understanding of who serves in what capacity and why which assists with organizational transparency and helps ensure committee appointees align with the board's strategic vision.

56. Having all the directors participate in the evaluation process brings more eyes to potential red flags and a wider range of perspectives on candidate suitability. Different board members may notice different strengths or concerns based on their varied experiences.

57. Broader board involvement in the appointments process may enhance perceived fairness and legitimacy, which is particularly important when the committees make decisions affecting licensees' right to practice law.

58. There are, however, disadvantages to the full board participating in the review and evaluation of potential candidates.

59. Full board review of every candidate is time-intensive and will burden board members with administrative work better handled by a smaller group, particularly given the number of potential candidates that could be expected for the required and recommended committees.

60. Larger groups can fall into consensus-seeking behavior or political maneuvering. Individual board members may defer to dominant voices rather than conducting independent evaluation.

61. Discussing candidates' qualifications and any concerns becomes more complicated with more people involved, potentially raising privacy issues or making candid assessment more difficult.

62. The opportunity cost of time spent on detailed candidate review is time not spent on strategic governance, policy development, and oversight—the board's core functions.

63. The benefits and disadvantages of having the nominating committee do the preliminary committee appointment work are generally the inverse of the benefits and disadvantages of engaging the entire board. Having a nominating committee review the candidates, their qualifications and how they align with the board's need for assistance has some benefits.

64. A nominating committee can meet more frequently than the board, review candidates more quickly, and fill committee vacancies promptly without requiring full board scheduling and deliberation.

65. A nominating committee can establish consistent vetting procedures, maintain candidate pipelines, conduct preliminary interviews, and reference checks more systematically than the full board.

66. A nominating committee can discuss sensitive matters (candidate weaknesses, conflicts of interest, past performance issues) more candidly and with better confidentiality controls.

67. There are, however, potential disadvantages to establishing a nominating committee.

68. Board members may feel disconnected from committee composition decisions and less invested in appointees they didn't help select, creating information asymmetries within the board.

69. A nominating committee may develop blind spots, favor similar backgrounds or viewpoints, or fall into patterns without the benefit of the broader perspective of the board to challenge assumptions.

70. The public, licensees and other stakeholders may perceive a nominating committee creating a less democratic process, especially if controversial appointments or apparent conflicts of interest arise.

71. If the transitional board and the transitional Indigenous council are inclined to establish a nominating committee, some of the disadvantages could be overcome by delegating to the nominating committee the responsibility for vetting candidates for appointment and having the nominating committee make recommendations to the board for approval. The board would provide the nominating committee with terms of reference that set out a clear mandate, require regular reporting to the board, establish policies on conflicts of interest and selection criteria and provide for periodic rotation of nominating committee membership to prevent entrenchment.

Question

Does the transitional board and the transitional Indigenous council support the idea of a nominating committee for the purpose of identifying and vetting candidates for appointment to committees enough to see draft rules for this?

A Final Note

72. Committees matter. They can assist the board by bringing to the table experience, skills and knowledge that is not otherwise present at the board. They can engage with the details of Legal Professions BC while ensuring that the board is kept informed of matters critical to the oversight of operations and implementation of the organizational strategy. They can free the board to focus on its core obligations of regulating the profession, establishing standards and programs and ensuring the independence of licensees in the public interest. However, to be effective, committees require good terms of reference and a board that ensures they abide by and implement their terms of reference. Otherwise, committees can become mini-boards with their own agenda rather than assisting the board with its agenda.

73. This final point may be particularly true of Legal Professions BC and the statutory prohibition of directors participating on various committee.

DRAFT

Transitional Board and Transitional Indigenous Council

Trust Accounts – Policy Report

To:	**Transitional Board** **Transitional Indigenous Council**
Purpose:	**Discussion**
Date:	**December 10, 2025**
Version:	**V1**

I. Background

1. Trust accounts play a critical role in the practice of law because they allow legal professionals to hold and manage money that belongs to clients or third parties. For example, a lawyer, notary public, or regulated paralegal (after amalgamation date) may receive money into a trust account from a client or third party through a retainer, settlement, real estate, court-ordered or other funds related to the provision of legal services. A trust account safeguards these funds by keeping them separate from the legal professional's own money.

2. Many legal professionals need to operate a trust account, depending on their practice area and the model through which they deliver services, and receive and disburse trust funds for client matters, such as for conveyances (sales and purchase proceeds), or litigation (settlement funds). In addition, law firms of different sizes may choose to have a pooled trust account through which all their legal practitioners operate. The volume of transactions processed through legal professionals' trust accounts underscores their importance to the broader economy, and in turn, requires confidence in rules that ensure the protection of client money.

3. At its May 2025 meeting, the transitional board and transitional Indigenous council provided the direction that, when possible, one of the goals for the rules and code of professional conduct drafting is to provide uniformity of professional responsibility obligations across the legal professions. At its November 2025 meeting, the transitional board and transitional Indigenous council discussed approaching the rules and code of professional conduct drafting under the presumption that privilege will apply to lawyers, notaries public and regulated paralegals after amalgamation date.

4. This policy paper will focus on how the transitional board and transitional Indigenous council may wish to approach the drafting for the first rules and code of professional conduct for this topic. Both the Notaries Society and Law Society have rules respecting trust accounts and related areas such as general accounting practices, and rules respecting anti-money laundering and anti-terrorist financing ("AML/ATF") and client identification and verification ("CIV") requirements. This paper will provide a brief overview of the current approaches to trust accounts of the Notaries Society and Law Society, followed by a discussion of advantages and disadvantages of prescriptive and outcomes-focused rule drafting. The paper will also discuss the need to standardize the current practices for notaries public and lawyers for amalgamation date, the potential for impact on the Law

Foundation, as well as some of the specific requirements for rules as set out in the *Legal Professions Act*.

II. Alignment to the Act

5. Part 12 of the *Legal Professions Act* addresses trust accounts and sets out some mandatory rule requirements that the transitional board and transitional Indigenous council must make, while leaving discretion for other potential rules on this topic.

6. Section 167 sets out a mandatory requirement for a licensee or law firm who holds money in trust in that they must establish a trust account and then deposit the funds in a savings institution designated under the rules. Section 167(2) to (4) also establishes that the Law Foundation's board of trustees is responsible for approving the interest rate for trust accounts, and that licensees and law firms must remit the interest to the Law Foundation in accordance with the rules. Section 167(5) permits the licensee or law firm to establish a separate trust account with interest paid to the client on the client's request.

7. Section 168 establishes the process respecting unclaimed trust funds, obligating licensees and law firms to pay to the regulator unclaimed trust funds in accordance with the rules. The regulator is also required to establish and maintain an unclaimed trust fund program, paying any remaining unclaimed money to the Law Foundation after 5 years. Section 168 also sets out the right to claim the trust money against the regulator, and the Law Foundation's obligation to indemnify the regulator for any future claims respecting the funds.

8. Section 169 provides a mandatory duty on a licensee or law firm to notify the regulator if their pooled trust account is overdrawn by an amount exceeding $2,500 or another amount as specified in the rules. However, there is concern about the current language used in section 169 with the use of the phrase "overdrawn", instead of "shortage". A "shortage" is when a legal professional's financial obligation to a client exceeds the client's trust amount, and a legal professional should be required to report a trust shortage to the regulator if it is over a certain amount. In a pooled trust account, the legal professional may have a shortage without going into an overdraft if they are using other clients' funds held in the account to cover the shortage. In addition, the mandatory obligation to report a shortage should apply to both a pooled trust account, as well as any separate trust accounts set up pursuant to section 167(5), and accordingly, references to "pooled" should be removed from section

169. The transitional board and transitional Indigenous council may wish to request that this section of the Act be amended prior to amalgamation date.

9. Section 170 authorizes the CEO (or their delegate, in practice) to perform a trust review or audit, including the power to request information, have all or parts of records, books and accounts reviewed or audited, and provide the regulator with an accountant's report. Section 170(2) allows the CEO to exempt certain classes of licensees or law firms from the trust account review and auditing process, and to determine the qualifications of those who perform a review or audit.

10. Section 171 mandates that the board must make rules respecting trust accounts, with subsection (2) specifying that the board must make rules designating savings institutions and classes of savings institutions in which licensees and law firms may deposit money that they hold in trust in, as well as rules respecting payment to the regulator of unclaimed funds held in trust in accordance with section 168.

11. Section 171(3) then provides a list of suggested topics for rules, including:

- establishing standards for accounting and management of funds held in trust;
- providing for precautions to be taken by licensees and law firms;
- permitting pooled trust accounts;
- governing the payment of interest on trust accounts to the Law Foundation;
- creating and maintaining the regulator's unclaimed trust funds account;
- establishing procedures to manage claims for unclaimed trust funds once transferred to the regulator;
- requiring licensees and law firms to:
    - use an approved form of agreement at designated savings institutions with the approved interest rate and fees set by the Law Foundation;
    - tender the agreement before any deposit; and
    - annually reporting to any savings institution information required under the *Canada Deposit Insurance Corporation Act* (Canada);
- specifying an amount different than the standard set by the Act for an overdrawn pooled trust account;
- authorizing the CEO to suspend the licence of a licensee or permit of a law firm for failure to comply with a trust account review or audit;
- respecting the recovery of the regulator's costs for a trust review or audit if the licensee or law firm has not complied with the Act, rules, or code of professional conduct; and

- establishing requirements for trust accounts for former licensees.

12. Although not mandatory under the Act, many of the suggested rules under section 171(3) are required to ensure that licensees, law firms, and the regulator have a functioning trust accounting program.

III. Discussion

Current approaches

13. Both the Notaries Society and the Law Society have professional obligations and accounting standards set out in their respective rules and codes of professional conducts. However, the organizations have approached drafting the rules respecting those standards in different manners (discussed below). At its core, the rules and code of professional conducts' obligations protect the public's money held by notaries and lawyers from misconduct respecting the funds, from a spectrum of activities ranging from minor accounting errors to intentional theft to money laundering.

14. The Law Society takes a prevention with oversight approach to its trust accounting program. Trust funds must be related and are restricted to the provision of legal services, and the rules mandate that lawyers keep detailed books and records for all accounting matters. The Law Society's approach may be seen as transparent and detailed risk-mitigation measures for lawyers and the regulator, as enshrined in the rules, in advance of and in response to money-laundering vulnerabilities identified by the Cullen Commission's findings in 2022.[1]

15. The Law Society's trust accounting rules, including its rules specific to AML/ATF activities and CIV requirements, were commended by the Cullen Commission. The Cullen Commission noted that trust rules are "critically important" to the Law Society's overall efforts to address money laundering, and that oversight is:

> [C]rucial, given that others, particularly law enforcement, cannot compel lawyers to produce privileged information or documents. The trust accounting rules and audit

[1] The Honourable Austin F. Cullen, Commissioner, *Commission of Inquiry into Money Laundering in British Columbia – Final Report* (June 2022) ("*Cullen Commission Report*"), pages 1177-1178.

process significantly mitigate the money laundering risks associated with trust accounts.[2]

However, some lawyers have informally indicated that they find the rules challenging to interpret and apply. This contrast of perceptions of the Law Society's rules speaks to the difficulty in drafting rules that set out and maintain specific requirements in response to an identifiable risk against the administrative cost and disciplinary consequences placed on the legal profession to uphold those standards.

16. Following the Cullen Commission's report, in July 2022, the Law Society created the Trust Review Task Force (the "Task Force").[3] The Task Force included paralegals, notaries and lawyers, and although focused on the Law Society's current trust accounting rules, the Task Force also sought to anticipate the impending changes in a move toward Legal Professions BC.[4] The Law Society's Benchers approved the Task Force's report in February 2025, with the report determining that the objectives of the trust accounting and related rules should include the following:

    (a) protecting funds entrusted to lawyers from loss;
    (b) maintaining public confidence in the integrity of the profession and in the ability of the Law Society as the regulator;
    (c) mitigating the risk of legal services, including a trust account, from being used to further dishonest or illegal conduct, including money laundering and terrorist financing;
    (d) setting clear, effective requirements for the handling of funds entrusted to legal professionals to ensure funds are accounted for and properly handled;
    (e) promoting strong regulatory oversight such that the regulator is able to assess risks and conduct audits to identify issues and investigate conduct concerns;
    (f) deterring deliberate, reckless, or grossly negligent handling of client funds and encouraging financial responsibility in respect to practice obligations; and

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[2] *Cullen Commission Report*, pages 22-23.

[3] Law Society of British Columbia, Trust Review Task Force Terms of Reference (July 2022).

[4] Law Society of British Columbia, *Trust Review Task Force – Final Report* (February 2025) ("*TRTF Report*"), paragraphs 16-18.

(g) ensuring that the regulatory requirements placed on legal professionals through the imposition of necessary accounting rules is proportionate to the risk that the rules seek to prevent.[5]

The Law Society anticipates draft amendments to its current trust accounting rules from the Task Force's recommendations in early 2026.

17. The Notaries Society takes a different approach to its trust accounting rules, which is more focused on the outcome expected of a notary public rather than specifying how the notary must achieve that outcome. The Notaries Society's rules include rules relating to how a notary public must manage their trust and other accounts, and there are also rules related to AML/ATF prevention measures, such as limits on cash transactions. The Notaries Society also reported to the Cullen Commission.[6]

18. One difference when comparing the Notaries Society's rules with those of the Law Society's relates to the claim of privilege over a trust account and the reporting to the federal government or the duty to withdraw from providing legal services that result. Currently, notaries public cannot claim privilege over their trust accounts, and accordingly, notaries public are required to report suspicious transactions to the federal government under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.[7] Lawyers claim privilege over their trust accounts, and therefore do not report to the federal government, but lawyers also have a duty to withdraw from providing legal services in the face of suspicious circumstances. Notaries do not currently have an equivalent obligation to withdraw from the provision of their legal services for suspicious circumstances.

19. Given the transitional board and transitional Indigenous council's direction to try to establish the same professional responsibilities and ethical obligations across the legal professions, and the presumption that privilege will apply to all legal professionals following amalgamation date, part of the work required for drafting new rules respecting trust accounts will include a comparison and standardization of the approach of the two existing legal professions, plus incorporating the perspective of the regulated paralegals.

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[5] *TRTF Report*, pages 6-7.

[6] *Cullen Commission Report*, pages 1215-1232.

[7] SC 2000, c 17.

Prescriptive or outcome-focused rule drafting

20. In general, there are two ways to approach rule drafting. The first is what may be called a "prescriptive" approach. A prescriptive, or rules-based approach sets out detailed and specific requirements that must be followed. It provides licensees and law firms with clear guidance on what to do, how to do it, and when. Some of the advantages of a prescriptive approach to rule drafting are:

- Transparency:
    - Because the rules are specific, licensees and law firms know what is required to meet the specified standards.
- Clarity of standards required:
    - Rules provide guidance to ensure internal control measures for licensees and law firms to reduce errors.
- Ease of enforcement:
    - Compliance may be measured objectively in that either the rule was followed, or it was not.
- Potential for lower interpretive burden:
    - If the rules are drafted following the drafting guidelines and requirements for plain language writing, then licensees and law firms may be able to follow step-by-step requirements.

21. Some of the disadvantages to prescriptive rule drafting include:

- Fixed and inflexible:
    - Detailed requirements may not address unique circumstances or evolving practices.
- Administrative cost:
    - More detail means rules may become longer, more complex, and harder to navigate.
- Harder to amend:
    - Updating the rules takes more effort, and rules may become outdated as technology and practices change.

22. Another approach is an outcome-focused, or a principle-based, approach which sets out broader obligations or expected outcomes, while giving licensees and law firms discretion

on how to meet those obligations or outcomes. Some of the advantages of outcome-focused rule drafting include:

- Flexibility:
    - Licensees and law firms may tailor their compliance in accordance with their individual and client needs, resources, and technology skills.
- Outcome oriented:
    - Encourages licensees and law firms to focus on achieving the rule's purpose and exercising professional judgment.
- Adaptable to new risks:
    - Broader rules may remain more relevant as circumstances or technology change.
- Less administrative detail:
    - Rules are shorter and easier to navigate.

23. Some of the disadvantages of outcome-focused rule drafting include:

- Ambiguity:
    - Outcome-focused approaches are open to interpretation, leaving uncertainty as to whether an action is compliant with the rule.
- Lack of clarity:
    - Without the details of prescriptive rules, internal controls are not established.
- Inconsistent practices:
    - Different licensees and law firms may interpret the same rule differently, reducing the standardization across the legal professions.
- More complex enforcement:
    - The regulator must assess context, intent, and reasonableness instead of compliance with a checklist, which is more subjective than objective.
- Administrative cost on licensees and law firms:
    - Requires more training and exercise of professional oversight.

24. The Law Society's Trust Review Task Force considered the two approaches but declined to recommend an outcome-focused approach to drafting the trust accounting and related rules.[8] The Task Force's report stated that outcome-focused "regulation may not meet with the "onerous obligations" the courts have applied to the law societies in regulating in the

[8] *TRTF Report*, pages 22-23.

public interest."[9] The Task Force's report also stated that there was "considerable value in a degree of prescriptiveness to how to maintain proper accounting records."[10]

25. In practice, there may be a way for the transitional board and transitional Indigenous council to compromise and achieve the advantages of both approaches while limiting the disadvantages. If drafted in accordance with the drafting guidelines, then the new rules will be drafted with consideration respecting the need for a rule, to write in plain English, and in reflection of the section 7 guiding principles under the *Legal Professions Act*. In some cases, more detailed rules are required to ensure that all licensees and law firms understand the standards and steps required by the regulator, to protect and account for trust funds, and to allow the regulator to do its role in ensuring those standards are maintained. This will be reviewed during the rule drafting process.

Discussion

1) What are your thoughts regarding prescriptive and outcome-focused approaches to rules drafting respecting trust accounting and related rules?

Standardization across the legal professions

26. Following its November 2025 meeting, the drafting for the rules and code of professional conduct will presume that privilege applies to lawyers, notaries public and regulated paralegals after amalgamation date. In drafting the first trust accounting rules for the new regulator, the transitional board and transitional Indigenous council will need to consider the impact on the two currently regulated legal professions (lawyers and notaries) as part of the transition. Efforts are needed to standardize the trust accounting rules for lawyers and notaries. For example, there are currently differences in cash amounts allowed to be deposited in a trust account, float amounts in trust accounts, and more.

27. The transitional board and transitional Indigenous council, in keeping with the effort to provide uniformity in the establishment and regulation of professional obligations across

[9] *TRTF Report*, pages 22-23.
[10] *TRTF Report*, page 23.

the legal professions, may want to presume that regulated paralegals will need or want to use a trust account after amalgamation date and draft the rules accordingly.

Impact on the Law Foundation

28. The Law Foundation faces a risk to its funding arrangements through the interest it will receive from notaries public's trust accounts because of the dissolution of the Notary Foundation under section 243 of the *Legal Professions Act*. In brief, there is a risk that there could be difficulties, delay, errors or confusion associated with changing the account setup of each individual notarial trust account to (a) change the designated beneficiary of the interest from the Notary Foundation to the Law Foundation, and (b) change the interest rate from that negotiated with the Notary Foundation to the rate negotiated with the Law Foundation. This will be a complicated and, in many cases, manual operation across multiple financial institutions. The Law Foundation will be exposed to a real risk of problems occurring during this process in which – possibly as a result of error – incorrect, lower rates are applied that are not agreed to by the Law Foundation, as required by the Act. The process of dealing with and rectifying such problems would introduce uncertainty into the relationships between the Law Foundation and financial institutions.

29. The Law Society, Notaries Society and Law Foundation are working together to ensure a smooth transition plan is in place to reduce the risk, which may be operational with the regulator providing resources and assistance. However, the transitional board and transitional Indigenous council may need to issue some transitional rules for a period following amalgamation date to assist notaries public in transitioning their trust accounts in accordance with the requirements under the *Legal Professions Act* and may anticipate seeing draft rules to mitigate the risk.

Discussion question

2) What are your thoughts on standardizing the professional responsibility obligations across the legal professions for trust accounting and related rules?

Regulation of law firms

30. At its November 2025 meeting, the transitional board and transitional Indigenous council discussed the idea of issuing permits to law firms. The *Legal Professions Act* defines in section 1 a "law firm" as a sole proprietorship, law corporation, partnership or any other

business structure, arrangement, or legal entity through which one or more licensees practise law. The Act also provides to the regulator the authority to discipline a law firm in a manner equivalent to individual licensees.[11]

31. Under the current *Legal Profession Act*, the trust accounting responsibilities and obligations are shared among licensees and law firms. For example, if there has been a serious breach of the Law Society Rules, either trust accounting or CIV, and after it has been investigated, a lawyer or managing partner(s) responsible for the breach may be disciplined. In some situations, in which the violation appears to be a law firm wide concern, the Law Society may hold the managing partners of the law firm accountable for the lack of implementing required measures to ensure compliance.

32. In the new *Legal Professions Act*, under section 171(3)(i), the transitional board and transitional Indigenous council may make rules that authorize the CEO to suspend the permit of a law firm for failure to comply with a trust review or audit. The utility of this rule-making permission is predicated on the regulator determining that permits will be issued to law firms, or at least law firms that maintain a trust account. In considering the idea of having Legal Professions BC issue permits for some law firms, the transitional board and transitional Indigenous council may wish to discuss the option to suspend a law firm's permit for failure to comply with a trust review or audit, and whether that option is needed for amalgamation date. In addition, further information is required to understand the potential impact of permits on the regulator and legal professionals.

Discussion questions

3) What are your thoughts on regulating law firms in respect to the trust accounting and related rules?

4) What are your thoughts on whether law firm regulation for trust accounting purposes should require permits, and if so, are permits required for amalgamation date?

[11] For example, section 87 of the *Legal Professions Act*, respecting professional conduct orders, permits the CEO to do, by order, the following: reprimand a law firm; require the law firm to submit to a practice review; impose limits or conditions on a law firm's permit; and, impose a fine on a law firm.

Anti-money laundering and anti-terrorist financing, and client identification and verification

33. The transitional board and transitional Indigenous council will need to maintain the standards of AML/ATF and CIV requirements established for notaries public and lawyers and continued into the new rules to apply to all legal professionals who use a trust account. Currently, the Law Society is part of the Federation of Law Societies Anti-Money Laundering Standing Committee, along with other law societies across Canada, that establishes and reviews Model Rules on CIV that are adopted by each law society. The standing committee regularly discusses updates to the Model Rules.[12]

34. Under section 171(3)(a) of the *Legal Professions Act*, the board must make rules establishing the standards of accounting for and management of trust funds, and section 171(3)(b) states that the board may make rules providing for precautions to be taken by licensees and law firm for care of trust funds. This includes rules relating AML/ATF and CIV, such as standards on cash limits for deposits or restrictions on money to be taken only in proportion to the provision of legal services or when client identification or verification is required. There will also need to be other rules to establish how licensees and law firms should manage their trust accounts as well as other general accounting practices.

35. The transitional board and transitional Indigenous council will need to balance the federal standards expected of legal professionals in relation to AML/ATF and CIV requirements against the requirements on licensees and law firms of rules in relation to trust accounts and accounting practices. The transitional board and transitional Indigenous council should anticipate more detailed explanatory notes to the proposed draft rules on this topic, highlighting any standardization, AML/ATF, and CIV considerations, including whether a proposed draft rule is one of the Model Rules.

Discussion question

5) Is there any additional information that should be included in the drafting notes for the proposed draft rules on trust accounting and related topics?

[12] Federation of Law Societies of Canada, "Fighting Money Laundering and Terrorist Financing" http://flsc.ca/what-we-do/fighting-money-laundering-and-terrorist-financing/.

Additional rule requirements under the Act

36. As outlined above, section 171(2) of the *Legal Professions Act,* which sets out some mandatory requirements for rules respecting trust accounts, is one of the few sections of the Act that mandates that the board must make rules, instead of may make rules. This section of the policy paper briefly discusses the need for certain rules under the Act, and any standardization requirements between the current Notaries Society and Law Society practices.

Designating savings institutions and classes of savings institutions

37. Section 171(2)(a) states that the rules must designate savings institutions and classes of savings institutions. The Notaries Society currently designates an "accredited financial institution" as:

    a. a bank included in Schedule I or II to the Bank Act (Canada);
    b. a trust company which is insured by the Canada Deposit Insurance Corporation and has not been declared by the Society as unacceptable for use by a Member; and
    c. a credit union approved by the BCFSA and Credit Union Deposit Insurance Corporation of B.C. for the receipt of trust funds.[13]

    The Law Society's rule requires that the savings institution accepts "demand deposits", has an office in British Columbia, and is insured by either the Canada Deposit Insurance Corporation, or the Credit Union Deposit Insurance Corporation of British Columbia.[14]

38. The Law Society's rule requires that the savings institution accepts "demand deposits", has an office in British Columbia, and is insured by either the Canada Deposit Insurance Corporation, or the Credit Union Deposit Insurance Corporation of British Columbia.[15]

39. One common factor across the current Notaries Society and Law Society rules is the need for a designated savings institution to have deposit insurance over the funds. This requirement is integral for the operation of a trust account by a legal professional to protect

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[13] Notaries Society Rules, Rule 1.2.
[14] Notaries Society Rules, Rule 1.2.
[15] Notaries Society Rules, Rule 1.2.

the money in the trust account since the money belongs to a client or third party and not the legal professional managing the account.

Unclaimed trust funds payment to the regulator

40. Section 171(2)(b) states that the board must make rules respecting the payment to the regulator of unclaimed funds held in trust. The Notaries Society allows for notaries public to pay to the regulator unclaimed trust funds along with a prescribed reporting form, if the notary has been unable to locate or contact their client after 2 years, or if the client has advised the notary in writing that they will not be cashing the cheque or otherwise claiming the trust funds.[16]

41. The Law Society's current rule also has requirements respecting the information a lawyer is required to provide to the regulator, including providing in writing the efforts that the lawyer has made to locate the client for 2 years.[17] If the Executive Director is satisfied that the lawyer has made appropriate efforts, then the Law Society accepts the money.[18]

42. Both the Notaries Society and Law Society have a 2-year requirement for the notary or lawyer to try to locate a client to claim their trust funds. However, the Notaries Society's rule allows for a notary public to pay the funds to the regulator before the 2-year period, in instances when the notary knows that a client is not going to either cash the cheque or request the funds. These instances may occur when the amount is miniscule or when the client has communicated their intention not to cash or claim. If a licensee can demonstrate to the regulator that a client is not going to claim the funds prior to a 2-year period, then the licensee should be allowed to pay to the regulator those funds so that the unclaimed trust funds process as outlined in section 168 of the Act may proceed. The client is not at risk of losing the funds as outlined in section 168, and the licensee is able to alleviate their risk posed by having stale dated cheques and unclaimed funds in their trust account.

Discussion question

6) What are your thoughts on allowing licensees to pay unclaimed trust funds to the regulator based on a time requirement?

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[16] Notaries Society Rules, Rule 3.58.

[17] Law Society Rules, Rule 3-89.

[18] Law Society Rules, Rule 3-89(4).

7) If there is a time limit, what are your thoughts on allowing licensees to pay unclaimed trust funds to the regulator based on the licensee's demonstration that the client is not going to claim the funds?

Overdrawn pooled trust fund account

43. Section 169 of the *Legal Professions Act* establishes that a licensee or law firm must notify, as soon as practicable, the regulator if their pooled trust account is overdrawn by either $2,500 or an amount specified in the rules. Section 171(3)(h) also provides that the board may make rules specifying a different amount that triggers a mandatory reporting obligation on a licensee or law firm for an overdrawn pooled trust account. As mentioned above (paragraph 8), the transitional board and transitional Indigenous council may wish to recommend an amendment to the Act to change "overdrawn" to "shortage" and remove "pooled" from the requirement so that it pertains to all trust accounts, including separate and pooled.

44. Both the Law Society and Notaries Society's current rules specify amounts that require mandatory reporting to the regulator when a trust shortage occurs, with the Law Society's being $2,500 and the Notaries Society being $5,000. In this instance, although the transitional board and transitional Indigenous council may wish to lower or raise the mandatory reporting requirement for a trust shortage, the government has included a suggested amount of $2,500 for overdrawn trust balances. For the purposes of a first set of rules, it may be the most straightforward approach to follow the amount as specified in the Act, pending any possible amendment to the Act to clarify the language in section 169 before amalgamation date.

45. The Act also only requires that the licensee or law firm report the overdrawn amount to the regulator. The Law Society and Notaries Society both take the obligation a step further and require the lawyer or notary public to immediately pay funds into the trust account to eliminate the shortage, in addition to reporting to the regulator.[19] A mandatory requirement on a licensee or law firm to eliminate the shortage protects the integrity of the pooled funds and all the clients' money and transactions that may be impacted if the shortage was not corrected.

[19] Law Society Rules, Rule 3-74(1); Notaries Society Rules, Rule 3.47.

Discussion question

8) What are your thoughts on requesting an amendment to sections 169 and 171(3)(h) of the *Legal Professions Act*, to amend the reporting requirements for "shortages" in a trust account?

9) What are your thoughts on a mandatory requirement for licensees to eliminate a trust shortage in a trust account?

IV. Discussion questions

46. In summary, the main discussion and direction items for the transitional board and transitional Indigenous council respecting trust accounts are:

1) What are your thoughts regarding prescriptive and outcome-focused approaches to rules drafting respecting trust accounting and related rules?

2) What are your thoughts on standardizing the professional responsibility obligations across the legal professions for trust accounting and related rules?

3) What are your thoughts on regulating law firms in respect to the trust accounting and related rules?

4) What are your thoughts on whether law firm regulation for trust accounting purposes should require permits, and if so, are permits required for amalgamation date?

5) Is there any additional information that should be included in the drafting notes for the proposed draft rules on trust accounting and related topics?

6) What are your thoughts on allowing licensees to pay unclaimed trust funds to the regulator based on a time requirement?

7) If there is a time limit, what are your thoughts on allowing licensees to pay unclaimed trust funds to the regulator based on the licensee's demonstration that the client is not going to claim the funds?

8) What are your thoughts on requesting an amendment to sections 169 and 171(3)(h) of the *Legal Professions Act*, to amend the reporting requirements for "shortages" in a trust account?

9) What are your thoughts on a mandatory requirement for licensees to eliminate a trust shortage in a trust account?

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