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Law Society of Alberta to Hold a Special Meeting to Debate its Power to Mandate Indigenous Cultural Competency Training

By: Koren Lightning-Earle, Hadley Friedland, Anna Lund, Sarah N Kriekle, Heather (Hero) Laird

Matter commented on: Notice of a Special Meeting of the Law Society of Alberta dated January 26, 2023

Editor's Note: *This is a guest post from our colleagues at the University of Alberta and in the legal profession in Alberta. A number of members of the University of Calgary Faculty of Law have signed the open letter referenced later in this post, a copy of which can be found [here](#).*

This post provides background information about the [Special Meeting of the Law Society of Alberta](#), which will be held on Monday February 6, 2023. At Monday's meeting, practicing lawyers in the Province of Alberta will be asked to vote on whether their self-governing organization should be able to mandate training on specific topics to ensure that lawyers in the province are minimally competent.

The target of this meeting is the Indigenous Cultural Competency training that Alberta lawyers were mandated to complete, in response to the [Truth and Reconciliation Commission's](#) Call To Action #27. We argue that mandating this course was in the public interest and an appropriate and necessary step for the Law Society to take to address a significant educational gap that many lawyers in this province have about the history and laws of Indigenous peoples. This educational gap has negatively impacted the quality of justice received by Indigenous peoples in the Canadian legal system. Monday's vote also raises bigger questions about the ability of the Law Society of Alberta to maintain public confidence by fulfilling its [central purpose](#) of "promoting and enforcing a high standard of professional and ethical conduct by Alberta lawyers."

The Law Society and Why They Called This Meeting

The Law Society of Alberta regulates lawyers in this province; lawyers are a self-regulating profession. The Law Society is governed by [24 benchers](#), 20 of whom are elected by lawyers and 4 of whom are appointed by the Minister of Justice and Solicitor General. If 50 members ask the Law Society to call a special meeting to debate specific business, the Law Society is obliged to call the meeting under section 28 of the *Legal Profession Act*, [RSA 2000, c L-8](#). Any resolution adopted at a special meeting is not binding on the Benchers. However, if the Benchers do not implement the resolution at their next meeting, 50 members can request the resolution be put to a referendum of all active members of the Law Society. A motion put to referendum passes if two-thirds of all lawyers who vote support it, and it is possible to implement it by law.

The February 6th meeting has been called in response to a petition signed by 51 lawyers calling for a repeal of rule 67.4 of the [Law Society of Alberta's Rules](#). Rule 67.4 gives the Benchers of

the Law Society the power to “prescribe specific continuing professional development requirements to be completed by members, in a form and manner, as well as time frame, acceptable to the Benchers.” Rule 67.4 was adopted in December 2020 and the Benchers have only used their power under this rule once: to mandate that all active Alberta lawyers take a course in Indigenous cultural competency.

Mandatory Indigenous Cultural Competency Training for Alberta’s Lawyers

In [October 2020](#), the Benchers of the Law Society of Alberta approved a requirement that all Alberta lawyers complete mandatory training in Indigenous history and cultural competency. This decision was an important step towards reconciliation and represented the culmination of years of hard work by Law Society staff and relevant experts, including Indigenous lawyers.

The Benchers implemented this requirement in response to the Truth and Reconciliation Commission’s (TRC’s) [Call to Action #27](#), which had been released five years earlier in 2015. The TRC itself resulted from decades of advocacy by residential school survivors who sought redress through Canadian courts. Some survivors eventually entered into a series of class action settlements with the Federal Government to compensate them for the egregious individual and collective harms caused by the residential school system. The TRC was established as part of the 2006 Indian Residential School Settlement Agreement. The residential school system dates back to the mid-19th century. The need for action by the legal profession has been a long time coming.

The TRC worked for 6 years to uncover the complex history of the residential school system and to identify concrete actions that would help Indigenous and non-Indigenous peoples, governments, and churches establish and maintain respectful relationships. Their final report identified 94 Calls to Action. Call to Action #27 reads:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

The TRC’s final report highlights how the legal profession was complicit in the residential school system and how its members have acted in ways that perpetuate injustices faced by Indigenous peoples in Canada. In 1920 the *Indian Act* was amended to compel First Nations students to attend residential school (*An Act to Amend the Indian Act*, [SC 1919-20, c 50](#)). Crown prosecutors refused to prosecute charges related to the physical and sexual abuse of children at residential schools unless there was physical evidence of the abuse. Civil litigators revictimized survivors with explicit and adversarial questioning. Lawyers have been involved in repeatedly enabling parties to the settlement agreement to avoid their obligations under it. The TRC concluded that training for lawyers was necessary, in part because:

The courtroom experience was made worse by the fact that many lawyers did not have adequate cultural, historical, or psychological knowledge to deal with the painful memories that the Survivors were forced to reveal. The lack of sensitivity that lawyers often

demonstrated in dealing with residential school Survivors resulted, in some cases, in the Survivors' not receiving appropriate legal service. (Truth and Reconciliation Commission, [*Summary of the Final Report*](#) at 168)

In other words, the history of treatment of Indigenous peoples in Canada by the legal system, including the legal profession, warranted a requirement that those who practice law in Canada be educated on this history.

The need for Indigenous cultural competency training is not limited to lawyers working on issues related to the residential school system. Lawyers negotiate land claim settlements and Impact Benefit Agreements involving Indigenous communities. They litigate treaty and Aboriginal rights claims. They represent clients, both governmental and corporate, that have regular interactions with Indigenous peoples and communities. Due to the intergenerational impacts of the residential school system and the ongoing injustices of colonialism, Indigenous peoples are disproportionately represented in the child welfare and criminal law systems. There are also a growing number of Indigenous peoples in the legal profession as articling students, lawyers, professors, and judges.

The Path: Your Journey Through Indigenous Canada

The Benchers opted to implement Call to Action #27 by mandating that lawyers in Alberta take a course called "[The Path: Your Journey Through Indigenous Canada](#)" as a part of their continuing professional development. The course provides lawyers with basic education about terminology, the historical relationship between Indigenous peoples and Canada, and examples of initiatives to revitalize Indigenous laws. To adapt the Path for an Alberta audience, the Law Society consulted with Indigenous members of the Alberta bar, many of whom appear in the course. The investment that the Law Society made into adapting "The Path" for Alberta members was a huge step towards reconciliation. It was made mandatory to ensure a minimum standard of competence of lawyers with respect to this history.

Lawyers were given 18 months to complete the 5-hour course, which was provided free of charge. The course is effectively impossible to fail, given the repeated chances to learn and correct answers. Lawyers with qualifying lived or professional experience were exempted from completing the course. Lawyers who have taken the new Canadian Centre for Professional Legal Education (CPLED) Practice Readiness Education Program (PREP) during articles were not required to also take the Path. University of Calgary Faculty of Law students take The Path as part of their introductory course "Foundations of Law and Justice I", and they too are exempted from the requirement. Of the nearly 10,000 lawyers in Alberta required to take the course, less than 30 did not complete the course prior to October 20, 2022 and were suspended pending completion of the course.

Other Continuing Professional Development Requirements for Alberta Lawyers

The Path is the only prescribed professional development requirement for all practicing lawyers in Alberta. The Law Society has [an additional requirement for those wishing to serve as principals](#). They must undergo a 3-hour, \$125 course before they will be approved to supervise a student-at-law. To our knowledge, the petitioners' have not expressed opposition to the course for principals.

The Law Society of Alberta has suspended its other continuing professional development requirements, and these will be re-introduced in May 2023. Prior to being suspended, these requirements were some of the least demanding continuing professional development requirements in Canada. Lawyers were required to develop and retain annual continuing professional development plans, but a range of activities qualified as professional development and there was no enforcement to ensure that lawyers were complying with their plans. Contrast Alberta's approach with the [requirements](#) in our neighboring province of Saskatchewan, where active members of the Law Society of Saskatchewan must complete 12 hours of accredited professional development activities every year, including 2 hours dedicated to legal ethics.

The Petition for a Special Meeting

[51 Alberta lawyers signed a public petition](#) calling for a special meeting to vote on repealing Rule 67.4. The petition expresses concern that mandatory education infringes lawyers' professional autonomy. However, background information from the petitioners, including emails sent out on an Alberta legal organization's listserv and op-eds published in the [Western Standard](#) and [Dorchester Review](#) penned by a signatory, explicitly state that this petition is being brought to challenge the mandatory Indigenous cultural competency training. The op-eds describe the requirement as part of a "radical activist and authoritarian movement known as 'woke'", liken The Path to "cancer", and dismiss intergenerational trauma as an "ethereal boogeyman".

The petitioners suggest that the *Legal Profession Act* does not authorize the Benchers to pass a rule like Rule 67.4. However, [section 6\(n\)](#) of the act grants wide ranging powers to the Benchers to take any action that they consider necessary for the "promotion, protection, interest or welfare of the Society." Ensuring the minimal competence of lawyers protects the public and thus advances the Law Society's interests and falls well within their scope of authorized activities. In *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32 \(CanLII\)](#), the Supreme Court of Canada recognized that a law society, "as a public actor, has an overarching interest in protecting the values of equality and human rights in carrying out its functions" (at para 41). In *Green v Law Society of Manitoba*, [2017 SCC 20 \(CanLII\)](#) the Supreme Court of Canada upheld the mandatory continuing professional development (CPD) requirements imposed on lawyers in that province by their law society (at para 5). In its reasons the Court observed that CPD "serve[s] the public interest and enhance[s] confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism. CPD programs have in fact become an essential aspect of professional education in Canada" (at para 3).

Continuing professional development requirements raise important issues that would benefit from ongoing conversations. In the days since the Notice of the Special Meeting was circulated, lawyers have shared general concerns about the financial impact on small firms and solo practitioners of the approaches used in other jurisdictions, where accredited activities demand time away from one's practice and sometimes come with a user fee. Others have expressed concerns about how the Benchers *could* use their authority under Rule 67.4 to implement ideological training, unconnected in any meaningful way to lawyer competence. Some have questioned if Alberta's approach is too permissive, and whether more rigorous standards are needed. These are important issues that would benefit from further discussion, but this discussion should be carried out in a manner that does not imperil the existing Indigenous cultural competency requirement. Moreover,

any discussion of these issues needs to be separated from the position of the petitioners, given the expressed motivations.

What Happens Next?

On Thursday, [an open letter](#) signed by 400 active Alberta lawyers, as well as 124 other supporters including Non-Active LSA members, Legal Academics, Articling Students, Law students, and Legal Organizations, set out the signatories' support of mandatory Indigenous competency training. Additionally, a number of organizations have called on lawyers in the province to attend the meeting and vote against the statement. Below is a partial list of organizations who have issued public statements on this question:

- [Benchers of the Law Society of Alberta](#)
- [Indigenous Bar Association](#)
- [Canadian Bar Association – Alberta Branch](#)
- [Canadian Association of Legal Ethics](#)

Active Law Society members can register for the meeting prior to the deadline of **February 3, 2023 at 11 am**. They can attend and vote on February 6, 2023, as long as they sign in by 10:45 am.

This post may be cited as: Koren Lightning-Earle, et al., “Law Society of Alberta to Hold a Special Meeting to Debate its Power to Mandate Indigenous Cultural Competency Training” (February 3, 2023), online: ABlawg, http://ablawg.ca/wp-content/uploads/2023/02/Blog_KLE_etal_LSA_Special_Meeting.pdf

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