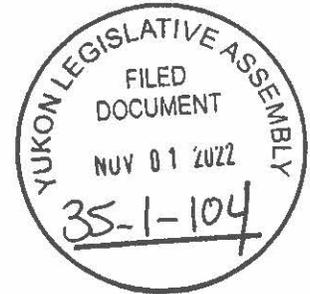


LAW SOCIETY OF YUKON

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September 6, 2022

VIA EMAIL & BY REGULAR MAIL

The Honourable Tracy-Anne McPhee
Yukon Legislative Assembly
Box 2703
Whitehorse, YT Y1A 2C6

Dear Minister McPhee:

Re: Request for Amendments to *Legal Profession Act, 2017*

The Law Society of Yukon (LSY) writes to confirm its request and support for the following two amendments to the *Legal Profession Act, 2017* (the “Act”):

- Amendment to section 64(a) of the Act by striking out the reference to ‘dismissible’. This would permit an investigator to dismiss a complaint following an investigation on the basis of a lack of evidence, or on the basis that the evidence does not disclose conduct serious enough to warrant further action.
- Inclusion of a statutory immunity clause in the Act for persons acting in good faith on behalf of the Law Society of Yukon under the *Legal Profession Act, SY 2017, c. 12, Regulations, or Rules of the Law Society.*

The requested amendments are necessary for the LSY to fulfill its mandate, which, under section 3 of the Act, is to “uphold and protect the public interest in the delivery of legal services”. The LSY does so by, among other things, establishing standards for the education, professional responsibility and competence of its members and applicants for membership. A similar provision to section 3 of the Act was held by the Supreme Court of Canada to “manifest[s] the Legislature’s intention to leave the governance of the legal profession to lawyers”.

Amendment to section 64(a) of the Act

Section 49(2) of the Act defines “dismissible” as permitting a summary dismissal based on the nature of the allegations. In particular, a complaint is “dismissible” under s. 49(2) of the Act if:

- it is outside the LSY’s jurisdiction (s. 49(2)(a));

- it does not allege facts that, if proven, would amount to conduct unbecoming a member, professional misconduct, or incompetence of the member (s. 49(2)(b));
- it does not include enough information to initiate the processes under Part 4 of the new LPA (s. 49(2)(c));
- it is frivolous, vexatious or moot (s. 49(2)(d)); or
- it constitutes an abuse of process (s. 49(2)(e)).

This definition does not permit an investigator to dismiss a complaint based on a lack of evidence or on the basis that the evidence does not disclose conduct serious enough to warrant further action. Based on administrative law principles, which are constantly evolving, it would violate basic notions of fairness should an investigator be required to refer a complaint for further action when an investigation reveals no evidence of misconduct. Such an outcome would work a serious unfairness against the lawyer complained about, and undermine the LSY's authority as keeper and interpreter of the conduct standards that apply to lawyers. The context of the LSY's broad authority to regulate the profession and promote the rule of law is important when interpreting its authority to dispose of complaints, which must include the ability to take no further action when none is warranted.

A simple legislative amendment can address this issue by uncoupling the criteria for dismissal from the definition of "dismissible" in the Act. This could be done by striking out the reference to "dismissible", as shown below:

- 64 After completing the investigation of a complaint about a member, the investigator of the complaint
- (a) ~~may, if they determine that the complaint is dismissible,~~ dismiss the complaint;

An alternative approach would be to expressly expand the ability to dismiss a complaint under section 64(a) in specific circumstances which would include

- Where, following an investigation, the allegations in the complaint are not supported by the available evidence; and
- Where the investigation does not disclose conduct by the lawyer serious enough to warrant further action.

Amendment in either form respects the complainant's interests because the dismissal of their complaint, on *any* basis, remains subject to the right of appeal under section 65(1).

Inclusion of statutory immunity clause

The Act currently does not protect those acting in good faith on behalf of the LSY, including staff and committee members, with statutory immunity from claims for damages. Most other regulatory bodies, including other regulatory bodies in Yukon and the law societies in several provinces, have such an immunity.

As a public interest regulatory body, there are very sound policy reasons to provide statutory immunity for actions taken in good faith by those acting on the LSY's behalf.

The LSY has a challenging, and, at times unpopular, mandate to regulate the legal profession in the public interest. The Act provides the LSY with considerable powers to carry out this mandate. Experience has shown that the exercise of such powers can attract spurious lawsuits against regulatory bodies or those acting on their behalf.

In addition, the LSY relies primarily on volunteers to carry out its important work. Without solid immunity in place, potential volunteers may be understandably reluctant to expose themselves to spurious lawsuits.

Although not universal, a number of other regulatory bodies in Yukon have statutory immunity for actions taken in good faith under their enabling legislation. The *Chartered Professional Accountants Act* states as follows:

52 Immunity from liability

No legal proceeding for damages lies or may be commenced or maintained against a person due to anything that the person, in good faith, does or omits to do

- (a) in performance or intended performance of a duty under this Act or the bylaws; or
- (b) in exercise or intended exercise of any power under this Act or the bylaws.

Similar immunity provisions can be found in Yukon's *Engineering Profession Act*, *Medical Profession Act* and *Registered Nurses Profession Act*.

We consider statutory immunity necessary and appropriate for individuals acting on behalf of the Law Society. An immunity clause for actions taken in good faith is appropriate and necessary to protect those who carry out the LSY's important duties in the public interest.

The LSY invites you to share this letter with the other members of the legislative assembly and is available to provide additional information or answer questions regarding these requested amendments upon request from any interested party.

Sincerely,

LAW SOCIETY OF YUKON



Meagan Lang
President