

CONSULTATION REPORT

AN ACT TO AMEND THE LEGAL PROFESSION ACT

September 2023

Department of Justice and Public Safety

Government of Prince Edward Island

Invitation to Provide Comment

**The Deadline for comments on the matters discussed in
this Report is October 13, 2023.**

The purpose of this Consultation Report is to allow interested persons an opportunity to consider the proposed changes to Prince Edward Island's *Legal Profession Act*. Any comments sent to the Department of Justice and Public Safety will be considered in the development of new legislation on this topic.

You can contact us to provide your comments or questions about this document by mail or e-mail to:

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This consultation is a public process. **The Department of Justice and Public Safety assumes that comments received on this Consultation Report are not confidential unless specifically indicated.** The Department may quote from or refer to your comments in whole or in part. The Department may attribute comments provided by organizations. If you would like your comments to be treated confidentially, please request confidentiality in your response or submit your comments anonymously.

Any personal information received by the Department through this consultation process is subject to the *Freedom of Information and Protection of Privacy Act*. If you have any questions or concerns, please contact the Legislative Specialist by means of the contact information indicated above.

I. INTRODUCTION

The Department of Justice and Public Safety (“JPS”) is proposing that the Legislative Assembly of Prince Edward Island enact an amending Bill, *An Act to Amend the Legal Profession Act*. The purpose of this Bill is to respond to requests from the Law Society of Prince Edward Island for Government to amend certain provisions of the *Legal Profession Act*.

In May 2023, the Law Society of Prince Edward Island forwarded a formal request to JPS to amend the *Legal Profession Act* after conducting its own review. For the reasons to be explained later in this Consultation Report, the Law Society requested

1. the repeal of clause 17(2)(a) of the *Legal Profession Act*, which requires applicants for membership in the Law Society to swear an oath of allegiance to His Majesty;
2. the repeal of subsection 54(1) of the *Legal Profession Act*, which obligates the Law Society to “own, operate and maintain” law libraries in Summerside and Charlottetown;
3. the amendment of subsection 27(1) of the *Legal Profession Act*, so that it no longer restricts the status of a retired member on the basis of age (65 years or older);
4. the repeal of clause 15(a) of the *Legal Profession Act*, which requires a prospective member to be a Canadian citizen or a permanent resident of Canada.

The Law Society, on behalf of the Law Foundation of Prince Edward Island, also requested that Government consider amending the *Legal Profession Act* to allow for a public representative to be appointed to the Foundation’s Board of Governors and for the Board of Governor’s membership to be comprised of seven members.

The Law Society’s request to make legislative changes to the *Legal Profession Act* aligns with the mandate of JPS to review and modernize statutes under its administration, and to promote inclusion. JPS is also proposing legislative amendments, in accordance with this mandate, to make non-substantive changes to the *Legal Profession Act* that update terminology, including replacement of gendered language, and which align the Act’s text with current legislative drafting style.

II. PROPOSED AMENDMENTS

Oaths of Office – subsection 17(2)

Similar to other common law jurisdictions, the *Legal Profession Act* requires that an applicant for registration as a member make the following oaths of office as a requirement for registration as a new member:

(a) “I, (name of applicant), do swear that I will be faithful and bear true allegiance to His Majesty King Charles the Third (or as the case may be), his heirs and successors, according to law. So Help Me God;”

(b) “I, (name of applicant), do solemnly and sincerely swear that I will faithfully and honestly fulfill the duties which devolve upon me as a barrister, solicitor and attorney, or as a member of the Law Society of Prince Edward Island, and that I will as a barrister, solicitor and attorney conduct all causes and matters faithfully and to the best of my ability; I will not seek to destroy any person’s property; I will not promote suits upon frivolous pretences; I will not pervert the law to favour or prejudice any person; but in all things conduct myself truly and with integrity; in fine, the Sovereign’s interests and that of my fellow citizens I will uphold and maintain according to the law in force in this province. So Help Me God.”

JPS has previously received feedback from the public that this provision is discriminatory and outdated, particularly the oath of allegiance to His Majesty. Though similar oaths of allegiance have been found to be non-discriminatory and constitutional in other Canadian jurisdictions, proceedings have been commenced in Alberta by a number of applicants on the basis that the oath requirement infringes on freedom of religion and to equality before the law without discrimination, and is inconsistent with certain Treaty rights.

JPS has noted that there are a number of issues with the current oaths of office:

(a) It is not evident that the oath of allegiance actually promotes allegiance to the Canadian constitution. The absence of a mandatory oath of allegiance in most other Canadian jurisdictions has not made lawyers of those provinces noticeably less loyal to the constitution compared to other jurisdictions where the oath of allegiance is required.

(b) The rationale for the oath of allegiance is unclear. Although an oath of allegiance is required for certain public offices that exercise state power, the practice of law is different. The Supreme Court of Canada has confirmed that the practice of law does not involve the performance of a government function.

(c) The value of requiring an oath of allegiance is doubtful. It is not clear that there is any benefit in requiring lawyers to swear such an oath.

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(d) The continued presence of an oath of allegiance is perceived in some cultural communities as being non-inclusive. In light of the Government’s commitment to promoting inclusion, the removal or modification of the oaths of office seem appropriate.

JPS is proposing the following legislative changes to address the concerns identified in the oaths of office for lawyers:

1. The repeal (removal) of the oath of allegiance to King Charles the Third; and
2. An updated oath of office that more clearly expresses the expectations for lawyers in Prince Edward Island:

I, [name] swear [or affirm] that as a barrister, solicitor and attorney, I shall to the best of my knowledge and ability, conduct all matters and proceedings faithfully, honestly and with integrity. I shall support the Rule of Law and uphold and seek to improve the administration of justice. I shall abide by the ethical standards and rules governing the practice of law in Prince Edward Island.

Maintenance of Law Libraries – subsection 54(1), section 50

Subsection 54(1) of the *Legal Profession Act* requires the Law Society to own, operate and maintain a law library in Charlottetown and Summerside. Those libraries are currently located in the Charlottetown and Summerside law courts buildings. Related to those libraries is section 50 of the Act which provides that the Law Foundation is to establish and maintain a fund whose proceeds are to be used for certain purposes, including “aiding in the establishing, operating and maintaining of law libraries in Prince Edward Island.”

The Law Society Council has advised Government that it is concerned about the expense of owning, operating and maintaining the law libraries. The Law Society recommended that the public would be better served if the Law Society ceased operating the law libraries and instead implemented programs that are better suited to meeting the needs of its members and those of the public, recognizing that it continues to have a statutory obligation to protect the public interest in the administration of justice. The Law Society notes that Law Foundation funding does not cover the expenses associated with the libraries and cites recent statistics which confirm that the law libraries are being used by the public and Law Society members on a very limited basis.

JPS has considered and proposes to accept the recommendation of the Law Society to repeal subsection 54(1), section 50, and related provisions in the Act. These changes would align the *Legal Profession Act* with comparable legislation in other Canadian jurisdictions.

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Eligibility to become a retired member of the Law Society – Subsection 27(1)

Among the classes of membership of the Law Society, the *Legal Profession Act* provides for a class of retired members. Eligibility to become a retired member is currently limited to members who are (a) of the age of 65 years or more, and (b) have ceased to be engaged in the practice of law or who are unable to practice law because of a permanent disability.

The Law Society Council has noted that it has heard concerns that the age restriction in the eligibility requirements is discriminatory, and it has recommended that the age restriction be removed accordingly.

JPS has considered and proposes to accept the recommendation of the Law Society to repeal the reference to “is of the age of 65 years or more and” from subsection 27(1) of the Act.

Residency requirements to be eligible for admission as a member of the Law Society – Clause 15(a)

The Law Society has advised Government that Prince Edward Island is now the only jurisdiction in Canada to require that a person be a Canadian citizen or a permanent resident of Canada to be licensed as a lawyer. The Law Society notes that the requirement for citizenship used to be standard across Canada but has gradually been eliminated in response to challenges to its constitutionality. In 2007, the Competition Bureau released a report which recommended that the requirements for permanent residency which existed in four jurisdictions be eliminated; that recommendation was implemented in Ontario (2007), Alberta (2009) and Saskatchewan (2010). As a result of its review of the issue, the Law Society has advised Government that the citizenship or permanent residency requirement likely cannot be justified with reference to its objectives as set out in section 4 of the *Legal Profession Act*. The Law Society has recommended that the citizenship and permanent residency requirement in the Act be eliminated.

More recently, the Legislative Assembly has considered Bill 100, *An Act to Amend the Legal Profession Act*. This Bill would amend clause 15(a) of the *Legal Profession Act* to allow persons with a work permit to be eligible for membership in the Law Society. In support of the Bill, the following additional arguments were presented:

1. The permanent residency requirement creates conflict with the current federal and provincial immigration regime, which generally requires employment as a precondition to either provincial nomination or permanent residency. This restricts the ability of persons who are otherwise able to work in Canada under federal law from being able to work as a lawyer in PEI.
2. Since no other province has a permanent residency requirement, clause 15(a) of the Act operates as a bar to the interjurisdictional transfer of lawyers admitted to practice in other Canadian jurisdictions.

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3. It is argued that the permanent residency requirement creates an obstacle to increased diversity within the legal profession, particularly with respect to the admission of qualified persons who are from the BIPOC community and the 2SLGBTQ community.

JPS has considered and proposes to accept the recommendation of the Law Society to repeal clause 15(a) of the *Legal Profession Act* which requires an applicant to be a Canadian citizen or permanent resident. With respect to the arguments made in favour of Bill 100, the approach it proposes may continue to bar persons who are otherwise eligible to work in Canada from being considered for Law Society membership, i.e. foreign persons who have applied for but not received a work permit after graduating from a Canadian law school. The approach proposed by the Law Society has the potential to enable greater inclusion of diverse applicants and is consistent with the Law Society's objectives [in section 4 of the Act] and the approach taken by other Canadian and Prince Edward Island professions legislation.

Law Foundation of Prince Edward Island – section 49

The Law Foundation of Prince Edward Island is established by section 49 of the *Legal Profession Act*. It has the power to establish and maintain a fund and use the proceeds of the fund for the purposes of (i) legal education, research or law reform, (ii) the editing and printing of the decisions of the Prince Edward Island courts, (iii) the promotion of legal aid, and (iv) aiding in the establishing, operating and maintaining of law libraries in Prince Edward Island. As noted in this Consultation Report, the Law Society and JPS are proposing the elimination of the Law Foundation's obligation to use the proceeds of the fund with respect to law libraries.

The Law Foundation is administered by a board of governors comprised of the Minister of Justice and Public Safety and Attorney General (or the Minister's appointee) and four members of the Law Society appointed by the Law Society Council. The Law Foundation has requested that section 49 of the Act be amended to add two more members to the board of governors, including one member who is to represent the general public. This would increase the number of members of the board of governors from five members to seven members. The rationale for adding a representative of the general public is to enhance public confidence in the Law Foundation, and to allow for a broader range of perspectives on the board of governors.

JPS has considered and is proposing to accept the request from the Law Foundation to add two additional members, including a public representative, to the Law Foundation's board of governors.

III. INVITATION FOR COMMENT

We hope that this Consultation Report is useful in providing a summary of the background to the *Legal Profession Act*, and Government's interest in updating the legislation.

- A copy of the proposed text of the Bill entitled *An Act to Amend the Legal Profession Act* is available for review on the Justice and Public Safety website at <https://www.princeedwardisland.ca/en/topic/justice-and-public-safety>.
- A copy of the current *Legal Profession Act* can be located on the Government of Prince Edward Island website at <https://www.princeedwardisland.ca/en/legislation/justice-and-public-safety/2020>.

We encourage you to provide comments on this Bill by **October 13, 2023**, so that Government has an opportunity to consider all feedback prior to finalizing the Bill for consideration by the Legislative Assembly of Prince Edward Island. Comments may be provided as described in page 2 of this Consultation Report.