



# Agenda

## Benchers

Date: Saturday, May 28, 2022

Time: **8:00 am – Breakfast**  
**9:00 am - Call to order**

*For those attending virtually, please join the meeting anytime from 8:30 am to allow enough time to resolve any video/audio issues before the meeting commences.*

Location: Great Room at the Eldorado Resort & Zoom

Recording: *Benchers, staff and guests should be aware that a digital audio and video recording will be made at this Benchers meeting to ensure an accurate record of the proceedings. Any private chat messages sent will be visible in the transcript that is produced following the meeting.*

### CONSENT AGENDA:

Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.

1	Minutes of April 22, 2022 meeting (regular session)
2	Minutes of April 22, 2022 meeting ( <i>in camera</i> session)
3	External Appointment: Legal Aid BC
4	Rule Amendments: Rule 3-77 to conform with <i>Canadian Deposit Insurance Corporation Act</i>
5	Rule Amendments: Non-substantive Rule Corrections

### REPORTS

6	President's Report <ul style="list-style-type: none"> <li>Results of Election for Benchers' Nominee for 2023</li> <li>Second Vice-President-elect</li> </ul>	15 min	Lisa Hamilton, QC
7	CEO's Report <ul style="list-style-type: none"> <li>Update on Single Legal Regulator Discussions</li> </ul>	45 min	Don Avison, QC



# Agenda

<b>GUEST PRESENTATIONS</b>			
8	Update on the Federation of Law Societies of Canada	20 min	Nicolas Plourde & Jonathan Herman
9	Update on the Law Society of Alberta	20 min	Ken Warren, QC & Elizabeth Osler, QC
<b>DISCUSSION/DECISION</b>			
10	Approval of the Law Society's 2021 Audited Financial Statements	10 min	Jeevyn Dhaliwal, QC Jeanette McPhee
<b>UPDATES</b>			
11	Report on Outstanding Hearing & Review Decisions <i>(Materials to be circulated at the meeting)</i>	5 min	Christopher McPherson, QC
<b>FOR INFORMATION</b>			
12	Minutes of May 12, 2022 Executive Committee Meeting		
13	Three Month Benchers Calendar – June to August 2022		
<b>IN CAMERA</b>			
14	Other Business		



# Minutes

## Benchers

Date: Friday, April 22, 2022

Present:	<p>Lisa Hamilton QC, President          Christopher McPherson, QC, 1<sup>st</sup> Vice-President          Jeevyn Dhaliwal, QC, 2<sup>nd</sup> Vice-President          Paul Barnett          Kim Carter          Tanya Chamberlain          Jennifer Chow, QC          Cheryl S. D'Sa          Lisa Dumbrell          Brian Dybwad          Brook Greenberg, QC          Katrina Harry          Sasha Hobbs          Lindsay R. LeBlanc          Dr. Jan Lindsay          Geoffrey McDonald</p>	<p>Steven McKoen, QC          Jacqueline McQueen, QC          Paul Pearson          Georges Rivard          Michèle Ross          Kelly H. Russ          Gurminder Sandhu          Thomas L. Spraggs          Barbara Stanley, QC          Natasha Tony          Michael Welsh, QC          Kevin B. Westell          Sarah Westwood          Guangbin Yan          Gaynor C. Yeung</p>
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Staff:	<p>Don Avison, QC          Avalon Bourne          Shelley Braun          Barbara Buchanan, QC          Jennifer Chan          Lance Cooke          Natasha Dookie          Su Forbes, QC          Andrea Hilland, QC          Kerryn Holt          Jeffrey Hoskins, QC          Alison Kirby          Jason Kuzminski</p>	<p>Andrea Langille          Michael Lucas, QC          Alison Luke          David MacLean          Claire Marchant          Jeanette McPhee          Cary Ann Moore          Michael Mulhern          Doug Munro          Shalyn Norrish          Lesley Small          Nick Wells          Adam Whitcombe, QC</p>
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Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, QC	First Vice President, Canadian Bar Association, BC Branch
	Pinder Cheema, QC	Law Society of BC Representative on the Federation Council
	Christina Cook	Member, Aboriginal Lawyers Forum
	Paul Craven	A/Assistant Deputy Minister
	Dr. Cristie Ford	Professor, Allard School of Law
	Cindy Jeklin	Member, Law Society of BC
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Ann Lee	Director of Operations , Mediate BC
	Julia Lockhart	Member, Law Society of BC
	Jamie Maclaren, QC	Executive Director of Access Pro Bono
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Shannon Salter	Deputy Attorney General of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Lana Walker	Assistant Dean, Thompson Rivers University

## OATH OF OFFICE

President Hamilton administered the oath of office (in the form set out in Rule 1-3) to newly appointed Benchers Michèle Ross and Natasha Tony.

## CONSENT AGENDA

### 1. Minutes of March 4, 2022, meeting (regular session)

The minutes of the meeting held on March 4, 2022 were approved unanimously and by consent as circulated.

### 2. Minutes of March 4, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on March 4, 2022 were approved unanimously and by consent as circulated.

### 3. Rule Amendments: Approval of Alternative Discipline Process

The following resolution was passed unanimously and by consent:

***BE IT RESOLVED to amend the Law Society Rules as follows:***

1. ***Paragraph (b) of the definition of “professional conduct record” is rescinded and the following substituted:***
  - (b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules, subject to Rule 3-9.8 [*Records and confidentiality*];
2. ***The following subrule is added to Rule 3-4:***
  - (3) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 [*Action on a complaint*], the Executive Director may proceed on a complaint under Division 1.01 [*Health issues*], without further investigation of the matter.
3. ***In Rule 3-8***
  - (a) ***subrule (2) is rescinded and the following substituted:***
    - (2) The Executive Director may take no further action under this division on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

- (2.1) Subject to Rule 3-9.9 [*Referral to complaint investigation process*], the Executive Director must take no further action under this division on a complaint if the Executive Director has proceeded on the complaint under Division 1.01 [*Health issues*].
- (b) *in subrule (3), “Unless subrule (1) applies” is struck and “Unless subrule (1) or (2.1) applies” is substituted.*
4. *The following subrule is added to Rule 3-9:*
- (3) Despite subrule (1), when proceeding on a complaint under Division 1.01 [*Health issues*], the Executive Director may delay notifying the complainant until health information has been collected and assessed.
5. *The following division is added to Part 3:*

### **Division 1.01 – Health issues**

#### **Proceeding on health issue**

- 3-9.1** (1) In this division, “**health issue**” includes matters that may affect a lawyer’s physical or mental health.
- (2) The Executive Director may proceed under this division on the basis of information about a health issue that may affect a lawyer received from any source, including the lawyer.
- (3) The Executive Director may proceed under this division if
- (a) the lawyer acknowledges the existence of a health issue that may have contributed to an alleged discipline violation by the lawyer,
  - (b) the lawyer consents in writing to the Executive Director proceeding under this division, and
  - (c) the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division.

#### **Risk mitigation**

- 3-9.2** Unless a consent agreement is in effect under this division, if the Executive Director is satisfied on reasonable grounds that interim measures are necessary to protect the public, the Executive Director may enter into an interim agreement under which the lawyer agrees to do one or more of the following:
- (a) not engage in the practice of law indefinitely or for a specific period of time;

- (b) restrict the lawyer's practice to a specific area of law or other type of practice;
- (c) accept practice supervision on terms approved by the Executive Director;
- (d) any other measure that the Executive Director considers necessary in the public interest.

### Health information

- 3-9.3** (1) The Executive Director may request that the lawyer provide health information that demonstrates to the satisfaction of the Executive Director that
- (a) a health issue may have contributed to an alleged discipline violation by the lawyer,
  - (b) the lawyer could benefit from remedial initiatives, and
  - (c) it is in the public interest for the lawyer to engage in remedial measures.
- (2) The Executive Director may request further health information from the lawyer as, in the judgment of the Executive Director, is required to determine whether a consent agreement under Rule 3-9.4 [*Consent agreement*] is appropriate.

### Consent agreement

- 3-9.4** (1) The Executive Director may enter into a consent agreement with a lawyer if the Executive Director is satisfied that
- (a) proceeding under this division is permitted under Rule 3-9.1 [*Proceeding on health issue*], and
  - (b) the lawyer has provided sufficient health information requested under Rule 3-9.3 [*Health information*] for the Executive Director to make a decision under subrule (5).
- (2) Before entering into a consent agreement under this rule, the Executive Director must ensure that each complainant in the complaint giving rise to the agreement is given an opportunity to provide a statement regarding the effect on the complainant of the lawyer's conduct.
- (3) A consent agreement under this rule must include provisions addressing the following:
- (a) the duration of the agreement and, if different, of any obligation of a party;
  - (b) confidentiality and information sharing;
  - (c) the fulfillment of or amendment to the terms of the agreement;
  - (d) responsibility for reporting a breach of the terms of the agreement;
  - (e) the consequences of the lawyer's fulfilling or failing to fulfill the terms of the agreement;

- (f) responsibility for costs associated with fulfilling the terms of the agreement;
  - (g) the lawyer's undertaking not to assert delay or any other prejudice as the result of proceeding under this division if the matter is subsequently referred to the complaint investigation process under Rule 3-9.9 [*Referral to complaint investigation process*].
- (4) A consent agreement under this rule may also include other provisions, including but not limited to the following:
- (a) a recommended treatment plan;
  - (b) medical monitoring and reporting requirements;
  - (c) practice conditions and limitations;
  - (d) mitigation of loss or harm resulting from an alleged discipline violation;
  - (e) an apology, restitution or other remedial steps.
- (5) The Executive Director may enter into a consent agreement if the Executive Director is satisfied that the agreement is in the public interest having considered all the relevant circumstances, including the following:
- (a) the nature and scope of the terms of the agreement, including specific action to be taken to protect the public;
  - (b) the nature and seriousness of the alleged discipline violation;
  - (c) the impact of the lawyer's conduct on the complainant or others;
  - (d) any previous complaints concerning the lawyer proceeded on under this division;
  - (e) the effect of the agreement on the administration of justice and the public's confidence in the integrity of the legal profession;
  - (f) whether measures to be taken under the agreement are likely to improve the lawyer's ability to fulfill the duties of a lawyer in the practice of law;
  - (g) the presence of aggravating or mitigating factors, such as acknowledgement of a discipline violation or steps taken to redress a wrong where appropriate.
- (6) An agreement under this rule is
- (a) voluntary and requires the consent of the lawyer, and
  - (b) not valid unless signed by the Executive Director and the lawyer.
- (7) When a consent agreement is made under this rule, the Executive Director must notify the complainant in writing of that fact.
- (8) The Executive Director may report to the Benchers or the Executive Committee on a consent agreement made under this rule, but the report must not identify the lawyer concerned.



- (9) Subject to Rule 3-9.9 [*Referral to complaint investigation process*], the Society is bound by an effective consent agreement made under this rule, and no further action on the complaint that gave rise to the agreement is permitted.

### **Practice conditions and limitations**

- 3-9.5** (1) When a condition or limitation on the practice of a lawyer is agreed to under this division, the Executive Director may disclose the fact that the condition or limitation applies, the nature of the condition or limitation and its effect on the lawyer's practice.
- (2) A disclosure under this rule must not indicate that the agreement was made under this division.
- (3) If the Executive Director discloses the existence of a condition or limitation under this rule by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

### **Amending consent agreement**

- 3-9.6** (1) A consent agreement may be amended by agreement of the parties reduced to writing and given effect in accordance with Rule 3-9.4 [*Consent agreement*].
- (2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-9.4.

### **Breach of consent agreement**

- 3-9.7** If a lawyer is in breach of a consent agreement made under this division, the Executive Director may do any of the following as appears to the Executive Director to be consistent with the public interest:
- (a) terminate the consent agreement;
  - (b) refer the matter under Rule 3-9.9 [*Referral to complaint investigation*] for investigation of the complaint that gave rise to the consent agreement;
  - (c) enter into an amended consent agreement under Rule 3-9.6 [*Amending consent agreement*];
  - (d) take any other appropriate action consistent with these rules.

### **Records and confidentiality**

- 3-9.8** (1) Nothing done under this division forms part of a lawyer's professional conduct record.

- (2) Unless permitted under this division, no one is permitted to disclose any information or records related to a step taken under this division.
- (3) The Executive Director may do any of the following:
  - (a) disclose information related to a step taken with respect to a lawyer under this division if
    - (i) the lawyer consents to the disclosure, or
    - (ii) the disclosure is necessary to comply with a legal duty to accommodate;
  - (b) disclose or publish information about consent agreements or other steps taken under this division, but that information must not identify the lawyer, clients or complainants concerned;
  - (c) disclose information to the complainant to the extent necessary
    - (i) to comply with Rule 3-9 *[Notice]*,
    - (ii) to comply with Rule 3-9.4 *[Consent agreement]*,
    - (iii) to report to the complainant on the successful fulfillment of the terms of the consent agreement, or
    - (iv) to report to the complainant that the complaint has been referred for investigation or further investigation under Rule 3-9.9 *[Referral to complaint investigation process]*.
- (4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

### **Referral to complaint investigation process**

- 3-9.9** (1) The Executive Director may refer a matter that has been proceeded on under this division for investigation or further investigation under Division 1 *[Complaints]* if
- (a) a condition required under Rule 3-9.1 *[Proceeding on health issue]* is not present or no longer present,
  - (b) the lawyer fails or refuses to provide sufficient health information requested under Rule 3-9.3 *[Health information]*,
  - (c) it is not possible, in the opinion of the Executive Director, to reach an interim agreement or a consent agreement within a reasonable period of time, or
  - (d) the lawyer breaches an interim agreement or a consent agreement made under this division.
- (2) The Executive Director must give the lawyer 30 days' notice in writing before taking action under this rule.

## Dispute resolution

- 3-9.10** (1) This rule applies to resolution of a dispute arising from an allegation that the lawyer
- (a) has committed a breach of an interim agreement or a consent agreement, or
  - (b) has failed to successfully fulfill the terms of a consent agreement.
- (2) A lawyer may apply to the Tribunal for the determination of a dispute if the Executive Director has given notice under Rule 3-9.9 [*Referral to complaint investigation process*] that
- (a) an interim agreement or consent agreement will be terminated as a result of an alleged breach or failure to fulfill the terms of a consent agreement, and
  - (b) the matter that gave rise to the interim agreement or consent agreement will be referred for investigation or further investigation under Division 1 [*Complaints*].
- (3) The lawyer may make an application under subrule (2) within 30 days of receiving notice under Rule 3-9.9 [*Referral to complaint investigation process*] by filing with the Tribunal and delivering to the Executive Director written notice setting out the substance of the application, the grounds for it and the order that is sought.
- (4) On application by the lawyer, a motions adjudicator may extend the time to apply for a determination under this rule.
- (5) When an application is made under subrule (2), the motions adjudicator must do one of the following as appears to the motions adjudicator to be appropriate:
- (a) grant all or part of the order applied for, with or without conditions;
  - (b) refuse the order.
- (6) The motions adjudicator must provide written reasons for a decision under this rule.
- (7) For greater certainty, Rule 3-9.8 [*Records and confidentiality*] applies with respect to an application under this rule, and the written reasons for a decision must not be published or otherwise disclosed except as permitted by Rule 3-9.8.

### REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

#### 4. Rule Amendments: Administrative Penalties

The following resolution was passed unanimously and by consent:

***BE IT RESOLVED to amend the Law Society Rules as follows:***

1. ***In Rule 1 the definition of “professional conduct record” is amended by adding the following paragraph:***

- (d.2) an administrative penalty assessed under Rule 4-59 [*Administrative penalty*] unless cancelled under Rule 4-60 [*Review and order*];
2. ***Rule 3-8 (3) is amended by striking*** “the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.” ***and substituting the following:***
- the Executive Director must
- (a) refer the complaint to the Practice Standards Committee,
  - (b) refer the complaint to the Discipline Committee, or
  - (c) impose an administrative penalty under Part 4, Division 6.
3. ***Rule 4-48 is amended by adding the following subrule:***
- (1.2) The Executive Director must publish and circulate to the profession a summary of the circumstances of the rule breach deemed admitted under Rule 4-59 [*Administrative penalty*] and the administrative penalty imposed.
4. ***Rule 4-56 is amended by adding the following subrule:***
- (1.1) A lawyer must pay in full an administrative penalty by the date set under Division 6 [*Administrative penalty*].
5. ***Part 4 is amended***
- (a) ***by establishing the following divisions:***
    - (i) ***Division 1 [Discipline Committee], comprising Rules 4-2 to 4-46;***
    - (ii) ***Division 2 [Disclosure and publication], comprising Rules 4-47 to 4-51;***
    - (iii) ***Division 3 [Criminal conviction], comprising Rules 4-52 to 4-54;***
    - (iv) ***Division 4 [Investigation], comprising Rule 4-55;***
    - (v) ***Division 5 [Enforcement], comprising Rules 4-56 to 4-57, and***
  - (b) ***by adding the following division:***

## **Division 6 – Administrative penalty**

### **Application**

- 4-58** (1) This division applies to allegations of breaches of the following provisions:

- (a) Rule 3-59 [*Cash transactions*];
  - (b) Rule 3-96.1 [*Electronic submission of documents*];
  - (c) Part 3, Division 11 [*Client Identification and Verification*].
- (2) This division applies to a law firm or an articulated student as it does to a lawyer.

### **Administrative penalty**

- 4-59** (1) If the Executive Director is satisfied on a balance of probabilities that a lawyer has breached a rule, the Executive Director may assess an administrative penalty.
- (2) The maximum administrative penalty that the Executive Director may assess is as follows:
- (a) if no previous administrative penalty has been assessed against the lawyer, \$5,000;
  - (b) if one or more administrative penalties have previously been assessed against the lawyer, \$10,000.
- (3) At least 30 days before the effective date of an administrative penalty under this rule, the Executive Director must deliver to the lawyer notice in writing of the following:
- (a) the effective date of the penalty, by which the penalty must be paid if not disputed;
  - (b) the amount of the penalty;
  - (c) the reasons for the penalty, including the specific rule breach alleged;
  - (d) the means by which the lawyer may apply to the chair of the Discipline Committee for an order under Rule 4-60 [*Review and order*] and the deadline for making such an application before the effective date of the penalty.
- (4) A lawyer who has received a notice under this rule must do one of the following on or before the date specified in the notice:
- (a) pay the administrative penalty in the amount specified in the notice;
  - (b) apply to the chair of the Discipline Committee for an order under Rule 4-60 [*Review and order*].
- (5) A lawyer is deemed to admit the breach of the rule as alleged in the notice from the Executive Director under subrule (3) if
- (a) the lawyer pays the administrative penalty,
  - (b) the lawyer fails to comply with subrule (4), or
  - (c) the chair of the Discipline Committee orders under Rule 4-60 [*Review and order*] that a penalty be paid.

- (6) When an administrative penalty has been imposed under this division and the lawyer has paid the amount assessed, the Discipline Committee must not take any action against the lawyer under Rule 4-4 [*Action on complaints*] with respect to the rule breach giving rise to the administrative penalty.

### **Review and order**

- 4-60** (1) A lawyer who has received a notice of administrative penalty under Rule 4-59 [*Administrative penalty*] may apply before the effective date of the penalty to the chair of the Discipline Committee for a review of the penalty and an order under this rule.
- (2) The chair of the Discipline Committee must consider submissions regarding the administrative penalty received within the time allowed under subrule (1) from the lawyer and, if satisfied that the lawyer has breached a rule as alleged, make an order
- (a) confirming that the penalty must be paid in accordance with the notice delivered under Rule 4-59 [*Administrative penalty*],
  - (b) reducing the amount of the penalty, or
  - (c) extending the date by which the penalty is to be paid.
- (3) If not satisfied that the lawyer has breached a rule as alleged, the chair of the Discipline Committee must make an order cancelling the administrative penalty.
- (4) The chair of the Discipline Committee must promptly notify the lawyer and the Executive Director of a decision under this rule.
- (5) The lawyer must pay an administrative penalty as ordered under this rule.

### **REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

## **REPORTS**

### **5. President's Report**

Lisa Hamilton, QC confirmed that no conflicts of interest had been declared.

Ms. Hamilton informed Benchers that, as there was more than one candidate nominated for the Benchers' Nominee for the 2023 Second Vice-President-elect, an election would be held with the results announced at the May 28 Bencher meeting.

Ms. Hamilton thanked Pinder Cheema, QC, the Law Society's Member of the Federation Council, for attending the meeting to answer any questions about the written briefing she had prepared that was included in the Bencher agenda materials for information.

Ms. Hamilton acknowledged the significant decisions made by Benchers to approve the development of an alternative discipline process and the use of administrative penalties, which would help provide support to those in the profession struggling with mental health challenges. She thanked the Mental Health Task Force for their efforts. Ms. Hamilton then spoke about her own experiences with mental health challenges early in her career, and the importance of reducing stigma, showing empathy, and supporting those struggling with mental health challenges.

## **6. CEO's Report**

Don Avison, QC began his report by echoing Ms. Hamilton's comments regarding the significance of the approval of an alternative discipline process and the use of administrative penalties.

Mr. Avison provided an update on plans for the technical configuration of the Bencher Meeting Room. He noted that the current set-up is quite similar to what the permanent set-up will be, which will continue to accommodate virtual attendees.

Mr. Avison updated Benchers on discussions with government, the Society of Notaries Public of BC, and the BC Paralegal Association. He indicated that a full day of meetings would be taking place on May 17, after which he would update Benchers.

Mr. Avison then reviewed with Benchers plans for a number of upcoming events, including Welcoming Ceremonies, the QC Reception, and in-person Call and Admission Ceremonies. He also informed Benchers that planning for the Bencher Retreat was well underway.

Federation meetings will be taking place in Montreal the week following the Bencher meeting, and Mr. Avison noted he would be reporting back to Benchers regarding the outcome of the discussions.

Mr. Avison concluded his report by informing Benchers that links to the annual reports of the Supreme Court of BC and Court of Appeal had been included in the meeting materials, as well as a copy of the action plan released by the province of BC in relation to the declaration of the rights of Indigenous persons.

Benchers discussed the implementation of Administrative Penalties, and Mr. Avison noted that guidelines were being developed that would be circulated at a later date.

## **7. Remarks**

Ms. Hamilton welcomed Deputy Attorney General Shannon Salter to the meeting. Ms. Salter thanked Ms. Hamilton for the welcome, and noted that Paul Craven, Superintendent of

Professional Governance and Acting Assistant Deputy Minister of the Justice Services Branch of the Ministry of Attorney General was attending the meeting virtually.

Ms. Salter spoke about the government's intention to establish a single legal regulator, noting that the project was in its early stages. She spoke about the development of a modern regulatory framework, clear scopes of practice, an updated mandate for the regulator, and that these changes may help address BC's access to justice crisis. She indicated the importance of evolving regulation in terms of governance best practices, while also understanding the importance of independence of the legal profession. Ms. Salter recognized the work of the Law Society in keeping the public at the forefront, particularly through the work of the Innovation Sandbox. She also recognized the diversity of the Bencher table.

Ms. Salter reviewed next steps in the process, noting that a brief intentions paper would likely be published in late summer. She also indicated that the intention would be to introduce legislation sometime in 2023.

Benchers discussed how the scope of practices would be determined. Ms. Salter noted that discussions regarding this matter were at a very early stage, and would include environmental scans of other jurisdictions, conducting benefit/risk analyses to the public, identifying opportunities to address unmet need, as well as consultations.

Benchers discussed how the proposed governance framework would be compared against principles of best practices. Paul Craven spoke about the number of changes in regulatory areas, including the *Professional Governance Act*, the *Health Professions Act*, as well as reviewing the practices of other jurisdictions. Mr. Craven noted that these general principles would need to be applied in the context of the legal profession. Mr. Avison added that lessons learned from the regulatory changes in other professions could be helpful to take into consideration, as well as lessons learned from the Innovation Sandbox regarding determining competencies.

## **6. CEO's Report (continued)**

Mr. Avison introduced Jason Kuzminski, who then presented on the Law Society's communications and engagement strategy. Mr. Kuzminski provided an overview of each of the components of the strategy, including the strategic objectives, the Law Society's key stakeholder groups, the specific strategies to be employed in implementing the strategy, and the proposed activities to support the strategy.

Mr. Avison provided a brief update regarding the Cullen Commission hearings, noting that the report should be released later in the spring. He also informed Benchers that Judge Kimberly Prost of the International Criminal Court would be available in August to speak at a Rule of Law lecture regarding the role of the International Criminal Court and he encouraged people to attend.



Mr. Avison introduced Su Forbes, QC who then presented on the Lawyers Indemnity Fund year in review for 2021. Ms. Forbes provided an overview of the program, statistics for 2021, and priorities for 2022. She also thanked the Continuing Legal Education Society of BC (CLEBC) for its assistance with organizing the Junior Lawyers Risk Management Conference.

## **DISCUSSION/DECISION**

### **8. Continuing Professional Development Course Accreditation**

Lesley Small provided background information on the recommendation to discontinue the CPD accreditation process.

Benchers discussed the current frequency of requests for CPD approval, as well as the process by which lawyers report to the Law Society the CPD they have taken, and whether an attestation form to ensure compliance with CPD requirements was necessary. Ms. Small indicated that lawyers would continue to complete a declaration form, and that the Law Society would continue to provide guidance on any questions and how CPD criteria categories should be interpreted.

Some Benchers expressed concerns about maintaining quality control of CPD reports, while others spoke about trusting that lawyers will take what is required in terms of CPD. Some Benchers spoke about the importance of keeping the Law Society's mandate front of mind when directing Law Society resources.

The following resolution was passed by a majority of Benchers:

***BE IT RESOLVED*** that the Benchers approve that the CPD accreditation process be discontinued and that lawyers instead simply report to the Law Society the learning activities they have engaged in.

### **9. Continuing Professional Development Credit for Pro Bono Legal Services**

Lisa Dumbrell, Chair of the Access to Justice Advisory Committee, provided background information on the recommendations relating to providing CPD credit for pro bono legal services.

Benchers discussed the provision of pro bono legal services as a method to support access to justice for those who are unable to afford legal services, and those who do not qualify for legal aid, particularly in the Indigenous community.

Benchers also discussed the ensuing amendments to the Rules to ensure that the educational component of CPD would not be lost, while also increasing opportunities for pro bono. Many

Benchers were of the view that giving lawyers the choice of how to use their CPD credits would help encourage lawyers to provide pro bono legal services.

Some Benchers expressed concerns regarding providing credit for pro bono services, as the CPD guidelines do not permit credit for legal work. Some Benchers also expressed concerns regarding the resource implications of implementing the recommendations.

Benchers agreed to vote on each recommendation separately.

The following resolution was passed by a majority of Benchers.

**BE IT RESOLVED** the Benchers approve providing CPD credits to lawyers who provide minimum levels of pro bono service delivery for people with limited means or non-profit organizations, and that the matter be referred to staff to develop the number of available hours to be credited and the amount of pro bono services that must be provided to obtain the credits.

The following resolution was passed by a majority of Benchers.

**BE IT RESOLVED** the Benchers refer to the Lawyer Development Task Force as part of its anticipated review of the CPD program, the consideration of extending the intended purpose of the program beyond conventional educational program to include developing in lawyers the knowledge, competence, professionalism and experience that also support the policy objective of advancing the public interest in the administration of justice.

## **10. Governance Reform**

Ms. Hamilton spoke about those recommendations in Mr. Cayton's report about which there was a consensus at the last meeting. She also noted that there were some recommendations that would require further discussion, but the approach to many of these would be dependent on the developments with the government's intention to establish a single legal regulator. She then informed Benchers that she had surveyed past Law Society presidents regarding extending the length of the President's term, and that the majority had expressed concerns about extending the term length past one year, as a longer term may present barriers to serving as President. She also informed Benchers that the induction session for Bencher candidates would likely occur in advance of the 2023 general election, though reference material would be considered for November's by-election.

Ms. Hamilton then spoke about the recommendations regarding limits on the role of Benchers, including conducting interviews with articled students and providing confidential advice to the profession, which had not been discussed at the last Bencher meeting.

Benchers discussed the interviews with articulated students and whether different models could be utilized, including group interviews, incorporating an interview component into PLTC, and having Life Benchers assist with conducting interviews. Many Benchers were in agreement regarding the value of student interviews, particularly for those students who are encountering challenges in their articles. Some Benchers were of the view that students could be given the option of a one-on-one or group interview.

Benchers also discussed the purpose of the interviews with articulated students, and whether the intended outcome was currently being achieved. Many Benchers were of the view that data should be obtained from students regarding the interviews as a first step in determining the best path forward.

Benchers discussed the role of Benchers in providing confidential advice to the profession. While many Benchers thought there was value in the provision of confidential advice, particularly for small law firms and sole practitioners, Benchers also discussed the importance for the profession of having a dispassionate third party provide confidential advice.

Ms. Hamilton indicated that further discussion would take place and that obtaining data would be a helpful first step in determining how to address these matters.

## **UPDATES**

### **11. Financial Matters**

Jeevyn Dhaliwal, QC, Chair of the Finance and Audit Committee introduced the item, thanking committee members and staff for all their efforts.

Jeanette McPhee, provided an overview of the unaudited financial results and highlights for 2021, noting that the audited financial statements would be presented for approval at the May Bencher meeting. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which is mainly due to positive variances in both revenues and operating expenses. Revenue was slightly ahead of budget, primarily due to higher than expected practice fees and electronic filing revenue.

Ms. McPhee reviewed practice fees and electronic filing revenue, both of which were significantly ahead of budget, with the number of full-time practising lawyers at 13,317 compared to a budget of 12,673. She noted an error in the report regarding the number of lawyers for 2022; the report had indicated that the number of lawyers was 2.5% ahead of budget, but should read 2.5% ahead of 2021 numbers.

Ms. McPhee reviewed operating expenses for the year, which were under budget by about 6%, likely due to significant efforts in reducing costs during the pandemic, as well as lower recruiting

fees. Ms. McPhee indicated that offsetting these savings was an increase in external counsel fees and costs associated with the governance review.

Ms. McPhee reviewed the TAF/Trust Assurance program, which had revenue ahead of budget, due to higher than expected real estate unit sales. Expenses were under budget mainly due to lower travel costs with audits being conducted remotely.

Ms. McPhee reviewed actual revenue for the Lawyers Insurance Fund, which was slightly ahead of budget with a higher than expected number of practising indemnified lawyers. She indicated that operating expenses were under budget with savings primarily related to compensation costs, external counsel fees, and general office expenses. Investment income was significantly ahead of budget due to higher investment returns and a larger portfolio value, and Ms. McPhee indicated that investment returns were 12.8%.

Ms. McPhee then provided an overview of the financial results and highlights to the end of February 2022, noting that year to date results are positive to budget, mostly due to an increase in revenue. Ms. McPhee also provided a forecast for 2022 and indicated that the Law Society is forecasting to be ahead of budget due to an increase in the expected number of practising lawyers.

Benchers discussed the Law Society's investment policy. Ms. McPhee indicated that the Law Society invests with different financial managers across a number of funds, including Canadian equity and bonds, a real estate fund, and a mortgage fund. She also noted that the Law Society has an independent firm that provides a third-party viewpoint on how funds are being managed.

## **12. Report on Outstanding Hearing & Review Decisions**

Christopher McPherson, QC, as Tribunal Chair, provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

### **FOR INFORMATION**

## **13. Briefing by the Law Society's Member of the Federation Council**

There was no discussion on this item.

## **14. Submission to the Special Committee to review FIPPA**

There was no discussion on this item.

**15. Minutes of April 7, 2022 Executive Committee Meeting**

There was no discussion on this item.

**16. Three Month Bencher Calendar – April to June 2022**

There was no discussion on this item.

**17. Other business**

Paul Pearson indicated that he intended to bring forward a motion at the May Bencher meeting, which would seek to appoint an Indigenous representative to the “working group” meeting with government to discuss the move towards a single legal regulator. Ms. Hamilton indicated that she and Mr. Avison would discuss with Mr. Pearson prior to the May Bencher meeting.

The Benchers then commenced the *In Camera* portion of the meeting.

AB  
2022-04-22



# Memo

To: Benchers  
From: Policy Staff  
Date: May 18, 2022  
Subject: Necessary amendments to Rule 3-77 to conform to the new requirements of the *Canada Deposit Insurance Corporation Act*

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## Problem

Law Society Rule 3-77 needs to be updated to reflect the new reporting requirements for professional trustee accounts (“PTA”) in the *Canada Deposit Insurance Corporation Act*<sup>1</sup>.

The new rules for PTAs are opt-in requirements. Professional Trustees who fail to opt in will have their trust accounts treated as general accounts. If accounts are treated as general accounts, disclosure of trust beneficiary information is required, which lawyers are not permitted to do (absent instruction of each client), in order for each client’s funds to be treated as a separate deposit for the purposes of deposit insurance. It is important to modernize the rule to ensure that lawyers are required to designate their trust accounts held in a designated savings institution insured by CDIC as PTAs in order to reduce the risk of making improper disclosures of confidential, and potentially privileged, information and to ensure there is no loss or reduction of insurance coverage.

Attached is the CDIC’s “What you Need to Know – Professional Trustees” for reference. The Law Society has published information on its website: [Canada Deposit Insurance Corporation - FAQs | The Law Society of British Columbia](#)

Staff have presented the issue to the Executive Committee, with its approval, and after reviewing the issue in greater detail, recommend the Benchers adopt the resolution appended to this memorandum.

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<sup>1</sup> RSC 1985, c C-3. This included changes to the Schedule, which are referenced in Law Society Rule 3-77. DM3595568

## Discussion

Effective April 30, 2022 those who qualify as a Professional Trustee under the Act may opt in to designating trust accounts as PTAs with their financial institutions. The designation must be done annually. The definition includes “a lawyer or partnership of lawyers, a law corporation, or a notary or partnership of notaries in the province of Quebec, when they act in that capacity as a trustee of money for others.”<sup>2</sup>

The process for opting in requires the Professional Trustee to request of the member institution that a trust account (or accounts) be designated a PTA which requires:

- a. Making an attestation to the member institution that they are a Professional Trustee, and
- b. Providing the Professional Trustee’s contact information to the member institution.

In order to maintain the PTA designation going forward, the Professional Trustee must make a yearly attestation in April. Failing to do so will have the account(s) be treated as a general trust account(s). The Professional Trustee also must maintain the required records for a PTA.

Rule 3-77 needs to be changed to reflect the current process. It is important to update the rule and the checklist, and ensure lawyers are directed to the proper resources.

Given that the new process went live April 30, 2022 it is prudent to make this change as soon as possible to avoid confusion, improper reporting, and/or lawyers having accounts designated as general accounts by virtual of failing to opt-in to the PTA designation.

The proposed revision to Rule 3-77 will better ensure, through subrule (1), that lawyers reference the current scheme under the *Canada Deposit Insurance Corporation Act* so that the trust funds, rather than the account, are insured to the maximum amount of coverage. This is particularly important in a pooled trust account. Subrule (2) provides a regulatory reminder to lawyers to structure the account under the *Act* so as to maintain confidentiality and privilege. Under the current structure, that would likely be by designating the account as a “Professional Trustee Account” and this can be set out in practice guidance prepared by staff. However, the general requirement to preserve confidentiality and privilege will persist regardless of whether the structure under the *Act* changes again in the future.

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<sup>2</sup> *Canada Deposit Insurance Corporation Act*, s. 2.

## Resolution

Staff recommend the Benchers adopt the resolution appended to this memorandum.

/DM

/Appendix

/Attachment



## What you Need to Know – Professional Trustees

As of April 30<sup>th</sup>, 2022, CDIC is introducing new disclosure requirements for deposits held in trust. CDIC continues to insure eligible deposits held in trust at CDIC Member Institutions up to \$100,000 per beneficiary.

### Professional Trustees:

Professional Trustees are a new classification of trustees who may, at their discretion, opt into less onerous disclosure requirements for accounts they designate Professional Trustee Accounts (PTAs).

To take advantage of the new rules for Professional Trustees, a Trustee must meet the following requirements:

#### 1. Qualify as a Professional Trustee:

Trustees who hold deposits in trust in their professional capacity may qualify as Professional Trustees. To find out if you qualify, visit "[For Professional Trustees](#)".

#### 2. Hold a Deposit Account "In Trust" at a CDIC Member Institution:

CDIC insures eligible trust deposits held at CDIC Member Institutions. A Professional Trustee must first hold funds in trust at a CDIC Member Institution before they may designate an account or accounts as PTAs.

#### 3. Designate an Account as a "Professional Trustee Account" with the Member Institution:

A Professional Trustee may request that any of their accounts in which they hold deposits in trust for beneficiaries at a CDIC Member Institution be designated PTAs. The request to designate an account as a PTA must be done directly with the Professional Trustee's member institution.

Once an account is designated as a PTA, the Professional Trustee does not have to regularly report beneficiary information to CDIC member institutions for that PTA account. Accounts not designated as PTAs are subject to the general disclosure rules for trust deposits which can be found at the following link: "[For Trustees](#)".

#### 4. Complete Required Attestation & Provide your Contact Information:

To designate an account a PTA, the Professional Trustee must:

- a. Make an attestation to the Member Institution holding their account(s) that they are a Professional Trustee; and
- b. Provide their contact information to the Member Institution.



## 5. Meet Ongoing Obligations as a Professional Trustee:

Professional Trustees who have designated an account or accounts as PTAs must:

- a. **Maintain Up-to-date Beneficiary Records:** The Professional Trustee must maintain a record of each beneficiary's key contact information and interest (percentage or dollar amount) in the PTA;
- b. **Specify Type of Deposit Account:** Where the deposits held in designated PTAs are held under a Special Income Arrangements<sup>1</sup>, the Professional Trustee must maintain a record of the type of arrangement for each PTA, and the names and addresses of those for whose benefit the arrangement is held; and
- c. **Provide Information Upon Request:** The Professional Trustee must provide the beneficiary information to CDIC upon request electronically in a manner that permits data extraction and manipulation.

## 6. Annually Re-attest to Professional Trustee Status:

To ensure your account remains designated as a PTA, the Professional Trustee must provide a yearly attestation to the Member Institution (each April). CDIC member institutions are required to inform you of the need to provide a re-attestation. Failure to re-attest will result in the account or accounts losing the PTA designation.

## Stay in touch with the Member Institution:

The CDIC Member Institution(s) where you bank may assist you in determining the approach that works best for you. If you wish to designate an account or accounts as PTAs, or remove a Professional Trustee designation, please reach out to your Member Institution.

## Want to know more?

CDIC is a federal Crown Corporation and is fully funded by CDIC Members. Visit [cdic.ca](http://cdic.ca) for more information about trustees and how we protect your deposits.

Visit our website.  
[cdic.ca](http://cdic.ca)

Call us.  
1-800-461-2342

Follow us.  
[Social media](#)

Canada

This document contains general information and is not intended as legal or financial advice.

[May /2021]

<sup>1</sup> Special Income Arrangements include: RRSP's, RRIF's TFSA's, RESP's and RDSP's.

**CDIC Rule****RESOLUTION:**

***BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-77 and substituting the following:***

**Canada Deposit Insurance Corporation**

- 3-77** (1) A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must meet the conditions required under the Schedule to the *Canada Deposit Insurance Corporation Act* to ensure that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.
- (2) The lawyer must not disclose information that is subject to solicitor and client privilege or confidentiality without the consent of the client.

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

# LAW SOCIETY RULES

## PART 3 – PROTECTION OF THE PUBLIC

### Division 7 – Trust Accounts and Other Client Property

#### ~~Annual CDIC report~~ Canada Deposit Insurance Corporation

- 3-77 (1) A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must meet the conditions required under file an annual report for each account maintained by the lawyer with that institution in accordance with section 3 (3) of the Schedule to the Canada Deposit Insurance Corporation Act, so to ensure that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.
- (2) The lawyer must not disclose information that is subject to solicitor and client privilege or confidentiality without the consent of the client.

# LAW SOCIETY RULES

## PART 3 – PROTECTION OF THE PUBLIC

### Division 7 – Trust Accounts and Other Client Property

#### Canada Deposit Insurance Corporation

- 3-77 (1) A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must meet the conditions required under the Schedule to the *Canada Deposit Insurance Corporation Act* to ensure that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.
- (2) The lawyer must not disclose information that is subject to solicitor and client privilege or confidentiality without the consent of the client.



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC  
Date: May 2, 2022  
Subject: **Minor corrections to Law Society Rules**

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1. I attach draft rule amendments and a resolution to correct minor errors in the Law Society Rules that have recently come to light. These changes do not affect the rules in any substantive way, but correct an incorrect reference to a provincial statute and an internal reference, correct a deviation from standard regulation drafting and improve gender-inclusive language.

## Drafting notes

2. The current definition of “professional corporation” in Rule 1 refers to the wrong Part of the *Business Corporations Act*.
3. Rule 1-8(7)(a) mixes the two currently accepted methods of tabulating subparagraphs in regulations in BC. Since the subparagraphs are preceded by “the following” in the opening part of the provision, they should be separated by semi-colons and no conjunction is used.
4. Rules 1-10(7), 2-55(1) and 2-69(4) were evidently overlooked in last year’s general revisions to use gender-inclusive language in the Rules. I have also taken the opportunity to simplify the language a bit in one case.
5. In the general revision of rules governing the Tribunal adopted by the Benchers effective the first of this year, an internal reference in Rule 5-5.1 was inadvertently not revised to reflect the re-numbering of the provision referred to.

JGH

Attachments: drafts  
resolution

## RULE CORRECTIONS May 2022

### RESOLUTION:

*BE IT RESOLVED to amend the Law Society Rules as follows:*

1. ***Rule 1, definition of “professional corporation” is amended by striking “registered under Part 10 of the Business Corporations Act” and substituting “registered under Part 11 of the Business Corporations Act”.***
2. ***Rule 1-8 (7) (a) is rescinded and the following substituted:***
  - (a) a notice containing the following information:
    - (i) the locations at which the meeting is to be held;
    - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule;
    - (iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and
3. ***Rule 1-10 (7) is amended by striking “to prepare his or her report” and substituting “to prepare the auditor’s report”.***
4. ***Rule 2-55 (1) (a) is rescinded and the following substituted:***
  - (a) whose application for enrolment has been rejected by a panel that is not satisfied that the person is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,
5. ***Rule 2-69 (4) is amended by striking “in addition to her entitlement” and substituting “in addition to the student’s entitlement”.***
6. ***Rule 5-5.1 (8) (d) is amended by striking “an application under subrule (5) (f)” and substituting “an application under subrule (7) (k)”.***

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

# LAW SOCIETY RULES

## RULE 1 – DEFINITIONS

### Definitions

1 In these rules, unless the context indicates otherwise:

“**professional corporation**” includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part ~~10-11~~ [Extraprovincial Companies] of the *Business Corporations Act*, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;

## PART 1 – ORGANIZATION

### Division 1 – Law Society

#### Meetings

#### Annual general meeting

- 1-8 (7) Before advance voting is permitted under Rule 1-13.1 [*Voting in advance of general meeting*] and at least 16 days before an annual general meeting, the Executive Director must issue
- (a) a notice containing the following information:
    - (i) the locations at which the meeting is to be held~~;~~
    - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule~~;~~ and
    - (iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and
  - (b) the audited financial statement of the Society for the previous calendar year.

#### Auditors

- 1-10 (7) The auditor is entitled at all times to have access to every record of the Society and is entitled to require from the Benchers, officers and employees of the Society information and explanations that the auditor considers necessary to enable the auditor to prepare ~~his or her~~ the auditor's report.



# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 2 – Admission and Reinstatement

#### Admission program

##### Re-enrolment

- 2-55 (1) This rule applies to a person
- (a) whose application for enrolment has been rejected ~~because he or she has not satisfied by~~ a panel that is not satisfied that ~~he or she~~the person is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,

##### Leave during articles

- 2-69 (4) An articulated student is entitled to 18 weeks maternity leave during the period from 11 weeks before to 17 weeks after giving birth, in addition to ~~her~~the student's entitlement under subrule (3).

## PART 5 – TRIBUNAL, HEARINGS AND APPEALS

### Practice and procedure before a hearing panel

##### Pre-hearing conference

- 5-5.1 (7) The conference may consider any matters that may aid in the fair and expeditious disposition of the matter, including but not limited to
- (k) any other matters that may aid in the disposition of the matter.
- (8) The motions adjudicator may
- (a) adjourn a pre-hearing conference generally or to a specified date, time and place,
  - (b) order discovery and production of documents,
  - (c) set a date for the hearing, and
  - (d) allow or dismiss an application under subrule (~~57~~) (~~fk~~).

# LAW SOCIETY RULES

## RULE 1 – DEFINITIONS

### Definitions

1 In these rules, unless the context indicates otherwise:

“**professional corporation**” includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part 11 [*Extraprovincial Companies*] of the *Business Corporations Act*, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;

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    - (iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and
  - (b) the audited financial statement of the Society for the previous calendar year.

#### Auditors

- 1-10 (7) The auditor is entitled at all times to have access to every record of the Society and is entitled to require from the Benchers, officers and employees of the Society information and explanations that the auditor considers necessary to enable the auditor to prepare the auditor’s report.

# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 2 – Admission and Reinstatement

#### Admission program

##### Re-enrolment

- 2-55 (1) This rule applies to a person
- (a) whose application for enrolment has been rejected by a panel that is not satisfied that the person is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,

##### Leave during articles

- 2-69 (4) An articulated student is entitled to 18 weeks maternity leave during the period from 11 weeks before to 17 weeks after giving birth, in addition to the student's entitlement under subrule (3).

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- (k) any other matters that may aid in the disposition of the matter.
- (8) The motions adjudicator may
- (a) adjourn a pre-hearing conference generally or to a specified date, time and place,
  - (b) order discovery and production of documents,
  - (c) set a date for the hearing, and
  - (d) allow or dismiss an application under subrule (7) (k).



## **CEO's Report to the Benchers**

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May 28, 2022

Prepared for: Benchers

Prepared by: Don Avison, QC

## **1. Discussions Regarding a Single Legal Regulator in BC**

As a Benchers know, there have been a number of discussions with senior officials of the Ministry of the Attorney General, with notaries and representatives of the paralegal profession regarding government's intention to develop and introduce legislation to establish a single legal regulator for all legal professions in British Columbia.

Many of the discussions have, to this point, focused on matters I would characterize as technical. For example, the May 17 session concentrated on current processes for licensing and discipline. We have asserted that the authority of the board to address such matters should be continued in any revisions to existing legislation, or with respect to the development of a new Act, but the details should continue to be addressed in the rules rather than prescriptively in the legislation.

Most Benchers have indicated they are available for a briefing that will take place on May 20 and subsequent updates will be provided following meetings currently scheduled for May 24 and June 6, 2022.

## **2. Status of the Cullen Commission Report and CIFA Update**

Commissioner Cullen was to have reported to government in mid-May but there was a further extension to June 3, 2022. It should be noted that the report goes to government on that date and it is not yet known when the public release will take place.

When the report does become available, I will be asking our counsel, Ludmila Herbst QC, to join me in providing a briefing to Benchers on the report generally and with respect to any recommendations that relate specifically to the legal professions or to the responsibilities of the Law Society.

I can also advise that the Law Society continues to be an active participant in the meetings of the Counter-Illicit Finance Alliance of BC (CIFA-BC) and I and a number of our senior staff members attended the semi-annual symposium of CIFA-BC on May 18, 2022. I thought that session was quite useful and I believe it is appropriate for me to say that there were some very positive comments made regarding the leadership role that the Law Society has played in Anti-Money Laundering matters.

### **3. Rule of Law Lecture with Justice Kimberly Prost of the International Criminal Court**

We can now confirm that Justice Prost will join us on August 11, 2022 for a Rule of Law lecture on “The Rule of Law, War Crimes and the Role of the International Criminal Court”. Justice Prost was elected to a nine year term on the International Criminal Court in December 2017. She had previously served as a judge of the International Criminal Tribunal for the former Yugoslavia, as the first Ombudsperson for the U.N. Security Council’s Al Qaeda Sanctions Committee, as Head of the Criminal Law Section of the Commonwealth Secretariat in London and as Head of the Legal Advisory Section with United Nations Office on Drugs and Crime in Vienna.

During the early part of her career, Prost was with Canada’s Federal Department of Justice where she served in a number of roles including counsel with the War Crimes and Crimes Against Humanity section and as the Director of DOJ’s International Assistance Group.

I think this will be a fascinating lecture and we look forward to providing further details in the weeks ahead. I also see this as an excellent opportunity to invite elevated levels of public participation as I think the subject matter will be of broad general interest.

### **4. The Donoghue and Stevenson 90th Anniversary Conference: The Immortal Snail**

Former Justice Martin Taylor, David Hay QC and Michael Clancy of the Law Society of Scotland have asked us to pass along information regarding a conference to be held on May 26, 2022 to mark the 90th anniversary of the decision of the House of the Lords in *Donoghue v. Stevenson*. We have provided notice of this on the Law Society website and sent out tweets to make the profession aware of this opportunity but I thought I would mention it here also as Benchers may wish to make lawyers and law students aware of the event (which will qualify for Law Society CPD credit).

I note that a number of Canadian speakers will participate including Mr. Justice Russell Brown of the Supreme Court of Canada and Professor John Kleefeld of the UNB law school.

Further information regarding the conference can be found at the following website: <https://www.lawsco.org.uk/members/cpd-training/donoghue-v-stevenson-90th-anniversary-conference-the-immortal-snail/>

## **5. The 2022 LSBC AGM**

This year's annual general meeting will take place on June 22, 2022. There are seven Member Resolutions to be considered. The full text of the resolutions can be viewed within the Member Portal on the Law Society website. Lawyers also have the ability to comment on the resolutions prior to advance online voting taking place, the purpose of which is to assist the movers of the resolutions in determining if they wish to withdraw or make changes to the resolutions. The last day for the movers of the resolutions to do so is Tuesday, May 31, 2022, after which time the resolutions will be finalized and communicated to the profession in the second meeting notice.

Don Avison, QC  
Chief Executive Officer



*To* Benchers  
*From* Finance and Audit Committee  
*Date* May 10, 2022  
*Subject* **Bencher Approval of the 2021 Audited Financial Statements**

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The annual audited financial statements are to be reviewed and recommended for approval by the Finance and Audit Committee, and approved by the Benchers.

Attached are the 2021 audited financial statements for the General Fund, and the consolidated Lawyers Indemnity Fund. These statements were reviewed by the Finance and Audit Committee at their May 10, 2022 meeting.

The Finance and Audit Committee recommends the following resolution for approval by the Benchers:

*BE IT RESOLVED to approve the Law Society's 2021 Financial Statements for the General Fund, and the 2021 Consolidated Financial Statements for the Lawyers Indemnity Fund.*



**The Law Society of British  
Columbia – General Fund**

Fund Financial Statements  
**December 31, 2021**

DRAFT

# The Law Society of British Columbia – General Fund

## Fund Statement of Financial Position

As at December 31, 2021

	2021	2020
	Total \$	Total \$
<b>Assets</b>		
<b>Current assets</b>		
Cash (note 2)	31,978,828	24,919,747
Unclaimed trust funds (note 2)	2,151,250	2,144,416
Accounts receivable and prepaid expenses (note 3)	2,292,224	1,871,173
Due from Lawyers Indemnity Fund (note 9)	6,170,902	9,015,334
	<u>42,593,204</u>	<u>37,950,670</u>
<b>Non-current assets</b>		
Cambie Street property – net (note 4 (a))	10,916,561	11,735,274
Other property and equipment – net (note 4 (b))	1,540,005	1,296,660
Intangible assets – net (note 4 (c))	485,806	518,908
Long-term loan receivable (note 5)	535,161	451,725
	<u>56,070,737</u>	<u>51,953,237</u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities (note 6)	5,430,922	5,436,275
Liability for unclaimed trust funds (note 2)	2,151,250	2,144,416
Current portion of building loan payable (note 8)	100,000	500,000
Deferred revenue (note 2)	14,606,765	13,718,957
Deposits	57,405	55,805
	<u>22,346,342</u>	<u>21,855,453</u>
<b>Building loan payable</b> (notes 8 and 9)	<u>-</u>	<u>100,000</u>
	22,346,342	21,955,453
<b>Net assets</b>		
Unrestricted (note 7)	<u>33,724,395</u>	<u>29,997,784</u>
	<u>56,070,737</u>	<u>51,953,237</u>
<b>Commitments</b> (note 14)		

### Approved by

\_\_\_\_\_ President \_\_\_\_\_ Chair of Finance and Audit Committee

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

**The Law Society of British Columbia – General Fund**

Fund Statement of Changes in Net Assets

For the year ended December 31, 2021

	<u>2021</u>	<u>2020</u>
	Total \$	Total \$
<b>Net assets – Beginning of year</b>	29,997,784	26,305,864
Net excess of revenue over expenses for the year	<u>3,726,611</u>	<u>3,691,920</u>
<b>Net assets – End of year</b> (note 7)	<u>33,724,395</u>	<u>29,997,784</u>

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

**The Law Society of British Columbia – General Fund****Fund Statement of Revenue and Expenses****For the year ended December 31, 2021**

	<b>2021</b>	<b>2020</b>
	<b>Total \$</b>	<b>Total \$</b>
<b>Revenue</b>		
Practice fees	25,683,871	25,246,037
Trust administration fees	5,238,051	3,861,523
Enrolment fees	1,775,550	1,753,250
E-filing revenue	1,334,626	745,535
Fines, penalties and recoveries	677,540	405,820
Application fees	814,802	698,950
Investment income (note 9)	304,645	435,564
Other income	423,814	451,251
Rental revenue	1,026,505	1,039,101
	<b>37,279,404</b>	<b>34,637,031</b>
<b>Expenses</b>		
Bencher governance and support	1,083,536	792,357
Communications and publications	572,853	483,299
Information services	1,932,145	1,843,335
Education and practice		
Credentials	956,736	822,638
Member services	841,691	902,279
Membership assistance programs	60,324	65,778
Practice advice	941,962	788,089
Practice standards	422,078	384,526
Professional legal training course and education	2,803,117	2,586,170
General and administrative		
Finance	1,313,139	1,247,656
Amortization of other property and equipment	505,972	521,923
General administration	1,556,651	1,609,234
Human resources	668,282	624,260
Records management and library	280,135	281,327
Policy and legal services		
Policy, ethics and tribunal counsel	2,103,565	2,016,002
External litigation and interventions	549,206	339,300
Unauthorized practice	306,394	301,098
Regulation		
Custodianship costs	1,753,460	1,645,616
Discipline	2,851,525	2,764,687
Professional conduct – intake and investigations	6,424,483	6,398,057
Forensic accounting	692,522	869,320
Trust assurance	2,866,796	2,777,950
Occupancy costs, net of tenant recoveries	2,142,549	2,006,925
Carried forward	33,629,121	32,071,826

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – General Fund

Fund Statement of Revenue and Expenses ...continued

For the year ended December 31, 2021

	2021	2020
	Total \$	Total \$
Brought forward	33,629,121	32,071,826
Special Compensation Fund General and administrative costs		58,805
	<u>33,629,121</u>	<u>32,130,631</u>
<b>Costs recovered Lawyers Indemnity Funds</b>		
Co-sponsored program costs	(1,002,286)	(657,991)
Program and administrative costs	<u>(1,374,042)</u>	<u>(1,227,529)</u>
	<u>(2,376,328)</u>	<u>(1,885,520)</u>
	<u>31,252,793</u>	<u>30,245,111</u>
<b>Net excess of revenue over expenses before contribution to Lawyers Indemnity Fund</b>	6,026,611	4,391,920
<b>Contribution from Trust Assurance Net Assets to Lawyers Indemnity Fund</b> (note 7)	<u>2,300,000</u>	<u>700,000</u>
<b>Net excess of revenue over expenses for the year</b>	<u>3,726,611</u>	<u>3,691,920</u>

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – General Fund

## Fund Statement of Cash Flows

For the year ended December 31, 2021

	2021	2020
	Total \$	Total \$
<b>Cash provided by (used in)</b>		
<b>Operating activities</b>		
Net excess of revenue over expenses for the year	3,726,611	3,691,920
Items not affecting cash		
Amortization of Cambie Street building and tenant improvements	976,167	951,913
Amortization of other property and equipment	382,149	367,431
Amortization of intangible assets	154,043	154,492
	-	-
Loss on disposal of other property and equipment	538	111
Contributions to Lawyers Indemnity Fund	2,300,000	700,000
	7,539,508	5,865,867
(Increase) decrease in current assets		
Unclaimed trust funds	(6,834)	70,601
Accounts receivable and prepaid expenses	(421,051)	55,347
(Increase) decrease in current liabilities		
Accounts payable and accrued liabilities	(5,354)	(1,674,224)
Liability for unclaimed trust funds	6,834	(70,601)
Deferred revenue	887,808	(11,712,410)
	-	-
Deposits	1,600	(200)
	8,002,511	(7,465,620)
<b>Financing activities</b>		
Decrease in building loan payable	(500,000)	(500,000)
Interfund transfers	544,432	(3,633,313)
	44,432	(4,133,313)
<b>Investing activities</b>		
Purchase of property and equipment	(783,485)	(901,790)
Purchase of intangible assets	(120,941)	(174,492)
Long-term loan receivable	(83,436)	(86,257)
	(987,862)	(1,162,539)
<b>Increase (decrease) in cash</b>	7,059,081	(12,761,472)
<b>Cash – Beginning of year</b>	24,919,747	37,681,219
<b>Cash – End of year</b>	31,978,828	24,919,747
<b>Supplementary cash flow information</b>		
Interest paid	2,184	10,410
Interest income received	329,723	456,601

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – General Fund

## Notes to Fund Financial Statements

As at December 31, 2021

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### 1 Nature of operations

The Law Society of British Columbia (the Society) regulates the legal profession in British Columbia, protecting public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers. The Society is a not-for-profit organization.

The funds covered in these fund financial statements are for the Society's General Fund and Special Compensation Fund with the following activities:

The General Fund comprises the assets, liabilities, net assets, revenue and expenses of the operations of the Society other than those designated to the statutory Special Compensation Fund and the Lawyers Indemnity Fund. This includes collecting revenues associated with practice fees, trust administration fees, enrolment fees, and various other administrative fees and penalties used to cover the costs of the Society to regulate the legal profession and educate and enforce adherence of its members to act within the rules of professional conduct for lawyers.

The Special Compensation Fund was maintained by the Society pursuant to Section 31 of the Legal Profession Act (the LPA). The Special Compensation Fund claims were recorded net of recoveries from the Special Compensation Fund's insurers when they were approved for payment by the Special Compensation Fund Committee as delegated by the Benchers and the settlement has been accepted by the claimant. The LPA provides that the assets of the Special Compensation Fund are not subject to process of seizure or attachment by creditors of the Society.

Effective from January 1, 2013, the Legal Profession Amendment Act, 2012 repealed Section 31 of the LPA. The legislation was changed pursuant to Section 50 of the Legal Profession Amendment Act, 2012 (SBC 2012, C16), to initiate the transfer of unused reserves that remain within the Special Compensation Fund, after all recoveries are received and expenses and claims are paid, to be used in the Lawyers Indemnity Fund. Additionally, Section 23 of the LPA was amended to remove the requirement that practising lawyers pay the Special Compensation Fund assessment. At December 31, 2020 the Special Compensation Fund was wound up.

Effective from May 1, 2004, Part B to the B.C. Lawyers' Compulsory Professional Liability Indemnification Policy provides defined insurance coverage for dishonest appropriation of money or other property entrusted to and received by insured lawyers in their capacity as barristers and solicitors and in relation to the provision of professional services. Part B (Trust Protection Coverage) is recorded in the Lawyers Indemnity Fund.

The Society's Lawyers Indemnity Fund is presented separately in consolidated fund financial statements, including the Society's wholly owned BC Lawyers' Indemnity Association (BCLIA). The Lawyers Indemnity Fund underwrites the program by which errors and omissions insurance is provided to members of the Society. The Lawyers Indemnity Fund's consolidated fund financial statements provide further detail on the various insurance coverages provided.

The COVID-19 global pandemic has resulted in measures taken by various governments, including emergency measures to combat the spread of the virus, which has affected economic activity. The Law Society has taken a number of measures to monitor and mitigate the effects of COVID-19, such as implementing safety and health measures, effectively transforming the operations to a virtual workplace, and providing support to lawyers who

# **The Law Society of British Columbia – General Fund**

## **Notes to Fund Financial Statements**

**As at December 31, 2021**

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may be significantly affected by the pandemic through targeted initiatives. At this stage, there has not been a decline in fees or assessment revenues as a result of the pandemic and the Society will continue to monitor this closely.

### **2 Significant accounting policies**

These fund financial statements are prepared in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO) as issued by the Canadian Accounting Standards Board.

#### **Allocated administrative expenses**

Administrative expenses are recovered by the General Fund from the Lawyers Indemnity Fund. Recoveries are based on amounts derived either on percentage of use, the proportion of the Lawyers Indemnity Fund's staff compared to the Society's total staff costs, or a set amount.

#### **Cash**

Cash comprises cash on hand and held with a Canadian chartered bank.

#### **Claims liabilities**

In accordance with the absolute discretionary nature of the Special Compensation Fund arrangements, the claims become a liability only when approved by the Special Compensation Fund Committee and accepted by the claimant.

#### **Deferred capital contributions**

Contributions restricted for the purchase of capital assets are deferred and recognized as revenue on the same basis as the capital assets are amortized.

#### **Fair value of financial instruments**

The fair values of cash, accounts receivable and accounts payable and accrued liabilities correspond to their carrying values due to their short-term nature.



# The Law Society of British Columbia – General Fund

Notes to Fund Financial Statements

As at December 31, 2021

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## Intangible assets

Intangible assets comprise computer software. Software is recorded at cost and amortized on a straight-line basis at 10% – 20% per annum.

## Property and equipment

Property and equipment, including leasehold improvements, are recorded at cost less accumulated amortization.

The Society provides for amortization on a straight-line basis as follows:

Buildings	40 years from purchase date
Building – Envelope	7% per annum
Computer hardware	10% - 20% per annum
Furniture and fixtures	10% per annum
Leasehold improvements	10% per annum
Building improvements and equipment	10% per annum
Tenant improvements	over lease period

The Society recognizes a full year's amortization expense in the year of acquisition, with the exception of building improvements and equipment and leasehold improvements which are amortized from their date of completion.

## Revenue recognition

The Society follows the deferral method of accounting for practice fees and assessments. Fees and assessments are billed and received in advance on a calendar-year basis. Accordingly, fees and assessments for the next fiscal year received prior to December 31 have been recorded as deferred revenue for financial reporting purposes and will be recognized as revenue in the next calendar year. The Society began billing annual practice fees in two instalments beginning with the collection of the 2021 annual practice fees. Revenue will be recognized on a monthly basis as earned. Surplus funds are invested in a high interest savings account.

All other revenues are recognized when earned if the amount to be received can be reasonably estimated and collection is reasonably assured.

# The Law Society of British Columbia – General Fund

## Notes to Fund Financial Statements

As at December 31, 2021

### Unclaimed trust funds

The General Fund recognizes unclaimed trust funds as an asset as well as a corresponding liability on the fund statement of financial position. If these funds are claimed, the owner of the trust fund balance is entitled to the principal balance plus interest at prime rate minus 2%. Due to the historically low collection rates on these balances, the General Fund does not accrue for any interest owing on the trust fund amounts held and recognizes income earned from the unclaimed trust fund investments in the fund statement of revenue and expenses. Unclaimed funds outstanding for more than five years are transferred to the Law Foundation of British Columbia.

### Use of estimates

The preparation of fund financial statements in accordance with ASNPO requires management to make estimates and assumptions that affect the reported amounts of certain assets and liabilities and disclosure of contingent assets and liabilities at the date of the fund financial statements and the reported amounts of certain revenues and expenses during the year. Actual results could differ from these estimates.

The Society continues to monitor these estimates; however, they have not to date been significantly impacted by the economic uncertainty related to COVID-19.

### 3 Accounts receivable and prepaid expenses

Accounts receivable are presented net of the allowance for doubtful accounts of \$1,702,515 (2020 – \$1,224,884).

### 4 Property, equipment and intangible assets

- a) 845 Cambie Street property

	<b>2021</b>		
	<b>Cost</b>	<b>Accumulated amortization</b>	<b>Net</b>
	\$	\$	\$
Land	4,189,450	-	4,189,450
Buildings and equipment	17,071,416	11,374,076	5,697,340
Leasehold improvements	7,725,118	6,752,647	972,471
Tenant improvements	826,619	769,319	57,300
	<b>29,812,603</b>	<b>18,896,042</b>	<b>10,916,561</b>

# The Law Society of British Columbia – General Fund

## Notes to Fund Financial Statements

As at December 31, 2021

	<b>2020</b>		
	<b>Cost</b>	<b>Accumulated</b>	<b>Net</b>
	<b>\$</b>	<b>amortization</b>	<b>\$</b>
		<b>\$</b>	<b>\$</b>
Land	4,189,450	-	4,189,450
Buildings and equipment	16,825,340	10,623,021	6,202,319
Leasehold improvements	7,813,202	6,549,917	1,263,285
Tenant improvements	826,619	746,399	80,220
	<b>29,654,611</b>	<b>17,919,337</b>	<b>11,735,274</b>
b) Other property and equipment			
	<b>2021</b>		
	<b>Cost</b>	<b>Accumulated</b>	<b>Net</b>
	<b>\$</b>	<b>amortization</b>	<b>\$</b>
		<b>\$</b>	<b>\$</b>
Furniture and fixtures	3,497,788	2,436,178	1,061,610
Computer hardware	2,001,876	1,527,238	474,638
Artwork and collectibles	49,161	45,405	3,756
Law libraries – at nominal value	1	-	1
	<b>5,548,826</b>	<b>4,008,821</b>	<b>1,540,005</b>
	<b>2020</b>		
	<b>Cost</b>	<b>Accumulated</b>	<b>Net</b>
	<b>\$</b>	<b>amortization</b>	<b>\$</b>
		<b>\$</b>	<b>\$</b>
Furniture and fixtures	2,970,009	2,259,380	710,629
Computer hardware	1,908,049	1,325,775	582,274
Artwork and collectibles	49,161	45,405	3,756
Law libraries – at nominal value	1	-	1
	<b>4,927,220</b>	<b>3,630,560</b>	<b>1,296,660</b>

# The Law Society of British Columbia – General Fund

## Notes to Fund Financial Statements

As at December 31, 2021

c) Intangible assets

	<b>2021</b>		
	<b>Cost \$</b>	<b>Accumulated amortization \$</b>	<b>Net \$</b>
Computer software	2,380,119	1,894,313	485,806
Website development	110,733	110,733	-
	<b>2,490,852</b>	<b>2,005,046</b>	<b>485,806</b>
	<b>2020</b>		
	<b>Cost \$</b>	<b>Accumulated amortization \$</b>	<b>Net \$</b>
Computer software	2,259,177	1,762,415	496,762
Website development	110,733	88,587	22,146
	<b>2,369,910</b>	<b>1,851,002</b>	<b>518,908</b>

## 5 Long-term loan receivable

In 2018, the Society agreed to participate with other Canadian law societies in a collective loan of \$2 million to the Canadian Legal Information Institute (CanLII), a wholly owned subsidiary of the Federation of Law Societies of Canada (FLSC). The loan is part of the financing for the purchase by CanLII of Lexum, a corporation providing support services to CanLII for the implementation of CanLII's legal information website. The Law Society's participation in this loan was \$276,390 in 2018. Part of the Society's support of this transaction are annual repayable capital payments of \$89,079 in 2019, \$86,257 in 2020 and \$83,435 in to the vendors of Lexum as provided in a Subordination and Commitment Agreement. Amounts advanced under this agreement earn interest at the same rate as the amount advanced under the collective loan. In 2021, the Society's total participation in this loan is \$535,161(2020 – \$451,725). The loan has a five-year term with an annual interest rate of 4.74%, payable annually. The interest earned in the current year relating to the loan was \$25,078.

# The Law Society of British Columbia – General Fund

Notes to Fund Financial Statements

As at December 31, 2021

## 6 Accounts payable and accrued liabilities

Accounts payable and accrued liabilities include the following amounts collected on behalf of external organizations, but not yet paid:

	2021 \$	2020 \$
Advocate	231,339	193,193
Courthouse Libraries BC	2,050,215	1,707,199
Lawyers Assistance Program	477,390	423,184
Pro bono	198,856	191,603
CanLII	259,759	236,493
Federation of Law Societies	208,202	197,519

## 7 Unrestricted net assets

The General Fund unrestricted net assets include \$3,966,733 (2020 – \$3,693,174), which has been allocated to capital expenditures in accordance with the capital plan.

The General Fund unrestricted net assets also include \$1,842,249 (2020 – \$2,072,034), which has been appropriated for future trust assurance expenses. During the year, \$ 5,238,051 (2020 – \$3,861,523) in trust administration fee revenue was collected and \$ 3,167,836 (2020 – \$3,078,990) in trust assurance expenses were incurred.

Pursuant to the reserve policy, \$ 2,300,000 of the net assets related to trust assurance was transferred to the Lawyers Indemnity Fund for Part B coverage in 2021 (2020 – \$700,000).

# The Law Society of British Columbia – General Fund

## Notes to Fund Financial Statements

As at December 31, 2021

The remaining General Fund net assets represent \$12,842,371 (2020 – \$12,950,843) invested in capital assets, and working capital of \$15,073,041 (2020 – \$11,281,734), combining for a total unrestricted net asset amount of \$ 27,915,412 (2020 – \$24,232,577).

	(in 000s)					2021	2020
	Invested in capital \$	Working capital \$	Unrestricted \$	Trust assurance \$	Capital plan \$	Total \$	Total \$
Net assets – Beginning of year	12,951	11,282	24,233	2,072	3,693	29,998	26,247
Net (Deficiency) excess of revenue over expenses before contribution to Lawyers Indemnity Fund	(1,513)	3,791	2,278	2,070	1,678	6,026	4,451
Contribution to Lawyers Indemnity Fund				(2,300)		(2,300)	( 700)
Repayment of building loan payable (note 8)	500	-	500	-	(500)	-	-
Purchase of capital assets	904	-	904	-	(904)	-	-
<b>Net assets – End of year</b>	<b>12,842</b>	<b>15,073</b>	<b>27,915</b>	<b>1,842</b>	<b>3,967</b>	<b>33,724</b>	<b>29,998</b>

## 8 Building loan payable

In 1992, the Benchers authorized the borrowing of monies from the Lawyers Indemnity Fund to fund the capital development of the Society's buildings at 845 Cambie Street, Vancouver, BC. The loan is secured by the buildings, has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly bond yield to maturity earned on the Lawyers Indemnity Fund investment portfolio. Interest paid on the building loan is disclosed in note 9. The outstanding building loan balance at December 31, 2021 is \$ 100,000 (2020 – \$600,000). It is the intention of the Benchers to require the General Fund to repay a minimum of \$500,000 of the principal each year. During 2021, principal of \$500,000 (2020 – \$500,000) was repaid. The loan will be paid off in total by 2022.

	2021 %	2020 %
Weighted average rate of interest	1.88	1.36

## 9 Interfund transactions

The operations of the General, Lawyers Indemnity and Special Compensation Funds are controlled by the management of the Society. Balances between the funds generally arise from transactions of an operating nature and are recorded at the exchange amount at the dates of the transactions. Surplus funds are kept in the General Fund bank accounts or invested in a high interest savings account.

# **The Law Society of British Columbia – General Fund**

## **Notes to Fund Financial Statements**

**As at December 31, 2021**

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Amounts due to and from the Lawyers Indemnity Fund are due on demand and have no fixed terms of repayment. The Lawyers Indemnity Fund has authorized a loan facility of up to \$1 million, of which \$ nil has been drawn down at December 31, 2021 (2020 – \$nil), to the General Fund to fund capital expenditures in accordance with the capital plan.

Monthly interest on the Lawyers Indemnity Fund's net loan position with the General and Special Compensation Funds is earned at the rate equal to the stated monthly bond yield to maturity earned on the Lawyers Indemnity Fund investment portfolio. The average bond yield for 2021 was 1.88% (2020 – 1.36%). The General Fund's net loan position includes the General Fund's building loan and other operating balances with the Lawyers Indemnity Fund. The net loan position fluctuates during the year as amounts are transferred between the General Fund, the Special Compensation Fund and the Lawyers Indemnity Fund to finance ongoing operations.

During 2021, interest of \$2,184 was paid on the building loan and interest revenue of \$190,071 was received from General Fund cash balances held by the Lawyers Indemnity Fund for a net interest income of \$187,887.

During 2020, interest of \$10,410 was paid on the building loan and interest revenue of \$ 202,807 was received from General Fund cash balances held by the Lawyers Indemnity Fund and \$ 308 was received from Special Compensation Fund cash balances held by the Lawyers Indemnity Fund for a net interest income of \$192,705.

Other interfund transactions are disclosed elsewhere in these fund financial statements.

### **10 Special Compensation Fund claims and program changes**

#### **Outstanding claims**

Pursuant to section 31(6) of the Legal Profession Act, the payment of Special Compensation Fund claims is at the discretion of the Special Compensation Fund Committee as delegated by the Benchers. As at December 31, 2021, there were no remaining claims for which statutory declarations had been received. All claims for which statutory declarations were received have been reviewed by the Special Compensation Fund Committee, and accordingly, at December 31, 2020 the Special Compensation Fund was wound up

For claims reported prior to May 1, 2004, the insurance bond provided that total claims attributable to the period in excess of \$25,000,000 were 100% reimbursed by a commercial insurer up to a maximum of \$15,000,000 for claims against one lawyer and in total. As set out in note 1, claims reported after May 1, 2004 are subject to Part B coverage by the Lawyers Indemnity Fund.

### **11 Related parties**

The elected Benchers include members drawn from law firms across the province. These law firms may at times be engaged by the Society in the normal course of business. During the year ended December 31, 2021, expenses of \$11,716 (2020 – \$nil) recorded at the carrying amount were incurred by the General Fund during the normal course of business with these law firms.

# The Law Society of British Columbia – General Fund

Notes to Fund Financial Statements

As at December 31, 2021

## 12 Capital management

The Society defines its capital as the amounts included in its unrestricted net assets. Its objective when managing capital is to safeguard its ability to continue as a going concern so that it can continue to fulfill its objectives and meet its requirements.

## 13 Financial instruments

The General Fund's financial instruments consist of cash, accounts receivable and accounts payable and accrued liabilities.

The significant financial risks to which the Society is exposed are credit risk and liquidity risk.

### a) Credit risk

Cash and accounts receivable expose the Fund to credit risk.

The maximum exposure to credit risk arising from the above-noted items is \$33,681,343 (2020 – \$26,169,122). Credit risk arises from the possibility that a counterparty to an instrument fails to meet its obligations.

### b) The Society's assets mainly consist of cash and therefore are not subject to any heightened credit risk as a result of COVID-19.

### c) Liquidity risk

Liquidity risk is the risk that the Fund will not be able to meet all cash outflow requirements. Financial instruments held by the Society are limited to cash, accounts receivable and accounts payable and accrued liabilities and, therefore, bear no significant liquidity risk.

## 14 Commitments

The Society has committed to payments under certain operating leases relating to vehicle costs. Future minimum lease payments required in each of the next three fiscal years are:

	\$
2022	5,304
2023	2,652
2024	-
	<hr/>
Total future minimum lease payments	<u>7,956</u>

For the year ended December 31, 2021, an amount of \$5,304 representing payments under operating leases was expensed (2020 – \$5,304).



**The Law Society of British  
Columbia – Lawyers  
Indemnity Fund**

Consolidated Fund Financial Statements  
**December 31, 2021**

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Consolidated Fund Statement of Financial Position

As at December 31, 2021

	2021 \$	2020 \$
<b>Assets</b>		
Cash	836,534	3,029,869
Accounts receivable – net of allowance (note 3)	338,460	439,339
Prepaid expenses	549,393	56,434
Short-term investments (note 5)	516,963	515,438
Member deductibles	1,513,163	1,270,504
General Fund building loan (note 0)	100,000	600,000
Investments (note 6)	241,159,753	213,187,539
	<u>245,014,266</u>	<u>219,099,123</u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities (notes 4 and 8)	2,151,511	1,981,060
Deferred revenue	8,646,759	8,371,389
Due to General Fund (note 10)	6,170,902	9,015,334
Provision for claims (note 9)	72,917,766	76,375,620
Provision for ULAE (note 9)	12,399,000	12,222,000
	<u>102,285,938</u>	<u>107,965,403</u>
<b>Net assets</b>		
Unrestricted net assets	125,228,328	93,633,720
Internally restricted net assets (note 11)	17,500,000	17,500,000
	<u>142,728,328</u>	<u>111,133,720</u>
	<u>245,014,266</u>	<u>219,099,123</u>
Commitments (note 10)		

### Approved by

\_\_\_\_\_ President \_\_\_\_\_ Chair of Finance and Audit Committee

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Consolidated Fund Statement of Revenue and Expenses

For the year ended December 31, 2021

	2021 \$	2020 \$
<b>Revenue</b>		
Annual assessments	17,051,823	16,518,443
Investment income (note 6)	6,609,753	6,742,564
Other income	85,200	44,149
	<u>23,746,776</u>	<u>23,305,156</u>
<b>Indemnity expenses</b>		
Actuary, consultant and investment manager fees	1,119,439	1,043,028
Allocated office rent from General Fund	323,505	323,829
Contribution to program and administrative costs of General Fund	1,374,042	1,228,752
Insurance	1,067,773	379,933
Office	276,846	484,463
Premium taxes	-	11,084
Provision for settlement of claims (note 9)	6,487,841	11,369,370
Provision for ULAE (note 9)	177,000	362,000
Salaries, wages and benefits	3,149,622	3,073,329
	<u>13,976,068</u>	<u>18,275,788</u>
<b>Loss prevention expenses</b>		
Contribution to co-sponsored program costs of General Fund	1,002,286	657,991
	<u>14,978,354</u>	<u>18,933,779</u>
<b>Excess of revenue over expenses before the following</b>	8,768,422	4,371,377
<b>Fair value increase in investments</b> (note 6)	20,525,641	8,146,950
	<u>29,294,063</u>	<u>12,518,327</u>
<b>(Recovery of) provision for income taxes</b>	(545)	5,411
	<u>29,294,608</u>	<u>12,512,916</u>
<b>Contribution from Trust Assurance Net Assets in General Fund</b> (note 10)	2,300,000	700,000
<b>Excess of revenue over expenses for the year</b>	<u>31,594,608</u>	<u>13,212,916</u>

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

**The Law Society of British Columbia – Lawyers Indemnity Fund**

Consolidated Fund Statement of Changes in Net Assets

For the year ended December 31, 2021

			2021	2020
	Unrestricted \$	Internally restricted \$	Total \$	Total \$
<b>Net assets – Beginning of year</b>	93,633,720	17,500,000	111,133,720	97,920,804
Excess of revenue over expenses for the year	31,594,608	-	31,594,608	13,212,916
<b>Net assets – End of year</b>	<u>125,228,328</u>	<u>17,500,000</u>	<u>142,728,328</u>	<u>111,133,720</u>

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Consolidated Fund Statement of Cash Flows

**For the year ended December 31, 2021**

	<b>2021</b>	<b>2020</b>
	\$	\$
<b>Cash provided by (used in)</b>		
<b>Operating activities</b>		
Excess of revenue over expenses for the year	31,594,608	13,212,916
Items not affecting cash		
Unrealized gain on investments	(11,509,114)	(4,215,946)
Realized gain on disposal of investments	(9,016,527)	(3,931,005)
Pooled distributions from investments	(6,783,814)	(6,858,317)
Contribution from General and Special Funds	2,300,000	700,000
	6,585,153	(1,092,352)
(Increase) decrease in assets		
Accounts receivable	100,879	(126,969)
Prepaid expenses	(492,959)	(10,489)
Short-term investments	(1,525)	7,031,242
Corporate shares held	(1,003,390)	-
Member deductibles	(242,659)	172,260
(Decrease) increase in liabilities		
Accounts payable and accrued liabilities	170,385	(160,859)
Deferred revenue	275,370	227,686
Provision for claims	(3,457,854)	(133,442)
Provision for ULAE	177,000	362,000
	2,110,400	6,269,077
<b>Investing activities</b>		
Decrease in General Fund building loan	500,000	500,000
Purchase of investments	(22,812,788)	(90,663,440)
Proceeds from disposal of investments	23,153,421	83,763,650
	840,633	(6,399,790)
<b>Financing activities</b>		
Interfund transfers (note 10)	(5,144,368)	2,233,313
	(2,193,335)	2,102,600
<b>Cash – Beginning of year</b>	3,029,869	927,269
<b>Cash – End of year</b>	836,534	3,029,869
<b>Supplementary cash flow information</b>		
Interest paid	185,703	203,115
Interest income received	15,914	44,750

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### 1 Nature of operations

The Law Society of British Columbia (the Society) regulates the legal profession in British Columbia, protecting public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers.

The Society's fund covered in these consolidated fund financial statements is for the Lawyers Indemnity Fund (the Fund) and the Society's wholly-owned subsidiary, BC Lawyers Indemnity Association (BCLIA) that together comprise the Society's indemnification program. Effective January 1, 1990, the Fund underwrites the program by which professional liability indemnity is provided to eligible members of the Society.

The Society's General Fund and Special Compensation Fund are presented in separate fund financials.

The Fund is maintained by the Society pursuant to Section 30 of the Legal Profession Act. The LSBC Captive Insurance Company Ltd. (Captive) was considered assessable for income tax under current legislation, and was wound up at December 31, 2020. BCLIA is not subject to regulation by the BC Financial Services Authority (BCFSA).

The COVID-19 global pandemic resulted in measures taken by various governments, including emergency measures, to combat the spread of the virus, which has affected economic activity. The Law Society has taken a number of steps to monitor and mitigate the effects of COVID-19, such as implementing safety and health requirements, effectively transforming the operations to a virtual workplace, and providing support to lawyers who may be significantly affected by the pandemic through targeted initiatives. At this stage, there has not been a decline in fees or assessment revenue as a result of the pandemic; this will be monitored closely.

#### Part A

The Society's members have limits of coverage for claims and potential claims arising from negligent acts, errors or omissions under Part A of the BC Lawyers Compulsory Professional Liability Indemnification Policy (the Policy) as follows:

	\$	\$
The Fund	995,000	990,000
Deductible – applicable to indemnity payments only	5,000 or	10,000
	<hr/>	<hr/>
Limit per error or related errors		1,000,000
		<hr/>
Annual aggregate limit for all errors per covered lawyer		2,000,000
		<hr/>

The amount of the member deductible is \$5,000 for each initial claim resulting in an indemnity payment and \$10,000 for each additional claim within a three-year reporting period resulting in an indemnity payment.

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

For the 2021 and 2020 policy years, the Society and BCLIA have obtained stop-loss reinsurance in the amount of \$12 million to cover aggregate payments over \$25 million for Parts A and C of the Policy. This limit is co-indemnified 80/20 with the reinsurer paying 80% of losses over \$25 million to a maximum of \$12 million and the Fund paying 20%.

### Part B

Effective May 1, 2004, Part B of the Policy provides defined indemnity coverage for dishonest appropriation of money or other property entrusted to and received by covered members in their capacity as lawyers and in relation to the provision of professional services.

For the 2021 and 2020 policy years, there is a \$300,000 per claim limit and a \$17.5 million profession-wide annual aggregate limit. There is no deductible payable by the covered lawyer. The Society and BCLIA have obtained insurance in the amount of \$5 million to cover a portion of the annual aggregate limit. This insurance is subject to a \$3 million group deductible and is co-insured 80/20 with the insurer paying 80% of losses over \$3 million to a maximum of \$5 million, and the Fund paying 20%.

### Part C

Effective January 1, 2012, Part C of the Policy provides defined indemnity coverage for trust shortages suffered by covered lawyers as a result of relying on fraudulent certified cheques. Effective January 1, 2017, Part C was expanded to include coverage for certain other social engineering frauds.

For the 2021 and 2020 policy years, there is a limit of \$500,000 per claim, and per lawyer and firm annually, a profession-wide annual aggregate of \$2 million, and a deductible of 35% of the client trust fund shortage (reduced by the amount of any overdraft paid). Coverage, for relying on fraudulent certified cheques, is contingent upon compliance with the Society's client identification and verification rules.

## 2 Significant accounting policies

These consolidated fund financial statements are prepared in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO) as issued by the Canadian Accounting Standards Board.

### Basis of consolidation

These consolidated fund financial statements include the accounts of the Fund and BCLIA.

### Allocated administrative expenses

Administrative expenses are recovered by the General Fund of the Society from the Fund. Recoveries are based on amounts derived either on percentage of use or the proportion of the Fund's staff compared to the Society's total staff cost.

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### **Cash**

Cash comprises cash on hand and held with a Canadian chartered bank.

### **Fair value of financial instruments**

The fair values of cash, accounts receivable, short-term investments and accounts payable and accrued liabilities correspond to their carrying values due to their short-term nature.

The fair values of the provision for claims correspond to their carrying values because they are discounted.

The interfund balances including the building loan receivable and other interfund transactions are recorded at their carrying amounts which approximate their exchange amounts.

### **Short-term investments**

Short-term investments consist of pooled money market funds, whose investments have original maturities of less than 90 days. The carrying amount approximates the fair value at the reporting date due to their short-term maturities.

### **Investments**

The Fund's investments consist of units in pooled equity, available for sale equities, bond pooled funds, real estate and mortgage funds and are initially and subsequently measured at fair value. Changes in fair value are recognized in the consolidated fund statement of revenue and expenses in the year incurred. Transaction costs that are directly attributable to the acquisition of these investments are recognized in the consolidated fund statement of revenue and expenses in the year incurred.

### **Investment income**

Investment income and pooled fund distributions are recorded on an accrual basis. Dividends are recorded on the date of record. Gains and losses realized on the disposal of investments are taken into income on the date of disposal.

### **Provision for claims**

The provision for claims and unallocated loss adjustment expenses (ULAE) represents an estimate for all external costs of investigating and settling claims and potential claims reported prior to the date of the consolidated fund statement of financial position. The provision is adjusted as additional information on the estimated amounts becomes known during the course of claims settlement. All changes in estimates are expensed in the current period. The provision for unpaid claims is established according to accepted actuarial practice in Canada. It is carried on a discounted basis and therefore reflects the time value of money. To recognize the uncertainty in establishing best estimates, the Fund includes a provision for adverse deviations (PFAD).



# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### Revenue recognition

The Fund follows the deferral method of accounting for annual assessments. Assessments are billed and received in advance on a calendar-year basis. Accordingly, assessments for the next fiscal year received prior to December 31 have been recorded as deferred revenue for financial reporting purposes and will be recognized as revenue in the next calendar year. The Society began billing annual assessments in two instalments beginning with the collection of the 2021 annual assessments.

All other revenue is recognized when receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

### Use of estimates

The preparation of financial statements in conformity with ASNPO requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as at the date of the consolidated fund financial statements and revenues and expenses for the period reported.

The Society continues to monitor these estimates; however, they have not to date been significantly impacted by the economic uncertainty related to COVID-19.

The determination of the provision for claims and ULAE involves significant estimation. Actual results could differ from those estimates and the differences could be material.

### Financial instruments

The Fund's financial instruments consist of cash, accounts receivable, short-term investments, investments and accounts payable and accrued liabilities.

The significant financial risks to which the Fund is exposed are credit risk, market risk, price risk, and liquidity risk.

### Credit risk

Cash, short-term investments, accounts receivable, members' share of provision for claims, bond pooled funds and the investment in real estate mortgage indirectly expose the Fund to credit risk.

The maximum exposure to credit risk arising from the above-noted items is \$142,097,295 (2020 – \$119,144,897).

Credit risk arises from the possibility that a counterparty to an instrument fails to meet its obligations.

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

The cash deposits are held only with Schedule I banks. The accounts receivable balances are spread across the broad membership base with no significant exposure to any one individual. The guidelines of the Society's statement of investment policies and procedures (SIPP) mitigate credit risk by ensuring the investments in the bond pooled funds have an adequate minimum credit rating and well-diversified portfolios.

### Market risk

Market risk is the potential for loss to the Fund from changes in the value of its financial instruments due to changes in interest rates, foreign exchange rates or equity prices.

The Fund manages market risk by diversifying investments within the various asset classes and investing in pooled funds as set out in the Society's SIPP.

### Price risk

Price risk is the risk that the fair value of the Society's investments will fluctuate due to changes in the market prices whether these changes are caused by factors specific to the individual financial instrument, its issuer, or factors affecting all similar financial instruments traded in the market. It arises primarily on pooled equity, bond, real estate and mortgage fund investments.

To manage price risk, the Society has guidelines on the diversification and weighting of investments within pooled funds that are set and monitored against the Society's SIPP.

As at December 31, 2021, if pooled fund prices increased or decreased by 10% with all other factors remaining constant, net assets would have increased or decreased by approximately \$24.0 million (2020 – \$21.3 million).

### Liquidity risk

Liquidity risk is the risk that the Fund will not be able to meet all cash outflow requirements. At December 31, 2021, the sum of the Fund's cash, short-term investments and pooled fund investments, at fair value, which are available to settle the liabilities of the Society as they come due, exceeded the sum of the liabilities by \$140 million, or 137% (2020 – \$108 million, or 99%).

## 3 Accounts receivable

	2021 \$	2020 \$
Member deductibles	687,346	743,296
Allowance for doubtful accounts	(455,206)	(422,256)
GST/HST/PST receivable	106,320	118,299
	<hr/>	<hr/>
	338,460	439,339
	<hr/>	<hr/>

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### 4 Government remittances

The following government remittances are included in accounts payable:

	2021 \$	2020 \$
Ministry of Finance – premium tax	-	1,241

### 5 Short-term investments

Short-term investments comprise pooled money market funds and equities with the following balances:

	2021 \$	2020 \$
Money market funds	516,963	515,438

### 6 Investments

	2021 \$	2020 \$
Investments – at fair value	241,159,753	213,187,539

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

				2021
	Carrying cost \$	Gross unrealized gains \$	Gross unrealized losses \$	Estimated fair value \$
Bonds				
Pooled Funds	53,079,370	-	2,231,002	50,848,368
Equities				
Canadian Pooled Funds	20,191,344	13,229,357	-	33,420,701
International Pooled Funds	31,371,087	37,473,628	-	68,844,715
Corporate Shares Held	1,003,390	-	-	1,003,390
	52,565,821	50,702,985	-	103,268,806
Real Estate, Mortgage, and Infrastructure				
Real Estate Fund	14,521,175	7,298,952	-	21,820,127
Mortgage Fund	42,480,873	198,709	-	42,679,582
Infrastructure	21,796,436	746,434	-	22,542,870
	78,798,484	8,244,095	-	87,042,579
	184,443,675	58,947,080	2,231,002	241,159,753
				2020
	Carrying cost \$	Gross unrealized gains \$	Gross unrealized losses \$	Estimated fair value \$
Bonds				
Pooled Funds	52,308,669	549,970	-	52,858,639
Equities				
Canadian Pooled Funds	22,830,786	10,145,055	-	32,975,841
International Pooled Funds	37,336,707	29,027,437	-	66,364,144
	60,167,493	39,172,492	-	99,339,985
Real Estate & Mortgage				
Real Estate Fund	14,521,175	5,041,804	-	19,562,979
Mortgage Fund	40,983,238	442,698	-	41,425,936
	55,504,413	5,484,502	-	60,988,915
	167,980,575	45,206,964	-	213,187,539

The effective yield on the bonds, mortgages and equities portion of the investment portfolio was 2.21% (2020 – 2.00%).

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### Investment risk management

The Society has adopted policies that establish the guidelines for all investment activities. These guidelines apply to the investment funds controlled by the Fund.

The Society's overall investment philosophy is to maximize the long-term real rate of return subject to an acceptable degree of risk.

The Society's long-term funding requirements and relatively low level of liquidity dictate a portfolio with a mix of fixed income, equities, and infrastructure, as well as real estate and mortgages. The Society invests in bonds, equities, infrastructure, real estate and mortgages through pooled funds.

### Net investment income

	2021 \$	2020 \$
Interest on cash	13,729	34,340
Pooled distributions	6,783,910	6,900,929
Net interfund loan interest expense (note 10)	(187,886)	(192,705)
	6,609,753	6,742,564

### Fair value changes in investments

	2021 \$	2020 \$
Realized gain on disposal of investments	9,016,527	3,931,005
Unrealized gain on investments measured at fair value	11,509,114	4,215,945
	20,525,641	8,146,950

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### 7 General Fund building loan

In 1992, the Benchers authorized the lending of monies from the Fund to support the capital development of the Society's buildings at 845 Cambie Street, Vancouver, BC. The loan has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly bond yield to maturity earned on the Fund's investment portfolio. It is the intention of the Benchers to require the General Fund to repay a minimum of \$500,000 of the principal each year. During 2021, principal of \$500,000 (2020 – \$500,000) was repaid.

	2021 %	2020 %
Weighted average rate of return	1.88	1.36

### 8 Accounts payable and accrued liabilities

	2021 \$	2020 \$
Trade payables	1,555,058	1,664,427
Accrued trade expenses	596,453	303,586
Premium taxes payable	-	11,084
Provincial sales taxes payable	-	1,241
Income taxes payable	-	722
	<u>2,151,511</u>	<u>1,981,060</u>

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### 9 Provision for claims and unallocated loss adjustment expenses (ULAE)

The changes in unpaid claims recorded in the consolidated fund statement of financial position are as follows:

	2021 \$	2020 \$
<b>Part A Indemnity Coverage</b>		
Provision for claims – Beginning of year	75,211,258	75,174,017
Provision for losses and expenses for claims reported in the current year	18,571,141	19,382,000
Decrease in estimated losses and expenses for losses reported in prior years	(11,806,141)	(8,364,859)
Provision for claims liability	<u>81,976,258</u>	<u>86,191,158</u>
(Subtract) add:		
Payments on claims reported in the current year	(965,972)	(832,332)
Payments on claims reported in prior years	(9,782,526)	(10,144,993)
Recoveries on claims	953,071	61,895
Change in due from members	256,774	(64,470)
Claim payments – net of recoveries	<u>(9,538,653)</u>	<u>(10,979,900)</u>
Part A Provision for claims – End of year	<u>72,437,605</u>	<u>75,211,258</u>
<b>Part B Indemnity Coverage</b>		
Unpaid claims – Beginning of year	455,169	319,490
Provision for losses and expenses for claims	211,550	355,034
	<u>666,719</u>	<u>674,524</u>
(Subtract) add:		
Payments on claims	(390,757)	(255,443)
Recoveries on claims	12,895	36,088
Claim payments – net of recoveries	<u>(377,862)</u>	<u>(219,355)</u>
Part B Provision for claims – End of year	<u>288,857</u>	<u>455,169</u>
<b>Part C Indemnity Coverage</b>		
Provision for claims – Beginning of year	709,193	1,015,554
Provision for losses and expenses for claims reported in the current year	(488,709)	(2,805)
	<u>220,484</u>	<u>1,012,749</u>
(Subtract) add:		
Payments on claims	(15,065)	(195,766)
Change in due from members	(14,115)	(107,790)
Part C Provision for claims – End of Year	<u>191,304</u>	<u>709,193</u>
<b>Total provision for Parts A, B and C Indemnity Coverage</b>	<u>72,917,766</u>	<u>76,375,620</u>

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

The determination of the provision for unpaid claims and adjustment expenses requires the estimation of two major variables or quanta, being development of claims and the effect of discounting, to establish a best estimate of the value of the respective liability or asset.

The provision for unpaid claims and adjustment expenses is an estimate subject to variability, and the variability could be material in the near term. The variability arises because all events affecting the ultimate settlement of claims have not taken place and may not take place for some time. Variability can be caused by receipt of additional claim information, changes in judicial interpretation of contracts, significant changes in severity of claims from historical trends, the timing of claims payments and future rates of investment return. The estimates are principally based on the Fund's historical experience. Methods of estimation have been used that the Society believes produce reasonable results given current information.

The provision for ULAE is an actuarially determined estimate of the Fund's future operational costs relating to the administration of claims and potential claims reported up to the consolidated fund statement of financial position date.

The Fund discounts its best estimate of claims provisions at a rate of interest of 1.91% (2020 – 1.84%). The Fund determines the discount rate based upon the expected return on its investment portfolio of assets with appropriate assumptions for interest rates relating to reinvestment of maturing investments.

A 1% increase in the discount rate will have a favourable impact on the discounted claims liability of \$2,490 million (2020 – \$2.589 million) and a 1% decrease in the discount rate will have an unfavourable impact on the discounted claims liability of \$2.675 million (2020 – \$2.738 million).

To recognize the uncertainty in establishing these best estimates, to allow for possible deterioration in experience, and to provide greater comfort that the actuarial estimates are adequate to pay future claims liabilities, the Fund includes a PFAD in some assumptions relating to claims development and future investment income. The PFAD is selected based on guidance from the Canadian Institute of Actuaries.

The effects of discounting and the application of PFAD, net of members' share of provision for claims, are as follows (in thousands of dollars):

	2021 \$	2020 \$
Undiscounted	75,914	78,996
Effect of present value	(4,395)	(4,333)
PFAD	12,285	12,665
	<hr/>	<hr/>
	83,804	87,328
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# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### Claims development tables (net of members' share of provision for claims)

A review of the historical development of the Fund's insurance estimates provides a measure of the Fund's ability to estimate the ultimate value of claims. The top half of the following tables illustrates how the Fund's estimate of total undiscounted claims costs for each year has changed at successive year-ends. The bottom half of the tables reconciles the cumulative claims to the amount appearing in the consolidated fund statement of financial position.

#### Part A indemnity claims (in thousands of dollars)

Claims year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	13,390	15,230	12,690	15,090	16,720	15,720	19,767	18,522	17,877	16,896	
One year later	13,080	15,100	12,390	16,590	15,440	15,791	19,219	17,580	17,353		
Two years later	11,970	17,780	12,240	15,210	15,956	16,005	18,802	17,062			
Three years later	10,690	20,300	11,760	13,153	14,548	14,807	15,664				
Four years later	10,490	20,460	12,256	12,775	13,875	13,387					
Five years later	10,100	18,983	11,862	10,385	12,761						
Six years later	9,571	18,087	11,062	10,266							
Seven years later	8,870	17,283	10,271								
Eight years later	8,765	17,071									
Nine years later	8,758										
Current estimate of cumulative claims	8,758	17,071	10,271	10,266	12,761	13,387	15,664	17,062	17,353	16,896	139,489
Cumulative payments to date	(8,294)	(16,450)	(8,783)	(8,022)	(10,378)	(7,109)	(8,547)	(5,447)	(4,026)	(917)	(77,973)
Undiscounted unpaid liability	464	621	1,488	2,244	2,383	6,278	7,117	11,615	13,327	15,979	61,516
Undiscounted unpaid liability in respect of 2011 and prior years											2,770
Undiscounted unallocated loss adjustment expense reserve											11,156
<b>Total undiscounted unpaid claims liability</b>											75,442
Discounting adjustment (includes claim PFAD)											7,855
<b>Total discounted unpaid claims liability</b>											<u>83,297</u>

**The Law Society of British Columbia – Lawyers Indemnity Fund**  
Notes to Consolidated Fund Financial Statements  
December 31, 2021

**Part B indemnity claims (in thousands of dollars)**

Claims year	2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$	2018 \$	2019 \$	2020 \$	2021 \$	Total \$
Estimate of undiscounted ultimate claims costs											
At end of claims year	18	53	562	41	274	1,588	135	152	93	196	
One year later	13	82	500	184	134	1,764	126	51	84		
Two years later	12	100	421	180	62	1,696	178	49			
Three years later	13	115	372	157	65	2,039	166				
Four years later	8	108	205	120	70	2,043					
Five years later	8	100	185	101	65						
Six years later	20	100	199	107							
Seven years later	14	100	201								
Eight years later	14	100									
Nine years later	6										
Current estimate of cumulative claims	6	100	201	107	65	2,043	166	49	84	196	3,017
Cumulative payments to date	(6)	(100)	(200)	(93)	(65)	(2,043)	(133)	(49)	(5)	(65)	(2,759)
Undiscounted unpaid liability	-	-	1	14	-	-	33	-	79	131	258
Undiscounted unpaid liability in respect of 2011 and prior years											5
Undiscounted unallocated loss adjustment expense reserve											45
<b>Total undiscounted unpaid claims liability</b>											<b>308</b>
Discounting adjustment (includes claim PFAD)											30
<b>Total discounted unpaid claims liability</b>											<b>338</b>

**The Law Society of British Columbia – Lawyers Indemnity Fund**  
**Notes to Consolidated Fund Financial Statements**  
**December 31, 2021**

**Part C indemnity claims (in thousands of dollars)**

Claims year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	-	-	-	-	-	-	65	650	91	56	
One year later	-	-	-	-	-	423	65	723	91		
Two years later	-	-	-	-	-	923	65	692			
Three years later	-	-	-	-	-	923	65				
Four years later	-	-	-	-	-	923					
Five years later	-	-	-	-	-						
Six years later	-	-	-	-	-						
Seven years later	-	-	-	-	-						
Eight years later	-	-	-	-	-						
Nine years later	-	-	-	-	-						
Current estimate of cumulative claims	-	-	-	-	-	923	65	692	91	56	1,827
Cumulative payments to date	-	-	-	-	-	(923)	(65)	(692)	-	(14)	(1,694)
Undiscounted unpaid liability	-	-	-	-	-	-	-	-	91	42	133
Undiscounted unpaid liability in respect of 2010 and prior years											-
Undiscounted unallocated loss adjustment expense reserve											31
<b>Total undiscounted unpaid claims liability</b>											164
Discounting adjustment (includes claim PFAD)											5
<b>Total discounted unpaid claims liability</b>											169

The expected maturity of the unpaid claims provision is analyzed below (undiscounted and gross of reinsurance):

(in thousands of dollars)	Less than one year	One to two years	Two to three years	Three to four years	Four to five years	Over five years	Total
	\$	\$	\$	\$	\$	\$	\$
December 31, 2021	19,634	15,416	11,685	8,027	5,927	15,225	75,914
December 31, 2020	20,540	16,023	12,058	8,591	5,931	15,853	78,996

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### Role of the actuary

With respect to preparation of these consolidated fund financial statements, the actuary is required to carry out a valuation of the Fund's policy liabilities and to provide an opinion regarding their appropriateness as at the date of the consolidated fund statement of financial position. The factors and techniques used in the valuation are in accordance with accepted actuarial practice, applicable legislation and associated regulations. The scope of the valuation encompasses the policy liabilities, which consist of a provision for unpaid claims and adjustment expenses. In performing the valuation of the liabilities for these contingent future events, which are by their very nature inherently variable, the actuary makes assumptions as to future loss ratios, trends, expenses and other contingencies, taking into consideration the circumstances of the Fund and the nature of the indemnity policies.

The valuation is based on projections for settlement of reported claims and claim adjustment expenses. It is certain that actual claims and claim adjustment expenses will not develop exactly as projected and may, in fact, vary significantly from the projections.

The actuary relies on data and related information prepared by the Fund. The actuary also analyzes the Fund's assets for its ability to support the amount of policy liabilities.

### 10 Interfund transactions

The operations of the Fund and the General Fund are administered by the management of the Society. Balances between the funds arise from transactions of an operating nature and are recorded at exchange amounts at the dates of the transactions. Amounts due to and from the General Fund are due on demand and have no fixed terms of repayment. The Fund has authorized a loan facility of up to \$1 million to the General Fund to fund capital expenditures in accordance with the 10-year capital plan.

Pursuant to reserve policy, \$2.3 million of the net assets related to trust assurance was transferred during 2021 (2020 – \$0.70 million).

Monthly interest on the Fund's net loan position with the General Fund is paid to the Fund at a rate equal to the stated monthly bond yield to maturity earned on the Fund's investment portfolio. The average bond yield for 2021 was 1.88% (2020 – 1.36%). The Fund's net loan position as at December 31, 2021 was \$6.1 million (2020 – \$9.3 million) which includes the General Fund building loan and other operating balances with the General Fund. This net loan position fluctuates during the year as amounts are transferred between the General Fund and the Fund to finance ongoing operations.

During the year ended December 31, 2021, interest revenue of \$2,184 (2020 – \$10,410) was received on the General Fund building loan, interest of \$190,071 (2020 – \$202,807) was paid on General Fund cash balances held by the Fund.

Other interfund transactions are disclosed elsewhere in these consolidated fund financial statements.

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2021

### 11 Internally restricted net assets

The Benchers have allocated one annual, profession-wide, policy limit of \$17.5 million (2020 – \$17.5 million) of the net assets to Part B coverage for dishonest appropriation of trust funds or property.

### 12 Regulatory requirements and capital management

Under regulation of the Insurance (Captive Company) Act of B.C. the Captive was required to maintain a minimum of \$200,000 in shareholder's equity and \$100,000 in reserves. In 2020, BCFSa was informed of the intention to wind up the Captive, and at the time of wind up on December 31, 2020, the Captive was no longer subject to regulatory requirements.

As of January 1, 2021, BCLIA was incorporated to issue the indemnity policies to covered lawyers and is exempt from regulation by the BCFSa. BCLIA has assumed from the Society the rights and obligations of the Captive under all outstanding professional liability policies, except the Business Innocent Covered Party (BIC) policies.

### 13 Related parties

The elected Benchers include members drawn from law firms across the province. These law firms may at times be engaged by the Society in the normal course of business. During the year ended December 31, 2021, expenses of \$229,723 (2020 – \$146,602) were incurred by the Fund with these law firms.

## **Management Discussion and Analysis**

The Law Society of British Columbia accounts for its financial activities through two separate funds: the General Fund and the Lawyers Indemnity Fund. Society management has the responsibility for assisting the Benchers in fulfilling the Society's mandate, while ensuring that operating expenditures are closely controlled and that appropriate accounting and internal controls are maintained. The 2021 audited financial statements for the two funds are set out in this report. The statements are presented in accordance with the presentation and disclosure standards of the Chartered Professional Accountants of Canada.

During 2021, in addition to the general oversight by the Benchers, the Finance and Audit Committee assisted the Benchers in ensuring that management and staff properly managed and reported on the financial affairs of the Society. The oversight by the Benchers and the Finance and Audit Committee included:

- Reviewing periodic financial statements of the General and Consolidated Lawyers Indemnity Fund
- Reviewing investment performance as managed by the appointed investment managers
- Reviewing with the Law Society's auditors their approach, scope and audit results
- Reviewing the annual Audit Report prepared by the Law Society auditors
- Recommending the 2022 practice fees and indemnity assessments, and reviewing corresponding budgets
- Reviewing the enterprise risk management plan

## **General Fund**

### **Overview**

Overall, the 2021 results for the General Fund resulted in an operating surplus of \$3.7 million, after the transfer of net assets from the trust assurance program to the Lawyers Indemnity Fund. Revenues were higher than expected, particularly in the areas of practice fees, trust administration fees, and electronic filing revenue. Operating expenses increased over the prior year primarily due to increases in travel, meetings, events and office occupancy costs over 2020. In 2020, these costs were much lower as a result of the Covid-19 pandemic.

### **Revenues**

General Fund revenue was \$37.3 million, \$2.6 million (7.6%) higher than 2020 primarily due to the growth in the number of lawyers, increased trust administration fees and increased electronic filing revenue. During 2021, net growth in the number of full-time equivalent practising lawyers was 3.3% resulting in a total of 13,317 full fee paying equivalent lawyers for the year, compared to 12,893 in 2020. The trust administration fee (TAF) revenue increased 36% due to an increase in the number of transactions arising from an increase in activity in the real estate market. Electronic filing revenue increased 79% over 2020 due to the increased real estate activity, along with the introduction of the

Land Owner Transparency Act (LOTA). The Act includes new electronic filing requirements, resulting in additional electronic filing revenues.

The Lawyers Indemnity Fund contributed \$2.4 million to the General Fund for co-sponsored program costs and for general program and administrative expenses attributable to operations.

### **Expenses**

The 2021 General Fund expenses increased by \$1.5 million (4.6%) to \$33.6 million, compared to \$32.1 million in 2021.

Bencher Governance and Support expenses increased by \$291,000 over 2020 due to an increase in travel and meeting costs with the lifting of some COVID-19 travel restrictions and the resulting increase in in-person events.

Communication and Information Services total costs were \$180,000 more than 2020 due to general wage increases and increased software maintenance costs.

Education and Practice expenses were higher than 2020 by \$476,000, with the implementation of new online learning platform, along with staffing and general wage increases.

General and administration costs increased \$40,000 over 2020 due to general wage increases.

Policy and Legal Services expenses increased \$303,000 over 2020, with increases in external litigation costs.

Regulation operating expenses increased \$133,000 over 2020, primarily due to higher external counsel fees and general wage increases.

Occupancy costs increased \$136,000 from 2020 due to higher property taxes and building maintenance costs.

### **Net Assets**

Overall, the General Fund remains financially sound. As of December 31, 2021, net assets in the General Fund were \$33.7 million. The net assets include \$4.0 million in capital funding for planned capital projects related to the 845 Cambie Street building and workspace improvements for Law Society operations. Pursuant to reserve policy, during the year \$2.3 million of net assets related to trust assurance was transferred to the Lawyers Indemnity Fund for Part B coverage. After this transfer, at December 31, 2021, the net assets include \$1.8 million of trust assurance net assets. The remaining General Fund net assets are \$27.9 million, of which \$13 million is invested in capital assets, mainly the 845 Cambie Street building, and \$15 million is working capital.

## **Lawyers Indemnity Fund**

### **Overview**

The Lawyers Indemnity Fund remains in a strong financial position at the end of 2021. Revenue from annual assessments was slightly higher than 2020 due to additional covered members and the increase in the value of the investment portfolio was higher than the previous year with strong investment returns during 2021.

### **Revenues**

The 2021 indemnity assessment remained at \$1,800 per full-time lawyer, resulting in total revenue of \$17.1 million, compared to \$16.5 million in 2020.

During 2021, the long term investment portfolio earned a return of 12.8 %. All increases in the market value of the investment portfolio have been recognized through the statement of revenue and expenses in accordance with Canadian accounting standards for not-for-profit organizations.

### **Expenses**

In 2021, the Lawyers Indemnity Fund general operating costs, including the \$2.4 million contribution to the General Fund, but excluding claims payments and unallocated loss adjustment expenses (ULAE), were \$8.3 million, compared to \$7.3 million in 2020. The increase is related to the cost of adding cyber coverage to the indemnity program and an increase in investment management fees due to a larger portfolio value and asset mix changes.

The net actuarial provision for settlement of claims for the year was \$6.5 million, a decrease of \$4.9 million from 2020. The 2021 claims provision was lower mainly due to changes to prior years' reserves. The provision for claims liabilities on the balance sheet at the end of 2021 was \$72.9 million, compared to \$76.4 million at the end of 2020.

### **Net Assets**

As of December 31, 2021, LIF net assets were \$142.7 million, which includes \$17.5 million internally restricted for Part B claims, leaving \$125.2 million in unrestricted net assets.

### **Other Matters**

Effective January 1, 2020, Section 30 of the *Legal Profession Act* was amended to convert the “insurance” program to an “indemnification” program. New Section 30.1 provides that the Law Society or any subsidiary (except for a captive insurer) that operates such a program is not an insurer as defined in the *Financial Institutions Act* or the *Insurance Act*, nor are they carrying on insurance business in B.C.



Effective January 1, 2020, the Lawyers Insurance Fund became the Lawyers Indemnity Fund. The LSBC Captive Insurance Company Ltd. was wound up on December 31, 2020, and all of its assets and liabilities have been transferred to the Law Society.

As of January 1, 2021, BCLIA was incorporated to issue the indemnity policies to covered lawyers. As a subsidiary of the Society that is exempt from regulation by the BC Financial Services Authority, BCLIA will assume from the Society the rights and obligations of the Captive under all outstanding professional liability policies, except the Business Innocent Covered Party (BIC) policies.