



Agenda

Benchers

Date: Saturday, June 4, 2016

Time: **7:30 am** Hot breakfast

8:30 am Call to order

Location: **Salon A/B, Penticton Lakeside Resort, Conference Centre & Casino, Penticton, BC**

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
INTRODUCTION					
1	<ul style="list-style-type: none"> Introduction of Guests Chief Justice Hinkson, CJSC 		President		
CONSENT AGENDA: The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.					
2	Consent Agenda <ul style="list-style-type: none"> Minutes of May 6, 2016 meeting (regular session) Minutes of May 6, 2016 meeting (<i>in camera</i> session) Amendments to the Fiduciary Property Rules 		President	Tab 2.1 Tab 2.2 Tab 2.3	Approval Approval Approval



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
	<ul style="list-style-type: none"> Amendments to BC Code: Short-Term Summary Legal Services Law Society Scholarship Selections Rules Relating to the Roles of President and Executive Director in Hearings 			Tab 2.4 Tab 2.5 Tab 2.6	Approval Approval Approval
DISCUSSION/DECISION					
3	TRC Retreat Agenda: Discussion		President		Discussion
4	Selection of Benchers' Nominee for 2017 Second Vice-President		President		Acclamation or Call for Election
FOR INFORMATION					
5	Briefing by President of the Federation of Law Societies		Jeff Hirsch		Briefing
6	Federation Council Representative Selection Process			Tab 6	Information
IN CAMERA					
7	Update and Briefing on Lawyers Insurance Fund Matter		CEO	Tab 7	Briefing
8	<i>In camera</i> <ul style="list-style-type: none"> Bencher concerns Other business 		President/CEO		Discussion/ Decision



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
ADDITIONAL ITEM					
	Hearing in the Matter of Malcolm Zoraik			<i>Materials to be sent under separate cover to participating Benchers</i>	



Minutes

Benchers

Date: Friday, May 06, 2016

Present: David Crossin, QC, President
Herman Van Ommen, QC, 1st Vice-President
Miriam Kresivo, QC, 2nd Vice-President
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Lynal Doerksen
Martin Finch, QC
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton
Jamie Maclaren
Sharon Matthews, QC

Steven McKoen
Christopher McPherson
Nancy Merrill, QC
Maria Morellato, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Dan Smith
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Thomas Fellhauer

Craig Ferris, QC

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Lance Cooke
Charlotte Ensminger
Su Forbes, QC
Andrea Hilland

Jeffrey Hoskins, QC
Michael Lucas
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

<p>Guests:</p> <p>Dom Bautista</p> <p>Mark Benton, QC</p> <p>Johanne Blenkin</p> <p>Kari Boyle</p> <p>Anne Chopra</p> <p>Janine Benedet</p> <p>Gavin Hume, QC</p> <p>Anushka Kurian</p> <p>Helen Luo</p> <p>Susan Munro</p> <p>Caroline Nevin</p> <p>Lana Piovesan</p> <p>Wayne Robertson, QC</p> <p>Monique Steensma</p> <p>Tanya Vasto</p> <p>Bill Veenstra</p> <p>Ardith Walkem</p> <p>Michael Welsh</p>	<p>Executive Director, Law Courts Center</p> <p>Executive Director, Legal Services Society</p> <p>CEO, Courthouse Libraries BC</p> <p>Coordinator, BC Family Justice Innovation Lab</p> <p>Equity Ombudsperson, Law Society of BC</p> <p>Associate Dean of Law, University of British Columbia</p> <p>Law Society of BC Member, Council of the Federation of Law Societies of Canada</p> <p>Magna Carta Essay Contest Runner-Up</p> <p>Magna Carta Essay Contest Winner</p> <p>Director of Publications, Continuing Legal Education Society of BC</p> <p>Executive Director, Canadian Bar Association, BC Branch</p> <p>Lunch & Learn Chair, BC Paralegal Association</p> <p>Executive Director, Law Foundation of BC</p> <p>CEO, Mediate BC</p> <p>Membership Chair, BC Paralegal Association</p> <p>Secretary Treasurer, Canadian Bar Association, BC Branch</p> <p>Nlaka'pamux Lawyer</p> <p>Vice-President, Canadian Bar Association, BC Branch</p>
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CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on April 8, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on April 8, 2016 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers re-appoint Ms. Anna Fung, QC as the Law Society's member of the Vancouver Airport Authority for a second three year term, effective May 31, 2016.

BE IT RESOLVED to amend the Commentaries to Appendix A, Rule 1 of the Code of Professional Conduct for British Columbia by:

1. Inserting "Rule 22-2(6)" in place of "Rule 51(5)" in Commentary [11];
2. Inserting "Rule 22-2(7)" in place of "Rule 51(6)" in Commentary [11];
3. Inserting "Rule 22-2(15)" in place of "Rule 51(12)" in Commentary [16]; and
4. Inserting "Rule 22-2(4)(b)(ii)" in place of "Rule 51(3)(b)(ii)" in Commentary [20], as recommended by the Ethics Committee.

2. SWEARING IN OF DAN SMITH

Mr. Crossin administered the oath of office to incoming appointed Bencher Dan Smith.

3. MAGNA CARTA ESSAY AWARD

Mr. Crossin remarked briefly on the historical importance of the Magna Carta to the rule of law as we know it, and provided background for the creation of Magna Carta essay contest by the Rule of Law and Lawyer Independence Advisory Committee. First Place, an award of \$1000, was presented to Ms. Helen Luo for her essay entitled "The Journey of the Magna Carta"; the \$500 Runner-up award was presented to Ms. Anushka Kurian for her essay entitled "The Ripple Effect of the Magna Carta".

Mr. Crossin commended the excellent work of each student, and encouraged all to read the winning essays which will be posted to the website.

GUEST PRESENTATIONS

4. Overview of the Truth and Reconciliation Commission

Mr. Crossin introduced Ardith Walkem, an accomplished Nlaka'pamux lawyer and mediator, to provide her important perspective on the work and recommendations of the Truth and Reconciliation Commission (TRC) in advance of the upcoming Law Society Retreat.

Ms. Walkem expressed how honoured she was at being invited to speak, and raised her hands to the Benchers. To begin, she related her family history, which included being raised in Spence's Bridge in a nation whose territory crosses the Canada/US border. Both her parents were sent to residential school and all 6 of her siblings either attended residential school or were part of the child welfare system.

She provided a background for the work of the TRC, noting that the TRC itself arose out of the largest class action in Canadian legal history, the settlement of which included a recognition of the damage inflicted by the Indian Residential Schools system (IRS). In the spirit of healing, and in recognition of the impacts of the IRS on future generations, on communities and the nation as a whole, the IRS survivors dedicated part of their settlement funds to establish the TRC. Thus, the very creation of the commission was an invitation to forge a new relationship, to emerge from one of pain and lack of understanding and move to one of knowledge, respect and collaboration. Ms. Walkem characterized it as an invitation to ask how such a thing as the IRS could have happened, and indeed, why the inequitable relationships between the Indigenous and the non-Indigenous persist today.

The TRC set out on a path toward accountability, with the recognition that to know the truth, one must begin by telling it. According to Ms. Walkem, the TRC's focus on the legal profession was intentional. Mr. Justice Sinclair (as he then was) commented that Canada waged war through the rule of law, using legislation to prohibit the practice of culture. The systemic child abuse of the IRS, which continues to impact across generations with higher suicide rates and violence towards women and children, was sanctioned by both the government and the law. Accordingly, the law must now make reparations.

Ms. Walkem then summarized the areas contained in the TRC report, opening with child welfare recommendations, and commenting on the disproportionate representation of Indigenous people in the child welfare and criminal justice systems and the prevalence of violence against Indigenous women. Ms. Walkem noted that one of the strongest calls to action in the TRC report is incorporation of Indigenous laws into Canada's legal system; Canada has not yet made space

for the fully developed legal systems of Indigenous peoples that govern how both individuals and neighboring nations relate to one another.

Finally, she queried how the legal profession can interpret the phrase “cultural competency” in the context of the IRS, and suggested the Australian approach:

- Be aware of its history, how it continues and is tied to today, to show empathy
- Search within ourselves and the law to ask how we are active participants, and what beliefs we hold that allow stereotypes and biases to continue; in other words, be self-aware as lawyers and as a profession
- Make a commitment to act individually, as well as on a broader level

The TRC pointed to the UN Declaration on the Rights of Indigenous Peoples as a guide to restructuring our relationship. Ms. Walkem summed up the path forward with the simple, profound phrase: “Nothing about us, without us”.

Mr. Crossin expressed his sincere gratitude to Ms. Walkem for her stunning commentary, confirming that the Law Society views these issues as one of most fundamental challenges of its lifetime. He reiterated the Law Society’s commitment and dedication to meeting these challenges with the collaboration of its members and Indigenous leaders across the province.

Dan Smith, Appointed Bencher, member of the Campbell River Indian Band and a citizen of the Laich Kwil Tach Nation rose on behalf of the Benchers also to express thanks to Ms. Walkem for the information she provided and to her family, for their own efforts towards recognition of Indigenous laws in our Constitution during its patriation.

EXECUTIVE REPORTS

5. President’s Report

Mr. Crossin briefed the Benchers on various Law Society matters to which he has attended since the last meeting, including the most recent Executive Committee meeting, at which the Committee received a presentation on enhancing the role and the profile of the paralegals. Its decision was that deliberation on the role of the paralegal should form part of the greater discussion of non-lawyer service providers generally. Accordingly, work on this issue will be deferred until that broader work can begin. The Committee also reviewed the issue of production of hearing records, hearing from both Jeff Hoskins, QC, Tribunal and Legislative Counsel, and Michelle Robertson, Hearing Administrator regarding pragmatic concerns, and made recommendations to the Benchers which will be reviewed later in this meeting. Policy and Legal

Services lawyer, Andrea Hilland, also updated the Committee on the progress of the Retreat Agenda and speakers, which the Benchers will also hear later in the meeting.

Additionally, Mr. Crossin attended the Victoria Bar Association dinner at Government House with First Vice-President Herman Van Ommen, QC, Second Vice-President Miriam Kresivo, QC, CEO Tim McGee, QC and Vancouver Island Benchers Pinder Cheema, QC, Dean Lawton and Nancy Merrill, QC. He noted the suggestion that a Fall Bencher meeting be held in Victoria; staff will look into the cost and logistics to determine the feasibility.

He also met with Dean Dauvergne of Allard Law at UBC to discuss their Indigenous Studies program, emphasizing to the Benchers the important work being done at UBC, UVic and Thompson Rivers to develop and expand curricula in this area.

Together with Mr. McGee and Bencher Jeff Campbell, QC, Mr. Crossin attended the Access Pro Bono breakfast event, an awards event for lawyers who serve in the pro bono regime. It is his intention to try to foster greater collaboration between Access Pro Bono and the Access to Justice BC Committee, organizations working toward similar ends. On a related note, he also attended the recent, productive retreat of the Legal Aid Task Force; Benchers will continue to be apprised by Chair Nancy Merrill, QC of ongoing developments.

Finally, he encouraged Benchers to attend the 50th Year Certificate Lunch on June 23rd, to recognize the significant achievements of the members being celebrated.

6. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers.

He encouraged Benchers to review the recently released Annual Report on Performance. The Report, which can be found on our website, sets out highlights of the Law Society's activities as regulator, its strategic plan focus and key performance measures which reflect key regulatory functions. In presenting our regulatory operations in this way to the public, we are unique among regulators in Canada.

Mr. McGee also briefed Bencher on the progress of building restoration and repairs, and thanked Bernice Chong, Jeanette McPhee and the Operations group for their ongoing efforts. The goal is to have the Benchers Room on 9th floor ready and fully operational for the July meeting. Ninth floor work will also include renovations to the Benchers lounge to add a hearing room door as a security feature.

Under the leadership of Communications Director Taylore Ashlie, work on the development of a new website is underway and going well. He encouraged Benchers to respond to the survey sent

earlier, so that their feedback and suggestions may be included in the design phase. Completion of the project is targeted for the end of the year.

Mr. McGee thanked key staff on the Core Values Working Group who will be presenting to Benchers later in the meeting. The project, led by staff and supported by a high rate of volunteerism, reflects the sense of community and commitment aspired to by Law Society staff.

He noted his recent attendance, with President Crossin, at the Access Pro Bono breakfast, expressing his gratitude to that organization and the lawyers engaged in that important work. He also acknowledged the success of Access Pro Bono, due in large part to the stewardship of Jamie McLaren who is deserving of recognition for his work. The market value of services provided by Access Pro Bono in 2015 was approximately \$5 million. Over 15000 low income individuals received legal assistance, and approximately 7000 more received legal advice and information. Mr. McGee queried how the Law Society could further support the important work of this organization. One suggestion provided by a Bencher was to increase awareness amongst retiring members that they are able to provide pro bono assistance within the scope of their retired status.

On a related note, Mr. McGee also advised the Benchers of his recent appointment to the Planning Committee of Access to Justice BC, expressing his appreciation for the appointment and for the important work being done by that committee as well.

Finally, he took the opportunity to discuss with Benchers the benefits of reflecting back on key policy decisions from the past, to evaluate how they were received and how they have affected the organization. As an example, he cited the 2006 policy decision that we should be more transparent in disclosing the ongoing work of the Law Society, in support of our public interest mandate. Though such a policy is the standard now, at the time it represented a somewhat revolutionary shift for a law regulator. Reflecting back, we should be proud and encouraged by innovative policy decisions such as that one which have stood us in good stead over time.

7. Briefing by the Law Society's Member of the Federation of Law Societies Council (FLSC)

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Federation Council. He provided details of the March 9-11 Federation meetings in Banff, describing the meetings as reflective of the important growth and evolution of the Federation as an organization. As part of the new governance structure, there was a half day meeting of the Presidents and Vice-Presidents to elicit their views and guidance in a structured way. Also included was the new CEO forum, created to enhance the role of the CEOs and enable them to provide their collective guidance to Council.

In place of the traditional Conference session, one and a half days were spent by Council on the business of the Federation, including a significant amount of time on the calls to action of the Truth and Reconciliation Commission. The latter culminated in a resolution committing the Federation to including response to the TRC calls to action as a strategic priority, in a manner that engages Indigenous peoples. A new working group will help guide that work.

The new Audit and Finance Committee delivered its report, including a detailed budget review and projection, which was followed by Council's approval of the proposed budget.

Richard Scott, Council member and former Batonnier of the Law Society of New Brunswick, was appointed as a liaison between CanLII and Federation Council.

Amendments to the Model Code, including communicating with witnesses and the duty to report to an insurer, were approved by Council.

Council passed a resolution approving a detailed plan to review the substantive work of the National Committee on Accreditation, which included striking a committee to review the standards for assessing for incoming lawyers to Canada.

The National Mobility Database is in need of enhancement, and the work is now underway.

Strategic planning process will be a focus of the June 14 Council meeting, and law societies' input will be sought in advance.

DISCUSSION/DECISION

8. Rule 5-24.1 (proposed) Record for Review of Hearing Decision

Mr. Van Ommen reviewed for the Benchers the discussion from last meeting concerning proposed rule changes, in which Benchers agreed with the basic premise that the party initiating a review would be responsible for preparing the record, but expressed concern with the requirements of affidavit on an application to be relieved of that responsibility due to financial hardship. The matter was referred to the Executive Committee which has recommended the removal of that provision, making the application consistent with other applications under the Rules.

The Executive Committee is recommending the Rule change be made now, to alleviate the current administrative burden, but following suggestions from the Benchers last meeting, is also recommending consideration of electronic records.

Mr. Van Ommen noted an error in the proposed resolution found at page 123 of the Agenda materials, confirming that section of the resolution should read “*By rescinding Rule 5-25 (9) (c) and (d) and substituting the following*”.

Ms. Rowbotham expressed her appreciation to the Executive Committee for reviewing the matter, and her acknowledgement of Ms. Robertson’s hard work and the administrative challenges associated with hearing records, but noted her disappointment with the proposed resolution as inadequate to address concerns expressed last meeting.

The proposed resolution (moved by Mr. Van Ommen, seconded by Ms. Merrill and attached as Appendix A) was passed by a vote of 25 for and 1 opposed.

REPORTS

9. Core Values Presentation

Bernice Chong, Manager of Operations and Chair of the Core Values Working Group, thanked the Executive Committee for inviting the Working Group to speak to Benchers, and provided background on the Working Group’s formation and mandate. Originally focused on a code of conduct, the Working Group settled on the creation of a values statement instead, with the recognition that core values shape and provide constants for an organization. The resulting core values statement informs how we interact with each other and with our stakeholders; it aids in recruitment and shapes our work product as we pursue our public protection mandate.

To create the statement, the Working Group reviewed the Law Society mandate, consistent behaviours, witnessed behaviours, culture during recruitment and managerial practices; in determining a representative values statement, it also considered what was sustainable over time. After a challenging process which included good discussion and debate, the Core Values Working Group settled on two values embodied by Law Society staff: integrity and excellence.

Ms. Robertson characterized the two values as “umbrellas” which cover related values. Integrity includes the concepts of respect and fairness, which in turn include accountability, transparency, diversity and reliability. Blanka Natale, Operations Supervisor, and Ms. Lesley Small, Manager of Credentials and Member Services, noted that the value of excellence also includes the ideals of innovation, quality, performance, teamwork and recognition. Examples of how various projects, functions and departments embody integrity and excellence were provided.

Mr. Crossin expressed his thanks to the Working Group, and to the staff presenting to Benchers, recognizing that Law Society staff are not just employees but men and women of principle who care about the work they and the Benchers do in pursuit of our mandate.

10. Investment Review

As Chair of the Finance and Audit Committee, Ms. Kresivo began by acknowledging and thanking the members of that Committee as well as staff for their stewardship of the Law Society's finances. She then provided the Benchers with an overview of the Law Society's long term investment management; though the Committee is tasked with its ongoing review, it is important for Benchers to remain aware and informed.

Ms. Kresivo talked generally about basic investment principles, including our Statement of Investment Policies and Procedures, and touched on the questions of how and why we invest in specific investments. She referred the Benchers to the Report in the materials for more background as well as benchmarks for performance. She also reviewed with Benchers how our investment managers are chosen and periodically reviewed, noting that last year Benchers were asked to approve a change in investment managers.

Ms. Kresivo also briefed the Benchers on the Law Society's long term investment strategy, noting that our philosophy, based on the work we do and the requirements of our insurance program, is to achieve a long term rate of return with an acceptable degree of risk. Though values will fluctuate year over year, the target rate is 5.5%. She then reviewed the types of choices made in the context of our long term strategy, which included choices of active or passive funds, balanced or specialty funds and managerial style.

Finally, Ms. Kresivo provided an overview of investment performance, noting that a longer term view is essential. With the exception of one year, we have exceeded the benchmark of 5.5%. While there are no causes for concern, she emphasized the importance of Benchers remaining interested and informed, encouraging all to come to the Finance and Audit Committee meetings which are open to all.

11. 2015-2017 Strategic Plan Implementation Update

Mr. Crossin reviewed with Benchers the proposed plan for the upcoming Bencher Retreat conference agenda. Speaking on the Friday will be Grand Chief Ed John, Judge Len Marchand, Judge Marian Buller, Appointed Bencher Dan Smith, Michael McDonald, of the Indigenous Bar Association, Katrina Harry, lead counsel of the Legal Services Society's Parents' Legal Centre, and Bev Sellars, author and IRS survivor. Mr. Crossin noted that on May 11 the Steering Committee will have their last meeting before Retreat.

Mr. Van Ommen, as Retreat Chair, noted that the earlier comments of Ms. Walkem provided a good preview of what Benchers will hear at the Retreat, reminding all that it will be an opportunity to listen and to learn. Mr. Crossin echoed these sentiments, adding that

Ms. Walkem’s entreaty of “nothing about us without us” should be a guiding principle in this process.

12. Report on the Outstanding Hearing & Review Decisions

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

RTC
2016-05-06

RECORD FOR REVIEW

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 5-15 (3) and substituting the following:

- (3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

2. By adding the following Rule:

Preparation and delivery of record

- 5-24.1**(1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the Executive Director, and
 - (b) 1 copy to the other party.
- (2) The time for producing the record may be extended by agreement of the parties.
- (3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).
- (4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (a) an extension of time to prepare and deliver the record, or
 - (b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.
- (5) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.
- (6) The President may
- (a) designate another Benchers to make a determination under subrule (5), or
 - (b) refer the application to a pre-review conference.
- (7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 [*Costs of hearings*].

3. ***By rescinding Rule 5-25 (9) (c) and (d) and substituting the following:***
- (c) set a date for the review, subject to Rule 5-24.1 (3) [*Preparation and delivery of record*], and
 - (d) make any order or allow or dismiss any application consistent with this part.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: The Benchers
From: The Act and Rules Committee
Date: April 25, 2016
Subject: The “Fiduciary Property” Rules

The Benchers will recall that the Law Society Rules were amended in 2015 to allow lawyers to hold “fiduciary property” – that is, property that the lawyer holds as a fiduciary where the appointment is derived from a solicitor-client relationship (such as an executor under a will, an attorney under a power of attorney, or as a trustee) in a manner that is governed by rules separate from those that govern “trust funds.”

The underlying policy rationale for the amendments in 2015 was to recognize that the trust rules are very prescriptive and, when applied to fiduciary property, created the possibility that lawyers would be required to handle funds that were held as fiduciary property in a manner that was too restrictive in light of their fiduciary responsibilities. The amended rules therefore created a separate category of property that was called “fiduciary property.” A separate set of rules was created through which fiduciary property could be held. The requirements for the holding of fiduciary property under the rules were more akin to the sort of responsibilities that one would have as a general trustee, and in fact, quite closely follow the requirements under the *Power of Attorney Act* and Regulations.

When the rules were amended, “fiduciary property” was defined as “funds other than trust funds...” Consequently, after the amendments were passed, fiduciary property could never be held in a trust account (pooled or otherwise), as (subject to very limited exceptions) the rules prohibit anything other than trust funds from being deposited into a trust account.

Feedback has been received from the Bar that suggests that this limitation is unduly restrictive. Lawyers suggested that there may be, in fact, times where the lawyer would want to hold funds that are fiduciary property in a pooled trust account without going through the necessity of opening a separate account through which to hold the funds as “fiduciary property”.

A relaxation of the prohibition against holding fiduciary property in a trust account was requested. It was recognized that, if fiduciary property was to be held in a trust account, the funds would be governed by the trust rules, and therefore the benefit of the less prescriptive

manner for holding fiduciary property would be lost. However, feedback from lawyers suggested that this would, at times, be acceptable.

The Act and Rules Committee considered this feedback and proposes that the rules be amended to permit funds that are fiduciary property to be held in a trust account. The Act and Rules Committee also recommends that, once funds that are fiduciary property are deposited into a trust account, the funds that are fiduciary property must be held as “trust funds.”

As these amendments do not change the general policy direction approved by the Benchers, the Act and Rules Committee has simply drafted proposed amendments to effect this recommended change. The advantages of the amendments from 2015 are maintained, and the public remains protected as before. In essence, what is proposed now is to permit fiduciary property to be held as trust funds, rather than to *require* fiduciary property to be held in a separate account.

MDL/al

LAW SOCIETY RULES 2015

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Fiduciary property

- 3-55** (1) In addition to any other obligations required by law or equity, this rule applies to lawyers who are responsible for fiduciary property.

(6) A lawyer who deposits fiduciary property to a pooled or separate trust account must comply with the rules pertaining to trust funds with respect to the fiduciary property.

Pooled trust account

- 3-60** (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than trust funds or funds that are fiduciary property.

Separate trust account

- 3-61** (3) Subject to Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a separate trust account any funds other than trust funds or funds that are fiduciary property.

LAW SOCIETY RULES 2015

PART 3 – PROTECTION OF THE PUBLIC

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Fiduciary property

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- (6) A lawyer may deposit funds that are fiduciary property to a pooled or separate trust account, provided that the lawyer complies with the rules pertaining to trust funds with respect to the fiduciary property.

Pooled trust account

- 3-60** (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than trust funds or funds that are fiduciary property.

Separate trust account

- 3-61** (3) Subject to Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a separate trust account any funds other than trust funds or funds that are fiduciary property.

FIDUCIARY PROPERTY**SUGGESTED RESOLUTION:**

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

- 1. In Rule 3-55, by adding the following subrule:***
 - (6) A lawyer may deposit funds that are fiduciary property to a pooled or separate trust account, provided that the lawyer complies with the rules pertaining to trust funds with respect to the fiduciary property.”
- 2. In Rules 3-60 (4) and 3-61 (3), by striking “funds other than trust funds” and substituting “funds other than trust funds or funds that are fiduciary property”.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: The Benchers
From: Ethics Committee
Date: May 12, 2016
Subject: **Amendments to BC Code: Short-Term Summary Legal Services**

This memorandum presents and recommends amendments to the Code of Professional Conduct for British Columbia's rules for "limited representation," which correspond to the "short-term summary legal services" rules in the Federation of Law Societies' Model Code of Professional Conduct. The recommendation of the Ethics Committee is to adopt the language of the Model Code's rules and commentary, in relation to short-term summary legal services, on the basis that the changes would be an improvement on the existing BC Code rules and provide more complete guidance. Adopting the Model Code language also serves the purpose of bringing the two Codes more closely into alignment and represents an incremental advance toward more consistent standards and guidance in the codes of professional conduct and rules applicable across the Country.

Resolution: Be it resolved to amend the *Code of Professional Conduct for British Columbia*:

1. By deleting the title "Limited representation" and the existing rules 3.4-11.1 to 3.4-11.4;

and
2. By inserting instead:
 - a. the proposed Commentary [7.2] to rule 3.1-2,
 - b. the title "Short-term summary legal services" and
 - c. the new rules 3.4-11.1 to 3.4-11.4, including Commentary [1] to [4],as proposed and recommended by the Ethics Committee.

The *BC Code* rules for limited representation currently provide as follows:

Limited representation

3.4-11.1 In rules 3.4-11.1 to 3.4-11.4 “**limited legal services**” means advice or representation of a summary nature provided by a lawyer to a client under the auspices of a not-for-profit organization with the expectation by the lawyer and the client that the lawyer will not provide continuing representation in the matter.

3.4-11.2 A lawyer must not provide limited legal services if the lawyer is aware of a conflict of interest and must cease providing limited legal services if at any time the lawyer becomes aware of a conflict of interest.

3.4-11.3 A lawyer may provide limited legal services notwithstanding that another lawyer has provided limited legal services under the auspices of the same not-for-profit organization to a client adverse in interest to the lawyer’s client, provided no confidential information about a client is available to another client from the not-for-profit organization.

3.4-11.4 If a lawyer keeps information obtained as a result of providing limited legal services confidential from the lawyer’s partners and associates, the information is not imputed to the partners or associates, and a partner or associate of the lawyer may

- (a) continue to act for another client adverse in interest to the client who is obtaining or has obtained limited legal services, and
- (b) act in future for another client adverse in interest to the client who is obtaining or has obtained limited legal services.

The equivalent Model Code provisions, all of which are a more recent addition to the original Model Code, state:

Short-term Summary Legal Services

3.4-2A In rules 3.4-2B to 3.4-2D “Short-term summary legal services” means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

3.4-2B A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

3.4-2C Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

3.4-2D A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer’s firm.

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in Rules 3.4-2A-2D will not be imputed to the lawyers in the lawyer’s firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer’s knowledge about possible conflicts of interest is based on the lawyer’s reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.

To ensure the client is aware that short-term legal services have limitations, the Federation also added commentary [7B] to the commentary to rule 3.1-2 of the Model Code. Commentary [7B] states:

[7B] In providing short-term summary legal services under Rules 3.4-2A – 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and

determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

In his memo of November 6, 2014 Gavin Hume, QC (in his capacity as Chair of the Standing Committee on the Model Code) made the following comments about these new provisions:

16. New conflicts of interest rules related to the provision of short-term summary legal services have been added to the Code. Short-term summary legal services are defined as advice or representation of a limited nature provided to a client under the auspices of a pro-bono or not-for-profit legal services provider, a definition broad enough to include a wide range of non-for-profit providers including legal aid duty counsel.

17. The goal of these new rules is to facilitate the provision of short term summary legal services by reducing the scope of the conflicts check required in this particular context. (See new rules 3.4-2A to 3.4-2D and commentary to rule 3.2-1.) Under the new rules, lawyers providing short-term summary legal services are no longer required to perform full conflicts checks (see new rule 3.4-2B). To protect clients in these circumstances, lawyers are prohibited from acting where there is a conflict of interest involving the lawyer's own interests or those of another current client of the lawyer or the short-term legal service provider (see new rule 3.4-2C). Where adequate measures have been taken to protect confidential information, however, a lawyer would be able to act where there is a conflict of interest between the short-term summary services client and another client of the firm provided the other client is represented by a different lawyer (see new rule 3.4-2D).

18. The Standing Committee decided to reject a suggestion that lawyers not be permitted to seek the consent of a short-term summary legal services client to act where there is a conflict of interest. Such a prohibition would assume that a short-term summary services client could never give informed consent, an assumption rejected by the Standing Committee. The new rule leaves open the possibility of informed consent.

19. To ensure the client is aware of the limitations of short-term summary legal services, a new paragraph (7B) has been added to the commentary to rule 3.1-2 (Competence) advising the lawyer to disclose to the client the limited nature of the services provided and to determine whether any additional legal services may be required or are advisable.

The Ethics Committee has noted the following differences between the *BC Code* rules and the Model Code with respect to this issue:

- The additional commentary to Model Code rule 3.2-1 requires disclosure of the nature of the limited services to the client.
- The Model Code rules state expressly that a lawyer need not perform a conflicts check before providing the services. The BC rules do not contain such an exemption, although they do contemplate that a lawyer is entitled to provide services under the rules provided the lawyer is not aware of a conflict.

In our view, these are both improvements over the *BC Code* provisions and they make the Model Code rules more complete than ours in this area.

In addition to the Ethics Committee's own review of the current and proposed short-term summary legal services rules, the Committee has consulted on the amendments recommended herein with Benchers Jamie Maclaren, in view of his significant ongoing commitment and role with Access Pro Bono. Mr. Maclaren has indicated that in his view the proposed changes are an overall improvement on the existing rules. He considered the draft rules to be clear and indicated that they would provide added guidance for volunteer lawyers. He encouraged the Ethics Committee to proceed with the draft amendments.

Accordingly, we recommend these new rules to the Benchers in place of the current *BC Code* rules. Although the new (attached) rules are identical to those of the Model Code, the numbering is slightly different to conform to the *BC Code*.

Attachments:

- Clean and redlined versions of the proposed new Short-Term Summary Legal Services rules.

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary

17.2] In providing short-term summary legal services under rules 3.4-11.1 – 3.4-11.4, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

Limited representation

~~**3.4-11.1** In rules 3.4-11.1 to 3.4-11.4 “limited legal services” means advice or representation of a summary nature provided by a lawyer to a client under the auspices of a not-for-profit organization with the expectation by the lawyer and the client that the lawyer will not provide continuing representation in the matter.~~

~~**3.4-11.2** A lawyer must not provide limited legal services if the lawyer is aware of a conflict of interest and must cease providing limited legal services if at any time the lawyer becomes aware of a conflict of interest.~~

~~**3.4-11.3** A lawyer may provide limited legal services notwithstanding that another lawyer has provided limited legal services under the auspices of the same not-for-profit organization to a client adverse in interest to the lawyer's client, provided no confidential information about a client is available to another client from the not-for-profit organization.~~

~~**3.4-11.4** If a lawyer keeps information obtained as a result of providing limited legal services confidential from the lawyer's partners and associates, the information is not imputed to the partners or associates, and a partner or associate of the lawyer may~~

- ~~(a) continue to act for another client adverse in interest to the client who is obtaining or has obtained limited legal services, and~~
- ~~(b) act in future for another client adverse in interest to the client who is obtaining or has obtained limited legal services.~~

Short-term Summary Legal Services

3.4-11.1 In rules 3.4-11.2 to 3.4-11.4 “Short-term summary legal services” means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

3.4-11.2 A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

3.4-11.3 Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

3.4-11.4 A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in Rules 3.4-11.1-3.4-11.4 will not be imputed to the lawyers in the lawyer's firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the pro bono or not-for-profit legal services provider to receive its services.

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary

[7.2] In providing short-term summary legal services under rules 3.4-11.1 – 3.4-11.4, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

Short-term Summary Legal Services

3.4-11.1 In rules 3.4-2B to 3.4-2D “Short-term summary legal services” means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

3.4-11.2 A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

3.4-11.3 Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

3.4-11.4 A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

Commentary

1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in Rules 3.4-11.1-3.4-11.4 will not be imputed to the lawyers in the lawyer's firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.

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Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: May 9, 2016
Subject: **Rules relating to the roles of President and Executive Director in hearings**

1. At their meeting in March, the Benchers referred to the Act and Rules Committee the task of considering rule amendments to re-assign some of the functions currently assigned to the Executive Director to the President (or designate) as more appropriate to the adjudicative function of that office.
2. I attach my memorandum to the Benchers, which explains the purpose of this exercise.
3. The Act and Rules Committee considered all of the rules concerning hearings and reviews that assign a function to the Executive Director. Many of those assignments the Committee found pertained to the disciplinary function of the Law Society and were appropriately carried out by the Executive Director. A number of others, however, the Committee found pertained to the adjudicative function and should be assigned to the President (or designate) in accordance with the Benchers resolution.
4. I attach redlined and clean versions of draft amendments intended to effect those changes. I also attach a suggested resolution recommended by the Act and Rules Committee to put the Benchers' resolution into effect.

Drafting notes

5. One of the main objectives of this exercise was to remove the Executive Director from the apparent conflict involved in setting the date for discipline hearings when the parties cannot agree. On the credentials side, Rule 2-91 appears to give the Executive Director the power to set the date unilaterally as standard procedure. Although that is not what usually happens,

the Committee propose new provisions similar to those governing the setting of dates for discipline hearings.

6. In the case of review hearings, the current rules have no provision for setting a hearing date if the parties do not agree. The Committee proposes a new Rule 5-24.1 based on the current rule for discipline hearings.
7. Several of the proposed amendments are intended to eliminate the role of the Executive Director in receiving applications from parties to hearings and passing them on to the President. The Committee proposes a new provision, Rule 10-1(4.1), to set out the requirement that documents directed to the President are delivered to the Law Society offices.

Attachments: memo to Benchers, February 22, 2016
draft
resolution

JGH



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: February 22, 2016
Subject: **Rules relating to the roles of President and Executive Director in hearings**

1. This memorandum is intended to ask the Benchers to consider in principle proposed changes to the Rules relating to two areas in the Law Society's tribunal function:
 - a. a re-assignment of the current function of setting a date for a hearing unilaterally when the parties cannot agree from the Executive Director to the President;
 - b. a change in the procedure for making an application for a decision so that the application can be made directly to the President, rather than to the Executive Director who then is required to refer it to the President for decision.

Setting hearing date

2. In the Law Society Rules on discipline and credentials hearings and reviews, both the President and the Executive Director are assigned functions. For example, the President appoints hearing panels and review boards to hear matters that need adjudication. The Executive Director issues discipline citations and appoints discipline counsel to conduct the prosecution of them.
3. Generally, the functions assigned to the President facilitate the adjudication of matters by the Law Society tribunal, and the functions assigned to the Executive Director facilitate the representation of the regulatory side of the Law Society before the Law Society tribunal. This is consistent with the principle accepted by the Benchers that there should be an actual and apparent separation between the prosecutorial and adjudicatory functions of the Law Society.

4. However, there is one area where the current rules appear to have assigned a function of an adjudicative nature to the Executive Director. When the parties to a discipline matter are unable to agree on a date to begin a hearing, a date can be set by the Executive Director or by a Bencher presiding at a prehearing conference.
5. This is the relevant part of the provisions of the Rule:

Notice of hearing

4-32(1) The date, time and place for the hearing to begin must be set

- (a) by agreement between discipline counsel and the respondent, or
 - (b) failing agreement, by the Executive Director or by the Bencher presiding at a prehearing conference.
6. The timing of a prehearing conference sometimes allows that option to prevail, but often a party who is reluctant to go to a hearing is also uncooperative in respect to prehearing conferences. When the option of the Executive Director setting the date is used, it has the appearance of one party acting unilaterally, possibly to its advantage.
7. This provision was first enacted in 1988, before any serious consideration was given to the issue of separating the adjudicatory and prosecutorial functions of the Law Society. Since that time, numerous adjudicatory functions have been assigned to the President to decide or designate another Bencher to decide. In my view, it would be more consistent with the scheme of the rules to assign this function to the President or the President's designate rather than the Executive Director.
8. The question for the Benchers is whether should be referred to the Act and Rules Committee to recommend amendments to give effect to the proposed change.
9. There are no equivalent procedural rules pertaining to credentials hearings or to reviews on the record. It may also be appropriate to ask the Act and Rules Committee to recommend rule amendment to provide for setting hearing or review dates in the absence of agreement of the parties.

Applications

10. In the rules relating to credentials and discipline hearings and reviews on the record, there are numerous provisions for a party to make a motion or application for the resolution of an issue

in advance of the hearing of the application, citation or review. The procedure in each case is similar to the following example:

Preliminary questions

- 4-36**(1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it,
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
- (a) appoint a panel to determine the question;
 - (b) refer the question to a prehearing conference;
 - (c) refer the question to the panel at the hearing of the citation.
- (4) The President may designate another Benchers to exercise the discretion under subrule (3).
- (5) A panel appointed under subrule (3) (a) is not seized of the citation or any question pertaining to the citation other than that referred under that provision.
11. The process whereby the party makes an application to the Executive Director who then must “promptly notify” the President who then must adjudicate or designate another Benchers to do so appears unnecessarily convoluted. It also has the effect of blurring the separation of prosecutorial and adjudicative functions.
12. That procedure was developed many years ago to avoid problems with parties and counsel corresponding with the President at the President’s law office and not through the Law Society business offices. There was a time when that was necessary before there was dedicated apparatus and staff available at the Law Society. Now it confuses some parties and staff and potentially slows the processing of applications as they come in and are re-routed to the eventual destination.
13. In my view, it would be appropriate to amend each of the pre-hearing provisions to eliminate the involvement of the Executive Director and require applications and motions to be made directly to the President, with copies to the opposing party. It may be prudent to add a rule that requires that all applications addressed to the President must be delivered in paper or electronic form to the Law Society business offices.

14. Again, the question for the Benchers is should the question of simplifying the rules be referred to the Act and Rules Committee to propose the actual rule amendments to give effect to the change.

JGH

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PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Notice to applicant

- 2-91** (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of
- (a) the purpose of the hearing,
 - (b) ~~the date, time and place of the hearing,~~ [rescinded]
 - (c) the circumstances to be inquired into at the hearing, and
 - (d) the amount of security for costs set by the Credentials Committee under Rule 2-92 *[Security for costs]*.

(1.1) The date, time and place for the hearing to begin must be set

- (a) by agreement between counsel for the Society and the applicant, or
- (b) on the application of a party, by the President or by the Benchers presiding at a pre-hearing conference.

(1.2) When a date is set under subrule (1.1), the President must notify the parties in writing of the date, time and place of the hearing.

- (2) ~~The Executive Director must serve the notice referred to in subrule (1)~~ or (1.2) must be served
- (a) in accordance with Rule 10-1 *[Service and notice]*, and
 - (b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

Preliminary questions

- 2-94** (1) Before a hearing begins, the applicant or counsel for the Society may apply for the determination of a question relevant to the hearing by delivering to the ~~Executive Director~~ President, and to the other party, written notice setting out the substance of the application and the grounds for it.
- (2) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]

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- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
- (b) refer the question to a pre-hearing conference;

Compelling witnesses and production of documents

- 2-95** (1) Before a hearing begins, the applicant or counsel for the Society may apply for an order under section 44 (4) [*Witnesses*] by delivering written notice setting out the substance of the application and the grounds for it to the ~~Executive Director~~ President and to the other party.
- (2) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]

Adjournment of hearing

- 2-98** (1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering written notice setting out the reasons for the request to the ~~Executive Director~~ President and to the other party a notice in writing that sets out the reasons for the request.
- (2) [rescinded] ~~The Executive Director must promptly notify the following of a request under subrule (1) and the reasons for it:~~
- ~~_____ (a) the party not making the request;~~
 - ~~_____ (b) a person given written notice of the application under Rule 2-85 (12) [Reinstatement of former lawyer];~~
 - ~~_____ (c) the President;~~
 - ~~_____ (d) anyone else who, in the Executive Director's opinion, should be notified.~~

Procedure

- 2-101** (5) ~~The Executive Director must promptly deliver a~~ A copy of the panel's reasons prepared under subrule (4) must be delivered promptly to the applicant and counsel for the Society.

Inactive applications

- 2-102** (3) An application under subrule (2) is made by written ~~notifying~~ notification of the following:
- (a) the applicant;
- (b) the ~~Executive Director~~ President.

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PART 4 – DISCIPLINE

Amending an allegation in a citation

- 4-21** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the ~~Executive Director~~President, and
 - (b) after the hearing has begun, with the consent of the respondent.

Severance and joinder

- 4-22** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the ~~Executive Director~~President for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or
 - (b) two or more citations be determined in one hearing.
- (3) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~[rescinded]
- (4) The President may
- (c) refer the application to a pre-hearing conference.

Notice of hearing

- 4-32** (1) The date, time and place for the hearing to begin must be set
- (a) by agreement between discipline counsel and the respondent, or
 - (b) ~~failing agreement~~on the application of a party, by the ~~Executive Director~~President or by the Benchers presiding at a pre-hearing conference.
- (2) When a date is set under subrule (1), the ~~Executive Director~~President must notify the ~~respondent parties and the complainant~~ in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.

Application for details of the circumstances

- 4-35** (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the ~~Executive Director~~President and discipline counsel written notice setting out the substance of the application and the grounds for it.

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- (2) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]
- (5) The President may
 - (b) refer the application to a pre-hearing conference.

Preliminary questions

- 4-36** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the ~~Executive Director~~ President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]
 - (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
 - (b) refer the question to a pre-hearing conference;

Compelling witnesses and production of documents

- 4-37** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44 (4) [*Witnesses*] by delivering to the ~~Executive Director~~ President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]

Pre-hearing conference

- 4-38** (2) When the President orders a conference under subrule (1), the President must
- (a) set the date, time and place of the conference, and notify the parties, and
 - (b) designate a Bencher to preside at the conference.
- (3) ~~The Executive Director must notify the respondent and discipline counsel of the time and place of the conference.~~ [rescinded]

Adjournment

- 4-40** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the ~~Executive Director~~ President and the other party written notice setting out the grounds for the application.

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- (2) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]
- (4) The President may
 - (b) refer the application to a pre-hearing conference.
- (6) [rescinded] ~~When an adjournment is granted under this rule, the Executive Director must notify the complainant.~~

Submissions and determination

- 4-43 (3) ~~The Executive Director must promptly deliver a~~ A copy of the panel's reasons prepared under subrule (2) (b) must be delivered promptly to each party.

Disciplinary action

- 4-44 (4) ~~The Executive Director must promptly deliver a~~ A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

PART 5 – HEARINGS AND APPEALS

Application to vary certain orders

- 5-12 (1) An applicant or respondent may apply in writing to the ~~Executive Director~~ President for
- (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-11 [*Costs of hearings*], or
 - (ii) to fulfill a condition imposed under section 22 [*Credentials hearings*], 38 [*Discipline hearings*], or 47 [*Review on the record*],
 - (b) a variation of a condition referred to in paragraph (a) (ii), or
 - (c) a change in the start date for a suspension imposed under section 38 [*Discipline hearings*] or 47 [*Review on the record*].
- (3) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]

Reviews and appeals

Initiating a review

- 5-19 (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by delivering a notice of review to the ~~Executive Director~~ President and counsel representing the Society.

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- (2) Within 30 days after being notified of the decision of a panel under Rule 4-44 [*Disciplinary action*] or 5-11 [*Costs of hearings*], the respondent may initiate a review by delivering a notice of review to the ~~Executive Director~~ President and discipline counsel.
- (5) When a review is initiated under subrule (3) or (4), counsel acting for the Society or discipline counsel must promptly deliver a notice of review to the ~~Executive Director~~ President and the respondent.
- (6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) [*Costs*], the lawyer concerned may initiate a review by delivering a notice of review to the ~~Executive Director~~ President.

Preparation and delivery of record

- 5-24.1** (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the ~~Executive Director~~ President, and
 - (b) 1 copy to the other party.
- (4) By delivering to the President ~~Executive Director~~ and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (5) ~~The Executive Director must promptly notify the President of~~ When an application is made under subrule (4), ~~and~~ the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

Notice of review hearing

- 5-24.2** (1) The date, time and place for the hearing on a review to begin must be set
- (a) by agreement between the parties, or
 - (b) on the application of a party, by the President or by the Benchers presiding at a pre-review conference.
- (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

Pre-review conference

- 5-25** (2) When a conference has been ordered under subrule (1), the President must
- (a) set the date, time and place of the conference; and notify the parties, and

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- (b) designate a Bencher to preside at the conference.
- (4) ~~The Executive Director must notify the applicant or the respondent, as the case may be, or his or her counsel, of the time and place of the conference.~~ [rescinded]

Adjournment

- 5-26** (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the ~~Executive Director~~ President and to the other party written notice setting out the grounds for the application.
- (2) ~~The Executive Director must promptly notify the President of an application under subrule (1).~~ [rescinded]

Decision on review

- 5-27** (4) ~~The Executive Director must promptly deliver~~ A a copy of the review board's written reasons prepared under subrule (2) must be delivered promptly to the applicant or respondent and counsel for the Society.

Inactive reviews

- 5-28** (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the ~~Executive Director~~ President and the other party a notice in writing that sets out the basis for the application.
- (2) ~~The Executive Director must promptly notify the following of an application under subrule (1):~~ [rescinded]
- (a) the party not making the application;
- (b) the President;
- (c) anyone else who, in the Executive Director's opinion, should be notified.

PART 10 – GENERAL

Service and notice

- 10-1** (4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

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PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Notice to applicant

- 2-91** (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of
- (a) the purpose of the hearing,
 - (b) [rescinded]
 - (c) the circumstances to be inquired into at the hearing, and
 - (d) the amount of security for costs set by the Credentials Committee under Rule 2-92 [*Security for costs*].
- (1.1) The date, time and place for the hearing to begin must be set
- (a) by agreement between counsel for the Society and the applicant, or
 - (b) on the application of a party, by the President or by the Benchers presiding at a pre-hearing conference.
- (1.2) When a date is set under subrule (1.1), the President must notify the parties in writing of the date, time and place of the hearing.
- (2) The notice referred to in subrule (1) or (1.2) must be served
- (a) in accordance with Rule 10-1 [*Service and notice*], and
 - (b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

Preliminary questions

- 2-94** (1) Before a hearing begins, the applicant or counsel for the Society may apply for the determination of a question relevant to the hearing by delivering to the President, and to the other party, written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
- (b) refer the question to a pre-hearing conference;

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Compelling witnesses and production of documents

- 2-95** (1) Before a hearing begins, the applicant or counsel for the Society may apply for an order under section 44 (4) [*Witnesses*] by delivering written notice setting out the substance of the application and the grounds for it to the President and to the other party.
- (2) [rescinded]

Adjournment of hearing

- 2-98** (1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering written notice setting out the reasons for the request to the President and to the other party.
- (2) [rescinded]

Procedure

- 2-101** (5) A copy of the panel's reasons prepared under subrule (4) must be delivered promptly to the applicant and counsel for the Society.

Inactive applications

- 2-102** (3) An application under subrule (2) is made by written notification of the following:
- (a) the applicant;
 - (b) the President.

PART 4 – DISCIPLINE

Amending an allegation in a citation

- 4-21** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the President, and
 - (b) after the hearing has begun, with the consent of the respondent.

Severance and joinder

- 4-22** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the President for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or

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- (b) two or more citations be determined in one hearing.
- (3) [rescinded]
- (4) The President may
 - (c) refer the application to a pre-hearing conference.

Notice of hearing

- 4-32** (1) The date, time and place for the hearing to begin must be set
- (a) by agreement between discipline counsel and the respondent, or
 - (b) on the application of a party, by the President or by the Benchers presiding at a pre-hearing conference.
- (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.

Application for details of the circumstances

- 4-35** (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the President and discipline counsel written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (5) The President may
 - (b) refer the application to a pre-hearing conference.

Preliminary questions

- 4-36** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
 - (b) refer the question to a pre-hearing conference;

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Compelling witnesses and production of documents

- 4-37** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44 (4) [*Witnesses*] by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]

Pre-hearing conference

- 4-38** (2) When the President orders a conference under subrule (1), the President must
- (a) set the date, time and place of the conference, and notify the parties and
 - (b) designate a Bencher to preside at the conference.
- (3) [rescinded]

Adjournment

- 4-40** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the President and the other party written notice setting out the grounds for the application.
- (2) [rescinded]
- (4) The President may
- (b) refer the application to a pre-hearing conference.
- (6) [rescinded]

Submissions and determination

- 4-43** (3) A copy of the panel's reasons prepared under subrule (2) (b) must be delivered promptly to each party.

Disciplinary action

- 4-44** (4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

PART 5 – HEARINGS AND APPEALS

Application to vary certain orders

- 5-12** (1) An applicant or respondent may apply in writing to the President for
- (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-11 [*Costs of hearings*], or

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- (ii) to fulfill a condition imposed under section 22 [*Credentials hearings*], 38 [*Discipline hearings*], or 47 [*Review on the record*],
- (b) a variation of a condition referred to in paragraph (a) (ii), or
- (c) a change in the start date for a suspension imposed under section 38 [*Discipline hearings*] or 47 [*Review on the record*].
- (3) [rescinded]

Reviews and appeals

Initiating a review

- 5-19** (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by delivering a notice of review to the President and counsel representing the Society.
- (2) Within 30 days after being notified of the decision of a panel under Rule 4-44 [*Disciplinary action*] or 5-11 [*Costs of hearings*], the respondent may initiate a review by delivering a notice of review to the President and discipline counsel.
- (5) When a review is initiated under subrule (3) or (4), counsel acting for the Society or discipline counsel must promptly deliver a notice of review to the President and the respondent.
- (6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) [*Costs*], the lawyer concerned may initiate a review by delivering a notice of review to the President.

Preparation and delivery of record

- 5-24.1** (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the President, and
 - (b) 1 copy to the other party.
- (4) By delivering to the President and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (5) When an application is made under subrule (4), the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

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Notice of review hearing

- 5-24.2** (1) The date, time and place for the hearing on a review to begin must be set
- (a) by agreement between the parties, or
 - (b) on the application of a party, by the President or by the Benchers presiding at a pre-review conference.
- (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

Pre-review conference

- 5-25** (2) When a conference has been ordered under subrule (1), the President must
- (a) set the date, time and place of the conference and notify the parties, and
 - (b) designate a Benchers to preside at the conference.
- (4) [rescinded]

Adjournment

- 5-26** (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the President and to the other party written notice setting out the grounds for the application.
- (2) [rescinded]

Decision on review

- 5-27** (4) A copy of the review board's written reasons prepared under subrule (2) must be delivered promptly to the applicant or respondent and counsel for the Society.

Inactive reviews

- 5-28** (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the President and the other party a notice in writing that sets out the basis for the application.
- (2) [rescinded]

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PART 10 – GENERAL

Service and notice

10-1 (4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

EXECUTIVE DIRECTOR AND TRIBUNAL RULES

SUGGESTED RESOLUTION:

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

1. In Rule 2-91:

(a) by rescinding subrule (1) (b), and

(b) by rescinding subrule (2) and substituting the following:

(1.1) The date, time and place for the hearing to begin must be set

(a) by agreement between counsel for the Society and the applicant, or

(b) on the application of a party, by the President or by the Benchers presiding at a pre-hearing conference.

(1.2) When a date is set under subrule (1.1), the President must notify the parties in writing of the date, time and place of the hearing.

(2) The notice referred to in subrule (1) or (1.2) must be served

(a) in accordance with Rule 10-1 [*Service and notice*], and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period..

2. In Rule 2-94:

(a) in subrule (1), by striking “to the Executive Director” and substituting “to the President”,

(b) by rescinding subrule (2), and

(c) by rescinding subrule (3) (b) and substituting the following:

(b) refer the question to a pre-hearing conference;.

3. In Rule 2-95:

(a) in subrule (1), by striking “to the Executive Director” and substituting “to the President”, and

(b) by rescinding subrule (2).

4. In Rule 2-98, by rescinding subrules (1) and (2) and substituting the following:

(1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering written notice setting out the reasons for the request to the President and to the other party..

5. ***In Rule 2-101, by rescinding subrule (5) and substituting the following:***
 - (5) A copy of the panel's reasons prepared under subrule (4) must be delivered promptly to the applicant and counsel for the Society..
6. ***In Rule 2-102, by rescinding subrule (3) and substituting the following:***
 - (3) An application under subrule (2) is made by written notification of the following:
 - (a) the applicant;
 - (b) the President..
7. ***In Rule 4-21 (1) (a), by striking "and the Executive Director," and substituting "and the President,".***
8. ***In Rule 4-22:***
 - (a) ***in subrule (1), by striking "to the Executive Director" and substituting "to the President",***
 - (b) ***by rescinding subrule (3), and***
 - (c) ***by rescinding subrule (4) (c) and substituting the following:***
 - (c) refer the application to a pre-hearing conference..
9. ***In Rule 4-32, by rescinding subrules (1) and (2) and substituting the following:***
 - (1) The date, time and place for the hearing to begin must be set
 - (a) by agreement between discipline counsel and the respondent, or
 - (b) on the application of a party, by the President or by the Benchers presiding at a pre-hearing conference.
 - (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period..
8. ***In Rule 4-35:***
 - (a) ***in subrule (1), by striking "to the Executive Director" and substituting "to the President",***
 - (b) ***by rescinding subrule (2), and***

(c) *by rescinding subrule (5) (b) and substituting the following:*

(b) refer the application to a pre-hearing conference..

9. In Rule 4-36:

(a) *in subrule (1), by striking “to the Executive Director” and substituting “to the President”,*

(b) *by rescinding subrule (2), and*

(c) *by rescinding subrule (3) (b) and substituting the following:*

(b) refer the question to a pre-hearing conference..

10. In Rule 4-37:

(a) *in subrule (1), by striking “to the Executive Director” and substituting “to the President”, and*

(b) *by rescinding subrule (2).*

11. In Rule 4-38:

(a) *by rescinding subrule (2) (a) and substituting the following:*

(a) set the date, time and place of the conference, and notify the parties, and, *and*

(b) *by rescinding subrule (3).*

12. In Rule 4-40:

(a) *in subrule (1), by striking “to the Executive Director” and substituting “to the President”,*

(b) *by rescinding subrules (2) and (6), and*

(c) *by rescinding subrule (4) (b) and substituting the following:*

(b) refer the application to a pre-hearing conference..

13. By rescinding Rule 4-43 (3) and substituting the following:

(3) A copy of the panel’s reasons prepared under subrule (2) (b) must be delivered promptly to each party..

14. ***By rescinding Rule 4-44 (4) and substituting the following:***
 - (4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party..
15. ***In Rule 5-12:***
 - (a) ***in subrule (1), by striking "to the Executive Director" and substituting "to the President", and***
 - (b) ***by rescinding subrule (3).***
16. ***In Rule 5-19 (1), (2), (5) and (6), by striking "to the Executive Director" and substituting "to the President"***
17. ***In Rule 5-24.1:***
 - (a) ***in subrules (1) and (4), by striking "to the Executive Director" and substituting "to the President", and***
 - (b) ***by rescinding subrule (5) and substituting the following:***
 - (5) When an application is made under subrule (4), the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly..
18. ***By adding the following rule:***

Notice of review hearing

5-24.2(1) The date, time and place for the hearing on a review to begin must be set

 - (a) by agreement between the parties, or
 - (b) on the application of a party, by the President or by the Benchers presiding at a pre-review conference.

(2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.
19. ***In Rule 5-25:***
 - (a) ***by rescinding subrule (2) (a) and substituting the following:***
 - (a) set the date, time and place of the conference and notify the parties, and, ***and***
 - (b) ***by rescinding subrule (4).***

20. In Rule 5-26:

- (a) in subrule (1), by striking “to the Executive Director” and substituting “to the President”, and**
- (b) by rescinding subrule (2).**

21. By rescinding Rule 5-27 (4) and substituting the following:

- (4) A copy of the review board’s written reasons prepared under subrule (2) must be delivered promptly to the applicant or respondent and counsel for the Society.

22. In Rule 5-28:

- (a) in subrule (1), by striking “to the Executive Director” and substituting “to the President and the other party”, and**
- (b) by rescinding subrule (2).**

23. In Rule 10-1 by adding the following subrule:

- (4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Renee Collins
Date: May 25, 2016
Subject: LSBC Member of FLS Council
Selection/Terms of Reference

On November 15, 2016 the term of Law Society's member of the Federation of Law Societies (FLS) Council, Gavin Hume, QC will come to an end. Accordingly, we will shortly begin the process for selection of a new Law Society FLS Council member.

The process itself was approved by the Benchers in November of 2007. Responsibility for managing the process was given to the Executive Committee, which codified the process as set out in the attached Terms of Reference (Appendix A).

A call for nominations will be circulated to Benchers and Life Benchers by email in the coming weeks. Nominations will be reviewed by the Executive Committee in advance of the November 4th, 2016 Bencher meeting, at which selection from a short list of candidates will be made by Benchers.

More detailed information will be provided to you throughout the process; in the meantime, please don't hesitate to contact me with any questions.



LSBC Member of the Federation of Law Societies of Canada Council

TERMS OF REFERENCE

To: Benchers and Life Benchers

From: Executive Committee

Date: September 16, 2010

LSBC Member of the Federation of Law Societies of Canada Council

TERMS OF REFERENCE

Background

[The Federation of Law Societies of Canada](#) (FLSC) is the national coordinating body of [Canada's 14 law societies](#) mandated to regulate Canada's 95,000 lawyers and Quebec's 3,500 notaries. The Federation is the common voice of Canada's law societies on a wide range of issues critical to the protection of the public and the rule of law, including solicitor-client privilege, the importance of an independent and impartial judiciary, and the role of the legal profession in the administration of justice. The Federation is governed by a national [Council](#) that includes a representative from each of the 14 member law societies.

Appointment

1. All current elected and Life (elected) Benchers are eligible to be nominated and to serve as LSBC's FLSC Council Member, provided that they are members in good standing.
2. The Benchers appoint LSBC's Council member from the pool of nominees presented by the Executive Committee.
3. The Executive Committee manages the appointment process, which includes:
 - setting the term of appointment (generally a period of three years, unless the Executive Committee directs otherwise);
 - inviting and reviewing nominations;
 - preparing a pool of nominees from the nominations received for the Benchers' consideration; and
 - notifying the nominees and FLSC of the Benchers' appointment decision.
4. The Council member, on completing a first term, may be considered by the Executive Committee to be appointed by the Benchers for one further term.

Note that Appendix 3, section 2 of the [Bencher Governance Policies](#) applies: "Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to that particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment for up to six years."

Service

1. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.
 2. If the Council member is or becomes a Life Benchers, or is defeated in a Benchers election, the Council member will complete the full term of the Council appointment.
 3. The Council member will strive to:
 - attend all FLSC Council meetings (currently three in person and one telephone meeting per year)
 - report after each Council meeting to the Benchers at their next meeting, and where appropriate, to the Executive Committee at their next meeting
 - provide supporting documentation received from FLSC to LSBC as appropriate to ensure that LSBC is fully informed about national initiatives and the FLSC agenda
 - attend Benchers meetings to facilitate this obligation and answer questions
 - attend all FLSC Conferences (currently semi-annual)
 - obtain instructions from LSBC, where necessary regarding matters on the FLSC agenda
 - which instructions may come from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers
 - Benchers approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments
 - remain fully informed about the work of LSBC and in particular, the Benchers' strategic priorities and current issuesⁱ
 - where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding LSBC's ability to deal with FLSC agenda issues
 - as appropriate, convey LSBC 's desire for FLSC to achieve certain objectives
 - facilitate an exchange of information between LSBC and other law societies on matters of common interest
 - participate fully in the national deliberations and work of whatever Council committee(s) the Council member may join
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