



Agenda

Benchers

Date: Friday, April 7, 2017

Time: **7:30 am** Continental breakfast

8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

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.*

OATH OF OFFICE:

President Herman Van Ommen, QC, will administer an oath of office (in the form set out in Rule 1-3) to Barbara Cromarty.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Administer Oath of Office	5	President		Presentation

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 March 3, 2017 meeting (regular session) Minutes of March 3, 2017 meeting (<i>in camera</i> session) Rule 1-9 – Voting at General Meetings by Internet Proposed Rule 3-39.1 and Others – Compulsory Trust Protection Insurance 	1	President	Tab 2.1 Tab 2.2 Tab 2.3 Tab 2.4	Approval Approval Approval Approval
---	--	---	-----------	--	--



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
GUEST PRESENTATIONS					
3	Begbie Symbolism	15	Grand Chief Edward John	Tab 3	Presentation
DISCUSSION/DECISION					
4	Strategic Plan Review Process: <ul style="list-style-type: none"> Introduction to Process 	10	CEO	Tab 4	Discussion
	<ul style="list-style-type: none"> Admission Program – Focus on Articling 	20	Director, Education & Practice/Deputy Director, PLTC/Manager, Member Services & Credentials		Discussion
5	Financial Matters <ul style="list-style-type: none"> 2017 First Quarter Financial Report 	10	Miriam Kresivo, QC / CFO	Tab 5.1	Discussion
	<ul style="list-style-type: none"> Finance & Audit Committee: 2016 Enterprise Risk Management Plan – Update 	10		Tab 5.2	Discussion
	<ul style="list-style-type: none"> Investment Review 	10		Tab 5.3	Discussion
6	Professional Regulation Department - Overview	30	CLO		Discussion/Decision
7	Implementation of Electronic Transfer of Funds Using Online Banking	20	CFO & Director of Trust Regulation	Tab 7	Decision



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
8	Appointment to the Legal Services Society Board	5	President	Tab 8	Discussion/ Decision
9	Recruitment and Nomination Advisory Committee: Terms of Reference	5	President	Tab 9	Discussion/ Decision
EXECUTIVE REPORTS					
10	President's Report	10	President		Briefing
	<ul style="list-style-type: none"> TRC Advisory Committee Update 				
	<ul style="list-style-type: none"> Bencher Calendar 				Briefing
	<ul style="list-style-type: none"> Briefing by the Law Society's Member of the Federation Council 				Briefing
	<ul style="list-style-type: none"> Report on Outstanding Hearing & Review Decisions 			(To be circulated at the meeting)	Briefing
FOR INFORMATION					
11	<ul style="list-style-type: none"> Email from Honourable Suzanne Anton, QC, Minister of Justice and Attorney General of British Columbia to Tim McGee, QC: Women's Right to Vote Event 			Tab 11.1	Information
	<ul style="list-style-type: none"> Three Month Bencher Calendar – April to June 			Tab 11.2	Information

Agenda

The Law Society
of British Columbia



ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<i>IN CAMERA</i>					
12	<i>In camera</i> <ul style="list-style-type: none"> • Bencher concerns • Other business 		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, March 03, 2017

Present: Herman Van Ommen, QC, President
Miriam Kresivo, QC, 1st Vice-President
Nancy Merrill, QC, 2nd Vice-President
Jasmin Ahmad
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Jeevyn Dhaliwal
Craig Ferris, QC
Martin Finch, QC
Brook Greenberg
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton, QC
Jamie Maclaren
Sharon Matthews, QC
Steven McKoen
Christopher McPherson
Lee Ongman
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Daniel P. Smith
Michelle Stanford
Sarah Westwood
Tony Wilson, QC

Unable to attend: Thomas Fellhauer
Lisa Hamilton
Greg Petrisor

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

<p>Guests: Hon. Suzanne Anton, QC Dom Bautista Mark Benton, QC Johanne Blenkin Carolyn LeFebvre Dr. Catherine Dauvergne The Honourable Lance Finch, QC Ron Friesen Richard Fyfe, QC Derek LaCroix, QC Martyn Lafrance Prof. Bradford Morse Wayne Robertson, QC Bill Veenstra</p>	<p>Attorney General and Minister of Justice Executive Director, Law Courts Center Executive Director, Legal Services Society CEO, Courthouse Libraries BC Director of Communications & Strategic Initiatives, Canadian Bar Association, BC Branch Dean of Law, University of British Columbia Legal Aid Task Force CEO, Continuing Legal Education Society of BC Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General Executive Director, Lawyers Assistance Program Chief of Staff to Minister Anton Dean of Law, Thompson Rivers University Executive Director, Law Foundation of BC Vice President, Canadian Bar Association, BC Branch</p>
--	--

INTRODUCTION

Mr. Van Ommen opened the meeting with an acknowledgement of the hospitality of the Coast Salish peoples, specifically the Squamish, Musqueam and Tsleil Waututh nations, on whose territories the meeting was being conducted.

He also introduced special guests of the meeting, the Honourable Suzanne Anton, QC, Attorney General and Minister of Justice, and the Honourable Lance Finch, QC, member of the Legal Aid Task Force.

Regarding the Consent Agenda, he noted two amendments to the Draft Bencher Meeting Minutes for January 27, 2017:

- The phrase “and secured” should be deleted from the revised definition of “Member Contact Information” in Rule 2-9
- The phrase “Excused” should be amended to read “Unable to attend” in the Attendance section

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on January 27, 2017 were approved as circulated and amended.

The *in camera* minutes of the meeting held on January 27, 2017 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend Rule 3-34 of the Law Society Rules by striking the phrase “rule 4.3” and substituting “section 4.3”

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-85 (3) and substituting the following:

(3) On an application under subrule (2) (c), the Executive Director may waive payment

of all or part of the application fee on any conditions that the Executive Director considers appropriate.

Be it resolved to amend the Code of Professional Conduct for British Columbia by inserting into the commentary for Rules 3.7-9 and 5.1-2 additional paragraphs as follows:

To be added to the commentary on Rule 3.7-9:

[6] In the absence of a reasonable objection, a lawyer who is discharged or withdraws continues to have a duty to promptly sign appropriately drafted court orders that have been granted or agreed to while the lawyer was counsel. This duty continues, notwithstanding subsequent instructions of the client.

To be added to the commentary on Rule 5.1-2:

[5] In the absence of a reasonable objection, lawyers have a duty to promptly sign appropriately drafted court orders that have been granted or agreed to. This duty continues, notwithstanding subsequent instructions of the client.

DISCUSSION/DECISION

2. Legal Aid Task Force Report

Nancy Merrill, QC, Chair of the Legal Aid Task Force (the Task Force), began by thanking the members of the Task Force, Vice-Chair Richard Peck, QC, Pinder Cheema, QC, Tom Christensen, QC, David Crossin, QC, the Honourable Lance Finch, QC, Judge Patricia Stark (Task Force member prior to her elevation to the Bench), Linda Thomas, Sarah Westwood, and Janet Winteringham, QC, for their time and commitment to this project, as well as staff Michael Lucas and Doug Munro for their invaluable hard work and support. She also thanked the Attorney General for her interest in the work of the Task Force, and her attendance at the colloquium held in late 2016.

In briefing Benchers on the Task Force's final report and recommendations, she observed that while historically the Law Society had been instrumental in the creation of legal aid, it had been notably silent until it assumed its leadership role once again last year. It bestowed upon the Task Force a mandate to:

- Develop a principled vision for the Law Society concerning publicly funded legal aid;
- Identify ways the Law Society could promote and improve lawyer involvement in delivering legal services through legal aid plans;
- Identify ways to enhance Law Society leadership concerning legal aid; and

- Develop the best methods for engagement with other organizations to coordinate the efficient use of resources in improving publicly funded legal aid.

Since its creation, the Task Force has held 12 meetings, a half day retreat and a full day colloquium. Its initial task was to develop a principled vision for legal aid, which would form the basis for moving forward. With a vision articulated, the Task Force proceeded to outline ideas for mandate items 2-4, and recommended the creation of a permanent advisory committee to continue this work.

Ms. Merrill then introduced the Honourable Lance Finch, QC, and invited him to speak. Mr. Finch congratulated the Benchers on their decision to strike this Task Force to undertake this important work. He echoed Ms. Merrill's thanks of Task Force members and staff, and noted that the draft vision set out in the Task Force report articulates reasons why access to legal advice and access to lawyers is essential to the rule of law. The proper functioning of our legal system depends upon both sides having professionally trained legal representation. One needs to fully understand the areas of practice in which legal aid is required before proposals can be made to the government seeking improvement to the legal aid system. To that end, Mr. Finch urged Benchers to adopt the vision and recommendations articulated by the Task Force.

Following the remarks of the Attorney General, outlined below, Mr. Van Ommen opened the discussion to Benchers, who were united in their praise for the Task Force and its thoughtful report, which can provide a meaningful foundation for moving forward. Some noted the importance of accepting the recommendations in order to move these issues to the forefront of public consciousness. Others noted that this work is consistent with the Law Society's mandate to uphold and protect the public in the administration of justice, and is synchronous with the work of the CBA highlighting the needs of the justice sector. Also noted was the burden being placed on the lawyers who continue to practice legal aid work despite the myriad challenges, some of whom cannot afford an office from which to work.

During discussion, Mr. Maclaren proposed that the language of the vision be amended to include the recognition of legal aid as an essential service that must be adequately funded by the government. Ms. Matthews also suggested an addition to the suggestions of how to advance mandate items 2-1 that includes articulation of a commitment to advocate for improvements to the legal aid system.

Ms. Merrill then moved (seconded by Ms. Rowbotham) the adoption of the vision articulated in Appendix 1 to the report, the dissolution of the current Task Force, and the establishment of an advisory committee with the mandate proposed at paragraph 64 of the report.

Some Benchers expressed support for adoption of the vision as articulated in the report, noting that ideas of how best to carry out the vision could be left to the advisory committee; others supported an amendment to include the suggestions made by Mr. Maclaren and Ms. Matthews.

Mr. Maclaren then moved (seconded by Ms. Stanford) that the following language be inserted at the end of the vision statement on page 22: “legal aid is an essential public service and, as such, governments bear the responsibility to fund legal aid to the degree necessary to achieve these purposes and objectives”.

After calling for discussion and hearing none, Mr. Van Ommen called for a vote on the amendment which was passed, with 16 for and 6 opposed.

Ms. Matthews then moved (seconded by Mr. Maclaren) for the addition of a recommendation 2(b)(iv) on page 19 of the report as follows: “advocating with the government and the public for improvements to legal aid”.

During discussion of this proposed amendment, Ms. Merrill confirmed that it was consistent with the recommendations of the Task Force, which had discussed the benefit of having regular meetings with both the Attorney General and the Minister of Finance. In response to the suggestion that the Law Society should be looking to public advocacy groups given its limited avenues for public consultation, Ms. Merrill observed that the way in which the Law Society advocated could be left to the advisory committee to discuss.

Following a vote, the amendment passed unanimously.

Mr. Van Ommen then called for a vote on the main motion to adopt the vision and recommendations, as amended: the motion passed unanimously.

3. Honourable Suzanne Anton, QC, Minister of Justice and Attorney General of British Columbia

Following Ms. Merrill’s and Mr. Finch’s remarks, Minister Anton spoke to Benchers, beginning by offering her compliments to the Law Society for undertaking the important work of advocating for legal aid reform, which is deserving of increased public attention and discussion. She was pleased to be invited and to attend the Task Force colloquium.

Citing the government’s goal of innovation to increase access to justice, she outlined many of the government’s current initiatives, including the Civil Resolution Tribunal (CRT), and criminal justice reform, for which BC has been lauded as a leader. She noted the challenges of operating in a financially constrained environment, which requires smarter rather than more expensive innovation, but observed that the fourth consecutive budget surplus has allowed for investment in health and childcare and capital spending.

She noted other government legal services initiatives, including creating Make a Will Week, amending the Human Rights Code to prohibit discrimination against transgendered people, working with the National Inquiry into Missing and Murdered Indigenous Woman and Girls (the National Inquiry), establishing a Family Information Liaison Unit to help those families who have lost loved ones interact with the National Inquiry, and celebrating 100 years of women getting the vote.

She provided additional detail of the recently launched CRT, the only online dispute resolution tribunal in the world that is linked to the court system. Currently open to strata disputes, the CRT will soon announce the start of Small Claims resolutions for claims under \$5000. She also noted the Justice and Public Safety Council which is responsible for coordinating the Justice Summits, the Provincial Court scheduling project, and the additional funding of the Legal Services Society (LSS).

Given the significant overrepresentation of Indigenous peoples in the criminal justice system, the Justice Services Branch has also engaged in numerous initiatives to assist, such as participation in the social determinants of health Regional Caucuses through the First Nations Health Council, establishment of 4 First Nations Courts (in the context of which she applauded the ingenuity and commitment to justice of Chief Judge Tom Crabtree and the Provincial Court), commission of Grand Chief Ed John's outstanding and insightful report on indigenous children in care, and development of such projects as the Aboriginal Family Healing Court Conference Pilot Project (akin to a First Nations Court for children in care) and the Parents Legal Centre for parents of children in care (developed through LSS).

Returning to the issue of legal aid, Minister Anton noted that approximately 20% of her Ministry's budget is allocated to legal services, through its funding of the traditional legal aid services provided by LSS as well as other legal services run by the government. She cited as examples of initiatives the expanded criminal and family duty counsel, the expanded Law Line, and the aforementioned Parents Legal Centre. She also noted the success of the government's Justice Access Centres which direct people to sources of legal advice, assist with the preparation of documents and provide information on resources for cases of domestic violence, residential tenancy disputes, child protection mediation and parenting after separation.

She also noted the need for more capital investment in courthouses and the personnel who staff them, such as crown counsel and sheriffs, particularly at the Supreme Court level. While BC has fewer cases of unreasonable delay than jurisdictions such as Alberta and Ontario, she observed that delay generally is a problem for justice and public confidence in our justice systems. To that end, she expressed her appreciation for the involvement and work of the Law Society, an important partner in justice.

Mr. Van Ommen thanked the Minister for attending and speaking.

4. Governance Committee: 2016 Bencher and Year End Survey Report

Steve McKoen, Chair of the Governance Committee briefed the Benchers on the results of the 2016 Bencher and Year End Survey Report, noting that, of the 26 responses received last year, most were in agreement with the survey statements; only 4% of responses expressed disagreement with the survey statements. Of all of the statements, the highest level of agreement was with the statement “Benchers are actively engaged with each other on issues”; the least agreement was with the statement “Benchers are up to date on the latest developments in the market for legal services”. Mr. McKoen also noted a decrease in agreement with the statements “Benchers have no hesitation raising issues” and “the meeting allows for candid conversation”.

Given these results, and the low level of disagreement with the statements in general, the Governance Committee will review and revise the survey to elicit more informative responses and make it a more useful tool. Mr. McKoen also noted that since 2007, Governance reviews have been conducted approximately every 5 years; accordingly, the Committee will be reviewing the recommendations made in the Governance review of 2012 to determine whether it remains useful to advance the goals set out then, or whether the goals should be refreshed. It will report back to Benchers following that review.

Mr. Van Ommen expressed concern over the decline in agreement with the statements concerning hesitation raising issues and candid meeting discussion. He emphasized the importance to him of open discussion, including the encouragement of dissent, and welcomed suggestions from Benchers to help achieve that openness.

One Bencher questioned whether the survey statistics accurately reflected the tone in the room, as there does not appear to be hesitation to raise issues or to dissent in the meetings. Another queried whether the results were more a reflection of the wording of the questions, rather than representative of Benchers’ attitudes generally.

Mr. Van Ommen noted that there were no decisions for approval in the report; he also noted that the Executive Committee would be looking at providing more information to Benchers on the market for legal services in BC.

5. Review of the Law Society’s 2016 Audited Financial Statements and Financial Reports

Miriam Kresivo, QC, briefed Benchers as Chair of the Finance and Audit Committee, beginning by thanking the hardworking members of the Committee, and the staff who so ably support it.

She recalled for Benchers the Committee’s mandate, which is to provide recommendations on annual fees, review budgets, review financial and investment results on a quarterly basis, review audit information and recommend approval of audited financial statements.

The presentation of the 2016 Audited Financial Statements and Financial Reports represents a significant part of that mandate. She noted the auditor's acknowledgment of staff's clear understanding of the organization and its needs, and the excellent job they are doing.

Jeanette McPhee, Chief Financial Officer, detailed the results of the 2016 Audited Financial Statements as compared to the 2015 results.

Beginning with the General fund, she noted a positive year in operations, with revenue at \$23.1 million or 3% over budget. One of the main areas over its projected budget was Juricert fees at \$976,000, which is the most since the inception of the program and a 14% increase over 2015. This variance of \$200,000 over budget is largely related to the increase in the real estate market during the year. Another area over budget was Practice Fee revenue, which exceeded its budget slightly with a 2% increase in members. The area of Recoveries, Fines and Penalties was also over budget by \$150,000. PLTC fees were below budget, with 470 students rather than the projected 500; however, Ms. McPhee noted that this does not appear to be a trend, as more than 500 students are expected in 2017. She also noted that the history of practicing membership over 11 years appears to be increasing at a rate of about 2% per year, and in 2016 there were 11,620 full time equivalent lawyers. The budget for 2017 is 11,760; the current number is 11,600 so we expect to be close to budget.

Operating expenses had a positive variance this year, at 21.4 million or 4% under budget. Savings were achieved in the areas of external fees within Credentials and Forensic Accounting, Human Resources (HR) and staff related expenses. External fees were down due to fewer files sent out in Credentials and Forensic Accounting. She noted that HR professional recruitment fees were under budget by \$125,000, with lower costs for skills training and professional development, which may be attributable in part to the development of our technical skills enrichment program and also staff workload issues. This is not necessarily a desired result, however, and staff will continue to be encouraged to focus on their professional development needs.

Overall, external fees in Regulation were under budget by \$80,000, which is a good achievement. Ms. McPhee noted that this is an area that is very difficult to project with any certainty due to pressures and complexity of files.

In the area of Trust Assurance Ms. McPhee noted a TAF revenue of \$4.5 million in 2016 which is approximately \$1 million over its budget of \$3.5 million, and 12% over 2015. As 75% of TAF revenue is due to real estate transactions, this figure is largely the result of demand in the real estate market in 2016. She also noted that the market is projected to decrease in 2017, which may correlate with a decrease in TAF revenue. Operating expenses were slightly below budget.

Reviewing the General Fund Balance sheet, Ms. McPhee noted assets of \$52 million and liabilities of \$32 million, leaving \$19.8 million in net assets. This consists of 4 main items. The first is Capital Projects funding of \$2.6 million, which is money set aside to pay for capital projects to maintain the building and operations. The second is the TAF reserve of \$4.8 million, which increased as a result of the increase in TAF related transactions in 2016 and the last half of 2015. The Finance and Audit Committee will be reviewing the TAF reserve this year as the current reserve policy is to transfer any excess funding over the required reserve to the Lawyers Insurance Fund (LIF). The third item is the investment in capital assets of \$11 million, which largely consists of the 845 Cambie building, leasehold improvements and operational capital items. The final item is \$1.4 million in unrestricted net assets, or working capital. This represents less than a month of operating expenses so it is a reasonable reserve.

Ms. McPhee then reviewed LIF, noting its assessment revenue of \$14.7 million was 2% over budget, and operating expenses, excluding claims, were under budget at \$6.7 million, due in large part to savings from staff vacancies. There was a considerable increase in Claims Provision in 2016, which is based on the actuarial valuation for claims. This is adjusted at the end of each year based on new claims in the year, and changes in claims from prior years. The provision was adjusted upward as there has been higher claims experience this year. She noted that this increase is not a reflection of actual payments, but a projection by the actuary.

The LIF investment Portfolio performance was reviewed, with the 2016 returns at 7.1%, which is above the benchmark by 6.0%.

The LIF Net Assets are \$70.4 million, which is a decrease due to the higher claims provision. LIF reserve levels have been reviewed by our actuarial and are deemed to be adequate for our insurance program.

The Special Compensation Fund has had no significant activity, although there was a small recovery of \$75,000 on a past file. There are a few more files to be finalized and the remaining reserve before the recoveries will be transferred to LIF mid-year.

After hearing no questions, Ms. Kresivo moved (seconded by Mr. Van Ommen) the following resolution:

BE IT RESOLVED to approve the Law Society's 2016 Combined Financial Statements for the General & Special Compensation Funds, and the 2016 Consolidated Financial Statements for the Lawyers Insurance Fund.

The motion was passed unanimously.

Ms. Kresivo reminded Benchers of the next Finance and Audit Committee meeting scheduled for April 6 at 12:00, at which Benchers are always welcome.

REPORTS

6. Lawyers Insurance Fund: Program Report for 2016

Su Forbes, QC, Director of LIF provided the LIF Program Report for 2016. She began by noting important aspects of LIF's role: to help and support lawyers to competently and ethically serve their clients and to discharge their financial obligations when they are negligent and cause loss to a client. This helps ensure the honour and integrity of the legal profession – all part of the Law Society's mandate set out in s. 3 of the *Legal Profession Act*.

Of the 14,000 lawyers in BC, 8700 are in private practice. LIF insures and manages the claims of this group. 1200 of these lawyers are part time and 7500 are full time. This proportion has remained relatively unchanged over the last 10 years and represents a steady state of insured membership.

Over a 5 year period, the frequency and number of reports has remained fairly consistent. The program saw an increase of approximately 10% in 2015, but that number dropped in 2016. However, we have seen an increase in the size or severity of claims in the same period.

Ms. Forbes then reviewed the risk of each practice area, noting that civil litigation (plaintiff) and motor vehicle (plaintiff) represent approximately 33% of reports; approximately 70% of all reserves are for these areas and real estate. She also noted that the 10 areas of practice that give rise to the lowest number of reports and dollars reserved, (each less than 5%), have remained the same during the last many years.

She next reviewed expense and claim settlement payments. Total payments are typically in the \$12-14 million range. There was a dip in 2015, likely due to timing, and 2016 saw the highest number of total payments since beginning of the program in 1986. As noted by Ms. McPhee earlier, our actuary is projecting an upward trend in the size of payments moving forward.

Typically the program closes as many files as it opens, however, last year 30 more files were closed than opened. Approximately 73% of closed files are closed with no payment, which reflects the skill of our claims counsel and early reporting by lawyers. Reviewing last year's closed reports, a consistently high level of repair (being the elimination, reduction or mitigation of loss) is demonstrated. Over the last 15 years, the level of repairs is approximately 15-20%, which again is the result of timely reporting and proactive steps taken by claims counsel.

From 2015 to 2016, the number of settlements increased, with 3 settlements over \$1 million (paid by excess carriers) in 2016. In 2016 LIF made 6 risk management presentations and, with the support of CLE, completed the significant undertaking of producing the YouTube video "The Naked Lawyer: big data reveals why you are at risk". Through those live forums, a video link of the "Naked Lawyer" on our website, and several PLTC sessions where we presented by video,

we have been able to reach over 1000 lawyers and students. Finally, LIF took an unprecedented 13 matters to trial in 2016 and won all; it appealed 2 trials it had earlier lost and also won those.

Regarding Part B, since the beginning of the program in 2004, we have received 228 reports of claims and potential claims under Part B and have paid claims involving 24 lawyers. Last year saw 7 claims paid for a total of \$94,000, \$6000 of which has already been recovered under payment plans.

Reviewing the insurance fee history, Ms. Forbes noted that 31 years ago the insurance fee for a \$200,000 policy was \$1750, and \$2600 represented the highest fee paid, in 1990. Fee stability was reached in 2000, but the economic recession, increased claims, and poor investment returns in 2008 pushed the fee back up to where it started at \$1750 – but by that time, for a \$1 million policy. Thereafter, improved market returns resulted in LIF maintaining the fee at \$1750 for the last 8 years. Finally, although LIF is the third largest program in Canada, we have the 9th largest fee.

The program is evaluated by users through its service evaluation surveys. Within 206 completed surveys, there are 183 positive comments and only 7 “grumbles”. Approximately 96% were satisfied with the outcome of their claim and 97% were happy with LIF staff counsel service.

Ms. Forbes then reviewed examples of comments made by lawyers experiencing claims, including suggestions of how to avoid such risks in the future. The risks included failure to communicate effectively, failure to manage the client relationship, failure to know or properly analyze the pertinent law, as well as simple oversights and unavoidable risks.

Ms. Forbes concluded her presentation to Benchers by noting that this year’s risk management focus will have a coverage theme and will be presented in 2 parts: the first will be a publication detailing how effective risk management starts by knowing what a policy does and does not cover, and making informed decisions about whether additional coverage is needed; the second will be a live presentation called “Under the Covers” which will help underscore the point. Both the publication and a video of the live presentation will be available on our website as tools to help lawyers protect themselves and better serve their clients.

Following the presentation, Ms. Forbes was asked about whether our insurance covers data theft and fraud, and what a cyber policy might cover. She highly recommended the purchase of a commercial “cyber liability policy” which would provide third party coverage in case client information is misused by a third party, and first party coverage for business interruption, “ransomware” extortion, notification costs, and other costs a firm might incur. Our policy does not cover situations in which a client’s information, housed on a laptop for example, falls into the hands of a third party and is misused. The policy does provide coverage where the lawyer might

lose information that could cause a loss directly related to the legal services to be provided to the client.

Mr. Van Ommen thanked Ms. Forbes for her informative presentation.

EXECUTIVE REPORTS

7. President's Report

Mr. Van Ommen briefed the Benchers on various Law Society matters, beginning by reminding Benchers that the Executive Committee Meeting Minutes from the February 16, 2017 meeting are now posted on Bencher Resources.

He noted his attendance last weekend at the Kootenay Bar Association meeting, at which he met all of the candidates in the Kootenay County Bencher By-election. He will report to Benchers with results after the election on March 15.

At the invitation of the Attorney General, he attended the Budget speech in Victoria; observing the myriad items being addressed in the Budget underscored for him the importance of raising the profile of access to justice issues.

- **Bencher Calendar**

Mr. Van Ommen also reviewed with Benchers events appearing in the 3 month Calendar excerpt, encouraging Benchers to become engaged as much as possible. He highlighted the New West Bar Dinner on March 14, and the reception for the National Action Committee on Access to Justice, hosted by the Law Society on March 23.

He also reminded Benchers to continue to advise of events as they become aware of them, to help populate the Calendar and make it a truly useful tool.

- **TRC Advisory Committee**

As Co-Chair of the Committee, Mr. Van Ommen provided an update on the Committee's progress to date. He invited Deputy Director of PLTC Annie Rochette to brief Benchers on the implementation of the TRC's Calls to Action into the PLTC curriculum. There has been an increase in Aboriginal cultural content in classroom instruction, which covers Canadian law as it pertains to Aboriginal peoples. PLTC has also included a whole day of instruction on criminal procedure which covers bail and sentencing, and therefore includes a review of Gladue rights. Ms. Rochette acknowledged that these are small steps, and stressed the importance of moving forward in a consultative manner with the Indigenous community, the

TRC Advisory Committee and law schools in looking at integrating cultural competency in a meaningful manner throughout the whole curriculum.

Committee member Dean Lawton also stressed the importance of coordinating with other entities, and continuing to consult with everyone concerned with this common interest, in an effort to use our collective energies effectively.

Mr. Van Ommen also noted that opportunities for further cultural competency training for Benchers were being explored, to follow up on the meaningful experiences gained at the 2016 Bencher Retreat.

He also briefed Benchers on an issue that has been discussed by the TRC Advisory Committee and will be raised at the next Bencher meeting: that of the status of the statue of Sir Matthew Begbie currently installed in the Law Society building lobby. The Committee has been reviewing the symbolism of the statue, and querying whether it remains appropriate for the Law Society to display the controversial symbol at a time when it is engaged in a process of reconciliation. The Committee is recommending the replacement of the statue with a more unifying symbol; Grand Chief Ed John will attend the Bencher meeting to present the Committee's recommendations. A statement regarding this replacement, which will be submitted to Benchers for approval, will be circulated in advance of the Bencher meeting for review and consideration. He noted that these recommendations will also be made public prior to the Bencher meeting, to enable the inclusion of any views expressed by the profession.

- **Briefing by the Law Society's Member of the Federation Council**

Mr. Van Ommen briefed the Benchers as the Law Society's member of the FLSC Council, providing an outline of the upcoming Federation Council Spring Meetings to be held March 13 and 14 in Quebec City. The meetings will include a special session on law firm regulation, which will give the Law Society an opportunity to compare our approach with that of other provinces. A major item on the Federation Council agenda will be the development of its Strategic Plan.

He was also pleased to report that Council will approve the membership of the Federation TRC Working Group, which will include Past President David Crossin, QC.

- **Report on Outstanding Hearing & Review Decisions**

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

8. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers which included a review of the Operational Priorities for the year. Though staff remain meaningfully engaged in their day to day priorities across all departments, each year we identify 5 operational priorities to receive special attention, focus and oversight by the management leadership group.

- Review of the Key Performance Measures: this will include an examination of department goals and an assessment of whether our current targets continue to accurately reflect and measure those goals.
- Review of the Enterprise Risk Management (ERM) plan: the ERM plan is a comprehensive view of risks at the operational level across all departments, a categorization of those risks as high, medium, or low, and an assessment of our ability to mitigate those risks. The plan is reviewed annually to track any changes to ratings year over year but this review is a full substantive review conducted every 3 years.
- Resourcing analysis: the annual employee survey indicates that resources for staff could be improved in certain areas. We will analyze our resource needs, including the types of resources required, and assess those needs on the basis of anticipated impact and cost effectiveness.
- Cultural competency and diversity training: our goal is to develop and deliver a strong base program this year for staff in general cultural competency training with a particular focus on Indigenous matters.
- Outstanding file reduction initiative: we have set an important target to significantly reduce over 2 years the number of files being carried forward in Professional Conduct from year to year. We will be recruiting more resources to assist, ensuring we are matching the right skills to the right tasks. We will be reporting back to Benchers as this project progresses.

Mr. McGee also briefed Benchers on the progress of the LIF restructuring. He thanked Ms. Forbes and Ms. McPhee for their outstanding work on this important project. He also reminded Benchers of the upcoming strategic planning set for the Fall of this year, and noted that staff will be providing a series of educational sessions at Bencher meetings to provide background on possible strategic planning topics.

Additionally, Mr. McGee noted that the new website would be going live Monday, March 6 following the recent testing done and feedback received. He also noted that leave to appeal had been granted by the Supreme Court of Canada in the TWU matter.

Following Mr. McGee's report, Benchers commented on the importance of cultural competency training, and a suggestion was made regarding a possible presentation to Benchers on intercultural fluency. Another Bencher queried whether internal complaint processes could be reviewed to ensure we are presenting an open and welcoming entry point for members of the Indigenous community; Mr. Van Ommen confirmed that this is currently part of the TRC Advisory Committee work plan.

Concern was expressed regarding the apparent delay in addressing the file reduction initiative; in response Mr. McGee noted that recruiting of the resources had begun and that once in place tracking and reporting would commence. While it was a timing issue it should not affect meeting the 2 year reduction target which has been set. Indeed, Ms. Armour noted that file reduction had already begun, and that a report will be provided to the Executive Committee at its next meeting.

RTC
2017-03-03

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC on behalf of Act and Rules Committee
Date: March 6, 2017
Subject: **Rule amendments to permit electronic general meetings**

1. At the Annual General Meeting in October 2016 the members passed this resolution proposed by the Benchers:

BE IT RESOLVED to authorize the Benchers to amend the Rules respecting general meetings to provide for voting at a general meeting either partly or fully by electronic means.

2. Steps are well underway for the Annual General Meeting in October this year to be conducted in part by internet connections.
3. The Act and Rules Committee recommends several amendments to the rules on general meetings to allow members of the Law Society to attend general meetings by way of the internet, hear the discussion at the meeting and vote on motions, resolutions and elections conducted at the meeting.
4. I attach draft amendments, in redlined and clean versions, as well as a suggested resolution to give effect to the changes.
5. Proposed amendments to Rule 1-9 establish the ability to conduct a general meeting at least in part by internet connection. While the present rule requires that all persons “present” at a general meeting, be able to speak at the meeting, the amended rule would restrict that right to those present in person or by telephone. However, those attending through the internet would be able to vote in real time.
6. A new subrule (6.1) is similar to the current requirements for electronic voting in benchers elections. A contractor can be retained to conduct on-line participation in the general

meeting. Steps must be taken to ensure the secrecy of voting when a secret ballot is held and reasonable security measures are required.

7. Amendments to Rule 1-13 prohibit Law Society members from voting more than once or if not entitled to vote and from allowing another person to vote in their place or from assisting a non-member to vote in a general meeting.
8. The Act and Rules Committee recommend adoption of the proposed amendments.

Attachments: draft amendments
resolution

JGH

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Meetings

Telephone and internet connections

- 1-9** (1) The Benchers may conduct a general meeting by joining any number of locations by
(a) telephone, ~~or by any other means of communication that allows all persons participating in and entitled to vote at the meeting to hear each other~~
(b) internet connection.

(1.1) Persons participating in and entitled to vote at a general meeting who are connected by telephone or internet connection must be able to hear all others participating in person or by telephone.

(1.2) Persons participating in and entitled to vote at a general meeting who are connected by telephone must be able to speak at the meeting if recognized by the President.

(1.3) Persons participating in and entitled to vote at a general meeting who are connected by the internet must be able to vote in real time when called upon by the President to do so.

- (5) The Executive Committee must designate locations to be joined to the annual general meeting by telephone, including at least the following locations:
- (a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminster;
 - (b) one in District No. 2, County of Victoria;
 - (c) one in District No. 3, County of Nanaimo;
 - (d) one in District No. 5, County of Kootenay;
 - (e) one in District No. 6, Okanagan;
 - (f) 2 in District No. 7, County of Cariboo;
 - (g) one in District No. 8, County of Prince Rupert;
 - (h) one in District No. 9, Kamloops.

(6.1) The Executive Director

- (a) may retain a contractor to assist in any part of a general meeting conducted by way of the internet.

LAW SOCIETY RULES

- (b) must ensure that votes cast electronically in a secret ballot remain secret, and
- (c) must take reasonable security measures to ensure that only members entitled to vote can do so.

- (7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting, ~~and the meeting may continue if the members continuing to participate and vote adopt a resolution to that effect.~~

Procedure at general meeting

- 1-13** (1) Benchers, members of the Society in good standing and articulated students are entitled to be present and to speak at a general meeting.

(1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.

- (15) A member of the Society in good standing who is present at a general meeting is entitled to one vote.

(15.1) A member of the Society must not

- (a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or
- (b) enable or assist a person
 - (i) to vote in the place of the member, or
 - (ii) to cast a vote that the person is not entitled to cast.

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Meetings

Telephone and internet connections

- 1-9** (1) The Benchers may conduct a general meeting by joining any number of locations by
- (a) telephone, or
 - (b) internet connection.
- (1.1) Persons participating in and entitled to vote at a general meeting who are connected by telephone or internet connection must be able to hear all others participating in person or by telephone.
- (1.2) Persons participating in and entitled to vote at a general meeting who are connected by telephone must be able to speak at the meeting if recognized by the President.
- (1.3) Persons participating in and entitled to vote at a general meeting who are connected by the internet must be able to vote in real time when called upon by the President to do so.
- (5) The Executive Committee must designate locations to be joined to the annual general meeting by telephone, including at least the following locations:
- (a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminster;
 - (b) one in District No. 2, County of Victoria;
 - (c) one in District No. 3, County of Nanaimo;
 - (d) one in District No. 5, County of Kootenay;
 - (e) one in District No. 6, Okanagan;
 - (f) 2 in District No. 7, County of Cariboo;
 - (g) one in District No. 8, County of Prince Rupert;
 - (h) one in District No. 9, Kamloops.
- (6.1) The Executive Director
- (a) may retain a contractor to assist in any part of a general meeting conducted by way of the internet,
 - (b) must ensure that votes cast electronically in a secret ballot remain secret, and

LAW SOCIETY RULES

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting.

Procedure at general meeting

1-13 (1) Benchers, members of the Society in good standing and articulated students are entitled to be present and to speak at a general meeting.

(1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.

(15) A member of the Society in good standing who is present at a general meeting is entitled to one vote.

(15.1) A member of the Society must not

(a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or

(b) enable or assist a person

(i) to vote in the place of the member, or

(ii) to cast a vote that the person is not entitled to cast.

ELECTRONIC GENERAL MEETINGS

SUGGESTED RESOLUTION:

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

1. In Rule 1-9

(a) by striking the heading and substituting the following:

Telephone and internet connections,

(b) by rescinding subrule (1) and substituting the following:

(1) The Benchers may conduct a general meeting by joining any number of locations by

(a) telephone, or

(b) internet connection.

(1.1) Persons participating in and entitled to vote at a general meeting who are connected by telephone or internet connection must be able to hear all others participating in person or by telephone.

(1.2) Persons participating in and entitled to vote at a general meeting who are connected by telephone must be able to speak at the meeting if recognized by the President.

(1.3) Persons participating in and entitled to vote at a general meeting who are connected by the internet must be able to vote in real time when called upon by the President to do so.,

(c) in subrule (5), by striking “joined to the annual general meeting,” and substituting “joined to the annual general meeting by telephone,” and

(d) by rescinding subrule (7) and substituting the following:

(6.1) The Executive Director

(a) may retain a contractor to assist in any part of a general meeting conducted by way of the internet,

(b) must ensure that votes cast electronically in a secret ballot remain secret, and

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

- (7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting..

2. *In Rule 1-13, by adding the following subrules:*

- (1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.
- (15.1) A member of the Society must not
- (a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or
 - (b) enable or assist a person
 - (i) to vote in the place of the member, or
 - (ii) to cast a vote that the person is not entitled to cast..

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Alison Luke and Jeff Hoskins, QC on behalf of
Act and Rules Committee
Date: March 6, 2017
Subject: Trust Protection Insurance Rules

1. The Act and Rules Committee recommends the adoption of a new rule to ensure that the Law Society is in compliance with section 30 of the *Legal Profession Act*. In addition the Committee recommends several other non-substantive amendments to the Law Society Rules for the purpose of making the language of the Rules consistent with the language of section 30 and internally consistent.

Background

2. The Lawyers Insurance Fund (LIF) manages the Law Society's insurance program, which includes two different types of insurance:¹
 - a. **Professional liability insurance** ("Part A"), which protects lawyers if they are liable for negligence and ensures that clients receive compensation to which they are entitled.²
 - b. **Trust protection insurance** ("Part B"), which ensures that innocent members of the public do not suffer a financial loss through dishonest appropriation by a BC lawyer.

¹ The current policy can be found online at www.lawsociety.bc.ca/docs/insurance/policy_2016.pdf. A third type of insurance, trust shortage liability insurance ("Part C"), is also included in the policy and provides some protection for lawyers if they fall victim to a 'bad cheque' or other social engineering scam. Unlike the other two types of insurance, there is no reference to Part C insurance in either the *LPA* or the Rules. As a result, it is not necessary to make amendments relating to this type of insurance.

² Note that some lawyers are exempt from professional liability insurance and the associated insurance fee (e.g. government lawyers, non-practising lawyers). In contrast, all lawyers are covered by trust protection insurance, regardless of their practice status or whether they pay the insurance fee.

3. The *LPA* clearly distinguishes between these types of insurance. For example, section 30(1) provides a definition for trust protection insurance that differentiates it from professional liability insurance.³
4. Further, section 30(1.1) of the *LPA* requires the Benchers to make rules requiring lawyers to maintain professional liability insurance *and* trust protection insurance:

(1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection insurance.

5. However, currently Rule 3-39(1) *only* requires lawyers to maintain professional liability insurance:

Compulsory liability insurance

- (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-40 [*Annual insurance fee*], unless the lawyer is exempt or ineligible under Rule 3-43 [*Exemption from liability insurance*].
6. There is no corresponding provision in the Rules specifically requiring lawyers to maintain trust protection insurance.
7. This issue was reviewed on two occasions by last year's Act and Rules Committee, and the proposed amendments are largely a product of those discussions.

Discussion

8. LIF staff have noted that Rule 3-39(1) does not currently reflect the statutory requirement under the *LPA* that lawyers hold compulsory trust protection insurance. Rather, a plain reading of Rule 3-39(1) suggests lawyers are only required to maintain professional

³ In addition to providing a definition for trust protection insurance, the *LPA* distinguishes between professional liability insurance and trust protection insurance in the following provisions: s. 30(1.1), (2), (2.1), (4), (5), (6), (8) and (9).

liability insurance. As a result, the Law Society does not appear to be in compliance with its governing statute.

9. A basic amendment adding a new provision (Rule 3-39.1) that specifically requires lawyers to maintain trust protection insurance resolves this issue and brings the Rules into compliance with the *LPA*.
10. A number of more minor inconsistencies in the language of other insurance-related provisions have been identified, including:
 - a. Internal inconsistencies in the language within the Rules: For example, professional liability insurance is referred to as “compulsory liability insurance,” “mandatory professional liability insurance,” “liability insurance” and “policy of professional liability insurance” in different places in the Rules.
 - b. Inconsistencies between the language used in the Rules and the *LPA*: For example, there are several references in the Rules to “Part B of the policy of professional liability insurance.” This phrase is synonymous with the term “trust protection insurance,” which is defined in the *LPA*. Other Rules variously require lawyers to “have” or “carry” insurance, when the phrasing used in the statute is “maintain.” For clarity and consistency, the Rules should use the statutory language.
11. Consequently, a number of additional corrective amendments are proposed to ensure that appropriate and consistent language is being used throughout the Rules.
12. The proposed changes have been reviewed and approved by LIF staff.

Recommendation

13. The Act and Rules Committee recommends including a provision in the Rules requiring lawyers to maintain trust protection insurance to bring the Rules into compliance with the *LPA*. The Committee also recommends the additional proposed amendments to remedy inconsistencies in the language used in the insurance-related provisions.
14. We attach a copy of the complete section 30 of the *Legal Profession Act* for reference, draft amendments in redlined and clean versions and a suggested resolution to give effect to the proposed amendments.

LEGAL PROFESSION ACT

PART 3 – PROTECTION OF THE PUBLIC

Insurance

- 30** (1) In this section, “trust protection insurance” means insurance for lawyers to compensate persons who suffer pecuniary loss as a result of dishonest appropriation of money or other property entrusted to and received by a lawyer in his or her capacity as a barrister and solicitor.
- (1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection insurance.
- (2) The benchers may establish, administer, maintain and operate a professional liability insurance program and may use for that purpose fees set under this section.
- (2.1) The benchers
- (a) must establish, administer, maintain and operate a trust protection insurance program and may use for that purpose fees set under this section,
 - (b) may establish conditions and qualifications for a claim against a lawyer under the trust protection insurance program, including time limitations for making a claim, and
 - (c) may place limitations on the amounts that may be paid out of the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program.
- (3) The benchers may, by resolution, set
- (a) the insurance fee, and
 - (b) the amount to be paid for each class of transaction under subsection (4) (c).
- (4) The benchers may make rules to do any of the following:
- (a) permit lawyers to pay the insurance fee by instalments on or before the date by which each instalment of that fee is due;
 - (b) establish classes of membership for insurance purposes and exempt a class of lawyers from the requirement to maintain professional liability insurance or trust protection insurance or from payment of all or part of the insurance fee;

- (c) designate classes of transactions for which the lawyer must pay a fee to fund the professional liability or trust protection insurance program.
- (5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection insurance.
- (6) The benchers must establish an insurance fund, comprising fees set under this section and other income of the professional liability and trust protection insurance programs, and the fund
 - (a) must be accounted for separately from other funds,
 - (b) is not subject to any process of seizure or attachment by a creditor of the society, and
 - (c) is not subject to a trust in favour of a person who has sustained a loss.
- (7) Subject to rules made under section 23 (7), a lawyer must not practise law unless the lawyer has paid the insurance fee when it is due, or is exempted from payment of the fee.
- (8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection insurance issued by the society, if
 - (a) the society has, on behalf of the lawyer,
 - (i) paid a deductible amount under the professional liability insurance program in respect of a claim or potential claim under that program, or
 - (ii) made an indemnity payment under the trust protection insurance program in respect of a claim under that program, and
 - (b) the lawyer has not reimbursed the society, at the date that the insurance fee or an instalment of that fee is due.
- (9) The benchers may waive or extend the time
 - (a) to pay all or part of the insurance fee, or
 - (b) to repay all or part of a deductible amount paid under the professional liability insurance program or an indemnity payment made under the trust protection program on behalf of a lawyer.

- (10) If the benchers extend the time for a payment under subsection (9), the later date for payment is the date when payment is due for the purposes of subsections (7) and (8).
- (11) A payment made from the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program
 - (a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and
 - (b) if collected, is the property of the society and must be accounted for as part of the fund.

[2012-16-19; 2016-5-44]

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Inter-jurisdictional practice

Inter-jurisdictional practice without a permit

- 2-16** (3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this rule, a visiting lawyer must at all times
- (a) ~~carry~~ maintain professional liability insurance that
 - (i) is reasonably comparable in coverage and limits to that required of lawyers under Rule 3-39 (1) [*Compulsory professional liability insurance*], and
 - (ii) extends to the visiting lawyer's temporary practice in British Columbia,
 - (b) ~~have~~ maintain trust protection insurance or other defalcation compensation coverage from a governing body that extends to the visiting lawyer's temporary practice in British Columbia,
 - (6) The requirement in subrule (3) (a) does not apply to a visiting lawyer who is exempt from ~~compulsory~~ professional liability insurance under Rule 3-43 [*Exemption from professional liability insurance*] with respect to legal services to be provided in British Columbia.

Inter-jurisdictional practice permit

- 2-19** (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (d) proof of professional liability insurance as required under Rule 2-16 (3) (a) [*Inter-jurisdictional practice without a permit*], and
 - (e) proof that the visiting lawyer ~~has~~ maintains the trust protection insurance or other defalcation coverage required under Rule 2-16 (3) (b) [*Inter-jurisdictional practice without a permit*].

Expiry and renewal of inter-jurisdictional practice permit

- 2-22** (3) A permit ceases to be valid if the holder of the permit
- (b) fails to maintain professional liability insurance as described in Rule 2-19 (3)
 - (d) [*Inter-jurisdictional practice permit*], ~~or~~
 - (b.1) fails to maintain the trust protection insurance or other defalcation coverage described in Rule 2-16 (3) (b) [*Inter-jurisdictional practice permit*], or

LAW SOCIETY RULES

Practitioners of foreign law

Practitioners of foreign law

- 2-29** (2) The Executive Director may issue a permit to a person applying under subrule (1) if satisfied that the person
- (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-39 (1) [*Compulsory professional liability insurance*], and
 - (ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.

Dual qualification

- 2-32** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer ~~holds~~ maintains professional liability insurance that
- (a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and
 - (b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-39 (1) [*Compulsory professional liability insurance*].

Multi-disciplinary practice

Application to practise law in MDP

- 2-40** (2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that
- (d) every member of the MDP obtains and maintains professional liability insurance as required under Rule 2-47 [*Liability insurance*],

Liability insurance

- 2-47** (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP
- (a) maintains professional liability insurance
 - (i) on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pays the insurance fee, and

LAW SOCIETY RULES

- (ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-39(1) [*Compulsory professional liability insurance*], and
- (b) complies with the provisions of Part 3, Division 5 [*Insurance*] as if the non-lawyer were a lawyer.
- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable insurance base assessment is the part-time insurance fee specified in Schedule 1.

Notifying the Society

- 2-49** (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:
- (d) professional liability insurance maintained by non-lawyers under Rule 2-47 [*Liability insurance*],

Division 2 – Admission and Reinstatement

Call and admission

First call and admission

- 2-77** (1) An articulated student who applies for call and admission must deliver to the Executive Director
- (b) ~~an errors and omissions~~ a professional liability insurance application or exemption form,
 - (c) the following fees:
 - (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*], and

Transfer from another Canadian jurisdiction

- 2-79** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (d) ~~an~~ a professional liability ~~errors and omissions~~ insurance application or exemption form;

LAW SOCIETY RULES

(f) the following fees:

- (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*];

Transfer as Canadian legal advisor

2-82 (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

- (d) ~~an errors and omissions~~ professional liability insurance application or exemption form;

(e) the following fees:

- (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*];

Reinstatement

Reinstatement of former lawyer

2-85 (4) The Executive Director may issue a practising certificate to an applicant on reinstatement on payment of the following:

- (b) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*];

Division 3 – Fees and Assessments

Annual practising fees

2-105 (1) The annual practising fee and insurance fee are payable in respect of each calendar year.

- (2) The date for payment of the annual practising fee and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.

Refund when lawyer does not practise law

2-115 (1) A lawyer who has paid the annual fee for a year but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during that year through disability, other than a suspension, is entitled to a refund of

- (b) a portion of the annual insurance fee set under section 30 (3) (a) [*Professional liability-iInsurance*], in an amount determined by the Executive Director.

LAW SOCIETY RULES

Refund on exemption during practice year

- 2-116** (1) A lawyer who has paid the annual insurance fee for a year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [Exemption from professional liability insurance] during that year, is entitled to a refund of a portion of the fee in an amount determined by the Executive Director.

Failure to pay fine, costs or penalty

- 2-117** (1) The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:
- (e) reimbursement for payment made on behalf of the lawyer or former lawyer under ~~Part B of the policy of professional liability~~ trust protection insurance.

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Insurance

Compulsory professional liability insurance

- 3-39** (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-40 [Annual insurance fee], unless the lawyer is exempt or ineligible under Rule 3-43 [Exemption from professional liability insurance].
- (2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).
- (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to ~~compulsory~~ professional liability insurance under this division that affects the limits of liability or scope of coverage.

Compulsory trust protection insurance

- 3-39.1** (1) A lawyer must maintain trust protection insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay any fee for trust protection insurance set under Rule 3-40 [Annual insurance fee].
- (2) A lawyer is bound by and must comply with the terms and conditions of trust protection insurance maintained under subrule (1).

LAW SOCIETY RULES

Annual insurance fee

- 3-40** (1) The insurance fee to be paid under section 23 (1) (c) [*Annual fees and practising certificate*] is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
 - (b) any surcharge for which the lawyer is liable under Rule 3-44 [*Deductible, surcharge and reimbursement*]; minus
 - (c) any credit to which the lawyer is entitled under Rule 3-42 [*Insurance fee credit*].
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.
- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.
- (5) For the purpose of this rule,
- (a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and
 - (b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.
- (6) The Executive Director may, in the Executive Director’s discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time insurance fee or, in extraordinary circumstances, allow the lawyer to pay the part-time insurance fee despite subrule (3).

Payment of annual insurance fee by instalments

- 3-41** (1) A lawyer must pay the insurance fee in two equal annual instalments as follows:
- (a) the first instalment on or before November 30 of the year preceding the year for which it is paid;
 - (b) the second instalment on or before June 30 of the year for which it is paid.

LAW SOCIETY RULES

- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) *[Insurance]* and surrender to the Executive Director his or her practising certificate and any proof of professional liability insurance issued by the Society.

Insurance fee credit

- 3-42** (1) The Benchers may approve an annual insurance fee credit and set the conditions that a lawyer must meet to be entitled to the credit.
- (2) When a lawyer is entitled to an annual insurance fee credit, the first instalment of the insurance fee payable by the lawyer is reduced by the amount of the credit.

Exemption from professional liability insurance

- 3-43** (1) A lawyer is exempt from the requirement to maintain professional liability insurance and pay the insurance fee if the lawyer is
- (a) not engaged in the practice of law, other than pro bono legal services, anywhere in his or her capacity as a member of the Society, or
 - (b) employed by one of the following and is not engaged in the practice of law, other than pro bono legal services, except in the course of that employment:
 - (i) a government department;
 - (ii) a corporation other than a law corporation;
 - (iii) a society, trade union or a similar organization.
- (2) A lawyer is not exempt under subrule (1) (b) if the lawyer engages in the practice of law, other than pro bono legal services, in any way other than as described in those provisions.
- (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the lawyer is a member.
- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
- (a) is resident or is deemed resident under the National Mobility Agreement, and
 - (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

LAW SOCIETY RULES

- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

Deductible, surcharge and reimbursement

- 3-44** (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's insurance program on behalf of the lawyer:
- (a) a deductible amount;
 - (b) any other amount that the lawyer is required to repay or reimburse the insurer under ~~the policy of~~ professional liability insurance.
- (2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must
- (a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and
 - (b) if the payment was made under ~~Part B of the policy of professional liability insurance~~ trust protection insurance, reimburse the Society in full on demand, for all amounts paid ~~under Part B~~.
- (3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

Application for insurance coverage

- 3-45** (1) A lawyer may apply for insurance coverage by delivering to the Executive Director
- (a) an application for insurance coverage, and
 - (b) the prorated insurance fee as specified in Schedule 2.
- (2) A lawyer who is insured for part-time practice may apply for insurance coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time insurance coverage, and
 - (b) the difference between the prorated full-time insurance fee specified in Schedule 2 and any payment made for part-time insurance coverage for the current year.

LAW SOCIETY RULES

- (3) The Executive Director must not grant the insurance coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

Confidentiality of insurance claims

- 3-46** (1) In this rule, “**claim**” means a claim or potential claim reported under the policy of professional liability and trust protection insurance.
- (2) Unless permitted by this rule, ~~No~~ no one is permitted to disclose any information or records associated with a claim.
- (3) ~~Despite subrule (2),~~ The Executive Director may do any of the following:
- (a) disclose information about a claim with the consent of the lawyer;
 - (b) if a claim has become known to the public, disclose
 - (i) the existence of the claim,
 - (ii) its subject matter,
 - (iii) its status, including, if the claim is closed, the general basis on which it was closed, and
 - (iv) any additional information necessary to correct inaccurate information.
- (4) For the purpose of subrule (3) (b) (iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:
- (a) opened;
 - (b) under investigation;
 - (c) the stage of any litigation commenced;
 - (d) closed.
- (5) In the case of a claim under ~~Part B of the policy of professional liability~~ trust protection insurance, the Executive Director may do any of the following:
- (a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 [*Discipline*] or 5 [*Hearings and Appeals*] or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;
 - (b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when
 - (i) the lawyer’s misappropriation is known to the public,
 - (ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or
 - (iii) the facts are not disputed or are admitted by the lawyer or former lawyer;

LAW SOCIETY RULES

- (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Div 7 – Trust Accounts and Other Client Property

Trust report

- 3-79** (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 [*Exemption from professional liability insurance*] from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
- (a) not received any funds in trust,
 - (b) not withdrawn any funds held in trust, and
 - (c) complied with this division.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Inter-jurisdictional practice

Inter-jurisdictional practice without a permit

- 2-16** (3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this rule, a visiting lawyer must at all times
- (a) maintain professional liability insurance that
 - (i) is reasonably comparable in coverage and limits to that required of lawyers under Rule 3-39 (1) [*Compulsory professional liability insurance*], and
 - (ii) extends to the visiting lawyer's temporary practice in British Columbia,
 - (b) maintain trust protection insurance or other defalcation compensation coverage from a governing body that extends to the visiting lawyer's temporary practice in British Columbia,
 - (6) The requirement in subrule (3) (a) does not apply to a visiting lawyer who is exempt from professional liability insurance under Rule 3-43 [*Exemption from professional liability insurance*] with respect to legal services to be provided in British Columbia.

Inter-jurisdictional practice permit

- 2-19** (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (d) proof of professional liability insurance as required under Rule 2-16 (3) (a) [*Inter-jurisdictional practice without a permit*], and
 - (e) proof that the visiting lawyer maintains the trust protection insurance or other defalcation coverage required under Rule 2-16 (3) (b) [*Inter-jurisdictional practice without a permit*].

Expiry and renewal of inter-jurisdictional practice permit

- 2-22** (3) A permit ceases to be valid if the holder of the permit
- (b) fails to maintain professional liability insurance as described in Rule 2-19 (3) (d) [*Inter-jurisdictional practice permit*],
 - (b.1) fails to maintain the trust protection insurance or other defalcation coverage described in Rule 2-16 (3) (b) [*Inter-jurisdictional practice permit*], or

LAW SOCIETY RULES

Practitioners of foreign law

Practitioners of foreign law

- 2-29** (2) The Executive Director may issue a permit to a person applying under subrule (1) if satisfied that the person
- (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-39 (1) [*Compulsory professional liability insurance*], and
 - (ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.

Dual qualification

- 2-32** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer maintains professional liability insurance that
- (a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and
 - (b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-39 (1) [*Compulsory professional liability insurance*].

Multi-disciplinary practice

Application to practise law in MDP

- 2-40** (2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that
- (d) every member of the MDP obtains and maintains professional liability insurance as required under Rule 2-47 [*Liability insurance*],

Liability insurance

- 2-47** (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP
- (a) maintains professional liability insurance
 - (i) on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pays the insurance fee, and

LAW SOCIETY RULES

- (ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-39(1) [*Compulsory professional liability insurance*], and
- (b) complies with the provisions of Part 3, Division 5 [*Insurance*] as if the non-lawyer were a lawyer.
- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable insurance base assessment is the part-time insurance fee specified in Schedule 1.

Notifying the Society

- 2-49** (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:
- (d) professional liability insurance maintained by non-lawyers under Rule 2-47 [*Liability insurance*],

Division 2 – Admission and Reinstatement

Call and admission

First call and admission

- 2-77** (1) An articulated student who applies for call and admission must deliver to the Executive Director
- (b) a professional liability insurance application or exemption form,
 - (c) the following fees:
 - (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*], and

Transfer from another Canadian jurisdiction

- 2-79** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (d) a professional liability insurance application or exemption form;
 - (f) the following fees:
 - (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*];

LAW SOCIETY RULES

Transfer as Canadian legal advisor

- 2-82** (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (d) a professional liability insurance application or exemption form;
 - (e) the following fees:
 - (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*];

Reinstatement

Reinstatement of former lawyer

- 2-85** (4) The Executive Director may issue a practising certificate to an applicant on reinstatement on payment of the following:
- (b) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*];

Division 3 – Fees and Assessments

Annual practising fees

- 2-105** (1) The annual practising fee and insurance fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.

Refund when lawyer does not practise law

- 2-115** (1) A lawyer who has paid the annual fee for a year but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during that year through disability, other than a suspension, is entitled to a refund of
- (b) a portion of the annual insurance fee set under section 30 (3) (a) [*Insurance*], in an amount determined by the Executive Director.

LAW SOCIETY RULES

Refund on exemption during practice year

- 2-116** (1) A lawyer who has paid the annual insurance fee for a year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from professional liability insurance*] during that year, is entitled to a refund of a portion of the fee in an amount determined by the Executive Director.

Failure to pay fine, costs or penalty

- 2-117** (1) The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:
- (e) reimbursement for payment made on behalf of the lawyer or former lawyer under trust protection insurance.

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Insurance

Compulsory professional liability insurance

- 3-39** (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-40 [*Annual insurance fee*], unless the lawyer is exempt or ineligible under Rule 3-43 [*Exemption from professional liability insurance*].
- (2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).
- (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to professional liability insurance under this division that affects the limits of liability or scope of coverage.

Compulsory trust protection insurance

- 3-39.1** (1) A lawyer must maintain trust protection insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay any fee for trust protection insurance set under Rule 3-40 [*Annual insurance fee*].
- (2) A lawyer is bound by and must comply with the terms and conditions of trust protection insurance maintained under subrule (1).

LAW SOCIETY RULES

Annual insurance fee

- 3-40** (1) The insurance fee to be paid under section 23 (1) (c) [*Annual fees and practising certificate*] is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
 - (b) any surcharge for which the lawyer is liable under Rule 3-44 [*Deductible, surcharge and reimbursement*]; minus
 - (c) any credit to which the lawyer is entitled under Rule 3-42 [*Insurance fee credit*].
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.
- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.
- (5) For the purpose of this rule,
- (a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and
 - (b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.
- (6) The Executive Director may, in the Executive Director’s discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time insurance fee or, in extraordinary circumstances, allow the lawyer to pay the part-time insurance fee despite subrule (3).

Payment of annual insurance fee by instalments

- 3-41** (1) A lawyer must pay the insurance fee in two equal annual instalments as follows:
- (a) the first instalment on or before November 30 of the year preceding the year for which it is paid;
 - (b) the second instalment on or before June 30 of the year for which it is paid.

LAW SOCIETY RULES

- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) *[Insurance]* and surrender to the Executive Director his or her practising certificate and any proof of professional liability insurance issued by the Society.

Insurance fee credit

- 3-42** (1) The Benchers may approve an annual insurance fee credit and set the conditions that a lawyer must meet to be entitled to the credit.
- (2) When a lawyer is entitled to an annual insurance fee credit, the first instalment of the insurance fee payable by the lawyer is reduced by the amount of the credit.

Exemption from professional liability insurance

- 3-43** (1) A lawyer is exempt from the requirement to maintain professional liability insurance and pay the insurance fee if the lawyer is
- (a) not engaged in the practice of law, other than pro bono legal services, anywhere in his or her capacity as a member of the Society, or
 - (b) employed by one of the following and is not engaged in the practice of law, other than pro bono legal services, except in the course of that employment:
 - (i) a government department;
 - (ii) a corporation other than a law corporation;
 - (iii) a society, trade union or a similar organization.
- (2) A lawyer is not exempt under subrule (1) (b) if the lawyer engages in the practice of law, other than pro bono legal services, in any way other than as described in those provisions.
- (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the lawyer is a member.
- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
- (a) is resident or is deemed resident under the National Mobility Agreement, and
 - (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

LAW SOCIETY RULES

- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

Deductible, surcharge and reimbursement

- 3-44** (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's insurance program on behalf of the lawyer:
- (a) a deductible amount;
 - (b) any other amount that the lawyer is required to repay or reimburse the insurer under professional liability insurance.
- (2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must
- (a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and
 - (b) if the payment was made under trust protection insurance, reimburse the Society in full on demand, for all amounts paid.
- (3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

Application for insurance coverage

- 3-45** (1) A lawyer may apply for insurance coverage by delivering to the Executive Director
- (a) an application for insurance coverage, and
 - (b) the prorated insurance fee as specified in Schedule 2.
- (2) A lawyer who is insured for part-time practice may apply for insurance coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time insurance coverage, and
 - (b) the difference between the prorated full-time insurance fee specified in Schedule 2 and any payment made for part-time insurance coverage for the current year.

LAW SOCIETY RULES

- (3) The Executive Director must not grant the insurance coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

Confidentiality of insurance claims

- 3-46** (1) In this rule, “**claim**” means a claim or potential claim reported under the policy of professional liability and trust protection insurance.
- (2) Unless permitted by this rule, no one is permitted to disclose any information or records associated with a claim.
- (3) The Executive Director may do any of the following:
- (a) disclose information about a claim with the consent of the lawyer;
 - (b) if a claim has become known to the public, disclose
 - (i) the existence of the claim,
 - (ii) its subject matter,
 - (iii) its status, including, if the claim is closed, the general basis on which it was closed, and
 - (iv) any additional information necessary to correct inaccurate information.
- (4) For the purpose of subrule (3) (b) (iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:
- (a) opened;
 - (b) under investigation;
 - (c) the stage of any litigation commenced;
 - (d) closed.
- (5) In the case of a claim under trust protection insurance, the Executive Director may do any of the following:
- (a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 [*Discipline*] or 5 [*Hearings and Appeals*] or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;
 - (b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when
 - (i) the lawyer’s misappropriation is known to the public,
 - (ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or
 - (iii) the facts are not disputed or are admitted by the lawyer or former lawyer;

LAW SOCIETY RULES

- (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Div 7 – Trust Accounts and Other Client Property

Trust report

- 3-79** (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 [*Exemption from professional liability insurance*] from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
- (a) not received any funds in trust,
 - (b) not withdrawn any funds held in trust, and
 - (c) complied with this division.

TRUST PROTECTION INSURANCE

SUGGESTED RESOLUTION:

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

1. *In Rule 2-16*

(a) in subrule (3), by rescinding paragraphs (a) and (b) and substituting the following:

- (a) maintain professional liability insurance that***
 - (i) is reasonably comparable in coverage and limits to that required of lawyers under Rule 3-39 (1) [Compulsory professional liability insurance], and***
 - (ii) extends to the visiting lawyer's temporary practice in British Columbia,***
- (b) maintain trust protection insurance or other defalcation compensation coverage from a governing body that extends to the visiting lawyer's temporary practice in British Columbia,, and***

(b) in subrule (6), by striking the phrase "exempt from compulsory liability insurance" and substituting "exempt from professional liability insurance";

2. *In Rule 2-19, by rescinding subrule (3) (e) and substituting the following:*

- (e) proof that the visiting lawyer maintains the trust protection insurance or other defalcation coverage required under Rule 2-16 (3) (b) [Inter-jurisdictional practice without a permit].;***

3. *In Rule 2-22, by rescinding subrule (3) (b) and substituting the following:*

- (b) fails to maintain professional liability insurance as described in Rule 2-19 (3) (d) [Inter-jurisdictional practice permit],***
- (b.1) fails to maintain the trust protection insurance or other defalcation coverage described in Rule 2-16 (3) (b) [Inter-jurisdictional practice permit], or;***

4. *In Rule 2-32, by striking the phrase "the lawyer holds liability insurance" and substituting "the lawyer maintains professional liability insurance";*

5. *In Rule 2-40 (2) (d), by striking the phrase "maintains liability insurance" and substituting "maintains professional liability insurance";*

6. ***In Rule 2-49 (1), by rescinding paragraph (d) and substituting the following:***
 (d) professional liability insurance maintained by non-lawyers under Rule 2-47 [*Liability insurance*];
7. ***In Rule 2-77 (1), by rescinding paragraph (b) and substituting the following:***
 (b) a professional liability insurance application or exemption form,;
8. ***In Rule 2-79 (1), by rescinding paragraph (d) and substituting the following:***
 (d) a professional liability insurance application or exemption form,;
9. ***In Rule 2-82 (1), by rescinding paragraph (d) and substituting the following:***
 (d) a professional liability insurance application or exemption form,;
10. ***In Rule 2-117 (1), by rescinding paragraph (e) and substituting the following:***
 (e) reimbursement for payment made on behalf of the lawyer or former lawyer under trust protection insurance.;
11. ***In Rule 3-39, by rescinding the heading and substituting the following:***

Compulsory professional liability insurance;

12. ***By adding the following rule:***

Compulsory trust protection insurance

3-39.1(1) A lawyer must maintain trust protection insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay any fee for trust protection insurance set under Rule 3-40 [*Annual insurance fee*].

- (2) A lawyer is bound by and must comply with the terms and conditions of trust protection insurance maintained under subrule (1).;

13. ***In Rule 3-43, by rescinding the heading and substituting the following:***

Exemption from professional liability insurance;

14. ***In Rule 3-44 (2), by rescinding paragraph (b) and substituting the following:***
 (b) if the payment was made under trust protection insurance, reimburse the Society in full on demand, for all amounts paid.;

15. In Rule 3-46

- (a) by rescinding subrules (1) and (2) and substituting the following:**
- (1) In this rule, “**claim**” means a claim or potential claim reported under the policy of professional liability and trust protection insurance.
 - (2) Unless permitted by this rule, no one is permitted to disclose any information or records associated with a claim.,
- (b) by rescinding the preamble to subrule (3) and substituting the following:**
- (3) The Executive Director may do any of the following; *and*
- (c) by rescinding the preamble to subrule (5) and substituting the following:**
- (5) In the case of a claim under trust protection insurance, the Executive Director may do any of the following:.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Truth and Reconciliation Advisory Committee
Date: February 7, 2017
Subject: Begbie Symbolism

Purpose

This memo provides the Truth and Reconciliation Advisory Committee's recommendations regarding the Law Society's use of Begbie symbolism in light of the Truth and Reconciliation Commission's calls to action.

Background

The Law Society of BC uses Judge Begbie symbolism in three ways:

- 1) There is a statue of Judge Begbie in the foyer of the Law Society building;
- 2) A bronze statue of Judge Begbie is given out to the recipient of the Law Society award, which "is intended to honour the lifetime contribution of the truly exceptional in the legal profession"; and
- 3) "Begbie" is a code word used to trigger safety procedures in the Law Society building.

At the June 22, 2016 Truth and Reconciliation Steering Committee meeting, the Committee discussed the need for both truth (acknowledging past harms) and reconciliation (redressing those harms). During this discussion, Chief John raised a concern about the statue of Judge Begbie in the Law Society of BC's foyer.

The statue had originally been cast for the Provincial Government as a model for a larger statue which was subsequently cancelled. In 1975, when Judge Peter Millward was the Treasurer of the Law Society, he discovered the statue which was purchased by the Law Society to "stand in the hallway of the Law Society building."¹ The Law Society has commemorated Judge Begbie because he was the first judge of the Colony of British Columbia beginning in 1858. He was successively Chief Justice of the mainland colony, of the united Colony of British Columbia and, after 1871, of the new province of British Columbia. As such, Judge Begbie played a key role in the unilateral assertion of colonial law to the detriment of Indigenous law in what is now

¹ *The Advocate*, v. 35, part 2, February-March 1977, at 123.

commonly known as British Columbia. In the interest of “truth,” Chief John advised that the history surrounding Judge Begbie in relation to Indigenous people must be acknowledged. This point has been reiterated by Truth and Reconciliation Advisory Committee members at the September 13, October 31, and December 19, 2016 meetings.

The Executive Committee discussed the Begbie issue at their October 12, 2016 meeting and determined that the Truth and Reconciliation Advisory Committee should develop recommendations on how the Law Society of BC should deal with the Begbie issue.

Law Society staff has indicated that the foyer is scheduled to be renovated in the near future, so the Begbie statue will need to be moved in any event. However, a thoughtful reconsideration of Begbie symbolism may provide an opportunity for the Law Society to demonstrate its commitment to reconciliation.

Issue

The primary issue is whether the Law Society should continue using Begbie symbolism, considering his negative relationship with Indigenous people in British Columbia and the Law Society’s efforts to respond to Truth and Reconciliation Commission’s calls to action.

Analysis

As a starting point for reconciliation, the Truth and Reconciliation Commission has advised Canadians to come to terms with its colonial past, and to understand how the effects of colonization continue to influence the experiences of Indigenous people in the present day. The Truth and Reconciliation Commission acknowledged that:

Notions of European superiority and Aboriginal inferiority have tainted mainstream society’s ideas about, and attitudes towards, Aboriginal peoples in ways that have been profoundly disrespectful and damaging. [Canadians] need to understand Canada’s history as a settler society.... This knowledge and understanding will lay the groundwork for establishing mutually respectful relationships.²

As will be demonstrated, Judge Begbie’s treatment of Indigenous people exemplifies the need to reconsider colonial history from an Indigenous perspective to better understand the ongoing implications for Indigenous people in the present day.

Judge Begbie’s role with respect to the Tsilhqot’in war of 1864 is the primary reason his image may be perceived as offensive by Indigenous people and others. The Tsilhqot’in war involved Tsilhqot’in leaders who stood up against colonial violations of Tsilhqot’in law, including illegal occupation and unauthorized incursions into Tsilhqot’in territory, the mistreatment of Tsilhqot’in

² Truth and Reconciliation Commission Executive Summary Report at 185.

citizens, and the threat of germ warfare *via* the intentional infection of smallpox.³ The Tsilhqot'in warriors killed 14 non-Indigenous surveyors who were trying to build a road from the coast into the interior through Tsilhqot'in territory.

The Tsilhqot'in leaders were invited to discuss terms of peace, "and then in an unexpected act of betrayal, they were arrested, imprisoned and tried for murder."⁴ Judge Begbie sentenced six Tsilhqot'in leaders to be executed by hanging. There is an ongoing negative connotation associated with Judge Begbie among Indigenous people because of his role in the execution of the Tsilhqot'in leaders.

This continuing resentment was reported in the Chilcotin Justice Inquiry of 1993, in which retired Provincial Court Judge Anthony Sarich was appointed to look into the relationship between the Tsilhqot'in people and the justice system of British Columbia. Justice Sarich wrote: "In every village, the people maintained that the chiefs who were hanged... in 1864 as murderers were, in fact, leaders of a war party defending their land and people."⁵ The commission recommended a posthumous pardon for the chiefs.

The government of British Columbia issued an apology by way of a press release issued on October 28, 1993. Then Attorney General Colin Gabelmann stated: "The hanging of the Chilcotin chiefs in 1864 is a tragedy which, if we are to move forward with respect and in good faith, must be recognized. On behalf of the government and people of B.C., I would like to say that we are sorry that those events occurred and regret their effect on the Chilcotin people."⁶

Premier Christy Clark also apologized during a speech in the legislature on October 23, 2014:

Today we acknowledge that those six chiefs were not criminals and they were not outlaws.... They were warriors, they were leaders, and they were engaged in a territorial dispute to defend their lands and their peoples.... The pain of 1864 has never receded.... To the extent that it falls within the power of the province of B.C., we confirm without reservation that these six Tsilhqot'in chiefs are fully exonerated of any crime or wrongdoing.⁷

Chief John advised that it is imperative for the Law Society to reflect on this negative history in its work toward reconciliation.

³ Edward Hewlett, *The Chilcotin Uprising: a Study of Indian-White Relations in Nineteenth Century British Columbia*, (MA Thesis, University of British Columbia, 1972). See also Tom Swanky, *A Missing Genocide and the Demonization of its Heroes*, (Vancouver: Dragonheart, 2014).

⁴ October 23, 2014, Speech by Premier Christy Clark in the British Columbia Legislature.

⁵ Report of the Cariboo-Chilcotin Justice Inquiry, 1993, at 8.

⁶ Press release issued by Attorney General Colin Gabelmann, October 28, 1993.

⁷ *Supra* note 4.

For many Indigenous people, Judge Begbie epitomizes the cruelty of colonization. Not only did Judge Begbie completely disregard Indigenous laws, he was a key player in the assertion of colonial laws to the detriment of Indigenous laws and people. His decision regarding the Tsilhqot'in leaders helped to facilitate the incursion of non-Indigenous settlers into Indigenous territories. Moreover, he was aware of the deception used to lure the Tsilhqot'in leaders to appear before him,⁸ but he found them guilty and ordered their execution despite the deceit. This history has left an ongoing legacy of Indigenous distrust of the colonial legal system.

However, there are some Begbie supporters within the legal profession. As mentioned above, Judge Begbie was the first judge in British Columbia, and was therefore integral to bringing the colonial legal system to British Columbia. For mainstream society, Judge Begbie represents the introduction of law and order to the province of British Columbia. This perception is based on the assumption that there was no law or order in the region prior to the arrival of Europeans, which completely ignores the existence of Indigenous peoples and Indigenous laws.

Canada was built upon the legal fictions of the Doctrine of Discovery and *terra nullius*,⁹ which are both based on racist assumptions of European superiority and Indigenous inferiority. According to the Doctrine of Discovery, any land not inhabited by Christians was available to be “discovered,” claimed, and exploited by Christian rulers.¹⁰ *Terra nullius* is a related concept whereby territories, despite being inhabited by Indigenous peoples, came to be regarded as uninhabited for legal purposes. *Terra nullius* is “based on the proposition that Indigenous peoples were sufficiently inferior to enable the Crown to presume that their territories were unoccupied.”¹¹

Although Canadian courts have stated that these concepts do not apply in Canada,¹² the case law reveals the truth: “At the time of assertion of European sovereignty, the Crown acquired ... underlying title to all the land in the province.”¹³ The idea that the Crown's unilateral assertion of sovereignty could usurp Indigenous sovereignty, and thus convert Indigenous interests into mere rights of use and occupation which “burden” the Crown's underlying title indicates that the Doctrine of Discovery and *terra nullius* indeed operate as foundational concepts within the

⁸ “It seems horrible to hang 5 men at once, especially under the circumstances of the capitulation, but the blood of 21 [sic] whites calls for retribution. And these fellows are cruel, murdering pirates – taking life and making slaves in the same spirit in which you or I would go out after partridges or rabbit shooting.” (“The Chilcoaten Expedition: Diary of a Volunteer” *British Colonist* 17 October, 1864.)

⁹ “Nobody's land”.

¹⁰ <https://www.gilderlehrman.org/history-by-era/imperial-rivalries/resources/doctrine-discovery-1493> .

¹¹ Asch, M. (2002) ‘From Terra Nullius to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution’, *Canadian Journal of Law and Society*, 17(2), pp. 23–39.

¹² “The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada, as confirmed by the *Royal Proclamation* (1763), R.S.C. 1985, App. II, No. 1.” [See *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 at para. 69.]

¹³ *Ibid.*

Canadian legal system. To accept the unilateral assertion theory, one “must assume Indigenous inability, absence, and invisibility in order to imagine the crystallization of Crown sovereignty and superior title.”¹⁴ The Truth and Reconciliation Commission has recommended the repudiation of these racist concepts.¹⁵ To repudiate these concepts, one must take active measures against them. Complacency with these concepts helps to perpetuate colonial oppression.

A study on the impacts of the Doctrine of Discovery on Indigenous peoples endorsed by the United Nations Permanent Forum on Indigenous Issues concluded that educating law makers and decision makers (including judges and lawyers) is an important requirement for reconciliation:

Genuine reconciliation is not possible without a clear understanding of ... past and present injustices relating to Indigenous peoples. In view of the legal fictions generated by “discovery” and other related doctrines, there is an urgent need to ensure that curricula include the historical realities of the founding of modern nation States.... Further, in view of the entrenched and often unconscious ways the doctrines are embedded in State legal and political culture, there is a need for education of State law makers and decision makers.¹⁶

A reconsideration of Begbie’s role in bringing colonial law into British Columbia in light of the Indigenous perspective provides an opportunity to educate the legal profession about the racist foundations of colonial laws.

Another argument in support of Begbie might reference Judge Begbie’s purported compassion toward Indigenous people,¹⁷ and suggest that he treated Indigenous people better than his

¹⁴ Tracey Lindberg, “Contemporary Canadian resonance of an imperial Doctrine,” in Robert Millers et al *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford University Press, 2012) 126 at 158.

¹⁵ Truth and Reconciliation Commission Recommendations 45, 46, 47 and 49. For example, recommendation 47 states: “We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.”

¹⁶ *Study on the impacts of the Doctrine of Discovery on Indigenous peoples, including mechanisms, processes and instruments of redress*, United Nations Permanent Forum on Indigenous Issues, Thirteenth session, New York, May 12-23, 2014, at para. 29.

¹⁷ In *The Man for a New Country: Sir Matthew Baillie Begbie* (Sidney, BC: Grays, 1977) David Williams provides the following examples:

- “He forcefully expressed his esteem for Indians in a case he heard in 1885, in which he struck down an attempt by the Dominion government to repossess certain lands dedicated as Indian Reserve at Victoria.” (p. 102).
- When the potlatch had been made illegal by the *Indian Act*, Judge Begbie quashed a conviction because the *Indian Act* “did not precisely define a potlatch, and was too vague to find a criminal conviction based upon it. He discussed in his judgement the origin of the festival and of the dances which accompanied it, with sympathy and understanding.” (p. 103).

colonial contemporaries. Some historians include Judge Begbie's description of Klatsassin (the Tsilhqot'in Chief who led the warriors) as "the finest savage I have met with yet"¹⁸ as evidence of his respect for the Chief. However, Judge Begbie's use of the term "savage" is a clear indication that he was influenced by racist ideologies of his era.

As legal scholar Kent McNeil explains:

During the second half of the 19th century, social theorists adapted the compelling ideas on biological evolution brought to public attention by the publication of Charles Darwin's *Origin of Species* in 1859 and applied them to human societies, producing what was thought to be a scientific basis for the widespread belief among Whites in their own racial and cultural superiority.¹⁹

According to social Darwinism, societies evolved "along a measured line from grade to grade of actual savagery, barbarism, and civilization.... The savage state...represents an early condition of mankind, out of which the higher culture has gradually been developed or evolved."²⁰ Accordingly, Begbie's description of Klatsassin should not be perceived as a compliment.

Some Begbie supporters may argue that it is unfair to judge Begbie's actions by today's moral standards: Judge Begbie was simply applying the (colonial) law, and had no alternative but to sentence the Tsilhqot'in leaders to death. On the other hand, reconsidering history with the addition of the Indigenous perspective enhances our understanding of history. Moreover, our analyses should not be frozen in an age of racial discrimination. The re-examination of historical situations in light of current human rights norms helps to promote human rights by acknowledging the prejudicial attitudes of the past, so that we do not repeat such prejudices in the present or future.

-
- "When the Dominion government in 1878 proposed fishing restrictions at the mouth of the Fraser, Begbie wrote the Attorney General in Victoria urging him to ensure that the Ottawa government framed the Order-in-Council so that it would not prevent 'Indians fishing by their accustomed methods for the support of themselves or their tribes and not for exportation'." (p. 105).
 - "He realized that any land scheme permitting pre-emption or homesteading and registration of deeds or title would impinge on Indian tribal lands. On April 30, 1869, in writing to Douglas about the adoption of a general land scheme, he said" 'I may also observe that the Indian Title is by no means extinguished. Separate provision must be made for it, and soon; though how this is to be done will require some consideration.'" (p. 105).
 - "In 1873, he enjoined all Justices of the Peace from interfering with 'Indian chiefs exercising their customary jurisdiction over drunken and disorderly members of their own tribes and inflicting on them the salutary discipline usual in the tribe.'" (p. 107).

¹⁸ *Ibid* at 115.

¹⁹ Kent McNeil, "Social Darwinism and Judicial Conceptions of Indian Title in Canada in the 1880s," *Journal of the West*, (1999) 38:1, 68 at 69.

²⁰ Edward Taylor, *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Art and Custom*, 2 vols. (London: John Murray, 1871) 1:28.

Some may argue that by removing Begbie symbolism, we are attempting to erase or rewrite history. This is not the case.

History cannot be erased.... There must be a full and honest account of the past, in order to ensure that colonial doctrines do not continue to be perpetuated. A clear shift of paradigm is critical from colonial doctrines to a principled human rights framework, consistent with the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights law.²¹

By reconsidering Judge Begbie's sentencing of the Tsilhqot'in leaders, we are not trying to erase or rewrite the history, but to enrich our understanding of history by adding the Indigenous perspective.

In any event, all of the arguments in support of Judge Begbie detract from the real issue: his key role in the unilateral assertion of colonial law to the detriment of Indigenous people in British Columbia. This assertion was based on the presumption of European superiority and Indigenous inferiority, and continues to have repercussions for Indigenous people.

The Truth and Reconciliation Advisory Committee believes that a reconsideration of Begbie symbolism is necessary in light of the Law Society's commitment to reconciliation.

Options

The first option is to maintain the *status quo*, and continue to use Judge Begbie symbolism. This option would require less effort, because there would be no need to consider what to do with the statue in the foyer, what would be given to the recipient of the Law Society award in lieu of the bronze statue of Begbie, or what new code word would be used to trigger safety procedures in the Law Society building. The Law Society would also avoid change resistance from Begbie supporters and other lawyers who are content with the *status quo*.

However, maintaining the *status quo* is not a neutral act. "Celebrating the colonial founders creates an ongoing perceived public policy interest in refraining from looking too deeply into colonial history"²² and demonstrates a "policy decision not to disturb the colonial myths."²³ This approach is contrary to the Truth and Reconciliation Commission's instruction to begin the process of reconciliation by coming to terms with Canada's history as a settler society to lay the groundwork for establishing mutually respectful relationships.²⁴

²¹ *Supra*, note 16 at para. 38.

²² Tom Swanky, *A Missing Genocide and the Demonization of its Heroes*, (Burnaby: Dragon Heart, 2014) at 14.

²³ *Ibid* at 17. Two key colonial myths are the Doctrine of Discovery and *terra nullius*, described above.

²⁴ Truth and Reconciliation Commission Executive Summary Report at 185.

The second option is for the Law Society to remove the symbols which commemorate Judge Begbie because his legacy offends Indigenous people, and the Law Society has committed to reconciling with them. Removing the Begbie symbols would demonstrate the Law Society's genuine commitment to responding to the Truth and Reconciliation Commission's calls to action.

However, removing the symbols may raise concerns about censorship. The Truth and Reconciliation Advisory Committee is not recommending the Begbie statue not be shown anywhere, but has discussed the possibility that the statue might serve an educational purpose in a venue that is more conducive to providing additional context, such as a museum.

It is interesting to note that the British Columbia government dealt with a similar issue regarding murals in the Parliament Buildings, which depicted Indigenous peoples as subservient to non-Indigenous people. The BC government commissioned a report²⁵ which identified the location of the murals as a key issue. The Indigenous informants who were consulted during the review "emphasized the importance of making the Parliament Buildings a safe place for everyone to enter".²⁶ The Advisory Panel unanimously concluded that the Parliament Buildings are for all British Columbians, and should not be the location for works of art that cause offense to any of the people of the province.²⁷ Similarly, because our mandate is to "ensure the public is well served by a competent, honourable legal profession," the foyer of the Law Society building should be a welcoming place for everyone, and images that may cause offense should be removed.

The removal of Begbie symbolism would likely result in change resistance. Lawyers who commend Judge Begbie's role in bringing the colonial legal system to British Columbia may be troubled by the changes. Some lawyers may have the view that because lawyers governed by the Law Society of British Columbia practise colonial law, it is logical to commemorate a figure who was integral to bringing colonial law to this province. This position not only omits the pre-existence of Indigenous laws in the area now known as British Columbia (i.e. by overlooking Judge Begbie's dismissal of Tsilhqot'in laws with respect to the trial and execution of the Tsilhqot'in leaders), it also fails to acknowledge that the Canadian common law recognizes the continuance of Indigenous legal systems upon the arrival of Europeans.²⁸ There is strong

²⁵ *A Review of the Depiction of Aboriginal Peoples in the Artworks of the Parliament Buildings: Report of the Speaker's Advisory Panel*, (Legislative Assembly of British Columbia: 2001).

²⁶ *Ibid* at 22.

²⁷ *Ibid* at 31.

²⁸ In his article "The 'Golden Thread' of Continuity: Aboriginal Customs at Common Law and Under the *Constitution Act, 1982*" (1999) 44 McGill L.J. 711-752, Mark Walters provides the following examples: in *Connolly v. Woolrich*, [(1867), 17 R.J.R.Q. 75, (Qc. Sup. Ct.), aff'd (1869), 17 R.J.R.Q. 266, (Qc. Q.B.)] the court found that no legislative instrument could be found "abolishing or changing the customs of the Indians" [*Ibid.* at 96]; therefore, Cree marriage customs continued and British colonial courts were required to "acknowledge and enforce them" [*Ibid.* at 138]. More recently, in *Côté*, the Supreme Court of Canada held that "under the legal principles of British conquest," the "pre-existing laws governing the acquired territory of New France were received and continued in the

rationale to support the idea that a better appreciation of Indigenous laws will facilitate meaningful reconciliation,²⁹ and to that end, there are increasing efforts to educate lawyers about Indigenous laws (e.g. the University of Victoria Law's proposed joint Indigenous-Common Law Degree). Removing Begbie symbolism could provide an opportunity to inform lawyers about the interaction of colonial and Indigenous laws in relation to a significant occurrence in British Columbia's history. As mentioned above, understanding Canada's settler history is an important starting point for reconciliation.

There are some logistical considerations regarding the removal of the Begbie symbolism. Finding a new code word to trigger safety procedures would require minimal effort. The three bigger logistical considerations are: 1) what should be done with the Begbie statue in the foyer, 2) what should replace the statue, and 3) what should be given to the recipient of the Law Society award in lieu of the bronze statue of Begbie.

Although the Begbie statue could be removed without any consideration of what to replace it with, the Committee is of the view that the pursuit of a more positive and unifying symbol is an important aspect of the Law Society's reconciliation efforts. Therefore, the Committee recommends that the Begbie statue in the Law Society foyer should be removed, and replaced with a symbol that promotes reconciliation. If the Benchers endorse the recommendation to replace the Begbie statue, then further thought about the development of a new symbol will be necessary. The Committee discussed the possibility of commissioning an artist to develop a symbol of reconciliation, which would require an appropriate process to select an artist.

There are a number of options for the statue once it is removed from the foyer:

- 1) It could be moved to another area of Law Society building. While moving the statue to another area may be more agreeable to Begbie supporters than removing it from the building entirely, this approach would not adequately respond to the concerns surrounding the Indigenous perspective regarding Judge Begbie.
- 2) It could be moved to the Law Society archives. However, the utility of the statue in the archives would be minimal.
- 3) The Committee discussed the possibility that the statue might serve as an educational tool in a venue that could provide additional context, such as in a museum where the statue

absence of subsequent legislative modification.”²⁸ [*R. v Côté*, [1996] 3 SCR 139 at para. 49]. In *The Queen v. Nan-E-Quis-A-Ka* [(1889), 1 Terr. L.R. 211] a general legislative measure introducing English law was held not to displace Aboriginal marriage custom in western Canada.

²⁹ For example, call to action 50 states: “In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.”

could be part of an exhibit showing various aspects and perspectives regarding the colonization of BC. If this option is pursued, then further consideration regarding the selection of an appropriate museum would be required.

- 4) The Committee also discussed the idea of gifting the statue to the New Westminster Court, where the courthouse is located on “Begbie Square”. It is not known whether the New Westminster Court would accept the gift, so further information would be required before pursuing this option.

Regarding the issue of what should be given to the recipient of the Law Society award in lieu of the miniature statue of Begbie, the Truth and Reconciliation Advisory Committee has proposed that the Law Society find an appropriate replacement. This could be associated with the new symbol, or something entirely different. The Executive Committee is currently considering awards on a broader scale, including a number of new awards that will be given out by the Law Society (e.g. diversity and inclusion award, family law award, etc.). It would be logical to consider the replacement of the miniature Begbie statue provided as the Law Society Award in the context of the broader discussions regarding awards.

Recommendations

The Truth and Reconciliation Advisory Committee recommends:

- 1) The statue of Judge Begbie in the foyer of the Law Society building should be removed;
- 2) A new and unifying symbol to promote reconciliation should be placed in the foyer of the Law Society building;
- 3) The miniature Begbie statue given to recipients of the Law Society Award should be replaced with a more appropriate gift; and
- 4) A new code word to trigger safety procedures in the Law Society building should be selected.

REDACTED MATERIALS



CEO's Report to the Benchers

April 2017

Prepared for: Benchers

Prepared by: Timothy E. McGee, QC

Introduction

The Law Society's current three year Strategic Plan needs to be reviewed and renewed by the Benchers at the end of the year. In advance of the formal sessions in the fall we will be using the Benchers meetings in April, May, June and July, to familiarize and inform the Benchers on selected topics of strategic importance. Through those briefing sessions we hope the Benchers will start to focus their thinking and opinions on most of the key topics well in advance of the deliberations on the content of the next strategic plan. The goal is to have a stronger starting point for the fall discussions based upon a common, relevant knowledge base and ample time for personal reflection and informal discussions in the months ahead.

Briefings of Key Topics

The Executive Committee recently reviewed a memorandum from staff which suggested a number of possible themes and issues for discussion as part of the initial phase of the strategic planning process. A brief summary follows:

Regulatory compliance

Our mandate provides that we regulate the practice of law. In keeping with that mandate, we continually assess the effectiveness and efficiency of our current process. But more broadly, should we consider whether our current approach to regulatory compliance is the best model? Historically, law societies have regulated reactively. More lawyer regulatory bodies around the world are trying, or are thinking of trying, a proactive model. What would proactive models look like? What other models should be considered? Practice audits? Diversion for mental health issues? What measure will be most effective in changing lawyer behaviour for the good? How does an effective anti-money laundering response factor into this?

Admissions program reform

Our mandate requires that we establish standards and programs for the education of lawyers and of applicants for call and admission and that we ensure the integrity, honour and competence of lawyers. And so much is changing in legal education. Universities have created new law faculties with different teaching styles and are proposing more. Ontario is considering changes in its admissions processes. More and more applicants are coming to the process through the NCA, without a Canadian law degree at all. We have recently completed a review which endorses and supports our current PLTC program. But, if we were starting from scratch,

would we seek to educate and admit new lawyers the way we do it now? Is it time to re-evaluate and make new proposals for consideration?

Access to justice

Ensuring access to justice is a pivotal element in fulfilling our mandate to protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons. Access is probably the pre-eminent challenge to the administration of justice today. It has been high on our strategic priority list for a number of years, and it is unlikely to fall off the list any time soon. In a society that respects the rule of law, how can people access the law in a way that allows them to understand their rights and responsibilities and make informed decisions? How can we make that access more affordable for more people? Are there alternatives to the adversarial system for some disputes? Is there a role for tariffs? How do alternate legal services providers eg: Notaries and paralegals, factor into this?

Economics of the Profession

As our engagement with the challenge of access to justice has shown the economics of legal practice and the cost of legal services within the market for those services is a central consideration. What does it actually cost to provide legal services? How can improvements to the delivery and affordability of legal services be determined until this question is answered? What work will it take to answer the question?

Truth and reconciliation

As the Truth and Reconciliation Commission Final Report told us, the rights and freedoms of Canada's Indigenous peoples have been disregarded for more than a century. The Calls to Action from the TRC Report require our response. How can they be implemented to realize improvements in the relationship between the justice system and Indigenous populations? How does this topic cross over and/or intersect with all other strategic topics?

Public confidence in the administration of justice and the rule of law

Protecting the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons requires that we look beyond simply the rights and freedoms of individuals. It requires that we engage with the

justice systems in its broadest sense. How can the public confidence in the justice system be enhanced? What role does elementary or secondary education play in this issue? How can systems be strengthened to engage public confidence in process and outcomes? How does an effective anti-money laundering response factor into this issue? How can the Law Society work with the two principal levels of government to that end?

Disclosure and Privacy

One of the challenges in fulfilling our mandate is that it is not sufficient that we do an excellent job; we must be seen to be doing an excellent job. At the same time, we must be mindful that in a world of big data, Facebook and Twitter, privacy has become a central concern for many people. Transparency of our regulatory processes remains the best way to demonstrate we are fulfilling our mandate while also ensuring that our privacy protections keep pace with the changing expectations. Our disclosure and privacy rules and guidelines were last considered and implemented nearly ten years ago. Do those processes meet current standards?

Process and Next Steps

I am attaching to my report a draft plan and agenda for the presentation of the topics outlined above, which was developed after discussion with the Executive Committee.

Strategic Planning and Role of Benchers

As we initiate our strategic planning process, the Executive Committee suggested that it would be helpful for the Benchers to have a refresher or primer on the process and reasons for strategic planning and, in particular, the role of the Benchers in that process. To that end, I have set out below a few of the key points to keep in mind:

- The Law Society's mandate, mission and vision is enshrined in s.3 of the LPA, in effect, this is our organization's "master" strategic plan;
- The three year strategic plan and direction must build on that to specify what policies and initiatives will best achieve that mandate, mission and vision and over what time frame;
- A good strategic plan looks to the future and responds to 2 fundamental questions: (i) What are we doing today that we need to be doing *differently* in the future to sustain success? and (ii) What are we *not* doing today that we

need to be doing in the future to sustain success? The strategic plan is, therefore, about change. This separates it from the annual operating plan and the day-to day necessities of managing operations;

- The Benchers role is to set strategic priorities from among a host of options by making choices rooted to what will best serve the mandate. Having too many priorities is the same as having no priorities;
- A robust knowledge base of relevant facts, trends and activities in the areas we seek to influence or change is necessary before deliberations can begin. Benchers' personal insights, opinions and preferences are welcome and an integral part of the process. The pitfalls to avoid are acting without sufficient information, not debating different viewpoints, or simply not doing the mental work of sorting through the complexity of various options;
- The staff role is to help build that knowledge base and to contribute to the discussion of what is important, urgent, long term versus short term, realistic versus aspirational, and thereby help create focus; and
- As the strategic plan takes shape it should allow Benchers to envision how the landscape we are seeking to influence or change will look in three years if we are successful in our chosen strategies and tactics – that is – we are aligned on what successful execution of the plan will mean in real life and can therefore measure progress against our goals over the next three years.

I look forward to discussing these matters with you at the meeting next week.

Timothy E. McGee, QC
Chief Executive Officer

Strategic Planning Process

Benchers Briefing Agenda

Month	Topic	Precis
April	Regulatory Program Overview	A review of the work and statistics relating to complaints and discipline, laying the groundwork for understanding strategic issues.
	Admissions Program Reform	Strategic issues and principles relating to qualification of lawyers. Current available statistics on articling in BC and elsewhere in Canada. Discussion of admission program initiatives elsewhere. Complications brought by the increasing number of NCA-qualified candidates.
May	Economics of the Legal Marketplace	An introduction to the problems faced in generating policy solutions for legal services without a clear understanding of the legal market place. Why is this important? What evidence can be generated? What work is being or has been done?
	Access to Justice and Legal Services	Review of best approaches to alternative legal services providers based on goals of and discussion from the Benchers retreat. What connections exist with the Legal Aid Task Force vision on legal aid recently approved by the Benchers.
June	Regulatory Compliance	Overview of strategic initiatives that could be considered: Practice reviews, diversion programs. What would more proactive regulation look like? What might it achieve? What are other jurisdictions doing? How does anti-money laundering factor into this?
	Disclosure and Privacy Review	Examination of changes in data access since the policy decision made by the Benchers following the recommendations of the Disclosure and Privacy Task Force in the mid-2000s. Do our processes meet current standards? What are current standards? What issues arise with the need for transparency? How are processes to be compliant with FOIPPA? What changes in the law of privacy have arisen in the last decade?

Strategic Planning Process

Bencher Briefing Agenda

July	<p>Truth and Reconciliation</p> <p>Public Confidence in the Administration of Justice and the Rule of Law</p>	<p>Having recognised that the work of the Law Society to respond to the Calls to Action from the Truth and Reconciliation Commission's Report is one of our most crucial obligations, what strategic policy issues arise? An introduction to what do the Calls to Action encompass and how the Law Society can respond. An overview of what specific issues arise. How does this cross over and/or intersect with all other strategic issues?</p> <p>This issue is integral to the Law Society mandate. An overview of what it means and why it has strategic importance. How the Law Society's engagement with the justice system and the leadership role it must take has strategic importance. A discussion of the role of the Law Society in strengthening the justice system and how the Law Society must work with the various levels of government to that end. A discussion of what role the Law Society can take to engage and educate the public on the importance of the legal system and how it protects rights and freedoms. What role does an effective anti-money laundering response mean here?</p>
------	---	---

The Law Society
of British Columbia



Quarterly Financial Report

March 31, 2017

Prepared for: Finance & Audit Committee Meeting – April 6, 2017
Bencher Meeting – April 7, 2017

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

Quarterly Financial Report – First Quarter 2017

Attached are the financial results and highlights for the first quarter of 2017.

General Fund**General Fund (excluding capital and TAF)**

The General Fund operations resulted in a positive variance to budget of \$330,000 in the first quarter.

Revenue

Revenue for the first quarter was \$5,935,000, \$109,000 (2%) above budget, which is mainly due to the timing of revenues received.

Operating Expenses

Operating expenses for the first quarter were \$4,992,000, \$221,000 (4%) below budget mainly due the timing of expenditures.

2017 Forecast - General Fund (excluding capital and TAF)

While it is still early in the year, we are tracking to budget in the first quarter.

Operating Revenue

At this time, revenues are projected at budget. Practicing membership revenue is budgeted at 11,760 members, and PLTC revenue is budgeted at 500 students.

Operating Expenses

At this time, operating expenses are projected at budget and we will continue to closely monitor costs throughout the year.

TAF-related Revenue and Expenses

As the first quarter TAF revenue is not received until the April/May time period, first quarter revenue is not recorded at this time. Trust assurance program costs are close to budget.

Special Compensation Fund

The transfer of the Special Compensation Fund reserve to the Lawyers Insurance Fund is pending a review of future recoveries from Special Compensation Fund claims, and will transfer during 2017.

Lawyers Insurance Fund

LIF operating revenues were \$3.9 million in the first quarter, slightly ahead of budget due to timing.

LIF operating expenses were \$1.6 million, \$225,000 below budget, relating primarily to \$100,000 of staff vacancy savings, and the remainder relating to timing of expenses.

The market value of the LIF long term investments held by the investment managers is \$158.0 million, an increase of \$4.0 million in the first two months to the end of February (March 2017 investment results not yet available). The year to date investment returns were 2.6%, slightly ahead of the benchmark return of 1.6%.

Summary of Financial Highlights - March 2017
(\$000's)

2017 General Fund Results - YTD March 2017 (Excluding Capital Allocation & Depreciation)

	Actual*	Budget	\$ Var	% Var
Revenue (excluding Capital)				
Membership fees	4,894	4,879	15	0%
PLTC and enrolment fees	64	43	21	49%
Electronic filing revenue	172	175	(3)	-2%
Interest income	164	108	56	52%
Credentials & membership services	70	97	(27)	-28%
Fines, penalties & recoveries	192	134	58	43%
Other revenue	64	97	(33)	-34%
Building revenue & tenant cost recoveries	316	293	23	8%
	5,935	5,826	109	2%
Expenses (excl. dep'n)	4,992	5,213	221	4%
	944	613	330	

2016 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

	Avg # of Members	Actual Variance
Practice Fee Revenue		
2013 Actual	10,985	
2014 Actual	11,114	
2015 Actual	11,378	
2016 Actual	11,619	
2017 Budget	11,760	
Revenue		
Membership revenue projected to be at budget		-
PLTC revenue projected to be at budget		-
Expenses		
Projected to be at budget		-
2017 General Fund Variance (excl. reserve funded items)		-

Trust Assurance Program Actual

	2017 Actual	2017 Budget	Variance	% Var
TAF Revenue **	90	31	59	0.0%
Trust Assurance Department	618	613	(5)	-0.8%
Net Trust Assurance Program	(528)	(582)	54	

** Q1 revenue not due until April 30th - small amount relating to Q4, 2016, received after completion of audit

2017 Lawyers Insurance Fund Long Term Investments - YTD February 2017* Before investment management fees

Performance	2.6%
Benchmark Performance	1.6%

* March investment results not yet available

The Law Society of British Columbia
General Fund
Results for the 3 Months ended March 31, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance	% Variance
Revenue				
Membership fees (1)	6,943	6,971		
PLTC and enrolment fees	64	43		
Electronic filing revenue	172	175		
Interest income	164	108		
Other revenue	326	328		
Building Revenue & Recoveries	316	293		
Total Revenues	7,985	7,918	67	0.8%
Expenses				
Regulation	1,948	2,066		
Education and Practice	722	786		
Corporate Services	610	676		
Benchers Governance	328	276		
Communications and Information Services	479	505		
Policy and Legal Services	458	483		
Occupancy Costs	588	585		
Depreciation	94	137		
Total Expenses	5,227	5,514	287	5.2%
General Fund Results before TAP	2,758	2,404	354	
Trust Administration Program (TAP)				
TAF revenues	90	31	59	0%
TAP expenses	618	613	(5)	-1%
TAP Results	(528)	(582)	54	
General Fund Results including TAP	2,230	1,822	408	

(1) Membership fees include capital allocation of \$2.04m (Capital allocation budget = \$2.02m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at March 31, 2017
(\$000's)

	Mar 31 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	192	283
Unclaimed trust funds	1,812	1,813
Accounts receivable and prepaid expenses	1,323	1,982
B.C. Courthouse Library Fund	378	729
Due from Lawyers Insurance Fund	29,003	34,170
	<u>32,709</u>	<u>38,977</u>
Property, plant and equipment		
Cambie Street property	12,423	12,448
Other - net	1,145	1,197
	<u>46,276</u>	<u>52,622</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	4,733	6,282
Liability for unclaimed trust funds	1,812	1,813
Current portion of building loan payable	500	500
Deferred revenue	15,173	21,345
Deferred capital contributions	10	12
B.C. Courthouse Library Grant	378	729
Deposits	25	25
	<u>22,631</u>	<u>30,706</u>
Building loan payable	<u>1,600</u>	<u>2,100</u>
	<u>24,231</u>	<u>32,806</u>
Net assets		
Capital Allocation	3,936	2,647
Unrestricted Net Assets	18,110	17,169
	<u>22,046</u>	<u>19,816</u>
	<u>46,276</u>	<u>52,622</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 3 Months ended March 31, 2017
(\$000's)

	<i>Invested in Capital</i>	<i>Working Capital</i>	Unrestricted	Trust	Capital	2017	2016
	\$	\$	Net Assets	Assurance	Allocation	Total	Total
			\$	\$	\$	\$	\$
Net assets - At Beginning of Year	11,059	1,345	12,404	4,765	2,647	19,816	14,939
Net (deficiency) excess of revenue over expense for the period	(322)	1,031	709	(528)	2,049	2,230	4,877
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	-
LSBC Operations	73	-	73	-	(73)	-	-
845 Cambie	187	-	187	-	(187)	-	-
Net assets - At End of Period	11,497	2,376	13,873	4,237	3,936	22,046	19,816

The Law Society of British Columbia
Special Compensation Fund
Results for the 3 Months ended March 31, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance
Revenue			
Annual assessment	-	-	
Recoveries	4	-	
Interest income	-	-	
Other income	-	-	
Total Revenues	4	-	4
Expenses			
Claims and costs, net of recoveries	21	-	
Administrative and general costs	0	-	
Loan interest expense	(7)	-	
Total Expenses	14	-	14
Special Compensation Fund Results	(10)	-	(10)

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at March 31, 2017
(\$000's)

	Mar 31 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	1,353	1,363
	<u>1,354</u>	<u>1,364</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		
Deferred revenue		
	<u> </u>	<u> </u>
Net assets		
Unrestricted net assets	1,354	1,364
	<u>1,354</u>	<u>1,364</u>
	<u>1,354</u>	<u>1,364</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 3 Months ended March 31, 2017
(\$000's)

	Actual \$	Budget \$
Unrestricted Net assets - At Beginning of Year	1,364	1,352
Net excess of revenue over expense for the period	<u>(10)</u>	<u>12</u>
Unrestricted Net assets - At End of Period	<u><u>1,354</u></u>	<u><u>1,364</u></u>

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 3 Months ended March 31, 2017
(\$000's)

	2017 Actual	2017 Static Budget	\$ Variance	% Variance
Revenue				
Annual assessment	3,961	3,683		
Investment income	4,168	1,630		
Other income	15	15		
Total Revenues	8,144	5,328	2,816	52.9%
Expenses				
Insurance Expense				
Provision for settlement of claims	3,869	3,869		
Salaries and benefits	643	775		
Contribution to program and administrative costs of General Fund	310	335		
Provision for ULAE	-	-		
Insurance	134	115		
Office	79	116		
Actuaries, consultants and investment brokers' fees	161	184		
Allocated office rent	73	73		
Premium taxes	-	2		
Income taxes	-	-		
	5,269	5,469		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	191	217		
Total Expenses	5,460	5,686	226	4.0%
Lawyers Insurance Fund Results	2,684	(358)	3,042	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at March 31, 2017
(\$000's)

	Mar 31 2017	Dec 31 2016
Assets		
Cash and cash equivalents	23,469	32,863
Accounts receivable and prepaid expenses	739	122
Prepaid Taxes		
Due from members	159	164
General Fund building loan	2,100	2,600
Investments	158,271	154,268
	<u>184,738</u>	<u>190,017</u>
Liabilities		
Accounts payable and accrued liabilities	1,145	1,826
Deferred revenue	3,543	7,461
Due to General Fund	29,003	34,170
Due to Special Compensation Fund	1,354	1,364
Provision for claims	67,859	66,046
Provision for ULAE	8,781	8,781
	<u>111,685</u>	<u>119,648</u>
Net assets		
Unrestricted net assets	17,500	17,500
Internally restricted net assets	55,553	52,869
	<u>73,053</u>	<u>70,369</u>
	<u>184,738</u>	<u>190,017</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 3 Months ended March 31, 2017
(\$000's)

	Unrestricted \$	Internally Restricted \$	2017 Total \$	2016 Total \$
Net assets - At Beginning of Year	52,869	17,500	70,369	75,888
Net excess of revenue over expense for the period	2,684	-	2,684	(5,519)
Net assets - At End of Period	55,553	17,500	73,053	70,369

Memo

To: Benchers
From: Finance and Audit Committee
Date: March 7, 2017
Subject: Enterprise Risk Management Plan - 2016 Update

Attached is the annual update to the Law Society's Enterprise Risk Management (ERM) plan, which has been in place since 2011.

Background

The ERM plan is a governance tool to accomplish the following:

- Identify the enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate.
- Determine the relative priority of those risks based on the likelihood they would occur and the extent of the impact on the organization.
- Manage the risks through mitigation strategies that are either in place or in progress, which assist in retaining, reducing, avoiding or transferring the risks.

The initial ERM plan was prepared by management, reviewed by the Finance and Audit Committee and presented at the December 2011 Benchers meeting. An update to the plan was reviewed by the Finance and Audit Committee and presented at the March 2013, January 2015, and January 2016 Benchers meetings.

2016 Update

In 2016, Management reviewed and updated the ERM plan, which was reviewed by the Finance and Audit Committee at their November 2016 meeting.

Attached is the 2016 ERM Executive Summary which highlights the top 10 strategic residual risks, along with the updated enterprise risk register.

Law Society of British Columbia
Enterprise Risk Management – Updated October 2016
Executive Summary

An enterprise risk is the threat that an event or action will adversely affect an organization's ability to achieve its strategic goals and mandate.

An Enterprise Risk Management Plan (ERM) is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, retaining, reducing, avoiding or transferring the risks

To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed and is reported to the Finance and Audit Committee (and then to the Benchers) on an annual basis.

The process going forward will be:

- Leadership Council plays a central role, with the Chief Executive Officer being the main liaison, per the Executive Limitations
- The ERM plan will be maintained through discussions by Leadership Council and related departments to refresh the Risk Schedule and related risk management efforts
- Should a risk change or a new risk occur, the escalation process will be to inform the appropriate Executive Team member, and/or the CEO, with a report out to the President (or Executive Committee) when required, subject to the Executive Limitations

The top ten strategic residual risks are noted below, with the full Risk Schedule attached as Appendix A.

Summary of Major Strategic Residual Risks (top 10 risks)		
Category	Risk	ET Lead
Regulatory	R6: Actual or alleged failure to fulfill the statutory duties under the <i>Legal Profession Act</i>	CEO
Regulatory	R5: Actual or alleged failure to appropriately sanction, or deal with a lawyer in a timely way	CLO
Staff and Work Environment	SW1: Loss of key personnel	CEO
Lawyers Insurance	LIF3: Significant theft under Part B of the LPL policy	Dir of Insurance
Financial	F2: Significant economic and/or financial market downturn	CFO
Operational	O1: Natural disaster	CEO
Operational	O3: Significant breach of confidential and/or FOIPPA information to members, employees and/or the public	CEO
Regulatory	R3: Conflict of interest event by Benchers or staff	CEO
Operational	O4: Unauthorized access to data and information	CIPO and CFO
Operational	O5: Loss of data and information	CIPO and CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

93

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
REGULATORY	R6: Actual or alleged failure to fulfill the statutory duties under the <i>Legal Profession Act</i>	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public confidence along with a loss of reputation with the membership • Financial: costs and damages - possible litigation 		<ul style="list-style-type: none"> • Bencher governance policies and training • Bencher Strategic Plan • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Crisis communication plan (note: applies to all risks) • Government relations • Hearing panel composition and training • Trust Assurance audit program 			<ul style="list-style-type: none"> • 2017 Counsel Resource Plan 	CEO
REGULATORY	R5: Actual or alleged failure to appropriately sanction, or deal with, a lawyer in a timely way	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public confidence along with a loss of reputation with the membership • Financial: costs and damages - possible litigation 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) • D & O insurance policy underwritten by AIG • Government relations • Ability to seek review and/or appeal to the BC Court of Appeal • Enhanced role of Tribunal Counsel • Hearing panel composition and training • National Discipline standards 			<ul style="list-style-type: none"> • 2017 Counsel Resource Plan 	CLO and Tribunal Counsel
STAFF AND WORKING ENVIRONMENT	SW1: Loss of key personnel	<ul style="list-style-type: none"> • Operational: service disruption as well as loss of corporate knowledge 		<ul style="list-style-type: none"> • Succession planning and cross training • Compensation and benefit philosophy 				CEO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

94

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> Professional, leadership and skills development program Review and renewal of management structure and working groups to provide leadership experience Employee Recognition Program (RREX) 				
LAWYERS INSURANCE FUND	LIF3: Significant theft under Part B of the LPL policy	<ul style="list-style-type: none"> Reputational: diminished public perception of the profession Financial: significant investigation expense and settlement payments 		<ul style="list-style-type: none"> Proactive claims and risk management practices Policy wording and limits Member Manual, including trust rules Trust assurance audit program Education and risk management advice to lawyers Effective regulatory response (eg: custodianships, suspensions) Appropriate reserve levels and Minimum Capital Test ratio Insurance policy for Part B underwritten by AIG 				Director of Lawyers Insurance Fund
FINANCIAL	F2: Significant economic and/or financial market downturn	<ul style="list-style-type: none"> Financial: investment devaluation as well as losses of market value in the building and member revenue, member economic impact 		<ul style="list-style-type: none"> Investment policies and procedures (SIIP) Quarterly reviews of investment performance and benchmarking Investment managers and pooled funds Annual operating and capital budgeting process Monthly and quarterly financial review process Real estate expert advice and monitoring Adequate reserve levels and Minimum Capital Test Updated Statement of Investment Policy, & Asset Mix Change in 2015 (improve diversification) 				CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

95

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
				through sale of building, move to real estate and mortgage funds)				
OPERATIONAL	O1: Natural disaster	<ul style="list-style-type: none"> • Operational and financial: injury of staff and/or building damage • Operational: service disruption • Financial: unexpected costs 		<ul style="list-style-type: none"> • Fire and earthquake safety plan and training • Information technology backup plan • Building due diligence review • Insurance coverage • Off-site storage • Off-site server location • Annual manager training to back up floor wardens (both operations and fire/earthquake) 				CEO
OPERATIONAL	O3: Significant breach of confidential and/or FOIPPA information to members, employees and/or the public	<ul style="list-style-type: none"> • Reputational: diminished public perception of independence and possible loss of reputation with membership 		<ul style="list-style-type: none"> • Information technology security policy, process and procedures • Member file and case file management procedures • Building security system and procedures • Information, privacy and security training of new staff • Established Privacy Policies • Privacy awareness training for all staff completed May 2014 • Majority of privacy report recommendations implemented • Privacy impact assessments • Information Privacy Agreements with contractors • IT Security Review completed, recommendations implemented • Encryption of Benchers and Committee agendas 				CIPO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

96

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> • Bencher and Committee member procedures for Law Society documents in place 				
REGULATORY	R3: Conflict of interest event by Benchers or staff	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public perception of independence along with a loss of reputation with the membership 		<ul style="list-style-type: none"> • Bencher governance policies and training • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law including investigations conducted by independent, external counsel where appropriate • Enhanced role of Tribunal Counsel • Hearing panel composition and training 				CEO
OPERATIONAL	O4: Unauthorized access to data and information	<ul style="list-style-type: none"> • Reputational: diminished public perception of independence and possible loss of reputation with membership 		<ul style="list-style-type: none"> • Information technology security policy, process and procedures • Records management policies • Confidential shredding contract • LEO document management security profiles • Established New Privacy Policies • Privacy awareness training for all staff completed May 2014 • Majority of privacy report recommendations implemented • Privacy impact assessments • Information Privacy Agreements with contractors • Annual Privacy training in place • IT Security Review completed, recommendations implemented • Encryption of Bencher and Committee agendas 				CIPO and CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

97

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> • Benchers and Committee member procedures for Law Society documents in place 				
OPERATIONAL	O5: Loss of data and information	<ul style="list-style-type: none"> • Reputational: diminished public perception of independence and possible loss of reputation with membership • Operational: service disruption • Financial: unexpected costs 		<ul style="list-style-type: none"> • Information technology backup plan • Information technology security policy, process and procedures • Records management policies and LEO • Off-site Iron Mountain storage for closed files • Insurance coverage • Off-site storage • Off-site server location 				CIPO and CFO
LAWYERS INSURANCE FUND	LIF8: Investment devaluation	<ul style="list-style-type: none"> • Financial: insufficient reserves or surplus 		<ul style="list-style-type: none"> • Investment policies and procedures (SIIP) • Investment managers and pooled funds • Quarterly reviews of investment performance • Appropriate reserve levels and Minimum Capital Test ratio • Updated Statement of Investment Policy, & Asset Mix Change (improve diversification through sale of building, move to real estate and mortgage funds) 				CFO
REGULATORY	R1: Adverse change in Provincial Legal Profession Act or government policy direction	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures as well as the possible loss 		<ul style="list-style-type: none"> • Benchers Strategic Plan • Meet KPMs and monitor Bellwether • Continuous review of regulatory model 			<ul style="list-style-type: none"> • LIF Working Group review of structure 	CEO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

98

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
		of the right to self-regulation • Reputational: diminished public perception of independence		• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Media monitoring • Government relations • National Discipline Standards • <i>Legal Profession Act</i> Amendments – 2012 • Governance Committee – 2013 • Hearing panel composition and training				
OPERATIONAL	O2: Failure (not due to natural disaster) in infrastructure and/or security of the building	• Operational and financial: injury of staff and/or building damage • Operational: service disruption • Financial: unexpected costs		• Information technology backup plan • External property management firm • Building due-diligence review • Capital plan • Building maintenance plan • Insurance coverage • Off-site storage and servers				CFO and CIPO
REGULATORY	R2: Loss of a lawsuit alleging a failure of the Law Society to follow due process	• Political: direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self-regulation • Reputational: diminished public perception of independence along with		• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Hearing panel composition and training • Enhanced role of the Tribunal Counsel • National Discipline Standards • <i>S.86 Legal Profession Act</i> (statutory protection against lawsuits and liability) • D & O insurance policy underwritten by AIG				CLO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

99

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
		a loss of reputation with the membership • Financial: lawsuit defence and settlement costs						
STAFF AND WORKING ENVIRONMENT	SW3: Labour action (strike)	• Operational: service disruption		<ul style="list-style-type: none"> • Cross training • Compensation and benefit philosophy • Human resource and operational standards, policies and procedures • Reward and Recognition Program (RREX) • 2016 – 2018 collective agreement 				CIPO and CFO
STAFF AND WORKING ENVIRONMENT	SW5: Loss of a lawsuit on human rights issues by staff	<ul style="list-style-type: none"> • Operational and reputational: diminished levels of staff performance • Financial: unexpected costs 		<ul style="list-style-type: none"> • Human resource and operational standards, policies and procedures • Annual performance management and coaching process • Leadership development training • Legal counsel and advice 				CFO
LAWYERS INSURANCE FUND	LIF1: Inadvertent loss of LIF captive structure	• Financial: requirement to restructure insurance program		<ul style="list-style-type: none"> • Legal and tax advice of appropriate structure 			• LIF Working Group review of structure	Director of Lawyers Insurance Fund
STAFF AND WORKING ENVIRONMENT	SW2: Inability to recruit and/or retain skilled staff as an organization	• Operational: service disruption as well as loss of corporate knowledge		<ul style="list-style-type: none"> • Compensation and benefits program • Market benchmarking • Human resource and operational standards, policies and procedures • Succession planning and cross training • Employee survey and action plans 				CEO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

100

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> • Annual performance management and coaching process • Hiring practices and use of recruiting firms • Professional, leadership and skills development program • Staff working groups to enhance leadership skills • Employee Enrichment Program • Rewards and Recognition Program - RREX • New Performance Management program – implemented in 2015 • Values Working Group – Implemented in 2015 				
FINANCIAL	F4: Unexpected escalation of operating costs	<ul style="list-style-type: none"> • Financial: loss of revenue 		<ul style="list-style-type: none"> • Executive limitations • Schedule of Authorizations • Annual operating and capital budgeting process • Monthly and quarterly financial review process • External property management firm expertise • Building maintenance plan • Building due-diligence review • Capital plan 			<ul style="list-style-type: none"> • 2017 Counsel Resource Plan 	CFO
REGULATORY	R7: Loss of a lawsuit alleging wrongful deprivation of lawyers (prospective)	<ul style="list-style-type: none"> • Reputational: diminished public perception of independence along with a loss of reputation with the membership 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Appropriate credentialing procedures, including investigations, assessment of applications and credentials hearings 			<ul style="list-style-type: none"> • Federation - National admission standards for good character requirement being developed 	CLO and the Director of Education and Practice

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

101

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
	membership (livelihood)	<ul style="list-style-type: none"> Financial: costs and damages imposed through possible litigation 		<ul style="list-style-type: none"> Hearing panel composition and training S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) D & O insurance policy underwritten by AIG 				
REGULATORY	R4: Failure of the Law Society to stay within jurisdiction and/or wrongful prosecution	<ul style="list-style-type: none"> Political: direct government intervention in the Law Society authority and structures Reputational: diminished public perception of independence along with a loss of reputation with the membership 		<ul style="list-style-type: none"> Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law Hearing panel composition and training Enhanced role of the Tribunal Counsel 				CLO and Tribunal Counsel
FINANCIAL	F3: Loss of tenants	<ul style="list-style-type: none"> Financial: losses of market value in the building and lease revenue 		<ul style="list-style-type: none"> Long-term leases, effect early renewals when appropriate External property management firm expertise Building maintenance plan Building due-diligence reviews Capital plan Annual operating and capital budgets 				CFO
FINANCIAL	F6: Lower member base	<ul style="list-style-type: none"> Financial: loss of revenue to the Law Society 		<ul style="list-style-type: none"> Bencher Strategic Plan Research into profession demographics 				CEO
STAFF AND WORKING ENVIRONMENT	SW4: Unhealthy or unsafe conditions	<ul style="list-style-type: none"> Operational and reputational: injury to staff and/or diminished 		<ul style="list-style-type: none"> Human resource and operational standards, policies and procedures First Aid attendants 				CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

102

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
		levels of staff performance • Operational: service disruption		<ul style="list-style-type: none"> • Fire and earthquake safety plan and training • Property management firm expertise and building maintenance plan • Workers Compensation coverage • Health and Safety Committee 				
LAWYERS INSURANCE FUND	LIF7: Lawsuit for “bad faith” failure to settle / denial of coverage	<ul style="list-style-type: none"> • Reputational: loss of reputation with the public or profession • Financial: exposure to excess damage award 		<ul style="list-style-type: none"> • Established and documented quality control (Claims Manual) • Protocol to avoid “bad faith” losses • Third Party Claims Audits • S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability) • E&O insurance policy underwritten by Markel • Appropriate reserve levels and Minimum Capital Test ratio 				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF5: Significant error in advice to insured or payment (non-payment) of individual claim	<ul style="list-style-type: none"> • Financial: unnecessary payments 		<ul style="list-style-type: none"> • Established and documented quality control (Claims Manual) • Peer File Reviews • E&O insurance policy underwritten by Markel 				Director of Lawyers Insurance Fund
FINANCIAL	F1: Misappropriation of Law Society financial assets	<ul style="list-style-type: none"> • Reputational: loss of reputation with the membership • Financial: loss of revenue, increased fees 		<ul style="list-style-type: none"> • Internal controls • Schedule of authorizations • External audit • Monthly and quarterly financial review process • Crime insurance 				CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

103

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
LAWYERS INSURANCE FUND	LIF6: Error in actuarial advice	<ul style="list-style-type: none"> Financial: insufficient reserves 		<ul style="list-style-type: none"> External actuarial advice and projections External auditor reviews of actuarial methodology and numbers Monitoring of LPL insurance trends and risks Appropriate reserve levels and Minimum Capital Test ratio 				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF2: Loss of third-party lawsuit against captive, insurance operations or in-house counsel	<ul style="list-style-type: none"> Financial: exposure to compensatory damage award 		<ul style="list-style-type: none"> Established and documented quality control (Claims Manual) S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability) E & O insurance policy underwritten by Markel 				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF4: Catastrophic losses under Part A of the LPL policy	<ul style="list-style-type: none"> Financial: significant investigation expense and settlement payments 		<ul style="list-style-type: none"> Policy wording on limits and “related errors” Proactive claims and risk management practices Monitoring of LPL insurance trends and risks Education and risk management advice to lawyers Appropriate reserve levels and Minimum Capital Test ratio Stop-loss reinsurance treaty underwritten by ENCON 				Director of Lawyers Insurance Fund
FINANCIAL	F5: Inaccurate or untimely financial reporting	<ul style="list-style-type: none"> Reputational: loss of reputation with the membership Financial: loss of revenue or increase in costs 		<ul style="list-style-type: none"> Internal controls Executive limitations Annual external audit Investment policies and procedures (SIIP) 				CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2016
Appendix A

104

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2015	Residual Risk Level 2016	Planned (In Progress) Strategies and Controls	ET Lead
		<ul style="list-style-type: none"> • Operational: poor decision-making 		<ul style="list-style-type: none"> • Quarterly reviews of investment performance and benchmarking • Annual operating and capital budgets • Monthly and quarterly financial review process 				
REGULATORY	R8: Admission decisions are not reflective of the character, fitness, and competencies of a prospective lawyer	<ul style="list-style-type: none"> • Political: possible loss of the right to self-regulation • Reputational: diminished public perception of independence • Financial: costs and damages imposed through possible litigation 		<ul style="list-style-type: none"> • Law Society Admission Program • Credentialing standards and procedures • Hearing panel composition and training • Enhanced role of Tribunal Counsel • Legislative amendment to allow Law Society appeals of prior decisions 			<ul style="list-style-type: none"> • Federation - National admission standards, for good character requirements, being developed 	Director of Education and Practice

Law Society of British Columbia
Enterprise Risk Management
Risk Assessment Tools

Likelihood (Rating)	Estimated Chance of a Single Occurrence Within Five Years
High (4)	80 - 100%
Medium-High (3)	60 – 80%
Medium (2)	40 – 60%
Low (1)	0 – 40%

Consequences (Rating)	Financial Consequences	Operational Consequences	Reputational Consequences	Political Consequences
High (5)	A material loss of financial assets or cash: > \$750,000 in general, or 200% of gross case reserves/expected value for LIF claims, or >20% negative return for LIF investments	A substantial proportion of operations cannot be restored in a timely manner, essential services are unable to be delivered, and/or there is a significant loss of corporate knowledge that will result in the under-achievement of the Law Society's mandate	An irreparable loss of member and stakeholder trust in, or severe public criticism at a national and provincial level that brings disrepute to the reputation of, the Law Society	Change in the mandate and/or the imposition of a new governance as well as management structure for the Law Society is enacted by the government
Medium-High (4)	A substantial loss of financial assets or cash: \$500,000 - \$750,000 in general, 190% of gross case reserve expected value for LIF claims >15% negative return for LIF investments	Part of the operation cannot be restored in a timely manner, with some disruption to essential services, and/or a loss of corporate knowledge that can impact on the ability to render key decisions for the Law Society in the short to medium term	A substantial loss of member and stakeholder trust in, or sustained public criticism at a provincial level of, the Law Society which will be difficult to remedy over the short to medium term	The Law Society is susceptible to a potential change in government rules and legislation with implications for its authorities and/or an imposed change in the management structure

Law Society of British Columbia
Enterprise Risk Management
Risk Assessment Tools

<p>Medium (3)</p>	<p>A moderate loss of financial assets or cash: \$250,000 - \$500,000 in general 180% of gross case reserves/expected value for LIF claims 10% negative return for LIF investments</p>	<p>Some parts of the operation will be disrupted, but essential services can be maintained, and/or there is some loss of corporate knowledge that warrants management attention but the implications for which are limited to select projects or processes</p>	<p>Some loss of member and stakeholder trust in, and local public criticism over a short period of time of, the Law Society which warrants management attention</p>	<p>A change in Provincial direction affecting the operations of the Law Society is likely, but can be addressed within the current governance and management structure</p>
	<p>A manageable loss of financial assets or cash: \$100,000 - \$250,000 in general 170% of gross case reserves/expected value for LIF claims 5% negative return for LIF investments</p>	<p>Some inefficiency will exist, leading to increased cost and/or time in the provision of essential services, and/or a loss of corporate knowledge that may result in minor disruptions in specific projects or processes</p>	<p>A relatively minor setback in the building of member and stakeholder trust in, or “one off” unfavorable local public attention put toward, the Law Society</p>	<p>Minor, non-routine changes may occur in regulation of relevance, and the nature of guidance that is provided by the government, to the Law Society</p>
	<p>A relatively immaterial loss of financial assets or cash: < \$100,000 in general 160% of gross case reserves/expected value for LIF claims <5% negative return for LIF investments</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>

Law Society of British Columbia
Enterprise Risk Management
Risk Assessment Tools

		Consequences				
		Low	Low-Medium	Medium	Medium-High	High
Likelihood		1	2	3	4	5
High	4					
Medium-High	3					
Medium	2					
Low	1					

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

Memo

To: Benchers
From: Policy and Legal Services Staff
Date: March 28 2017
Subject: Rule 3-64(7) Permitting the Use of Online Banking Systems for the Electronic Withdrawal of Trust Funds

Purpose

1. This memo addresses the question of whether the Law Society Rules (the “Rules”) should be amended to allow lawyers to make electronic withdrawals of trust funds using financial institutions’ online banking systems. This includes online withdrawals from trust accounts for transfers to clients and third parties (e.g. online wire transfers), online transfers between lawyers’ trust accounts (e.g. from a one pooled account to another pooled account, or from a pooled to a separate trust account) and online transfers from a trust account to a general account (e.g. for the payment of fees). These types of online transactions are currently prohibited by the Rules.
2. Part 1 of this memo summarizes the rationale for adopting a rule change. Part 2 addresses some of the potential concerns with permitting the online withdrawal of trust funds.
3. Following a review of the material below, the Benchers are asked to make a decision in principle as to whether the Rules should be amended to allow lawyers to carry out online withdrawals of trust funds.

Background

4. Broadly defined, electronic fund transfer is an electronic transmission of funds from one account to another, either within a single financial institution or across multiple institutions, through a computer based system.¹ This can include a variety of modes of

¹ There is currently no definition for electronic fund transfer in the Rules.

payment, including electronic wire transfers that are manually processed by the bank, wire transfers that are carried out through an online system and other forms of internet banking, such as the movement of funds from one account to another through a financial institution's online platform.

5. Electronic withdrawals of trust funds are predominantly governed by Rule 3-64(7),² which was specifically designed to enable lawyers to carry out a certain type of electronic transfer: wire transfers that are manually processed at a financial institution.³ The Rule defines the conditions under which these transfers can occur.

(7) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:

(a) the transfer system is one that will produce, not later than the next banking day, a confirmation form from the financial institution confirming the details of the transfer, which should include the following:

- (i) the date of the transfer;
- (ii) source trust account information, including account name, financial institution and account number;
- (iii) destination account information, including account name, financial institution, financial institution address and account number;
- (iv) the name of the person authorizing the transfer;
- (v) amount of the transfer;

(b) the lawyer must

- (i) complete and personally sign a requisition for the transfer in a form approved by the Discipline Committee,
- (ii) submit the original requisition to the appropriate financial institution,
- (iii) retain a copy of the requisition in the lawyer's records,
- (iv) obtain the confirmation referred to in paragraph (a) from the financial institution,
- (v) retain a hard copy of the confirmation in the lawyer's records, and
- (vi) immediately on receipt of the confirmation, verify that the money was drawn from the trust account as specified in the requisition.

² Electronic transfer of trust funds is also permitted for the payment of property transfer tax using the Electronic Filing System of the Land Title Branch under Rule 3-64(8).

³ A rule permitting lawyers to electronically withdraw funds from trust accounts was first introduced in 2003 to bring the Law Society in compliance with the requirement by the Canadian Payment Association that all payments over \$25 million must be made by electronic transfer rather than by traditional paper based payment instruments. In 2009, the Rules were amended to allow electronic transfers (in the form of a wire transfer) of any amount.

6. Under the rule, a lawyer wishing to send a wire transfer must complete the Law Society's electronic fund transfer form (the "EFT")⁴ to requisition the transfer, submit the EFT to the financial institution for processing and retain a hard copy. In processing the EFT, the financial institution manually inputs the information on the form into the payment system, debits the funds from the sender's account and activates the transfer to the receiving bank. Once the transfer is complete, the lawyer must obtain and retain a next-day confirmation from the financial institution and verify that the appropriate amount of money was withdrawn from the trust account.
7. In requiring lawyers to submit the original EFT to the financial institution to complete the transfer, the rule implicitly prevents lawyers from entering information into an online banking platform and activating the fund withdrawal remotely. This prohibition is made explicit in both the EFT and the Trust Accounting Handbook, which explains that lawyers may set up online banking, but the access must be "view only", as to restrict the ability to conduct internet transfers out of the trust account.⁵
8. Additionally, electronic fund transfers from a trust account to a general account for the payment of fees are prohibited under Rule 3-64(6), which prescribes that these funds can *only* be withdrawn by cheque.

(6) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds with a cheque payable to the lawyer's general account.
9. The Rules currently do not place any restrictions on the method by which a lawyer can receive money into trust.⁶

⁴ The EFT was created because financial institutions offering electronic wire transfer services did not consistently include all of the information the Law Society required to create an adequate audit trail.

⁵ See The Trust Accounting Handbook online at p. 23: www.lawsociety.bc.ca/docs/trust/Trust-Accounting-Handbook.pdf. The EFT clearly states: "Online payments from the trust account via the web are NOT PERMITTED under this Rule."

⁶ Alberta, New Brunswick, Newfoundland and PEI have rules specifically authorizing electronic *deposits* into trust. LSUC's rules do not explicitly prohibit lawyers from allowing funds to be deposited by internet banking, however the guidance does outline various considerations for lawyers, including whether the deposit will generate the documents required to fulfill record keeping requirements.

Discussion

Part 1: Rationale for adopting a rule change

10. There are numerous rationale for amending the Rules to permit the online withdrawal of trust funds. These include: providing an efficient and flexible means for lawyers to move trust funds, maximizing the security measures associated with electronic fund transfers and reducing opportunities for fraud, recognizing technological changes within the banking sector and aligning with rule developments in other provinces. Each of these rationale is explored in further detail below.

i. Flexibility and efficiency

11. The Trust Assurance department has received feedback from lawyers that the complexities associated with the current electronic transfer process makes for an administratively inefficient and costly method for withdrawing funds from trust accounts.
12. Lawyers' primary concern with the existing rule is that it only permits one type of electronic transfer, namely, wire transfers, initiated by providing an EFT to a financial institution each time they wish to withdraw funds from trust electronically.⁷ In addition to the time and cost associated with the lawyer delivering the EFT, reliance on bank staff to manually key the transfer information into the system can result in a delay in the transmission of funds based on the financial institutions' internal processing timelines. Further, fees for outgoing wire transfers processed at a financial institution can cost up to \$195 per transaction.
13. In contrast, many financial institutions now enable clients (e.g. lawyers) to utilize an online system to carry out wire transfers through the internet without any manual intervention by the financial institution. Rather than delivering a requisition to the bank, authorized users can log into the online system and personally enter data describing the details of the transfer. Payment is approved online by the required number of authorized users and the transfer is processed almost immediately. A unique payment reference is generated by the system once the transaction is complete.

⁷Acceptable modes of delivery vary across institutions. For example, RBC will allow firms that are commercial banking clients to courier the paperwork, but non-commercial clients must visit the branch in person. CIBC no longer accepts wire instructions by email or fax. Other institutions may still permit faxed or emailed instructions.

14. Developing a new rule that would enable lawyers to set-up, approve and release payments at any time, from any location would provide lawyers with the opportunity to efficiently and flexibly manage their financial obligations remotely and to maintain maximum control over time-sensitive transfers. Costs are also reduced, with online wire transfers ranging from \$10-\$50 per transaction.⁸
15. Developing rules that would allow for the online transfer of funds from a lawyer's trust account to their general account (e.g. for the payment of fees) and the online transfer of funds between trust accounts (e.g. to move a client's funds from a pooled trust account to a separate trust account) would also improve efficiency and flexibility by eliminating the need for lawyers to physically take trust cheques to their financial institution for processing. The clearing period associated with paper-based instruments, which can range from two to ten days⁹, would also be significantly reduced if online transfers were permitted.¹⁰
16. The flexibility of online banking has another aspect: most systems have highly adaptable administration and approval options that enable users to customize access controls and authorization processes, and to define monetary limits for both online wire transfers and online fund transfers between accounts. This would enable the Law Society to establish clear but general rules governing the online withdrawal of trust funds that could apply across different proprietary online banking systems (e.g. CIBC, RBC, etc.) and to different types of transactions (e.g. for online wire transfers to clients and third parties and the transfer of trust funds between different accounts).

ii. Security features and fraud reduction

17. Online banking systems use a range of advanced security measures to keep transactions secure, providing the financial institutions and their clients with new opportunities to bolster fraud protection. Features of some of the online banking systems available for business clients¹¹ at several of the major financial institutions operating in BC may include:

⁸There may be additional one-time costs associated with setting up accounts and obtaining authentication devices.

⁹This includes clearing periods associated with cheques and bank drafts. For example, the Law Society has recently discovered that RBC no longer guarantees funds on presentation of a bank draft; there is a four to five day waiting period after deposit, which can cause problems in relation to conveyances, undertakings and other matters.

¹⁰Electronic fund transfers are processed by financial institutions once per day. If the transaction is processed by 2pm MST, the funds will be received the same day.

¹¹ This represents a summary of the types of features of RBC, CIBC and CWB's commercial systems, and is not exhaustive list of the types of security features that may be available. These features apply to both online wire transfers and fund transfers between different accounts. These features may not all be available as part of a financial institution's personal banking platform.

- encryption of all data passed between a website and a browser to ensure information remains private;
- use of firewalls to shield the system from computer hackers;
- separate log-ins for each user to build a clear audit trail;
- two-factor authentication requiring two pieces of evidence to assert and confirm a person's identity to digitally sign transactions (e.g. RSA SecureID token code and an individual password);
- ability for users to define and customize particular authorization processes, including establishing multiple signing authorities;
- ability for users to define transaction and daily transfer limits;
- transaction and session monitoring, including monitoring unusual sign-on activity;
- opportunities to review, update and verify information associated with the transfer; and
- ability to track the movement of funds in real-time and produce detailed activity reports and confirmations.

18. In addition to the security features of financial institutions' proprietary online systems, the "payment system" used for sending and receiving domestic wire transfers —the Large Value Transfer Systems ("LVTS") — is the same, regardless of whether the wire transfer is initiated by the lawyer delivering instructions to the financial institution or by executing the transfer online.¹² LVTS is supported by a strong legal framework in which all completed transactions are guaranteed by the Bank of Canada, and are irrevocable and final once received by the beneficiary's financial institution.¹³ All international wire

¹² LVTS is the payment system used for sending and receiving wire payments between most Canadian financial institutions transacting in both international and Canadian dollar payments. Wire transfers from smaller banks and credit unions are not processed through LVTS, and therefore do not automatically attract the same benefits. Wire transfers between customers at the same financial institution are also excluded from LVTS. However, the majority of major financial institutions have adopted voluntary best practices that ensure they will treat these wire payments in a similar manner as LVTS wire transfers. See Payments Canada, "Businesses: Straight-through processing guidelines for wire transfers" online at <https://payments.ca/wp-content/uploads/2016/06/Businesses-Wire-En.pdf> . Also see slides from the CIBC presentation to the Law Society of BC, July 25, 2016.

¹³ LawPro Magazine, "Show me the money" (Summer 2008). online at http://www.practicepro.ca/lawpromag/Wire_Transfer_Benefits.pdf. Irrevocability and finality provides the certainty to the beneficiary that they can use the funds the moment they become available and payment will not be reversed or returned.

transfers, whether initiated by a requisition at the bank or online by the lawyer, are routed through the SWIFT network. These payments are also irrevocable and final.

19. Permitting lawyers to withdraw trust funds online would also have the benefit of reducing lawyers' reliance on cheques, which is likely to decrease instances of fraud resulting from personal banking information being obtained from a lost or stolen cheque and used illicitly. Financial institutions and Payments Canada advise that one of the most effective fraud management strategies clients can adopt is to reduce the number of cheques they write.
20. Providing lawyers with an online banking option for withdrawing trust funds is also likely to result in a decrease in the number of wire transfers initiated by lawyers delivering a written requisition (EFT) to their financial institution. Although wire transfers are a more secure method of moving funds than cheques, they are nevertheless vulnerable to fraud if a financial institution receives a fax or emailed EFT from someone who has seized account information and coopted the client's email account. Financial institutions are increasingly concerned about this risk, with signature fraud and other operational risks being the primary rationale for CIBC no longer accepting faxed or emailed wire transfer instructions.¹⁴ This fraud risk is minimized by the above-noted security features of online systems.
21. In addition to protecting lawyers from fraud, the security controls associated with online banking systems will help to ensure that clients' funds are maximally safeguarded, supporting the Law Society in fulfilling its mandate of protecting the public interest.

iii. Technological changes in the banking industry

22. The transition to a digital economy is well underway. As part of this shift, financial institutions are moving away from the manual, paper-based processing of transactions and are continually improving the capabilities of their online banking programs.
23. Virtually all financial institutions now offer clients the option of transferring funds from one account to another online. The majority of large banks and several credit unions also have systems in place that enable lawyers to initiate online wire transfers. For example, if permitted by the Rules, lawyers could use CIBC's Cash Management Online, RBC's Express Wire Payments or Canadian Western Bank's Wire Service to login-in, input

¹⁴ Operational risks include human error resulting from the use of old templates, keying errors and poor internal controls associated with faxing or emailing instructions.

information, set-up authorizations, approve and release wire payments themselves, without any intervention from the financial institution.¹⁵

24. Lawyers in BC are expressing frustration that the Rules do not allow them to utilize these services. Permitting lawyers to take advantage of online banking technologies sends a signal to both the profession and the public that the Law Society is striving to be an innovative regulatory body, in accordance with its Strategic Plan.¹⁶
25. Over the past year, the Law Society has also received reports that some institutions will no longer process wire transfers using the EFT, and are asking lawyers to transfer their funds online instead. For example, the Law Society has been informed that CIBC no longer accepts emailed or faxed instructions for wire transfers, including the Law Society's EFT. Instead, it is recommended that lawyers who wish to send a wire transfer remotely use CIBC's Cash Management Online system. Given the existing rules preclude lawyers from doing so, those who want to continue to bank with CIBC will largely rely on the use trust cheques (with their associated vulnerabilities to fraud) to withdraw money from trust.¹⁷

iv. Adoption of rules permitting online transfers by other law societies

26. Most Canadian law societies already have rules in place that permit lawyers to withdraw trust funds using online banking systems, including Alberta, Ontario, Newfoundland, Prince Edward Island, New Brunswick, Nova Scotia, Quebec and Yukon. The relevant provisions are included at **Appendix A**.
27. Alberta's rules permit the online withdrawal of trust funds to make payments to clients or third parties, as well as the online transfer of funds from trust to general accounts or between a lawyer's trust accounts provided the system requires lawyers to have a password or access code to authorize the online withdrawal. Written instructions must also be obtained from the payee prior to the withdrawal and a "non-cheque withdrawal

¹⁵ Other major financial institutions operating in BC that provide online wire transfer services include Bank of Montreal, TD Canada Trust, HSBC, Scotia Bank, Vancity and Prospera Credit Union.

¹⁶ See Goal 2 of the 2015-2017 Strategic Plan.

¹⁷ CIBC will still accept the EFT for wire payments done over the counter in a branch, or as a contingency only through fax if the fax agreement is signed on an exceptional basis.

form” must be completed. Confirmation of the transfer must be obtained and maintained as part of the firm’s financial records.¹⁸

28. Newfoundland, Prince Edward Island and New Brunswick have identical rules addressing the electronic transfer of funds from trust. These rules permit the online withdraw of trust funds to transfer funds to clients or third parties (e.g. online wire transfers) and the online movement of funds from trust to general accounts, or between trust accounts, provided the system meets the following regulatory requirements:

- users must be provided with an individual password or access code that is retained by the lawyer, and is used to authorize the withdrawal
- the system must produce a next-day confirmation that the data describing and authorizing the transfer were received
- the confirmation generated by the system must contain specific information, including: names of the payee and recipients; their trust account number and financial institution information; and the time and date the instructions to carry out the transfer were received by the financial institution and the confirmation was sent.

29. There are also obligations on lawyers to complete an electronic funds transfer requisition (prescribed by the law society) prior to the transfer being initiated, which must be maintained for the lawyer’s records. Lawyers must also print, review, sign and date the confirmation of the transfer produced by the online system.¹⁹

30. Ontario’s rules permit the use of online banking to withdraw trust funds for payments to clients or third parties, to transfer funds between trust accounts and to transfer funds between a trust and general account, provided the lawyer complies with the requirements set out in section 12 of By-Law 19.²⁰ These regulatory requirements closely mirror those of the Maritime provinces, as detailed above, with the added security measure of requiring one person, using a password, to enter the data describing the details of the transfer into the system, and another person, using a different password, to authorize the

¹⁸ Rule 119.42(1), online at <http://www.lawsociety.ab.ca/docs/default-source/regulations/rules698a08ad53956b1d9ea9ff0000251143.pdf?sfvrsn=2> .

¹⁹ For New Brunswick, see Rule 4(8) of the Uniform Trust Account Rules, online at: http://lawsociety-barreau.nb.ca/uploads/forms/Uniform_Trust_Account_Rules_-_Regles_uniformes_sur_les_comptes_en_fiducie.pdf. Excerpt at Appendix A. For Newfoundland, see Rule 5.04(6) <http://lawsociety.nf.ca/lawyers/lawyer-regulation/law-society-rules/part-v/> For Prince Edward Island, see Rule 74(8), online at <http://lawsocietypei.ca/media/for-lawyers/regulation/REGULATIONS%20%20as%20of%20July%20%202016.pdf>

²⁰ Communications with Leslie Greenfield, Manager, Practice Audits, Law Society of Upper Canada (September 27, 2016).

transfer.²¹ Lawyers are required to complete and retain an electronic funds transfer requisition prior to the transfer being initiated and keep this on record, and to print, review, sign and date the confirmation produced by the system.²²

31. Although Nova Scotia permits all types of online withdrawals from trust (e.g. to clients and third parties, between trust accounts and between trust and general accounts), there are no rules *specifically* designed to regulate electronic transfers. Instead, Nova Scotia relies on a broader rule that governs all types of trust withdrawals (e.g. wire transfers at the bank, cheques, internet banking).²³ Consequently, Nova Scotia's rules are significantly less detailed than the rules pertaining to electronic withdrawals in Alberta, Ontario and the other Maritime provinces.
32. Most notably, Nova Scotia requires that all trust withdrawals — including online withdrawals — are made by two persons, one of whom must be a lawyer.²⁴ Staff in Nova Scotia remark that implicitly, the rules require that online trust withdrawals must not be executed without the use of two different passwords held in confidence by two different people. This is not explicit in the rule, however.
33. Quebec permits the online electronic withdrawals from trust. However, as is the case in Nova Scotia, there are no rules that specifically address electronic transfers, including online withdrawals from trust.²⁵
34. The Yukon permits online banking to move funds from trust to a client or a third party or to move funds from a trust account to a general account, but not to transfer funds between trust accounts. There are no law society rules that specifically address electronic

²¹ See By-law 9 at 12, online at: <https://www.lsuc.on.ca/uploadedFiles/By-Law-9-Financial-Transactions-Records-October-19-2015.pdf>. Excerpt at Appendix A. Separate rules apply to sole practitioners and to closing real estate transactions, for which only one person is required to carry out the transfer.

²² General observations from auditors are that the number of lawyers using online banking in Ontario is on the increase, although many still use cheques. *Supra* note 20.

²³ See 10.3.5 of the Regulations made pursuant to the *Legal Profession Act*, S.N.S. 2004, c. 28 online at <http://nsbs.org/sites/default/files/cms/menu-pdf/currentregs.pdf>. Excerpt at Appendix A. Supporting guidance material provides some specific details on the parameters of online trust withdrawals, including a requirement for password protection. See Nova Scotia Barristers' Society, "Trust Account Regulations FAQ", online at: <http://www.nsbs.org/faqs-trust-account-regulations>.

²⁴ Withdrawals can be made by only one person if the lawyer is a sole practitioner.

²⁵ Section 30 of the *Regulation respecting accounting and standards of professional practice of advocates* states that "transfers of money by electronic means are subject to the provisions of this regulation." There are no further specific references to any form of electronic transfers, including online transfers, in the regulation. Division VII, s. 48 sets out the general parameters for withdrawing money from trust. See https://www.barreau.qc.ca/pdf/avis/reglement-comptabilite_en.pdf. Excerpt at Appendix A.

transfers. Instead, this authority is found in a general provision in the governing statute relating to trust withdrawals.²⁶

35. In contrast, in BC the withdrawal of trust funds via “electronic transfers” is restricted to wire transfers carried out by a financial institution once they have received the EFT. Both implicitly (text of Rule 3-64(7)) and explicitly (Law Society guidance material), the use of online systems to withdraw or transfer funds using internet banking is not allowed.²⁷

Part 2: Concerns

36. Despite the many advantages associated with withdrawing trust funds online, there may be weaknesses or inconsistencies in the protocols, procedures and protections associated with different online transfer systems. Lawyers may also fail to take adequate steps to safeguard online transactions if the rules are unclear or otherwise insufficiently address key security measures. Some issues that may arise are detailed below.

i. Record keeping and audit capability

37. Online trust transactions should only be permitted if it is possible to create a comprehensive and accurate paper trail that allows both lawyers and auditors to easily trace and verify the movement of funds.
38. Sufficiently documented payment details are essential to provide lawyers with certainty of funds and to prevent trust funds from being over-drawn. Similarly, the Law Society’s capacity to identify how funds were handled and whether misappropriation or other misconduct occurred will be diminished if the audit trail is not well persevered. Accordingly, all transaction records must be adequately detailed and easily accessible. The retention period of electronic data stored by the online system must also be sufficient.
39. Research suggests that several of the major online banking systems strive to address these audit capability concerns. For example, CIBC’s Cash Management Online system provides immediate payment confirmation and details and enables records to be produced with respect to the date, time and identification of users at each step of the transaction. Records are available online for 13 months and are stored by CIBC for seven years.

²⁶Communications with Law Society of Yukon, March 2, 2017. See the *Legal Profession Act*, s. 61(11) online at http://www.lawsocietyyukon.com/act/lpa_dec2004.pdf. Excerpt at Appendix A.

²⁷ Other jurisdictions that do not permit online electronic transfers from trust: Manitoba (although they are currently exploring permitting an e-transfer model for the sole purpose of registering documents with the Property Registry, Northwest Territories and Saskatchewan.

40. Rules could be drafted in a manner that ensures that lawyers are not permitted to withdraw trust funds online unless the system being utilized is capable of generating an audit trail that provides an adequate level of assurance for lawyers and auditors. For example, the electronic transfer rules of many other law societies preserve the audit trail by including provisions that address the timing, content and record keeping requirements of the confirmation generated by the online system (for example, see Ontario's rules at Appendix A). If the system used to make an online transfer does not meet these regulatory parameters, its use is not permitted.
41. Many jurisdictions also require lawyers to complete an electronic funds transfer form — similar to BC's EFT — containing key information about the transfer, and to store this for record keeping and auditing purposes. This form is not delivered to, or signed by, the financial institution. If this approach were adopted in BC, rule amendments could ensure that the information currently required by the EFT to initiate wire transfer (e.g. payee name, source account, destination account, names and signatures of authorization lawyers, dates) would also be required to initiate an electronic fund transfer using an online system. This information could be recorded in a form similar to the EFT, but would not have to be delivered to the financial institution.

ii. Irrevocability

42. As is the case with electronic wire transfers done through the bank, online wire transfers from trust are "irrevocable" in nature. As such, if a lawyer subsequently realizes the funds were transferred to the incorrect beneficiary (for example, through fraud) the transaction cannot be revoked. This is in contrast trust cheques, which have a lengthy clearing period in which stop-payment orders can be issued.
43. In permitting electronic wire transfers through the bank under existing Rule 3-64(7), however, the Law Society has already accepted the risk associated with the irrevocable nature of some types of trust withdrawals.

iii. Security controls

44. Online banking systems are proprietary in nature, and accordingly, security measures will vary. Although several of the major financial institutions reviewed for the purposes of this memo appear to have a comprehensive set of controls associated with the online withdrawal or transfer of funds, this may not be true of all institutions.
45. To meet this challenge, staff could establish what security features the Law Society views as necessary to safeguard the electronic transmission of trust funds, and amendments would be drafted in a manner that ensures that online transactions can only be completed using a system with these features.

46. For example, the new rule could adopt the approach taken in Ontario, in which one user, using one password, must set up the transfer on the online banking system, while another user, with another password, must authorize it.²⁸ Another option is a requirement for “two-factor” authentication, such that two pieces of evidence to assert and confirm a lawyer’s identity are necessary to digitally sign transactions (e.g. a password and a security token). The use of online systems without this level of authorization security would not be permitted. Lawyers could then decide where to bank on the basis of whether their financial institution’s online system meets the new regulatory requirements.
47. The rule could also be designed to ensure that *only* lawyers can authorize the transfer of trust funds, by requiring any non-lawyer accessing the account to have “read-only” access, or by requiring that only a lawyer can authorize the transfer. A rule prohibiting passwords sharing could also be developed. These features would also address concerns raised by Nova Scotia and Ontario, as detailed below.
48. To address risks associated with client identification, the new rule could also incorporate a provision emphasizing that lawyers must ensure the client’s identification is verified prior to the online transfer of funds, pursuant to existing Rule 3-102.
49. Note that the Act and Rule Committee, in consultation with the Trust Assurance department and experts in the banking sector, would consider all the relevant security aspects during the drafting process. The Benchers will have an opportunity to review the finalized rule before its adoption to ensure they are satisfied it adequately addresses the above noted concerns.

iv. Feedback from other jurisdictions

50. In the course of preparing this memo, all of the law societies permitting online withdrawals from trust were contacted and asked whether they had experienced problems with permitting online transactions. Apart from one case highlighted by the Chambre des notaries du Quebec, there were no reports of any significant concerns about lawyers being permitted to use online banking to withdraw and transfer trust funds.
51. The law societies that provided feedback did, however, identify a number of issues:
 - a. **Nova Scotia:** Recent spot-audits revealed that some lawyers improperly provided assistants with passwords that enabled them to access internet banking websites and transfer trust funds. In two cases, a lawyer independently transferred funds using internet banking when access should have (under the rules) been under the control of two persons. Nova Scotia also noted that a number of lawyers failed to

²⁸ *Supra* note 21. Separate rules are in place for sole practitioners which permit them to authorize online transfers without another person.

obtain written confirmation of the transfer in the form of a print-out of the online banking screen showing the receipt of funds.²⁹ Despite these issues, risk-management staff articulated that they did not feel that permitting lawyers to transfer trust funds online had increased the risk of fraudulent trust account activity.³⁰

As previously noted, Nova Scotia relies on a general rule to regulate all types of withdrawals from trust.³¹ As such, their rules do not clearly prescribe a number of the safeguards that have been built into the electronic transfer rules in other provinces, including establishing a clear requirement that users of an electronic transfer system be provided with, and keep in confidence, individual passwords or access codes.³²

- b. **Ontario:** Two concerns were raised in relation to the online withdrawal of trust funds. The first relates to record keeping: some lawyers fail to complete the electronic transfer form (Form 9A) for each electronic trust transfer and the confirmations of the transactions are not always signed and dated and can lack all the required details. Second, staff noted that in addition to the lawyer, a non-lawyer (e.g. bookkeeper, staff) might have full access to the trust account electronically, and is therefore be able to transfer funds.³³
- c. **Quebec:** The Chambre des notaires du Quebec identified a case where a notary transferred a large amount of money from their trust account to their credit card as a payment through Interac/electronic banking. This case is currently under investigation.

52. In sum, two key messages emerge from the experiences of these jurisdictions. First, of the provinces currently permitting the use of online banking systems to withdraw funds from trust accounts, only Quebec — which lacks detailed rules addressing the electronic transfer of funds — has experienced a significant issue related to permitting this mode transaction. Second, putting in place detailed rules regarding account and password use, as well as measures to preserve the audit-trail, appear to be key to ensuring trust funds are effectively safeguarded. Based on Quebec’s experience, an additional rule specifically

²⁹ Report of Graham Dennis, CPA who undertook 38 trust account audits in 2015-2016 on behalf of the Nova Scotia Barristers’ Society. The auditor notes that when breaches of protocol were brought to the lawyers’ attention, they generally took steps to immediately remedy the problem (e.g. change the password or to limit access of the assistant to “viewing only”).

³⁰ Telephone conversation on March 1, 2017 with Mhairi McInnis, Administrator, Professional Responsibility who oversees risk assessment and analysis and the analysis of trust account reporting.

³¹ See Rule 10.3.5, *supra* note 23.

³² See Appendix A to compare the rules of the various jurisdictions that permit the use of online banking systems to withdraw and transfer trust funds.

³³ Conversation with Leslie Greenfield, Manager, Practice Audits, *supra* note 20.

prohibiting the electronic withdrawal of trust funds by way of credit card, debit card or email transfer may also be advisable.

Conclusion

53. Permitting lawyers to utilize online systems to withdraw trust funds has the potential to improve the administrative efficiency and flexibility of trust transactions, reduce fraud and enable the Law Society to demonstrate it has kept in stride with technological innovation in the banking industry and rule developments in other jurisdictions.
54. On this basis, staff recommend that the Rules are amended to permit the online transfer of trust funds, including the transfer of funds from a trust account to a client or third party, the transfer of funds from trust to a lawyer's general account and the transfer of funds between trust accounts.
55. Note that the proposed rule would provide an *additional* method by which lawyers can withdraw trust funds, and will not replace existing means of transferring funds, including trust cheques and wire transfers initiated by delivering a written requisition to the financial institutions still accepting the EFT. Accordingly, the amendments would only impact those lawyers who choose to utilize online banking and would not alter the process for withdrawing trust funds for those who decide not to exercise the online option created by the rule amendments.

Next steps

56. Following a review of the analysis above, the Benchers are asked to make a decision in principle as to whether or not to proceed with a rule change. If the Benchers support an amendment, the matter will be referred to the Act and Rules Committee to draft a rule for approval by the Benchers at a later date.

APPENDIX A

Alberta

The screenshot shows a web browser window with the URL <http://www.lawsociety.ab.ca/docs/default-source/regulations/rules698-618ad3395961-d9ed9f000025143.pdf?sfvrsn=2>. The page content is as follows:

Nov2010

Electronic Banking Withdrawals

119.42 (1) A law firm may withdraw money from trust electronically subject to the following conditions:

- (a) the system used must be able to produce a hardcopy confirmation from the financial institution within 2 banking days of the withdrawal showing the details (date, amount, source account number, and destination account number and name) of the withdrawal or the withdrawal instructions to the financial institution;
- (b) if the withdrawal is done online,
 - (i) the system used must be one where each law firm user has an individual password or access code, and only a lawyer of the law firm can authorize the financial institution to carry out the withdrawal unless otherwise approved by the Executive Director, and
 - (ii) only a lawyer of the law firm, using his or her password, shall execute the instruction to the financial institution authorizing the withdrawal of money unless otherwise approved by the Executive Director;
- (c) the law firm shall obtain written instructions from the payee detailing the destination account (account name, account number, financial institution and financial institution address), unless the money is being transferred to another account of the law firm;
- (d) the law firm shall complete a non-cheque withdrawal form in a form prescribed by the Executive Director;
- (e) the law firm shall obtain a confirmation from the financial institution and within 2 banking days of the withdrawal shall write the name of the client and file number on the confirmation if not already present;
- (f) the written instructions from the payee and the financial institution confirmation must be maintained with the law firm banking records as part of the financial records.

Nov2010/Nov2012

Electronic Banking Deposits

119.43 (1) A law firm may receive money into a law firm trust account electronically subject to the following conditions:

New Brunswick (Newfoundland and PEI have the same provisions incorporated into their rules)

trust account. When the member is unavailable, arrangements should be made for another member to sign the trust cheque.

4(8) A member shall only withdraw money from a trust account by means of electronic funds transfer if the following conditions are met:

(a) the electronic transfer system used by the

prises pour qu'un autre membre soit habilité à signer en son absence.

4(8) Un membre ne peut retirer des fonds d'un compte en fiducie par télévirement que si les conditions qui suivent sont réunies :

a) le système de télévirement que le membre utilise

7

Règles uniformes sur les comptes en fiducie prises sous le régime de la Loi de 1996 sur le Barreau

member does not permit an electronic transfer of funds without a password or access code to authorize a financial institution to carry out the transfer;

(b) the member retains the password or access code referred to in paragraph (a);

ne fonctionne pas sans un mot de passe ou un code d'accès autorisant l'établissement financier à effectuer le télévirement.

b) le membre conserve le mot de passe ou le code d'accès visé à l'alinéa a);

(c) the electronic funds transfer system will produce, no later than the close of the banking day immediately following the day on which the electronic transfer of funds was authorized, a written confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer was received;

(d) the confirmation referred to in paragraph (c) contains

(i) the number of the trust account from which the trust money is drawn,

(ii) the name, branch name and address of the financial institution where the account to which the money is transferred is kept,

(iii) the name of the person or entity in whose name the account to which money is transferred is kept,

(iv) the number of the account to which money is transferred or such other identifying reference as may be required to confirm the payment on account of the client as requested,

c) le système de télévirement produira, avant l'heure de fermeture du jour bancaire ouvré qui suit celui où a été autorisé le télévirement, une confirmation écrite de l'établissement financier attestant qu'ont été reçues les données détaillant le télévirement et autorisant l'établissement financier à y donner suite;

d) la confirmation mentionnée à l'alinéa c) comporte les renseignements suivants :

(i) le numéro du compte en fiducie duquel les fonds en fiducie sont retirés,

(ii) la dénomination sociale, la dénomination de la succursale et l'adresse de l'établissement financier où est tenu le compte cible,

(iii) le nom de la personne ou de l'entité au nom de qui est établi le compte cible,

(iv) le numéro du compte cible ou toute autre précision permettant de confirmer que le paiement a été dûment effectué pour le client,

<p>(v) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and</p> <p>(vi) the time and date that the confirmation from the financial institution was sent to the member;</p> <p>(e) before any data describing the details of the electronic funds transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, an electronic funds transfer requisition in a form approved by the Society is completed and signed by the member, and</p> <p>(f) the data entered into the electronic funds</p>	<p>(v) les date et heure de réception par l'établissement financier des données détaillant le télévirement et l'autorisant à y donner suite,</p> <p>(vi) les date et heure d'envoi au membre de la confirmation émanant de l'établissement financier;</p> <p>e) avant que ne soient entrées dans le système de télévirement toutes données détaillant le télévirement ou autorisant l'établissement financier à y donner suite, une réquisition de télévirement est établie en la forme approuvée par le barreau et signée par le membre;</p> <p>f) les données entrées dans le système de télévirement</p>
---	---

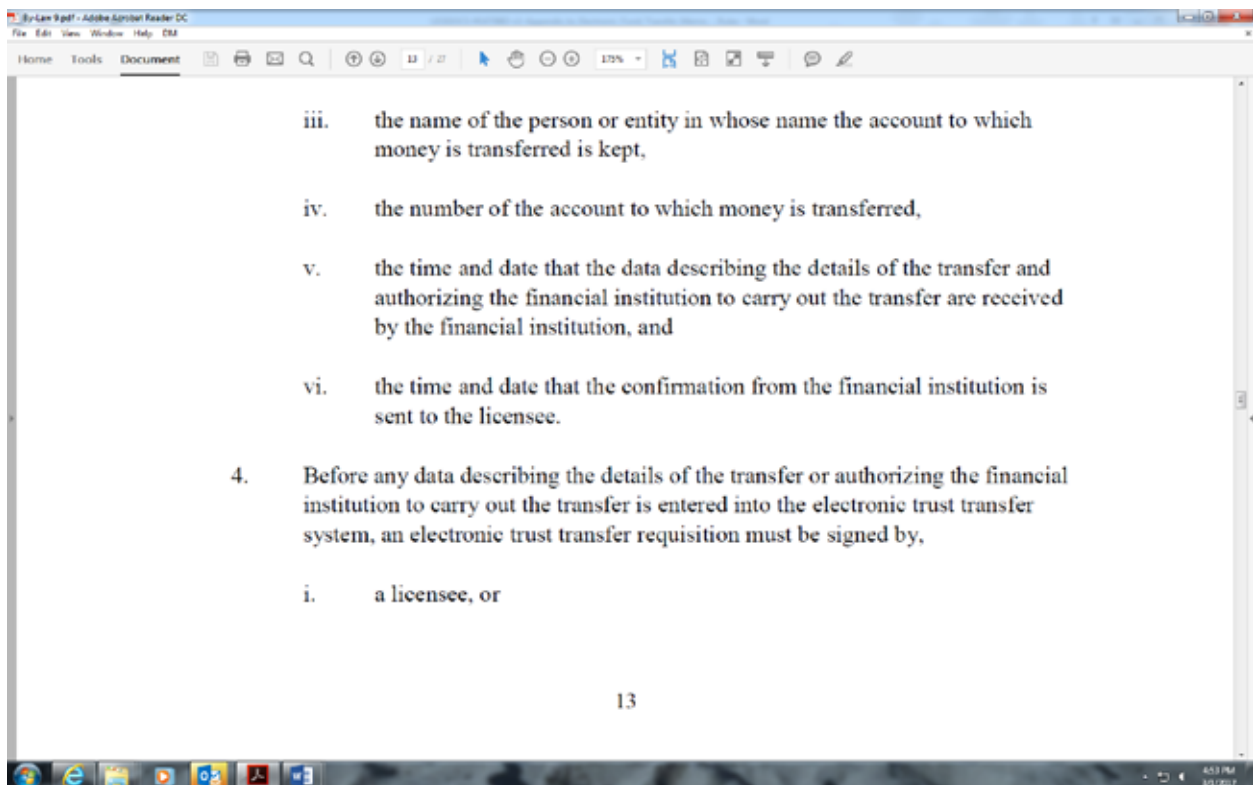
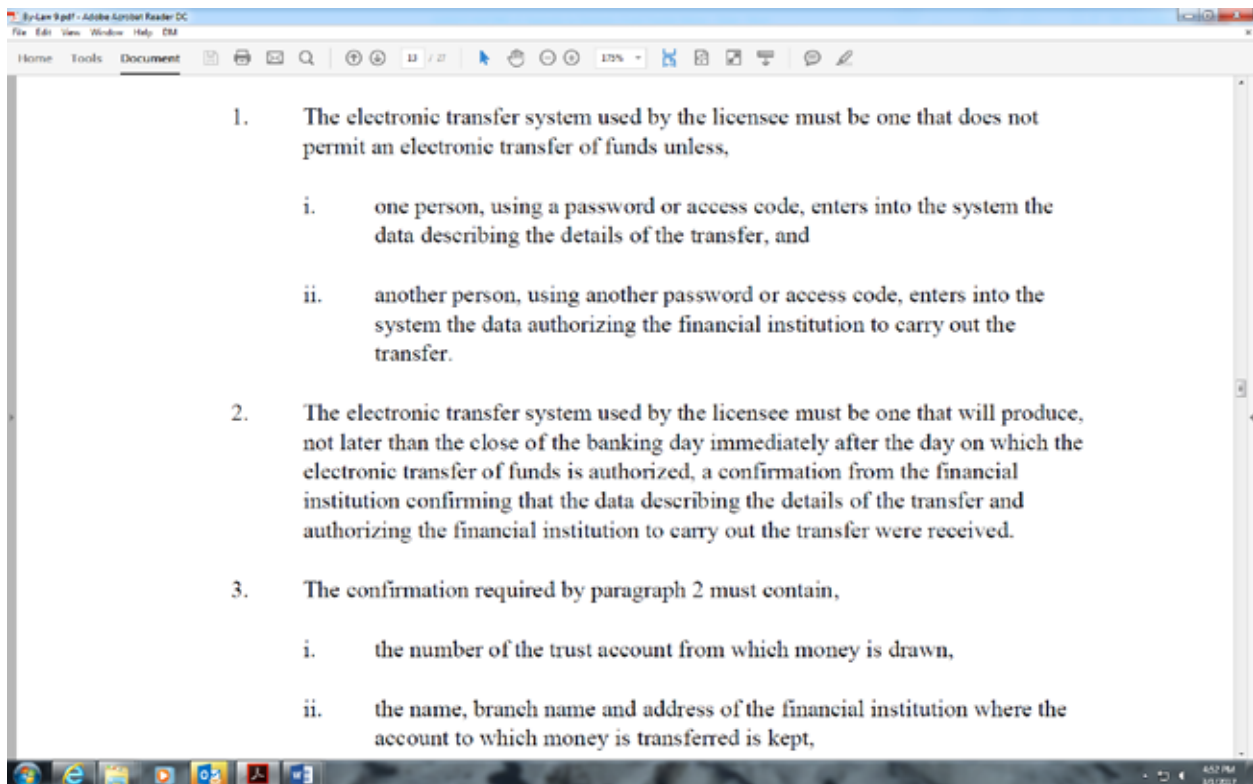
8

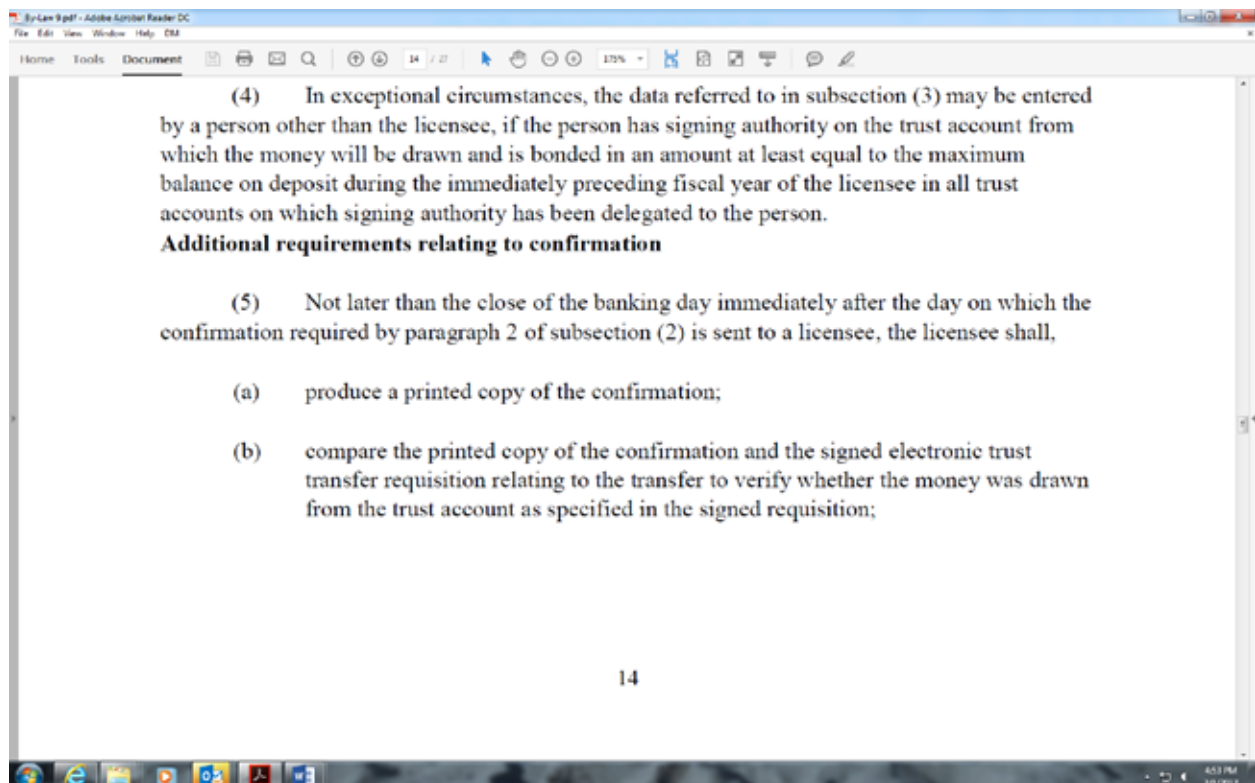
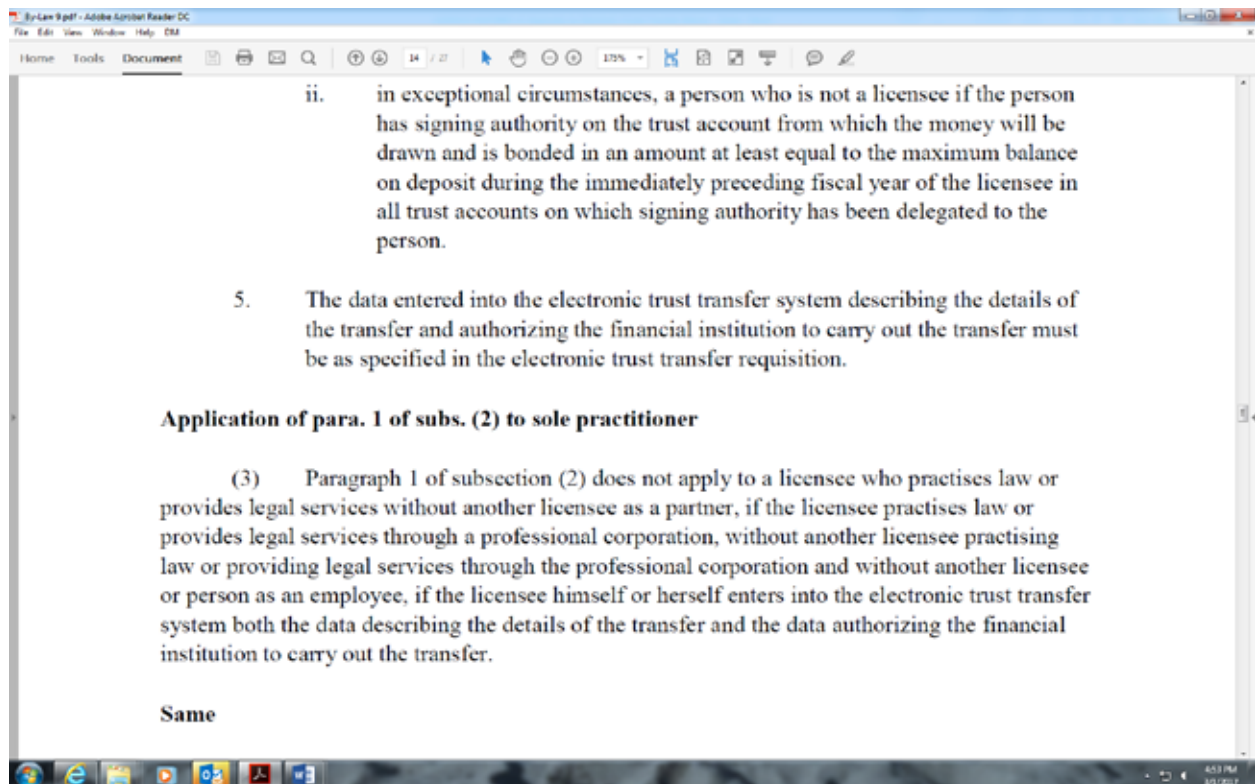
<p>transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer is as specified in the electronic funds transfer requisition.</p> <p>4(9) No later than the close of the banking day immediately following the day on which the confirmation referred to in paragraph (8)(c) is sent to a member, the member shall</p> <p>(a) produce a printed copy of the confirmation,</p> <p>(b) compare the printed copy and the signed electronic funds transfer requisition relating to the transfer to verify whether the money was withdrawn from the trust account as specified in the signed requisition,</p> <p>(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which trust money was withdrawn from the trust account, and</p> <p>(d) after complying with paragraphs (a) to (c), sign and date the printed copy of the confirmation</p>	<p>qui détaillent le télévirement et autorisent l'établissement financier à y donner suite sont les mêmes que celles figurant dans la réquisition de télévirement.</p> <p>4(9) Avant l'heure de fermeture du jour bancaire ouvré qui suit celui où la confirmation mentionnée à l'alinéa (8)c) lui est envoyée, le membre :</p> <p>a) imprime la confirmation;</p> <p>b) compare la copie imprimée de la confirmation avec la réquisition de télévirement signée se rapportant à l'opération afin de s'assurer que le retrait du compte en fiducie soit conforme à la réquisition signée;</p> <p>c) indique sur la copie imprimée de la confirmation le nom du client, l'objet du dossier et tout numéro de dossier à l'égard duquel des fonds en fiducie ont été retirés du compte en fiducie;</p> <p>d) après s'être conformé aux alinéas a) à c), signe et date la copie imprimée de la confirmation.</p>
---	--

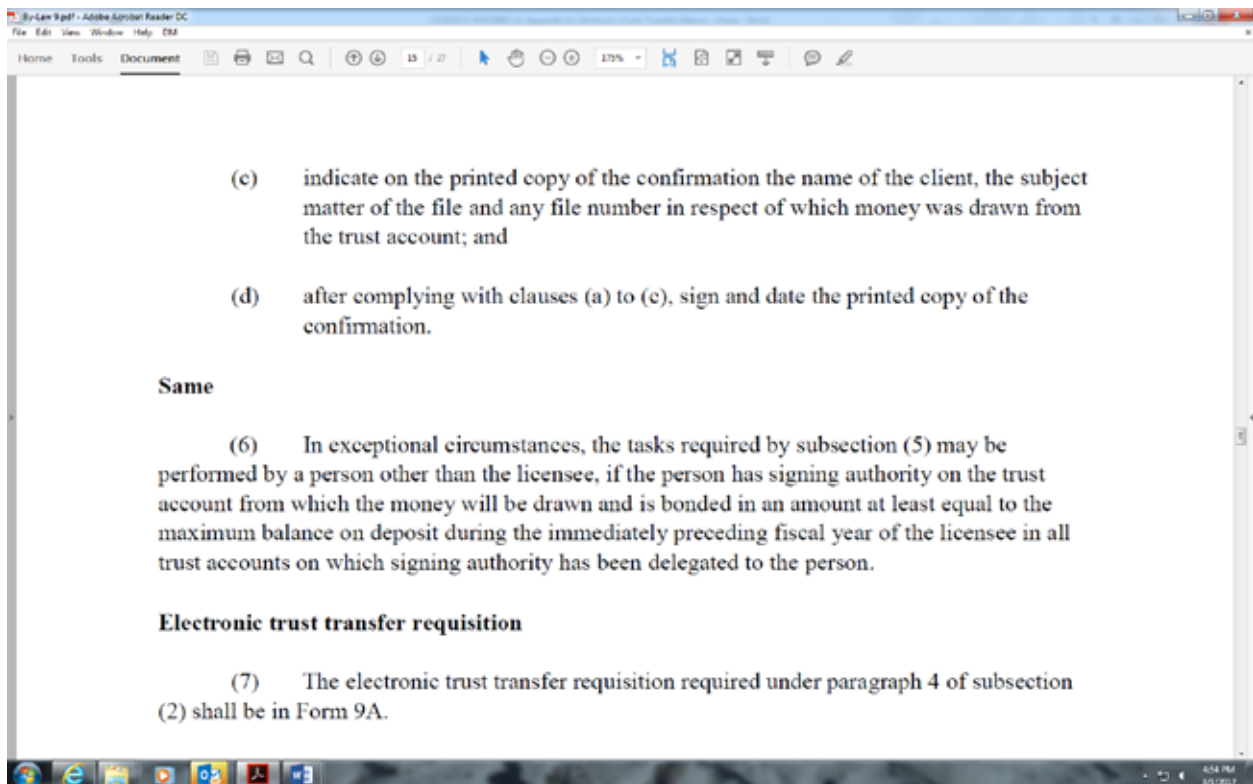
<p>4(10) For greater certainty, a member shall not make cash withdrawals from a trust account by means of a debit card.</p> <p>4(11) At all times a member shall maintain sufficient balances on deposit in trust to meet the member's obligations with respect to money held in trust for clients, and all shortages shall be restored immediately by the member.</p>	<p>4(10) Il est entendu qu'un membre ne peut effectuer des retraits d'argent d'un compte en fiducie au moyen d'une carte de débit.</p> <p>4(11) Le membre maintient en tout temps des soldes suffisants dans ses comptes en fiducie pour satisfaire ses obligations relatives aux fonds qu'il détient en fiducie pour des clients et pourvoit immédiatement à tous déficits.</p>
<p>REPORTING OVERDRAFTS</p> <p>5(1) Subject to subsection (2), the member shall report immediately to the Executive Director any overdrafts in the member's trust account, which report shall include a full explanation for how the overdraft occurred.</p> <p>5(2) A transaction which creates an overdraft in a trust account below an amount sufficient to meet all of the member's obligations shall not be a violation of these Rules and does not have to be reported if the transaction which caused the overdraft resulted from:</p> <ul style="list-style-type: none"> a) a debit memo for financial institution charges or service charges, b) an error on the part of the financial institution, 	<p>SIGNALEMENT DES DÉCOUVERTS</p> <p>5(1) Sous réserve du paragraphe (2), le membre signale immédiatement au directeur général tous découverts survenus dans son compte en fiducie et fournit des explications détaillées.</p> <p>5(2) Ne constitue pas une violation des présentes règles et ne donne pas lieu à un signalement l'opération qui entraîne dans un compte en fiducie un découvert inférieur aux crédits nécessaires pour permettre au membre de s'acquitter de ses obligations, si elle est imputable à l'une des causes suivantes :</p> <ul style="list-style-type: none"> a) une note de débit pour frais de l'établissement financier ou de gestion; b) une erreur de la part de l'établissement financier;

Ontario

<p>Withdrawal by electronic transfer</p> <p>12. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.</p> <p>When money may be withdrawn</p> <p>(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:</p>	<p>12</p>
--	-----------

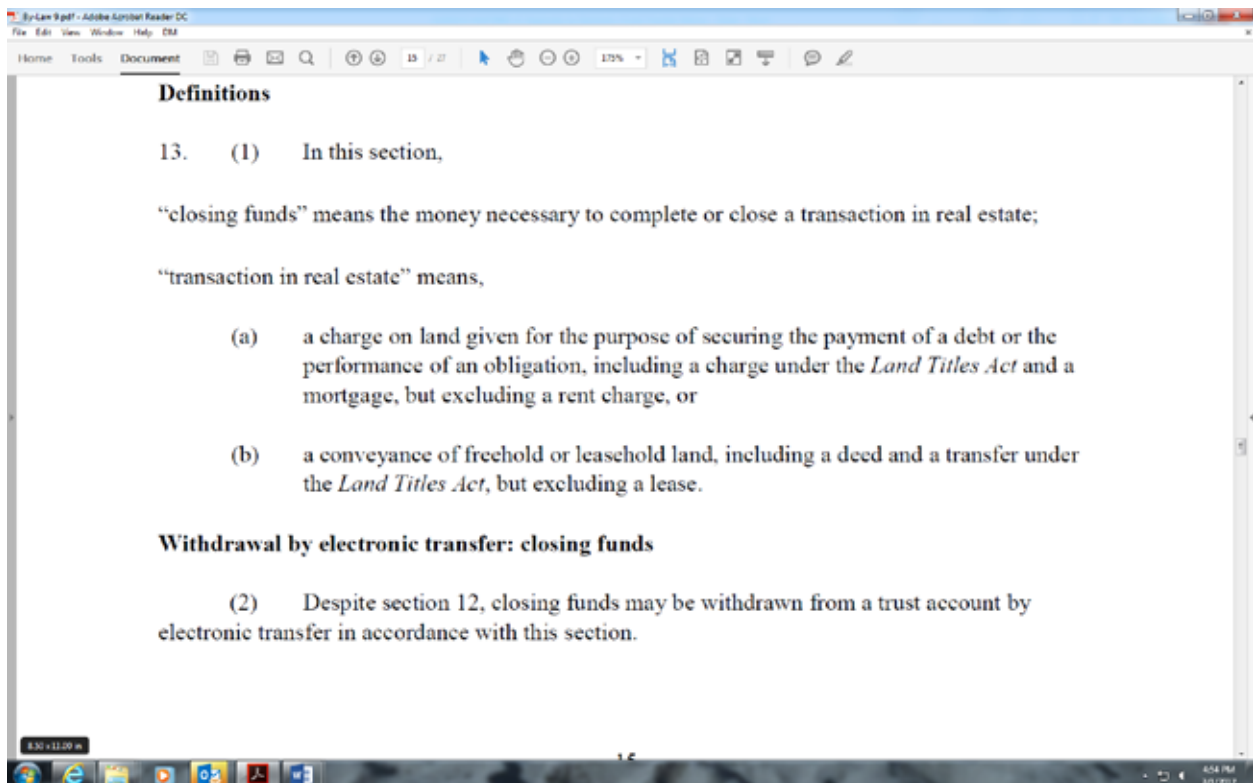


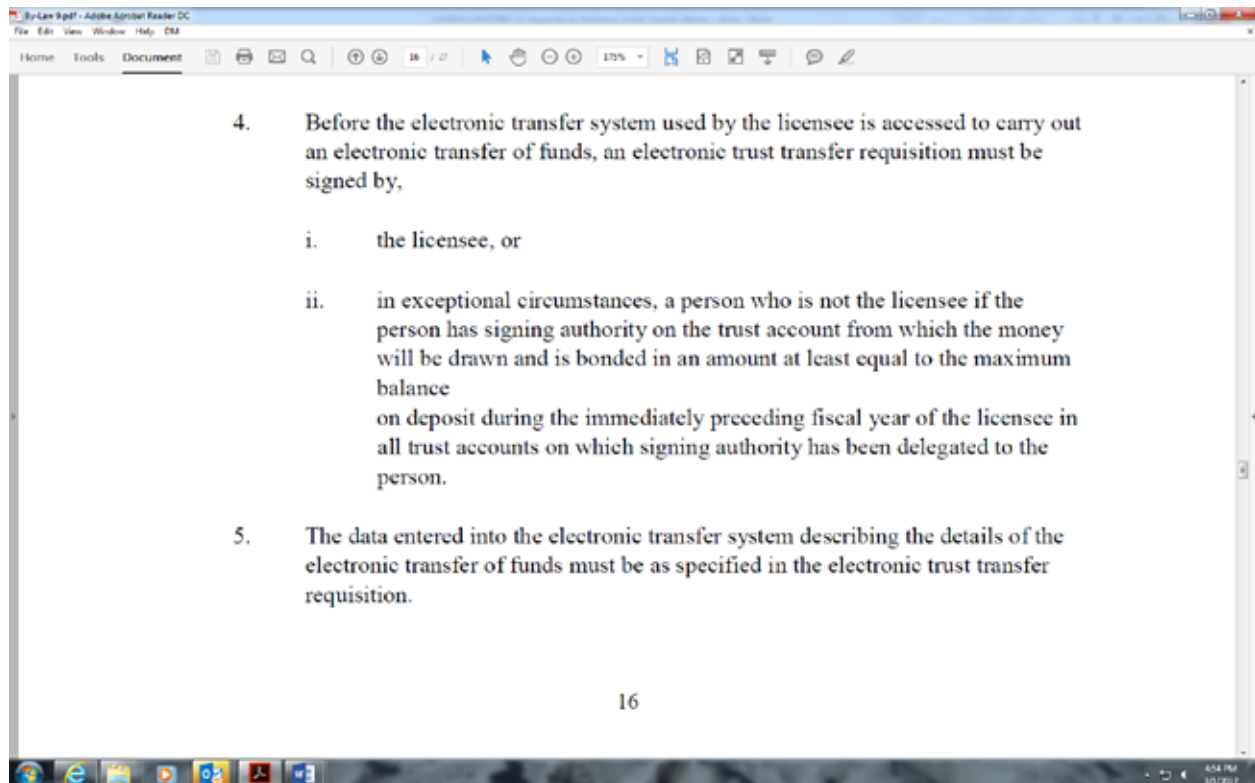
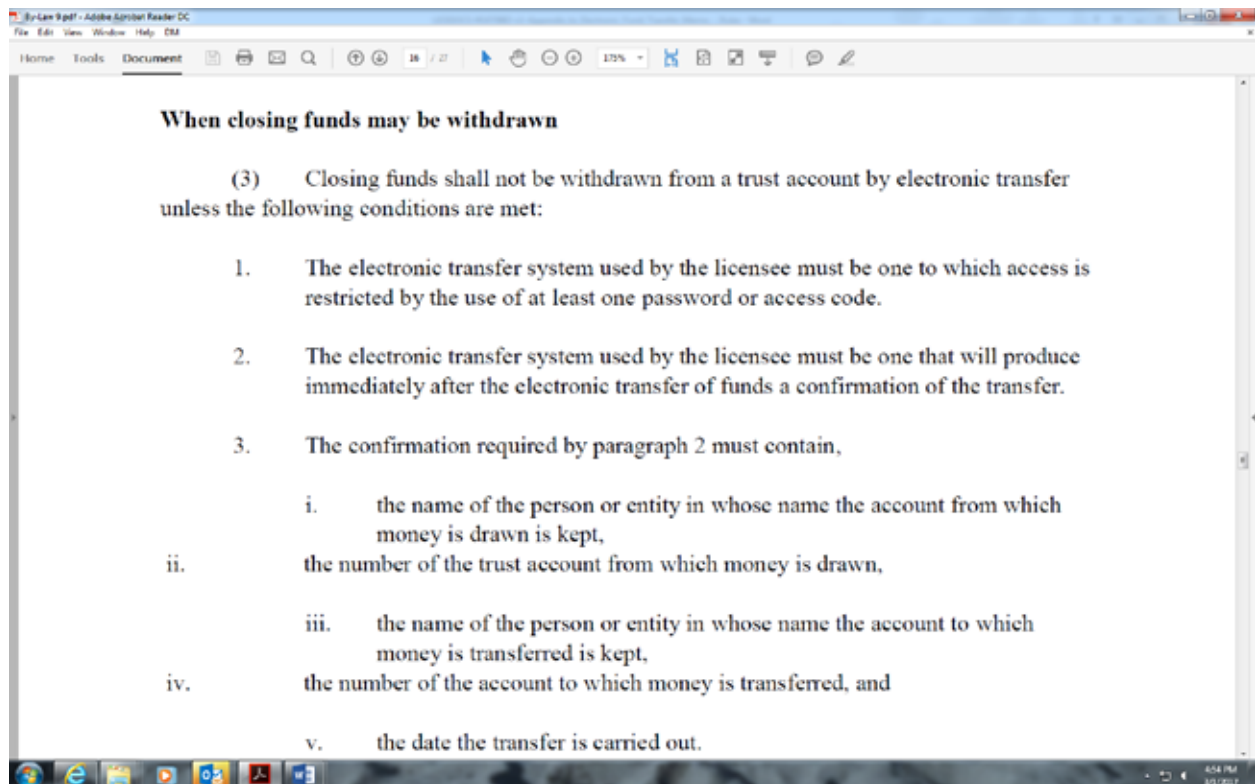


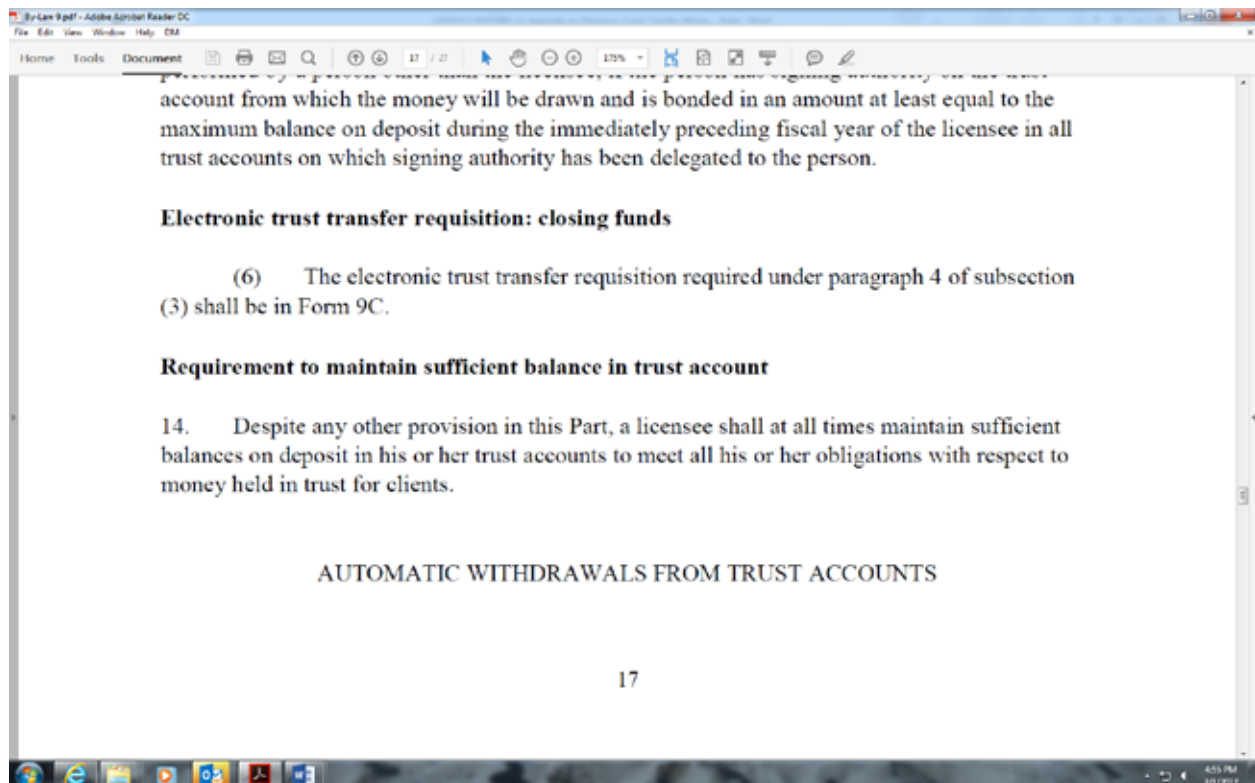
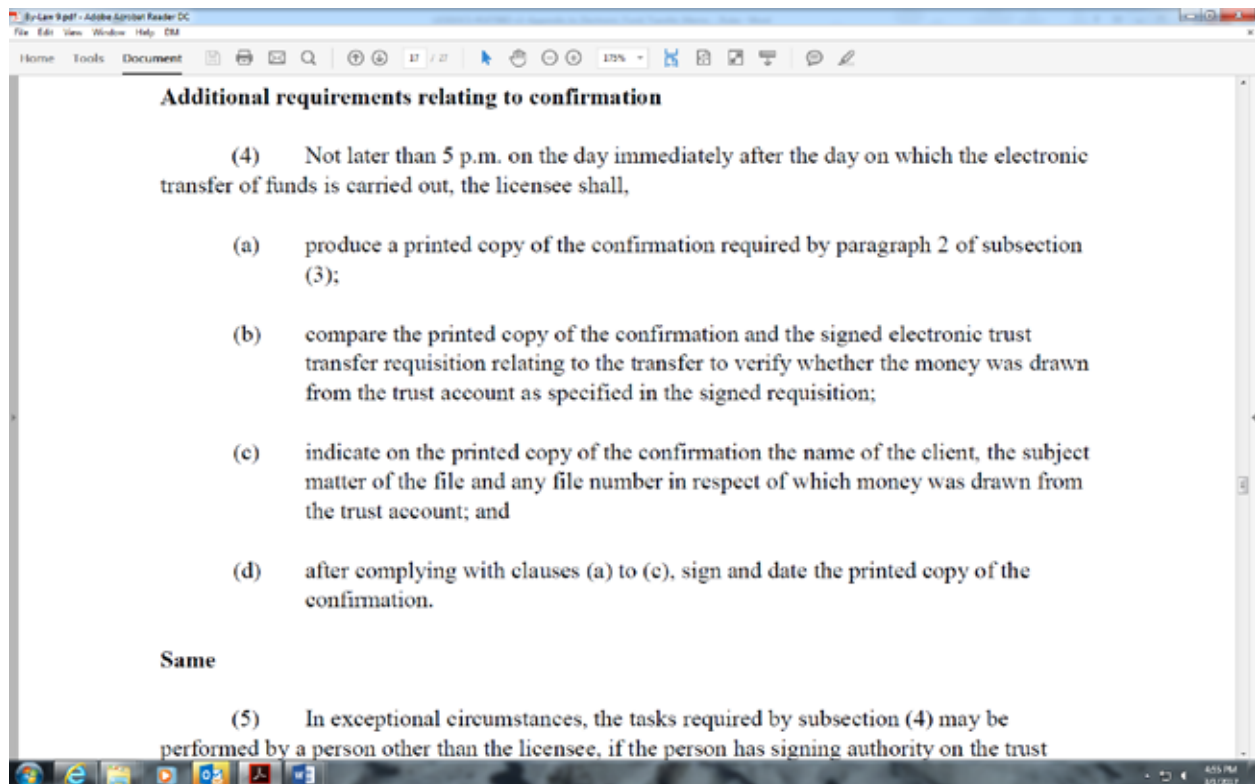


Electronic trust transfer requisition

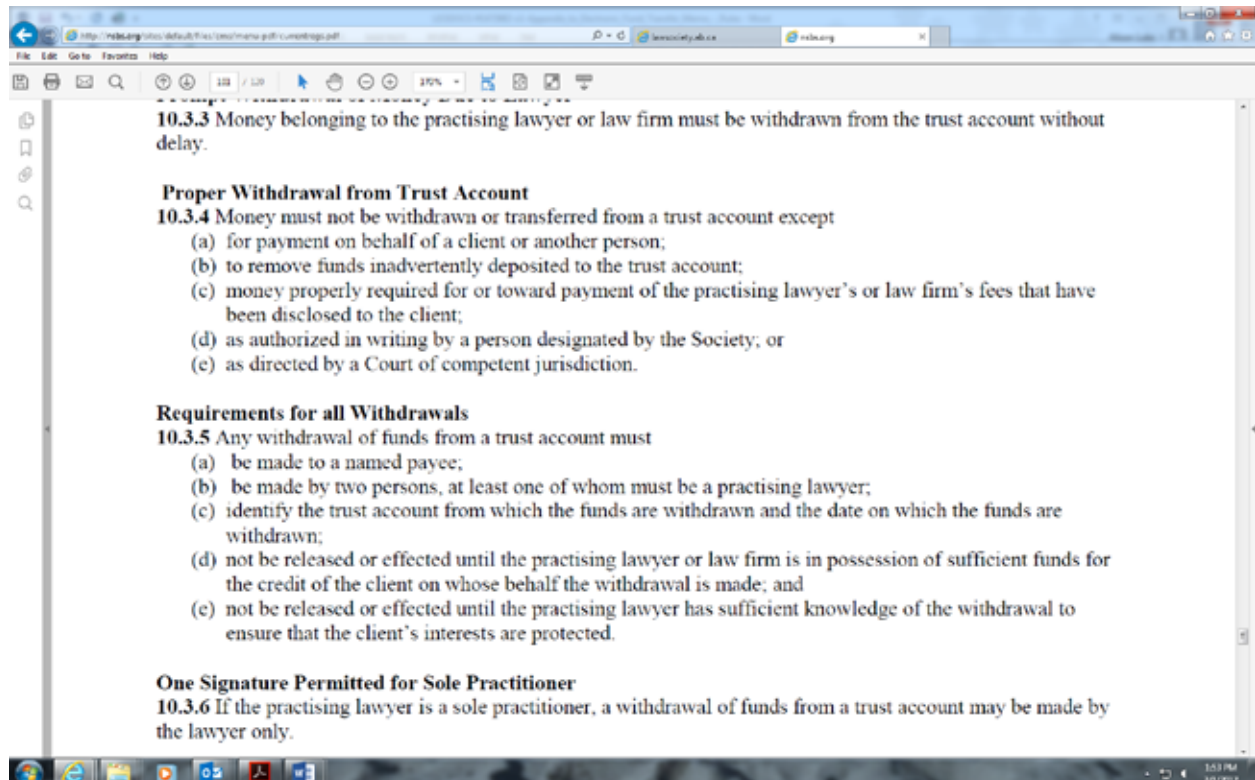
(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.







Nova Scotia



10.3.3 Money belonging to the practising lawyer or law firm must be withdrawn from the trust account without delay.

Proper Withdrawal from Trust Account

10.3.4 Money must not be withdrawn or transferred from a trust account except

- (a) for payment on behalf of a client or another person;
- (b) to remove funds inadvertently deposited to the trust account;
- (c) money properly required for or toward payment of the practising lawyer's or law firm's fees that have been disclosed to the client;
- (d) as authorized in writing by a person designated by the Society; or
- (e) as directed by a Court of competent jurisdiction.

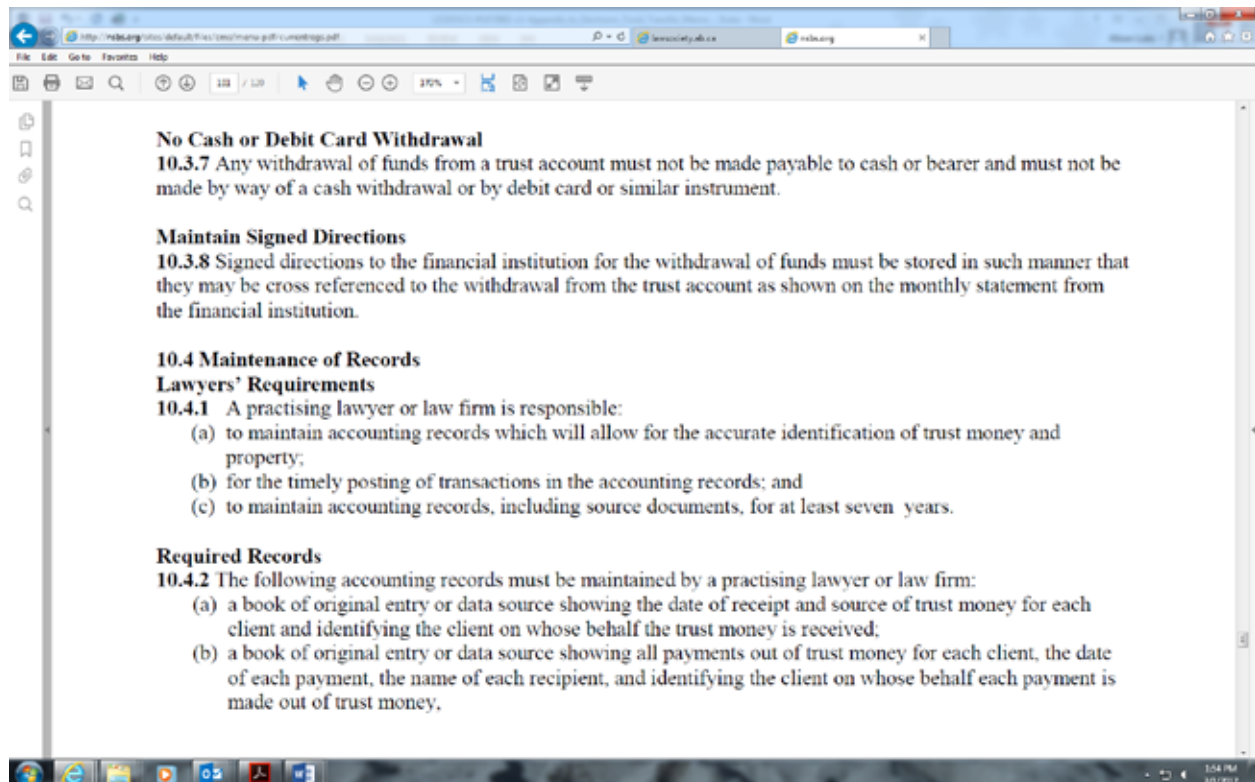
Requirements for all Withdrawals

10.3.5 Any withdrawal of funds from a trust account must

- (a) be made to a named payee;
- (b) be made by two persons, at least one of whom must be a practising lawyer;
- (c) identify the trust account from which the funds are withdrawn and the date on which the funds are withdrawn;
- (d) not be released or effected until the practising lawyer or law firm is in possession of sufficient funds for the credit of the client on whose behalf the withdrawal is made; and
- (e) not be released or effected until the practising lawyer has sufficient knowledge of the withdrawal to ensure that the client's interests are protected.

One Signature Permitted for Sole Practitioner

10.3.6 If the practising lawyer is a sole practitioner, a withdrawal of funds from a trust account may be made by the lawyer only.



No Cash or Debit Card Withdrawal

10.3.7 Any withdrawal of funds from a trust account must not be made payable to cash or bearer and must not be made by way of a cash withdrawal or by debit card or similar instrument.

Maintain Signed Directions

10.3.8 Signed directions to the financial institution for the withdrawal of funds must be stored in such manner that they may be cross referenced to the withdrawal from the trust account as shown on the monthly statement from the financial institution.

10.4 Maintenance of Records

Lawyers' Requirements

10.4.1 A practising lawyer or law firm is responsible:

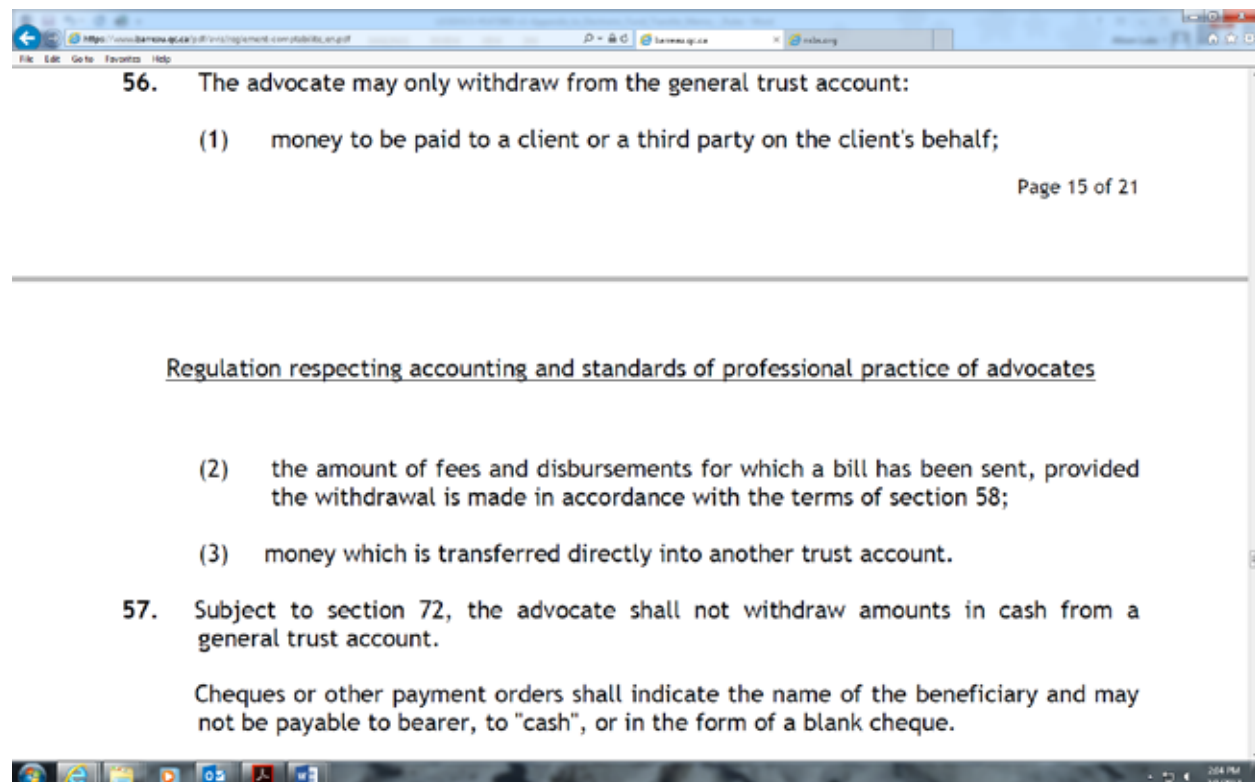
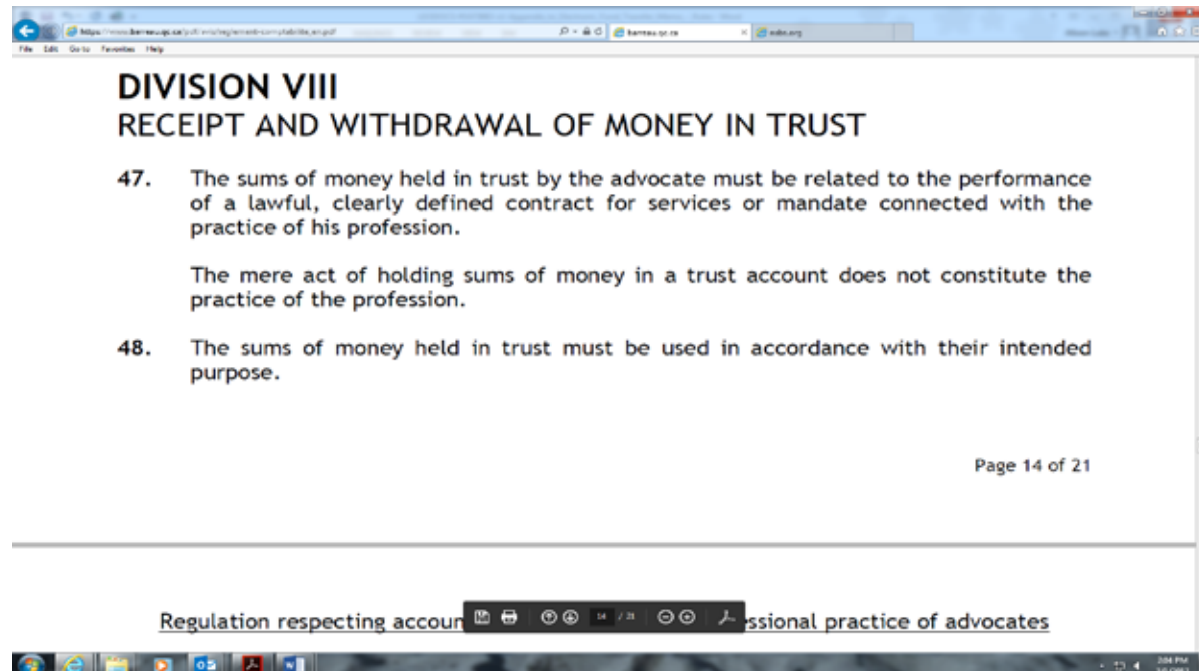
- (a) to maintain accounting records which will allow for the accurate identification of trust money and property;
- (b) for the timely posting of transactions in the accounting records; and
- (c) to maintain accounting records, including source documents, for at least seven years.

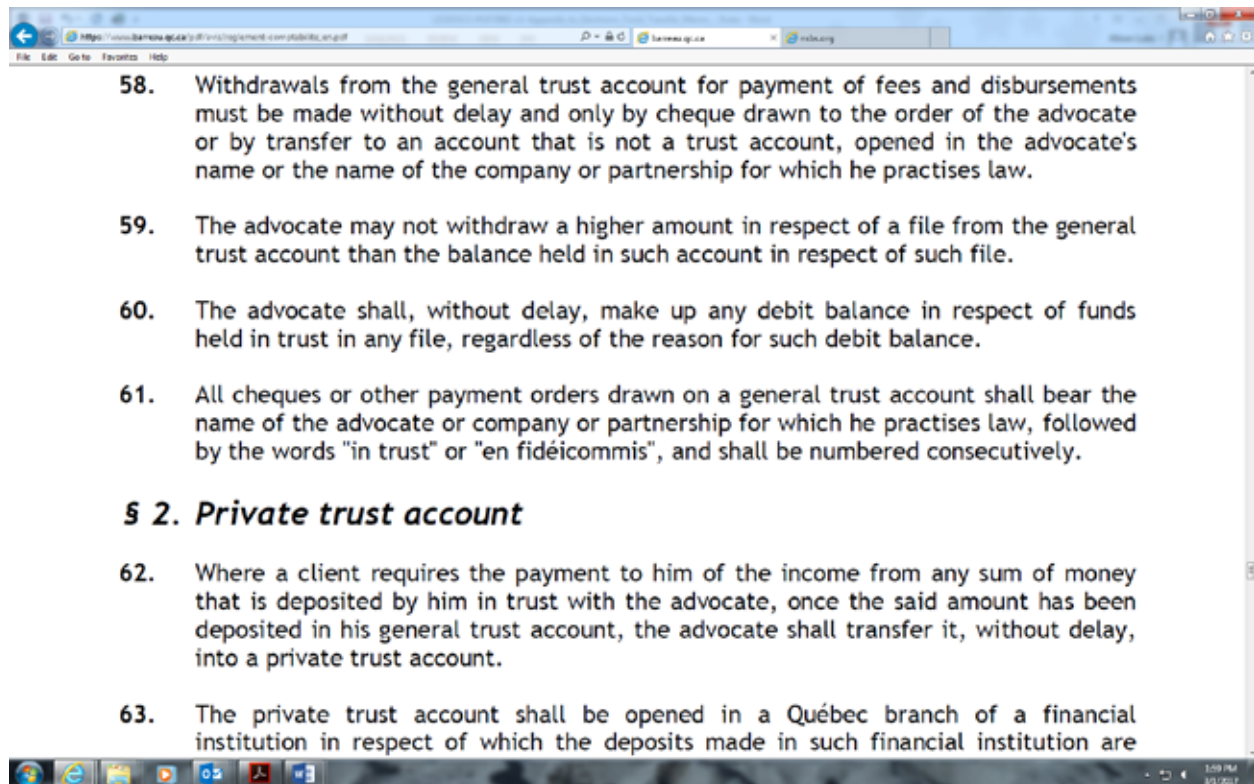
Required Records

10.4.2 The following accounting records must be maintained by a practising lawyer or law firm:

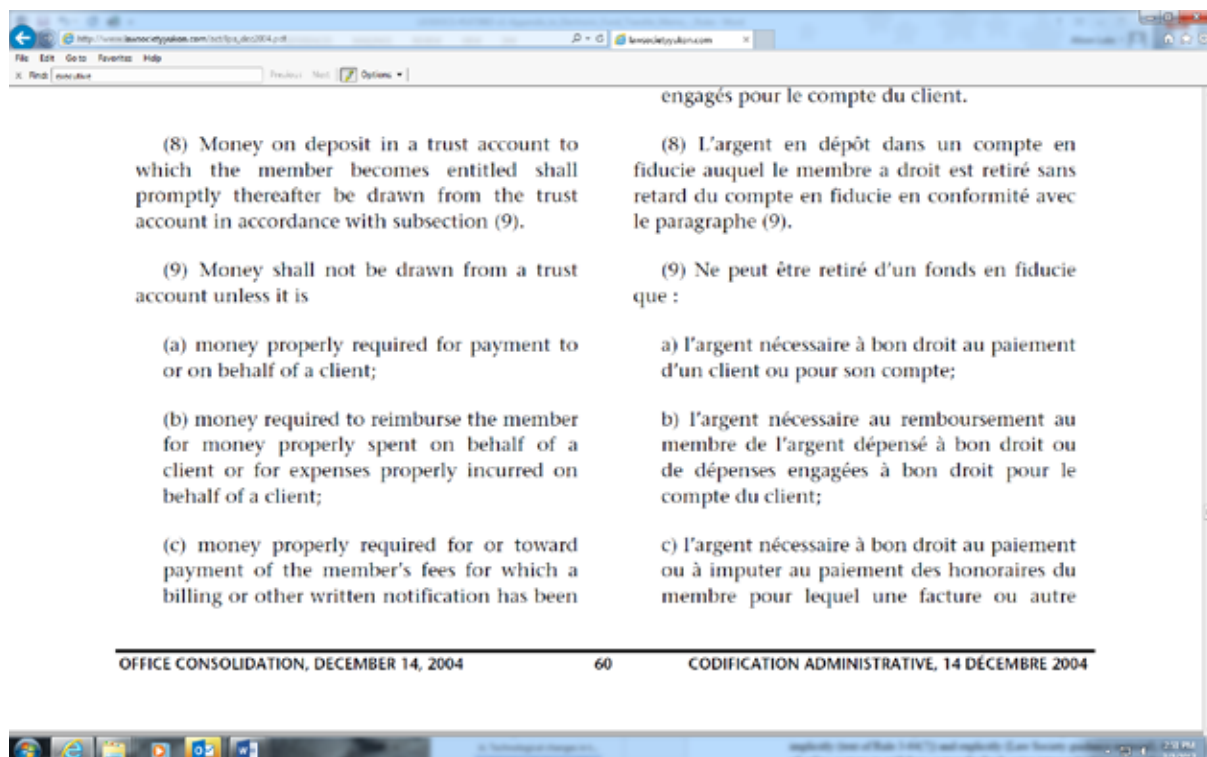
- (a) a book of original entry or data source showing the date of receipt and source of trust money for each client and identifying the client on whose behalf the trust money is received;
- (b) a book of original entry or data source showing all payments out of trust money for each client, the date of each payment, the name of each recipient, and identifying the client on whose behalf each payment is made out of trust money,

Quebec





Yukon





Memo

To: Benchers
From: Executive Committee
Date: March 29, 2017
Subject: Legal Services Society

This memo provides background and advice on one matter for consideration:

1. Legal Services Society (LSS): requires one new appointment by the Benchers, after consulting with CBABC.

1. Legal Services Society

Law Society member, appointed by: Benchers, after consulting with CBABC

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Suzette Narbonne	3 years per term, maximum of 2 terms	1	5/1/2011	4/30/2017

Background

As set out in section 9 of the LSS Act, “[t]he objects of the Society are to assist individuals with their legal problems and facilitate their access to justice, to establish and administer an efficient and effective system for providing legal aid to BC individuals, and to provide advice to the Attorney General respecting legal aid and access to justice for individuals in BC.”

The term of Law Society appointee and current Chair Suzette Narbonne will expire April 30, 2017; she is ineligible for reappointment under the terms of our appointment policy given her length of service. This is a Law Society appointment, to be approved by Benchers after consultation with the Canadian Bar Association, BC Branch (CBABC) Executive.

In a letter to Past President David Crossin, QC dated November 22, 2016 (attached at Tab 1), Ms. Narbonne set out the preferred competencies for this position which include:

- Experience with provision of legal aid

- Knowledge of the social and economic circumstances associated with special legal needs of low-income individuals and cultural diversity of BC
- Knowledge of justice system operations
- Leadership experience with Indigenous communities

She also identified Indigenous services, with particular focus on an action plan toward reconciliation through accessibility, early intervention and prevention and justice reform as a strategic priority of the LSS Board.

This appointment must be made in consultation with the CBABC; it is therefore recommended that the preferred candidate be a member of the CBA and preferably active within that organization in addition to their qualifications. We have consulted with the CBA, providing them with the list of candidates below and have received their advice regarding CBA membership.

Candidates

We have been posting this opportunity on our website and in E-brief since December; this has generated a considerable list of interested candidates; LSS has also recommended two candidates for consideration. Additionally, the Executive Committee has discussed appointing a Bencher to LSS, to help further the Law Society's commitment to taking a leadership position regarding legal aid. To that end, the Committee has considered the application of Bencher Phil Riddell. The entire list of candidates is set out below with brief details and links to their biographical information for your review:

Redacted for personal information.

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Recommendation

In light of the Benchers' recent approval of the Report and recommendations of the Legal Aid Task Force, the Executive Committee recommends appointing Benchers Phil Riddell to LSS to help further the Law Society's commitment to taking a leadership position regarding legal aid. Mr. Riddell's practice experience and familiarity with LSS issues makes him eminently qualified for the position; further, he has met with LSS representatives who have confirmed that he would be an asset to the organization. The Committee also confirms that Mr. Van Ommen has consulted with CBA President Michael Welsh regarding this recommendation.

The Executive Committee therefore recommends that the Benchers appoint Phil Riddell to the Board of the LSS for a three term beginning May 1, 2017.



**Legal
Services
Society**

Providing legal aid
in British Columbia
since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

Tel: (604) 601-6000
Fax: (604) 682-0914
www.lss.bc.ca

Executive Office

November 22, 2016

Mr. David E. Crossin, QC
President
THE LAW SOCIETY OF BRITISH COLUMBIA
845 Cambie Street
Vancouver, BC, V6B 4Z9

Dear Mr. Crossin:

**Re: Appointment to the Legal Services Society ("LSS") board of directors to succeed
Suzette Narbonne, April 30, 2017**

I write about prospective Law Society of BC appointments to succeed me on the LSS Board of Directors. LSS has been active in seeking candidates for the Law Society and CBA's consideration for the vacancy that will arise in May 2017 when my own term expires.

Our own process involves the LSS Board Executive Committee members reviewing applications before a recommendation is made to you. We have met with the two potential candidates and we are pleased to advance these names for the Law Society's consideration.

As you may recall, LSS uses a competency matrix approach to address board vacancies. In this case we are looking for candidates who have the following competencies:

1. Experience with provision of legal aid
2. Knowledge of the social and economic circumstances associated with the special legal needs of low-income individuals and the cultural diversity of BC
3. Knowledge of justice system operations
4. Leadership experience in Indigenous communities.

One of the LSS Board's strategic priority identified is Indigenous services with particular focus on an Action Plan on Reconciliation through accessibility, early intervention and prevention and justice reform. We have identified the following individuals who have expressed an interest in serving on the LSS Board and are passionate about services to Indigenous people:

1. Ray Phillips, QC
2. Linda Thomas

Mr. David E. Crossin, QC
President, The Law Society of BC

Page 1 of 2
November 22, 2016



Both candidates have substantial experience providing legal aid services. Ray Phillips is a criminal lawyer and provides Duty Counsel in the Kamloops First Nations Court. Linda Thomas has a significant background in family and child protection law. Both candidates are well respected in their communities and have significant experience serving Indigenous communities and legal aid clients.

LSS is involved at many levels in discussions on justice reform and we continue to struggle to secure the resources we need to meet our mandate and our clients' needs. We believe that the above candidates' contributions as board members will support the society's ongoing commitment to excellence and strategic priority to engage with BC's Indigenous leadership to develop an LSS Action Plan on Reconciliation.

LSS recognizes that the decision on appointments to the LSS board rests with the Law Society in consultation with the Canadian Bar Association, BC Branch. If there is further detail that we could provide at this time that would be of assistance to your decision I trust that you will let me know. We continue to be grateful for the ongoing support of the Law Society.

In the event that further information would be helpful I trust that Law Society staff will not hesitate to contact me or the LSS CEO, Mark Benton QC, directly.

Yours truly,

Suzette Narbonne,
Chair – LSS Board of Directors

Cc: Caroline Nevin, Executive Director, CBA
Mark Benton, CEO
Renee Collins-Gault, Manager, Executive Support, The Law Society of BC
Gulnar Nanjijuma, Corporate Secretary

Attachments: Bio for Ray Phillips, QC
Bio for Linda Thomas
LSS Board Competency Matrix

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society
of British Columbia



A Recruitment and Nominating Advisory Committee

April 7, 2017

Prepared for: Benchers

From: Executive Committee

Purpose: Discussion and Decision

Committee Process

1. At its February 2017 meeting, the Executive Committee considered a report proposing the creation of a Recruitment and Nominating Advisory Committee. The report was introduced by the President, who noted that the intention behind the suggestion for a Recruitment and Nominating Advisory Committee was to source well qualified candidates for appointments to both internal and external committees and Boards in a more effective and transparent way.
2. The Committee discussed the possibility of retaining professional recruitment services, but thought the work could be done effectively internally and without the additional expense. The current process was discussed, which includes consideration of our Volunteer webpage where candidates can express interest in particular committees and upload their resumes. It was noted that this process was effective to identify candidates who are actively seeking volunteer positions, but would not necessarily be effective to encourage other highly qualified candidates who may be better suited for the positions. The Committee members agreed that the Benchers themselves could also engage in outreach, given their regular and diverse community involvement.
3. The Executive Committee decided to recommend to Benchers the creation of a Recruitment and Nominating Advisory Committee, the draft details and mandate of which would be developed by staff for consideration.

Background

4. During the course of any given year, the President, the Executive Committee and the Benchers are variously called upon to make a number of appointments to internal committees, task forces and working groups and to a number of external bodies.
5. While the issue of whether the Benchers should establish a nominating committee was considered during the 2012 governance review, the Governance Review Task Force (GRTF) discussion revolved largely around the President's authority to appoint internal committees. During consideration of the GRTF recommendation by the Governance Committee in 2013, the Governance Committee "found it difficult to accept the observation in the Governance Review Task Force (GRTF) Interim Report that *"that the Committee appointment process is not as systematic or transparent as it could be."* Overall, the Governance Committee was not persuaded of the need to recommend to the Benchers the creation of a formal nominating committee for the sole purpose of making recommendations once a year.
6. The Governance Committee noted that much of what would be desirable in a committee appointment policy was already provided for in the current appointments policy. The Governance Committee therefore recommended to the Benchers that the current guidelines remain appropriate in guiding the President's discretion in making appointments, and should be confirmed as guidelines. The recommendation was adopted by the Benchers at the December 7, 2013 meeting.

Issue

7. Each year, the President, Executive Committee and Benchers are called upon to make appointments to Law Society committees and task forces and to a variety of external organizations. Some of the appointments are the prerogative of the President, others are specifically within the authority of the Executive Committee and still others require the appointment to be approved by the Benchers.
8. While current Benchers are the principal appointees to Law Society committees and task forces, they are not the only ones appointed. Many committees and task forces have one or more members who are lawyers but not Benchers and in a few cases, even members who are not lawyers.
9. In terms of external appointments, our governance policy provides that Benchers should be appointed to outside bodies only if the body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases, there should be a presumption against appointing Benchers to other bodies.
10. In terms of internal appointments, our current governance policy provides a number of considerations the President should take into account in making appointments, including ensuring that committee membership contains an appropriate mix of Benchers, non-Bencher lawyers and laypersons to ensure both connection to the Benchers and accountability to the membership of the Law Society and the general public.
11. A copy of the current appointments policy is attached as Appendix 1.
12. Since the 2012 governance review, despite efforts to recruit persons other than Benchers to both Law Society committees and to external appointments, the process remains a challenge.
13. An online expression of interest (EOI) form has been in place on the Law Society website since 2013. Since its inception, the EOI form has generated 75 persons for consideration by the Appointments Subcommittee and latterly by the Executive Committee and the President in relation to internal appointments.
14. Of those 75 persons, we have appointed eight to Law Society committees, task forces or working groups since 2012. Of the eight, two were Life Benchers and one was a past Bencher. During the same period, we made over 100 non-Bencher appointments to Law Society committees, task forces, working groups and projects.¹

¹ Over the period, there were just over 800 Law Society committee, task force, working group and project appointments made.

15. Of the 75 persons, we have appointed 16 to external organizations or bodies since 2012.² One was a Life Bencher and one was a past Bencher. We appointed 11 others not on the list of 75 names.
16. While we have made some effort to make use of the EOI process to populate our internal committees and our appointments to external organizations, it has not generally made much impact on our overall appointments.

Other Law Societies

17. Several other Canadian law societies have formal nominating committees. The responsibilities of such committees includes variously recommending appointments to internal committees, assisting with recommendations to external bodies, and assisting with the recruitment, appointment and election of members of the governing body.
18. The Law Society of Upper Canada has very recently created the Treasurer's Appointments Advisory Group. The Group prepared a report on an external appointment process which was considered by Convocation at its February 2017 meeting. The report recommends, among other matters, guiding principles for appointments, methods of recruitment for potential candidates, timelines for consideration and renewal of appointments, the review and assessment of applicants by the Group and reporting to Convocation. A copy of the report is attached as Appendix 2.

Recommendation

19. The Executive Committee recommends that the Benchers establish a Recruitment and Nominating Advisory Committee.
20. The Executive Committee recommends the Benchers adopt the terms of reference set out in Appendix 3 for the Recruitment and Nominating Advisory Committee.

Resolution

21. The suggested resolution that is:

BE IT RESOLVED that a Recruitment and Nominating Advisory Committee be established and that the terms of reference for the Committee be as set out in Appendix 3.

² This result may slightly overstate our reliance on the EOI form for external appointments, as occasionally external organizations have stated a preference for a particular person or persons and we have asked them to fill out the EOI form.

Appendix 1

Appointments policy

1. Objectives

The objective of the Law Society in making appointments or nominations to boards, councils or committees of outside bodies is to ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability to undertake the responsibilities of the position are appointed. The Law Society recognizes that each of its appointees has a duty to serve the best interests of the body to which he or she is appointed, keeping in mind the protection of the public interest in the administration of justice.

2. Term of Office

A Law Society appointment to any position will normally be for a term not exceeding three years, and a total period not exceeding six years, provided that other considerations relating to the 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.

3. Benchers or Non-Benchers

A Bencher should be appointed to an outside body only if that body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases, there should be a presumption against appointing Benchers to other bodies. An example of a circumstance that might rebut that presumption is a Law Society appointment to a newly-created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body's procedures are well established.

4. Consultation

(a) Canadian Bar Association:

- It is generally desirable that a consensus be reached in cases where a body's governing legislation, by-laws or governance policy call for a Law Society appointment in consultation with the Canadian Bar Association.
- A consensus should be attempted in all cases, recognizing that there may be rare instances where the Law Society will appoint someone not approved or acceptable to the Canadian Bar Association.

(b) Outside Body:

- It is generally desirable that, before making an appointment or nomination to an outside body, the Law Society consult the body's chair and senior management regarding applicable appointment parameters
 - appointment parameters include
 - the body's requirements, needs or interests to be addressed by the appointment, including
 - skills, experience and background desired in an appointee
 - prospective appointees who have expressed interest in the appointment to the body, including
 - names, current contact information and resumes
 - the body's receptiveness to their appointment
 - appointment timing preferences and requirements, including
 - term of office, commencement date and date of appointment
 - re-appointment factors, including
 - the incumbent's eligibility and readiness to continue to serve
 - the body's receptiveness to re-appointment of the incumbent

5. Geographic Considerations

The Law Society should consider geographical representation when making appointments to organizations that have a province-wide scope.

6. Equity

The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

7. Appointment of Judges

Where the legislation or by-laws of the body permit, judges are eligible to be appointed to positions by the Law Society.

8. Communication Expectations

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
 - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
 - including any plans, policies or events that
 - materially change the bodies' objects or operations, or
 - could reasonably be considered to be inconsistent with the public interest in the administration of justice
 - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies
 - to protecting and promoting the public interest in the administration of justice
 - to supporting good governance practice by the Law Society and those bodies
 - to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain a listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities
- contact information for inquiries
- directions for submitting expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.



Report to Convocation February 23, 2017

Treasurer's Appointments Advisory Group

Working Group Members

Raj Anand
Suzanne Clement
Cathy Corsetti
William McDowell
Gina Papageorgiou

Purpose of Report: Decision

**Prepared by Jim Varro
(Director, CEO's Office/Corporate Secretary - 416-947-3434)**

FOR DECISION**LAW SOCIETY EXTERNAL APPOINTMENTS PROCESS****MOTION**

1. **That Convocation approve the external appointment process as described in this report.**

Background

2. The Law Society makes or recommends a number of appointments to the boards, councils and committees of outside bodies. The appointments are made or recommended by Convocation or the Treasurer under authority conferred by statutes and the constitutions and by-laws of those outside bodies. The appointments carry statutory and common law responsibilities, powers and duties. A list of these external appointments is at [Tab 8.1](#).
3. Where the Law Society is required to recommend names for appointments, the Treasurer will provide names to Convocation for approval.
4. In some cases the Law Society provides a list of candidates for certain external appointments that are made by the Attorney General or the Lieutenant Governor in Council.
5. In September 2016, the Treasurer's appointed the Treasurer's Appointments Advisory Group to assist him in renewing the appointments process and bringing more transparency and consistency to the process. One of the first tasks of the Group is to present to Convocation a process for making recommendations for external appointments.
6. This report sets out a process for selecting appropriate candidates for Convocation's consideration.

Guiding Principles - Equality, Diversity & Inclusion Principles in the External Appointments Process

7. The objective of the Law Society appointments process is to ensure the appointment of well-qualified persons with the requisite character, knowledge, experience, expertise, willingness and availability to serve and ability to undertake the duties of the position, who would be selected applying the guiding principles described below. This is to be accomplished through a transparent process that ensures equality of opportunity.
8. A key feature of the process is adopting and building into the process a policy that acknowledges the importance of applying principles of equality, diversity and inclusion.

9. Acknowledging and with thanks for the helpful input of the Equity and Aboriginal Issues Committee, the Group proposes that the following be applied in the process for recruitment of those for each external appointment.

POLICY STATEMENT

This policy affirms the Law Society's commitment to promoting and respecting principles of equality, diversity and inclusion in the external appointments process at all stages.

As part of The Law Society of Upper Canada's mandate to ensure access to justice, the Law Society integrates equality, diversity and inclusion values and principles into its policies, programs and procedures.

The Law Society recognizes the diversity of the legal profession and the public it serves. In fulfilling the specific criteria established by a board, council or committee to which an appointment is being made, when identifying candidates to appoint or recommend for external appointments, Convocation or the Treasurer will take into account the following:

- Membership in equality-seeking communities, including those based on race, ancestry, ethnic origin, place of origin, citizenship, language, disability, age, creed, sex, gender identity, gender expression and sexual orientation; and
- Knowledge of equality, diversity and inclusion issues.

Particulars of the Process

Sources

10. The Group proposes that the following be utilized as the primary methods of recruitment for potential candidates:
 - a. A communications initiative that includes notices of vacancies as they occur in the Ontario Reports, on the Law Society's website and other media. This is reasonably effective at reaching interested lawyers and paralegals;
 - b. More particularly, for the Law Society's website, vacancies on an ongoing basis should be easily accessed on a dedicated page, for which a link can be provided in the notices described above;
 - c. Re-tooling the Law Society's online resume bank, which can be accessed for review when vacancies arise¹;
 - d. Regular stakeholder contact through which requests for expressions of interest in

¹ The form, which has been utilized in the past to obtain a pool of candidates from which to choose for vacancies, may be found at <http://www.lsuc.on.ca/appointmentapplication/>

appointments as vacancies arise can be made.

11. In addition, for some appointments, the Group may need to perform its own due diligence in reaching out to the legal communities in various locations.

Timelines

12. A record is kept in the office of the Corporate Secretary of all external appointments and expirations of terms. This has been utilized effectively in the past to alert the Treasurer to upcoming expiring terms for appointments, sufficiently in advance to take necessary action to ensure continuity in the Law Society's appointments.
13. The Group proposes that this process continue, but that in addition to an alert to the Treasurer's office, the Group also be informed. The suggested time frame is six months prior to the expiration of the term, which the Group may modify to a shorter period should that prove to be more than sufficient time to manage the appointment process for a vacancy.
14. The alert should identify the appointment, its expiration, the incumbent(s), the basis for the appointment, including any relevant excerpt from a statute, by-law or agreement, and the Convocation at which the appointment should be made to allow for time to communicate Convocation's decision to the relevant party or office prior to the expiration of the current appointee's term.
15. Once choices are confirmed, sufficient time should be allowed prior to the relevant Convocation for decision on the prospective appointees for status checks on the individuals, and sufficient time to replace a proposed appointee with another should an issue be disclosed through the status check.
16. It is understood that the Group may be required to adapt this timeframe and be flexible in order to meet an urgent request for appointment, should an exceptional situation arise.

Review and Assessment of Applicants

17. In keeping with the policy and criteria for appointments described in paragraphs 7 through 9 above, the Group will review current vacancies and suitable candidates with the Treasurer for recommendation to Convocation.
18. The Treasurer will then either appoint individuals directly as authority permits or as required refer the recommended names to Convocation for decision.
19. The choice of individual(s) will be guided by the requirements set out in the governing document for the appointment (e.g. statute, by-law, agreement). For example, in some cases, the appointment requires an individual from a particular geographic location, and in

others, three names may be required to satisfy the appointment requirements.

20. If the requirements of the position permit and unless circumstances suggest a different approach, incumbents should be given the opportunity to indicate a willingness to stand for reappointment, and that should be considered in providing appropriate names for appointments.

Reports to Convocation

21. The Group's work should be accomplished within a timeframe ahead of the Convocation at which a decision is to be made that will permit sufficient consideration of candidates and an informed decision on the appropriate names to be provided to Convocation.
22. Once the final list of names has been confirmed by the Treasurer, a report will be prepared for an *in camera* session at Convocation, as appropriate, where benchers will have the opportunity to review relevant material about the appointment and the proposed candidates, ask questions and make a decision.
23. The request for decision would usually be made through a Treasurer's report to Convocation or where possible in an appointments motion in the consent agenda. Where appointments are conclusive, Convocation's decision will be made public at the appropriate time.

LAW SOCIETY OF UPPER CANADA EXTERNAL APPOINTMENTS

ORGANIZATION	ELIGIBLE APPOINTEES	APPOINTED BY	LENGTH OF TERM
Civil Rules Committee	Lawyers (4)	Law Society	3 years
Family Rules Committee	Lawyers (4)	Law Society	3 years
Federal Judicial Advisory Committee	Representatives (3)	Justice Minister selects from a list of 3 names provided by the Law Society	2 years
Judicial Appointments Advisory Committee	Lawyer	Law Society	3 years
Justices of the Peace Appointments Advisory Committee	Lawyer (one for each region)	Attorney General selects from a list of 3 names provided by the Law Society	3 years
Justices of the Peace Review Council	Lawyer	Attorney General selects from a list of 3 names provided by the Law Society	4 years
Legal Aid Ontario Board of Directors	Representatives (5)	Attorney General selects from a list of 3 names provided by the Law Society	2 or 3 years, to be determined by Attorney General
Ontario Judicial Council	Treasurer or other bencher (lawyer)	Treasurer	Not specified
	Lawyer who is not a bencher	Law Society	4 years

RECRUITMENT AND NOMINATING ADVISORY COMMITTEE

TERMS OF REFERENCE

Updated: March 2017

MANDATE

The Recruitment and Nominating Advisory Committee advises the President, the Executive Committee or the Benchers, as appropriate, about potential appointees to other organizations to which the Law Society makes appointments and to Law Society committees, task forces and working groups when appointees other than Benchers are required. The Committee actively seeks out well-qualified persons with the requisite character, knowledge, experience, expertise and willingness to serve and fulfill the responsibilities of the appointment.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Chair and Vice-chair should be members of the Executive Committee.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. Quorum consists of at least half of the members of the Committee (Rule 1-16(1)).

ACCOUNTABILITY

The Committee is accountable to the Benchers.

REPORTING REQUIREMENTS

The Committee provides reports as required on all external appointments and when requested to do so by the President, on internal appointments.

DUTIES AND RESPONSIBILITIES

1. To actively seek out qualified candidates for upcoming appointments.
2. To consider and evaluate persons who have expressed interest in appointment to Law Society committees, task forces and working groups and to the boards and committees of other organizations.
3. To apply the Benchers policies on internal and external appointments in considering and evaluating potential appointments.
4. To make recommendations from time to time to the President, the Executive Committee or the Benchers, as appropriate, about potential appointees to available appointments.
5. To ensure that the Benchers policies on internal and external appointments reflect best practices for appointments and the needs of the Law Society.

6. To take on such other duties as the Benchers may assign from time to time.

STAFF SUPPORT

Manager, Executive Support

DRAFT

From: [REDACTED]
Sent: Tuesday, February 28, 2017 8:10 AM
To: Tim McGee, QC <TMcGee@lsbc.org>
Subject: JAG File No. 425491 - Women's Right to Vote event

Mr. Timothy McGee
 Chief Executive Officer and Executive Director
 Law Society of British Columbia
 Email: TMcGee@lsbc.org

Dear Mr. McGee:

On behalf of the Government of British Columbia, thank you for your support and attendance at the recent celebration at the Vancouver Law Courts recognizing 100 years of women's suffrage in British Columbia.

Joined by my colleague and emcee, the Honourable Linda Reid, it was a pleasure and honour to share the celebration with over 400 attendees, distinguished guests, speakers, students, teachers, public citizens and sponsors. The Right Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada and the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, provided not only historical, legal and political context, but they also offered inspirational commentary for current and future generations. Many thanks to the Honourable Madam Justices Elizabeth Bennett and Mary Newbury for their actions in originating this event.

The students from Killarney Secondary School presented a wonderful display of slam poetry, film, music and theatre that captured the essence of bringing historical women's suffrage to life. Complemented by contributions from the Royal BC Museum, the celebration was truly a unique opportunity to showcase 100 years of women's right to vote in British Columbia.

With appreciation for Equal Voice BC in creating the free event to the public, it was a welcome environment for celebrating this important milestone. I also recognize their ongoing efforts in increasing women's representation among elected officials. Founded in 2001, Equal Voice brings women and men together from across the political spectrum in its nine chapters across the country. Equal Voice regards the equal representation of women in Canada's Parliament, in our provincial/territorial legislatures, and on municipal and band councils, as a fundamental question of fairness for women in terms of their access to Canada's democratic institutions.

And to the event sponsors and supporting law firms of Miller Thomson, Lawson Lundell and Bennett Jones, their contributions made this special celebration possible. Please take a moment to see the [press release and video](#) of the event.

As British Columbia's Attorney General and Minister of Justice, I am truly honoured to represent the government in contributing to our fair and sustainable justice system. The Government of British Columbia will continue to build a strong economy and secure tomorrow to ensure that access to justice is supported by innovation and accountability, whereby all citizens can access justice through supported programs and self-service.

I look forward to continue working with our many partners, stakeholders and citizens in achieving even greater reforms in our justice system – one that is fair, protects all peoples, and one in which the public has the highest confidence.

Yours very truly,

Original signed by:

Suzanne Anton QC
Attorney General
Minister of Justice