The Law Society of British Columbia

Agenda

Benchers

Date: Saturday, May 6, 2017

Time: **7:30 am** Buffet breakfast
8:30 am Call to order

Location: Spirit Rooms, Inn at Laurel Point

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.***

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.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda • Minutes of April 7, 2017 meeting (regular session) • Rule 1-9 - General Meetings by Internet Access • Rule Revision: Qualifications of Principals • External Appointments: Vancouver Foundation	1	President	Tab 1.1 Tab 1.2 Tab 1.3 Tab 1.4	Approval Approval Approval
GUEST PRESENTATIONS					
2	Remarks from Treasurer of Law Society of Upper Canada		Paul Schabas, Treasurer, Law Society of Upper Canada		Presentation

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
3	Strategic Plan Review Process: Mental Health Initiative		Brook Greenberg		Discussion
EXECUTIVE REPORTS					
4	President's Report • TRC Advisory Committee Update		President		Briefing
	• Bencher Calendar				Briefing
	• Briefing by the Law Society's Member of the Federation Council				Briefing
	• Report on Outstanding Hearing & Review Decisions			(*To be circulated at the meeting*)	Briefing
5	CEO's Report		CEO	Tab 5	Briefing
FOR INFORMATION					
6	• Federation of Law Societies of Canada – President's Report • Three Month Bencher Calendar – May to July			Tab 6.1 Tab 6.2	Information Information

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
IN CAMERA					
7	LIF Restructuring	20	CEO		Discussion/ Decision
8	Update *In camera* • Bencher concerns • Other business		President/CEO		

The Law Society of British Columbia

Minutes

Benchers

Date:	Friday, April 07, 2017	
Present:	Herman Van Ommen, QC, President	Jamie Maclaren
	Miriam Kresivo, QC, 1st Vice-President	Sharon Matthews, QC
	Nancy Merrill, QC, 2nd Vice-President	Christopher McPherson
	Jasmin Ahmad	Greg Petrisor
	Satwinder Bains	Claude Richmond
	Jeff Campbell, QC	Phil Riddell
	Pinder Cheema, QC	Elizabeth Rowbotham
	Barbara Cromarty	Mark Rushton
	Jeevyn Dhaliwal	Carolynn Ryan
	Thomas Fellhauer	Daniel P. Smith
	Craig Ferris, QC	Michelle Stanford
	Martin Finch, QC	Sarah Westwood
	Brook Greenberg	Tony Wilson, QC
	Lisa Hamilton	
	J.S. (Woody) Hayes, FCPA, FCA	
	Dean P.J. Lawton, QC	
Unable to Attend:	Steven McKoen, Lee Ongman	
Staff Present:	Tim McGee, QC	Michael Lucas
	Deborah Armour	Alison Luke
	Taylore Ashlie	Jeanette McPhee
	Renee Collins	Doug Munro
	Lance Cooke	Lesley Small
	Su Forbes, QC	Alan Treleaven
	Andrea Hilland	Adam Whitcombe
	Jeffrey Hoskins, QC	Vinnie Yuen
	David Jordan	

DRAFT

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Johanne Blenkin	CEO, Courthouse Libraries BC
	Aseem Dosanjh	Past President, Trial Lawyers Association of BC
	Ron Friesen	CEO, Continuing Legal Education Society of BC
	Grand Chief Edward John	Co-Chair, Truth and Reconciliation Advisory Committee
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Bill Veenstra	Vice President, Canadian Bar Association, BC Branch
	Prof. Jeremy Webber	Dean of Law, University of Victoria
	Rolf Warburton	Board Chair, Continuing Legal Education Society of BC

INTRODUCTION

1. Administer Oath of Office

Mr. Van Ommen opened the meeting with an acknowledgment of the Coast Salish peoples, including the Squamish, Tsleil Waututh and Musqueam, on whose traditional territories the meeting was being held.

He then introduced newly elected Kootenay County Bencher Barbara Cromarty and administered her oath of office.

He also noted that item 2.3 "Rule 1-9 – Voting at General Meetings by Internet" was being removed from the Consent Agenda by request by a Bencher, and would be adjourned to next meeting.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on March 3, 2017 were approved as circulated.

The *in camera* minutes of the meeting held on March 3, 2017 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

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:**.**

GUEST PRESENTATIONS

3. Begbie Symbolism

Mr. Van Ommen introduced Grand Chief Edward John, Hereditary Chief of Tl'azt'en Nation and Co-Chair of the Truth and Reconciliation Advisory Committee (TRC Committee), noting Chief John's recent re-appointment as North American Representative to the United Nations Permanent Forum on Indigenous Issues**.**

Chief John acknowledged the Squamish, Tsleil Waututh and Musqueam peoples on whose lands the meeting was being held, and underscored the importance of doing so. He expressed his honour at being invited to speak with the Benchers, and in particular acknowledged appointed Bencher Dan Smith whom he has known for years, and newly elected Bencher Barbara Cromarty. He also thanked the Benchers for their establishment of the TRC Committee, which he noted as an important leadership step by the Law Society towards reconciliation. Steps such as these are important building blocks toward a deeper understanding of the truth of our past, upon which we can move to a better future.

As part of this understanding, the TRC Committee has discussed and provided recommendations regarding the statue of Justice Begbie residing in the lobby of the Law Society building. To help provide a better understanding of the symbolism of this statue to Indigenous peoples in BC, Chief John spoke of the history of the Tsilhqot'in people and their lands, the 19th Century colonizing principles that authorized taking "newly discovered" lands, the Tsilhqot'in's defense of their lands and the subsequent execution of 6 Tsilhqot'in Chiefs ordered by Justice Begbie. This latter event had a profound impact on the Tsilhqot'in people, and all Indigenous peoples in BC that persists today.

To Indigenous people, the statue is a reminder of this Province's colonial past and the hanging of the 6 Tsilhqot'in Chiefs. The TRC Committee recommends replacement of the statue with a more unifying symbol, which represents a small but important step toward reconciliation

Chief John thanked the Benchers for putting their trust in him to co-chair the TRC Committee, and for inviting him to speak to them today.

Following Chief John's remarks, Mr. Van Ommen noted Benchers' earlier discussions on the proposal to replace the Bebgie statue with a more unifying symbol, inviting further discussion on that proposal as well as on the details of any statement the Law Society might make to that effect.

Given the historical context provided, and the wish to ensure that members of the community feel comfortable and included on the premises, it was generally agreed that the statue would be removed and replaced with a more unifying symbol.

Discussion ensued regarding the wording of the Law Society statement advising members and the public of the decision. Opinion was divided regarding the extent to which historical context should be included. Many suggested the inclusion of strong support for the work of the Truth and Reconciliation Commission's Calls to Action and the acknowledgment of difficult truths in our

history to help us work toward reconciliation. Benchers were united in their gratitude to Chief John for his eloquent articulation of historical events, their impacts and their symbolism.

Mr. Smith provided particular thanks to Chief John for all of the work he has done for Indigenous peoples in Canada. Mr. Smith also noted the challenges associated with systemic change, with revisiting principles and policies we were not there to create, but stressed the importance of bringing difficult truths forward to move toward true reconciliation.

Mr. Van Ommen summarized the Benchers' comments and general agreement with the proposal to replace the statue, while also acknowledging the challenges of trying to draft by consensus.

Motion was made (Ms. Merrill, seconded by Mr. Greenberg) to accept the following recommendations of the TRC Committee:

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) [redacted]

[redacted]

The motion was passed unanimously.

Taking into account the comments and suggestions of the Benchers, Mr. Van Ommen would draft a statement and circulate it to Benchers.

He thanked Chief John for coming and speaking with Benchers on this important issue.

DISCUSSION/DECISION

4. Strategic Plan Review Process

Before addressing the strategic planning review process, Mr. McGee provided 2 notes for Benchers' reference: first, the 2016 Annual Report on Performance has now been posted, review of which Mr. McGee recommended as this is the most comprehensive public expression of the Law Society's work in the last year; second, April 9 will mark the 100th anniversary of the Battle of Vimy Ridge, and our website will post the names of Law Society members who participated in that battle to commemorate their contributions.

- **Introduction to Process**

  Mr. McGee provided the Benchers with an overview of the strategic planning process, referring to his memo on the role of Benchers in strategic planning generally. For the Law Society, strategic planning begins with the threshold question: in the next 3 years, what are the strategies that will be most important in advancing our statutory mandate? It is the opportunity to ask fundamental questions about what we need to do differently going forward to sustain success. Over the next few months, staff will provide Benchers with presentations on potential topics of focus to provide context for the formal strategic planning process that will begin in the Fall. He then introduced the Director, Education and Practice Alan Treleaven to begin the first of these presentations on the Admissions Program.

- **Admission Program – Focus on Articling**

  Mr. Treleaven was accompanied by Deputy Director of PLTC Annie Rochette and Manager, Member Services and Credentials Lesley Small.

  Mr. Treleaven provided an overview of the Admission Program, beginning by noting that in March 2016 Benchers approved recommendations for the Admission Program related to articling which included review of articling placement, unpaid or poorly paid articles and upcoming changes at the Law Society of Upper Canada (LSUC) which will impact all Canadian jurisdictions given open lawyer mobility.

  Admission programs and requirements differ across the country. Our own program is a combination of a 10 week Professional Legal Training Course (PLTC) and a 9 month articling placement. Though availability of articling positions and the pay provided is of perpetual concern, we currently do not have any Bencher approved policy outlining the Law Society's commitment to ensuring articles are available or appropriately paid.

  The practice varies both nationally and internationally. The growing gap between the number of law graduates and available articling positions is a major factor in LSUC's current admissions program review. Having tested experiential learning alongside its traditional bar admission training course/articling program, it is now investigating options such as Bar Exams (without training or articling) or restricted licencing.

  Ms. Small then provided some statistics of trends over the last 10 years. There has been an increase in articling placements, from 385 in 2007 to a peak of 501 in 2014. It has since leveled off to 480 for 2015 and 2016, and will likely be 500 in 2017. Our biggest intake is from the three BC law schools; the biggest increase in PLTC students from outside the province comes from the National Committee on Accreditation (NCA) Certification program. In 2007, 34 NCA certified students from outside the country came to BC; in 2015 that number was 115. The largest number of articling placements is with firms of 6-20 lawyers, and there has been a recent increase in articling placements with sole practitioners and firms of 2-5 lawyers.

In 2015, one of the questions on the Lawyer Education Advisory Committee survey of 2-3 year Calls related to articling remuneration. Of the 104 responses, 3 received no pay, 7 received $2000 a month or less, 51 received $2000-$3500 a month, and 43 received greater than $3500 per month. The Committee has recommended we continue to collect information and monitor this situation, particularly with regard to unpaid articles.

In response to a question regarding how the law schools calculate articling placement rates, Dean Jeremy Webber from UVic confirmed that the different universities have different data collection methods. He also noted that there can be a fairly long period between graduation and articling placement, so survey results may differ depending on whether they are sent immediately post-graduation, at 3-6 months, 6-9 months or 9-12 months. In his estimation, by one year post-graduation, most indicate a greater than 90% placement rate for students seeking articles. He also noted that placement rates may differ if data includes responses from students using their law degrees for activities other than articling.

Benchers also asked questions regarding information on BC students using programs outside of BC due to lack of articles here, statistics on rural versus urban placements, job placements after unpaid articles and retention rates on completion generally, and statistics on the number of newly Called lawyers leaving BC or practice generally. Ms. Small will follow up to provide as much of this information as it is currently available.

Ms. Rochette then briefed Benchers on current issues and trends, including the quality of the articling experience. She encouraged Benchers to think about PLTC and articling in tandem when considering learning outcomes and perspectives. In other words, we should be considering what we want students to achieve on completion of the program as a whole.

She noted 3 recent developments impacting admissions training:

- Federation National Competency Profiles
- TRC Calls to Action
- The Institute for the Advancement of the American Legal System's (IAALS) recent Foundations for Practice report.

The latter is the result of a large study aimed at identifying skills and traits necessary for tomorrow's lawyer. Added to the traditional skills associated with lawyers are communications skills, emotional intelligence, passion and ambition and commitment to the rule of law, amongst others. She characterized this study as a "game changer", noting that educators will need to consider these '21st Century skills' when considering legal education.

Mr. McGee summarized the topic, noting that it presented the Admission Program through the lens of availability, pay and quality. He invited Benchers to consider these issues from a strategic planning perspective, to think about what articling should look like in 3 years, to query what our

paramount issues are in BC, and indeed to ask whether we want to address them at all with our plan.

5. Financial Matters

Finance and Audit Committee Chair Miriam Kresivo, QC introduced this item beginning with thanks to Committee members, and Chief Financial Officer Jeanette McPhee and her knowledgeable and helpful staff for all their hard work. She underscored the importance of this work to Benchers, given their fiduciary responsibilities as directors. Financial Reports, Risk Management Plans and Investment Reviews provide necessary information to enable Benchers to assure themselves that finances are being reviewed properly, risks are being managed reasonably and we are investing appropriately.

- **2017 First Quarter Financial Report**

  Ms. McPhee summarized the 2017 First Quarter Financial Report which shows the Law Society appears to be on track at this early juncture. Actual results show a small positive variance of approximately $330,000 which is due mainly to the timing of fees and expenses. Membership is approximately 11600, with 11760 budgeted, indicating that we should be close to the projected amount by the end of the year. We do not yet have First Quarter revenue from Trust Assurance but expenses are on track. The Lawyers Insurance Fund (LIF) also appears on track, and investment returns are 2.6% compared to the benchmark of 1.6%.

- **Finance & Audit Committee: 2016 Enterprise Risk Management Plan (ERM) – Overview**

  Ms. McPhee provided this annual update for Benchers. She noted that review of the ERM ensures we are identifying major risk events and putting mitigation strategies in place to provide reasonable assurance we can achieve our strategic objectives. Comprehensive, detailed reviews of the ERM are done every 3 years; a detailed review of the ERM will be conducted this year.

  The process of review involves identifying, assessing, prioritizing and mitigating risks, and developing, implementing, measuring and monitoring an action plan. The 2016 ERM identifies 32 risks in the regulatory, financial, insurance and operational areas, the latter of which includes staff and working environment. These risks are then assessed and prioritized according to a ranking of likelihood of occurrence and consequence or impact. The annual review examines whether there has been any change to risk or ranking; there are no major changes to report in 2016, although some new management strategies have been highlighted in the report.

  The top 10 risks include two core regulatory risks: actual or alleged failure to fulfill the statutory duties under the *Legal Profession Act* (R6), and actual or alleged failure to appropriately sanction, or deal with a lawyer in a timely way (R5). Two new strategies aimed at mitigating these risks include the Law Firm Regulation Task Force and the

Early Intervention Task Force. The recently implemented Counsel Resource Project is aimed at improving our timely response to issues.

Ms. McPhee reiterated that a more detailed review will take place this year.

- **Investment Review**

Ms. Kresivo briefed Benchers on the Law Society's long term investment portfolio, noting that our investment goals include generating sufficient returns to pay for insurance claims and keeping fees reasonable. The Benchers have delegated this responsibility to the Finance and Audit Committee, which makes decisions and provides recommendations on changes to the investment plan, hires independent expertise on investment management, receives quarterly reporting from investment managers, including compliance reports, and holds meetings with managers to compare investment return performance with benchmarks. The Committee also conducts searches for and selection of new managers as and when required.

Long term investment strategy involves maximizing the long term rate of return subject to an acceptable degree of risk, taking into account the length of time needed to invest.

Following the sale of 750 Cambie in 2015, the decision was made to hire two specialty managers for investment in real estate and mortgages who each invest 10% of the fund, in addition to the existing balanced fund managers who each invest 40% of the fund. This mix of managers ensures diversity which in turn reduces risk.

Balanced fund manager Beutel Goodman exceeded the benchmark rate last year, achieving an approximately 10% return. However, over 4 years their added value is 1.4%; while this exceeds benchmarks, they recently sought to improve by revising their investment strategies. The other core manager, Fiera, has not performed as well in the past year as previously. However, over 4 years they have exceeded the benchmark by 1.3%.

There is only a one year performance history for the mortgage fund manager ACM, who has added 1.4% compared to the index. While mortgages are currently a safe, alternative investment, real estate has not done as well over the short term.

Recent returns over the last 4 years shows a 9.6% rate for the total fund; last year showed a 7.1% return compared to the benchmark of 6%. This fluctuates from year to year, with most years above the benchmark but some below. This meets the expectation of the investment plan.

To close, Ms. Kresivo reminded Benchers of the next Finance and Audit Committee meeting July 6, at which it would be looking at the year to date and reviewing the first draft of budget and fees recommendations.

6. Professional Regulation Department – Overview

Chief Legal Officer Deb Armour provided Benchers with an overview of the Professional Regulation Department as background for the upcoming strategic review process.

She noted that 60 of the approximately 200 Law Society employees work in professional regulation. The department is divided into these areas: Intake and Early Resolution; Investigations, Monitoring and Enforcement; Discipline; Unauthorized Practice; Custodianships; and Litigation Management. These departments work closely with the Discipline, Complainants Review and Unauthorized Practice Committees. The presentation focused on the first three areas.

86% of complaint files were closed at the staff level in 2016. We receive approximately 1200 complaints per year, 248 of which last year involved no further action, 78 were resolved by Intake and Early Resolution, 27 cases were referred to Practice Standards and 88 cases were taken to the Discipline Committee.

The process involves staff reviewing complaints to see if investigation is warranted; the pertinent questions are: do we have substantiation; and, is there an alleged violation. This is challenging work, in which both the complainant and the lawyer involved are unhappy and often under stress. We are fortunate to have a very good team who bring compassion to their work and who are committed to protection of the public while ensuring appropriate fairness to lawyers.

Intake and Early Resolution:

The Intake group acts as a call centre of sorts, receiving approximately 1500 calls or inquiries a year in addition to the complaints we receive. Some of these calls involve people in distress. Our Intake staff are very experienced in directing these people to the appropriate resources.

Staff in the Intake and Early Resolution group are the front lines of the complaint process. As noted above, many incoming complaints are determined to require no further action. However, for those that do, all the lawyers in the Early Resolution group have mediation training, which enables them to resolve many complaints received through informal mediation, in an attempt to repair relationships wherever possible. If a matter warrants further investigation, it is referred to our Investigations group.

Investigations:

Staff in the Investigations group have discretion to close complaints, however, they must refer to the Discipline Committee in four instances: alleged misappropriation, criminal conviction, breach of the ‘no cash’ rule and breach of undertaking. Staff work in tandem with auditors, practice standards, custodianship staff and discipline lawyers on these often complex cases to ensure we are gathering the best evidence available. Through interviews with lawyers and careful review of file materials, Investigations staff now uncover evidence that previously would surface only at the hearing stage.

Discipline:

Lawyers in the Discipline group represent the Law Society at hearings, review board cases, appeals and interim proceedings. We use both in house and external resources to administer the conduct review process. In 2016, 21 citations were issued which is the lowest number in years. 22 hearings and 6 reviews were also completed. Though typically there are 1 or 2 per year, there were no disbarments last year; there were 6 suspensions, 12 fines, 1 reprimand and 2 dismissals.

In response to a question, Ms. Armour clarified that, in situations of multiple citations, staff do not track the outcomes individually, but did confirm that there are many discussions at the staff level to try to capture all allegations appropriately. In response to another question, Ms. Armour noted that, as Chief Legal Officer, it is her responsibility to instruct on appropriate sanctions and confirmed that there is no current plan to review our system of sanctions.

Custodianships:

We take custody and control of all files, bank accounts and accounting records when a lawyer is unable to continue their practice as a result of disciplinary process, illness, disability or death. Our staff liaise with clients and act on their behalf if there is something imminent. The majority of this work is now done in house.

Statistics and trends:

Reviewing complaint frequency by area of law, Ms. Armour confirmed that family cases comprise 27% of all complaints, which is disproportionate to the 11% of lawyers practicing in this area. There were disproportionately fewer complaints in civil litigation, with just 17% compared to the 32% of civil litigation practitioners. 22% of all lawyers practice in the corporate commercial area but there are relatively few complaints.

Reviewing frequency by origin, she noted that 33% originate with the client, 29% with the opposing party, most of whom are self-represented litigants, 4% come from compliance audits, 2% from the other lawyer and .5% from judges, AGBC or courts.

Since 2013, the number of files remaining open after 1 year has increased, due in large part to the increasing complexity of files. Our Counsel Resource Plan has been implemented to assist with the timely resolution and closure of files.

File complexity, more challenges to our processes and a general increase in litigiousness has caused an overall increase in our number of hearing days, which in turn has also impacted timeliness. This pattern appears to be consistent across the country.

At file closure, lawyers are surveyed regarding the process. In the last year, survey results from lawyers were positive. Of the 140 people surveyed, 99% felt the complaint was dealt with fairly, 93% felt it was dealt with quickly and 100% agreed the process was thorough and staff was courteous throughout. 99% were satisfied with communications by staff, and 98% agreed that they were kept informed of developments.

Anecdotal trends show that we have an aging population of lawyers who are practicing longer, in many cases for economic reasons, and often with health issues that leave their practices vulnerable. There is also a decline of lawyers in rural or small communities, and an increasing social or practice isolation.

Challenges for Professional Regulation staff include increasing volume and complexity of work, difficult litigation, more ongoing forensic audits than ever, increased hearing days and more interim proceedings. Incidence of mental health and addiction issues are disproportionately higher in the lawyer population than the population generally and issues related to mental health are disproportionately represented in our processes.

Ongoing recent proactive regulation initiatives, such as our Law Firm Regulation Task Force and Early Intervention Working Group, are aimed at preventing the problems that lead to complaints and discipline. Outreach to the profession remains paramount, with the continual development of informational tools and proactive measures.

Mr. McGee noted that more information on proactive measures, including consideration of diversion and practice audits, will be presented to Benchers in June as a Strategical Planning topic.

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

7. Implementation of Electronic Transfer of Funds Using Online Banking

Having reviewed the Agenda materials supporting this item, Benchers were in agreement with the recommendations provided, specifically, that the Rules should be 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.

Mr. Van Ommen confirmed the matter would be referred to the Act and Rules Committee to provide a draft Rule amendment for approval by Benchers.

8. Appointment to the Legal Services Society Board (LSS)

Mr. Riddell excused himself from this discussion.

Mr. Van Ommen provided Benchers with the background for the appointment to LSS, noting that the Law Society also consults with the CBABC. Given the Law Society's current focus on more active involvement in legal aid, the Executive Committee was recommending the appointment of a qualified Bencher to the LSS Board; at issue before the Benchers was consideration of the appointment of Bencher Philip Riddell. Following consultation, LSS Executive Director Mark Benton, QC confirmed that the LSS Board would have no objections to such an appointment; Mr. Benton echoed that confirmation to Benchers at the meeting as well.

This recommendation marks a change in focus, as our current policy presumes against the appointment of a Bencher to external boards except in limited circumstances.

Concern was noted by one Bencher, who expressed reticence to speak where the matter involved a fellow Bencher, that Mr. Riddell's appointment would not be consistent with the current policy. It was stressed that the comments were not personal to Mr. Riddell, who was highly qualified for the post. Rather it was intended to highlight that the objective of the current policy is to appoint qualified individuals who will serve the outside organization, rather than the Law Society. Our goal of cross engagement with LSS was recognized, but the suggestion was made that such a goal could be met through means other than this appointment. Further, we have had an unprecedented number of well-qualified applicants who meet both the competency requirements provided by LSS and our own equity and diversity considerations. Appointment of a Bencher would appear to be at odds with our goal of increasing the pool of applicants from which we appoint.

Other Benchers expressed agreement with these sentiments. However, others noted that the current policy provides discretion to appoint Benchers in certain exceptional circumstances. Others expressed support for Mr. Riddell's appointment, noting that consideration for the priorities of our organization should be included; the Law Society has spent the last year focusing on the legal aid and access to legal services crisis in this province and closer engagement with LSS could only assist in those efforts.

Following discussion, Ms. Merrill moved (seconded by Mr. Fellhauer) that Philip Riddell be appointed to the LSS Board for a 3 year term beginning May 1, 2017.

The motion passed by a vote of 21 for, 5 opposed, with 1 abstention (with 2 Benchers not present for the vote).

9. Recruitment and Nomination Advisory Committee: Terms of Reference

Mr. Van Ommen introduced this item, noting that the creation of a Recruitment and Nominating Committee was aimed at the active recruitment of qualified individuals from all regions of BC for appointment to both external and internal bodies. The efforts of this committee are meant to augment the current system of providing notice of opportunities and relying on volunteers to come forward. It is hoped that active recruitment will increase the pool of diverse, qualified applicants from which we appoint.

He also noted that such a committee would be an appropriate one to review the current Governance Policy concerning appointment of Benchers to external boards and committees.

Ms. Merrill moved (seconded by Mr. Fellhauer) that a Recruitment and Nominating Advisory Committee be established upon the terms of reference set out at Appendix 3 of the accompanying memo.

The motion was passed unanimously.

EXECUTIVE REPORTS

10. President's Report

Mr. Van Ommen briefed the Benchers on various Law Society matters to which he has attended since the last meeting, including:

- TRC Advisory Committee Update:

  The main portion of this report was provided in the context of item 3 Begbie Symbolism. Mr. Van Ommen also noted that the next scheduled TRC Committee meeting was in 2 weeks.

- Bencher Calendar:

  Mr. Van Ommen invited Renee Collins, Manager, Executive Support to provide an update of technical improvements to the Calendar. Benchers also provided additions for the Calendar which would be added after the meeting.

- Report on Outstanding Hearing & Review Decisions

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

RTC

2017-04-07

The Law Society of British Columbia

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**

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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. The present rule requires that all persons "present" at a general meeting be able to speak at the meeting, and that would continue to apply to those present in person or by telephone. However, the amended rule would not extend that right to those now allowed to participate by way of the internet as there is currently no technology to make this possible.

6. If the Benchers approve these proposed Rule changes, members will be advised in the next EBrief and in this year's AGM Notices about the reasons for this limitation on their ability to participate.

7. Those attending through the internet would be able to vote in real time. A new subrule (6.1) is similar to the current requirements for electronic voting in bencher 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.

8. Amendments to Rule 1-13 prohibit Law Society members from voting more than once or if not entitled to vote, from allowing another person to vote in their place and from assisting a non-member to vote in a general meeting.

9. 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 articled 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 articled 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

The Law Society of British Columbia

Memo

To: Benchers
From: Lesley Small for Act and Rules Committee
Date: April 27, 2017
Subject: **Qualifications to Act as a Principal request for changes to Rule 2-57**

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1. The Act and Rules Committee considered proposed amendments to give effect to the decision of the Benchers to approve the Credentials Committee's recommendation to change the qualification to act as a principal to an articled student. The Credentials Committee had recommended:

    a. That the rules be amended to reduce the period of qualification required to be a principal in Rule 2-57 from 7 of the previous 10 years to 5 of the previous 6 years. Given how the Committee recommends defining "active practice" (see below), the Committee recommends deleting Rule 2-57(2)(a)(ii)

    b. That the rules be amended to reduce the requirement for practice in BC to 3 years of the overall 5 years of practice necessary to qualify to be a principal.

    c. That the words "active practice" in Rule 2-57 be replaced by "full-time practice."

    That the rules be amended to permit lawyers to be a principal who have practiced part-time (less than 25 hours per week). For the purposes of qualification, part-time practice should be counted as one-half of full time practice. Any combination of part-time and full time practice that adds up to five will suffice for the purposes of qualification.

    d. That the rule permitting applications in exceptional circumstances to the Committee to permit a lawyer who does not meet the requirements to be a principal nevertheless remain.

2. The Credentials Committee's memorandum outlining its recommendations and its reasons for making the recommendations is attached.

3. The proposed rule adds three definitions:

"full-time practice" meaning the practice of law and associated activities for an average of more than 25 hours per week;

"part-time practice," meaning the practice of law and associated activities for an over of not more than 25 hours per week; and

"associated activities" which includes practice management, administration and promotion and voluntary activities associated with the practice of law.

The included definition of part-time practice and associated activities is consistent with the eligibility requirements for part-time insurance.

4. The proposed rule also makes it clear that to act as a principal, a lawyer must currently be engaged in full-time practice.

5. The proposed rule calculates any time spent in part-time practice at a rate of 50% for the purpose of full-time practice in calculating eligibility to act as principal. It also extends the 5 out of 6 year full-time practice requirement immediately preceding the articling start date by the length of the period in which the lawyer engaged in part-time articles. In recognition that this period could be extended to up to 12 years, the proposed rule allows that a lawyer may have not practised at all during that time, to a maximum of 24 months.

6. In considering the proposed rule changes, the Act and Rules Committee suggested that it would be helpful to have some examples of the how the proposed rule would operate in relation to the calculation of part-time practice.

7. The Act and Rules Subcommittee considered a number of scenarios, including:

   i. Applicant A wished to act as a principal in 2014. Applicant A practised continuously since being called in 1971. Between January 1, 1993 and December 31, 2013, Applicant A had practised on a part-time basis. On January 1, 2014, Applicant A commenced practising full-time.

      Applicant A did not qualify under the current rules because he had not practised full-time for 3 out of the 5 years immediately preceding the student's articling start date.

      Under the proposed rule, Applicant A would have half-credit for the 11 years in which he practised continuously part-time, which would give him more than the five years required.

ii. Applicant B wished to act as a principal in 2015. Applicant B was called in 2005 and practised full-time until June 2007. Applicant B practised part-time between July 2007 and June 2014 and full-time since July 2014.

Applicant B would get half-credit for about a year plus full credit for six years before that.

iii. Applicant C applied to act as a principal in 2016. Applicant C was called in July 2006. From September 2006 until February 2009 Applicant C was a non-practising member. Applicant C returned to practice in February 2009. During the period March 2009 to July 2009 and since June 2013 to August 2016, Applicant C had practised on a part-time basis.

Applicant C would get credit as follows:

Part-time practice from 2013-2016 = half credit years	1.6
Full-time practice from 2009-2013 = full credit years	4

8. Draft amendments are attached in redlined and clean versions, together with a suggested resolution for their adoption. The Act and Rules Committee recommends that the Benchers adopt the proposed changes.

Attachments: memo
draft amendments
resolution

The Law Society of British Columbia

Memo

To: The Benchers

From: The Credentials Committee

Date: January 4, 2017

Subject: Qualifications to act as Articling Principal

Purpose

This memorandum recommends that the Benchers approve in principle amendments to Rule 2-57, which sets out the requirements necessary to qualify to be a Principal to an articled student. In particular, the Committee recommends a reduction in the number of years of overall practice and the number of years of practice in British Columbia in order to qualify. This memorandum sets out the rationale for the recommendation.

Background

The object and duty of the Law Society of British Columbia (the "Law Society"), set out in s. 3 of the *Legal Profession Act*[1] is to uphold and protect the public interest in the administration of justice. In discharging this mandate, the Law Society must, among other things, ensure the independence, integrity, honour and competence of lawyers, and establish standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission. Ensuring that students in the Law Society admission program are trained, during their articling period, by competent, experienced lawyers is a necessary part of discharging mandate. These requirements are intended to protect the public interest in the administration of justice by ensuring that the lawyers who supervise and guide articled students towards competency in practice and an understanding of their professional responsibilities have sufficient knowledge and experience both to serve as role models for their students and to convey concepts of professionalism.

[1] S.B.C. 1998 c. 9

Prior to 2002, articling principals were required to have been in full time practice for not less than four years immediately preceding the articling start date, either in BC or in Canada, and not less than three of those four years must have been spent practising in BC or in the Yukon territory as a member of the Law Society of BC. There was also no limit on the number of articling students one principal could supervise.

In 2002, the Law Society's Task Force on Admission Program Reform (the "Task Force") recommended (amongst other things), that the number of years of practice experience needed to qualify as a principal be increased to seven years, of which the previous five years had to be in BC; the remaining two years could be in other provinces. The Task Force also recommended limiting each principal to a maximum of two students at one time.

The recommendation to increase the required number of practice years from four to seven years appears to have been connected to the recommendation to limit the number of students each principal could supervise. The Task Force decided that an effective way to enhance the learning and supervisory relationship between student and principal would be to limit a principal to a maximum of two students. But this enhanced relationship also raised a related concern: because supervising an articling student would now be more directly undertaken by a particular lawyer serving as principal, "…some potential principals may not be senior or experienced enough to convey concepts of professionalism and serve as role models for their students."

The Task Force noted that with no limit on the number of students a principal could supervise, a learning relationship may not develop sufficiently between a nominal principal and a student even though the student might gain some experience under the supervision of other lawyers in the firm. The Task Force concluded that someone specific to each student should have primary responsibility for guiding the student towards professionalism and fulfillment of the Law Society requirements. This would be difficult to achieve with a nominal principal who had responsibility for multiple students.

The Task Force Report also addressed the question of whether increasing the required number of years of practice might adversely impact the availability of articling positions. It referenced Law Society research from the time indicating that by increasing the requirement from four to seven years, the number of articling positions available would only be reduced by approximately 1-2% and, further, that the reduction would be lower, or nil, if less than five of those seven years of practice had to be in BC. In the result, the Task Force concluded that increasing the years of practice requirement to 7 years would have either no or, at most, minimal impact on the availability of articling positions.

Over the years, however, there have been numerous applications by principals who do not meet the current requirements to establish "exceptional circumstances" so that they can be principal to a student despite not meeting the seven-year requirement. In many, perhaps most, cases, these applications are made because the student has otherwise been unable to find articles. The result

is that there has been a number of principals over the past 15 years who have less than seven years of practice experience, at least five of which must be in BC. Consequently, the Credentials Committee, and (the Committee understands), the Lawyer Education Advisory Committee have wondered whether the restrictions are too restrictive or outdated and should be amended.

The Lawyer Education Advisory Committee weighed in on this issue in its December 2015 Report to the Benchers, approved by the Benchers in March 2016 (the "Final Report"). It recommended as follows:

> #17. That the Credentials Committee consider recommending to the Benchers that Rule 2-57 be amended to change the qualifications to serve as an articling principal from having engaged in the active practice of law for 5 years instead of 7 years.

Unfortunately, the Final Report provides little substantive discussion regarding the recommendation other than to note that the Credentials Committee had previously considered the question and recommended the change. The Final Report does not address the related issues concerning years of practice in British Columbia, full time practice, and whether the term "active practice" ought to be defined. The main concern seems to have been that the rule prevented qualified lawyers from being principals, and that that could have an adverse effect on the number of available articling positions, although no empirical analysis was undertaken.

Analysis and Discussion

An analysis of whether Rule 2-57 should be amended as proposed requires identifying some of the policy reasons underpinning the recommendation.

As a starting point, one might ask:

- Is the current rule working well? If not, what are the problems associated with the current rule that need to be addressed?
- Is there a shortage of articling positions and principals that would warrant supporting a change to allow more lawyers to qualify to serve as principals?
- Are there other sound policy reasons for changing the requirements under the rule?

1. How is the current rule working?

Generally speaking, the rule seems to work quite well, most of the time. Difficulties arise where a lawyer with fewer than seven years of "active practice" asks to be a principal because discretion given to the Credentials Committee to permit principals with less than the seven year requirement to nevertheless act as a principal is vague and open to much interpretation as to what constitutes "exceptional circumstances."

How is the Committee to exercise its discretion? The circumstances often present challenges because frequently the student has exhausted other possibilities and if the principal is not approved, the student will be unable to find articles. This results in principals with experience below the current regulatory requirement taking on students who have had difficulty finding articles. However, if the lawyer is close to seven years' experience and has run a successful practice, why should the student be denied articles? There will always be a certain arbitrariness to the qualification requirement, and if this is admitted, perhaps the number needs re-examining based simply on the experience that the Committee has gained over the years as it tries to exercise its discretion. It is worth remembering, of course, that if the number of years is lowered, there will always be requests to permit lawyers who do not meet the qualification requirements to be principals nevertheless, unless no discretion is afforded in the rule to do so.

2. "Active Practice"

From a review of the Task Force Report, it is not clear what was originally meant by "active practice." It noted that other jurisdictions in Canada (the Committee reviewed Alberta, Ontario and Manitoba) also require principals to have engaged in "active practice" without defining the term. It could mean that a lawyer must actually be engaged in the practice of law and not just holding a practice certificate; however, the rule goes on to address being engaged full-time, as opposed to part-time. While "part-time" is referenced in the rule for professional liability insurance purposes, "full-time" is not a defined term. Where a lawyer engages "in the practice of law and associated activities for an average of 25 hours or less per week," the lawyer may be assessed the part-time insurance fee set out in Schedule 1 of the Rules[2]. "Associated activities" includes practice management, administration, and promotion and voluntary activities associated with the practice of law. Anything over and above this would require a lawyer to purchase the "full-time" insurance. A potential principal is not asked to declare or describe how often they engage in the practice of law and associated activities as a "full-time" practising member.

The Task Force may have intended the definition of "active practice" to be more than just the "practice of law". An Articling Agreement and Articling Skills and Practice Checklist were developed following the Task Force Report in 2002. The Articling Agreement outlines that "the principal will ensure that the student is instructed on the practice of law and professional conduct". The Articling Agreement also sets out the Benchers' strong recommendation that students obtain practical training and experience in a minimum of three practice areas and that the principal and student will ensure that the student obtains practical training and experience described in the Articling Skills and Practice Checklist. Despite this, a lawyer is not currently required to demonstrate a set standard or minimum experience in the skills listed in the Articling Skills and Practice Checklist in order to qualify to act as a principal.

[2] Rule 3-40(2)

3. Other Considerations and the Public Interest

The public interest requires the Law Society to ensure standards and program for the education, professional responsibility and competence of applicants for call and admission (see s. 3(c) of the *Legal Profession Act*). The public interest therefore requires defensible standards for the qualification of principals that will best meet these requirements.

Logically, one might assume that lawyers who have practised law for a longer period of time would be better mentors for articled students and be better able to teach a student about professional responsibility and how to be a competent lawyer by dint of experience. This rationale appears to have underlain the recommendation from the Admission Program Task Force to increase the eligibility requirement of principals from four to seven years.

If consideration is given to decreasing the eligibility again, a re-examination of the rationale must ensue. To this end, it is worth noting that:

(a) The articling program existed for many years when lawyers were required only to have four years of practice in order to qualify as a principal. The recommendation from the Task Force was to increase the eligibility centred on the Task Force's determination that lawyers needed to be senior enough to convey concepts of professionalism and serve as role models to their students given that the Task Force recommended an increased level of responsibility for each principal by reducing the number of students for whom a principal could be responsible. Has that role fundamentally affected the articling program? Or can it be said that principals were any less devoted to their responsibilities under the old regime than under the new?

(b) What evidence is there that some five year calls are less capable of being a principal? As noted above, there is a discretion under "exceptional circumstances" to permit a lawyer with fewer than seven years to be a principal, and these requests are not rare. If a less-than-seven-year call can be a good principal in exceptional circumstances, why wouldn't that hold true in less than exceptional circumstances? Consequently, the lawyer's *experience*, rather than an arbitrary number of years of practice, is the more important variable in the equation.

It is perhaps stating the obvious that a less onerous "years of practice" requirement should allow more lawyers to qualify as principals. It follows then that if more lawyers become willing to sign up as principals, a larger pool of principals would be available to students. This, in theory, should increase the number of articling positions available in BC. Whether this occurs or not is, of course, dependent on whether more junior lawyers will be prepared to take on a student, but it opens possibilities that would otherwise not exist.

Other Canadian Jurisdictions

A review of other Canadian law societies reveals that BC's seven year requirement is at the high end. The minimum years of practice a lawyer must have to be eligible to serve as a principal ranges from a low of three years in Manitoba, to a high of seven years in BC and New Brunswick.

Committee Consideration

1. Years of Practice

The Committee, after considering the points above and reviewing the history of the matter together with is consideration of the applications that come before it for "exceptional circumstances, determined that the status quo was not the right option.

When the recommendation to increase eligibility from four to seven years was made, it was made in the context of a larger examination of the admission program. The articling process was viewed somewhat as the "weak link" in admissions, given its uneven application. Some principals took on a significant mentoring or training role, while others were almost "nominal" within a firm, identified more for regulatory purposes than for educational abilities. Recommendations were made in 2002 to try to level out the experience that articled students receive whilst articling. Rules requiring three areas of practice, general reporting requirements over the term of articles and an encouragement of mentoring were at the forefront, and the Admissions Program Task Force seems to have been convinced in making its recommendations in 2002 that an increase in the years of experience of the principal would assist in achieving this outcome.

However, if there is now a sense that a barrier is created because people who could be good principals are excluded because of the seven-year requirement, then it is worth reconsidering that requirement. The abilities of the principal are, after all, the key. The number of years of eligibility to qualify will always be a somewhat arbitrary number. If experience in other jurisdictions, as well as past experience in BC, shows that lawyers with less years at the bar can still be good principals, then there is a good policy rationale to consider reducing the years of eligibility. If the Committee is satisfied that one can still create a robust program with lawyers of, for example, five years' experience, there is already rule in place[3] to address circumstances where a lawyer who would qualify on the base level of years in practice may still be disqualified if other concerns (such as complaints or discipline histories) are brought into play.

The main reason against a reduction relates to concerns regarding the competence of principals to guide and supervise articled students. The Committee has concluded that a reduction in the

[3] Rule 2-57(4)

years of full time practice leave will not result in principals not having sufficient experience to develop the competency, skills and experience to supervise articled students. The Committee recognizes that a risk arises with this determination, but believes that there will always be somewhat of an arbitrary line around where competence is presumed.

Noting that the current requirements of Rule 2-57 were more onerous than those of other jurisdictions, the Committee recognized that a reduction in years of practice was merited. While the principal/student relationship should be a mentor and teaching relationship, the Committee is willing to accept that mentoring can occur even where a principal may be relatively junior, although that will of course depend somewhat on the principal's skills as a mentor. It is also important to keep in mind, the Committee concluded, that the role of a principal is not so much to teach substantive law and procedure, but rather to pass on wisdom gained with experience about how to use substantive law and procedure in real-life situations, and to pass on wisdom concerning the application of ethical and professional considerations to those same real-life examples. However, the Committee recognized that there is an arbitrary line to draw as to when one ought to have enough practical experience to be useful as a principal, and in any event, it will always vary from lawyer to lawyer.

The Committee notes that the current rule is written in a way to recognize that requiring the current seven year requirement to be continuous may prevent experienced lawyers who have taken a recent period away from practice (often for maternity or paternity reasons) from becoming a principal. The Committee recommends retaining this aspect of the rule but recommends a reduction in the period of absence from practice to one year.

Consequently, the Committee recommends that the period of qualification in Rule 2-57 be amended from 7 of the previous 10 years to 5 of the previous 6 years.

Recommendation 1:

That the rules be amended to reduce the period of qualification required to be a principal in Rule 2-57 from 7 of the previous 10 years to 5 of the previous 6 years. Given how the Committee recommends defining "active practice" (see below), the Committee recommends deleting Rule 2-57(2)(a)(ii)

2. Practice in BC

The Committee has routinely approved lawyers who have many years of practice but do not necessarily have five years of practice in British Columbia. In most instances, the Committee has considered that their many years of practice in another jurisdiction amount to "exceptional circumstances". The Committee therefore questioned the need for principals to have spent at least five years of their practice in BC. The requirement seemed outdated.

The Committee recognized that practical experience could be gained from practice in another province – that is, one can gain practical experience in the application of substantive law, procedure, ethics and professionalism by drawing on examples from practice gained in another province. The Committee concluded that *some* experience in BC was necessary, however, because some law (particular family law) is very BC specific. However, the Committee recognized the current requirement that in excess of 70% of the principals practice to have been in BC (five out of seven years) was excessive, given the rational that underlies lawyer mobility in Canada.

The Committee's recommendation was that this requirement be reduced to three years of the five years of practice that it now recommends be required to qualify as a principal.

Recommendation 2:

That the rules be amended to reduce the requirement for practice in BC to three years of the overall five years of practice necessary to qualify to be a principal.

3. Part time Practice

Does "active practice" require full-time practice? Or can the requirement be met through part-time practice? And can a part-time practising lawyer qualify to be a principal? The Committee debated these questions at some length.

The Committee first considered what "active practice" should mean. It concluded that it should mean full time practice. While the Committee noted that "full time practice" is also not defined, it is clearer in meaning than "active practice."

The Committee next considered whether a principal engaged in something less than full-time practice should be permitted to qualify to be a principal. The Committee noted that the current rules[4] provide a formula for dealing with part-time practice for the purpose of qualifying to be a principal. The Committee agreed that the rules should continue to do so. Many senior lawyers may be currently engaged in part-time practice but they could still be excellent principals. The Committee was also mindful that younger lawyers, particularly women, may have taken the option of part-time practice for work-life balance. The fact that they may not have been engaged in full-time practice for a five year period immediately preceding taking a student should not be a presumptive bar to their qualification.

The Committee agreed that it would have concerns over a five year call who only practised one day per week acting as a principal. It was less troubled by a more senior lawyer who had practised 25 hours per week continuously over a longer period of time being a principal. It therefore debated where the right balance could be struck. The Committee concluded that for the

[4] Rule 2-57(2)

purposes of "part-time practice" in the context of qualifying to be a principal, the definition used for insurance purposes (less than 25 hours per week) should be adopted.

The Committee next considered how part-time practice should be addressed. After a considerable amount of discussion, the Committee settled on recommending that part-time practice should presumptively could as one-half of full time practice. Using this formula, the Committee agreed to recommend that, counting part-time practice as one-half of full time practice, any combination of the two that totaled five years would qualify an applicant to be principal. For example, a lawyer with two years of full time practice (anything over 25 hours per week) and six years of part-time practice would qualify.

The Committee also considered whether a *current* part-time practising lawyer could qualify to be principal to a full-time student.[5]After making enquiries of the Lawyers' Insurance Fund and debating the issue further, the Committee concluded that the rules should not permit a part-time practising lawyer to be principal to a full-time student. The principal is liable for errors caused by the student. Where the principal has part-time insurance, liability issues could arise that, the committee believes are best to be avoided when trying to protect clients' interests and to act overall in the protection of the public interest.

Recommendation 3:

That the words "active practice" in Rule 2-57 be replaced by "full-time practice."

That the rules be amended to permit lawyers to be a principal who have practiced part-time (less than 25 hours per week). For the purposes of qualification, part-time practice should be counted as one-half of full time practice. Any combination of part-time and full time practice that adds up to five will suffice for the purposes of qualification.

Given this recommendation, the Committee recommends that Rule 2-57(2)(a)(ii) be deleted.

4. Exceptional Circumstances

The Committee debated the "Exceptional Circumstances" provision.

As stated above, this provision can be a complicating factor, as the circumstances that give rise to requests to consider exercising the discretion vary widely and there is little guidance about how to exercise it. The Committee recognizes, of course, that the discretion is that of the Committee and it would be contrary to the principles of administrative law to fetter its exercise.

[5] The Committee's existing policy is to allow part-time practitioners to act as principals to part-time students. The Committee's concern has been the level of supervision afforded to a full-time student with a part-time mentor.

Consequently, the Committee considered whether the rule allowing for the exercise of discretion should itself set out minimum requirements or otherwise seek to create regulatory parameters around its exercise. The Committee was uncomfortable with this approach. In essence, the Committee was concerned that doing so would encourage applications for what would really be a lower standard of qualification and may be hard for the committee to reject.

The Committee also considered whether the ability to ask the Committee to exercise a discretion in exceptional circumstances should simply be removed altogether. Recognizing, however, that the Committee acknowledges that the line it draws on qualification requirements concerning years and location of practice will always be somewhat arbitrary, the Committee was uncomfortable recommending that it should be foreclosed from ever considering meritorious requests.

In the end, therefore, the Committee decided to recommend that the discretion to consider "exceptional circumstances" be left in the rules. The Committee will attempt to create some non-binding guidelines around its exercise for the consideration, of future Committees, but that will not be binding on them.

Recommendation 4

That the rule permitting applications in exceptional circumstances to the Committee to permit a lawyer who does not meet the requirements to be a principal nevertheless remain.

Summary of Recommendations

Recommendation 1:

That the rules be amended to reduce the period of qualification required to be a principal in Rule 2-57 from 7 of the previous 10 years to 5 of the previous 6 years. Given how the Committee recommends defining "active practice" (see below), the Committee recommends deleting Rule 2-57(2)(a)(ii)

Recommendation 2:

That the rules be amended to reduce the requirement for practice in BC to three years of the overall five years of practice necessary to qualify to be a principal.

Recommendation 3:

That the words "active practice" in Rule 2-57 be replaced by "full-time practice."

That the rules be amended to permit lawyers to be a principal who have practiced part-time (less than 25 hours per week). For the purposes of qualification, part-time practice should be counted as one-half of full time practice. Any combination of part-time and full time practice that adds up to five will suffice for the purposes of qualification.

That Rule 2-57(2)(a)(ii) be deleted.

Recommendation 4:

That the rule permitting applications in exceptional circumstances to the Committee to permit a lawyer who does not meet the requirements to be a principal nevertheless remain.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Admission program

Principals

2-57 (1) A lawyer engaged in full-time practice may act as principal to no more than 2 articled students at one time.

(1.1) In this rule

"associated activities" includes practice management, administration and promotion and voluntary activities associated with the practice of law;

"full-time practice" means the practice of law and associated activities for an average of more than 25 hours per week;

"part-time practice" means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must have

(a) engaged in full-time practice in Canada for 5 of the 6 years immediately preceding the articling start date, and

(b) spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in

(i) British Columbia, or

(ii) Yukon while the lawyer was a member of the Society.

(2.1) When a lawyer engages in part-time practice

(a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and

(b) the 6-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer is not engaged in the practice of law does not exceed 24 months in the entire period.

LAW SOCIETY RULES

(3) In exceptional circumstances, the Credentials Committee may allow a lawyer

(a) who does not qualify under subrule (2) to act as principal to an articled student, or

(b) to act as principal to more than 2 articled students at one time, despite subrule (1).

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

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"part-time practice" means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), ~~To~~ to qualify to act as a principal, a lawyer must have

(a) engaged in ~~the active~~ full-time practice ~~of law~~ in Canada

~~(i)~~ for ~~7~~ 5 of the ~~10~~ 6 years ~~, and~~

~~(ii) full-time for 3 of the 5 years~~

immediately preceding the articling start date, and

(b) spent at least ~~5~~ 3 years of the time engaged in the practice of law required under paragraph (a) ~~(i)~~ in

(i) British Columbia, or

(ii) Yukon ~~Territory~~ while the lawyer was a member of the Society.

(2.1) When a lawyer engages in part-time practice

(a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and

LAW SOCIETY RULES

(b) the 6-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer is not engaged in the practice of law does not exceed 24 months in the entire period.

(3) In exceptional circumstances, the Credentials Committee may allow a lawyer

(a) who does not qualify under subrule (2) to act as principal to an articled student, or

(b) to act as principal to more than 2 articled students at one time, despite subrule (1).

PRINCIPALS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-57 (1) and (2) and substituting the following:

(1) A lawyer engaged in full-time practice may act as principal to no more than 2 articled students at one time.

(1.1) In this rule

"associated activities" includes practice management, administration and promotion and voluntary activities associated with the practice of law;

"full-time practice" means the practice of law and associated activities for an average of more than 25 hours per week;

"part-time practice" means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must have

(a) engaged in full-time practice in Canada for 5 of the 6 years immediately preceding the articling start date, and

(b) spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in

(i) British Columbia, or

(ii) Yukon while the lawyer was a member of the Society.

(2.1) When a lawyer engages in part-time practice

(a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and

(b) the 6-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer is not engaged in the practice of law does not exceed 24 months in the entire period.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: April 25, 2017
Subject: Vancouver Foundation

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

1. Vancouver Foundation: requires one nomination by the Benchers.

1. Vancouver Foundation

Law Society member, appointed by: Bencher's nomination

Current Appointment	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Anna Fung, QC	3 year term, maximum of 2 terms	1	5/1/2011	4/30/2017

Background

Section 4 of the *Vancouver Foundation Act* states that "the objects of the foundation, all of which are deemed to be charitable, are the following:

(a) to provide care for needy men, women and children, and in particular the sick, aged, destitute and helpless;
(b) to promote educational advancement and scientific or medical research for the increase of human knowledge and the alleviation of human suffering;
(c) to better underprivileged or delinquent persons;
(d) to promote recreational activities and the conservation of human, natural and heritage resources;
(e) to provide for any other charitable purposes that the board considers contribute to the mental, moral, cultural and physical improvement of the inhabitants of British Columbia."

This is a Bencher nomination, with the actual appointment being made by the Vancouver Foundation. Anna Fung, whose current term expires April 30, 2017, is ineligible for reappointment.

The Vancouver Foundation has provided its ***Executive Brief on Vancouver Foundation Board Director Selection***, which includes their current priority criteria as follows:

Current Priority Criteria

Leadership and Community Focus*: Seeks to understand and address community needs and/or issues. Exhibits a track record of leadership in service to and development of the community. Demonstrates an affinity for, and track record of working to enhance community.*

Strategic Thinking/Visioning: *Able to see and communicate the big picture. Supports the removal of barriers to change. Brings new ideas and creative and critical thinking.*

Collaborator: *Actively collaborates with others to produce desired results. Shows respect for other team members by being open to and supportive of the thoughts, opinions and contributions of others.*

Authentic Ambassador: *Presents a polished and authentic image in alignment with Vancouver Foundation vision and values. Develops relationships with key stakeholders promoting the mission and vision of the Foundation. Encourages support from individuals, organizations and the community.*

Integrity: *Does not cut corners ethically. Earns trust and maintains confidences. Does what is right, not what is expedient. Speaks plainly, truthfully and authentically.*

Desired Technical Skills and Experience:

- *Marketing and community development experience*
- *First Nations leadership experience*
- *Experience in the information technology industry*

The entire Brief is attached at Tab 1.

Candidates:

Our website and E-Brief postings since December have generated 2 potential candidates; the Vancouver Foundation itself has recommended an additional 3 candidates:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Recommendation:

Based upon the Vancouver Foundation's priority criteria and recommendation, and her excellent credentials, the Executive Committee recommends the nomination of Rita Andreone, QC to the Board of the Vancouver Foundation for a three year term beginning upon her date of appointment by the Board.

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The Law Society of British Columbia

CEO's Report to the Benchers

May 2017

Prepared for: Benchers

Prepared by: Timothy E. McGee, QC

Update re LIF Working Group

The main focus of my report to the Benchers this month is an update on the work of the LIF Working Group including current status, outstanding issues and considerations, and proposed next steps. As this item will be presented in the in camera portion of the meeting you will find my written report and a slide deck that I will be presenting at the meeting in the in camera section of the Bencher agenda package.

Cultural Competency and Diversity Training for Staff

We have made it a priority in 2017 to design a cultural competency training program to build diversity awareness and increase cultural competence of all Law Society staff. This project is being ably led at the staff level by Hilary Stoddart, our Manager of Human Resources. In designing the program we recognize that these efforts are on a continuum and that becoming "culturally competent" cannot be achieved through a one-time training event. Therefore we have designed the initiative to be ongoing and to allow us to build on our learning opportunities and expand the scope of topics and areas of focus in the years to come.

The topics which we have chosen for the launch of the program this year were based both on the TRC's call to action for the Federation as well as the results of our survey of employees at last fall's Staff Forum. Law Society employees are clearly interested in learning about Indigenous issues, including the history and legacy of residential schools and the UN Declaration on the Rights of Indigenous Peoples. Our staff are also interested in general cultural competence, as well as other topics such as LGBTQ, mental health, and communicating with people from different backgrounds. We are taking a flexible approach to the delivery of the training by using different methods such as "lunch and learns", webinars, workshops, and on-line options through our Lynda.com services. We will be using outside professionals skilled in successful diversity and inclusion initiatives to assist us in some of these areas but we are also looking to "train the trainers", for example using the offerings of the Canadian Centre for Diversity and Inclusion to develop our own leaders among staff to sustain our programs and help build a strong sense of ownership among employees. We are very fortunate to have Andrea Hilland our Policy Counsel who supports the Equity and Diversity Advisory Committee and the Truth and Reconciliation Advisory Committee to play a leadership role in the design and delivery of our training, particularly as that relates to Indigenous issues.

We are planning to launch the program in the coming weeks and I look forward to reporting to you later in the year regrading progress and feedback.

Research Collaboration on the Cost of Delivering Legal Services

One of the strategic issues which we have wrestled with in past years is our dearth of knowledge about the economics of the legal profession and, in particular, the cost of delivering legal services in BC. The topic arises in a variety of contexts including, for example, discussion around the affordability (or lack thereof) of legal services for large segments of consumers and appropriate rate structures for legal aid services. The difficulty we have faced is not having access to reliable data from appropriate segments of the legal services market on which to base analysis and develop policies and initiatives which support our mandate.

Through the auspices of the Legal Services Society (LSS) and the Law Foundation we now have the opportunity to conduct a collaborative research initiative, an empirical study that will examine the cost of delivering legal services to low and middle income people in BC. The approach will involve retaining a major accounting firm with expertise in the area to conduct a survey of a representative sample of lawyers to obtain information relating to the cost of delivering legal services to low and middle income clients. This will permit the Law Society to have a better understanding of how the profession can be supported in ensuring the availability of legal services where there is unmet demand. LSS can use the information to redesign its legal aid tariffs to allow lawyers a reasonable return over and above the typical cost of delivering.

The research would be wholly funded (i.e. at no cost to the Law Society) with a grant from the LSS/Law Foundation Research Fund, a trust established some time ago (following on a period of exceptional interest rate returns for the Law Foundation) to support legal aid and access to justice research. Current estimated available funding is $77,000. LSS and LSBC will share the responsibility of working on the survey design. The Law Society will take the lead in identifying lawyers to be contacted and will support the researchers in encouraging lawyers to be involved. The information collected will remain in the control of LSBC and will be compiled at an aggregate level to show data at local, regional, and provincial levels and by area of practice.

The Executive Committee has reviewed the proposal and is supportive of moving forward. Senior staff from the Law Society, the Legal Services Society and the Law Foundation will collaborate on the proposed design and content of the survey and its distribution together with the external survey administrator chosen for the job. The Executive Committee will be consulted and will provide oversight and guidance regrading key elements of the project such as the survey itself and the priorities for the

eventual data analysis. The goal is to complete the project in time for the strategic planning deliberations of the Benchers in the fall.

Timothy E. McGee, QC
Chief Executive Officer

President's Report to the Law Societies
April 2017

From: **Maurice Piette, President**
Federation of Law Societies of Canada

To: **All Law Societies**

Date: **April 24, 2017**

INTRODUCTION

1. On March13-14, 2017, the leaders of Canada's law societies gathered in Quebec City for the Federation's late-winter business meetings. On these occasions, we convene a Council meeting, as well as the Presidents' Forum and the CEOs' Forum. I wish to thank the Chambre des notaires du Québec and the Barreau du Québec for extending their warm hospitality to all of our guests. I especially wish to thank Federation Vice-President and President-elect Sheila MacPherson for stepping into the role of chair for the Council meeting and the Presidents' Forum. Circumstances beyond my control regrettably kept me from attending these meetings.

2. What follows is an account of the highlights of the Council meeting, and any subsequent developments, that I provide as a supplement to any report that a Council member may wish to make to his or her home law society. Your Federation Council member is a key player in the success of the Federation and in ensuring that we stay focused on the needs of our members. I am very pleased to welcome Tilly Pillay, QC to the table in her new capacity as the Council member nominated by the Nova Scotia Barristers' Society.

COUNCIL MEETING AND UPDATES

Key Discussion and Decision Items

3. **Strategic Planning and Priorities for 2017-2018**. Extensive consultations, workshops and reflections have culminated in a new Strategic Plan for 2017-2018. The process is almost complete. Council members were in general agreement with a draft plan submitted to the law societies in February. Law societies were asked to provide any additional comments by mid-April so that the Annual Activity Plan and budget for 2017-2018 can be finalized before the new financial year begins on July 1st.

4. The Plan is focused on three strategic objectives:

   (a) Be a knowledge leader and effectively share information and facilitate collaboration;

   (b) Identify and promote best practices in professional regulation; and

   (c) Demonstrate excellence in governance and service delivery.

5. There was a consensus that the priorities of the Federation for the next year should include moving forward with three important initiatives:

(a) the work of the Truth and Reconciliation Commission Calls to Action Advisory Committee;

(b) the completion of the National Committee on Accreditation Program Review and how to address the recommendations that will arise from that review; and

(c) the efforts of the Working Group established to examine law society anti-money laundering rules for the profession and the approaches for how those rules are enforced.

6. **Draft 2017-18 Budget**. The Chair of the Federation's Finance and Audit Committee, Steve Raby, reported that final adjustments to the draft budget would be made in the spring. The proposed budget is expected to be substantially the same as the one for the year in progress. The Federation is on track to finish this year slightly under budget.

7. **International Engagement Plan**. The Federation's mission statement, governance policies and Strategic Plan contemplate an international role for the Federation including as a participant in international conferences and forums. The Council considered the Federation's international engagement plan for 2017-2018. The plan includes participation by the President and CEO at the annual meeting of the International Bar Association to be held in Sydney, Australia in October 2017 and the IBA's Bar Leaders' Conference to be held in Oslo, Norway in May 2018. The President is also invited to attend the annual meeting of the American Bar Association in New York, the annual congress of the Union internationale des avocats (to be held in Toronto in October), as well as the opening of the legal year in London in October. The Federation will send staff representatives to the International Conference of Legal Regulators in Singapore this fall and the CEO will attend the annual meeting of IILACE (Institute of International Law Association Chief Executives) with a number of his other Canadian colleagues in London in November.

8. **TRC Calls to Action Advisory Committee**. The Council approved the recommended composition of this Advisory Committee whose task will be to make recommendations on how best to respond to the Calls to Action issued by the Truth and Reconciliation Commission. The Advisory Committee is regionally balanced and consists of individuals representing First Nations, Métis and Inuit communities or organizations, as well as those with law society and legal academic experience. It will be Co-Chaired by Karen Wilford, Council member representing the Law Society of the Northwest Territories, and Ghislain Picard, Regional Chief for Quebec and Labrador. The Committee is planning to hold an initial meeting this spring. The other members of the Committee are:

(a) Peggy Corbel Warolin, Council member of the Barreau du Québec;
(b) Dianne Corbiere, Bencher, Law Society of Upper Canada;
(c) Brent Cotter, Professor and former Dean, University of Saskatchewan College of Law;
(d) David Crossin, Past President of the Law Society of British Columbia;
(e) Val Napoleon, Professor of Aboriginal Justice and Governance, University of Victoria Faculty of Law;
(f) Paul Okalik, MLA and former Premier of Nunavut;
(g) Jean Teillet, Métis lawyer and founder or leader of a variety of Métis and First nations groups;
(h) Stuart Wuttke, General Council of the Assembly of First Nations; and
(i) Tuma Young, Council member of the Nova Scotia Barristers' Society.

9. **National Committee on Accreditation Program Review**. The evaluation of international legal credentials of individuals seeking to apply to law society bar admission programs in common law jurisdictions has been a core activity of the Federation for many years. In some jurisdictions, the cohort of NCA applicants has grown significantly and constitutes an increasing percentage of the overall intake to the bar. The NCA Program Review was launched in 2016 to ensure that the underlying principles and processes for evaluating international credentials and experience are appropriate in today's environment. The Federation engaged Cambridge Professional Development ("CamProf"), to carry out the review of all aspects of the NCA. CamProf's report will be issued this spring and the next task will be to consider its recommendations and how they should be implemented.

10. **National Requirement Review**. The Council established a National Requirement Review Committee to examine the progress made and provide guidance with respect to the implementation of the National Requirement by the Canadian Common Law Program Approval Committee. The Approval Committee has been given the mandate by the law societies to assess whether existing and proposed Canadian common law programs will meet the National Requirement for knowledge and skills competencies required in order for graduates to apply to a law society bar admission program. This month the National Requirement Review Committee issued its report. The report affirms the jurisdiction of the Approval Committee to address many of the process issues related to review of programs against the National Requirement. It also recommends that the standard be amended to remove the requirement for the competencies in legal and fiduciary concepts related to commercial relationships. The report has been circulated to key stakeholders including Canada's law deans. Comments relating to the report are invited until the end of May 2017.

11. **Model Code of Professional Conduct**. The Federation's Standing Committee on the Model Code of Professional Conduct monitors changes in the law of legal ethics and professional responsibility, as well as feedback from stakeholders, and recommends such amendments to the Model Code as it considers appropriate. In the fall, the Committee circulated final Model Code amendments reflecting feedback from the law societies and other stakeholders received during an earlier consultation. The amendments address issues relating to competence, dishonesty/fraud, incriminating physical evidence, and the responsibilities that arise when a lawyer leaves a law firm. In March, the Council unanimously approved the amendments.

12. **Litigation Committee**. The Litigation Committee recommended that the Federation intervene at the Supreme Court of Canada in the matter of *Joseph Groia v. Law Society of Upper Canada*. John Callaghan, the member of the Committee representing the Law Society of Upper Canada abstained from the Committee's deliberations given the direct role played by the law society in the matter. The Committee is of the view that the matter raises important national issues about the ability of law societies to regulate their members. The Council approved the recommendation this month. The Federation Executive is now in the process of identifying pro bono counsel to work with the Committee to develop the Federation's arguments in the intervention.

Status of Permanent Committees and National Initiatives

13. At each meeting of Council, the Committees that are responsible for the core work of the Federation provide written updates about their activities. I have attached the summary reports that were provided to Council.

Member and Stakeholder Relations

14. I am looking forward to a busy spring and early summer. As a minimum, I will be attending Bencher retreats or AGMs in British Columbia, Alberta, Quebec and New Brunswick. Plans are also in the works for a meeting with the Minister of Justice and officials from the federal government, as well as with the Chief Justice of Canada, Beverley McLachlin.

CONCLUSION

15. The Federation depends on the support and active collaboration of its member law societies for its direction, and ultimately, its success. It is important to me, the Executive, Council and the Federation staff that you be kept informed of our activities. Please contact us if you require any further information about our work. I enthusiastically look forward to the second half of my term and furthering the Federation's role in serving its members and the public interest.

TAB 14(b)(i)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**February 16, 2017**
Committee name	**National Committee on Accreditation**
Background	The mandate and background information on the work of the Committee are available on the Federation Intranet here.
Current status, activities and next steps	• The roles of the committee are to set NCA policy and consider appeals of assessment decisions (ten to date in 2016/2017) • The NCA has received over 1,000 applications for assessment to date in 2016/2017, approximately the same number of assessments at this point last year. During the same period, 625 Certificates of Qualification have been issued. • to date in 2016/2017, three exam sessions have been held during which almost 4,000 exams were written. Exams are offered in Canadian cities (includes Vancouver, Calgary, Edmonton, Regina, Winnipeg, & Toronto) and sites abroad. In January examinations were written in 22 locations including seven outside Canada. The NCA has experienced increased requests for exam accommodations which are, if at all possible, provided as well as an increasing number of requests to write examinations in French.

TAB 14(b)(ii)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**Feb. 16, 2016**
Committee name	**Canadian Common Law Program Approval Committee**
Background	The mandate and background information on the work of the Approval Committee are available on the Federation Intranet.
Current status, activities and next steps	1. Meetings: The Approval Committee meets in person or by conference call at least three times a year to evaluate law school reports and consider policy implementation. 2. Law Schools: There are currently 20 law schools with approved programs, and one (Trinity Western University) with preliminary approval. 3. New Law Schools: The University of Saskatchewan is starting a four year law program in September 2017 hosted at the Nunavut Arctic College. Two universities are considering opening law schools: Ryerson and the Memorial University of Newfoundland. The Approval Committee is prepared to evaluate these programs upon receipt of proposals to determine if preliminary approval for the programs should be granted. 4. Joint Programs: The application of the National Requirement to joint, dual and one year programs for Canadian civil law graduates was deferred until 2017, however, feedback on all programs was provided to the law schools in both 2014 and 2015. Approvals for 52 joint programs (a law program combined with a non-law program), 8 dual programs (two law programs from different institutions), and 6 one year programs for graduates of civil law programs were issued in December. The Federation website will be updated in the near future to include all approved programs. 5. Next Meeting: The Approval Committee will meet next in June to review and evaluate the 2017 law school reports.

TAB 14(b)(iii)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**February 23, 2017**
Committee name	**National Requirement Review Committee**
Background	The mandate and background information on the work of the NRRC are available on the Federation intranet.
Current status, activities and next steps	• The NRRC has met three times since its last status update, most recently on February 16, 2017. The committee members have now completed the initial review of the National Requirement and expect to issue a final report on this aspect of the NRRC's work at the end of March 2017.

TAB 14(b)(iv)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**February 23, 2017**
Committee name	**Public Affairs and Government Relations Committee**
Background	The mandate and background information on the work of the Committee are available on the Federation intranet.
Current status, activities and next steps	• The Committee has not considered any new issues or developed any submissions since December 2016. • As requested by the motion adopted by Council in October 2016, the CEOs Forum has established the Anti-Money Laundering and Terrorist Financing Working Group ("Working Group") to review the model No Cash and Client Identification and Verification rules and consider issues related to their enforcement. The Working Group is co-chaired by Jim Varro of the LSUC and Frederica Wilson of the Federation. The members of the Working Group are: o Susan Robinson – Executive Director LSPEI o Chioma Ufodike – Manager, Trust Safety LSA o Elaine Cumming – Professional Responsibility Counsel NSBS o Deb Armour – Chief Legal Officer LSBC o Jeanette McPhee – CFO and Director of Trust Regulation LSBC o Leah Kosokowsky – Director, Regulation LSM o Naomi Bussin – Senior Counsel Professional Regulation LSUC o Sylvie Champagne – Secrétaire de l'Ordre et Directrice du contentieux Barreau o Nathalie Parent – Directrice générale adjointe Direction des services juridiques Chambre o Brenda Grimes – Executive Director LSNL • The Working Group met in January and will meet again on March 1, 2017. It has identified the following key aspects to the work: o review of the content and substance of the Model Rules, including review of amended federal regulations;

	○ survey of law societies to identify the methods used to assess compliance with the rules and approaches to their enforcement; ○ review and assessment of FATF mutual evaluation report; ○ identification of best practices for compliance and enforcement; ○ development of guidelines for compliance and enforcement, including education. • The Working Group established three sub-committees to tackle different aspects of the work simultaneously. Work is underway to review the model rules, develop a survey to gather information on law society compliance and enforcement practices and to review the FATF report and other contextual documents to inform the Working Group's overall endeavour.

TAB 14(b)(v)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**February 23, 2017**
Committee name	**Standing Committee on the Model Code of Professional Conduct**
Background	The mandate and background information on the work of the Standing Committee are available on the Federation intranet.
Current status, activities and next steps	• The Omnibus amendment package circulated in November 2016 for approval at the upcoming Council meeting contained a minor error. The corrected package is available **here**. The amendment package includes proposed changes to the rules on competence, dishonesty/fraud, and incriminating physical evidence, as well as new rules addressing responsibilities that arise when a lawyer leaves a law firm. • At the end of January 2017, the Standing Committee circulated a Consultation Package that includes proposed amendments to the rules on technological competence, the return to practice by former judges and the rule encouraging respect for the administration of justice. • The deadline for submissions is May 30, 2017. The Standing Committee will consider the feedback received, making further changes to the draft amendments as appropriate, and will prepare an Amendment Package to be sent out in September 2017. Those amendments will be before Council for approval at its December 2017 meeting • The proposed amendments to the rules governing the return to practice by former judges prompted the Canadian Association for Legal Ethics to write to the Standing Committee expressing appreciation for the committee's decision to address the issues. A copy of the letter is available **here**.

TAB 14(b)(vi)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**February 22, 2017**
Committee name	**Standing Committee on National Discipline Standards**
Background	The mandate and background information on the work of the Standing Committee are available on the Federation intranet.
Current status, activities and next steps	• The Standing Committee on National Discipline Standards ("Standing Committee") met in person in Ottawa on Monday, December 5, 2016. Work on a model rule in relation to Standard 16 was finalized. Challenges with the standards were discussed. The proposal for a Peer Support Project and several new standards in progress were also discussed. The new standards relate to: ○ quality measures in complaint, investigation, prosecution and adjudication processes ○ a law society's ability to take interim steps to protect the public before conviction or resolution of a matter ○ a process for early resolution of appropriate complaints • The revised Standards and Guide along with the new template for completion of the Law Society Annual Status Report for 2016 were provided to the law society contacts in January, 2017. Several law societies have already completed the Annual Status Report. The deadline for submission of the 2016 reports is March 1, 2017. • The Standing Committee will meet again by teleconference on March 2, 2017. • Allan Fineblit has agreed to remain involved in the work on national discipline standards as a consultant to the Standing Committee.

TAB 14(b)(vii)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**February 23, 2017**
Committee name	**Litigation Committee**
Background	The mandate and background information on the work of the Committee are available on the Federation intranet.
Current status, activities and next steps	• The Litigation Committee expects to meet prior to the March 2017 Council meeting to consider whether to recommend that the Federation seek leave to intervene at the Supreme Court of Canada in the case of *Groia v. Law Society of Upper Canada.* The case raises a number of important issues including: ○ Whether it is constitutionally permissible for a law society, or a court reviewing a law society's decision on appeal, to discipline a lawyer for in-court conduct that is not faulted by the trial judge; ○ What limits, if any, should be placed on a lawyer's freedom of expression when defening a client in a court of law? and ○ What is the boundary line that divides passionate, aggressive and zealous advocacy from professional conduct?

TAB 14(b)(viii)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**February 22, 2017**
Committee name	**National Admission Standards Project Steering Committee**
Background	The mandate and background information on the work of the Steering Committee are available on the Federation intranet.
Current status, activities and next steps	**THERE HAS BEEN NO CHANGE SINCE THE OCTOBER 2016 REPORT** (copied below): • At the June 2016 Council meeting, Federation Council considered a memo from Don Thompson dated May 11, 2016. The memo set out the recommendation of the National Admission Standards Project Steering Committee that work on the assessment phase of the National Admission Standards Project cease. The memo also sought direction from Council about whether to review the National Competency Profile and continue work on a National Good Character Standard. These recommendations were based on feedback received from law societies on the assessment proposal. It was the Committee's view that it is not financially or practically possible to execute a national assessment plan without a critical mass of law societies ready to move forward with the development of the plan. It was a precondition of the assessment phase of the project that commitment from a critical mass of law societies would be required to move forward. • Although there was no formal motion on the matter, there was a general consensus at the Council meeting to stop work on the assessment phase of the project, to review the National Competency Profile and to resume work on a National Good Character Standard.

	• Future work on National Admission Standards, including review of the National Competency Profile and resumption of work on a National Good Character Standard will be discussed during the Strategic Planning session happening on October 21, 2016. Once Council has decided if these projects should be included in the Federation's Strategic Plan, and their relative priority, steps will be taken to collaborate with law societies and other stakeholders to advance this work. • As part of its review of the composition and leadership of all Federation Committees, the Federation Executive has been considering the appropriate composition of the National Admission Standards Project Steering Committee should the work on national admission standards continue. Given the anticipated change in focus on this committee, it is expected that the composition of the Steering Committee will also change.

TAB 14(b)(ix)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION ACCESS TO LEGAL SERVICES STATUS REPORT

Date	**February 23, 2017**
Activity	**Law Societies Access to Legal Services Exchange / Participation in the Steering Committee of the Chief Justice of Canada's National Action Committee on Access to Civil and Family Justice**
Background	Background information on the Federation's work related to access to legal services is available on the Federation intranet.
Current status, activities and next steps	• Federation past President Jeff Hirsch continues to represent the Federation on the National Action Committee ("NAC"). The NAC will be hosting its next annual meeting of representatives of provincial and territorial access to justice committees in March 2017 in Vancouver, B.C. • The Law Societies Access to Legal Services Exchange group held its first quarterly meeting on Wednesday February 22, 2017. Members have agreed to maintain an updated inventory of access to legal services initiatives of Canada's law societies. The latest inventory will be published on the intranet in both English and French in early March 2017.