



Agenda

Benchers

Date: Friday, January 26, 2018

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

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

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
OATH OF OFFICE: The Honourable Chief Justice Robert J. Bauman, will administer an oath of office (in the form set out in Rule 1-3) to President Miriam Kresivo, QC, First Vice-President Nancy Merrill, QC and Second Vice-President Craig Ferris, QC (individually) and all of the Benchers elected, re-elected or appointed for the term commencing January 1, 2018 (en masse).					
1	Administer Oaths of Office	15	The Honourable Chief Justice Robert J. Bauman		Presentation and remarks
2	President's Welcome		President		
CONSENT AGENDA: The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.					
3	Consent Agenda · Minutes of December 8, 2017 meeting (regular session)		President	Tab 3.1	Approval



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
3 (cont.)	<ul style="list-style-type: none"> Minutes of December 8, 2017 meeting (<i>in camera</i> session) QC Nomination Advisory Committee Appointment Truth and Reconciliation Advisory Committee Terms of Reference revision Alternate Legal Service Provider Working Group Annual Fee Working Group Mental Health Task Force 			Tab 3.2 Tab 3.3 Tab 3.4 Tab 3.5 Tab 3.6 Tab 3.7	Approval Approval Approval Approval Approval Approval
EXECUTIVE REPORTS					
4	President's Report	10	President		Briefing
5	CEO's Report	10	CEO	Tab 5	Briefing
6	Briefing by the Law Society's Member of the Federation Council	10	Herman Van Ommen, QC		Briefing
GUEST PRESENTATION					
7	Presentation by Continuing Legal Education Society of BC – Upcoming Initiatives	15	Linda Russell / Jay Fogel		Presentation
DISCUSSION/DECISION					
8	Finance & Audit Committee: Updated Enterprise Risk Management Plan	15	Craig Ferris, QC / Jeanette McPhee	Tab 8	Discussion/ Decision



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
9	Law Firm Regulation Task Force – Update	5	Steven McKoen		Discussion
REPORTS					
10	Strategic Plan Priorities for 2018	20	President / CEO	Tab 10	Briefing
11	Communications Approach	30	Jason Kuzminski		Briefing
12	National Discipline Standards Report	10	Deb Armour, QC	Tab 12	Briefing
13	Report on Outstanding Hearing & Review Decisions		Craig Ferris, QC	<i>(To be circulated at the meeting)</i>	Briefing
FOR INFORMATION					
14	Three Month Benchers Calendar – January to March			Tab 14	Information
<i>IN CAMERA</i>					
15	Litigation Report – January 2018	10	Deb Armour, QC	Tab 15	Discussion/ Decision
16	<i>In camera</i> <ul style="list-style-type: none"> • Benchers concerns • Other business 		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, December 08, 2017

Present:

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

Unable to Attend: Daniel Smith

Staff Present:

Adam Whitcombe	Jason Kuzminski
Deborah Armour, QC	Michael Lucas
Renee Collins	Jeanette McPhee
Lance Cooke	Doug Munro
Su Forbes, QC	Annie Rochette
Andrea Hilland	Lesley Small
Jeffrey Hoskins, QC	Alan Treleaven
David Jordan	Vinnie Yuen

Guests: Don Avison	Incoming CEO & Executive Director (effective January 1, 2018)
Dom Bautista	Executive Director, Law Courts Center
Mark Benton, QC	Executive Director, Legal Services Society
Claire Marchant	Equity Ombudsperson, Law Society of BC
Jennifer Chow, QC	2018 Bencher
Michelle Casavant	Member, Aboriginal Lawyers Forum
Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
Geoffrey McDonald	2018 Bencher
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
Linda Russell	CEO, Continuing Legal Education Society of BC
Kerry Simmons, QC	President, Canadian Bar Association (National)
Bill Veenstra	President, Canadian Bar Association (BC Branch)
Michael Welsh, QC	2018 Bencher
Heidi Zetzsche	2018 Bencher

CONSENT AGENDA

1. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on October 27, 2017 were approved as circulated.

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

b. Resolutions

The following resolutions were passed unanimously and by consent.

Electronic Trust Fund Transfers

BE IT RESOLVED to amend the Law Society Rules effective July 1, 2018 as follows:

1. *In Rule 3-64:*

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

(b) *by electronic transfer as permitted by Rule 3-64.1 [Electronic transfers from trust],; and*

(b) *by rescinding subrules (6) to (8);*

2. *By rescinding Rule 3-65 and substituting the following:*

Electronic transfers from trust

3-64.1(1) In this rule, “**requisition**” means an electronic transfer of trust funds requisition, in a form approved by the Discipline Committee.

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

(a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,

(i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and

- (ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;
- (b) the lawyer using an electronic funds transfer system to withdraw trust funds must not
 - (i) disclose the lawyer's password or access code associated with the electronic funds transfer system to another person, or
 - (ii) permit another person, including a non-lawyer employee, to use the lawyer's password or access code to gain such access;
- (c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;
- (d) the confirmation required in paragraph (c) must contain all of the following:
 - (i) the name of the person authorizing the transfer;
 - (ii) the amount of the transfer;
 - (iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;
 - (iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;
 - (v) the name of the person or entity in whose name the account to which money is transferred is kept;
 - (vi) the number of the account to which money is transferred;
 - (vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;

- (viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;
- (e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;
- (f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;
- (g) the lawyer must retain in the lawyer's records a copy of
 - (i) the requisition
 - (ii) the confirmation required in paragraph (c).
- (3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses
 - (a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and
 - (b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.
- (4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must
 - (a) produce a printed copy of the confirmation,
 - (b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,
 - (c) indicate on the printed copy of the confirmation
 - (i) the name of the client,

- (ii) the subject matter of the file, and
 - (iii) any file number
- in respect of which the money was drawn from the trust account, and
- (d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.
- (5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) [*Exemptions*] from the client identification and verification requirements under Rules 3-102 to 3-106.
- (6) Despite subrules (2) to (4), a lawyer may withdraw funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer
 - (a) retains in the lawyer's records a copy of
 - (i) all electronic payment authorization forms submitted to the electronic filing system,
 - (ii) the property transfer tax return, and
 - (iii) the transaction receipt provided by the electronic filing system,
 - (b) digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and
 - (c) verifies that the money was drawn from the trust account as specified in the property transfer tax return.

Electronic deposits into trust

3-64.2 A lawyer must not receive money into a trust account by means of electronic transfer unless the following conditions are met:

- (a) the lawyer must obtain a confirmation in writing providing details of the transfer from the financial institution or the remitter of the funds within 2 banking days of the deposit;

- (b) the deposit must generate sufficient documentation to enable the lawyer to meet the record-keeping requirements under this division.

Payment of fees from trust

- 3-65** (1) In this rule, “fees” means fees for services performed by a lawyer or a non-lawyer member of the lawyer’s MDP, charges, disbursements and taxes on those fees, charges and disbursements.
- (1.1) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of the lawyer’s fees must withdraw the funds
- (a) with a cheque payable to the lawyer’s general account, or
 - (b) by electronic transfer in accordance with Rule 3-64.1 [*Electronic transfers from trust*] to the lawyer’s general account.
- (2) A lawyer who withdraws or authorizes the withdrawal of trust funds under subrule (1.1) in payment for the lawyer’s fees must first prepare a bill for those fees and immediately deliver the bill to the client.; *and*
- 3. In Rule 3-66 (2), by striking “Rules 3-64 and 3-65 apply” and substituting “Rules 3-64 to 3-65 apply”.**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Bencher Election Rules – Rule 1-22

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 1-22 (1) (b).

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Code of Professional and Ethical Responsibilities for Tribunal Adjudicators

BE IT RESOLVED to approve the Code of Professional and Ethical Responsibilities for Tribunal Adjudicators.

External Appointments: Legal Services Society and Land Title & Survey Authority

BE IT RESOLVED to re-appoint Mr. Marzban to the Legal Services Society’s Board of Directors for a second two-year term commencing January 1, 2018.

BE IT RESOLVED to nominate Kenneth Jacques, Patrick Julian and Lorena Staples, QC for consideration by the LTSA Board of Directors, for an appointment to its Board for a three-year term commencing April 1, 2018.

Introductions of guests:

Mr. Van Ommen was pleased to announce the hiring of new CEO Don Avison who will join the Law Society January 1, 2018. He welcomed Mr. Avison, providing a brief background of his accomplishments, including former posts as Deputy Minister of Justice and Deputy to the Premier in the North West Territories, and Deputy Minister of Health and of Education in BC.

He also provided introductions to newly elected Benchers Jennifer Chow, QC, Geoffrey McDonald, Michael Welsh, QC and Heidi Zetzsche, noting that the recent Bencher elections resulted for the first time in a majority of women Benchers at the Bencher table, and in Vancouver County, more women than men being elected.

Additionally, he acknowledged those Benchers who were attending for their last Bencher meeting. On behalf of Benchers, he thanked Satwinder Bains, Tom Fellhauer, Lee Ongman, Greg Petrisor and Claude Richmond for their 8 years of service as elected or appointed Benchers, and Woody Hayes, FCPA, FCA and Dan Smith for their term of service as appointed Benchers.

He also noted that the hearing panel pools have recently undergone the first major replenishment since their inception 6 years ago; training of new pool members has already begun.

Finally, he welcomed to the meeting the new Equity Ombudsperson Claire Marchant, who started in her role earlier in the Fall.

Ms. Kresivo then announced Second Vice-President Craig Ferris, QC as the new Tribunal Council Chair for 2018.

GUEST PRESENTATION

2. Remarks from President of Canadian Bar Association (National)

National CBA President Kerry Simmons, QC provided an update for Benchers on CBA developments and initiatives. This is the first year of the new governance structure that incorporates a smaller but more diverse board than ever before, and changes to accessibility resulted in a doubling of attendance at last year's AGM.

Advocacy is integral part of the CBA's function; Ms. Simmons met recently with the Minister of Justice and the Treasury Board regarding concerns on the breadth of proposed legislation on solicitor client privilege. She also had the chance to connect with representatives of the

Federation of Law Societies and other international leaders at the International Bar Association Conference in Sydney, Australia.

She has had the privilege of travelling to many of the provinces and territories to listen to lawyers, particularly the younger members of the Bar, share their experiences with articling, admission and legal ethics. She recognized the significant influence the CBA can have on these important issues, and noted the importance of understanding lawyers' experiences as we make decisions that shape and frame our profession.

Of particular significance is our response to how lawyers feel about their own wellness. How does a lawyer build a practice without drowning under the pressure? We need pathways to healthy coping mechanisms, and work environments where it is okay to talk about thriving emotionally and spiritually. She applauded the Law Society for its inclusion of wellness in its continuing professional development recommendations, and emphasized the culture change that must occur to make this a healthier profession.

DISCUSSION/DECISION

3. Approval of Strategic Plan Initiatives

Mr. Van Ommen noted that the proposed Strategic Plan, based on Benchers' suggestions and feedback, had been considered by the Executive Committee and was being presented to Benchers for approval.

Following his invitation for questions or comment, it was asked how the plan would be prioritized and resourced. Mr. Van Ommen noted that it was the role of the Executive Committee and the CEO to provide a list of priorities for the Operational Plan each year.

When asked by another Bencher to provide his thoughts on the inclusion of mental health and wellness, Mr. Greenberg noted that the broad topic itself would require prioritization and consideration of resources, and could benefit from the creation of a task force to focus discussion.

Other Benchers provided their thanks for the considerable work that went in to creating the plan, noting it to be an excellent roadmap for the 3 years ahead.

Following a call for a vote, the plan was approved unanimously.

4. Law Firm Regulation Task Force: Second Interim Report

Mr. Van Ommen noted the concerns expressed by Benchers last meeting on the self-assessment tool, particularly as it related to sole practitioners. In response, staff have made revisions

designed to make the tool easier to use for all users. Additionally, after discussion of the initiative as a whole, the Executive Committee has recommended the creation of a pilot project to test the tool and to see how the initiative works in practice. The proposed resolution was circulated to the Benchers.

He noted that the Equity and Diversity Advisory Committee has provided comments and welcomed comments or questions from others. Some members of the Equity and Diversity Advisory Committee noted the Committee's strong support for a clause promoting equity and diversity, but also noted its concern regarding the current wording of that clause as more aspirational than practical. However, Committee members expressed caution concerning wording that appeared to create a positive duty, preferring instead language that suggested a goal rather than a duty.

Ms. Kresivo noted that there will be a newly constituted Task Force moving forward, and encouraged dialogue between it and the Equity and Diversity Advisory Committee to consider alternative language.

A question was also posed regarding how long the pilot would run and when implementation of the full program was anticipated. Mr. Van Ommen noted that the details of the pilot had yet to be developed, but confirmed that it was important to take the necessary time to process information arising from the pilot before reporting back to Benchers and moving forward with the project as a whole.

Also questioned was whether the ultimate program would include model policies, rather than the "educational resources" proposed for the pilot, with the suggestion that it is important to have consistency between the pilot and the ultimate program. Mr. Van Ommen noted that the Task Force was not foreclosing the eventual possibility of model policies, but that it recommended using the language "educational resources" for present purposes. If information obtained as a result of the pilot project suggests that firms want model policies, the ultimate program can include such policies. Suggestion was made that the term "sample policies" be used instead for the purposes of the pilot project.

In response to the question of whether Benchers would be first to participate in the pilot, Mr. Van Ommen clarified that the pilot would not be designed for just Benchers, but for wider participation.

Suggestion was made that recommendation 9 be tabled pending the Equity and Diversity Advisory Committee's input and further consideration. Concern was expressed that there could be some risk moving forward with this element without further consideration. Support for the inclusion of the recommendation was also expressed, with the acknowledgment that the current

wording was broad enough to capture the intent, and further revisions could be made in future if necessary.

Ms. Merrill then moved (seconded by Mr. Ferris) the approval of a resolution that Benchers adopt recommendations 1 – 9, 11, 14, 16 and 17, and adopt recommendations 12 and 13 of the said Report, but replace the phrase “model policies” in each recommendation with the phrase “educational resources”, and that in place of recommendations 10 and 15, the Benchers resolve that the implementation of law firm regulation will be commenced with a pilot project.

In discussion of the motion to amend, some Benchers noted that the wording of recommendation 9 is broad enough so as not to preclude future refinement as input is received; others agreed and noted that this recommendation would be conspicuous in its absence if removed, and further, that its removal would send the wrong message. Others stressed the importance of approving all recommendations now to avoid delay of the pilot project.

However, others questioned whether there was sufficient information before Benchers to ensure a considered decision and expressed concern that the imposition of obligations such as posed by recommendation 9 could result in a backlash akin to that experienced in Ontario. In response, it was observed that the best way to receive important feedback is through the pilot process.

Mr. Van Ommen called for a vote on the motion to amend; with 3 in favour and 28 opposed, the motion to amend failed.

A vote was called on the main motion; the motion was approved, with 28 in favour and 3 opposed.

5. CPD Final Review Report

Lawyer Education Advisory Committee Chair Dean Lawton, QC noted that the CPD Final Review Report was made available to Benchers for consideration last meeting, recalling that some suggestions had been made regarding language changes and some clarifications had been sought. Director, Education and Practice Alan Treleaven summarized those suggestions and clarifications, including, of note, the inclusion of language recognizing multiculturalism, diversity and equity issues. Clarification was also provided around receiving CPD credit for training on how to chair or conduct meetings and serve effectively on boards, as distinct from actually conducting those activities, for which no credit would be given. Also clarified was the effective date that the “carry over” option would begin, which is January 1, 2019.

In answer to a question regarding carry over of credits, Mr. Treleaven clarified that, beginning in 2019, a lawyer will be able to carry over unused credits of 6 hours to the next year, effectively reducing the next year’s requirement by the amount carried over. However, he also clarified that

the required 2 hours of ethics or practice management training cannot be carried over and must be completed each year.

Following a call for comments or questions, the issue of CPD credits for pro bono services was raised. Noting that recommendation 10 specifies that pro bono activity be ineligible for credit, several Benchers supported the suggestion that pro bono services provided through a verifiable pro bono clinic should be eligible for at least a portion of CPD credit hours. Such services should be recognized and credited as they provide invaluable training for lawyers, encourage a greater connection with the wider community, and facilitate increased access to justice.

In response, comment was made that if increased access to justice was a focus of this suggestion, more work may be required to determine which activities, from “low bono” to pro bono to legal aid work, might be eligible. Suggestion was made that recommendation 10 be removed from the recommendations being considered, until such time as further work might be done by the Access to Legal Services and Lawyer Education Advisory Committees.

Comment was also made that other practice areas, such as family law, involve “pro bono” type work routinely; while beneficial socially, it may not be appropriate for continuing education credits.

Also discussed were recommendations 22A and 22B regarding wellness credits. Clarification was sought as to whether these credits were available to group study. Mr. Lawton confirmed that the intent was to ensure a disciplined approach to study in this area, so if group study were properly designed, it may be eligible. In response to another question, Mr. Lawton also clarified that physical therapy modalities were excluded from credit after consultation with LAP, but noted that courses focused on education regarding physical wellness may receive credit, depending on how they are framed.

Mr. Wilson noted that, since advocating for the inclusion of recommendation 22B which includes caps on wellness credits, he has had the opportunity to consider the potential impact on other areas as well and now agrees with the appropriateness of moving 22A which does not include caps.

Mr. Van Ommen then called for the motion, noting that if any wished to have certain recommendations excised, a motion to amend should follow. Ms. Hamilton moved (seconded by Ms. Westwood) the approval of all recommendations in the CPD Review Final Report, including 22A but not 22B.

In discussion, Mr. Maclaren reiterated his support for providing credit for pro bono activities, noting that, for much of BC’s population, the only connection they may ever have with a lawyer may be through a pro bono clinic. He also noted that he supported a cap on pro bono credits, and

that it may be difficult to establish caps at a later date if the opposite approach is taken at this time. He then moved to amend (seconded by Mr. McKoen) the original motion to exclude recommendation 10 for further review by applicable committees.

In discussion, support for the amendment included the observation that areas such as family law may provide pro bono type service, but most lawyers do not practice in areas that touch the greatest need and there is currently a crisis in access to justice that demands the use of any and all tools available.

It was noted by some that the amendment would be supported if the issue was returned to the applicable committees for review of what constitutes pro bono, amongst other considerations.

Following the call for a vote, the motion to amend was passed, with 28 in favour and 3 opposed.

The main motion as amended was then approved unanimously.

6. Early Intervention Working Group Final Report

Chair Craig Ferris, QC reported, beginning by thanking members Jeff Campbell, QC, Woody Hayes, FCPA, FCA and Michelle Stanford, as well as CLO Deb Armour, QC, Acting CEO Adam Whitcombe and Policy and Legal Services Manager Michael Lucas for their valuable support.

The working group engaged in a review of the reliability of data and the building of a data base. It concluded that if we were able to obtain relevant data, and from that data draw meaningful conclusions, the project would be valuable. However, the group concluded that the relatively weak correlations that can be drawn from the data collected are insufficient to justify the further investment needed to create regulations. While it cannot recommend proceeding on the current data base, it does note that further analysis should be pursued if other opportunities arise.

Mr. Ferris then moved (seconded by Mr. Campbell) that the working group be wound up, now that their work is complete. The motion was approved unanimously.

DISCUSSION/DECISION

7. Year-End Advisory Committee Reports

- **Access to Legal Services Advisory Committee**

Chair Martin Finch, QC began by thanking committee members and staff, with particular thanks to Policy and Legal Services staff lawyer Doug Munro for providing direction and focus for the committee's work.

The Committee has continued its conversations exploring details regarding the provision of legal services and engaging perennial concerns like limited scope retainers and unbundling legal services, and has continued to advise Benchers as issues arise. Authority was sought from Benchers to create a mechanism to gather information that would facilitate more effective strategic planning around access to justice issues. The Executive Committee has since approved a questionnaire regarding pro bono services that will form part of the voluntary portion of the Annual Practice Declaration.

He also thanked Mr. Van Ommen for facilitating a meeting with managing partners of large Vancouver law firms regarding coordinating ways for lawyers to provide pro bono services and improved access to legal services more generally. Developing a model vehicle will likely be included in the work of next year's committee, with the aim of advancing access to legal services in the city.

He noted the valuable contributions of the Honourable Thomas Cromwell, who identified potential ways to deconstruct current regulations that may inadvertently present impediments to access. The work of identifying and simplifying regulations to ensure lawyers are better able to provide greater access to legal services will also be a task for next year's committee.

While review of these issues is often broad in scope, this should continue to be balanced with the implementation of specific tools to improve access, such as facilitating improved website access to increase awareness of ways the public can access pro bono or low bono legal services.

Mr. Van Ommen thanked Mr. Finch and the committee for tackling these difficult and timely issues.

- **Equity and Diversity Advisory Committee**

Chair Nancy Merrill, QC thanked committee members and staff lawyer Andrea Hilland for their hard work and commitment throughout the year. She noted that 2017 is the 25th anniversary of the Law Society Gender Equality Report and the committee has been engaged in analysis of progress made in the interim. Results of that analysis, which show that all recommendations directed at the Law Society have been achieved, will be published in Benchers Bulletin and on the website. She also noted that the new Equity Ombudsperson was hired earlier in the year, and indeed, joins us for the meeting today.

The committee is also considering a project to collect anecdotes from racialized lawyers to raise awareness of discrimination in the profession. Also underway is work to review options to support lawyers to take parental leave, as well as to provide continued focus for mental health issues in the profession. A series of articles is anticipated for the Benchers Bulletin; Mr. Greenberg will write on mental health issues, Ms. Ahmad will write on the experience of

racialized lawyers and Ms. Hamilton on parental leave. The committee is also continuing its work on recommendation 9 regarding the Law Firm Regulation project.

Finally, Ms. Merrill also noted that Jennifer Chow, QC is the first recipient of Diversity and Inclusion Award, which will be presented at an event this evening.

- **Lawyer Education Advisory Committee**

Though Chair Dean Lawton, QC's report was provided under the earlier agenda item, he took this opportunity to note his thanks to committee members as well as Director, Education and Practice Alan Treleaven and Deputy Director of PLTC Annie Rochette, and Policy staff lawyer Alison Luke for their hard work throughout the year.

- **Legal Aid Advisory Committee**

Chair Nancy Merrill, QC thanked the committee members, as well as Policy and Legal Services Manager Michael Lucas, Policy staff lawyer Doug Munro and Paralegal Aaron Bockner for their hard work and commitment throughout the year.

The committee has been focused on a number of initiatives, including exploring the possibility of research into the benefits of legal aid to society. Funding for such a research project may be available through the Law Foundation, and discussions have begun with Associate Professor Dandurand who's done similar research in the past. The committee intends to hold another colloquium in 2018, which Justice Cohen has graciously agreed to facilitate once again. Confirmation of the topic will await the outcome of the 2018 provincial budget, on which the committee has drafted submissions to the government.

Additionally, the committee is developing educational materials and resources, PLTC has agreed to include legal aid on its spring curriculum, the committee is creating a speakers list and has coordinated with the University Deans to talk to law students about the importance of legal aid work. Also, the committee continues to advocate with the government regarding public improvements to legal aid; members met with MLA's in September, and the Executive Committee approved intervention in legal aid test case litigation for which Richard Peck, QC will represent the Law Society on a pro bono basis.

With the assistance of Communications Director Jason Kuzminski, the committee is also working on a communications plan which includes an increased social media presence, and is focused on continuing to find ways to keep legal aid in spotlight to both lead and educate on this important issue.

- **Rule of Law and Lawyer Independence Advisory Committee**

Chair Craig Ferris, QC thanked committee members and staff for their hard work throughout the year. He noted that the committee hosted a successful lecture earlier in the year, with plans to host another in 2018, as well as a successful essay contest. It wrote and published on a number of different issues this year, including on the rule of law and political developments in the United States, on the independence of judges and the impact of criticism of the courts, border security, changes to legislation regarding solicitor client privilege, and the issue of delay in the courts and how that affects the rule of law. The committee also joined with other bar associations in a letter to Zimbabwe concerning changes to its constitution, and continued its work regarding Bill C-59, writing a letter to the Federal government outlining concerns.

Additionally, members met with Lawyers Rights Watch Canada regarding lawyers in other jurisdictions being targeted by government, and met with the BC Civil Liberties regarding whether solitary confinement is a tool being abused in this country.

Policy issues were also explored concerning whether regulation of alternate legal service providers could impact lawyer independence, and gave some consideration to how lawyers can safeguard themselves when practicing in other countries.

In the near future the committee will provide the Executive Committee with a memo on where the parameters lie regarding section 3 of the Legal Profession Act, providing factors to consider when exploring what it means to uphold and protect the rule of law.

The committee has also begun looking at the issue of publication of judicial expenses, and may be looking to write to the government on proposed legislation that could have an impact on judicial independence and the rule of law.

Finally, Mr. Ferris also highlighted for Benchers issues that are likely to rise to the fore in 2018, including alternate business structures which are being reviewed in other jurisdictions as a possible tool to enhance access to justice.

- **Recruitment and Nominating Advisory Committee**

Mr. Van Ommen reported as chair of this committee, noting its very recent creation. He thanked committee members as well as Manager, Executive Support Renee Collins for their hard work. The committee's emphasis will be on recruiting qualified applicants for appointment by the Law Society to external boards and organizations. Establishing new and effective processes remains a work in progress.

EXECUTIVE REPORTS

8. President's Report

- **TRC Advisory Committee Report**

Mr. Van Ommen reported as co-chair of this committee, noting the significant impact it has made since its inception in 2016. Earlier in the year, the concerns of the committee regarding the Begbie statue were brought to the attention of Benchers, resulting in the removal of the statue. Though controversial, the decision was lauded by the Indigenous community as an important step towards reconciliation.

Much of the year was spent planning and preparing for the symposium held in November which brought together over 300 people in the room and another 200 online to listen and learn and discuss. An important piece of the symposium was the creation of the powerful video *But I Was Wearing a Suit*, which documents the stories of Indigenous lawyers experiencing stereotyping and discrimination in our courts and our legal system. Participants described profound reactions to the video, and provided overwhelmingly positive feedback on the symposium as a whole.

In follow up, staff will prepare a report with recommendations for further steps we can take toward reconciliation.

- **Bencher Calendar**

Mr. Van Ommen noted that the calendar, started earlier this year, remains a work in progress and depends for its success on Bencher participation. He encouraged Benchers to continue to advise of upcoming events in their districts, and observed that a robust calendar of events can help facilitate greater engagement with lawyers and the local Bar associations around the province.

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

Mr. Van Ommen reported that, following the recent Federation Conference discussions in Victoria, a focus of the upcoming Federation Council meeting will be consideration of the review of the NCA program to determine whether and how the Federation should move to develop a substantive competency-based profile. He also noted that suggestions relating to proposed revisions to the Model Code by BC have not been included in the draft to be considered by the Federation Council, and he anticipates discussing with the Council the reasons why, as well as discussing a process by which law societies can provide feedback in working toward a proposal that is acceptable to a greater number of law societies. He recognized the importance of trying to achieve uniformity amongst the law societies.

- **Final Remarks**

Mr. Van Ommen announced the results from the recent Executive Committee election, congratulating successful candidates Lisa Hamilton, QC, Dean Lawton, QC, Steve McKoen and Carolynn Ryan. He thanked all candidates for their willingness to participate.

He also thanked Adam Whitcombe for stepping into the role of Acting CEO for the past months, a role he filled admirably, even while maintaining his ongoing duties as Chief Information and Planning Officer. On behalf of Benchers, Mr. Van Ommen expressed his gratitude and appreciation.

9. CEO's Report

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

He noted that this was his last Bencher meeting as Acting CEO and thanked Mr. Van Ommen, the Executive Committee and Benchers for their support. He also thanked all of the Law Society staff for their assistance, with particular mention of his own direct reports including Mr. Kuzminski and Ms. Collins.

Mr. Whitcombe also paid tribute to outgoing President Van Ommen, noting particularly his impactful work on Law Firm Regulation and the separation of the Law Society's insurance function, among other projects. On behalf of staff, he presented Mr. Van Ommen with a gift as a token of our appreciation for his support throughout the year.

CBA(BC) President Bill Veenstra then presented Mr. Van Ommen with a gift on behalf of the CBA(BC), thanking him for the steady hand with which he guided the profession in his year as President. Describing Mr. Van Ommen as a calm, thoughtful ambassador, he wished him well on his future endeavors.

In response, Mr. Van Ommen reiterated that it had been his pleasure to serve as President, and a privilege to be a Bencher for 9 years. The opportunity to serve as Bencher and work with such a great group of people has been the most satisfying endeavor of his career.

He then introduced Miriam Kresivo, QC as President for 2018, presenting her with the President's pin, noting that the Law Society would be in very good hands.

Ms. Kresivo thanked Mr. Van Ommen, noting her appreciation for their collegial working relationship over the last year. She applauded him for his tireless efforts on behalf of the Law Society and for the leadership he provided on successful initiatives undertaken by the Law Society during his tenure as Bencher and as a President.

She also echoed Mr. Van Ommen's gratitude for Mr. Whitcombe's assistance, noting how tirelessly he had worked through challenging times. She then welcomed Mr. Avison to his new role, and looked forward to working with him in the new year.

RTC
2017-12-08

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Executive Committee
Date: January 26, 2018
Subject: Law Society Representation on the 2018 QC Appointments Advisory Committee

1. Background

Historically, each Fall two members of the Law Society appointed by the Benchers participate in an advisory committee that reviews all applications for appointment of Queen's Counsel, and recommends deserving candidates to the Attorney General. The Benchers' usual practice, on the recommendation of the Executive Committee, is to appoint the President and First Vice-President to represent the Law Society.

The other members of the QC Appointments Advisory Committee are the Chief Justices, the Chief Judge, the Deputy Attorney General and the CBABC President.

2. Recommendation

The Executive Committee recommends that the Benchers appoint President Miriam Kresivo, QC and First Vice-President Nancy Merrill, QC as the Law Society's representatives on the 2018 QC Appointments Advisory Committee.



Memo

To: Executive Committee
From: Andrea Hilland
Date: January 4, 2018
Subject: Proposed Amendment to Terms of Reference

Purpose

This memo seeks approval for a minor amendment to the Truth and Reconciliation Advisory Committee's Terms of Reference (attached as Appendix A).

Background

At the October 30, 2015 Benchers meeting, shortly after the release of the Truth and Reconciliation Commission's report and recommendations, the Benchers unanimously agreed to take immediate action to respond to the TRC's calls to action. Following the December 4, 2015 Benchers meeting, a Steering Committee was struck to guide the Law Society of BC's approach to implementing calls to action that pertain to the Law Society of BC's mandate.

The TRC's Recommendations were the focus of the Benchers' Retreat and Conference on June 3, 2016. At the Benchers meeting on June 4, 2016, the Benchers supported the idea of establishing a permanent advisory committee. A resolution to create the Truth and Reconciliation Commission Advisory Committee was passed at the July 8, 2016 Benchers meeting.

The Law Society Truth and Reconciliation Steering Committee developed terms of reference for the permanent advisory committee. The terms of reference for the Truth and Reconciliation Advisory Committee were endorsed at the September 30, 2016 Benchers meeting. Following the September 30, 2016 Benchers meeting, a permanent Truth and Reconciliation Advisory Committee was appointed, and has been operating in accordance with the terms of reference since its inception.

Issue

The Truth and Reconciliation Advisory Committee's terms of reference provide that:

The Committee will have two co-chairs: the president of the Law Society of British Columbia and an Indigenous representative.

However, the current Vice-President of the Law Society has been appointed to serve as the Law Society's representative as co-chair of the Truth and Reconciliation Advisory Committee for the 2018 term. This is a slight divergence from the Committee's terms of reference.

Recommendation

The terms of reference should be amended to state that:

The Committee will have two co-chairs: a member of the Executive Ladder (i.e. the President, First Vice-President or Second Vice-President) of the Law Society of British Columbia and an Indigenous representative.

The proposed amendment maintains the requirement that the Law Society's representative be a member of Executive Ladder and accordingly continues to demonstrate the commitment of the Law Society's top level of governance to the implementation of relevant TRC calls to action. The proposed amendment also facilitates continuity in the leadership of the Truth and Reconciliation Advisory Committee.

Appendix A

TRUTH AND RECONCILIATION ADVISORY COMMITTEE TERMS OF REFERENCE

I. BACKGROUND

On June 2, 2015, the Truth and Reconciliation Commission (TRC) released its Executive Summary Report (Report),¹ including 94 recommendations (Recommendations)² to redress the legacy of residential schools and to offer guidance for reconciliation.

At the October 30, 2015 Benchers meeting, the Benchers unanimously agreed that addressing the challenges arising from the TRC Recommendations is one of the most important and critical issues facing the country and the legal system today. Therefore, they decided to take immediate action to demonstrate their commitment to respond meaningfully to the Recommendations.

The Benchers acknowledged that Recommendations 27 and 28 speak specifically to the legal profession, but recognized that the role of lawyers in reconciliation goes beyond these two Recommendations. A number of the other Recommendations are also intended to alleviate legal issues currently impacting Indigenous communities and, although not directly aimed at lawyers, their implementation largely depends on the engagement of lawyers.

The Law Society's regulatory authority over lawyers in British Columbia provides a significant opportunity to facilitate the implementation of the TRC Recommendations that relate to the Law Society's mandate to uphold and protect the public interest in the administration of justice, by:

- (a) preserving and protecting the rights and freedoms of all persons;
- (b) ensuring the independence, integrity, honour and competence of lawyers;
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
- (d) regulating the practice of law; and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.³

¹ http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf.

² http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf.

³ Section 3 of the *Legal Profession Act*.

The Law Society intends to support the realization of TRC's Recommendations that intersect with its mandate.

The TRC's Recommendations were the focus of the Benchers' Retreat and Conference on June 3, 2016. At the Benchers meeting on June 4, 2016, the Benchers supported the idea of a permanent advisory committee. A resolution was passed to create the Truth and Reconciliation Commission Advisory Committee at the July 8, 2016 Benchers meeting.

II. PREAMBLE

The Law Society of British Columbia:

1. Acknowledges the Truth and Reconciliation Commission's finding that, for over a century, the central goal of Canada's Aboriginal policy can best be described as "cultural genocide";
2. Recognizes that lawyers have played, and continue to play an active role in past and present injustices that affect Indigenous people; and
3. Understands that the matters identified in the TRC's report and recommendations are some of the most critical issues facing the legal system today.

Therefore, the Law Society of British Columbia has constituted a Truth and Reconciliation Commission Advisory Committee to guide the Law Society's immediate and meaningful response to the TRC's calls to action.

III. MANDATE

The mandate of the Truth and Reconciliation Advisory Committee is to provide guidance and advice to the Law Society of British Columbia on legal issues affecting Indigenous people in the province, including those highlighted in the Truth and Reconciliation Commission's Report and Recommendations, such as: Indigenous laws, the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, Aboriginal rights and title (including treaty rights), issues concerning jurisdictional responsibility for Indigenous people, child welfare, overrepresentation of Indigenous people in custody and the need for enhanced restorative justice programs, and the disproportionate victimization of Indigenous women and girls.

IV. GOALS

The goals of the Truth and Reconciliation Advisory Committee are to support the Law Society in its efforts to:

1. Understand access to justice issues from the perspective of Indigenous people in British Columbia;
2. Address the unique needs of Indigenous people within the legal system in BC;
3. Improve cultural competence training for lawyers in British Columbia to:
 - a. Recognize and respond to diverse legal service needs; and
 - b. Understand the relevance and applicability of Indigenous laws within the Canadian legal system;
4. Address the unique needs of Indigenous people within the Law Society's regulatory processes; and
5. Support Indigenous lawyers to help ensure the legal profession reflects the public it serves.

V. RESPONSIBILITIES

The Committee will:

1. Monitor legal issues affecting Indigenous communities in British Columbia;
2. Recommend ways for the Law Society to develop and maintain positive relationships with Indigenous communities;
3. Ensure that Indigenous communities are effectively engaged in the efforts of the Committee to fulfill its mandate;
4. Promote collaboration and coordination across Law Society committees and departments on Indigenous policies, programs, and initiatives;
5. At the request of the Benchers or Executive Committee on matters regarding Indigenous issues pertaining to the legal system in British Columbia:
 - Develop recommendations, policy options, and initiatives;
 - Advise the Benchers on priority planning;
 - Analyze policy implications of Law Society initiatives;
 - Identify strategic collaborative opportunities; and
 - Attend to other matters referred to the Committee.

VI. PRINCIPLES

The guiding principles for the Committee are as follows:

1. Reconciliation requires a willingness to promote structural and systemic change in the relationship between Indigenous and non-Indigenous peoples;
2. Inclusive engagement with Indigenous communities and the legal profession is required for the Committee to fulfill its mandate;
3. Relationships built upon respect are essential to the Committee's operation;
4. Flexibility is necessary for the Committee to address a broad range of issues, adapt to changing circumstances, and maintain relevance; and
5. Transparent communication is necessary to build and maintain trust in the Committee's endeavors.

VII. COMPOSITION

The Committee will be comprised of an equal number of Benchers and non-Benchers.

Selection of Committee members will be in accordance with the Law Society's appointments practices, and will reflect:

- a broad range of Indigenous representatives;
- different regions of the province, including urban and rural locations;
- a variety of practice areas; and
- gender balance.

Committee members who are well respected by Indigenous communities will be selected, with the understanding that Committee members will be trusted to identify and convey the perspectives and concerns of Indigenous communities to inform the work of the Committee.

The Indigenous representatives on the Committee will be survivors or intergenerational survivors of the residential school experience.

PROPOSED AMENDMENT: The Committee will have two co-chairs: ~~the President~~ a member of the Executive Ladder (i.e. the President, First Vice-President or Second Vice President) of the Law Society of British Columbia and an Indigenous representative.

VIII. MEETING PRACTICES

The Committee shall operate in a manner consistent with the Law Society's governance policies.

The Committee shall meet as required.

At least half of the members of the Committee will constitute a quorum.

The Committee will strive to reach consensus in decision-making. If consensus cannot be attained, then decisions will be made by a majority vote.

IX. REPORTING REQUIREMENTS

The Committee will provide written reports to the Benchers two times annually by providing one mid-year report and one year-end report each year.

The Committee may provide additional updates at regularly scheduled Bencher meetings.

X. REVIEW

These Terms of Reference are subject to review from time to time as deemed appropriate by the Benchers.



Memo

To: Benchers
From: Miriam Kresivo, QC
President
Date: January 17, 2018
Subject: Alternate Legal Service Provider Working Group

In December 2014, the Benchers approved the recommendation of the Legal Service Regulatory Framework Task Force (the LSRFTF) that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice.

The LSRFTF suggested that, if the Benchers adopted the recommendation, the next step would be to approach government for the necessary amendments to the *Legal Profession Act*.

A letter was sent to the government requesting amendments in December 2014. Since then we have had discussions with government regarding amendments to the *Legal Profession Act* and, although the timetable for such amendments has not been what the LSRFTF anticipated, we remain optimistic that such amendments will be forthcoming under the current government.

The mandate of the LSRFTF provided that, amongst other things, it was to:

1. identify the qualifications necessary for non-lawyers to be able to provide such services;
2. make recommendations to the Benchers for a regulatory framework to: (i) credential non-lawyers to provide legal services in discrete areas of practice; (ii) set standards for the provision of such services; and
3. ensure that the framework developed is consistent with a unified regulatory regime for legal services.

The LSRFTF reported that the Task Force decided not to address these aspects of the mandate as it was premature to develop a system of credentialing and regulating new providers of legal services before we could ascertain whether the necessary amendments to the *Legal Profession Act* would be forthcoming.

We believe the current government understands and appreciates the benefits of permitting the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice and does not take issue with amending the *Legal Profession Act* accordingly. And while time on the legislative agenda is scarce and valuable, we continue to press for the necessary amendments and hope that the government sees the benefit of permitting the Law Society to create additional classes of legal service providers.

In light of our strategic objective to license alternate legal service providers and our hope that necessary amendments to the *Legal Profession Act* will be forthcoming this year, now is the right time to consider the remaining aspects of the LSRFTF mandate so as to be ready to proceed once the amendments are in place.

LSRFTF gave considerable thought to the areas that would be best served by alternate legal service providers and concluded that family law, debtor/creditor law, and employment law were three areas of law in which there is unmet and underserved public need in obtaining legal services. The LSRFTF recognized the list was not exhaustive of all the unmet and underserved legal need, but that each of these three areas of law has been identified in legal needs surveys. The area of family law, in particular, presents the most common source of concern about access.

At its January 2018 meeting, the Executive Committee considered how best to move forward with the remaining alternate legal service provider issues. The Committee decided to recommend to the Benchers establishing an Alternate Legal Service Provider Working Group to oversee the development of the outstanding mandate elements outlined above in relation to family law practice as an initial project in qualifying, credentialing and regulating new classes of members.

The following resolution is therefore presented for the Benchers approval.

BE IT RESOLVED that the Benchers create an Alternate Legal Service Provider Working Group, the members of which are to be appointed by the President. The Working Group will:

- 1. consider and identify the qualifications necessary for family law legal service providers other than lawyers to be able to provide family law legal services directly to the public;*
- 2. make recommendations to the Benchers for a regulatory framework to: (i) qualify other legal service providers to provide family law legal services; (ii) set standards for the provision of such services; and*
- 3. ensure that the framework developed is consistent with a unified regulatory regime for legal services.*

The Working Group is to provide a report to the Benchers by the end of the year on its progress and any recommendations on the specific mandate items or other recommendations the Working Group may consider necessary.



Memo

To: Benchers
From: Miriam Kresivo, QC
President
Date: January 17, 2018
Subject: Annual Fee Working Group

In August of last year, a member resolution was received for consideration at the 2017 Annual General Meeting. In summary, the resolution sought to have the Law Society investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance premiums, which together comprise the annual fee. A copy of the proposed member resolution is attached as Appendix A.

Then President, Herman van Ommen, QC proposed that the 2018 Ladder consider how the Law Society might respond to the member resolution. In particular, he asked whether we should agree to look at reduce fees for some members, as was considered but not recommended by a working group following approval of a similar resolution at the 2013 Annual General Meeting.

The result of the discussion following Mr. Van Ommen's suggestion was an agreement that the Law Society would investigate and duly consider reduced rates of practice and insurance fees for public interest practitioners. The sponsors of the proposed member resolution therefore withdrew their resolution.

The following resolution is therefore presented for the Benchers approval.

BE IT RESOLVED that the Benchers create an Annual Fee Review Working Group, the members of which are to be appointed by the President. The Working Group will investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance fees and will report back to the Benchers before the 2018 annual general meeting.

Appendix A

Whereas, it is the statutory duty and object of the Law Society of British Columbia to protect the public interest in the administration of justice;

Whereas, the Law Society membership supports the practice of public interest law through not-for-profit and non-governmental organizations, and recognizes that public interest law practitioners provide valuable legal services to address critical legal needs unmet by the private sector;

Whereas, Law Society members who practice exclusively in public interest law are generally subject to lower amounts of professional liability than their fellow members;

Whereas, members of the Law Society of Upper Canada who practice exclusively in criminal law and/or immigration law are eligible for a reduction of insurance premiums;

Whereas, members of the Law Society of Upper Canada employed or volunteering in a legal clinic, a student legal clinic, or an Aboriginal legal services corporation funded by Legal Aid Ontario are exempted entirely from insurance premiums;

And *whereas*, Law Society members who practice exclusively in public interest law typically earn wages and salaries below the average market rates for fellow members with equivalent practice experience;

Therefore, **be it resolved that** the Law Society membership directs the Law Society to investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance premiums.

Submitted by:



Haran Aruliah
Member No: 514189



Marie-Noël Campbell
Member No: 512592

Memo

To: Benchers
From: Miriam Kresivo, QC
President
Date: January 17, 2018
Subject: Mental Health Task Force

Benchers will recall that as part of our mandate to support and assist lawyers and articulated students to fulfill their duties in the practice of law, the 2018 – 2020 Strategic Plan proposes that we improve the mental health of the legal profession by:

1. identifying ways to reduce the stigma of mental health issues; and
2. developing an integrated mental health review concerning regulatory approaches to discipline and admissions.

The Executive Committee considered this initiative to be one of our first priorities under the new strategic plan. It is therefore recommended that the Benchers establish a task force with a mandate to consider the two goals stated in the strategic plan and develop recommendations regarding how the Law Society might meaningfully accomplish the two objectives.

The following resolution is presented for the Benchers approval.

BE IT RESOLVED that the Benchers create the Mental Health Task Force, the members of which are to be appointed by the President. The Task Force will, at its first meeting, develop draft terms of reference consistent with the two goals in the 2018 – 2020 Strategic Plan for consideration and approval by the Benchers. The Task Force will present the draft terms of reference at the Benchers meeting next following the first meeting of the Task Force and provide the Benchers with a mid-year report and a year-end report on the Task Force's progress.



CEO's Report to the Benchers

January 2018

Prepared for: Benchers

Prepared by: Donald J. Avison

Introduction

As this is my first CEO report to the Benchers, I would like to begin by expressing my appreciation for the opportunity to serve the public interest and the profession in this interesting, challenging and important role. I am very much looking forward to the opportunity to meet the objectives established by the Benchers.

I started my new role on the same day that our new President, Miriam Kresivo QC, began her term. Although we are both new to our positions, with the support of Law Society staff, I know we will work together to ensure that 2018 is a successful year.

I would also like to express my personal thanks to past President, Herman Van Ommen QC, who took time in the busy last days of his term as President to provide me with the benefit of a comprehensive download of his knowledge, observations and experience both as President and as Benchers. As you know, Mr. Van Ommen will continue to serve the interests of the Law Society over the next two years as our representative on the Federation of Law Societies of Canada's Council.

Permit me also to offer the observation that I come to my new role with the benefit of a strong, effective and highly dedicated leadership team. I want to make particular mention of the support and advice that I have received from Adam Whitcombe both prior to, and since my arrival. It became clear to me very quickly that Adam, Jeanette McPhee, Deb Armour QC, Alan Treleaven and Su Forbes QC are all deeply committed to the objectives of the Law Society and the organization is well served by them.

My early experience tells me that the dedication and commitment of the senior leadership team is very much a shared characteristic throughout the whole of the organization. Over the course of the first few weeks as CEO, I have had the opportunity to speak directly with many staff members - something that I plan to do regularly - and I have been greatly impressed by how strongly and positively people feel about working here.

Implementing the 2018-2020 Strategic Plan

At the December 8, 2017 meeting, the Benchers approved an ambitious strategic plan for 2018 - 2020. Our work will now turn to providing the support and advice necessary to effectively operationalize that plan.

While the goal will be to implement the whole of the Strategic Plan over the course of the next three years, the early emphasis will likely focus on four important initiatives:

1. improving access to justice;
2. taking further meaningful steps on the Calls to Action set out in the Final Report of the Truth and Reconciliation Commission;
3. addressing the reality of mental health issues within the profession; and
4. implementing the recommendations of the Law Firm Regulation Task Force.

I anticipate that the access to justice initiative will likely have a number of dimensions, including acting on proposals to license alternate legal service providers, advancing the case for the importance of making investments in improved publicly funded legal services and encouraging government - particularly at the federal level - to proceed more rapidly in addressing judicial vacancies.

The Truth and Reconciliation Symposium held last fall represented an important step forward, but much remains to be done. We will be working closely with the TRC Advisory Committee and, through them, with First Nations, with Metis and with other Indigenous peoples to develop, and implement, a more robust TRC action plan. This is an area of particular importance to me and I believe my prior experience will position me to assist the advisory committee in making further progress.

In terms of our efforts to address the reality of mental health issues in the profession, I expect that a newly established Mental Health Task Force will identify ways to reduce the stigma of mental health issues and look at our discipline and admissions processes to ensure that we are able to take into account mental health issues.

Finally, with the law firm regulation pilot project approved by the Benchers at the December meeting, we take the first step towards a more supportive approach to legal regulation that recognizes assisting lawyers and firms in their practices benefits the public and reduces the need for reactive regulation. The Law Firm Regulation Task Force, with the support of staff, will continue its work in 2018 to implement and evaluate the pilot project.

2017 Year End Financial Results

While the final accounting remains to be completed, we should end the year in a positive budget position. Benchers will be briefed in further detail regarding our 2017 financial status at the March meeting.

Annual Employee Survey

In the past, the Law Society's employee survey was generally completed at year-end with a report on results at the January Bencher meeting.

We have adopted a different approach this year and the survey will be completed before the end of the month. Benchers will receive a detailed report at their March meeting.

Key Performance Measures (KPMs)

Together with the Executive Committee, we are currently looking at how we use KPMs to monitor the progress of the organization and in setting objectives for subsequent years. The mechanism can be an effective one - and the process is one that I very much support - but we are taking time to consider changes to the current KPMs to ensure that they adequately address the elements and challenges that are of greatest relevance to the organization. I expect that work to be completed in the short term with the report to Benchers at the March meeting.

Enterprise Risk Management (ERM) Plan

Prudent business and organizational practice requires a consistent approach to the development, monitoring and, where necessary, adjustment to the assessment of risks facing the enterprise. The Law Society, unlike other similar organizations, has had an ERM process in place for a several years now. At the January meeting, Benchers will be briefed, and will have an opportunity to consider and ask questions about the current ERM plan. In this regard, I would note that there have been changes in what are now identified as the top ten risks that we currently face. Chief Financial Officer, Jeanette McPhee, will present the updated plan and, together with other members of the senior leadership team, will be available to respond to questions.

Communications

This year will also see some changes which we hope will improve the effectiveness of our communications efforts. Jason Kuzminski, who joined us recently as Director of Communications & Public Affairs, will present at the upcoming meeting on our proposed approach to communications and public engagement and how this work is expected to link with the objectives set out in the Law Society's Strategic Plan.

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

Donald J. Avison
Executive Director/Chief Executive Officer



Memo

To: Benchers
From: Finance and Audit Committee
Date: January 17, 2018
Subject: Law Society Enterprise Risk Management (ERM) Plan – 2017 Update

Background

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

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

The ERM plan is reviewed on an annual basis, with a detailed review every three years.

In 2011, the initial ERM plan was prepared by management and reviewed by the Audit Committee and the Benchers. The plan has been updated each year, with a detailed review every three years.

Management performed a detailed review of the ERM plan during 2017, which was presented and approved at the October 2017 Finance and Audit Committee meeting.

2017 Update – Process and Summary

During 2017, Leadership Council convened meetings to review the ERM plan. This process included reviewing the more significant existing risks, the identification of emerging risks, and the removal or combination of risks that had become less significant since the last review. Existing and new mitigation strategies were reviewed, and management then evaluated the risks identified to determine the prioritization and ranking of the residual risks.

Attached is the updated 2017 ERM plan, which includes the Executive Summary (Appendix A) and the detailed Risk Schedule (Appendix B).

Summary of Changes

Four emerging risks added to the plan:

R11: Misuse of trust funds and accounts, and/or other facilitation of financial misconduct by members.

R10: Emergence of new technologies challenging the ability to regulate legal services.

R9: Perceived failure to enable, or actual hindrance of, reasonable access to legal service providers.

R12: Exercise of members' statutory right to override Benchers' decisions.

Risks removed or combined with others in the plan:

O4: Unauthorized access to data and information – was combined with O3 – Significant breach of confidential and/or private information.

LIF 8: Investment devaluation – was combined with F2 – Significant impact of economic downturn.

O2: Failure in the infrastructure and/or security of the building – was combined with O1 – natural or other disaster, fire, flood, earthquake

SW2: Inability to recruit and/or retain staff – Combined with SW1 – loss of key personnel.

SW4: Unhealthy or unsafe conditions – Combined with O1 – Natural or other disaster.

Risks removed from the plan:

F5: Inaccurate or untimely financial reporting – removed as less significant.

R1: Adverse change in the Legal Profession Act or government policy - Removed as it is considered a consequence of other risks.

LIF1: Inadvertent loss of LIF Captive structure – removed as not relevant with on-going discussions with FICOM and Ministry.

F4: Unexpected escalation of operating costs – removed as not significant in light of close monitoring.

F3: Loss of tenants – removed as minor risk.

F6: Lower member base – removed as less significant and monitored closely.

Law Society of British Columbia
Enterprise Risk Management – Updated October 2017
Executive Summary

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

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

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

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

The process going forward will be:

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

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

Summary of Major Strategic Residual Risks (top 10 risks)		
Category	Risk	ET Lead
Regulatory (Emerging)	R11: Misuse of trust funds and accounts, and/or other facilitation of financial misconduct by members	CLO and Director Trust Regulation, Director of insurance
Operational	O1: Natural or other disaster, such as fire, flood or earthquake	ED/CEO
Regulatory (Emerging)	R10: Emergence of new technologies challenging the ability to regulate legal services	CIPO
Regulatory (Emerging)	R9: Perceived failure to enable, or actual hindrance of, reasonable access to legal service providers	ED/CEO
Staff and Work Environment	SW1: Loss of key personnel or inability to recruit skilled personnel	ED/CEO
Regulatory	R5: Failure to appropriately sanction, or deal with, a lawyer in a timely way	CLO and Tribunal Counsel
Regulatory	R3: Conflict of interest event by Benchers or staff	ED/CEO
Operational	O3: Significant breach (including unauthorized access) of confidential and/or FOIPPA information to members, employees and/or the public	CIPO and CFO
Regulatory	R6: Significant failure to fulfill the statutory duties under the Legal Profession Act	ED/CEO
Regulatory (Emerging)	R12: Exercise of members' statutory right to override Bencher decisions	ED/CEO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
EMERGING REGULATORY RISK	R11: Misuse of trust funds and accounts, and/or other facilitation of financial misconduct by members	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public confidence along with a loss of reputation with the membership • Financial: costs and damages - possible litigation 		<ul style="list-style-type: none"> • Appropriate Law Society trust and conduct rules • Trust assurance audit program • Appropriate investigation and prosecution of legal matters commensurate with administrative law • Education and risk management advice to lawyers • Insurance policy terms and limits • Insurance policy for Part B underwritten by AIG • Credentialing standards and procedures • Hearing panel composition and training 	N/A		<ul style="list-style-type: none"> • Potential review of mandatory employee theft/crime insurance requirements for all practicing lawyers with trust accounts • Development of guidelines around reporting of criminal conduct to law enforcement 	CLO, Director Trust Regulation, Director of Insurance
OPERATIONAL	O1: Natural or other disaster, such as fire, flood or earthquake	<ul style="list-style-type: none"> • Operational and financial: injury of staff and/or building damage • Operational: service disruption • Financial: unexpected costs 		<ul style="list-style-type: none"> • Fire and earthquake safety plan and training • Building, human resources and operational procedures and training • First Aid attendants • Information technology backup plan • Building due diligence review • Insurance coverage and Work Safe coverage • Off-site storage • Off-site server location • Annual manager training to back up floor wardens 				ED/CEO
EMERGING REGULATORY RISK	R10: Emergence of new technologies challenging the ability to	<ul style="list-style-type: none"> • Regulatory: unable to appropriately investigate and discipline • Reputational: loss of confidence 		<ul style="list-style-type: none"> • General awareness and environmental scan • Practice advisors 	N/A		<ul style="list-style-type: none"> • Implement staff technology working group 	CIPO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
	regulate legal services	<ul style="list-style-type: none"> Operational: disruption to day-to-day activities 						
EMERGING REGULATORY RISK	R9: Perceived failure to enable, or actual hindrance of, reasonable access to legal service providers	<ul style="list-style-type: none"> Reputational: loss of public confidence, being seen as a barrier to public access Political: loss of self-regulation, direct government intervention 		<ul style="list-style-type: none"> Seeking legislative change to broaden legal service providers, i.e.: paralegals Unbundling of legal services Committees: Access to Legal Services, Legal Aid Advisory, Unauthorized Practice Appropriate use of unauthorized practice authority Supporting and funding pro bono service Funding other access to legal services initiatives 	N/A		<ul style="list-style-type: none"> Benchers strategic plan review in 2017 	ED/CEO
STAFF AND WORKING ENVIRONMENT	SW1: Loss of key personnel or inability to recruit skilled personnel	<ul style="list-style-type: none"> Operational: service disruption as well as loss of corporate knowledge 		<ul style="list-style-type: none"> Succession planning and cross training Compensation and benefit philosophy, including employee recognition program Professional, leadership and skills development program and human resource policies Performance management and coaching process Leadership council structure to provide leadership experience Hiring practices and recruiting firms 				ED/CEO
REGULATORY	R5: Failure to appropriately sanction, or deal with, a lawyer in a timely way	<ul style="list-style-type: none"> Political: direct government intervention in the Law Society authority and structures Reputational: diminished public confidence along 		<ul style="list-style-type: none"> Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) D & O insurance policy underwritten by AIG 				CLO and Tribunal Counsel

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
		with a loss of reputation with the membership • Financial: costs and damages - possible litigation		• Government relations • Ability to seek review and/or appeal to the BC Court of Appeal • Enhanced role of Tribunal Counsel • Hearing panel composition and training • National Discipline standards				
REGULATORY	R3: Conflict of interest event by Benchers or staff	• Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public perception of independence along with a loss of reputation with the membership		• Bencher governance policies and training • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law including investigations conducted by independent, external counsel where appropriate • Enhanced role of Tribunal Counsel • Hearing panel composition and training				ED/CEO
OPERATIONAL	O3: Significant breach (including unauthorized access) of confidential and/or FOIPPA information to members, employees and/or the public	• Reputational: diminished public perception of independence and possible loss of reputation with membership		• Information technology security policy, process and procedures • Member file and case file management procedures • Records management procedures and LEO security profiles, confidential shredding service • Building security system and procedures • Information technology, privacy and security training of new staff • Established Privacy Policies, including annual privacy awareness training for staff • Information Privacy Agreements with contractors				CIPO and CFO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> IT Security Review completed regularly Encryption of Benchers and Committee agendas Benchers and Committee member procedures for Law Society documents in place Cyber Insurance in place 				
REGULATORY	R6: Significant failure to fulfill the statutory duties under the <i>Legal Profession Act</i>	<ul style="list-style-type: none"> Political: direct government intervention in the Law Society authority and structures Reputational: diminished public confidence along with a loss of reputation with the membership Financial: costs and damages - possible litigation 		<ul style="list-style-type: none"> Benchers governance policies and training Benchers Strategic Plan Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law Crisis communication plan (note: applies to all risks) Government relations Hearing panel composition and training Trust Assurance audit program 			<ul style="list-style-type: none"> Law firm regulation working group 	ED/CEO
EMERGING REGULATORY RISK	R12: Exercise of members' statutory right to override Benchers decisions	<ul style="list-style-type: none"> Operational: disruptive to day-to-day operations Reputational: loss of member and public confidence, distraction from other issues, strained relationships Financial: large resource commitment takes away from other initiatives 		<ul style="list-style-type: none"> Communication strategies Law Society initiated consultation or member referenda Policy analysis 	N/A			ED/CEO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
REGULATORY	R8: Admission decisions are not reflective of the character, fitness, and competencies of a prospective lawyer	<ul style="list-style-type: none"> • Political: possible loss of the right to self-regulation • Reputational: diminished public perception of independence • Financial: costs and damages imposed through possible litigation 		<ul style="list-style-type: none"> • Law Society Admission Program • Credentialing standards and procedures • Hearing panel composition and training • Enhanced role of Tribunal Counsel • Legislative amendment to allow Law Society appeals of prior decisions 				Director of Education and Practice
OPERATIONAL	O5: Loss of data and information	<ul style="list-style-type: none"> • Reputational: diminished public perception of independence and possible loss of reputation with membership • Operational: service disruption • Financial: unexpected costs 		<ul style="list-style-type: none"> • Information technology backup plan • Information technology security policy, process and procedures • Records management policies and LEO • Off-site Iron Mountain storage for closed files • Insurance coverage • Off-site storage • Off-site server location 				CIPO and CFO
REGULATORY	R2: Loss of a lawsuit alleging a failure of the Law Society to follow due process	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self-regulation • Reputational: diminished public perception of independence along with a 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Hearing panel composition and training • Enhanced role of the Tribunal Counsel • National Discipline Standards • S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) • D & O insurance policy underwritten by AIG 				CLO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
		loss of reputation with the membership • Financial: lawsuit defence and settlement costs						
STAFF AND WORKING ENVIRONMENT	SW3: Labour action (strike)	• Operational: service disruption		<ul style="list-style-type: none"> • Cross training • Compensation and benefit philosophy • Human resource and operational standards, policies and procedures • Reward and Recognition Program (RREX) • 2016 – 2018 collective agreement 				CIPO and CFO
STAFF AND WORKING ENVIRONMENT	SW5: Loss of a lawsuit on human rights issues by staff	<ul style="list-style-type: none"> • Operational and reputational: diminished levels of staff performance • Financial: unexpected costs 		<ul style="list-style-type: none"> • Human resource and operational standards, policies and procedures • Annual performance management and coaching process • Leadership development training • Legal counsel and advice 				CFO
FINANCIAL	F2: Significant impact of economic and/or financial market downturn	• Financial: investment devaluation as well as losses of market value in the building and member revenue, member economic impact		<ul style="list-style-type: none"> • Investment policies and procedures (SIIP) • Quarterly reviews of investment performance and benchmarking • Investment managers and pooled funds • Annual operating and capital budgeting process • Monthly and quarterly financial review process • Real estate expert advice and monitoring 				CFO and Director of Insurance

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> • Appropriate reserve levels and Minimum Capital Test ratio • Updated Statement of Investment Policy, & Asset Mix Change in 2015 				
REGULATORY	R7: Loss of a lawsuit alleging wrongful deprivation of lawyer's (prospective) membership (livelihood)	<ul style="list-style-type: none"> • Reputational: diminished public perception of independence along with a loss of reputation with the membership • Financial: costs and damages imposed through possible litigation 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Appropriate credentialing procedures, including investigations, assessment of applications and credentials hearings • Hearing panel composition and training • S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) • D & O insurance policy underwritten by AIG 				CLO and the Director of Education and Practice
REGULATORY	R4: Failure of the Law Society to stay within jurisdiction and/or wrongful prosecution	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public perception of independence along with a loss of reputation with the membership 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Hearing panel composition and training • Enhanced role of the Tribunal Counsel 				CLO and Tribunal Counsel

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
LAWYERS INSURANCE FUND	LIF7: Lawsuit for “bad faith” failure to settle / denial of coverage	<ul style="list-style-type: none"> • Reputational: loss of reputation with the public or profession • Financial: exposure to excess damage award 		<ul style="list-style-type: none"> • Established and documented quality control (Claims Manual) • Protocol to avoid “bad faith” losses • Third Party Claims Audits • S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability) • E&O insurance policy underwritten by Markel • Appropriate reserve levels and Minimum Capital Test ratio 				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF5: Significant error in advice to insured or payment (non-payment) of individual claim	<ul style="list-style-type: none"> • Financial: unnecessary payments 		<ul style="list-style-type: none"> • Established and documented quality control (Claims Manual) • Peer File Reviews • E&O insurance policy underwritten by Markel 				Director of Lawyers Insurance Fund
FINANCIAL	F1: Misappropriation of Law Society financial assets	<ul style="list-style-type: none"> • Reputational: loss of reputation with the membership • Financial: loss of revenue, increased fees 		<ul style="list-style-type: none"> • Internal controls • Schedule of authorizations • External audit • Monthly and quarterly financial review process • Crime insurance 				CFO
LAWYERS INSURANCE FUND	LIF6: Error in actuarial advice	<ul style="list-style-type: none"> • Financial: insufficient reserves 		<ul style="list-style-type: none"> • External actuarial advice and projections • External auditor reviews of actuarial methodology and numbers • Monitoring of LPL insurance trends and risks 				Director of Lawyers Insurance Fund

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2016	Residual Risk Level 2017	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> Appropriate reserve levels and Minimum Capital Test ratio 				
LAWYERS INSURANCE FUND	LIF4: Catastrophic losses under Part A of the LPL policy	<ul style="list-style-type: none"> Financial: significant investigation expense and settlement payments 		<ul style="list-style-type: none"> Policy wording on limits and “related errors” Proactive claims and risk management practices Monitoring of LPL insurance trends and risks Education and risk management advice to lawyers Appropriate reserve levels and Minimum Capital Test ratio Stop-loss reinsurance treaty underwritten by ENCON 				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF2: Loss of third-party lawsuit against captive, insurance operations or in-house counsel	<ul style="list-style-type: none"> Financial: exposure to compensatory damage award 		<ul style="list-style-type: none"> Established and documented quality control (Claims Manual) S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability) E & O insurance policy underwritten by Markel 				Director of Lawyers Insurance Fund

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

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

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

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

The Law Society
of British Columbia



Strategic Plan

2018 - 2020

Our Strategic Plan

The initiatives identified in this Plan are intended to advance the objects and duties of the Law Society. They represent opportunities to initiate or improve Law Society policies, visions or positions on various issues of importance facing the justice system and the legal profession.

Mandate

The Law Society fulfills its mandate and implements its vision through its day-to-day operations and through its strategic initiatives. Our Strategic Plan identifies Law Society goals under each of these statutory objects and duties.

The Mandate of the Law Society is contained in section 3 of the *Legal Profession Act*:

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,*
- (b) ensuring the independence, integrity, honour and competence of lawyers,*
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,*
- (d) regulating the practice of law, and*
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.*

Law Society Vision:

The Law Society of British Columbia protects the public interest in the administration of justice. It does this by ensuring the public is well served by legal professionals who are honourable and competent, and brings a voice to issues affecting the justice system and the delivery of legal services.

Preserving and Protecting the Rights and Freedoms of All Persons

The Law Society's duty to preserve and protect the rights and freedoms of all people recognizes the Law Society's role extends beyond ensuring that individuals are well served by their lawyers. It also requires that we ensure the public has access to justice and has confidence in the rule of law and the administration of justice.

We will ensure the public has better access to justice by

- Pursuing our Vision for Publicly Funded Legal Services adopted by the Benchers in March 2017.
- Pursuing our initiative to license alternate legal service providers and work with government to obtain the necessary legislative amendments to do so.
- Collaborating with other justice system organizations to identify issues within the justice system, such as document disclosure, mega trials, and advocacy skills and training that could be addressed to improve the delivery of legal services.
- Examining the underlying economic costs of the provision of legal services and the cost of accessing justice.
- Reviewing regulatory requirements to ensure that they do not hamper innovation regarding or hinder cost-effective delivery of legal services.

We will ensure the public has greater confidence in the Rule of Law and the Administration of Justice by

- Identifying opportunities for public discussion about the meanings of these topics and about their importance to Canadian society.
- Developing educational materials about the role of a lawyer in the justice system and how lawyers advance the cause of justice.

We will identify and implement appropriate responses to the Calls to Action from the Report of the Truth and Reconciliation Commission by

- Seeking opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities.
- Embarking upon the development of an action plan to facilitate the implementation of relevant Recommendations.
- Encouraging all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues).

- Urging all lawyers in British Columbia to act on the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

Ensuring the Independence, Integrity, Honour and Competence of Lawyers

The Law Society's obligation to ensure the independence, integrity, honour and competence of lawyers is essential to the effective provision of legal advice and service.

Without independence, the public cannot be assured that lawyers are acting only in their clients' interests.

Without integrity and honour, the public cannot be assured that lawyers are discharging their role in the justice system with time-honored values of probity, honesty, and diligence.

Without competence, the public cannot be assured that the services provided by lawyers will meet clients' needs or provide value. Moreover, public confidence in the justice system would falter if the Law Society could not establish professional standards of competence for lawyers.

We will maintain and improve our standards for effective professional education, practice standards and practice advice by

- Identifying opportunities to educate the public and the profession about the benefits of the public's right to an independent legal profession.
- Continuously examining the standards of lawyer competence requirements to ensure they maintain public confidence in the excellence of the delivery of legal services.

Establishing Standards and Programs for the Education, Professional Responsibility and Competence of Lawyers and of Applicants for Call and Admission

The public expects and deserves effective regulation of the legal profession. Proper regulation of the legal profession requires setting effective standards and enforcement mechanisms to ensure applicants are properly qualified, and those who practise law do so

competently, professionally and ethically. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

We will ensure, bearing in mind the mobility of lawyers within Canada, that the Admission Program remains appropriate and relevant by

- Examining the availability of Articling positions and develop a Policy and proposals on access to Articling positions and remuneration.
- Examining the effectiveness of Articling and develop proposals for the enhancement of Articling as a student training and evaluation program.
- Examining alternatives to Articling.

We will ensure that appropriate standards are maintained for ethical and professionally responsible practice of law by

- Reviewing standards to ensure they are effective to reduce the likelihood of the laundering of money through the use of legal professionals.

Regulating the Practice of Law

The regulation of the practice of law is a key function of the Law Society and reflects how the public interest in the administration of justice is protected through setting standards for the competence and conduct of lawyers. Law Society investigations and hearings must continue to ensure that processes are fair and transparent.

The Goals that the Benchers have identified relating to this subsection of the Act are:

We will maintain a fair and transparent process through which concerns about lawyers' professional conduct can be investigated and, where appropriate, sanctioned by

- Continuously examining our regulatory processes to ensure they are fair and transparent and that they work to protect the public interest.

We will enhance our regulatory oversight of law firms by

- Implementing the recommendations of the Law Firm Regulation Task Force.

We will mitigate risk and prevent misconduct and improve regulatory outcomes by

- Examining “pro-active” or “outcomes focused” methods of regulation to complement the disciplinary process.

We will review our disclosure processes to balance transparency and privacy by

- Undertaking an examination of disclosure and privacy issues relating to Law Society core functions and recommend updates to our current practices.

Supporting and Assisting Lawyers, Articled Students, and Lawyers of other Jurisdictions who are Permitted to Practise Law In British Columbia in Fulfilling their Duties in the Practice of Law

While the public interest is the focus of the work of the Law Society, the public interest is also served where, as relevant, the Law Society can support and assist students and lawyers to meet the standards the Law Society has established. Disciplining those who fail in meeting standards will always be important, but such processes address after-the fact results. On the other hand, providing resources to assist lawyers and students in meeting the standards can lead to better and healthier lawyers and reduce the likelihood of incidents that will lead to a regulatory outcome.

We will improve the mental health of the legal profession by

- Identifying ways to reduce the stigma of mental health issues.
- Developing an integrated mental health review concerning regulatory approaches to discipline and admissions.

We will develop initiatives to improve the retention rate of lawyers in the profession, including in particular Indigenous and women lawyers by

- Promoting initiatives to improve the equity and diversity of the legal profession.



Memo

To: The Benchers
From: Deb Armour QC, Chief Legal Officer
Date: January 17, 2018
Subject: National Discipline Standards

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the National Discipline Standards at its meeting on June 13, 2014. All law societies in Canada have adopted the standards.
2. The standards address timeliness, openness, public participation, transparency, accessibility and training of adjudicators and investigators.
3. The standards are aspirational. As of 2016 year end, only one law society in Canada had met all of the standards and that occurred only once.
4. Standard 9 requires me to report to you annually. I provide that report below.

Report on LSBC Progress

5. LSBC progress on each of the standards is found at Attachment 1.
6. When I reported to the Benchers on our 2016 results a year ago, we had the best results ever having met 18 of 21 standards. There has been some slippage since that report. As of 2017 year end, we met 17 standards. This is still better than 2015 when we met 15 of 21 standards.
7. Standards not met:
 - a. The standard we met in 2016 and not 2017 is standard 7 – commencement of hearings within 9 months of authorization of a citation. The standard is 75% and we achieved 62% in 2017. We achieved 82% in 2016. This slippage is explained

in large part by significant vacancies within the Discipline Group. It is also a function of a higher than average number of citations issued.

The Law Society has never met the following 3 standards.

- b. Hearing panel decisions rendered within 90 days of last submissions of parties (Standard 8) – The standard is 90% and we are at 65% down from 70% last year. (2015 result was 55%. 2014 result was 71%.)
 - c. Ability to share information about lawyers with other law societies *in a manner that protects solicitor/client privilege* (Standard 16) – Rule 2-24 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. A rule amendment to make that clear is in progress.
 - d. Standard 19 states that there shall be a directory available with easily accessible information on discipline history for each lawyer. In 2016, changes were made to Lawyer Lookup to allow easy access to post-September 2003 discipline history. Changes will need to be made to put pre-September 2003 decisions online in order to fully meet this standard.
8. The other standard that bears comment is standard 3. We have always met that standard which requires that 80% of all complaints be resolved or referred for a disciplinary or remedial response within 12 months and 90% within 18 months. In 2017, we closed 91% within 12 months and 96% within 18 months. As I have previously reported, there is a backlog of files in our Investigations Group. With additional resources approved, we are making slow but steady progress in reducing the backlog. As that occurs and a larger number of old files are closed, we expect that the percentage of files closed within a year will decrease.

ATTACHMENT 1

NATIONAL DISCIPLINE STANDARDS

ANNUAL REPORT ON LSBC STATUS AS AT DECEMBER 31, 2017

STANDARD		CURRENT STATUS
Timeliness		
1.	<p><i>Telephone inquiries:</i></p> <p>75% of telephone inquiries are acknowledged within one business day and 100% within two business days.</p>	<p>MET</p> <p>99.86% of telephone inquiries were returned within one business day and the remaining 0.14% were returned within two business days.</p>
2.	<p><i>Written complaints:</i></p> <p>100% of written complaints are acknowledged in writing within three business days.</p>	<p>MET</p> <p>100% of written complaints were acknowledged in writing within three business days.</p>
3.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	<p>MET</p> <p>91% of complaints were closed within 12 months.</p> <p>96% of complaints were closed within 18 months.</p>
	<p>(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:</p> <p>80% of all internal reviews or internal appeals are decided within 90 days.</p> <p>90% of all internal reviews of internal appeals are decided within 120 days.</p>	<p>MET</p> <p>97.5% of all internal reviews were decided within 90 days (78 out of 80).</p> <p>97.5% of all internal reviews were decided within 120 days (78 out of 80). Two reviews went over 120 days because the Complainants' Review Committee granted the complainant's request (same complainant in both cases) for additional disclosure and opportunity to make a submission.</p>

STANDARD		CURRENT STATUS
	<p>(c) Where a complainant has been referred back to the investigation stage from an internal review or internal appeal process:</p> <p>80% of those matters are resolved within a further 12 months.</p> <p>90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.</p>	<p>N/A</p> <p>The Complainants' Review Committee does not have the ability to send a matter back to staff for further investigation. We have requested a rule change so that Complainants' Review Committee can do so.</p>
4.	<p><i>Contact with complainant:</i></p> <p>For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 100% of open complaints, complainants were contacted every 90 days.</p>
5.	<p><i>Contact with lawyer or Québec notary:</i></p> <p>For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 98.8% of open complaints (1700 out of 1721), the lawyer was contacted every 90 days.</p>
Hearings		
6.	<p>75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.</p> <p>95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.</p>	<p>MET</p> <p>100% of citations issued and served in this reporting period were issued and served within 60 days of authorization (27 citations). Last year's results were 100%.</p> <p>MET</p> <p>100% of citations issued and served in this reporting period were issued and served within 90 days of authorization (27 citations). Last year's results were 100%.</p>

STANDARD		CURRENT STATUS
7.	75% of all hearings commence within 9 months of authorization. 90% of all hearings commence within 12 months of authorization.	NOT MET 66% of hearings commenced in this reporting period were commenced within 9 months (8 out of 12 hearings). Last year's results were 82%. MET 92% of hearings commenced in this reporting period were commenced within 12 months (11 out of 12 hearings). Last year's results were 100%.
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	NOT MET 65% of all decisions were rendered within 90 days of the last date the panel received submissions. Last year's results were 70%.
9.	Each law society will report annually to its governing body on the status of the standards.	MET A report was delivered to the Benchers reporting on LSBC progress at its meeting on January 18, 2017.
Public Participation		
10.	There is public participation at every stage of discipline; i.e. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	MET There was one public representative on every disciplinary panel, at least two public representatives on every review board and a public representative on our charging body (i.e., Discipline Committee).
11.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	MET Our Complainants' Review Committee has 2 public members. Every panel includes one public member.
Transparency		
12.	Hearings are open to the public.	MET Hearings are open to the public unless the panel exercises its discretion under Rule 5-8 to exclude some or all members of the public.

STANDARD		CURRENT STATUS
13.	Reasons are provided for any decision to close hearings.	MET Rule 5-8(5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.
14.	Notices of charge or citation are published promptly after a date for the hearing has been set.	MET In all cases, we publish the fact that a citation has been authorized as soon as the respondent has been informed and the content of the citation after the respondent has been served.
15.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.	MET In all cases, we publish dates of hearings as soon as they are set.
16.	There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.	NOT MET Rule 2-24 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. We are working on a rule amendment to make that clear.
17.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	MET Rule 3-3(5) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3(6) indicates we cannot share privileged material. Note however that, as a matter of practice, the Law Society does not provide non-public information on discipline matters to law enforcement.
Accessibility		
18.	A complaint help form is available to complainants.	MET We have web based material that assists the public in making complaints as well as paper brochures describing our complaint process and jurisdiction.

STANDARD		CURRENT STATUS
19.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	NOT MET In 2016, changes were made to Lawyer Lookup to allow easy access to post-September 2003 discipline history. Changes will need to be made to put pre-September 2003 decisions online in order to fully meet this standard.
Qualification of Adjudicators and Volunteers		
20.	There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.	MET All adjudicators have taken a basic course on the principles of administrative law, Law Society procedures and decision-writing. All lawyer adjudicators have taken an advanced workshop on decision writing and, before chairing a panel or review board, an advanced workshop on hearing skills. All adjudicators attended the annual refresher training in person or by video recording.
21.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	MET Orientation was provided to all new members of the Discipline Committee. There are no volunteers involved in conducting investigations.