The Law Society of British Columbia

Agenda

Benchers

Date: Friday, April 6, 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
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.				
1	Consent Agenda	1	President		
	• Minutes of March 2, 2018 meeting (regular session)			Tab 1.1	Approval
	• Minutes of March 2, 2018 meeting (*in camera* session)			Tab 1.2	Approval
	• Proposed Terms of Reference for the Mental Health Task Force			Tab 1.3	Approval
	• Amendments to Law Society Rules re Law Firm Regulation			Tab 1.4	Approval
	• Amendments to Rule 5-12 (Application to Vary Certain Orders) and 2-104 (Anonymous Publication - Credentials decisions)			Tab 1.5	Approval

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
EXECUTIVE REPORTS					
2	President's Report	10	President		Briefing
3	CEO's Report	10	CEO	Tab 3	Briefing
4	Briefing by the Law Society's Member of the Federation Council	10	Herman Van Ommen, QC		Briefing
DISCUSSION/DECISION					
5	Anti-money Laundering Initiatives	20	President/CEO	Tab 5	Discussion/ Decision
6	Remarks by The Honourable David Eby, QC, Attorney General and Minister responsible for ICBC, Liquor, and Gaming	20	The Honourable David Eby, QC		Discussion
7	Creating Additional Investigation Powers for Complainants Review Committee and Practice Standards Committee	10	CEO/Michael Lucas	Tab 7	Discussion/ Decision
8	Publication of Hearing Reports – Credentials	15	Lisa Hamilton, QC	Tab 8	Discussion/ Decision
REPORTS					
9	Law Firm Regulation Task Force – Update	10	Steve McKoen	Tab 9	Briefing
10	2018 February YTD Financial Report	5	Craig Ferris, QC / Jeanette McPhee	Tab 10	Briefing

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
11	Report on Outstanding Hearing & Review Decisions	5	Craig Ferris, QC	(*To be circulated at the meeting*)	Briefing
FOR INFORMATION					
12	For Information: • Six Month Bencher Calendar – April to September • Demographics of the Profession in BC • National Committee on Accreditation Program Review Summary			Tab 12.1 Tab 12.2 Tab 12.3	Information Information Information
IN CAMERA					
13	Executive Director's Delegations		CEO	Tab 13	Discussion/ Decision
14	Administrative Matters		CEO		
15	*In camera* • Bencher concerns • Other business		President/CEO		Discussion/ Decision

The Law Society of British Columbia

Minutes

Benchers

Date:	Friday, March 02, 2018	
Present:	Miriam Kresivo, QC, President	Jamie Maclaren, QC
	Nancy Merrill, QC, 1st Vice-President	Geoffrey McDonald
	Craig Ferris, QC, 2nd Vice-President	Steven McKoen
	Jasmin Ahmad	Claude Richmond
	Jeff Campbell, QC	Phil Riddell
	Pinder Cheema, QC	Elizabeth Rowbotham
	Jennifer Chow, QC	Mark Rushton
	Barbara Cromarty	Carolynn Ryan
	Jeevyn Dhaliwal	Michelle Stanford
	Martin Finch, QC	Sarah Westwood
	Brook Greenberg	Michael Welsh, QC
	Lisa Hamilton, QC	Tony Wilson, QC
	Dean P.J. Lawton, QC	Heidi Zetzsche
Unable to Attend:	Christopher McPherson, QC	
Staff Present:	Don Avison	Michael Lucas
	Deborah Armour, QC	Alison Luke
	Renee Collins	Jeanette McPhee
	Su Forbes, QC	Doug Munro
	Andrea Hilland	Michelle Robertson
	Jeffrey Hoskins, QC	Annie Rochette
	Lindsay Jalava	Alan Treleaven
	David Jordan	Adam Whitcombe
	Jason Kuzminski	Vinnie Yuen

Guests:	Bill Veenstra	President, Canadian Bar Association, BC Branch
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Shannon Salter	Chair, Civil Resolution Tribunal
	Kensi Gounden	CEO, Courthouse Libraries BC
	Rob Seto	Director of Program, CLEBC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Dom Bautista	Executive Director, Law Courts Center
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Ryan Williams	President, TWI Surveys Inc.
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes & Resolutions Note that Exec Delegations came off to be discussed

a. Minutes

The minutes of the meeting held on January 26, 2018 were approved as circulated. Amendment to take Dan Smith off attendance.

The *in camera* minutes of the meeting held on January 26, 2018 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

External Appointments: Vancouver Building Board of Appeal, City of Vancouver & Hamber Foundation

BE IT RESOLVED to nominate Michael Morgan for Vancouver City Council's appointment of the Law Society representative on the Building Board of Appeal.

BE IT RESOLVED to appoint Paul Barbeau as the Law Society's new representative on the Hamber Foundation Board of Governors, and that Todd Kerr be re-appointed to the Board for a second term.

Proposed Amendments: Rule 2-24 and the Sharing of Information with Other Law Societies

BE IT RESOLVED to approve the recommendations to amend Rule 2-24 made by the Executive Committee in its memorandum dated February 21, 2018 and to refer the matter to the Act and Rules Committee to draft rule amendments to address the recommendations.

Waiver of Late Trust Report / Accountants Report Filing Fees

BE IT RESOLVED to approve the recommendations to Rule 3-80 made by the Executive Committee in its memorandum dated February 21, 2018 and to refer the matter to the Act and Rules Committee to draft rule amendments to address the recommendations.

GUEST PRESENTATIONS

2. Civil Resolution Tribunal (CRT) Update

Chair Shannon Salter attended for this presentation, providing an overview for Benchers of the CRT, recent developments and anticipated future changes. She began by thanking Benchers for their invitation to speak, noting that since the time of her last visit, the CRT officially opened to strata claims and small claims under $5,000.

Ms. Salter provided an overview of the CRT for Benchers, noting that it was the first public justice system online administrative tribunal in Canada and perhaps the world. Since its opening, other jurisdictions have followed suit, including the UK with Her Majesty's online court which was modeled largely on BC's CRT. The CRT's purpose is to bring the justice system to the people, and is built around the skills, abilities, challenges and limitations of the people who use the system, rather than the expectation that the people should fit themselves into the system.

Acknowledging the fact that only 2% of claims result in trial, the CRT is designed on the assumption that most people will not appear before a tribunal member, and with the aim of consensual and early settlement. Ms. Salter then described the process in full, beginning with the anonymous "Solution Explorer", and proceeding through the online application with an available "chat room" function for party to party negotiation, the possible mediated resolution stage, through to an adjudication. She emphasized that the majority of claims are settled before the adjudication stage. The CRT receives an average of approximately 5,000 small claims disputes per year and approximately 600 strata disputes.

Keeping users of the system in mind, the website, content, forms and decisions are all written at an accessible reading level. Online application forms are user tested, first by legal advocates of the most vulnerable members of society, then by randomly chosen members of the public and lawyers. Wherever possible, barriers to access such as physical impairment, mental health challenges or language barriers are accommodated to achieve inclusivity. Decisions are transparent and searchable, with over 200 decisions to date published on LexUM by CanLII. Uniquely, users are also surveyed following the process, not to ask about the outcome of their claim, but to ask questions like whether they understood the process, whether the technology was easy to use, how they found the process and how fairly they were treated by staff.

Ms. Salter noted that the system remains responsive to change. She alerted Benchers to a possible change ahead to increase the small claims limit to $10,000, and the anticipated expansion of CRT jurisdiction to include some motor vehicle claims. Regarding the latter, she noted that legislative changes were expected before June of this year, at which point consultation with stakeholders such as the Law Society could begin.

In response to questions, Ms. Salter confirmed that the Small Claims court has seen an approximate 40% reduction in its filings, which roughly corresponds to the previous proportion of its claims under $5,000. She also confirmed that the average CRT small claims timeframe is 3-4 months from start to completion; they are working toward the goal of 60-90 days. Strata claims, which tend to be more complex, are currently about 6-7 months.

Ms. Kresivo thanked Ms. Salter for her informative presentation.

3. 2017 Employee Survey Results

Ryan Williams from TWI Surveys Inc. attended to provide Benchers with a summary of results for the annual employee survey, which provides a yearly gauge for Law Society employees' job satisfaction.

There was an 85% response rate for the voluntary survey. Consistent with previous years, the data shows that most employees are "engaged", inspired by the mandate, find the work meaningful, feel appreciated and believe their work makes a difference. Differing responses amongst departments indicates a somewhat "silo'ed" environment, but this has improved over previous years.

He provided a comparison of Law Society responses to those of other organizations, summarizing those areas that fall above the norm, and those falling somewhat below. He also provided a sampling of comments and suggestions, both positive and constructive.

In response to the question of whether there was a high staff turnover rate, Ms. McPhee confirmed that the rate of turnover is approximately 10%-12% which is not unusual for an organization of this size. She also noted that the turnover of staff under 5 years has been high for about 10 years. In response to another question, Mr. Williams confirmed that it was difficult to ask employees in the employee survey why they may leave, given that those who leave do not complete the survey, but Ms. McPhee noted that exit surveys are conducted. The suggestion was made that information from those surveys be incorporated into this presentation so Benchers have a more complete picture.

A question was asked about a comment suggesting there should be no tolerance for bullying. Mr. Williams noted there were 3 such comments, but that was not necessarily reflective of the broader culture. It was noted by a Bencher that there did not appear to be any questions related to interactions between Benchers and staff. Mr. Williams suggested that responses would be influenced by the specific staff role and the responses of those who work closely with Benchers would reflect their experiences.

In response to another question, Mr. Williams clarified that the benchmark 'norms' come from data collected over 20 years as well as industry standards. He and Ms. McPhee also clarified that

the P50 pay structure determines salaries based on the median in the marketplace, and that the survey comment on increased benefits refers to sick days and flexibilities, but could also relate to a recent change in benefits provider.

Ms. Kresivo thanked Mr. Williams for an informative presentation.

EXECUTIVE REPORTS

4. President's Report

Ms. Kresivo acknowledged the recent appointment of former Bencher Madam Justice Matthews, noting she will be missed at the Bencher table. The vacancy created will necessitate a by-election, notice of which will go out to members in the County of Vancouver March 12. She noted that we continue to await the appointment of new Appointed Benchers and are following up with government in that regard.

She also acknowledged those who would be receiving their QC appointments at a ceremony later that day, and thanked Benchers Jeevyn Dhaliwal, Elizabeth Rowbotham and Michelle Stanford for speaking at recent Welcoming Ceremonies on her behalf. She then administered the oath of office to Bencher Pinder Cheema, QC who had been unable to attend the January meeting.

Ms. Kresivo reported on the recent joint meeting of the Legal Aid, the Truth and Reconciliation and the Access to Legal Services Advisory Committees with a view to coordinating their efforts on common issues. She also noted the recent Provincial Budget announcement which, for the first time in many years, provided additional funding for the justice system. The Law Society has reached out to the Attorney General with its continued pledge to work with government on increasing access to justice through the licensing of alternate legal service providers.

The newly constituted Alternate Legal Service Provider Working Group met for the first time yesterday. Its focus will begin with scope of work anticipated for these service providers. The Working Group is committed to transparency and will ensure consultation before any implementation.

She recently spoke at the Law Society Staff Forums, reporting on the strategic priorities for the year, including the focus on mental health, ongoing work toward reconciliation and the development of the law firm regulation program. She also recently completed an interview with Lawyers Daily, discussing the priorities and initiatives of the Law Society.

She will be attending the upcoming Federation Council meetings, the focus of which will include rules on money laundering and the NCA committee's review of competency based education. These meetings provide good opportunity for law societies to discuss issues of common interest and share insights, successful strategies and initiatives.

5. CEO's Report

Mr. Avison summarized the areas of the justice system included in this year's provincial budget, noting that it represented the first positive reference to the administration of justice in some years. He also reported on the finalization of the agreement between CanLII and LexUM, and briefed Benchers on Mr. William's presentation on the employee survey at the Staff Forums. While engagement by staff was largely positive, some concerns were also expressed. He will continue to follow up and keep Benchers apprised.

Finally, he extended his thanks and appreciation to those Benchers who have served as guest lecturers at PLTC over the last year.

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

- **Federation 101**

Law Society Federation Council member Herman Van Ommen, QC provided Benchers with a history and an overview of the Federation of Law Societies.

The Federation is a national coordinating body that began as a conference in 1926 and was incorporated in 1972. Today it has 14 provincial and territorial members, with the largest membership by lawyer population being Ontario, Quebec, Alberta and BC. Despite population differences, the Federation operates on a model of unanimity and consensus. Its strategic objectives include being a knowledge leader and facilitating collaboration and information sharing.

Its national initiatives include the National Mobility Agreement, which effectively created the modern Federation as it has come to be, the Model Code, which was spearheaded and chaired by the Law Society of BC's Gavin Hume, QC, the National Discipline Standards, the National Admissions Standards, and the National Committee on Accreditation (NCA), which is chaired by Mr. Van Ommen and is currently being reviewed.

In response to a question regarding whether the influx of foreign trained lawyers is having an increasing impact on the market, Mr. Van Ommen noted that the highest impact has been in Ontario, but confirmed there is also a significant impact in BC. Mr. Avison confirmed he would endeavor to provide that information for BC specifically. Mr. Treleaven noted that the NCA report, posted to Bencher Resources, contains relevant statistics; Ms. Kresivo asked that a condensed summary of the NCA review report be provided to Benchers.

UVic Dean of Law Jeremy Webber suggested that an increase in Canadian law school positions could help address the issue of an increasing number of Canadian students seeking legal education abroad.

The Federation also owns CanLII, the free public legal search service, which is overseen by a skills based independent board. Additionally, it maintains a policy and advocacy department as well as a standing committee which reviews and coordinates potential higher court interventions on matters of common interest. It is a founder of the International Conference of Legal Regulators and builds and maintains international relationships. It is funded primarily through law society levies. The NCA and the two continuing legal education programs operate on a cost recovery basis.

The Federation Council meets 4 times per year, with the March meeting focused on CEOs and Presidents and the October meeting typically including a conference topic of current relevance.

- **Anti-Money Laundering**

Chief Legal Officer Deb Armour, QC provided Benchers with an overview of the measures taken over the years by the Law Society and the Federation of Law Societies of Canada to prevent money laundering. She noted that the Federation's success at the Supreme Court of Canada in *Canada (Attorney General) v. Federation of Law Societies of Canada*, in which it argued that the inclusion of law societies in a federal anti-money laundering regime was unconstitutional and represented an attack on solicitor client privilege and the duty of loyalty to clients, underscores the responsibility of law societies to maintain appropriate measures to prevent money laundering.

The Law Society of BC has had rules in place for some years. Those rules prohibit lawyers from accepting $7,500 or more in cash except in limited circumstances. There are also detailed rules regarding client identification and verification which are part of a lawyer's "know your client" obligations.

We have a robust Trust Assurance program which uncovers breaches of those rules and misuse of trust accounts. Compliance issues discovered through the auditing process are referred to the Professional Conduct department. The Law Society disciplines as appropriate when we uncover those breaches and trust account misuse.

We have provided numerous educational materials to the profession including a "how to" video on client identification and verification. We have also issued Discipline Advisories to ensure lawyers are aware of the consequences of breaches of our rules.

A working group has been established at the Federation that Ms. Armour and CFO Jeanette McPhee are on. The working group has reviewed the current Federation models rules and has proposed changes that are with the law societies for consultation. BC has established its own working group to review the proposed changes and accept feedback from stakeholder groups such as the CBA.

The next steps for the Federation working group include establishing best practices for law societies for monitoring and enforcement and developing guidance to the profession on the revised rules and more generally.

DISCUSSION/DECISION

6. Governance Committee Report: Year-End Survey Results

Governance Committee Chair Steve McKoen briefed Benchers on the results of the year-end Bencher and Committee Survey. He noted that a total of 20 Benchers provided responses, and encouraged greater participation in the coming year. In its review of responses, the Committee reviewed those questions with considerable agreement to determine if the correct questions are being asked, as well as those with a measure of disagreement, to identify issues of concern.

To summarize, Benchers expressed increased agreement with the statements that they receive sufficient input from committees and staff to support their decisions, they receive sufficient information on financial performance, their discussions are open, meaningful and respectful and they know what it is expected of them.

There was disagreement with the statement that Benchers are up to date with the latest developments regarding supply and demand for legal services, and lower agreement with the statement that Benchers have no hesitation raising issues at meetings. These responses could be due to the wording of the questions, but they may also signal areas of concern.

As a result of its review, the Committee recommends revising the format for the committee survey to seek narrative information, rather than numerical responses, in an effort to increase the usefulness of responses. It also recommends a continuation of the two stage decision making process for complex issues. Also, despite some support for increased opportunities for debate of sensitive issues in camera, the committee recommends that the Benchers continue to discharge their public decision-making role openly.

Ms. Kresivo underscored the importance of the Benchers' public role, noting that the Bencher Governance Policies provide guidelines for the use of in camera discussion.

7. Composition of Review Boards

Craig Ferris, QC provided background for Benchers on the recommendation to reduce the composition of Review Boards from 7 to 5. He noted that the Executive Committee was unanimous in their recommendation to reduce the size, which will facilitate easier organization of review boards and more efficient decision-writing. He also acknowledged that the recommended composition of 2 Benchers, 3 lawyers and 1 non-Bencher member of the public

reduces the number of public review board members to 1 from 2, but also noted that this still represents 20% of the board.

Mr. Ferris then moved (seconded by Ms. Westwood) that the number of members of a review board be set at 5: 1 lawyer Bencher chair, 2 Benchers, at least 3 lawyers and 1 non-Bencher member of the public.

In discussion of the motion, it was noted that the composition of review boards was established in 2012 at 7 members, replacing the quorum of 7 or more Benchers previously required. In response to the question of how well the 2012 model worked, Mr. Ferris noted that, while he did not have statistics at hand, information relied upon for the recommended reduction confirmed the difficulty of organizing 7 people to write a decision; he also observed that the only court in Canada that sits as a 7 person panel is the Supreme Court of Canada.

Concern was expressed regarding the reduction of public members, and whether the single public member may feel reluctant to provide meaningful feedback. The question was asked whether appointed Benchers had ever been hesitant to participate fully, or noticed such hesitation in others. Appointed Bencher Claude Richmond confirmed he had no such concerns.

Following a vote, the motion was passed unanimously.

Mr. Ferris then reviewed the outstanding hearing decisions, encouraging those with outstanding decisions to complete them in a timely way. He also noted that Chief Information and Planning Officer Adam Whitcombe was working with Hearing Administrator Michelle Robertson to develop an electronic reminder system. Finally, to help facilitate efficient organization, he asked that hearing panel members notify Ms. Robertson, on completion of a hearing, of who would be primarily responsible for drafting the decision.

Tribunal and Legislative Counsel Jeff Hoskins, QC reminded all that the Tribunal Refresher Course would likely take place September 19, 2018 at 5 pm.

8. 2017 Audited Financial Statements

As Chair of the Finance and Audit Committee, Mr. Ferris introduced this item, noting that the auditors provided a clean audit opinion on the 2017 financial statements at the February 15 Finance and Audit Committee meeting.

Chief Financial Officer Jeanette McPhee then provided an overview of the 2017 Audited Financial Statements beginning with the General Fund.

She reported on a positive year, with revenue approximately 4% over budget, in part due to an increase in electronic filing fees as a result of an active real estate market. Other areas over

budget included the number of practicing members, interest income for cash balances, PLTC enrollment fees and discipline fines and penalties.

Operating expenses were approximately 3% under budget, with savings realized in the areas of staffing, HR recruiting and consulting costs, PLTC operations, and external counsel and investigations costs.

TAF revenue was $4.5 million, which was over budget in 2017, but this was due to the 2016 budget being set prior to the increase in activity in the 2016 real estate market. She noted that a reduction is expected for the coming year given market conditions. Trust Assurance expenses are close to budget for the year.

Ms. McPhee provided an overview of the General Fund Balance sheet, which includes approximately $21 million consisting of $11.7 million invested in capital, $3.3 million in trust assurance, after the transfer of $3.2 million transferred to the Lawyers Insurance Fund (LIF), and $2.7 million in capital funding for planned capital projects associated with maintenance for the 845 Cambie building and operational space costs.

The Special Compensation Fund is winding down, and there was approximately $120,000 in expenses related to collecting recoveries and document production on an older file. Pursuant to Section 50 of the Legal Profession Amendment Act, 2012, excess reserves of $1 million has been transferred to LIF. This leaves $276,000, which has been retained for anticipated future expenses related to collections and document production.

Providing an overview of LIF, Ms. McPhee confirmed that assessment revenue was 2% over budget, and operating expenses were 6% under budget. The claims provision in 2016 was unusually high; it returned to more normal levels in 2017. For investment returns, the goal is to exceed the benchmark by 1.3%; this year the benchmark is 7.1% and returns were 10.3%. The insurance fund has net assets of $84.2 million, with an adequate claims provision reserve in place.

In response to a question regarding whether PLTC students have ever received any refund or reimbursement for fees given our excess, Ms. McPhee noted that the additional PLTC fees related to having more students than budgeted at 510. She also noted that the PLTC fees compare positively to other provinces.

Mr. Ferris moved (seconded by Ms. Merrill) approval of the Law Society's 2017 Combined Financial Statements for the General & Special Compensation Funds, and the 2017 Consolidated Financial Statements for the Lawyers Insurance Fund.

The motion passed unanimously.

REPORTS

9. Lawyers Insurance Fund: 2017 Year-End Report

Director of LIF Su Forbes, QC provided Benchers with the LIF year-end report for 2017, beginning with the background statistics showing there are 14,400 lawyers in BC, 2,600 of whom are non-practicing or retired and 2,900 of whom are in house and therefore not insured through LIF. She reported that frequency of reporting has remained stable, as have the areas with the most (civil litigation plaintiff and motor vehicle) and least (creditors' remedies and commercial lending) claims. While claim payments on expenses remain consistent year over year, indemnities are more volatile. Total claim payments of $12.3 million put last year slightly below the annual average of $14 million.

Ms. Forbes reported that LIF closes approximately as many files as it opens each year. On average 76% are closed without payment, which is a testament to the skill of claims counsel in resolving matters and the diligent reporting patterns of lawyers in BC regarding potential claims. 48% of reports never develop into claims, and fully 17% are repaired, which is more than the number of defended and settled claims combined. She also detailed the numerous LIF educational initiatives to raise awareness regarding risks and coverage, and noted LIF's consistent success rate at trial and on appeal.

Reporting on Part B coverage for lawyer theft, she noted there have been 99 lawyers involved since its launch in 2004 and only 25 have generated paid claims. The vast majority of thefts involve small amounts, typically less than $25,000. The areas of practice involved include administrative (predominantly in the area of immigration), real estate, criminal, wills and estates, civil litigation and plaintiff's motor vehicle, family and commercial.

Payments are made in a timely way, on average within 7 months, compared to almost 2.4 years under the special compensation fund. Claimant service evaluation forms indicate high levels of satisfaction with the fairness, courtesy and timeliness of LIF's service.

Insurance fees have remained stable since 2000, and compare positively to other provinces. Though we are the 3rd largest program we have the 10th largest fee. Market uncertainty has affected investment returns, but it may still be possible to maintain the current fee level for the coming year.

Ms. Kresivo thanked Ms. Forbes and all the LIF staff for their good work and results.

In response to a question regarding the feasibility of offering lower coverage limits for lower risk areas, Ms. Forbes noted that that all provinces have agreed to provide a minimum of $1 million per claim in coverage. Additionally, the fees are set on principles of universality, which makes sense given how low our fee is in comparison with others.

Responding to a further question, she noted that small claims matters are all handled in house, but most Supreme Court matters are outsourced to external counsel given LIF's available resources.

RTC
2018-03-02

REDACTED MATERIALS

REDACTED MATERIALS

MENTAL HEALTH TASK FORCE

TERMS OF REFERENCE

Mandate

1. The Law Society of British Columbia's 2018-2020 Strategic Plan includes a focus on the mental health of the legal profession and provides that the Law Society will take steps to improve the mental health of the legal profession by:

    (a) identifying ways to reduce the stigma of mental health issues; and

    (b) developing an integrated mental health review concerning regulatory approaches to discipline and admissions.

2. The Mental Health Task Force has been created to make recommendations and take steps to assist the Law Society in achieving these goals (the "Goals") in order to further promote and protect the public interest.

Duties and Responsibilities

3. The Mental Health Task Force will:

    (a) meet as required;

    (b) prepare a mid-year and year-end report to the Benchers on its activities;

    (c) assist and advise the Benchers in achieving the Goals, including by:

        (i) making recommendations to the Benchers with respect to the development of a "diversion" or other alternative discipline process;

        (ii) making recommendations to the Benchers with respect to other aspects of the discipline process;

        (iii) making recommendations to the Benchers with respect to the Law Society admissions process;

        (iv) making recommendations to the Benchers with respect to the potential development of additional support resources for current, former and prospective Law Society members;

        (v) making recommendations to the Benchers with respect to the potential development and promotion of education materials for Law Society members that increase awareness of mental health issues and reduce stigma;

(vi) making recommendations to the Benchers with respect to potential development of an education program and materials for Law Society staff, hearing panel members, and Benchers that increase awareness of mental health issues and reduce stigma;

(vii) making recommendations to the Benchers concerning the role that other Law Society committees could have in advancing the Goals; and

(viii) making recommendations to the Benchers as to the advisability, viability and scope of a potential voluntary, confidential member survey;

(d) identify stakeholders and the role each can play in assisting the Task Force in fulfilling its mandate;

(e) collaborate with stakeholders, experts and other professional organizations as appropriate;

(f) collaborate with the Law Society Communications Department and the Executive Committee to ensure that promotion of any initiatives is included in the Law Society's comprehensive communication plan; and

(g) establish a process to receive input from Law Society members at key stages of the Task Force's work in regard to matters within the Task Force's mandate.

The Law Society of British Columbia

Memo

To: Benchers
From: Policy Staff for the Act and Rules Committee
Date: March 12 2018
Subject: **Law Firm Regulation Rules**

Purpose

1. The purpose of this memo is to seek approval from the Benchers on the law firm regulation rules developed by the Act and Rules Committee over the last several months and recommended to the Benchers for adoption at the April 2018 meeting. These rules have been finalized by that Committee and reviewed by the Law Firm Regulation Task Force.

2. The rules reflect the policy decisions made by the Benchers following the Law Firm Regulation Task Force's Second Interim Report (the "Report") in December 2017. This memo aims to ensure the Benchers have a comprehensive understanding of the new rules and the role they play in the operation of the law firm regulation scheme.

3. There is some urgency to the approval of the rules at the April Bencher meeting. Importantly, the Law Society must endeavour to minimize the gap between the last of law firm regulation related provisions of the *Legal Profession Act* (*"LPA"*) coming into force on April 2, 2018 and enacting the rules to support these new statutory authorities. Without these new rules, the *LPA* indicates that the Law Society is regulating law firms, but the Rules would be silent on the matter, creating uncertainty for both the profession and the public.

4. The rules are also necessary to commence registration and the self-assessment pilot project, which have target launch dates of May and June, respectively. Additionally, the rules are an important part of meaningful communications with the profession about the new regulatory requirements facing firms.

Background

5. While the proactive model that the Benchers approved for law firm regulation seeks to minimize reliance on more traditional, reactive compliance measures, including rules and sanctions, a number of new rules are nevertheless required to address some of the core aspects of the regulatory scheme.[1]

6. Recommendations 16 and 17 of the Law Firm Regulation Task Force's Second Interim Report specifically address rule development:

   > **Recommendation 16:** Unproclaimed amendments to the *Legal Profession Act* that are necessary for the functioning of the regulatory framework should be brought into force.
   >
   > **Recommendation 17:** New rules are developed in relation to firm registration, designated representatives, information sharing and the self-assessment tool. Existing rules must be reviewed for clarity and consistency.

7. With respect to Recommendation 16, staff have worked closely with legislative counsel in Victoria and, as a result, the unproclaimed amendments to the *LPA* relating to the regulation of law firms are proclaimed to be effective April 2, 2018. On that date, the Law Society gained all the statutory authorities necessary to regulate law firms.

8. A number of consequential amendments to the Rules are therefore necessary as the result of the remaining provisions of the *LPA* coming into force. The Act and Rules Committee has ensured that the consequential amendments are effective but change the existing rules as little as possible.

9. With respect to Recommendation 17, the Act and Rules Committee has drafted a number of substantive amendments to the Rules, including provisions addressing firm registration, the appointment of designated representatives, information sharing between firms and the Law Society and the self-assessment process. These rules are discussed in detail in the next section of this memo.

10. It should be noted that these rules are designed, in part, to facilitate the pilot project and may be amended in the future in response to policy issues arising should a decision be made to move to a profession-wide implementation of law firm regulation.

[1] The Benchers have the authority to make such rules under section 11 of the *Legal Profession Act*.

Discussion

11. The law firm regulation rules that are now before the Benchers are the product of lengthy and thoughtful consideration by the Act and Rules Committee over the past six months.

12. These rules reflect the policy decisions made by the Benchers through the adoption of the recommendations in the Report and are necessary to implement law firm regulation, including the profession-wide registration process and the pilot project's self-assessment tool.

13. The rules are divided into a) substantive rules and b) consequential amendments, which are necessary to bring the rules in alignment with the *LPA* provisions that were proclaimed on April 2, 2018.

Substantive rules

Definitions (Rule 2-12.1)

14. This section establishes "who" is subject to the new rules. It also defines two new documents that law firms will be required to deliver to the Law Society: a registration form and the self-assessment report.

Registration (Rule 2-12.2)

15. In order to gain a clear sense of who is being regulated, a rule is necessary to require each firm to register with the Law Society. The registration period will run for 30 days, commencing May 1, 2018. The Law Society will populate the registration form with information already in its databases, including the firm's name, address and a list of practising lawyers. Firms will be asked to confirm or update this information upon registration. As such, registration will not be an onerous process.

16. This new rule includes a requirement for firms to deliver a completed registration form to the Law Society and to immediately notify the Law Society of any changes to their registration information.[2]

Designated representative (Rule 2-12.5)

17. The rules require firms to appoint at least one "designated representative" to act as the point-person for communications between the firm and the Law Society. As

[2] This requirement is similar in nature to the current requirement under the Rules 2-10 and 2-11 for all lawyers to immediately notify the Executive Director of a change in the lawyer's place of practice or their contact information.

recommended in the Report, any designated representative must be a practising lawyer at the firm and must be identified by the firm during the registration process.[3] Changes to the designated representative must be reported to the Law Society immediately.

18. The rule outlines the responsibilities associated with this role, which require the designated representative to be available to communicate with the Law Society at all times and to respond promptly to correspondence and messages directed to the designated representative's firm.

19. Although firms may organize themselves internally such that a designated representative is tasked with completing the registration process or the self-assessment, the rules clearly establish that these are *firm* responsibilities. Firms, not the designated representative, will be held responsible for non-compliance with registration and self-assessment requirements.

20. As such, the rule establishes that an individual will not be subject to a disciplinary violation as the result of being a designated representative.[4] However, this individual must not knowingly or recklessly provide false or inaccurate information in the registration form or the self-assessment report.

Self-assessment (Rule 2-12.3)

21. A resolution was passed at the December 2017 Bencher meeting directing the Law Society to initiate a pilot project in which a smaller subset of firms complete the self-assessment before rolling the tool out to the entire profession. Accordingly, firms that are selected for the pilot will be subject to the self-assessment provisions in the Rules.

22. Under these provisions, the Executive Director has the discretion to require a law firm to complete a self-assessment report provided the firm is given at least three months' notice. This balances the need for the Law Society to maintain the flexibility to determine when a self-assessment reporting cycle (or pilot project) should occur with a firm's right to be given adequate notice that it must complete a self- assessment. Given feedback from the Nova Scotia Barristers' Society, which

[3] See Recommendation 3 of the Report: Firms must identify at least one designated representative, and may identify additional, alternate designated representatives, who will be readily available for receiving and responding to official communications from the Law Society, including but not limited to: general administrative matters, the self-assessment process, registration and conduct issues. The designated representative must be a lawyer at the firm and have practising status in BC.

[4] See Recommendation 6 of the Report: Fulfilling the duties of the designated representative is ultimately the responsibility of the firm and the designated representative is not personally responsible or liable for the firm's failure to fulfill those duties.

recently also undertook a pilot law firm regulation pilot project, that most firms took less than two hours to complete a similar self-assessment in their pilot project, the three month time frame is likely sufficient.

23. The Act and Rules Committee was alive to concerns about the potential use of the information provided to the Law Society in the self-assessment tool. Accordingly, the rule states that the self-assessment form is confidential, and cannot be disclosed to anyone, except for the purposes of statistical and other general analysis regarding the practice of law.

24. These provisions seek to assure pilot participants that, to the greatest extent possible, the information provided in the self-assessment will not be shared with other parties and further, that the Law Society's use of the information in the self-assessment form will be limited to analysis that increases the Law Society's understanding of how firms in BC are operating and where additional practice management supports may be required.

25. Together, these provisions reflect the Task Force's original proposal for the first stage of implementation of the self-assessment, as articulated in the Report. The link between the self-assessment and discipline may be revisited in future phases of law firm regulation.

Late delivery of registration form and self-assessment report (2-12.4)

26. Given the simplicity of the registration process, it is expected that most firms will register. It is less certain how firms selected for the pilot project will respond to the self-assessment exercise. However, it is anticipated that having a rule in place requiring firms to complete this form (in addition to the Law Society's communication strategy) will go some ways to ensuring that firms submit the self-assessment.

27. Law Society staff are committed to working with firms to assist with questions about the registration process and the self-assessment and sending reminders regarding the need to submit both documents. Nevertheless, to deter non-compliance there must be a consequence if a firm fails to register or submit the self-assessment form. In the Report, the Task Force proposed an administrative penalty in the form of a late fee.[5]

28. These late fees are imposed for a variety of regulatory purposes: to encourage compliance with the filing deadlines, to act as a sanction for those who do not

[5]The Report states "As firms are not currently required to register with the Law Society under the *Legal Profession Act* or the Rules, new rules must be developed to this effect. A penalty will be imposed on a firm for a failure to register. Rule development is explored in more detail later in this Report." (at para. 35). And at para. 90:

comply and to reassure the compliant majority that they will not be disadvantaged by those who do not play by the rules. The fees will also help cover administrative costs related to late filing (e.g., staff time required for follow-up, extension of period for analysis of documents, etc.).

29. A firm that files its registration or self-assessment documents *less than* 60 days past the deadline is not in breach of the rule (that is, no discipline outcome could result) but is required to pay a $200 fee for a late registration form and a $500 fee for the late filing of the self-assessment. This late fee will capture those firms that have missed the filing deadline but come into compliance within two months.

30. These amounts are in alignment with other late filing fees found in Schedule 1. For example, there is a $200 fee for the late filing of a trust report or the late filing of CPD hours, and a $500 fee for the late completion of CPD hours.

31. If, however, the registration or self-assessment documents are *more than* 60 days overdue, the firm is considered in breach of the rules (that is, a discipline outcome could result), and must immediately submit the required documents and pay the base late delivery fee ($200 for registration or $500 for the self-assessment) plus an "additional late delivery fee" of the same amount, resulting in a $400 fee for a registration form that is more than 60 days overdue and a $1000 fee for a self-assessment that is more than 60 days overdue.

32. This late fee structure will be revisited and the amounts could be increased if the self-assessment is rolled out the entire profession. Following the pilot project, the Task Force expects to consider whether to also take into account factors such as firm size in setting the amount of the late fees.

33. During the pilot project, the Law Society will be reticent to issue late fees in relation to the self-assessment, recognizing this requirement is both new and limited to a sub-set of the profession. Non-compliant firms will be contacted and offered guidance in fulfilling their requirements. However, to promote compliance it is important for the rules to include a potential consequence for failing to meet the regulatory requirement.

34. It should also be noted that the Law Society can impose penalties on firms under section 38(6.1) of the *LPA*. This section provides that if an adverse determination is made against a law firm in a discipline hearing, a panel may reprimand the law firm

"Regardless of the approach adopted by the firm, ensuring the self-assessment is completed and submitted to the Law Society is ultimately a *firm* responsibility. Firms that fail to submit a self-assessment will be subject to a penalty." This is similar to the consequence for the late completion of CPD under Rule 3-31.

or fine the law firm an amount not exceeding $50,000. Under section 38(7), a panel may also make "other orders and declarations" and "impose any conditions or limitations" on the firms that it considers appropriate.

Information sharing between the Law Society and the firm (Rules 3-3(4.1), 3-23(2.1) and 4-8(4.1))

35. The Benchers approved the development of rules to facilitate information sharing between the Law Society and the designated representative of a firm in relation to conduct issues involving a lawyer at the firm.[6]

36. Accordingly, the new rules permit the Law Society to exercise its discretion as to whether to share information regarding complaints against one of the firm's lawyers with the designated representative, as well as sharing information about Practice Standards Committee deliberations and Discipline Committee deliberations involving one of the firm's lawyers.

Consequential amendments

37. Additional consequential amendments are required as the last of the law firm regulation-related provisions in the *LPA* come into force on April 2, 2018, including:

- adding a definition of, and references to, "conduct unbecoming the profession" in the Rules to reflect the changes to section 1 of the *LPA*
- replacing the definition of "firm" with "law firm or "firm" to improve alignment with the definition in section 1 of the *LPA*
- replacing references to "law corporation" with "law firm" where that is appropriate to bring the Rules into alignment with the language used in the *LPA*
- clarifying in several sections that "lawyer" includes a law firm to expand the application of those sections of the Rules to address the regulation of firms
- adding references to a law firm in relation to rules that address complaints, discipline, hearings and appeals

[6] This is articulated in Recommendation 4 of the Report, which states "The Law Society is authorized to share information about a lawyer with the firm's designated representative when there is concern about the lawyer's conduct within the firm. The Law Society will exercise this discretion in a manner that is consonant with the principles of proactive regulation."

- adding provisions that allow a law firm to be represented in discipline matters by the designated representative or another lawyer practicing at the firm
- adding wording that reflects that a law firm may be required to attend a conduct meeting or conduct review through a representative
- allowing a Bencher presiding in a pre-hearing conference discretion to limit the number of persons appearing by teleconference (e.g., if a firm were cited, the issue of how many members of the firm can participate may arise)
- changing the definitions of "discipline violation" and "trust funds" in Rule 1 to ensure that law firm regulation is taken into account

Conclusion

38. The Act and Rules Committee has completed the task of translating the policy decisions made by the Benchers in December 2017 — through the adoption of the recommendations made in the Report — into regulatory requirements. The Committee now seeks Bencher approval of the new rules and the consequential amendments that will enable the Law Society to implement law firm regulation. No new policy issues are engaged by the development of these rules.

39. As noted above, there is some urgency to approving the rules at the April Bencher meeting. The rules are necessary to minimize the gap between the *LPA* provisions coming into force on April 2, 2018 and putting in place the necessary rules to support the new statutory authorities. Without these new rules, the *LPA* indicates that the Law Society is regulating law firms, but the Rules would be silent on the matter, creating uncertainty for both the profession and the public.

40. The rules are also required to commence firm registration and the self-assessment pilot project. Additionally, providing a clear sense of the rules is a necessary part of meaningful communications with the profession about the new regulatory requirements placed on firms.

41. Finally, it should be noted that these rules are designed, in part, to facilitate the pilot project and may be amended in the future in response to new policy issues arising from a decision to move to a profession-wide implementation of law firm regulation.

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S.B.C. 1998, c. 9

REDLINED WITH AMENDMENTS RELATING TO REGULATION OF LAW FIRMS CONTAINED IN

LEGAL PROFESSION AMENDMENT ACT, 2012

AMENDMENTS PROCLAIMED APRIL 2, 2018

ALL OTHERS PREVIOUSLY IN EFFECT

[NUMBER IN BRACKETS REFERS TO SECTION OF AMENDING ACT]

Definitions

1 (1) In this Act:

"conduct unbecoming ~~a lawyer~~the profession" includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel or a review board, [1(b)]

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"law firm" means a legal entity or combination of legal entities carrying on the practice of law; [1(c)]

PART 1 – ORGANIZATION

Division 3 – Rules and Resolutions

Law Society rules

11 (1) The benchers may make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act. [5(a)]

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(3) The rules are binding on the society, lawyers, law firms, the benchers, articled students, applicants and persons referred to in section 16 (2) (a) or 17 (1) (a). [5(b)]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

~~Non-resident partners~~Association with non-resident lawyers or law firms

18 The benchers may make rules concerning the ~~partnership~~ association of members of the society or law firms in British Columbia with lawyers or law firms in other jurisdictions. [10]

PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

26 (1) A person who believes that

(a) a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming ~~a lawyer~~the profession or a breach of this Act or the rules, or

(b) a law firm has been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules

may make a complaint to the society. [15(a)]

(2) The benchers may make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received under subsection (1). [15(b)]

(5) The society may apply to the Supreme Court for an order

(b) directing an officer or governing member of a person to cause the person to comply with an order made under subsection (4).

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Practice standards

27 (2) The benchers may make rules to do any of the following:

(e) permit the benchers to order that a lawyer, a former lawyer, an articled student or a law firm pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment; [17(a)]

(3) The amount of costs ordered to be paid by a ~~lawyer~~ person under the rules made under subsection (2) (e) may be recovered as a debt owing to the society and, when collected, the amount is the property of the society. [17(b)]

Specialization and restricted practice

29 The benchers may make rules to do any of the following:

(a) provide for the manner and extent to which lawyers or law firms may hold themselves out as engaging in restricted or preferred areas of practice; [18]

Financial responsibility

32 (1) The benchers may establish standards of financial responsibility relating to the integrity and financial viability of ~~a lawyer's~~ the professional practice of a lawyer or law firm. [21(a)]

(2) The benchers may make rules to do any of the following:

(a) provide for the examination of lawyers' books, records and accounts of lawyers and law firms and the answering of questions by lawyers and representatives of law firms to determine whether standards established under this section are being met; [21(b)]

(c) permit the imposition of conditions and limitations on a law firm that, or the practice of a lawyer who, does not meet the standards established under subsection (1). [21(c)]

(3) Rules made under subsection (2) (b) and (c) must not permit the suspension of a lawyer or imposition of conditions and limitations on the practice of a lawyer or the imposition of conditions and limitations on a law firm before the lawyer or law firm, as the case may be, has been notified of the reasons for the proposed action and given a reasonable opportunity to make representations respecting those reasons. [21(d)]

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Trust accounts

33 (1) The benchers may require a lawyer or law firm to do any of the following: [22(a)]

(a) provide information or an annual report concerning the lawyer's or law firm's books and accounts;

(b) have all or part of the lawyer's or law firm's books and accounts audited or reviewed annually;

(c) provide the executive director with an accountant's report on the lawyer's or law firm's books and accounts. [22(b)]

(2) The benchers may

(a) exempt ~~all or part of~~ classes of lawyers or law firms from some or all of the requirements of subsection (1), and [22(c)]

(3) The benchers may make rules to do any of the following:

(a) establish standards of accounting for and management of funds held in trust by lawyers or law firms;

(b) designate savings institutions and classes of savings institutions in which lawyers or law firms may deposit money that they hold in trust; [22(d)]

(c) provide for precautions to be taken by lawyers and law firms for the care of funds or property held in trust by ~~lawyers~~them. [22(e)]

(5) The rules made under subsection (3) may be different for

(a) lawyers and law firms, or

(b) different classes of lawyers and law firms. [22(f)]

Unclaimed trust money

34 (1) A lawyer who or a law firm that has held money in trust on behalf of a person whom the lawyer or law firm has been unable to locate for 2 years may pay the money to the society. [23(a) and (b)]

(2) On paying money to the society under subsection (1), the liability of the lawyer or law firm to pay that money to the person on whose behalf it was held or to that person's legal representative is extinguished. [23(b)]

(5) A person or the person's legal representative who, but for subsections (1) and (2), could have claimed money held by a lawyer or law firm may claim the money from the society. [23(c)]

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PART 4 – DISCIPLINE

Discipline rules

36 The benchers may make rules to do any of the following:

(b) authorize an investigation of the books, records and accounts of a lawyer or law firm if there is reason to believe that the lawyer or law firm may have committed any misconduct, conduct unbecoming ~~a lawyer~~the profession, or a breach of this Act or the rules; [24(a)]

(c) authorize an examination of the books, records and accounts of a lawyer or law firm;

(d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request; [24(b)]

(e.1) require a representative of a law firm to appear before the benchers, a committee or other body to discuss the conduct of the firm; [24(c)]

(f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articled student, or the conduct of a law firm, by issuing a citation; [24(d)]

(i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of

(i) the books, records or accounts of a lawyer, an articled student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or

(ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37. [24(f)]

Search and seizure

37 (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer, ~~or~~ an articled student or a law firm be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer, ~~or~~ articled student or law firm may have committed or will commit ~~any~~

(a) any misconduct,

(b) conduct unbecoming ~~a lawyer~~the profession, or

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(c) a breach of this Act or the rules. [25]

Discipline hearings

38 (4) After a hearing, a panel must do one of the following:

(b) determine that the respondent has committed one or more of the following:

(ii) conduct unbecoming ~~a lawyer~~ the profession; [27(a)]

(v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming ~~a lawyer~~the profession, or a breach of this Act or the rules. [27(b)]

(5) If an adverse determination is made under subsection (4) against a respondent~~,~~ other than an articled student or a law firm~~, under subsection (4),~~ the panel must do one or more of the following: [27(d)]

(6.1) If an adverse determination is made under subsection (4) against a law firm, the panel may do one or both of the following:

(a) reprimand the law firm;

(b) fine the law firm an amount not exceeding $50 000. [27(i)]

(7) In addition to its powers under subsections (5)~~, and~~ (6) and (6.1), a panel may make any other orders and declarations and impose any conditions or limitations it considers appropriate. [27(j)]

Suspension

39 (1) The benchers may make rules permitting ~~the chair of the discipline committee or any~~ 3 ~~other~~ or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing: [28(a)]

(a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients; [28(b)]

(b) impose conditions or limitations on the practice of a respondent who is an individual; [28(c)]

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PART 5 – HEARINGS AND APPEALS

Panels

41 (2) A panel may order an applicant or respondent, or a ~~shareholder, director, officer or employee~~ representative of a respondent law ~~corporation~~ firm, to do either or both of the following: [30]

Failure to attend

42 (1) This section applies if an applicant, ~~or~~ a respondent or the representative of a respondent law firm fails to attend or remain in attendance at [31(a)]

(2) If satisfied that the applicant, ~~or~~ respondent or representative of the respondent law firm has been served with notice of the hearing or review, the panel or the review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the review board could have made in the presence of the applicant or respondent. [31 (d)]

PART 7 – LAW FOUNDATION

Application of fund

61 (4) The funds of the foundation consist of the following:

(a) all money remitted to the foundation by or on behalf of lawyers and law firms under section 62 (2) or held in trust under section 63 (12); [38(b)]

Interest on trust accounts

62 (1) A lawyer or law firm must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33 (3) (b). [39(a)]

(2) Subject to subsection (5), a lawyer or law firm who is credited by a savings institution with interest on money received or held in trust, [39(a)]

(3) The benchers may make rules

(a) permitting a lawyer or law firm to hold money in trust for more than one beneficiary in the same trust account, and [39(a)]

(4) A relationship between a lawyer or law firm and client or a trust relationship between a lawyer or law firm, as trustee, and the beneficiary of the trust does not make the lawyer or law firm liable to account to the client or beneficiary for interest received by the lawyer or law firm on money received or held in an account established under subsection (1). [39(a)]

(5) On instruction from ~~his or her~~ a client, a lawyer or law firm may place money held on behalf of the client in a separate trust account, in which case [39(a) and (b)]

Security and investment of trust funds

63 (1) In this section:

"pooled trust funds" means money that has been received by a lawyer or law firm in trust and that is not the subject of instructions under section 62 (5); [40(a)]

(2) The benchers may make rules requiring that a lawyer or law firm do any or all of the following:

(b) tender the agreement, prepared and approved under paragraph (a), at a designated savings institution before the lawyer or law firm deposits pooled trust funds at that savings institution;

(c) report annually to any savings institution into which the lawyer or law firm has deposited pooled trust funds the information required under the *Canada Deposit Insurance Corporation Act*. [40(b)]

(3) The society may enter into an agreement with a savings institution with whom lawyers or law firms have deposited pooled trust funds, respecting the investment and security of pooled trust funds on deposit at all branches of that savings institution. [40(c)]

(4) Without limiting subsection (3), an agreement under that subsection may provide that

(b) the society obtain a line of credit, either secured or unsecured, from the savings institution for the purpose of ensuring that there is always sufficient money on deposit to guarantee that lawyers' and law firms' trust cheques on their pooled trust fund accounts will be honoured. [40(d)]

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(7) Money earned on investments under subsection (6) may be used to

(a) purchase insurance in an amount that the society considers necessary to ensure that all lawyers' and law firms' trust cheques drawn on their pooled trust fund accounts will be honoured, and [40(d)]

(8) The society may pay money out of a society trust account to a person who has suffered a loss directly resulting from the inability or refusal of the savings institution to honour a lawyer's or law firm's trust cheque drawn on a pooled trust fund account, up to a maximum, in any year, set by the benchers. [40(e)]

(12) Subject to subsections (7), (8) and (11), all interest earned on money deposited into a society trust account is held in trust by the society for the benefit of the foundation, and the society is not liable to account to any client of any lawyer or law firm in respect of that interest.[40(b)]

(13) Despite any agreement between a lawyer or law firm and a savings institution, if the ~~lawyer's~~ pooled trust fund account of the lawyer or law firm is overdrawn by an amount exceeding $1 000, the savings institution must, as soon as practicable, inform the society of the particulars. [40(f)]

PART 8 – LAWYERS' FEES

Definitions and interpretation

64 (1) In this Part:

"agreement" means a written contract respecting the fees, charges and disbursements to be paid to a lawyer or law firm for services provided or to be provided and includes a contingent fee agreement; [41(a)]

~~**"law firm"** means a law corporation or a number of lawyers or a number of law corporations or any combination of lawyers and law corporations in a partnership or association for the practice of law;~~ [41(b)]

Contingent fee agreement

66 (2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:

(a) limit the amount that lawyers or law firms may charge for services provided under contingent fee agreements; [42]

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Examination of an agreement

68 (2) A person who has entered into an agreement with a lawyer or law firm may apply to the registrar to have the agreement examined. [43]

PART 10 – GENERAL

Certain matters privileged

87 (2) If a person has made a complaint to the society respecting a lawyer or law firm, neither the society nor the complainant can be required to disclose or produce the complaint and the complaint is not admissible in any proceeding, except with the written consent of the complainant. [45(c)]

(3) If a lawyer or law firm responds to the society in respect of a complaint or investigation, ~~neither~~ none of the lawyer, the law firm ~~n~~or the society can be required to disclose or produce the response or a copy or summary of it, and the response or a copy or summary of it is not admissible in any proceeding, except with the written consent of the lawyer or law firm, even though the executive director may have delivered a copy or a summary of the response to the complainant. [45(d)]

Non-disclosure of privileged and confidential information

88 (1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records. [46(b)]

Legal archives

92 (1) The benchers may make rules permitting a lawyer or law firm to deposit records in the possession of the lawyer or law firm in an archives, library or records management office in Canada. [48]

(2) Rules made under this section may provide for

(b) the restrictions or limitations on public access that the lawyer or law firm may attach on depositing them, and [48]

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(c) circumstances under which the lawyer or law firm cannot be liable for disclosure of confidential or privileged information arising out of the deposit. [48]

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"complainant" means a person who has delivered a complaint about a lawyer or a law ~~corporation~~ firm to the Society under Rule 3-2 *[Complaints]*;

"complaint" means an allegation that a lawyer or a law ~~corporation~~ firm has committed a discipline violation;

"conduct unbecoming ~~a lawyer~~the profession" includes ~~any~~ a matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of

(iii) conduct unbecoming ~~a lawyer~~the profession,

"discipline violation" means any of the following:

(b) conduct unbecoming ~~a lawyer~~the profession;

(e) conduct that would constitute professional misconduct, conduct unbecoming ~~a lawyer~~the profession or a contravention of the Act or these rules if done by a lawyer or law firm;

"firm" [rescinded]~~includes one lawyer or two or more lawyers practising together, including in the following arrangements:~~

~~(a) a sole proprietorship;~~

~~(b) a partnership, including a limited liability partnership or a partnership of law corporations;~~

~~(c) an arrangement for lawyers to share certain common expenses but otherwise practise as independent practitioners;~~

~~(d) a law corporation;~~

~~(e) a public body such as government or a Crown corporation;~~

~~(f) a corporation that is not a law corporation, or other private body;~~

~~(g) a multi-disciplinary practice;~~

"law firm" or **"firm"** means a legal entity or combination of legal entities carrying on the practice of law;

"trust funds" includes funds received in trust by a lawyer or law firm acting in ~~the~~ that capacity ~~of a lawyer~~, including funds

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Law firms

Definitions and application

2-12.1 (1) In Rules 2-12.1 to 2-12.5

"deliver" means to deliver to the Executive Director;

"designated representative" means a practising lawyer designated by a law firm under Rule 2-12.5;

"registration form" means a form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;

"self-assessment report" means a report required under Rule 2-12.3 in a form approved by the Executive Committee completed to the satisfaction of the Executive Director.

(2) Rules 2-12.1 to 2-12.5 do not apply to

(a) a public body such as government or a Crown corporation,

(b) a corporation that is not a law corporation, or

(c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

Registration

2-12.2 (1) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must deliver a registration form within 30 days.

(2) A law firm must inform the Executive Director immediately of a change of any information included in the registration form.

LAW SOCIETY RULES

Self-assessment report

2-12.3 (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report.

(2) The Executive Director must notify the law firm of the requirement to deliver a self-assessment report at least 3 months before the date on which the Executive Director requires the law firm to deliver it.

(3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person.

(4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

Late delivery

2-12.4 (1) A law firm that fails to deliver a document required under Rule 2-12.2 *[Registration]* or 2-12.3 *[Self-assessment report]* by the time that it is due is deemed to have been in compliance with the rules if the law firm does the following within 60 days:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1.

(2) A law firm that fails to deliver a document required under Rule 2-12.2 *[Registration]* or 2-12.3 *[Self-assessment report]* beyond 60 days from the time that it is due is in breach of the rules and must immediately do the following:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1;

(c) pay an additional late delivery fee specified in Schedule 1.

Designated representative

2-12.5 (1) A law firm that is engaged in the practice of law must designate as its designated representative one or more practising lawyers engaged in the practice of law as members of the law firm.

(2) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must notify the Executive Director of the designation of designated representative as part of the registration process under Rule 2-12.2 *[Registration]*.

(3) A law firm that changes its designation of designated representative must inform the Executive Director within 7 days.

(4) A law firm must ensure that a designated representative is available to communicate with the Society at all times.

(5) A designated representative must respond to correspondence and messages directed by the Society to the designated representative's law firm promptly, and in any case within 2 business days.

(6) A designated representative

(a) is not responsible for a disciplinary violation by a law firm as a result of being a designated representative, and

(b) must not knowingly or recklessly provide false or inaccurate information in any form or report required under Rules 2-12.1 to 2-12.5.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

(e) a law ~~corporation~~firm.

Complaints

3-2 Any person may deliver a written complaint against a lawyer or law firm to the Executive Director.

Confidentiality of complaints

3-3 (1) No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.

(4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law.

LAW SOCIETY RULES

Investigation of complaints

3-5 (9) Any written response under subrule (7) must be signed by

(a) the lawyer personally, or

(b) a ~~director~~ representative of the law ~~corporation~~firm, if the complaint is about a law ~~corporation~~firm.

Division 2 – Practice Standards

Confidentiality of Practice Standards Committee deliberations

3-23 (1) Subject to subrules (2) to (6) and Rule 3-24 *[Report to complainant]*, the following must be treated as confidential and must not be disclosed except for the purpose of complying with the objects of the Act:

(a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;

(b) any action taken or decision made by the Committee;

(c) any report prepared for or on behalf of the Committee.

(2.1) The Executive Director may disclose information about Practice Standards Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.

Division 6 – Financial Responsibility

Insolvent lawyer

3-51 (2) An insolvent lawyer who becomes bankrupt has conducted himself or herself in a manner unbecoming ~~a lawyer~~the profession in either of the following circumstances:

(a) the lawyer's wilful neglect of creditors, financial irresponsibility or personal extravagance contributed to the bankruptcy;

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

"lawyer" includes a law firm;

LAW SOCIETY RULES

Division 8 – Unclaimed Trust Money

Definition

3-88 In this division~~,~~ :

"efforts to locate" means steps that are reasonable and adequate in all the circumstances, including the amount of money involved~~.~~ ;

"lawyer" includes a law firm.

PART 4 – DISCIPLINE

Interpretation and application

4-1 (1) In this part,

"conduct meeting" means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) *[Action on complaints]*;

"conduct review" means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).

(2) This part applies to a former lawyer, an articled student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.

(4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Action on complaints

4-4 (1) After its consideration under Rule 4-3 *[Consideration of complaints by Committee*, the Discipline Committee must

(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or

Notification

4-7 The Executive Director must notify the complainant and the lawyer or law ~~corporation~~ firm in writing of the determination of the Discipline Committee under Rule 4-4 *[Action on complaints]* or the chair under Rule 4-5 *[Consideration of complaints by the chair]*.

LAW SOCIETY RULES

Confidentiality of Discipline Committee deliberations

4-8 (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:

(a) information and documents that form part of the consideration of a complaint under Rule 4-4 *[Action on complaints]* or 4-5 *[Consideration of complaints by chair]*;

(b) the result of a consideration under Rule 4-4.

(4.1) Despite subrule (1), the Executive Director may disclose information about Discipline Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.

Conduct meeting

4-10 (1) A conduct meeting must be held in private.

(2) The Discipline Committee or the chair of the Discipline Committee may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer or a law firm required to attend a conduct meeting under Rule 4-4 (1) (c) *[Action on complaints]*.

Conduct review

4-12 (1) A conduct review is an informal proceeding at which the lawyer or law firm

Conduct Review Subcommittee report

4-13 (6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following

(d) rescind the decision under Rule 4-4 (1) (d) *[Action on complaints]* to require the lawyer or law firm to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4 (1).

Publication and disclosure

4-15 (3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose

(a) the fact that the lawyer or law firm is or has been required to appear before a Conduct Review Subcommittee, and

LAW SOCIETY RULES

Evidence of conduct review at the hearing of a citation

4-16 If a hearing is held on a citation issued following a conduct review concerning the same conduct referred to in the citation,

(b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the ~~lawyer~~ respondent during the conduct review, unless the respondent puts the matter in issue.

Pre-hearing conference

4-38 (7) If the Bencher presiding at a pre-hearing conference considers it appropriate, he or she may allow any ~~Any~~ person ~~may~~ to participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.

Disciplinary action

4-44 (1) Following a determination under Rule 4-43 *[Submissions and determination]* adverse to the respondent, the panel must

(b) take one or more of the actions referred to in section 38 (5) ~~or (6)~~to (7) *[Discipline hearings]*,

PART 5 – HEARINGS AND APPEALS

Application

5-1 (1) This part applies to

(2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Compelling witnesses and production of documents

5-5 (1) In this rule **"respondent"** includes a shareholder, director, officer or ~~employee~~ representative of a respondent law ~~corporation~~firm.

LAW SOCIETY RULES

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Revocation of permits

9-11 (1) After a hearing, a panel may revoke a law corporation's permit if

(a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming ~~a lawyer~~the profession,

SCHEDULE 1 – 2018 LAW SOCIETY FEES AND ASSESSMENTS

L. Late fees

4. Late registration delivery fee (Rule 2-12.4)..... 200.00

5. Late self-assessment delivery fee (Rule 2-12.4) 500.00

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"complainant" means a person who has delivered a complaint about a lawyer or a law firm to the Society under Rule 3-2 *[Complaints]*;

"complaint" means an allegation that a lawyer or a law firm has committed a discipline violation;

"conduct unbecoming the profession" includes a matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of

(iii) conduct unbecoming the profession,

"discipline violation" means any of the following:

(b) conduct unbecoming the profession;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;

"firm" [rescinded]

"law firm" or **"firm"** means a legal entity or combination of legal entities carrying on the practice of law;

"trust funds" includes funds received in trust by a lawyer or law firm acting in that capacity, including funds

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Law firms

Definitions and application

2-12.1 (1) In Rules 2-12.1 to 2-12.5

"deliver" means to deliver to the Executive Director;

"designated representative" means a practising lawyer designated by a law firm under Rule 2-12.5;

"registration form" means a form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;

"self-assessment report" means a report required under Rule 2-12.3 in a form approved by the Executive Committee completed to the satisfaction of the Executive Director.

(2) Rules 2-12.1 to 2-12.5 do not apply to

(a) a public body such as government or a Crown corporation,

(b) a corporation that is not a law corporation, or

(c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

Registration

2-12.2 (1) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must deliver a registration form within 30 days.

(2) A law firm must inform the Executive Director immediately of a change of any information included in the registration form.

Self-assessment report

2-12.3 (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report.

(2) The Executive Director must notify the law firm of the requirement to deliver a self-assessment report at least 3 months before the date on which the Executive Director requires the law firm to deliver it.

(3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person.

(4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

Late delivery

2-12.4 (1) A law firm that fails to deliver a document required under Rule 2-12.2 *[Registration]* or 2-12.3 *[Self-assessment report]* by the time that it is due is deemed to have been in compliance with the rules if the law firm does the following within 60 days:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1.

(2) A law firm that fails to deliver a document required under Rule 2-12.2 *[Registration]* or 2-12.3 *[Self-assessment report]* beyond 60 days from the time that it is due is in breach of the rules and must immediately do the following:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1;

(c) pay an additional late delivery fee specified in Schedule 1.

Designated representative

2-12.5 (1) A law firm that is engaged in the practice of law must designate as its designated representative one or more practising lawyers engaged in the practice of law as members of the law firm.

(2) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must notify the Executive Director of the designation of designated representative as part of the registration process under Rule 2-12.2 *[Registration]*.

(3) A law firm that changes its designation of designated representative must inform the Executive Director within 7 days.

(4) A law firm must ensure that a designated representative is available to communicate with the Society at all times.

(5) A designated representative must respond to correspondence and messages directed by the Society to the designated representative's law firm promptly, and in any case within 2 business days.

LAW SOCIETY RULES

(6) A designated representative

(a) is not responsible for a disciplinary violation by a law firm as a result of being a designated representative, and

(b) must not knowingly or recklessly provide false or inaccurate information in any form or report required under Rules 2-12.1 to 2-12.5.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

(e) a law firm.

Complaints

3-2 Any person may deliver a written complaint against a lawyer or law firm to the Executive Director.

Confidentiality of complaints

3-3 (1) No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.

(4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law.

Investigation of complaints

3-5 (9) Any written response under subrule (7) must be signed by

(a) the lawyer personally, or

(b) a representative of the law firm, if the complaint is about a law firm.

LAW SOCIETY RULES

Division 2 – Practice Standards

Confidentiality of Practice Standards Committee deliberations

3-23 (1) Subject to subrules (2) to (6) and Rule 3-24 *[Report to complainant]*, the following must be treated as confidential and must not be disclosed except for the purpose of complying with the objects of the Act:

(a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;

(b) any action taken or decision made by the Committee;

(c) any report prepared for or on behalf of the Committee.

(2.1) The Executive Director may disclose information about Practice Standards Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.

Division 6 – Financial Responsibility

Insolvent lawyer

3-51 (2) An insolvent lawyer who becomes bankrupt has conducted himself or herself in a manner unbecoming the profession in either of the following circumstances:

(a) the lawyer's wilful neglect of creditors, financial irresponsibility or personal extravagance contributed to the bankruptcy;

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

"lawyer" includes a law firm;

Division 8 – Unclaimed Trust Money

Definition

3-88 In this division:

"efforts to locate" means steps that are reasonable and adequate in all the circumstances, including the amount of money involved;

"lawyer" includes a law firm.

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Interpretation and application

4-1 (1) In this part,

"conduct meeting" means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) *[Action on complaints]*;

"conduct review" means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).

(2) This part applies to a former lawyer, an articled student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.

(4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Action on complaints

4-4 (1) After its consideration under Rule 4-3 *[Consideration of complaints by Committee*, the Discipline Committee must

(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or

Notification

4-7 The Executive Director must notify the complainant and the lawyer or law firm in writing of the determination of the Discipline Committee under Rule 4-4 *[Action on complaints]* or the chair under Rule 4-5 *[Consideration of complaints by the chair]*.

Confidentiality of Discipline Committee deliberations

4-8 (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:

(a) information and documents that form part of the consideration of a complaint under Rule 4-4 *[Action on complaints]* or 4-5 *[Consideration of complaints by chair]*;

(b) the result of a consideration under Rule 4-4.

(4.1) Despite subrule (1), the Executive Director may disclose information about Discipline Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.

Conduct meeting

4-10 (1) A conduct meeting must be held in private.

(2) The Discipline Committee or the chair of the Discipline Committee may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer or a law firm required to attend a conduct meeting under Rule 4-4 (1) (c) *[Action on complaints]*.

Conduct review

4-12 (1) A conduct review is an informal proceeding at which the lawyer or law firm

Conduct Review Subcommittee report

4-13 (6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following

(d) rescind the decision under Rule 4-4 (1) (d) *[Action on complaints]* to require the lawyer or law firm to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4 (1).

Publication and disclosure

4-15 (3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose

(a) the fact that the lawyer or law firm is or has been required to appear before a Conduct Review Subcommittee, and

Evidence of conduct review at the hearing of a citation

4-16 If a hearing is held on a citation issued following a conduct review concerning the same conduct referred to in the citation,

(b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the respondent during the conduct review, unless the respondent puts the matter in issue.

LAW SOCIETY RULES

Pre-hearing conference

4-38 (7) If the Bencher presiding at a pre-hearing conference considers it appropriate, he or she may allow any person to participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.

Disciplinary action

4-44 (1) Following a determination under Rule 4-43 *[Submissions and determination]* adverse to the respondent, the panel must

(b) take one or more of the actions referred to in section 38 (5) to (7) *[Discipline hearings]*,

PART 5 – HEARINGS AND APPEALS

Application

5-1 (1) This part applies to

(2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Compelling witnesses and production of documents

5-5 (1) In this rule **"respondent"** includes a shareholder, director, officer or representative of a respondent law firm.

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Revocation of permits

9-11 (1) After a hearing, a panel may revoke a law corporation's permit if

(a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming the profession,

LAW SOCIETY RULES

SCHEDULE 1 – 2018 LAW SOCIETY FEES AND ASSESSMENTS

L. Late fees

4. Late registration delivery fee (Rule 2-12.4)..... 200.00
5. Late self-assessment delivery fee (Rule 2-12.4) 500.00

LAW FIRM REGULATION

SUGGESTED RESOLUTION:

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

1. In Rule 1

(a) by rescinding the definitions of "complainant", "complaint", "conduct unbecoming a lawyer", "firm", and "trust funds" and substituting the following:

"complainant" means a person who has delivered a complaint about a lawyer or a law firm to the Society under Rule 3-2 *[Complaints]*;

"complaint" means an allegation that a lawyer or a law firm has committed a discipline violation;

"conduct unbecoming the profession" includes a matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"law firm" or **"firm"** means a legal entity or combination of legal entities carrying on the practice of law;

"trust funds" includes funds received in trust by a lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;**,**

(b) in the definition of "disciplinary record", by rescinding paragraph (a)(iii) and substituting the following:

(iii) conduct unbecoming the profession**,** ***and***

(c) in the definition of "disciplinary violation", by rescinding paragraphs (b) and (e) and substituting the following:

(b) conduct unbecoming the profession;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;**.**

2. By adding the following rules:

Law firms

Definitions and application

2-12.1 (1) In Rules 2-12.1 to 2-12.5

"deliver" means to deliver to the Executive Director;

"designated representative" means a practising lawyer designated by a law firm under Rule 2-12.5;

"registration form" means a form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;

"self-assessment report" means a report required under Rule 2-12.3 in a form approved by the Executive Committee completed to the satisfaction of the Executive Director.

(2) Rules 2-12.1 to 2-12.5 do not apply to

(a) a public body such as government or a Crown corporation,

(b) a corporation that is not a law corporation, or

(c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

Registration

2-12.2 (1) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must deliver a registration form within 30 days.

(2) A law firm must inform the Executive Director immediately of a change of any information included in the registration form.

Self-assessment report

2-12.3 (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report.

(2) The Executive Director must notify the law firm of the requirement to deliver a self-assessment report at least 3 months before the date on which the Executive Director requires the law firm to deliver it.

(3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person.

(4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

Late delivery

2-12.4 (1) A law firm that fails to deliver a document required under Rule 2-12.2 [Registration] or 2-12.3 [Self-assessment report] by the time that it is due is deemed to have been in compliance with the rules if the law firm does the following within 60 days:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1.

(2) A law firm that fails to deliver a document required under Rule 2-12.2 *[Registration]* or 2-12.3 *[Self-assessment report]* beyond 60 days from the time that it is due is in breach of the rules and must immediately do the following:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1;

(c) pay an additional late delivery fee specified in Schedule 1.

Designated representative

2-12.5 (1) A law firm that is engaged in the practice of law must designate as its designated representative one or more practising lawyers engaged in the practice of law as members of the law firm.

(2) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must notify the Executive Director of the designation of designated representative as part of the registration process under Rule 2-12.2 *[Registration]*.

(3) A law firm that changes its designation of designated representative must inform the Executive Director within 7 days.

(4) A law firm must ensure that a designated representative is available to communicate with the Society at all times.

(5) A designated representative must respond to correspondence and messages directed by the Society to the designated representative's law firm promptly, and in any case within 2 business days.

(6) A designated representative

(a) is not responsible for a disciplinary violation by a law firm as a result of being a designated representative, and

(b) must not knowingly or recklessly provide false or inaccurate information in any form or report required under Rules 2-12.1 to 2-12.5.**.**

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

(e) a law firm.**.**

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

3-2 Any person may deliver a written complaint against a lawyer or law firm to the Executive Director.**.**

5. In Rule 3-3 by adding the following subrule:

(4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law.**.**

6. By rescinding Rule 3-5 (9) (b) and substituting the following:

(b) a representative of the law firm, if the complaint is about a law firm.**.**

7. In Rule 3-23 by adding the following subrule:

(2.1) The Executive Director may disclose information about Practice Standards Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.**.**

8. In Rule 3-51(2), by striking the phrase "in a manner unbecoming a lawyer***" and substituting the phrase "***in a manner unbecoming the profession***".***

9. In each of Rules 3-53, by adding the following definition:

"lawyer" includes a law firm;**.**

10. By rescinding Rule 3-88 and substituting the following:

3-88 In this division:

"efforts to locate" means steps that are reasonable and adequate in all the circumstances, including the amount of money involved;

"lawyer" includes a law firm.

11. In Rule 4-1

(a) by rescinding subrules (1) and (2) and substituting the following:

(1) In this part,

"conduct meeting" means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) *[Action on complaints]*;

"conduct review" means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).

(2) This part applies to a former lawyer, an articled student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.***, and***

(b) by adding the following subrule:

(4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.**.**

12. In Rule 4-4 (1), by rescinding paragraphs (c) and (d) and substituting the following:

(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or**.**

13. In Rule 4-7, by striking the phrase "the lawyer or law corporation***" and substituting "***the lawyer or law firm***".***

14. In Rule 4-8, by adding the following subrule:

(4.1) Despite subrule (1), the Executive Director may disclose information about Discipline Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.**.**

15. ***In Rule 4-10, by striking the phrase "***to meet with a lawyer required to attend***" and substitute "***to meet with a lawyer or a law firm required to attend***".***

16. ***In Rules 4-12 (1), 4-13 (6) (d) and 4-15 (3) (a), by striking "***the lawyer***" and substituting '***the lawyer or law firm***".***

17. ***In Rule 4-16 (b), by striking "***the lawyer***" and substituting "***the respondent***".***

18. ***In Rule 4-38, by rescinding subrule (7) and substituting the following:***

(7) If the Bencher presiding at a pre-hearing conference considers it appropriate, he or she may allow any person to participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.**.**

19. ***In Rule 4-44 (1) (b), by striking the phrase "***in section 38 (5) or (6)***" and substituting "***in section 38 (5) to (7)***".***

20. ***By renumbering Rule 5-1 as Rule 5-1 (1) and adding the following subrule:***

(2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.**.**

21. ***In Rule 5-5, by rescinding subrule (1) and substituting the following:***

(1) In this rule "respondent" includes a shareholder, director, officer or representative of a respondent law firm.**.**

22. ***In Rule 9-11 (1), by rescinding paragraph (a) and substituting the following:***

(a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming the profession,**.**

23. ***In Schedule 1, section L, by adding the following line items:***

4. Late registration delivery fee (Rule 2-12.4)..... 200.00

5. Late self-assessment delivery fee (Rule 2-12.4) ..... 500.00**.**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: March 9, 2018
Subject: **Rules 2-104 and 5-12—minor corrections**

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1. The Act and Rules Committee recommends that the Benchers approve two minor amendments to repair minor flaws in the current rules. Draft changes, redlined and clean, are attached, along with a suggested resolution to effect the change.

Rule 2-104(7)

2. Rule 2-104 allows an applicant for call and admission, enrolment as a student or reinstatement as a lawyer who is refused by a hearing panel but succeeds before a review board to apply for anonymous publication of the hearing and review decisions. This is the text of the current rule:

> (7) If, on a review of a panel decision rejecting an application, the review board approves the application, the applicant may apply to the Benchers under subrule (4), and subrules (3) to (6) apply as if the review board were a panel.

3. The problem is the word "Benchers". Clearly, applying to the Benchers in the current rule is out of place. It should be "review board". In 2012, as part of the transition from Bencher reviews to review boards, the rule, then Rule 2-69.2(7), was amended to replace "Benchers" with "review board" in three places. Unfortunately, the amended rule was then published, by mistake, as it now is with two references to "review board" and one to "Benchers".

4. The error had not come to light when the Law Society Rules were revised in 2015, the Benchers adopted the incorrect provision along with all the others. As a result, to correct the error we now need a resolution of the Benchers.

Rule 5-12

5. This rule contains an omission, in two places, that requires repair.

6. Rule 5-12 applies to a person who has been the subject of a Law Society credentials or discipline hearing that resulted in the hearing panel or review board making an order for a fine, costs, suspension or practice conditions. Under the rule, that person may to apply to the President to vary the order.

7. Subrule (1) clearly contemplates that the order may be made under section 47 *[Review on the record]* of the *Legal Profession Act* by a review board deciding on a review of a panel decision.

8. When the President receives an application, she is required to refer it to the appropriate body from a list in subrule (4):

    (a) the same panel that made the order;
    (b) a new panel;
    (c) the Discipline Committee;
    (d) the Credentials Committee.

9. No mention at this stage that the order may originally have been made by a review board. This appears to be the result of an oversight. The Committee suggests merely inserting "or review board" after "same panel" in paragraph (a).

10. There is also a consequential change needed in subrule (6).

11. No change to (4) (b) is needed. That paragraph allows the President to refer the question to a new panel. Since there is likely a distinct advantage in referring the application to vary the order to the same body that made it, very likely the power to refer to a new panel would only be used where the original panel was not available. In the event that an original review board is not available, there would be no need to appoint a new review board, which is a larger body, when a new panel could serve the same purpose.

Attachments: draft 2;
resolution

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Anonymous publication

2-104 (7) If, on a review of a panel decision rejecting an application, the review board approves the application, the applicant may apply to the ~~Benchers~~ review board under subrule (4), and subrules (3) to (6) apply as if the review board were a panel.

PART 5 – HEARINGS AND APPEALS

Application to vary certain orders

5-12 (1) An applicant or respondent may apply in writing to the President for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-11 *[Costs of hearings]*, or

(ii) to fulfill a condition imposed under section 22 *[Credentials hearings]*, 38 *[Discipline hearings]*, or 47 *[Review on the record]*,

(b) a variation of a condition referred to in paragraph (a) (ii), or

(c) a change in the start date for a suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*.

(4) The President must refer an application under subrule (1) to one of the following, as may in the President's discretion appear appropriate:

(a) the same panel or review board that made the order;

(b) a new panel;

(c) the Discipline Committee;

(d) the Credentials Committee.

(5) The panel, review board or Committee that hears an application under subrule (1) must

(a) dismiss it,

(b) extend to a specified date the time for payment,

(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or

LAW SOCIETY RULES

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Anonymous publication

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(5) The panel, review board or Committee that hears an application under subrule (1) must

(a) dismiss it,

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(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or

LAW SOCIETY RULES

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*.

RULE REPAIRS

SUGGESTED RESOLUTION:

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

1. ***In Rule 2-104, by striking the phrase "***to the Benchers under subrule (4)***" and substituting "***to the review board under subrule (4)***".***

2. ***In Rule 5-12:***

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

(a) the same panel or review board that made the order;***; and***

(b) by rescinding the preamble to subrule (5) and substituting the following:

(5) The panel, review board or Committee that hears an application under subrule (1) must***.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

CEO's Report to the Benchers

April 2018

Prepared for: Benchers

Prepared by: Donald J. Avison

These are the key items I want to bring to the attention of the Benchers at the April 6, 2018 meeting.

March 5–6 Federation of Law Societies of Canada Meeting

As President Kresivo, QC and Mr. Van Ommen, QC will report on the meeting of Presidents and with respect to the Council meeting, I will focus my comments on the session with CEOs and staff that took place on March 5, 2018.

While this was my first meeting of the Federation in my capacity as CEO, I was not alone in this regard as Nova Scotia, Ontario, Yukon, the North West Territories and British Columbia have all made new CEO appointments over the course of the past year. The CEO in Saskatchewan is also relatively new. This represents a level of senior leadership change that the Federation has not experienced for a considerable period of time. As a result, a portion of the CEO agenda focused on what Jonathan Herman, the CEO of the Federation, referred to as “Federation 101” – a summary of the mandate, initiatives, structure and priorities of the Federation.

The substantive items addressed during the CEO session included the following:

- provision of support for smaller law societies;
- mobility/law society status of Federal Department of Justice lawyers; and
- data mining in the law society context;
- planning for the annual Federation conference. The 2018 event will take place in Charlottetown in October where the focus will be on Artificial Intelligence, Block Chain and Digital Currencies.

Anti-Money Laundering/Cash Transactions/Client Identification Policies and Procedures

These matters have received a considerable amount of attention in recent weeks, not only here in British Columbia, but also at the national level.

In BC the profile of the issue(s) has been raised through the work that Peter German, QC has undertaken at the request of the Attorney General. That work commenced with a focus on the linkage between casinos/gaming and money-laundering but it has now extended into other areas including real estate transactions and cash purchases of high value automobiles. Mr. German has made a number of preliminary recommendations to government (several of which have been implemented) and his report was to be delivered to the Attorney General by the end of March, 2018.

President Kresivo, QC and I had a productive discussion with Mr. German at my office on March 26 and we have invited him to speak at the meeting of the Benchers in May of 2018.

The Attorney General has also made several statements about money laundering and suspicious cash transactions and much of what he has said has been critical of federal government policies, practices and resourcing. The Attorney took those concerns directly to the House of Commons Standing Committee on Finance when he appeared before them on March 27, 2018.

The Attorney General has also raised concerns with the Law Society of British Columbia through his letter to me of February 26, 2018 and in my meeting with him at the Legislative Assembly on March 15, 2018. Copies of all related correspondence to the Attorney General is also included here. At the March 15 meeting, I asked the Attorney to attend the April 6 meeting of Benchers and his office subsequently advised that he intends to do so. I should also note that President Kresivo, QC and I will be meeting again with the Attorney General on April 3 and we will be providing to him a binder of materials setting out what the Law Society actually does in respect of such matters.

The materials for the April 6 meeting of Benchers will have a copy of the submission by the Federation of Law Societies of Canada to the Standing Committee on Finance on the Statutory Review of the Proceeds of Crime (Money Laundering) and Terrorist financing Act. The Law Society of BC provided significant input to that document and members of our senior staff are substantially engaged in the Federation's work on possible amendments to the model rules.

I have asked Ms. Armour, QC, Chief Legal Officer of the Law Society and Ms. McPhee, Chief Financial Officer, to be available at the April 6 meeting to provide brief updates on their work with the Federation and on initiatives in their respective areas of responsibility.

I should also mention that, in addition to the meeting with the Attorney General and with Mr. German, QC, we will also be looking for an opportunity for the Law Society to meet with the Minister of Finance for BC.

Other Matters

Benchers should also be aware of the following matters:

- follow-up work continues in relation to the Employee Survey;
- work on the remediation of exterior decks of the Law Society building will likely commence in the coming weeks;

- we understand that we can expect to hear from government shortly regarding the designation of Appointed Benchers;
- planning for the annual Law Society retreat is well underway and confirmation of participation by former commissioner Marie Wilson of the Truth and Reconciliation Commission has been received;
- government announced significant changes in relation to the governance of the College of Dental Surgeons, the implications of which I will briefly speak to at the April 6 meeting; and
- discussions continue with government on potential legislative amendments in areas of interest to the Law Society.

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

Donald J. Avison
Executive Director/Chief Executive Officer

BRITISH COLUMBIA

FEB 2 6 2018

Mr. Don Avison
Executive Director and Chief Executive Officer
The Law Society of British Columbia
845 Cambie Street
Vanouver BC V6B 4Z9

Dear Mr. Avison:

I am writing to you with respect to correspondence that I have received from a former member of the Law Society of British Columbia.

In that correspondence, the former member has raised an issue which, in the view of the former member, has implications for lawyers who practice in the area of commercial and real estate law. In particular, the former member raised a concern that, in the former member's experience, the Law Society does not have sufficient procedures in place to regulate its members when dealing with offshore buyers of real estate and the receipt of offshore funds. The former member also asserted that the Law Society has not issued any practice directive, advisory or rule to provide guidance to the legal profession as to best practices in handling transactions involving the receipt of offshore funds.

I am now writing to you to request, as a bencher under the *Legal Profession Act*, that these issues be addressed at a meeting of the benchers.

I look forward to your response.

Yours truly,

David Eby, QC
Attorney General

Ministry of Attorney General
Office of the Attorney General
Mailing Address:
PO Box 9044 Stn Prov Govt
Victoria BC V8W 9E2
email: AG.Minister@gov.bc.ca
website: www.gov.bc.ca/ag
Telephone: 250 387-1866
Facsimile: 250 387-6411

The Law Society
of British Columbia

March 2, 2018

Honourable David Eby
Attorney General
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General Eby,

Donald J. Avison
Executive Director/Chief Executive Officer

Thank you for your letter of February 26, 2018, which we received March 1. The Law Society takes seriously its responsibility to ensure lawyers do not engage in the conduct you raise in your letter.

The Law Society does, in fact, have rules about lawyers accepting cash, together with rules requiring lawyers to identify their clients when providing legal services and to verify their clients' identification when providing legal services in respect of a financial transaction.

I also wish to inform you that, at their meeting of March 2, 2018, Benchers were briefed regarding a number of initiatives that have been underway at the national and provincial level, for some time, regarding limitations on cash transactions, client identification requirements and the appropriate use of trust accounts. I believe it is important for you also to know that, as always, we look to develop useful guidance to the profession focused on protecting the public.

We would be pleased to discuss these initiatives and rules, together with the information we have provided to the profession relating to the rules and our enforcement processes, with you. Given the importance of the matters you raise, we would suggest an early meeting so we can address any matters that may concern you.

Sincerely,

Don Avison

845 Cambie Street, Vancouver, British Columbia, Canada V6B 4Z9
Direct: 604-669-2533 Facsimile: 604-669-5232
Toll-free within B.C. 1-800-903-5300 TTY: 604-443-5700
www.lawsociety.bc.ca

The Law Society
of British Columbia

March 26, 2018

Sent via mail to

Honourable David Eby
Attorney General
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General David Eby:

Donald J. Avison
Executive Director/Chief Executive Officer

Re: Discussions with the Law Society of British Columbia

I write to thank you again for taking time to meet with me last Thursday, March 15 at your Legislative Assembly office in Victoria. I appreciated the opportunity to discuss a number of issues, including Government's legislative program, our initiative on alternate legal service providers and our respective work in relation to the strengthening of anti-money laundering rules and laws.

In particular, it is important to set out the Law Society's past, current and prospective initiatives with respect to anti-money laundering. In correspondence you had sent to me on February 26, 2018, you had passed along concerns of a former member of the Law Society who expressed concern that the Society does not provide sufficient guidance to the profession regarding the handling of the transactions that involve the receipt and disbursement of offshore funds. As I indicated in our discussion, that statement is not true. The Law Society has provided communication to the profession on this and other issues related to anti-money laundering rules. We are happy to provide you with copies of bulletins and other materials over the years setting out lawyers' responsibilities with respect to anti-money laundering vigilance.

In addition, the Law Society has and will discipline members of the profession who fail in their obligations to properly deal with anti-money laundering requirements. During our discussion I mentioned the discipline decision of the Law Society in the matter of *Donald Franklin Gurney*, (a copy of which I provided to you).

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The Gurney case involved a situation where a lawyer improperly permitted his trust account to be used to receive and disburse a total of $25,845,489.87. Mr. Gurney received payment of "fees" in the amount of $25,845.00, despite the fact that no substantive legal services were provided. In finding that Mr. Gurney had engaged in unprofessional conduct, the Hearing Panel found that this was a case in which the nature of the transactions raised a reasonable suspicion that the transactions may involve illegality in circumstances that any objective observer would have considered suspicious. The Hearing Panel went on to say that proceeding with these transactions without appropriate inquiry as to the source of funds would require one "to ignore the sea of red flags" disclosed by the evidence in that matter. Mr. Gurney was suspended from the practice of law for six months and was ordered to pay an amount of $25,845.00, effectively removing the benefit of the fee that had gone to him for his role in the transactions.

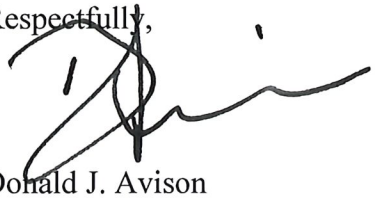
In reaching their decision, the Hearing Panel made it very clear that "there is a need for lawyers to understand the importance of their role in acting as gatekeepers to their trust accounts and to ensure that they make the necessary inquiries with regard to transactions that reasonably appear to be suspicious prior to their allowing funds to be deposited into their trust accounts. General deterrence requires the profession to understand that the breach of that professional duty will be treated as a serious breach."

I believe the Gurney case served multiple purposes and one of those was the education of the profession regarding the inappropriate use of trust accounts and the risks of failing to meet an acceptable level of inquiry.

I also wish to bring your attention to the submission that the Federation of Law Societies of Canada delivered to the House of Commons Standing Committee on Finance earlier this week, a copy of which I have enclosed. The submission speaks to the work that the Federation has done (and further work that is currently in progress) "to ensure that regulations in this area are as robust and effective as possible." It is expected that the work now being done by a special working group of the Federation (one that includes substantial participation by representatives of the Law Society of British Columbia) will result in proposed amendments to further strengthen the Federation's model rules. The submission also called upon governments to do their part in addressing the need for publicly accessible registries regarding beneficial ownership. I note that the submission also spoke to what the Government of British Columbia had said in the recent provincial budget about tracking beneficial ownership information in this jurisdiction.

Thanks again for meeting with me. As discussed, government and the Law Society must work together to for the public good on this matter. We look forward to working with you and with your officials in addressing how we can further strengthen the protection of the public.

Respectfully,



Donald J. Avison

Reply to: Direct line: [redacted]
E-mail: davison@lsbc.org

Federation of Law Societies of Canada
Fédération des ordres professionnels de juristes du Canada

Submission of the Federation of Law Societies of Canada to the House of Commons Standing Committee on Finance

Statutory Review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

March 20, 2018

World Exchange Plaza 1810 - 45 O'Connor Street Ottawa Ontario K1P 1A4
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Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Submission of the Federation of Law Societies of Canada to the House of Commons Standing Committee on Finance

Statutory Review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

March 20, 2018

Introduction

1. The Federation of Law Societies of Canada ("the Federation") appreciates the opportunity to provide comments to the Committee on the occasion of its review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act ("the Act").

2. The Federation is the coordinating body of the 14 governing bodies of the legal profession in Canada. Our member law societies are statutorily charged by legislation in each province and territory with the responsibility for regulating more than 120,000 lawyers, 3,800 notaries in Quebec and Ontario's nearly 9,000 licensed paralegals in the public interest. An important role of the Federation is to express the views of the governing bodies of the legal profession on national and international issues relating to the administration of justice and the rule of law.

3. The Federation and its member law societies support Canada's efforts to fight money laundering and terrorist financing. We recognize the importance of the objectives of the Act and concur with its basic purpose. Initiatives to fight these crimes, which include fulfillment of Canada's commitments internationally as a result of its membership in the Financial Action Task Force ("FATF"), must respect the framework of the values and constitutional principles on which Canadian society rests. This includes the rule of law, and within that, the right of individuals to an independent judiciary and independent legal counsel.

4. In 2015 the Supreme Court of Canada recognized that the provisions in the legislation requiring legal counsel to collect and retain information not required for client representation, expansive powers to search law offices, and inadequate protection for solicitor-client privilege violated provisions of the Canadian Charter of Rights and Freedoms and undermined the ability of lawyers and Quebec notaries to comply with their duty of commitment to the client's cause, a principle of fundamental justice.[1]

5. As the authority to regulate the legal profession in Canada rests with the provincial and territorial law societies, the public interest in addressing money laundering and terrorist financing as it relates to the legal profession is best served by having these regulators address any risks that the legal profession may present.

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[1] Canada (Attorney General) v. Federation of Law Societies of Canada, [2015] 1 SCR 401, 2015 SCC 7 (CanLII).

Anti-money laundering and anti-terrorist financing initiatives

6. The Federation and the law societies of Canada have demonstrated their commitment to protecting the public by regulating the legal profession to mitigate the risk of legal counsel engaging in or facilitating money laundering or the financing of terrorism. The development by the Federation of model rules limiting the ability of legal counsel to accept cash (the "No Cash Rule") and imposing extensive client verification obligations (the "Client ID Rule") and their adoption and enforcement by the law societies is evidence of our commitment to proactively regulate in this area. Combined with extensive rules of professional conduct and financial accounting rules, the No Cash Rule and the Client ID Rule provide effective regulation of the risks of members of the legal profession becoming involved in money laundering or the financing of terrorism.

7. The No Cash Rule, adopted in 2004 prohibits legal counsel from receiving cash in amounts over $7,500 and requires them to keep a record of cash transactions as part of their accounting record-keeping. The rule is intended to augment longstanding law society rules aimed at preventing lawyers from being unwittingly involved in money laundering and other criminal schemes, while maintaining the core principles underlying the solicitor-client relationship. The threshold in the Federation's rule is stricter than that in the regulations for reporting large cash transactions ($10,000). By prohibiting legal counsel from accepting cash the rule addresses the risks associated with the handling and placement of cash and so provides an effective alternative to the reporting requirements that apply to other reporting entities under the federal anti-money laundering scheme.

8. To ensure that legal counsel engage in appropriate client due diligence, the Federation adopted a model rule on client identification and verification, the Client ID Rule. The rule has been in force in all Canadian jurisdictions since 2008. Members of the legal profession must identify **all** clients who retain them to provide legal services by recording basic information such as the client's name, address and telephone number. In addition, when legal counsel provide legal services in respect of the receipt, payment or transfer of funds, they must verify their clients' identity by reference to independent source documents such as a driver's license, birth certificate, passport or other government issued identification. The Client ID Rule respects the threshold between constitutional and unconstitutional requirements imposed on members of the legal profession when it comes to the gathering of information from clients: legal counsel must obtain and keep all information needed to serve the client, but must not obtain any information which serves only to provide potential evidence against the client in a future investigation or prosecution by state authorities.

9. Together, the No Cash and Client ID rules accomplish three goals:

   a. the rules impose on lawyers and Quebec notaries a rigorous standard with respect to cash transactions and limit the ability of legal counsel to accept cash from clients;

   b. the rules address the activities of lawyers and Quebec notaries as financial intermediaries but form part of the extensive statutorily authorized regulatory regime for members of the legal profession through law societies rather than federal legislation; and

   c. the rules, as law society regulations, respect the constitutional principles upheld by the legal profession for the benefit of the public, protect the right of citizens to independent legal counsel, and ensure that counsel can continue to protect the client's privilege, which is a constitutionally recognized principle.

10. It has been suggested in a number of forums, including a recently published Department of Finance consultation paper[2] that the exclusion of members of the legal profession from the federal anti-money laundering and anti-terrorism financing regime is "a major deficiency"[3] We note that in its 2016 Mutual Evaluation Report on Canada the FATF also was dismissive of law society regulation to combat money laundering and the financing of terrorist activities suggesting that as a result of the Federation's successful challenge to the constitutionality of the federal anti-money laundering and terrorist financing scheme "there is … no incentive for the profession to apply AML/CFT measures and participate in the detection of potential ML/TF activities." These suggestions ignore the serious regulatory initiatives of Canada's law societies in this area and the ongoing monitoring of members of the legal profession that law societies engage in including both periodic and risk-based audits.

11. Law societies take their mandate to regulate the legal profession in the public interest seriously. The rules and regulations implemented by provincial and territorial law societies based on the Federation's model rules exist to address the conduct of legal counsel and to prevent them from unwitting involvement in money laundering or the financing of terrorism. As noted earlier, legal counsel are also required to abide by comprehensive rules of professional conduct that include provisions prohibiting them from knowingly assisting in or encouraging any unlawful conduct. Measures to ensure that legal counsel maintain appropriate practice management systems and comply with law society regulations include annual reporting obligations, practice reviews and financial audits. Law societies also have extensive investigatory and disciplinary powers that include the ability to impose penalties up to and including disbarment when members fail to abide by law society rules and regulations. Lawyers and Quebec notaries are, of course, also bound by the criminal law and those who wittingly participate in criminal activity are subject to criminal charges and sanctions. In the submission of the Federation, any actual or perceived gap in the legislative scheme as a result of the exclusion of members of the legal profession from the provisions of the Act has been filled by these regulatory initiatives.

12. However the Federation also recognizes that it is important to ensure that the regulations in this area are as robust and effective as possible, and to that end the Federation recently undertook a comprehensive review of its model rules. Last fall a Federation special working group launched a consultation on draft amendments to the rules that clarify some of the provisions and add additional obligations including a requirement for legal counsel to obtain and verify the identity of the beneficiaries of trusts and the beneficial owners of organizations as well as requirements for ongoing monitoring of the professional relationship and the activities of clients. Also proposed is a new model rule (modeled on a rule that several law societies have implemented) that would tie the use of trust accounts to the provision of legal services thus ensuring that lawyer trust accounts cannot be used for purely financial transactions. The consultation ended on March 15, 2018. The working group is now considering the feedback it received and will also be reviewing the Department of Finance white paper referred to earlier. It is expected that final amendments to the rules will be approved by the Federation and implemented by the law societies later this year.

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2 Reviewing Canada's Anti-Money Laundering and Terrorist Financing Regime, page 21

3 Anti-money laundering and counter-terrorist financing measures in Canada – 2016, FATF page 95

13. The Federation's working group also has undertaken a review of law society compliance and enforcement activities and is now preparing guidance on best practices to assist law societies in ensuring that their activities in these areas are as effective as possible. The working group will also be preparing comprehensive guidance and educational materials for the legal profession to assist members in understanding the money laundering and terrorism financing risks they may encounter in their professional activities and their associated legal, regulatory and ethical obligations.

Beneficial ownership

14. As noted above, proposed amendments to the Federation's model rules would add a requirement for legal counsel to obtain and verify information on the beneficial owners of organizations and the beneficiaries of trusts. The proposed amendments reflect the Federation's recognition of the value of capturing this information. It is important to note, however, that compliance with such a rule, which would mirror requirements in federal regulations, will be greatly hampered by the lack of publicly available information on beneficial owners. In the absence of publicly accessible registries of beneficial owners, it simply may not be possible to impose an absolute requirement to verify beneficial ownership information.

15. Canada has been criticized by the FATF and others for the lack of transparency on beneficial owners that exists in this country. In its recent consultation paper, the Department of Finance indicates that access to accurate beneficial ownership information "is vital to combatting illicit financial flows including money laundering, terrorist financing and tax evasion."[4] The consultation paper also acknowledges the lack of transparency on beneficial ownership, noting in particular the lack of any central registry.

16. The Federation notes that governments in many countries have recognized the threats posed by a lack of transparency on the beneficial owners of organizations and the beneficiaries of trusts. According to a 2016 report produced by Transparency International Canada[5] the G20, of which Canada is a member, has adopted principles on the transparency of beneficial ownership information and several member states (the UK, France, Australia and South Africa) have committed to setting up public registries of beneficial owners. The European Union has also adopted a requirement for its member countries to *collect and publish* beneficial ownership information. A July 2017 report published by the United States Library of Congress indicates that most countries surveyed have amended their legislation on beneficial ownership in response to either the G20 principles or the recommendations of the FATF. The report notes that Canada is one of only 2 G7 countries not to have taken legislative action.[6]

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[4] *Reviewing Canada's Anti-Money Laundering and Terrorist Financing Regime, page 18.*

[5] *No Reason to Hide; Unmasking Anonymous Owners of Canadian Companies and Trusts, Transparency International Canada,* ***http://www.transparencycanada.ca/wp-content/uploads/2017/05/TICBeneficialOwnershipReport-Interactive.pdf.***

[6] *Disclosure of Beneficial Ownership in Selected Countries, July 2017, Library of Congress,* ***https://www.loc.gov/law/help/beneficial-ownership/disclosure-beneficial-ownership.pdf.***

17. In the submission of the Federation, in light of the identified risk that a lack of transparency creates, it is essential that beneficial ownership information is not only provided to government authorities but is also publicly available. We note that the government indicated in its recent budget that it plans to introduce legislative amendments to enhance the availability of beneficial ownership information at the federal level. The Federation recognizes that responsibility for this issue is shared by the federal, provincial and territorial governments, but this jurisdictional complexity ought not to stand in the way of legislative reform. Indeed we note that in its recent budget the government of British Columbia announced plans to track beneficial ownership information of property, organizations and trusts. The Federation supports these plans and urges the federal government to move forward promptly with legislative initiatives that include the creation of a publicly accessible registry of beneficial owners and to continue to work with the provincial and territorial governments toward similar amendments to the legislation in their respective jurisdictions.

Conclusion

18. We would welcome the opportunity to discuss these matters further and to otherwise assist the Committee in its review of the Act.

The Law Society of British Columbia

Memo

To:	The Benchers
From:	Executive Committee
Date:	March 27, 2018
Subject:	Creating additional investigation powers for Complainants Review Committee and Practice Standards Committee

Issue

1. The Professional Conduct and Practice Standards Departments requested that the Executive Committee give a policy consideration regarding amending the Law Society Rules to permit the Complainants' Review Committee (CRC) and the Practice Standards Committee (PSC) with the additional option to be able to direct the Executive Director to undertake further investigations of matters under consideration by those committees.

2. The Committee undertook that analysis and makes the recommendations set out at the end of this memorandum.

Current Rules

3. The Rules provide the CRC with two options after it has completed its review. One, it can confirm the decision made at the staff level to close the file. Alternatively, it can refer the matter to either of the Discipline or the Practice Standards Committees "with or without recommendation."

4. The Rules provide the PSC with a wider range of options after it has considered a complaint (Rule 3-17):

    (a) decide that no further action be taken on the complaint;

    (b) make recommendations to the lawyer, if it considers that the carrying out of the recommendations will improve the lawyer's practice of law;

(c) require the lawyer to meet and discuss the circumstances of the complaint with a lawyer or Benchers designated by the Practice Standards Committee, who must then report to the Committee;

(d) find that there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner and order a practice review in respect of the lawyer's practice;

(e) refer the complaint to the Discipline Committee

If a matter giving rise to a discipline violation is discovered in the course of what the PSC learns, it may refer the matter to the Chair of the Discipline Committee under Rule 3-21. The limitations this creates are described below.

5. In neither case, however, do the rules specifically provide either the CRC or the PSC with the option of referring the matter back to the Executive Director (staff) for further investigation.

Current Practices and Issues

6. The specific lack of referral power to the Executive Director is usually not problematic. Nevertheless, there are circumstances where the lack of power to refer back to the Executive Director creates issues.

(a) CRC

7. When at the time of making a request for a CRC referral the complainant sends in further information, the staff lawyer who handled the file will review that information to determine whether the new information would affect the decision to have closed the file. If it does, the file will usually be re-opened and staff will do further investigation. If the further investigation indicated the need for a discipline outcome, the matter will be referred to the Discipline Committee. If the new information ultimately does not change the decision to close the file, the file will be closed and the complainant may renew the referral to the CRC.

8. If, on the other hand, the complainant raises new information that discloses another complaint, a new complaint file will be opened and investigated separately.

9. However, problems will from time to time arise where, while in the process of reviewing a complaint, the CRC has reservations about the decision at the staff level to close the file and therefore is considering referring it to the Discipline Committee, but the issue that CRC has identified has not been fully investigated. For example, staff may have closed a file where the complainant was upset at a letter written by counsel that staff concluded

did not met the threshold of warranting a referral to discipline. The lawyer may not have been asked for a full explanation of the circumstances giving rise to the letter. In such cases, a referral by CRC to Discipline will simply result in Discipline having to refer the matter back to staff for further investigation.

(b) PSC

10. The issue is slightly different with the PSC. Matters are rarely referred from the Professional Conduct Department to the PSC without a considerable amount of discussion with staff to that Committee, so investigations are usually very complete for the purposes of the referral. While the rules give the Committee, when considering a matter, the ability "to instruct the Executive Director to make or authorize any further investigation that the Practice Standards Committee considers desirable" it would be rare for this power to be needed.

11. What happens on a referral to PSC is that the Committee takes the matter and makes a decision about what to do with it. The available options are set out in Rule 3-17 as referred to in paragraph 4 above.

12. The options include requiring the lawyer to meet with a lawyer or Bencher or to order a practice review. Occasionally, during such meetings or reviews, new information surfaces that discloses a potential discipline violation. At that point, however, the Committee is arguably boxed in by the rules, as its only option would be to refer the matter to the Discipline Committee under Rule 3-21. When the latter happens, the Discipline Committee is left with little option other than to refer the matter back to staff for investigation. Similarly, where a lawyer breaches an order made by or undertaking given to the Practice Standards Committee, the matter is referred to the Discipline Committee which then refers the matter back to the Professional Conduct Department for investigation.

Discussion

13. In each case, it is problematic to send a matter, be it from the CRC or the PSC, to the Discipline Committee that has not benefited from a thorough investigation by staff, along with the opportunity for the lawyer to provide explanations, records, and any other information, to staff to address the concern.

14. In circumstances where the Discipline Committee receives such a referral, the Committee will simply refer the matter back to the Executive Director (staff) for further investigation, because there is incomplete information before the Committee to make a proper disposition of the issue.

15. If the Discipline Committee needs to refer matters to staff for a proper investigation, then the referral from CRC or PSC in the situations described simply creates delay.

16. If on the other hand each of the CRC and PSC had the authority to refer matters back to the Executive Director, a proper investigation can occur. For CRC referrals, the original complaint could be re-opened and investigated further, resulting in either a referral to Discipline Committee if a discipline outcome were warranted, or the file could be closed giving the complainant an opportunity to seek a review by CRC. For PSC matters, an amended Rule 3-21 could give the PSC the ability to refer to Discipline (which may be a rational option if the evidence is clear that a discipline violation has been committed, the lawyer has had an opportunity to respond and time is of the essence) or to refer the matter to the Executive Director (in other words, back to staff in the Professional Conduct Department) to investigate the matter that has arisen as a new complaint, without having to go through the current roundabout way to accomplish the same end.

Recommendation

17. The Executive Committee recommends that the Benchers approve in principle an amendment to the Rules to permit CRC to refer matters to the Executive Director for investigation and to permit the PSC to do likewise as outlined in this memorandum, and that the Benchers refer the issue to the Act and Rules Committee to prepare the amendments accordingly for consideration by the Benchers at a future date.

The Law Society of British Columbia

Memo

To: The Benchers
From: Credentials Committee
Date: March 14, 2018
Subject: Publication of Credentials Hearing Decisions

Introduction

1. At the Benchers meeting on June 8, 2017, the Benchers considered a proposal by the Credentials Committee to revise the current policy on the publication of Credentials hearing decisions. That proposal was the result of concerns discussed at the Committee level regarding the indefinite publication of personal information about applicants in Credentials decisions. The Committee considered that the significant privacy concerns at issue supported a reconsideration of the publication policy. In a memorandum submitted to the Benchers at the June meeting, the Committee proposed the redaction of an applicant's identity after a certain period of time following publication.

2. The publication policy for Credentials decisions is found in Rule 2-104 of the Law Society Rules, which requires the publication of the names of successful applicants unless the applicant can show the publication will cause "grievous harm" to the applicant or another identified individual. If an applicant is approved subject to conditions, there is no ability to apply for an order that he or she not be identified in the published decision. If an applicant is unsuccessful in seeking admission to the profession, the Rule requires anonymizing his or her name unless they consent to publication.

3. Since the early 1990s, Credentials hearing decisions have been made public and published on the Law Society website. The current rules are based on a review by the Benchers in the early 2000s. At that time, after considering recommendations from the Disclosure and Privacy Task Force, the Benchers resolved that unsuccessful applicants' names should be anonymized because it served little regulatory purpose to publish their names if they were not members of the Law Society. The Benchers considered that the names of successful applicants should be published unless the applicant could show "grievous harm" would result from publication. However, after a period of six months, the Benchers considered that the information in published decisions was less relevant to

the protection of the public interest. The Benchers resolved that published decisions would be moved from the "current" section of the Law Society website to an "archived" section after six months.

4. In 2014, the Benchers rescinded the rule that required archiving decisions because Internet technology had rendered the archiving function less effective. As a result, historical decisions are now as accessible as current decisions.

5. The publication policy for Credentials decisions engages important and competing interests. There is a strong public interest in openness and transparency in Law Society decisions. The public has a right to know how the Law Society reaches its decisions on admitting applicants whose past conduct has raised questions about their character and fitness to practice law. Public scrutiny protects the integrity of the process and promotes confidence in the legal profession and the Law Society's regulatory function. On the other hand, Credentials hearing decisions often disclose intensely private information regarding the applicant's personal history. The indefinite publication of highly personal information in Credentials hearing decisions may cause significant harm to applicants.

6. At the June Benchers meeting, the Committee recommended the following changes to the publication policy:

    (a) Where applicants are admitted without conditions, anonymize their names in the published decision after a period of six months;
    (b) Where applicants are admitted with conditions, anonymize their names six months after the expiry of the conditions;
    (c) Immediately anonymize the names of applicants who meet the grievous harm test;
    (d) Publish the name of unsuccessful applicants, unless they can meet the grievous harm test; and
    (e) Anonymize past decisions of unsuccessful applications, if subsequently they are admitted.

7. When the proposal was discussed at the June meeting, some Benchers expressed their view that Applicants should not be identified at all due to the private information discussed in Credentials decisions. Some Benchers were concerned that it would be impossible to anonymize an applicant's identify after it had been published on the Internet. Another suggestion was a presumption of anonymous publication, subject to an assessment by the panel. Others discussed the importance of transparency in the publication of Credential decisions. Some Benchers expressed their view that unsuccessful applicants' names should not be published, or at least that they should be treated in the same manner as successful applicants.

8. After some discussion, it was resolved that the Credentials Committee would consider the comments shared at the meeting and report back to the Benchers.

Discussion

9. The policy regarding publication of Credentials decisions involves profound issues regarding public confidence in the Law Society's regulatory function and the privacy concerns of applicants and others whose deeply personal information is discussed in Credentials decisions. It is hoped that this memorandum will inform a robust discussion amongst the Benchers regarding the proper re-formulation of the publication policy for Credentials decisions.

10. It is a foundational principle that courts and tribunals are expected to be open and information is expected to be available to the public. Openness is necessary to maintain the independence and impartiality of the Law Society. It is integral to public confidence in the Law Society and the profession. However, in some circumstances the privacy interests of an individual may require that certain information be redacted from published decisions.

The Different Categories of Applicants in Credentials Hearings

11. It is important to note that there are different categories of applicants who are subject to Credentials hearings, and that there are different considerations at issue for the various categories of applicants. In this memorandum we have set out what we believe to be the relevant factors for the different categories of applicants: successful applicants; successful applicants subject to conditions; unsuccessful applicants; transfers from other jurisdictions; and reinstatement of disbarred lawyers.

(a) Successful Applicants

12. Under Rule 2-104, successful applicants who are admitted on conditions are named in the decision. In reviewing Credentials decisions from the last decade, the decisions sometimes discuss highly personal information, such as a history of substance abuse, psychiatric issues, details of family violence, and rehabilitation efforts. In rare instances, these decisions were redacted to protect the privacy of the applicant or third parties. However, most decisions contained unredacted details of the events that placed the character of the applicant under question.

13. It is apparent from a review of past decisions that it is often necessary for the hearing panel to discuss personal details of applicants in describing how they may have addressed their past conduct in establishing that they should be admitted to the profession. It is questionable, however, whether the public interest requires a general rule that successful applicants should always be named. The publication of the decision, including the critical

reasoning for admitting the applicant, is arguably more important to transparency than the identity of the applicant.

14. If an applicant is admitted, it is because they have met the burden of proof to establish their good character, repute, and fitness to practice law. Once admitted, the applicant is on the same legal standing as lawyers who have not undergone a hearing. The publication of the applicant's intimate personal information for an indefinite period of time may affect their reputation throughout their career. In some circumstances it may cause significant prejudice.

15. However, some may consider that there is a public interest in identifying successful applicants as the public has an interest in knowing the identity of lawyers whose past conduct has required a Credentials hearing. The issues discussed in the Credentials hearing might affect a person's decision to retain the lawyer. In fact, it is possible that in some circumstances (such as where there is notoriety or media interest surrounding a hearing), there would be controversy generated by the anonymization of the applicant.

16. It should also be noted that Credential hearings are open to the public. Any member of the public or media can attend a hearing and publicize the hearing. The proposal to anonymize the names of applicants does not amount to a publication ban. The public interest in open proceedings and transparency is arguably not diminished if it is possible for the public to ascertain the identity of the applicant in cases where there is a public interest in doing so.

17. Further, not naming the applicant would arguably be consistent with the spirit of the former policy of archiving older decisions. In formulating the former policy, the Benchers of the day considered that after a period of time the information in the decision may be less relevant to the protection of the public. They resolved that the decision would be "archived" so that it was not easily accessible. As discussed above, evolution in Internet technology has rendered the previous policy ineffective. Accordingly, the Benchers may consider that revision to the publication policy would be consistent with the spirit of the former policy, which involved making dated decisions less accessible.

(b) Successful Applicants who are Subject to Conditions

18. Under Rule 2-104(3)(a), successful applicants who are admitted on conditions are named in the decision. These persons do not have the right to seek an order to have portions of the decision redacted, even on the ground that publication would cause "grievous harm".

19. A review of Credential decisions reveals that applicants who were admitted to the profession subject to conditions often had a history of personal challenges such as substance abuse, criminal charges, and mental illness. In many cases, these issues resulted

in the hearing panel ordering conditions. Consequently, the published decisions often disclose personal information for which there is a significant privacy interest.

20. For applicants who are admitted subject to conditions, however, there is a clear public interest in knowing that a lawyer is subject to conditions. Clients have an interest in knowing that their lawyer is subject to conditions on their practice. This weighs in favour of identifying applicants in Credentials hearing decisions who are admitted subject to conditions, at least for the time period the conditions are in force.

(c) Unsuccessful Applicants

21. Under Rule 2-104(2) a publication must **not** identify a rejected applicant unless the applicant consents. The rationale for this policy is that there is little regulatory purpose in publicizing unsuccessful applicants because they are not members of the Law Society.

22. A review of Credential decisions reveals that the decisions include personal information regarding past criminal charges, domestic violence, dishonesty, and substance abuse. In addition to anonymizing the names of the applicants, other aspects of the decisions were redacted to protect the identity of unsuccessful applicants. As with successful applicants, the matters discussed in Credentials decisions are often intensely personal.

23. Some Benchers have expressed the concern that a policy of naming unsuccessful applicants may discourage certain societal groups from pursuing a career in the legal profession.

24. There has been a concern that by not naming applicants who have been rejected, those persons may conceal the Credentials decision in seeking admission to other law societies or engaging in the unauthorized practice of law. This has occurred in some cases in the past, which clearly raises concerns about protection of the public.

25. The Law Society has the discretion to disclose the Credential decisions to the Federation of Law Societies of Canada and to other law societies. It has been noted that there is currently a lack of communication on this issue between Law Societies. It is our view, however, that the problem of rejected applicants attempting to conceal the decision should be remedied through improved communications with other Law Societies rather than through the publication policy.

(d) Reinstated Lawyers and Transfer Applicants from Other Jurisdictions

26. Under Rule 2-103(2), disbarred lawyers who are subsequently reinstated must be named in the publication.

27. Credential decisions involving reinstated lawyers include extensive details of the circumstances that led to the disbarment. While these circumstances generally involved a breach of professional rules, the decisions also included personal information such as substance abuse and mental illness.

28. There is, however, a strong public interest in knowing the identity of a formerly disbarred lawyer who has been reinstated. The disbarment of a lawyer is usually widely reported in the media. Indeed, the Law Society has often publicized the disbarment of a lawyer pursuant to its mandate to protect the public. It is not difficult to imagine the controversy that would arise from a policy withholding the identity of a reinstated lawyer who had been previously disbarred. It would be dramatically inconsistent for the Law Society to publicize a disbarment and then anonymize the identity of the lawyer when reinstated.

29. It is our view that the public interest in knowing the identity of a reinstated lawyer outweighs his or her privacy interests, particularly as the details of the circumstances leading to disbarment have likely already been published in a disciplinary decision. The public has a strong interest in knowing why the lawyer was disbarred and on what basis he or she has regained the privilege to practice law.

30. With respect to applicants from other jurisdictions, Credentials hearings have been ordered where there is a question regarding the fitness or character of the transferring lawyer.

31. It is our view that there is a public interest in naming successful applicants who have transferred from another jurisdiction. Given that some aspect of their past conduct (usually professional conduct) has brought their character or fitness under review, it is in the public interest to know the name of the lawyer and on what basis the hearing panel has decided to accept that lawyer's admission in this province.

Review of the Practices of Other Law Societies

32. A review of the related rules from other law societies, including the Law Society of Ontario, the Law Society of Alberta, and the Law Society of Manitoba are outlined below:

(a) Ontario

Rule 18 – Access to Hearing (*Law Society Hearing Division, Rules of Practice and Procedure*) provides that all hearings are open to the public, unless the hearing pertains to "intimate financial or personal matters" that should not be disclosed to preserve the interests of any person affected or the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

(b) Alberta

Rule 78(2) – Public or Private Proceedings (*Legal Professional Act*) provides that the Hearing Committee or the Benchers, on their own motion or on the application of the member concerned, may direct all or part of the hearing to be private. However, even if the meeting is private, the Society is not precluded from disclosing or publishing the name of a member whose conduct is the subject of a hearing.

(c) Manitoba

Section 78 – Exclusion of Members of Public (*Legal Profession Act*) provides that a committee, panel or court may make an order excluding members of the public from a hearing if it thinks that "the public interest in the disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed."

33. In general, these rules pertain to proceedings, which are open to the public unless there is an overarching reason to prevent this practice (eg. intimate financial or personal matters). Further, Manitoba has implemented a policy, as of 2016, to publish the names of applicants who review a decision on admission by way of a hearing panel of the Admissions and Education Committee. These previously had been anonymized.

Options

34. There are a number of possible options in reconsidering the publication policy for Credentials decisions:

Option One: Maintain the *Status Quo*.

35. While the current policy serves the interests of openness and transparency, it is our view that the indefinite publication of highly personal information (in some cases long after there is a public interest in doing so) warrants a change to the publication policy. A lawyer's reputation and career may be indefinitely marred by the publication of information about events that occurred in the distant past, often before they were called to the Bar. It is our view that the public interest does not require the indefinite publication of this information.

Option Two: Anonymize every applicant, successful or unsuccessful, except those who are subject to conditions or who have been reinstated. For those applicants who are subject to conditions, anonymize the decisions once the lawyer is no longer subject to conditions.

36. Under this option, there would be general anonymization of applicants' identities based on the private nature of the information discussed in Credentials hearings. Successful and unsuccessful applicants would be treated the same, although lawyers subject to conditions would still be named pursuant to the public right to know that a particular lawyer has conditions placed on his or her practice.

37. Applicants who have been reinstated following disbarment would be named, unless the applicant meets the grievous harm test. The rationale for treating these applicants differently is that their personal information has likely already been published in the disciplinary decision that led to the disbarment. There is also a compelling public interest in knowing the identity of a disbarred lawyer returning to practice.

38. While the anonymization of all applicants (except those subject to conditions and reinstatements) would effectively protect the privacy interests of applicants, this option raises legitimate concerns about the openness and transparency of Law Society proceedings. Such a policy may attract controversy. Arguably, this concern may be tempered by the fact that the hearings are open to the public. For cases where there is a public interest in knowing the identity of a particular applicant, this information would be discoverable.

Option Three - Name all successful applicants, but modify the test for redacting personal information (including identity) to a less onerous test.

39. As noted above, the "grievous harm" test sets a high threshold that is difficult to meet in practice. A review of past Credentials decisions illustrates that there are very few examples of applicants who have met this test to avoid publication of their personal identity and/or personal information.

40. Rather than adopt a general policy anonymizing all applicants regardless of the circumstances, the Rules could maintain the policy of naming successful applicants, but revise the test for redaction to make it more accessible. A modified test could be framed as:

> *whether the public interest in the disclosure of the information is outweighed by the interest of the Applicant or any other person in preventing the information from being disclosed.*

41. This is a contextual approach involving a fact-specific inquiry, allowing the hearing panel to consider whether the privacy concerns at issue should result in the anonymization of the applicant or the redaction of personal information. The legal test of whether the privacy interests outweigh the interests in disclosure provides a more accessible remedy than the "grievous harm" test. This approach allows for the publication of an applicant's

identity where there are no concerns with respect to personal information, but redaction in those cases where there are privacy concerns

42. This option maintains a presumption of openness in Law Society proceedings, but allows the hearing panel to craft an appropriate order to redact a decision to protect privacy interests.

Option 4: Publication of "Outcome of Hearing" identifying outcome at a hearing; Reasons would be published anonymously.

45. Under this option, all hearing reports would be published anonymously. This would ensure that the precedential value for why or why not an applicant was or was not admitted would be available, and there would be transparency of all decisions for the purposes of the public interest.

46. Recognizing that the hearing itself is public, however, and that the public may be interested in knowing whether or not a particular applicant was admitted, an "Outcome of Hearing" (akin, perhaps, to the "order" issued by a court that is separate from its reasons) would be issued by the Panel that named the applicant, named whether he or she had been admitted, and (if applicable), would set out the conditions on which the applicant was admitted (although medical conditions would continue to be redacted). This "Outcome of Hearing" would be posted publicly on the Law Society's website.

47. The result of this approach would be that the *outcome* of the hearing would be published and would therefore be available to interested parties (including other regulatory bodies), but none of the personal particulars of the matter would be linked to the applicant's name. While the reasons would be published, they would be published anonymously so the information contained in the reasons would not be immediately linked to the applicant. Some process may have to be identified recognizing that if the Reasons were published contemporaneously with the Outcome, the two could be linked too easily. This is not the Committee's intention.

48. As has been the case since Credentials decisions were first made public, if a particular person asked for the reasons relating to a particular order, they would be available by contacting the Law Society. However, the reasons would still not name the Applicant. They would still bear a style of cause of "Re: Applicant (No. X)".

49. It is, of course, possible that an industrious member of the public would be able to link the Reasons with the Outcome and post the reasons on the internet and name the applicant. It was also possible, in the time before internet search engines were available, that a member of the public would publish Hearing Panel decisions in another publication that could be widely circulated. Short of prohibiting such conduct in the rules (which might be criticized as a limitation on transparency), the Law Society has little control over how third parties utilize material we provide.

50. The advantage of the method outlined above is that the Law Society will have done what it can to be transparent about outcome while reasonably protecting an applicant from the public connecting, through a simple internet search, an applicant with sensitive personal information. The details the public needs in order to be able to find easily (whether the applicant was rejected, or was admitted, and if admitted on what conditions), will be easily obtained.

Recommendation

51. After a considerable discussion of the issues and various options, the committee recommends that the Benchers approve in principle Option 4 above.

52. The Committee concludes that Option 4 presents the best balance available to the Law Society to ensure that the public interest is protected while at the same time preserving legitimate privacy interests of both successful and unsuccessful applicants.

53. The public needs to know the *outcome* of a public hearing. If "form of practice" conditions are applied to the successful applicant, the public needs to know what those are. If an applicant has been rejected, it may be in the public interest for other bodies to know that fact.

54. However, the *reasons* for the outcome would not name the applicant. The public is still protected, because the reasons will be easily accessible through the Law Society website, and the public can assess how the Law Society reached its decision. The rationale for the outcome will still be available to counsel for future applicants for precedent value. But the often personal information contained in the Reasons will not name the Applicant.

55. Reasons have, since 1999, been available for Credentials hearings. If a member of the public called the Law Society to ask for a copy of the reasons, they would be provided. Option 4 would keep this practice alive. However, the style of cause would not name the applicant. Admittedly, someone could re-publish the reasons on the internet with the applicant's name attached, but the Law Society can never, in a public process, fully prevent that from occurring.

56. While this option also does not absolutely prevent an industrious member of the public from being able to figure out which reasons attach to which applicant, it at least prevents Reasons naming an applicant from "popping up" on a Google search should someone be searching a particular person out of idle curiosity. What will, instead, "pop up" is the outcome of the hearing and that, in most cases, is what people are really interested in.

57. The Committee therefore recommends Option 4 be approved in principle and that the matter be referred to the Act and Rules Committee to draft rules to reflect the policy direction.

LAW FIRM REGULATION: A PRIMER

OPENING COMMENTS

- The sole focus of the Law Society cannot just be "after the fact" regulation that responds to events that have already happened. "Proactive regulation" recognizes that it is preferable to prevent a problem than to sanction someone after a problem has occurred.

- Law firm regulation is part of efforts to get in front of issues and represents a shift to supporting law firms with resources and guidance about how to avoid problems that commonly lead to regulatory complaints.

WHY LAW FIRM REGULATION?

- Firms tend to create their own distinct cultures that affect the way lawyers within the firm practise law.

- Increasingly, clients tend to retain firms rather than particular lawyers. For example, firms bill, firms operate trust accounts, firms market.

- Firms' policies and processes have a considerable impact on how services are delivered to clients.

- While the Law Society has standards and provides support to help guide competency and ethical conduct of individual lawyers, there is no guidance about what good law firm structures may entail.

- Australian studies suggest that a decrease in the number of regulatory complaints against lawyers results where law firms are required to do nothing more than assess how effective their management structures are.

- If a decrease in complaints against lawyers can result if the Law Society introduced a regulatory scheme requiring firms to assess their management structures in relation to the provision of legal services, everyone would be ahead.

LAW SOCIETY TO INTRODUCE LAW FIRM REGULATION: REGISTRATION AND PILOT PROGRAM FOR SELF-ASSESSMENT:

(a) REGISTRATION

- Starting in May, the Law Society will contact firms (**including sole practitioners but not government or in-house law departments**) asking firms to confirm information concerning (a) name, (b) business address, and (c) names of lawyers practising at firms.

- Firms will also be asked to name one or more "designated representative(s)" – persons responsible for liaising with the Law Society in the event the Law Society needs to contact the firm. The designated representative is *not* responsible for the conduct of lawyers at the firm.

(b) SELF-ASSESSMENT (PILOT PROJECT)

- The self-assessment tool is the central component of law firm regulation and will be initiated through a pilot project involving no more than 10% of all firms.

- Firms chosen for the pilot will be asked to self-assess their policies and processes against 8 elements identified by the Law Society. These elements are chosen as the key regulatory items because they are widely recognised as representing the cornerstones of firm practice.

- The 8 elements are:

(1) Developing competent practices and effective management
(2) Sustaining effective and respectful client relations
(3) Protecting confidentiality
(4) Avoiding and addressing conflicts of interest
(5) Maintaining appropriate file and records management systems
(6) Charging appropriate fees and disbursements
(7) Ensuring responsible financial management
(8) Observing the laws protecting human rights and the principles of equity, diversity and inclusion

- The degree or manner in which firms have put in place policies and processes in the areas covered by the elements will vary from firm to firm dependant on several factors, including firm size.

- How firms develop implement policies and processes to achieve these outcomes is largely left to firms to determine, recognising that there is no "one-size-fits-all" approach.

- However, every firm needs to address these elements to some extent to ensure that the firm and the lawyers practising within it meet appropriate standards of professional conduct and competence and are compliant with legal requirements. Even firms that are sole practitioners need to address these elements.

- The pilot project is a survey to obtain information about how firms are doing in key areas of practice management covered by the 8 elements. There will be no regulatory consequence, at the pilot stage, should a firm report that it falls short in addressing any of the elements. Through the self-assessment, the Law Society will be asking firms for what types of educational or other resources they may find useful to assist them in satisfying the elements.

- In light of recent experience in Ontario, questions may be raised about the eighth element relating to equity, diversity and inclusion. Element 8 is included to encourage firms to turn their mind to and develop policies and processes to deal with *Human Rights Code* and workplace safety legislation, which require firms to implement human rights protections and address issues such as

bullying and workplace harassment, as well as consider the broader principles of equity, diversity and inclusion in their workplace policies. Firms or their lawyers are **not** asked to declare support for, or to promote the principles engaged by element 8.

WHAT'S IN THIS FOR LAW FIRMS AND THE PROFESSION AT LARGE?

- This new regulatory approach leverages the benefits that strong, positive firm cultures can have on the practice of law in order to reduce instances of unprofessional behaviour.

- Firms that create or maintain policies and processes that address the elements identified above will have management structures in place that the Law Society believes, and studies suggest, will address practice issues *before* they result in complaints.

- Over time, this new, proactive approach aims to increase the effectiveness of regulation, reduce the associated costs and improve lawyers' practices and the public's confidence in the legal profession.

- Law firm regulation will also provide for better accountability in situations where breaches of Law Society rules and Code of Conduct provisions are actually the result of shortcomings on the part of law firms and not individual lawyers.

The Law Society of British Columbia

Quarterly Financial Report

February 28, 2018

Prepared for: Finance & Audit Committee Meeting - March 28, 2018
Bencher Meeting - April 6, 2018

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

DM1866416

Quarterly Financial Report – to the end of February 2018

Attached are the financial results and highlights to the end of February 2018.

The first quarter results to the end of March 2018 are not available due to the timing of the FAC and Bencher meetings.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance to budget of $265,000, mainly due to the timing of revenue and expenses.

Revenue

Revenue was $4,245,000, $120,000 (3%) over budget, which is due to the timing of receipt of electronic filing revenue, recoveries and interest revenue.

Operating Expenses

Operating expenses were $3,440,000, $145,000 (4%) below budget mainly due the timing of expenditures.

2018 Forecast - General Fund (excluding capital and TAF)

While it is still early in the year, we are tracking to budget to the end of February 2018.

Operating Revenue

At this time, revenues are projected to be at budget. Practicing membership revenue is budgeted at 12,080 members, and PLTC revenue is budgeted at 500 students.

Operating Expenses

At this time, operating expenses are projected at budget for most areas.

In Discipline, we anticipate that more files will need to be sent out to external counsel which will have resource implications.

TAF-related Revenue and Expenses

TAF revenue for the first quarter of 2018 is not received until the April/May time period. There has been $138,000 received to date that relates to TAF receipts that were received after the year-end financial statement cut-off. Trust assurance program costs are close to budget.

Special Compensation Fund

In 2017, pursuant to Section 50 of the Legal Profession Amendment Act, $1.0 million of the unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund. The remainder is being held to offset anticipated future costs related to document production and recovery collections.

Lawyers Insurance Fund

LIF assessment revenues were $2.6 million in the first two months of the year, close to budget.

LIF operating expenses were $1.0 million, $51,000 in savings relating to staff vacancy savings.

The market value of the LIF long term investment portfolio is $174.4 million. The investment income to the end of February 2018 is below budget as the market returns to date have been minimal. With this market performance, the LIF long term investment portfolio return was only 0.10%, close to the benchmark return of 0.04%.

The Law Society of British Columbia

Summary of Financial Highlights - February 2018
($000's)

2018 General Fund Results - YTD February 2018 (Excluding Capital Allocation & Depreciation)

	Actual*	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	3,440	3,401	39	1%
PLTC and enrolment fees	32	32	-	0%
Electronic filing revenue	118	143	(25)	-17%
Interest income	117	56	61	109%
Credentials & membership services	70	84	(14)	-17%
Fines, penalties & recoveries	190	133	57	43%
Other revenue	52	51	1	2%
Building revenue & tenant cost recoveries	226	225	1	0%
	4,245	4,125	120	3%
Expenses (excl. dep'n)	3,440	3,585	145	4%
	805	540	265	

2018 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

Practice Fee Revenue	Avg # of Members	
2013 Actual	10,985	
2014 Actual	11,114	
2015 Actual	11,378	
2016 Actual	11,619	
2017 Actual	11,849	
2018 Budget	**12,080**	
		Actual Variance
Revenue		
Membership revenue projected to be at budget		-
PLTC revenue projected to be at budget		-
		-
Expenses		
Projected to be at budget		-
		-
2018 General Fund Variance (excl. reserve funded items)		-

Trust Assurance Program Actual

	2018 Actual	2018 Budget	Variance	% Var
TAF Revenue **	138	-	138	0.0%
Trust Assurance Department	417	452	35	7.7%
Net Trust Assurance Program	(279)	(452)	173	

** Q1 revenue not due until April 30th - small amount relating to Q4, 2017, received after completion of audit

2018 Lawyers Insurance Fund Long Term Investments - YTD February 2018* *Before investment management fees*

Performance	0.10%
Benchmark Performance	0.04%

* March investment results not yet available

The Law Society of British Columbia
General Fund
Results for the 2 Months ended February 28, 2018
($000's)

	2018 Actual	2018 Budget	$ Variance	% Variance
Revenue				
Membership fees **(1)**	5,538	5,537		
PLTC and enrolment fees	32	32		
Electronic filing revenue	118	143		
Fines, penalties and recoveries	190	133		
Application fees	70	84		
Interest income	117	56		
Other revenue	52	51		
Building Revenue & Recoveries	226	225		
Total Revenues	6,343	6,261	82	1.3%
Expenses				
Regulation	1,437	1,456		
Education and Practice	466	528		
Corporate Services	429	448		
Bencher Governance	187	209		
Communications and Information Services	334	320		
Policy and Legal Services	312	328		
Occupancy Costs	275	297		
Depreciation	143	218		
Total Expenses	3,583	3,803	220	5.8%
General Fund Results before Trust Assurance Program	**2,760**	**2,458**	**302**	
Trust Assurance Program (TAP)				
TAF revenues	138	-	138	0.0%
TAP expenses	417	452	35	7.7%
TAP Results	**(279)**	**(452)**	**173**	-38.3%
General Fund Results including Trust Assurance Program	**2,482**	**2,005**	**476**	

(1) Membership fees include capital allocation of $2.10m (Capital allocation budget = $2.14m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at February 28, 2018
($000's)

	Feb 28 2018	Dec 31 2017
Assets		
Current assets		
Cash and cash equivalents	12,357	18,633
Unclaimed trust funds	2,046	2,016
Accounts receivable and prepaid expenses	1,071	1,678
B.C. Courthouse Library Fund	393	787
Due from Lawyers Insurance Fund	19,326	17,385
	35,193	40,499
Property, plant and equipment		
Cambie Street property	12,412	12,370
Other - net	1,396	1,433
	13,808	13,804
Long Term Loan	276	
	49,277	54,303
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	4,609	6,290
Liability for unclaimed trust funds	2,046	2,016
Current portion of building loan payable	500	500
Deferred revenue	17,093	22,054
Deferred capital contributions	1	1
B.C. Courthouse Library Grant	393	787
Deposits	56	58
	24,698	31,706
Building loan payable	1,100	1,600
	25,798	33,306
Net assets		
Capital Allocation	4,062	2,666
Unrestricted Net Assets	19,417	18,331
	23,479	20,997
	49,277	54,303

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2018
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2018 Total	2017 Total
	$	$	$	$	$	$	$
Net assets - At Beginning of Year	11,704	3,314	15,018	3,313	2,666	20,997	19,816
Net (deficiency) excess of revenue over expense for the period	(211)	874	663	(279)	2,098	2,482	1,180
Contribution to LIF				-		-	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	20	-	20	-	(20)	-	-
845 Cambie	182	-	182	-	(182)	-	-
Net assets - At End of Period	**12,195**	**4,188**	**16,383**	**3,034**	**4,062**	**23,479**	**20,997**

The Law Society of British Columbia
Special Compensation Fund
Results for the 2 Months ended February 28, 2018
($000's)

	2018 Actual	2018 Budget	$ Variance
Revenue			
Annual assessment	-	-	
Recoveries	-	-	
Interest income	1	-	
Loan interest expense			
Other income	-	-	
Total Revenues	**1**	**-**	**1**
Expenses			
Claims and costs, net of recoveries	9	-	
Administrative and general costs	-	-	
Total Expenses	**9**	**-**	**9**
Special Compensation Fund Results before Contribution Lawyers Insurance Fund	**(8)**	**-**	**(8)**

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at February 28, 2018
($000's)

	Feb 28 2018	Dec 31 2017
Assets		
Current assets		
Cash and cash equivalents		1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	269	276
	269	**277**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		-
Deferred revenue		
	-	-
Net assets		
Unrestricted net assets	269	277
	269	**277**

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2018
($000's)

	2018 $	2017 $
Unrestricted Net assets - At Beginning of Year	277	1,364
Net excess of revenue over expense for the period	(8)	(1,088)
Unrestricted Net assets - At End of Period	**269**	**277**

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 2 Months ended February 28, 2018
($000's)

	2018 Actual	2018 Budget	$ Variance	% Variance
Revenue				
Annual assessment	2,577	2,544		
Investment income	126	555		
Other income	60	10		
Total Revenues	2,763	3,109	(346)	-11.1%
Expenses				
Insurance Expense				
Provision for settlement of claims	2,847	2,847		
Salaries and benefits	437	533		
Contribution to program and administrative costs of General Fund	219	220		
Provision for ULAE	-	-		
Insurance	89	78		
Office	125	121		
Actuaries, consultants and investment brokers' fees	168	129		
Premium taxes	-	-		
Income taxes	-	-		
	3,885	3,928		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	146	152		
Total Expenses	4,031	4,080	49	1.2%
Lawyers Insurance Fund Results	**(1,268)**			

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at February 28, 2018
($000's)

	Feb 28 2018	Dec 31 2017
Assets		
Cash and cash equivalents	18,116	18,538
Accounts receivable and prepaid expenses	803	668
Current portion General Fund building loan	500	500
LT Portion of Building Loan	1,100	1,600
Investments	167,602	167,448
	188,121	188,753
Liabilities		
Accounts payable and accrued liabilities	1,777	1,738
Deferred revenue	5,268	7,786
Due to General Fund	19,326	17,385
Due to Special Compensation Fund	269	276
Provision for claims	68,901	67,719
Provision for ULAE	9,601	9,601
	105,142	104,505
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	65,480	66,748
	82,980	84,248
	188,121	188,753

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2018
($000's)

	Unrestricted $	Internally Restricted $	2018 Total $	2017 Total $
Net assets - At Beginning of Year	66,748	17,500	84,248	70,369
Net excess of revenue over expense for the period	(1,268)	-	(1,268)	13,879
Net assets - At End of Period	**65,480**	**17,500**	**82,980**	**84,248**

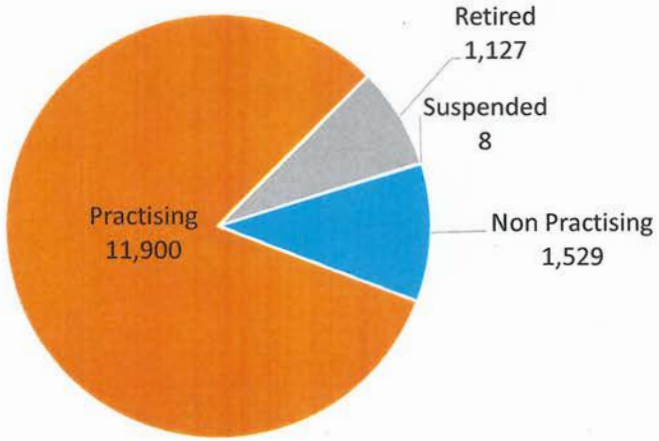
REDACTED MATERIALS

REDACTED MATERIALS

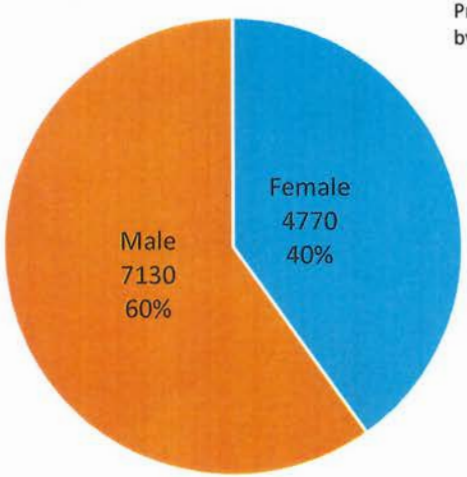
REDACTED MATERIALS

Demographics of the Profession in BC

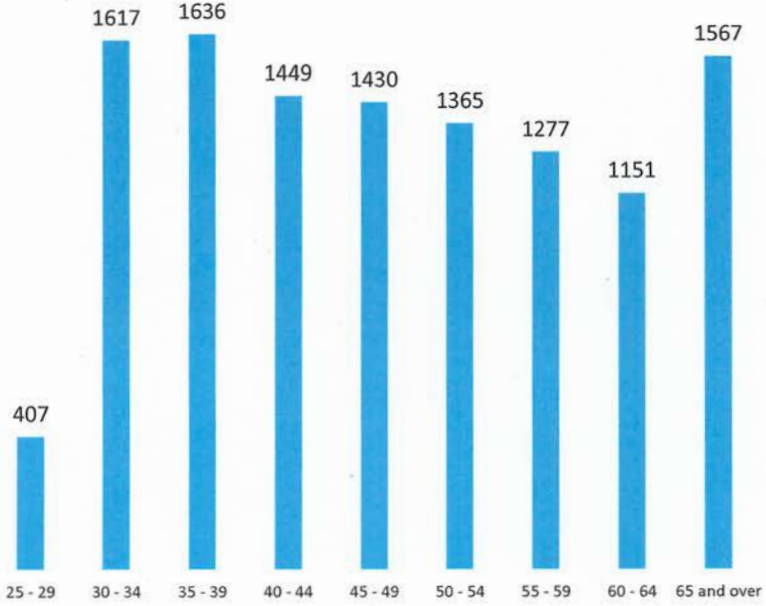
Membership by Type



Practising Members by Gender



Practising Members by Age



Practising Members by Location

National Committee on Accreditation Program Review
by Cambridge Professional Development
for the Federation of Law Societies of Canada

***excerpts*: NCA PROGRAM REVIEW REPORT - May 29, 2017**

Executive Summary

The Federation of Law Societies commissioned this Program Review of the work of its NCA standing committee. The Committee assesses all applications from and runs a suite of examinations for internationally educated prospective lawyers seeking admission to practise common law in Canada.

The project work included:

- A review of the goals and policies of the NCA
- Interviews with 10 stakeholders, selected in discussion with the NCA
- A review of the NCA procedures, from the provision of information, its application and assessment process, the administration of exams, and appeals processes
- A survey of 700 current and recent applicants to ascertain their views on the process
- Another survey of all the main law societies and law schools, mostly concerning their views on the preparation and support of applicants
- A study and comparison of the National Requirement and the National Competency Profile
- Obtaining information on success and failure rates, in obtaining CQ and subsequently
- A review of the governance and organization of the NCA, and oversight by the Federation Council
- Comparative studies of the systems used in Quebec, UK, Australia and for Accounting
- A series of three workshops, leading to preparation of this Program Review Report

We found much to praise concerning the NCA operations:

- Firstly, the central national approach provides a single point of entry for applicants.
- This is backed up by an attractive website with comprehensive information, including policies, exam arrangements, online application processes, payments, and tracking information. Email and telephone communication is also provided.
- We describe the overall administration as “exemplary”. It has handled a threefold increase in volume of applicants from a fourfold increase in the number of countries over the last eight years. It had 1700 applications in 2015. It set and marked 5000 exams over four sessions in 20 locations, including overseas. It has just seven staff.

But we also note scope for improvements:

- There is confusion over the exact benchmark being used, in particular there is no clear process to assess the three additional NR competences of problem solving, legal research, and communications. The treatment of foreign experience is unclear.
- There are grounds for concern over the success rates of NCA graduates, but inadequate data to confirm, refute, or explore this.
- NCA applicants are more varied than ever. There is a need for a portfolio of support mechanisms (from numerous stakeholders) to cater for their diverse needs.
- The NCA process is just the first step in the applicant’s journey. There is a need for information on the total route, including on alternative legal careers.

We propose seven recommendations, with 28 specific actions ... These present a structured route for the NCA, the Federation, and its stakeholders, towards a modern, state-of-the-art, competence-based system for defining and assessing the competencies required. There is a mixture of short and longer term actions involving collaborating stakeholders in working towards an ultimate vision ...

Summary of Recommendations

This report offers seven recommendations and 28 actions:

1. Develop a web information portal
   - 1.1. Implement specific improvements to current website
   - 1.2. Extend web presence
   - 1.3. Develop and signpost information on alternative careers

2. Build a strong competency-based foundation
   - 2.1. Develop a competency-based benchmark for entry to bar admissions
   - 2.2. Develop a competency-based benchmark for entry to practice

3. Strengthen the current NCA assessment and marking
   - 3.1. Develop/implement an NCA Quality Policy and Guideline
   - 3.2. Assess for three National Requirement skills not currently assessed
   - 3.3. Improve defensibility of NCA exams
   - 3.4. Clarify recognition of professional legal experience in common law
   - 3.5. Remove wait times between exam sessions for failed exams

4. Develop a competency-based NCA assessment system
   - 4.1. Conduct a feasibility study, with cost/benefit analysis
   - 4.2. Develop consensus on which competencies must be tested and to what extent
   - 4.3. Identify types of evidence suitable to demonstrate performance criteria
   - 4.4. Develop assessment tools
   - 4.5. Train and qualify assessors
   - 4.6. Conduct a pilot, evaluate, revise and finalize

5. Work with stakeholders to develop a menu of supports to meet diverse needs
   - 5.1. Collect and review evidence for successful supports from other professions
   - 5.2. Offer a mentoring program
   - 5.3. Better understand current language gaps
   - 5.4. Work with stakeholders to adapt, customize and develop accessible (online) gap training
   - 5.5. Develop a comprehensive web-based self-assessment

6. Develop NCA data collection system
   - 6.1. Mine existing data better
   - 6.2. Reach consensus on data collection
   - 6.3. Identify the required resources and conduct a pilot

7. Strengthen governance and oversight
   - 7.1. Strengthen Committee membership
   - 7.2. Hold at least one face-to-face meeting each year
   - 7.3. Increase reporting and presence of NCA at the Council table

7.4. Council to assume responsibility for NCA policy

.....

PLTC Students: Numbers of NCA Certificate and Canadian Law Degree Holders Annually

	NCA	Canadian Law Degree	Total PLTC
2017	108	399	507
2016	86	387	473
2015	119	381	500
2014	115	386	501
2013	81	356	437
2012	76	355	431
2011	55	351	406
2010	64	331	395
2009	29	361	390
2008	27	346	373
2007	34	351	385