



Agenda

Benchers

Date: Friday, May 3, 2019

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.*

CONSENT AGENDA:

Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.

1	Minutes of April 5, 2019 meeting (regular session)
2	Minutes of April 5, 2019 meeting (<i>in camera</i> session)
3	Code Amendment – Removing Gender Specific Language
4	Discipline and Credentials Committee Terms of Reference
5	Nomination Process for 2020 Second Vice-President

REPORTS

6	President's Reports	Nancy G. Merrill, QC
7	CEO's Report	Don Avison

GUEST PRESENTATION

8	Guest Presentation on Equity, Diversity and Inclusion in the Legal Profession	Dr. Lisa Gunderson
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DISCUSSION/DECISION

9	Law Society General Meeting Reform	Steven McKoen, QC
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Agenda

10	Anti-money laundering and terrorist financing: Cash Transaction and Trust Account Rules	Don Avison
UPDATES		
11	Report on Outstanding Hearing & Review Decisions (To be circulated at the meeting)	Craig Ferris, QC
FOR INFORMATION		
12	Correspondence from Attorney General dated April 11, 2019	
13	Three Month Benchers Calendar – May to July 2019	
IN CAMERA		
14	Other Business	



Minutes

Benchers

Date: Friday, April 05, 2019

Present:

Nancy G. Merrill, QC, President	Geoffrey McDonald
Craig Ferris, QC, 1 st Vice-President	Steven McKoen, QC
Dean P.J. Lawton, QC, 2 nd Vice-President	Christopher McPherson, QC
Jasmin Ahmad	Jacqui McQueen
Pinder Cheema, QC	Phil Riddell, QC
Jennifer Chow, QC	Elizabeth Rowbotham
Barbara Cromarty	Mark Rushton
Anita Dalakoti	Carolynn Ryan
Jeevyn Dhaliwal	Karen Snowshoe
Martin Finch, QC	Michelle D. Stanford, QC
Brook Greenberg	Sarah Westwood
Lisa Hamilton, QC	Michael Welsh, QC
Roland Krueger, CD	Tony Wilson, QC
Jamie Maclaren, QC	Guangbin Yan
Claire Marshall	Heidi Zetzsche

Unable to Attend: Jeff Campbell, QC

Staff Present:

Don Avison	Jeffrey Hoskins, QC
Gurprit Bains	Jason Kuzminski
Barbara Buchanan, QC	Jeanette McPhee
Bernice Chong	Eva Milz
Natasha Dookie	Doug Munro
Su Forbes, QC	Veronica Padhi
Mira Galperin	Lesley Small
Kerryn Garvie	Alan Treleaven
Andrea Hilland	Adam Whitcombe, QC

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Denise Cuthbert	Customer Success Manager, LifeWorks
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Michele Ross	President & Education Chair, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Acting Executive Director, Canadian Bar Association, BC Branch
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Karenna Williams	External Relations Executive Member, Aboriginal Lawyers Forum

CONSENT AGENDA

1. Minutes of March 1, 2019 meeting (regular session)

A motion was made to amend the minutes of the meeting held on March 1, 2019 to replace “could” with “can perhaps” on page 11 of the minutes (page 13 of the agenda package) and to strike the sentence beginning “The Committee is hopeful...licensed paralegals.” on page 11-12 of the minutes (page 13-14 of the agenda package). The motion was carried.

The minutes were approved, as amended.

2. Disclosure and Publication of Interim Orders Under Rule 3-10

The following resolution was passed unanimously and by consent.

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

1. In Rule 2-53, by adding the following subrule:

- (7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

2. In Rule 3-10, by rescinding Rule 3-10 (3) and substituting the following:

- (3) An order made under subrule (2) or varied under Rule 3-12 [*Procedure*] is effective until the first of
 - (a) final disposition of any citation authorized under Part 4 [*Discipline*] arising from the investigation, or
 - (b) rescission, variation or further variation under Rule 3-12.
- (4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articulated student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.
- (5) The Benchers who make an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.
- (6) Where, in the judgment of the Benchers who made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, those Benchers may order
 - (a) that the Executive Director not disclose all or part of the order, or
 - (b) placing limitations on the content, means or timing of disclosure.
- (7) An order made under subrule (6) does not apply to disclosure of information for the purposes of
 - (a) enforcement of the order,
 - (b) investigation and consideration of a complaint under this part or Part 4 [*Discipline*] or a proceeding under Part 5 [*Hearings and appeals*], or

- (c) obtaining and executing an order under Part 6 [*Custodianships*].
- (8) The Benchers who make an order under subrule (6) must give written reasons for their decision.
- (9) An order under subrule (6) may be made by a majority of the Benchers who made the order under subrule (2) (a).
- (10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.
- (11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

3. In Rule 4-50, by adding the following subrule:

- (4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

4. In Rule 9-11, by adding the following subrule:

- (4) Subrule (8) does not apply to a decision of Benchers, a hearing panel or a review board.

3. Transfer of Members of the Barreau du Québec

The following resolution was passed unanimously and by consent.

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

1. In Rule 2-80 (4) (b), by rescinding subparagraph (iii) and substituting the following:

- (iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body of which the applicant was a member..

2. In Rules 2-81 (1) and 3-43 (3) by striking the phrase “in the jurisdiction of a reciprocating governing body” and substituting “in the jurisdiction of a governing body”.

4. Anti-Money Laundering and Terrorist Financing Rules: Cash Transactions and Trust Accounting Rules

This item was removed from the consent agenda as a result of a concern about the proposed removal of an exception to the general rule that a lawyer should not accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction.

The exception is found in our present Rule 3-59(2)(b)(ii) and provides:

2) This rule does not apply to a lawyer when

(a) engaged in activities referred to in subrule (1) on behalf of his employer, or

(b) receiving or accepting cash ...

(ii) pursuant to the order of a court or other tribunal ...

While a court order directing the return of cash might not occur frequently, some Benchers suggested it could still arise. It was suggested the exception be retained but the language be amended to make it was clear the exception only applies to cash received by the lawyer pursuant to court order that deals specifically with the return of cash.

It was agreed that further work would be done by staff and the proposed amendments to Trust Rules would come back to Benchers for consideration at a future meeting.

REPORTS

5. President's Report

Ms. Merrill reported on the Federation meetings in Montreal in March and said some of the matters discussed included approaches in other Canadian jurisdictions to the orientation program for new Benchers and the Benchers code of conduct.

Ms. Merrill also attended a number of events, including a meeting of the New Westminster Bar Association, a meeting with the directors of the Association of Legal Aid Lawyers and the provincial judicial council meeting. She also reported on recent appointments to the Licensed Paralegal Task Force and the Futures Task Force, which now completes the composition of both Task Forces.

With the Bencher Retreat approaching in early June, Ms. Merrill provided Benchers with an update on the planning for the retreat. She then updated Benchers on guest speakers she had invited to attend future Bencher meetings, and reported on the Leadership Workshop for Women Benchers and Selected Guests that was held on April 3.

6. CEO's Report

Mr. Avison circulated a handout to Benchers summarizing the priorities and activities of the various provincial and territorial Law Societies. He noted some key initiatives, including work on legal aid in many jurisdictions, entity regulation, new categories of legal service providers and how technology is impacting the profession and what that might mean for regulators.

Mr. Avison then provided an update on anti-money laundering and consultations that had occurred between the Law Society and Dr. Peter German and Professor Maureen Maloney. He said Dr. German may be prepared to come and speak to Benchers at a future meeting after his report has been released publicly.

Mr. Avison advised the planning for the Bencher Retreat is progressing and that he would be in a position to provide details of the full conference program at the next meeting.

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

Mr. Van Ommen reported on the Federation Council meeting he attended on March 5. He said the council meeting consisted of its ordinary business of approving the activity plan and budget, as well as reports on the Federation's three strategic objectives – anti-money laundering, modernization of the national committee on accreditation, and the truth and reconciliation calls to action.

Regarding anti-money laundering, Mr. Van Ommen referred to the proposed rule changes before Benchers for consideration at this meeting and said the Federation would continue to monitor the adoption of those rules across Canada. The Federation had also been working on a new collaboration between the Federation's anti-money laundering working group and the federal government, and that the working group was intended to share information and provide an opportunity to educate people about the current rules preventing lawyers from engaging in or assisting with anti-money laundering. To keep track of developments, a twice annual meeting of the CEO of the Federation and a senior official in the federal government is planned. The Federation sees this as a positive development and Mr. Van Ommen will keep Benchers informed as matters progress.

On the modernization of the national committee on accreditation, Mr. Van Ommen said the Federation was working towards a competency-based assessment. An outside expert had been selected to prepare a gap analysis and gather evidence on the differences, if any, between people educated outside Canada and the lawyers educated inside Canada. It would be a few more months before the next stage of that work will be underway.

Mr. Van Ommen said the Federation is in the process of engaging with law schools to determine what they are doing with Calls to Action 27 and 28, and how these efforts should be reflected nationally.

The next Council meeting would be held on June 10 and Mr. Ferris will attend in place of Mr. Van Ommen.

GUEST PRESENTATIONS

8. Guest Presentation on LifeWorks

Ms. Denise Cuthbert, Customer Success Manager at LifeWorks, provided a presentation to Benchers on the services provided by LifeWorks.

The presentation covered areas such as 24/7/365 support over the phone, counselling sessions, online resources and tools, coverage and confidentiality. The most common issues that arise fall into the following five categories: family, life, work, health and money.

Ms. Cuthbert then described what someone can expect when they first contact LifeWorks and the intake process. She then provided more detailed information about the broad range of services provided by LifeWorks, and the various ways you can seek help – from a phone call to using the mobile app.

Benchers asked about confidentiality when contacting LifeWorks, the types of reports provided by LifeWorks to the Law Society, and how the Law Society might ensure lawyers are aware of the services provided by LifeWorks. Other matters discussed included collecting feedback from people who have used LifeWorks, and whether someone from LifeWorks would be able to attend events in rural communities to provide a similar presentation to the one provided to Benchers.

DISCUSSION/DECISION

9. Law Society General Meeting Reform

Mr. Steven McKoen, QC, Chair of the Governance Committee, reviewed the proposed reform of the Law Society's general meeting rules. He revisited the issues that occurred at the 2018 Annual General Meeting (AGM) in October 2018 and the continued meeting in December 2018. The main issue with the initial AGM in October was the failure of online voting, which led to the adjournment and rescheduling of the meeting at considerable inconvenience to the Benchers, staff and the membership. The continued AGM in December was too long at over 4.5 hours, there were multiple live amendments that led to confusion about what people were voting on, and online attendees would see amendments but lost connections or had difficulty joining the meeting at all.

Mr. McKoen said the view of the Governance Committee was that the status quo is not an option, but it is important to preserve the essential elements of the AGM. When considering possibilities for reform, the Committee's goals were to enhance opportunities to vote, retain the ability to effectively make member resolutions, and reduce the time needed to hold the meeting.

The recommendation of the Governance Committee was for a hybrid meeting that allows advance online voting and ample opportunity to consider resolutions but avoids overly complicating the process of the live meeting itself.

The key features of the Committee's recommendation were:

- (1) provide for and publish member resolutions prior to the meeting

- (2) allow amendments to resolutions pre-meeting, but not at the meeting, and
- (3) allow online voting on any member resolutions in advance of the meeting,
- (4) no online voting at the meeting, and
- (5) procedure at the meeting, not otherwise provided for in the Rules, would not be determined by Robert's Rules of Order.

Mr. McKoen explained that the Governance Committee recommends a process that preserves the ability to make and amend member resolutions, while recognizing that with the addition of advance voting the result is that by the time the live meeting is held most votes may already have been cast. The following timeline was proposed:

- Day 1 – Notice of meeting – invite member resolutions
- Day 2-30 – Publish resolutions on website as received
- Day 31-45 – Amendment/Withdrawal period
- Day 46-59 – Advance online voting
- Day 60 – Live meeting

Benchers discussed possible issues, such as the low threshold for submitting resolutions, the impact advance voting may have on the ability of members to advocate for or against a resolution before voting begins, and the difficulties with the current model where amendments from the floor are permitted at the meeting. The focus then became the broader policy issue of member engagement and ensuring the Law Society provides a forum that allows not just those members who are able to attend the AGM in person to express their views, but also the thousands of members who are not able to attend the AGM but still wish to have their vote count.

If Benchers approve the Committee recommendations at the May 3 Bencher meeting, an electronic referendum of members would need to be held in May in order to amend the rules applicable to general meetings. If the proposed new format is approved as a result of the referendum, Benchers could adopt rule changes at their July meeting and the 2019 AGM would be conducted under the new format in September and October, with the live meeting taking place on October 2.

UPDATES

10. Report on Outstanding Hearing & Review Decisions

Mr. Ferris provided a brief update on the outstanding hearing and review decisions, noting that it was a very busy period right now and there would be a lot of decisions coming up that needed to be written. He thanked everyone for keeping on top of the busy workload.

11.2019 February YTD Financial Report

Chief Financial Officer Jeanette McPhee briefed Benchers on the Year to Date Financial Report, noting there was a positive variance to date and two main areas where it was expected the positive variance would continue until the end of 2019 – the practice fee revenue and net revenue from the PLTC program.

With practice fee revenue, there is a forecast of 12,467 members, which equates to 84 practising lawyers over the budgeted 12,383. This amounts to about an additional \$140,000 in practice fee revenue. Regarding revenue from PLTC students, the projected number of students for 2019 is 645, which is 105 students more than budgeted (normally 540) resulting in an additional \$285,000 in revenue. Additional expenses incurred relating to higher PLTC student numbers means the general fund variance is \$300,000.

Ms. McPhee reminded Benchers that the 2019 budget projected a deficit of \$1.2 million, largely due to expected hearing costs, but that a lot of these costs would be funded out of reserve. She added that the Law Society's investment income for the first two months of 2019 was very good.

12.National Discipline Standards

Chief Legal Officer Natasha Dookie briefed Benchers on the Law Society's compliance with the National Discipline Standards. She said the objective of the National Discipline Standards is to create uniformly high standards for management of complaints and discipline matters by law societies throughout Canada. The focus of the standards is to address timeliness, openness, public participation, transparency, accessibility and the training of adjudicators and investigators.

Ms. Dookie highlighted some matters in the report provided to Benchers with respect to the Law Society's performance on the standards. In 2018, the Law Society's performance was the same as in 2017, with 17 of the 21 standards being met. Of significance was standard 16 – the sharing of information about lawyers with other law societies in a manner that protects solicitor-client privilege - which the Law Society met for the first time in 2018. The Law Society met that standard because of the creation of Rule 2-27.1, which permits information sharing with another governing body where it is in the public interest.

Ms. Dookie reported that, for many of the other standards, the Law Society not only met the standard but exceeded it. For example, with timeliness for responding to telephone inquiries, the standard requires inquiries be acknowledged within 1 business day 75% of the time and the Law Society met that standard 100% of the time. For hearings, the standard requires that 75% of citations be issued and served upon a lawyer within 60 days of being authorized and we met that standard 98% of the time.

Of the four standards the Law Society did not meet, standard 2 requires 100% of written complaints be acknowledged within 3 business days. The Law Society met this standard 99.68% of the time and the ones not met were due to administrative oversight. For standard 7, the requirement is for 75% of hearings to commence within 9 months of authorization and 90% to commence within 12 months of a citation being authorized. In 2018, the Law Society was only able to meet this standard 16% of the time due to significant staff turnover and a higher than normal volume of citations. Ms. Dookie said her department was in the process of dealing with that issue and she hoped the Law Society would be able to comply with this standard by 2020.

Ms. Dookie summarized the results by saying that, while the standards are aspirational, they inform every aspect of the complaints management process, and while there are some areas for improvement, in many areas the Law Society not only met but exceeded expectations.

13.2018 Year-End Report for the Lawyers Insurance Fund

Director of the Lawyers Insurance Fund, Su Forbes, QC, provided Benchers with the LIF year-end report for 2018. Ms. Forbes began by providing data on the number of lawyers in British Columbia – there are a total of 14,900 lawyers, made up of 12,200 practising lawyers and 2,700 non-practising or retired lawyers. Of the practising lawyers, 3,200 are in-house lawyers and not insured under the program, and 9,000 are in private practice and are insured lawyers.

Ms. Forbes then compared the 2019 fees across the country. British Columbia has the third largest program but the 10th largest fee. The insurance fee in BC includes the defalcation risk under Part B, and with the exception of Alberta, none of the other programs include this cost in the insurance fee.

Regarding the number of full-time and part-time insured lawyers, the number of part-time insured lawyers has remained fairly consistent since 2014 with between 1156 and 1174 part-time insured lawyers. The number of full-time insured lawyers, however, has increased over the last five years. Ms. Forbes then reviewed the number and frequency of reports, indicating that the frequency of reports trend line is relatively flat. She said this was one of the main drivers of the stability and predictability of the program in BC.

Ms. Forbes said the practice areas generating the greatest number of reports in 2018 is consistent with previous years, with “Civil Litigation – plaintiff” and “Motor Vehicle – plaintiff” accounting for a third of all reports. The areas generating the least number of reports in 2018 is also consistent from year to year. In terms of the severity of claims by area of law, for the first time in many years “Civil Litigation – plaintiff” was eclipsed by “Real estate – commercial”, as a result of a number of large commercial real estate claims in 2018.

Ms. Forbes then provided an overview of the causes of claims in 2018 and examples of the different types of situations that give rise to claims.

Regarding claims payments, Ms. Forbes provided information about claim payments between 2014 and 2018. Expense payments were fairly consistent year over year, with indemnity payments being more variable. Total payments are usually in the \$12 to \$15 million range. Ms. Forbes said the program closes roughly as many files as it opens each year and that a lot of files close without any payment at all.

For Part B claims, Ms. Forbes reported there were a total of 278 reports since the introduction of the Part B coverage. The number of reports has trended slightly to the positive over time. She then provided an overview of Part B claims in 2018, and said there were 22 reports, and payments were made on 19 claims on behalf of 6 lawyers totaling \$1.4 million.

Ms. Forbes reported on other results of the program in 2018, including the number of indemnity payments, risk management presentations provided by staff, and the number of matters taken to trial. Feedback provided as a result of the service evaluation and risk management forms was positive, with 99% of people expressing a high degree of satisfaction with the handling of their claim.

FOR INFORMATION

14. LifeWorks 2019 First Quarter Newsletter

There was no discussion on this item.

15. “Roads to Revival”: An External Review of Legal Aid Service Delivery in British Columbia, conducted for the Attorney General of BC by Jamie Maclaren, QC, January 2019

There was no discussion on this item.

16. Letter from Nancy Merrill, QC to Attorney General dated March 27, 2019 Re: Roads to Revival

There was no discussion on this item.

17. Three Month Bencher Calendar – April to June 2019

There was no discussion on this item.

KG
2019-04-05

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Ethics Committee
Date: April 4, 2019
Subject: Proposed amendment to BC Code rule 3.3-3 Commentary [5]

The Ethics Committee has identified the need for a correction to Commentary [5] to rule 3.3-3 of the Code of Professional Conduct for British Columbia (the “BC Code”), which does not substantively change the meaning or potential application of the provision. The correction is motivated primarily by an unnecessary occurrence of a gender-specific language reference that is used incorrectly, as though it were gender-neutral.

To answer the recognized need for correction, the Ethics Committee is recommending that the Benchers adopt a form of Commentary [5] that corresponds more closely to the provision of the Federation of Law Societies’ *Model Code of Professional Conduct*, which has been adopted in a number of Canadian jurisdictions. The Model Code’s version of Commentary [5] has eliminated the gender-specific reference, in addition to removing an unnecessary use of “he or she,” and includes another minor change to improve the clarity of the provision. The only variation from the Model Code’s version is to prefer the active voice, rather than the passive, which the Committee views as less precise. Adopting these changes would serve the end of bringing the BC Code’s version of Commentary [5] more closely into line with the Model Code than it currently is, as well as with corresponding provisions in use in other Canadian jurisdictions. This result would be in keeping with the Law Society’s commitment to improving the uniformity of ethical standards and regulation across Canada, which is implicit in the Society’s ongoing participation in the development of the Model Code.

Resolution

Be it resolved that:

The Commentary [5] to rule 3.3-3 of the BC Code be amended to reflect the changes indicated in the ‘red-lined’ version of the rule and Commentary presented below.

For convenience of review, the current text of the BC Code provision is also provided below, following the ‘red-lined’ version.

The ‘red-lined’ version of rule 3.3-3 and Commentary [5] of the BC Code (incorporating the Model Code’s language) is as follows:

Future harm / public safety exception

3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

Commentary

...

[5] If confidential information is disclosed under ~~this~~ rule 3.3-3, the lawyer should prepare a written note as soon as possible, which should include:

- (a) the date and time of the communication in which the disclosure is made;
- (b) the grounds in support of the lawyer's decision to communicate the information, including the harm ~~he or she~~ the lawyer intended to prevent, the identity of the person who prompted ~~him to~~ the lawyer to communicate the information as well as the identity of the person or group of persons exposed to the harm; and
- (c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

For reference, the existing BC Code version of rule 3.3-3 and Commentary [5] reads as follows:

Future harm / public safety exception

3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

Commentary

...

[5] If confidential information is disclosed under this rule, the lawyer should prepare a written note as soon as possible, which should include:

- (a) the date and time of the communication;
- (b) the grounds in support of the lawyer's decision to communicate the information, including the harm he or she intended to prevent, the identity of the person who prompted him to communicate the information as well as the identity of the person or group of persons exposed to the harm; and
- (c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

The decision to recommend the solution described above was initially a conclusion of the Ethics Committee in late 2018. However, the 'end of year' timing prevented the recommendation from being proposed for adoption before the transition to the 2019 Ethics Committee. The present Committee agrees with the assessment of the 2018 Ethics Committee on this issue and proposes the above resolution accordingly.

(End of Memorandum)



Memo

To: Benchers
From: Governance Committee
Date: April 24, 2019
Subject: Discipline and Credentials Terms of Reference

At its April 4, 2019 meeting the Governance Committee agreed to recommend to Benchers that they approve minor amendments to the Discipline and Credentials Committee Terms of Reference. Revised versions of both Terms of Reference are attached.

Benchers are asked to approve the revised Discipline and Credentials Committee Terms of Reference.



DISCIPLINE COMMITTEE TERMS OF REFERENCE

Updated: December 14, 2018

MANDATE

The primary function of the Discipline Committee is to determine the appropriate disposition of complaints about alleged misconduct and incompetence of lawyers. The Committee also approves or rejects proposed consent resolutions of citations and determines various applications made under the Law Society Rules. The Committee does not make policy.

COMPOSITION

1. Under Rule 4-2, the President must appoint a Discipline Committee, including a chair and vice chair, both of whom must be Benchers.
2. The Committee generally consists of four or more lawyer Benchers, one or more Appointed Benchers, and one or more non-Bencher lawyers.

MEETING PRACTICES

1. The Committee meets approximately 9 to 12 times a year. Meetings are scheduled on the day before the Bencher meeting.
2. Quorum consists of at least half of the members of the Committee [Rule 1-17(1)].
3. Approximately two weeks before the meeting, the agenda and supporting materials are uploaded for Committee members on the Law Society Member Portal. For each complaint referred to the Committee, the investigating lawyer prepares an opinion which sets out material facts, legal analysis and recommendation as to the appropriate disciplinary outcome. The investigating lawyer attends the meeting to present the opinion and answers the Committee's questions.
4. The Committee discusses the opinion and a Committee member makes a motion, which is seconded by another member. The Committee discusses the motion and then votes on the proposed disciplinary outcome. A motion passes if a majority of Committee members present vote in favour of the motion [Rule 1-18(3)].
5. The *Conduct Assessment and Disposition Guidelines* provide guidance to the Committee in the evaluation and disposition of complaints.
6. If there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the chair for consideration [Rules 4-3(2) and 4-5(1)].

ACCOUNTABILITY

While the Committee is accountable to the Benchers, the deliberations of the Committee are strictly confidential. In accordance with Rule 4-8, Committee members are not permitted to discuss agenda items with, or disclose the agenda materials to, anyone other than members of the Committee and staff attendees to Committee meetings.

DUTIES AND RESPONSIBILITIES

The Committee must consider any complaint referred to it under the Rules and, in accordance with Rule 4-4(1), the Committee must, in respect of every complaint referred to it:

- decide to take no further action;
- send a letter to the lawyer concerning the lawyer's conduct;
- require the lawyer to attend a conduct meeting with one or more Benchers or lawyers to discuss the lawyer's conduct;
- require the lawyer to attend a conduct review with at least one Bencher and another lawyer; or
- authorize the issuance of a citation, which results in a disciplinary hearing before a hearing panel.

In addition, the Committee may instruct the Executive Director to make or authorize further investigation that the Committee considers desirable [Rule 4-3(1)]. The Committee may also refer a lawyer to the Practice Standards Committee [Rule 4-4(2)].

The Committee may also:

- grant or deny a request by a lawyer that an investigation into their conduct be held in abeyance (Abeyance Policy);
- authorize the rescission of a citation under Rule 4-17(3);
- approve or reject a conditional admission and proposed disciplinary action (Rules 4-29 and 4-30);
- consider an application by a lawyer to delay the commencement of a suspension for the failure to produce records in a complaint investigation [Rule 3-6 (2)] or compliance audit [Rule 3-86 (2)], or for a failure to file a trust report [Rule 3-81 (3)];
- initiate a review of a facts and determination decision or a disciplinary action decision [section 47 of the *Legal Profession Act* and Rule 5-19 (4)];

- consider an application by a lawyer for an extension of time to pay a fine or fulfill a condition imposed in a disciplinary hearing (Rule 5-12).
- make recommendations to the Credentials Committee to inquire into a lawyer's suitability to act as a principal [Rule 2-57(4)];
- refer a matter to the Benchers for summary action where a member has been convicted of an indictable offence (Rule 4-52); or
- suspend or impose conditions and limitations on the practice of a lawyer that the Committee considers does not meet the minimum standard of financial responsibility [section 32 of the *Legal Profession Act* and Rule 3-52(4)].

STAFF SUPPORT

Chief Legal Officer and Committee Liaison

Manager, Investigations, Monitoring and Enforcement

Manager, Intake and Early Resolution

Manager, Discipline

Credentials Committee

Terms of Reference

Updated: February 22, 2019

Mandate

The Credentials Committee has the statutory responsibility for overseeing the enrolment, education, examination and call to the bar of articulated students, the transfer of lawyers to B.C. and the reinstatement of former lawyers. When the character or fitness of an applicant for admission, readmission or transfer needs to be addressed, the Committee considers the application directly or orders a formal credentials hearing. The Committee is also responsible for reviewing applications relating to a student's failed standing in PLTC and for considering any matters arising from the articling system. The Committee further assists the Benchers in setting credentials policy and ensuring that this policy is adhered to and assists in credentials program planning, evaluation and budget.

Composition

The Credentials Committee is made up of benchers, appointed benchers, and non-benchers appointed by the President. The Chair and Vice-Chair of the Committee must be benchers or appointed benchers (Rule 2-50(1)).

Meeting Practices

1. The Committee shall operate in a manner that is consistent with the Benchers' governance policies.
2. The Committee shall meet as required.
3. Quorum is at least half of the members of the Committee (Rule 1-17(1))

Accountability

The Credentials Committee is accountable to the Benchers.

Reporting Requirements

For Discussion purposes:

There is currently no requirement for the Credentials Committee to report to the Benchers. The Committee may wish to provide an annual report to the Benchers, or alternatively, may wish to

leave this requirements blank and seek the guidance of the Governance Committee on the reporting requirements.

Duties and Responsibilities

For Discussion Purposes:

The Credentials Committee's mandate as outlined in the current Benchers Governance Policies is as follows:

Credentials Committee

(a) The Credentials Committee has four mandates in the following order of importance:

- (i) To fulfill its obligations under the *Legal Profession Act* and the Law Society Rules;
- (ii) To assist the Benchers in setting credentials-related policy and ensuring that policy is adhered to;
- (iii) To assist in credentials-related program planning and evaluation;
- (iv) To assist or provide input into the budget-setting process.

(b) Authority: section 21; Rules 2-24 to 2-68; Benchers resolution, December 1999.

The jurisdiction of the Credentials Committee includes the review and resolution of issues relating to the enrolment of articulated students, call and admission of students and members transferring from other jurisdictions, reinstatement, interjurisdictional practice, return to practice, non-practising and retired membership and practitioners of foreign law.

All admissions to the Law Society of British Columbia are governed by the statutory criteria of good character and repute, and fitness. Statutory authority for Credentials matters is derived from the Legal Profession Act, sections 14 to 25 inclusive and from the Law Society Rules, Rules 2-50 - 1 to 2-118.

Specifically Rule 2-52 (1) sets out the powers of the Credentials Committee as follows:

2-52 (1) The Credentials Committee may

- (a) exercise the authority of the Benchers to call and admit barristers and solicitors,
- (b) implement, administer and evaluate a training course and examinations, assignments and assessments for all articulated students,
- (c) establish standards for passing the training course and examinations, assignments and assessment,
- (d) establish procedures to be applied by the Executive Director and faculty of the training course for

- (i) the deferral, review or appeal of failed examinations, assignments and assessments, and
- (ii) remedial work in the training course or examinations, assignments and assessments, and
- (e) review, investigate and report to the Benchers on all aspects of legal education leading to call and admission.
- (2) When the Credentials Committee is empowered to order a hearing under this division, it may do so even though the application has been withdrawn.
- (3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations imposed by the Committee under this division.

Staff Support

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Memo

To: Benchers
Date: April 25, 2019
Subject: Nomination Process for 2020 Second Vice-President

This memorandum outlines the process and timelines for the nomination and election of the 2020 Second Vice-President, which is consistent with past practice.

Law Society Rule 1-19(1) provides the election of the Second Vice-President is held at the annual general meeting each year. To initiate this process, each year staff send an email to Benchers in May inviting Benchers to declare their candidacy to be selected at the Benchers' nominee for the position of Second Vice-President for the following year. Benchers may declare their candidacy up until the June Bencher meeting.

If there is more than one candidate, the President will announce at the June Bencher meeting that there is more than one candidate and that an election will take place by secret ballot to determine who will be the Benchers' nominee. Shortly after, the President will inform Benchers of the results of the election. If there is only one candidate, at the June Bencher meeting the President will declare that Bencher candidate to be nominated by acclamation.

The Benchers' nominee is announced to the profession in the notice of the annual general meeting, which is usually distributed in August. The election of the Second Vice-President then takes place at the annual general meeting, and at that time, the President asks if there are any further nominations.

Below is the proposed timeline for the 2020 Second Vice-President Bencher nomination process:

May 6	Staff to email Benchers inviting nominations.
June 7	Due date for declaring candidacy to be selected as the Benchers' nominee.
June 8 (Bencher meeting)	<ul style="list-style-type: none">• If there is more than one candidate – President will announce that there will be an election and that the election will be done online by secret ballot.• If there is only one candidate – President will announce the candidate and declare that Bencher nominated by acclamation.
June 14	If an election is required, online voting opens
June 28	Online voting closes at 4:00pm – votes to be counted immediately and the President will email candidates and Benchers with the results.



CEO's Report to the Benchers

May 3, 2019

Prepared for: Benchers

Prepared by: Don Avison

1. The First Nations Provincial Justice Forum

The Forum, organized by the BC First Nations Justice Council, took place on the traditional lands of the Musqueam on April 24 and 25, 2019.

In 2017, the Justice Council and the government of British Columbia signed off on an MOU to develop an Indigenous Justice Strategy. A core objective of the Strategy will be to address the overrepresentation of indigenous peoples in the criminal justice and child welfare systems.

The sessions were attended by the Co-Chairs of the Law Society's Truth and Reconciliation Advisory Committee, Dean Lawton, QC and Michael McDonald, QC, by Benchers Karen Snowshoe and Claire Marshall, and by senior staff representatives.

In the opening session Attorney General Eby framed the need for reform in this area as "one of the most pressing issues the Canadian criminal justice system faces." His colleague, the Hon. Mike Farnworth, Minister responsible for Public Safety and the Solicitor General, noted that even with the increased focus on the contact of indigenous peoples with the criminal justice system, incarceration rates have actually increased. Minister Farnworth made very blunt statements regarding systemic discrimination in policing and corrections and, further, that "racial profiling has to be acknowledged and addressed."

Council Chair Douglas White spoke to the work that the Council plans to undertake. In so doing, he stated that First Nations are looking at "fundamentally reimagining the system."

The afternoon Keynote presentations were delivered by the Hon. Jody Wilson-Raybould and by the Hon. Jane Philpott. Both characterized indigenous justice reform as "urgent, vital and long overdue." Some key themes from the former federal ministers included the following:

- foundational changes in federal and provincial laws and policies will be essential;
- the system "must shift from denial to recognition";

- “breaking the pattern of victimization and marginalization will require considerable transformative work”;
- there must be more emphasis on restorative justice, more cultural competency training for those working at all levels in the criminal justice system and child welfare systems”;
- the volume of mandatory minimum sentences should be reduced as “they perpetuate continuing involvement in the criminal justice system” and operate to frustrate the expectations set out in the Supreme Court of Canada’s decision in *Gladue*. Like others who spoke at the Forum, the Hon. Jody Wilson-Raybould observed that April 23rd was the 20th anniversary of the *Gladue* decision.

2. B.C.’s 12th Annual Justice Summit

This year’s Justice Summit will take place at S.F.U’s Legal Centre on April 26, 2019.

The goal of this session is to look back at the Summit process and accomplishments with a view towards:

- identifying the preferred “vision and approach” for future Justice Summits” and input on how to improve the sessions, including roles, responsibilities and accountabilities for follow-up and on recommendations;
- assessing the desire/willingness of justice system participants to measure progress against Key indicators – and how to “obtain practical insights on how performance monitoring could best be achieved.”

President Merrill and I will be attending the Summit and will report on the proceedings at the May 3rd meeting of Benchers.

3. The 2019 Law Society Retreat

Plans are well underway for the retreat and we believe we have attracted participation from a number of interesting speakers who will speak to the

evolving role of technology and the implications for the legal profession and with respect to the role of the regulator.

We have also been informed that Attorney General Eby will be attending the event and has indicated a willingness to participate in the program.

4. Government Releases Review of the College of Dental Surgeons

On April 11, 2019 the Hon. Adrian Dix, Minister of Health, released a report, “An Inquiry into the Performance of the College of Dental Surgeons and the Health Professions Act.”

The report, authored by Harry Cayton C.B.E. who, until recently, was the C.E.O. of the U.K.’s Professional Standards Authority for Health and Social Care, offers a sharply critical assessment of the governance performance of the College and calls for a “complete overhaul of the way health professional regulation is conceived and delivered in B.C. Cayton has previous experience in this province, having been retained to provide governance advice and recommendations to the nursing professions as they amalgamated four entities into a single regulator.

Cayton’s report comes after the health minister, faced with a controversy over how the College board – or members of it – had mishandled sexual harassment complaints, intervened to make changes to the Board including the appointment of five senior health administrators from other areas of health care. At the time the media observed that Minister Dix had, in effect, placed the College in trusteeship pending the completion of Cayton’s inquiries.

Cayton’s report was delivered to government on December 21, 2018 and apparently was being reviewed by the Ministry of Health until after the public release.

Key Findings Regarding the College

These are some of the key observations offered in the Cayton report:

- there is an “inherent confusion” that results from the concept of dentists as “registrants” or as “members”. The member paradigm

implies that dentists own and control the college. This has impacted the way the College, the board and those within the dental profession perceive their respective roles and responsibilities;

- there exists a “persistent perception that the College exists for the benefit of dentists” – not the public;
- the Board of the CDSBC has not been a “well-managed or constructive governance body for several years”;
- there is a lack of trust between board members and between the board and staff. The relationship with the professional staff has deteriorated to the point that it requires urgent attention;
- the College “needs to build a different relationship with its dentist registrants; one of both mutual respect and distance”;
- the relationship between the College and the B.C. Dental Association is seen as “too close” which has eroded the capacity of the College to be – and to be seen as being – “an independent regulator focused on its mandate to protect the public”;
- the governance perspective that “we are special” or “we can be trusted to be left alone” is not “sustainable in the face of the many failures of professional regulation in many jurisdictions over many years nor in respect to the needs a modern health care system”;
- CDSBC Board and committee discussions reflect an underlying theme of “protecting the interests of dentists rather than of the public”;

The report sets out 21 recommendations. These are some of the more significant elements:

- the Board should continue with plans to reduce its size and should increase the number of public members, [this is consistent with recommendations he had previously made with respect to the College of Nursing Professionals];

- no one who has held an officer position with the Association should be allowed to stand for election to the Board of the College until at least three years have passed from when they held the Association position;
- no dentist about whom a complaint is under investigation should be permitted to stand for election and any dentist Board member who becomes the subject of a complaint “should stand down until the complaint is resolved”;
- the Board should review its committee structure with a view towards reducing the overall number of committees.

In assessing the effectiveness of the Health Professionals Act, Cayton also recommended a number of changes including legislative initiatives to establish a more accountable regulatory model. This would include the establishment of an oversight body for all health professionals, similar to the U.K.’s Professional Standards Authority but informed by the specific needs and context of British Columbia.

The report is a significant one and I would recommend that Benchers take advantage of the opportunity to read the full document.

5. Mental Health Week

May 6th to May 10th is Mental Health Week. In keeping with recommendations of the Mental Health Task Force, we will be focusing on raising awareness of the importance of supporting wellness and reducing stigma around mental health. This work includes providing mental health resources to managers and employees within the Law Society, not only to improve the well-being of our own people, but to improve the awareness and understanding of these issues, and the skills necessary to address them, among those who engage with the public and members of the profession who may be facing their own mental health issues.

Over the course of the week, the activities and resources that the Law Society will be making available to our people will be drawn from the Canadian Mental Health Association and their “Not Myself Today” resource kit that was developed for this year’s campaign. Our goal is to use the week as a foundation on which our people will have tools for talking about and managing

their mental health throughout the whole year. Each day next week, we will be posting to our intranet (1) a resource, such as LifeWorks or the Canadian Mental Health Association website, (2) a healthy break tip provided by the workplace strategies for mental health website, (3) mental health affirmation, and (4) a reminder of what the day's activity is. Activities planned for the week include a lunch and learn, a webinar, and coordinating a walk with other colleagues.

It is also our intention to use Mental Health Week to announce upcoming courses for our employees in the Fall, including a customized mental health workshop developed by the Canadian Mental Health Association that responds to several of the education-related recommendations in the Mental Health Task Force's First Interim Report, as well as providing them with a link to the Mental Health Task Force's work.

Don Avison
Chief Executive Officer



Memo

To: Benchers

Date: April 24, 2019

Subject: Law Society General Meeting Reform – For Decision

The Governance Committee's report on Law Society General Meeting Reform was before Benchers for discussion at the April 5, 2019 Benchers meeting. Chair of the Governance Committee, Steven McKoen, QC, spoke about the issues that arose at the 2018 Annual General Meeting (AGM) in October 2018 and the continued meeting in December 2018, goals and challenges associated with possibilities for reform, and the Governance Committee's recommendations to Benchers for reform.

Benchers had a thorough discussion about the issues to be addressed and possible options for reform. They had an opportunity to comment on the proposed changes and engaged in a discussion about how those changes may enhance opportunities for members to vote, streamline the in-person meeting process and also retain the ability to make member resolutions.

The Governance Committee recommends Benchers agree to seek the members' authority, in accordance with s. 12(3) of the Legal Profession Act, to amend the Law Society Rules to provide for:

- 1) a process for the submission and publication of member resolutions prior to an annual general meeting,
- 2) a process allowing amendments to member resolutions prior to an annual general meeting, but not at an annual general meeting,
- 3) online voting on Law Society and member resolutions in advance of a general meeting,
- 4) no online voting on Law Society and member resolutions at a general meeting, and
- 5) procedure at a general meeting, not otherwise provided for in the Rules, would not be determined by Robert's Rules of Order but by the Chair

If Benchers approve the Committee's recommendations, pursuant to Law Society Rule 1-40(1), the Benchers should direct the Executive Director to conduct a referendum of all members in May to obtain approval to amend the rules applicable to general meetings as proposed.

The Law Society
of British Columbia



Law Society General Meeting Reform

Committee: Governance

Steven R. McKoen, QC (Chair)
Pinder K. Cheema, QC (Vice-Chair)
Jasmin Z. Ahmad
Craig Ferris, QC
Claire Marshall
Linda I. Parsons, QC
Philip A. Riddell, QC

March 25, 2019

Prepared for: Benchers

Prepared by: Staff

Purpose: Discussion

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Committee Process

1. In light of the experience with the 2018 Annual General Meeting, the Committee was asked to consider possible reforms to the general meeting rules to avoid the issues experienced at that AGM while maintaining or improving the opportunity that members have to participate in general meetings.
2. The Committee met in January and February to review the experience with the 2018 AGM, consider the issues that arose at the October 30 meeting and the experience at the continued meeting on December 4, and discuss options for reforming the general meeting process.

Background

3. The experience at the 2018 AGM has thrown into sharp relief some issues with our current rules regarding general meetings. The Governance Committee has given consideration to the issues and how they might be addressed.
4. The origin of the current general meeting Rules is found in amendments to the Rules made in 1995.
5. Although the *Legal Profession Act* only required the Benchers to hold an AGM at a place and time designated by the benchers, in April of that year the Benchers approved amendments to the Rules that created the requirement to hold the AGM in at least eight physical locations to be connected by telephone. As a result, the 1995 AGM was the first to be held at more than one location.¹
6. The introduction of *Bill 15 – 1998 Legal Profession Act* in the 1998/99 3rd Session of the BC legislature added another element relevant to any consideration of the current Rules. The *Bill* introduced s. 12 of the current *Act* requiring the Benchers to make certain Rules regarding various matters that were previously covered in the *Act*. One of those matters was the conduct of general meetings of the society. The *Bill* removed most of sections 18 – 21 dealing with the AGM, the appointment of the auditors, special general meetings and quorum at a general meeting and then specifically provided in section 12(2) that the first rules must be consistent with the provisions of the *Legal Profession Act*, R.S.B.C. 1996, c. 255, relating to the same subject matter.
7. Section 12(3) of the *Bill* also provided that the benchers may only amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting in a referendum respecting the proposed rule, or the amendment or rescission of a rule. As a result, any amendments to the current Rules regarding the conduct of general meetings must be approved by the members, either at a general meeting or by referendum.
8. Subsequent amendments to the Rules have provided the Benchers with the discretion to webcast the meeting and permit members to vote online.

¹ The atrium of the Law Society Building and in teleconference locations in Victoria, Nanaimo, Castlegar, Kelowna, Prince George, Fort St. John, Terrace and Kamloops. A 1992 special general meeting on the Gender Equality in the Justice System report was held by teleconference on November 20, 1992. The meeting was held in Vancouver with remote teleconference locations in Courtenay, Kamloops, Nanaimo, Prince Rupert and Terrace and it was apparently not that successful due to unspecified technical issues.

Issues

9. In 1995, Jeff Hoskins, QC provided the Benchers with a memorandum covering a number of points raised by Benchers during the discussion that led to holding the AGM in more than one location. In particular, he provided a prescient summary of our efforts to expand the general meeting:

In the past, our experience has been that there is no technical service available to provide all of the various services necessary to conduct a meeting with remote locations. Nor is there a service available to take responsibility for making all the arrangements and ensuring that the operation works smoothly. As a result, considerable staff time is involved in organizing such an event. The lack of coordination among service providers can result in a technical product that is less than adequate, as was the case at the 1992 special meeting

10. The introduction of webcasting and online voting at the most recent AGMs, in addition to maintaining the teleconference locations, has made Mr. Hoskins' observations even more telling.
11. The most recent experience with our AGM highlights the problems with our current procedure. Our present Rules reflect their origin: a meeting of perhaps 100 members in a single location once a year. To this concept we have tacked on Rules providing for at least eight satellite locations and for online participation by way of a webcast and online voting. While it made sense to require that members had to be present at a general meeting to vote by a show of hands when everyone attended in person at one location, the result is a legal fiction when we pass a Rule to provide that a person participating in a general meeting at any location connected by telephone or the internet is present at the meeting for the purpose of voting.
12. The Committee considered a number of aspects of the current general meeting procedure in light of the experience with the 2018 AGM and other past meetings where member interest and attendance has been considerable.

Attendance

13. As noted above, the Rules require that the Executive Committee must designate at least eight satellite locations around the province in addition to the main location in Vancouver at which members may attend the meeting and may provide for virtual online attendance and voting.
14. While all other law societies in Canada have a similar requirement to ours regarding holding an AGM, no other Canadian law society provides for more than one physical location or currently provides for online attendance and voting.

15. The Committee recognized the challenges with coordinating communication and participation among multiple physical locations and the online participation and voting. In particular, the Committee was mindful of the sometimes unsatisfactory experience that coordinating and communicating with all of the physical and virtual participants during the course of a continuous meeting presents.

Member Resolutions

16. Rule 1-8(6) requires that the participation of only two members is necessary to place a resolution on the agenda for the annual general meeting.
17. For comparison, section 13 of the *Legal Profession Act* requires at least 5% of members in good standing to request a referendum on any resolution passed at the annual general meeting in order to require that the Benchers implement the resolution.
18. Similarly, calling a for a special general meeting requires 5% of the members in good standing at the time the request is received by the Executive Director and the proponents must state the nature of the business that is proposed for the meeting (Rule 1-11).
19. The considerable interest in amending the three member resolutions that were presented to the 2018 AGM highlighted for the Committee the challenge presented by requiring that only the support of two members is necessary to place a member resolution before the members at the AGM.

Amendments

20. Rule 1-13(13) provides that a dispute concerning the procedure to be followed at a general meeting not provided for in the Act or these Rules is to be resolved in accordance with the most recent edition of Robert's Rules of Order Newly Revised. The result is that amendments properly before the AGM are permitted.
21. Roberts Rules of Order Newly Revised provides for a wide variety of permitted amendments to matters before meetings. Most notable was the notice we received prior to the first 2018 AGM of two motions to substitute. This type of amendment motion essentially permits the mover to substitute a different resolution for the one under debate as long as the subject matter of the amendment is germane to the subject matter of the main resolution.
22. The Committee considered the consequence of using Robert's Rules of Order Newly Revised for the conduct of the AGM.
23. The first consequence was that, if a motion to substitute is permitted, the purpose of giving 21 days' notice to members about the resolutions to be considered at the meeting is largely undermined, in the sense that members who chose not to attend

based on the notice might have decided otherwise if they had known about the language of a substituted motion.

24. The second consequence is that permitting amendments at the meeting can lead to the experience at the 2018 AGM where the mover of one of the member resolutions proposed an amendment to the original resolution and another member proposed an amendment to the amendment to the original resolution, resulting in the need for three separate votes in relation to original resolution. The result was numerous anecdotal reports that some members were not sure what they were voting on when asked to vote at various times during the meeting.

Voting

25. Under the Rules, a member must be present at a general meeting in order to vote. Since no one can vote until the President calls for the vote, the meeting can extend for several hours where there are a number of resolutions to be voted upon, such as occurred at this year's AGM. Members must therefore attend throughout the entire meeting to be able to vote on all of the resolutions.
26. The usual society AGM resolutions relating to the business of the society, being in our case the appointment of the auditors and the election of the Second Vice-President, do not generate much interest or participation, as the low turn-out at the 2017 AGM evidenced.
27. What does generate member engagement are member resolutions, such as the one considered at the TWU special general meeting or the resolutions at the 2018 AGM. Participation in the 2018 AGM, both online and in person, confirms that members do want to participate in voting on these types of issues.
28. The Committee noted that the requirement to be present at the meeting, even with multiple physical locations and online participation, gives rise to the concern expressed by many members that it is not possible for them to attend at all on the date and time set for the meeting or that they cannot attend throughout the entire meeting due to commitments in court or otherwise.

Timing of the AGM

29. The AGM has been held some time in the fall for a number of years now. This timing was necessary when the members had to approve the annual practice fee at the meeting, since development and presentation of the budget for the following year usually took at least until the July Benchers meeting.
30. As the members are no longer required to approve the annual practice fee, the timing of the annual general meeting is now dictated only by the requirement in Rule 1-8(7) that, at least 21 days before an AGM, the Executive Director must make available to

Benchers and members a notice containing, inter alia, the audited financial statement of the Society for the previous calendar year.

31. The Committee noted that holding the AGM sometime earlier in the year might reduce the number of events in the fall each year that must be managed by staff at the Law Society. Many years ago, AGMs were held much earlier in the year.

Discussion

32. Given the experience with the 2018 AGM and the concerns expressed by many members, the Committee agreed that the status quo is not an option.
33. The current necessity for attendance during the entire course of the physical and virtual meeting to be able to vote on the resolutions caused the Committee the most concern. The Committee recognized the merit in the substantial number of complaints that this requirement effectively disenfranchised members who simply wanted to vote on the resolutions but were unable to attend at the date and time set for the meeting, or could only attend for part of the meeting.
34. The Committee discussed at some length the current requirement that only two members are required to place a resolution before the meeting. While recognizing that this threshold can and did lead to resolutions that were controversial and were opposed by a number of members, the Committee also recognized that imposing a higher threshold might unduly constrain resolutions that ought to be before the members, even if controversial.
35. The Committee was very much of the view that permitting amendments at the meeting was not conducive to the orderly conduct of the AGM and not in keeping with much of contemporary practice regarding resolutions at AGMs. In particular, the Committee was also mindful that permitting motions to substitute undermined the utility of giving members notice of the resolutions to be considered.
36. The Committee spent some time considering whether to recommend removing Roberts Rule of Order Newly Revised as the basis for the conduct of the AGM in the absence of specific direction in the Rules. The Committee considered whether an alternative, such as Nathan's Company Meetings For Share Capital and Non-Share Capital Corporations, 11th Edition was more in keeping with the type of meeting which is our AGM. The Committee also considered a simple Rule stating that procedure not otherwise provided for in the Act or Rules was at the direction of the Chair.
37. The current practice of requiring members to be present at the meeting (including present online) in order to vote caused the Committee considerable concern. The requirement certainly limits the ability of all eligible members to express a view regarding the resolutions, given the practicalities of attending at the physical locations.

And while making online participation available in recent years has certainly increased the opportunity for members to vote without having to take the time to travel to a physical location, it still requires members to be present throughout the entire meeting to vote on all the resolutions. In the case of the continued 2018 AGM, this meant sitting online for nearly 4 ½ hours.

Solutions

38. In considering all of the experience with the 2018 AGM and the concerns expressed by members about that AGM and previous general meetings, the Committee concluded that it should recommend to the Benchers that the Rules be amended to provide for voting on resolutions in advance of the AGM.
39. The Committee was of the view that voting in advance over a period of time prior to the AGM would certainly enable those who, in the past, have been willing to make the time to attend, either online or in person, to more conveniently express their view on the resolutions before the meeting if they choose. It might also enable, and perhaps even encourage, those members who have not been able to attend due to work or other commitments to express their views by voting on the resolutions in advance.
40. The Committee suggested that there be a 30 day period during which members may submit resolutions for consideration at the AGM. Resolutions would be published on the Law Society website and circulated via email as they were received during that period. Following the initial 30 day period, members would then have 15 days to propose amendments to the movers of the resolutions or to persuade the movers to withdraw a resolution. If proposed amendments were accepted by the movers, the resolutions would be amended accordingly. Following the conclusion of the 15 day amendment period, members would be given a 15 day period to vote online with respect to the resolutions. The results of the online vote would be disclosed only in conjunction with the vote at the AGM on the day of the meeting.
41. The Committee was of the view that there should not be any change to the number of physical locations but that the opportunity to participate online should be limited to the period prior to the scheduled date and time for the AGM. Experience with advance voting may evidence a decline in the number of members willing to take the time to attend at the physical locations or online during the scheduled AGM. However, the Committee thought that any discussion or decision on this issue should be left for future consideration.
42. The Committee was of the view that the Rule 1-13(9), providing that a dispute concerning the procedure to be followed at a general meeting not provided for in the Act or these Rules is to be resolved in accordance with the most recent edition of Robert's Rules of Order Newly Revised, should be revised, either by adopting rules of order more conducive to the general meeting of a society, such as Nathan's company

meetings including rules of order or by providing that matters of procedure not otherwise covered in the Act or Rules shall be decided by the Chair.

Impact Analysis

43. The proposal for voting in advance and amending the present Rule regarding reference to Robert's Rules of Order Newly Revised will have impacts on both the operations of the Law Society and the conduct of general meetings.
44. Provided we retain the current physical locations, the addition of an online voting process in advance of a general meeting will increase the cost of conducting the AGM. Past experience with online voting in conjunction with our biennial election process suggests the cost would be in the range of \$10,000 - \$15,000 to the provider and time and resources on the part of Law Society staff. In particular, staff time and resources would be required to develop a means for acquiring and publishing proposed resolutions in advance of the meeting, likely in conjunction with revisions to the Law Society website Member Portal. And staff time and resources would also be required to police and publish the member resolutions, and any amendments, when received. The Committee's recommendation is to limit online participation to the period prior to the AGM. If this recommendation is adopted, the savings from not providing online participation at the AGM would offset the cost of providing voting in advance.
45. The provision of voting in advance would necessarily preclude amendments to resolutions during the actual AGM, as voting on the resolutions as stated would have been conducted during the 15 day online advance voting period.
46. Without making changes to the number of physical locations or the opportunity to participate online during the actual AGM, advance voting may not lessen the risk of a technical failure during the period of the actual meeting necessitating an adjournment of the meeting. It is expected, however, to reduce the likelihood of a significant number of members attempting to attend online during the meeting which may reduce the chance of a technical failure due to the volume of users.
47. As noted above, the Benchers may only amend Rules regarding general meetings in accordance with an affirmative vote of 2/3 of those members voting in a referendum respecting the proposed rule, or amendment or rescission of a rule. Should the Benchers wish to propose amendments to the existing Rules regarding general meetings, a referendum would require staff time and resources to set up the referendum question(s), along with the cost of conducting an online referendum. Past experience suggests that we should expect the cost of the online referendum to be in the range of \$10,000 - \$15,000.
48. In addition to the practical implications of the Committee's suggestions, there is also the possibility that a more inclusive process may encourage members to be more

active in putting forward member resolutions. While the current procedure for members to initiate a resolution is not cumbersome, voting in advance online may make the resolution process appear more like an opinion poll than general meeting resolutions. This, in turn, may have an impact on the Benchers and their decision-making process.

Next Steps

49. The background, issues and solutions provided in this report are for initial consideration by the Benchers. Following any discussion or directions at the Bencher meeting, the Committee proposes to bring a final report back at the May Bencher meeting for decision.
50. The Committee envisions the following timetable is required to enable any amendments to the Rules to apply to the 2019 AGM:

April 5, 2019	Benchers consider proposals for reform
May 3, 2019	Benchers approve proposals/authorize referendum of members
May 15, 2019	Electronic referendum of all members starts
May 30, 2019	Electronic referendum concludes - votes counted
July 12, 2019	Bencher meeting approves Rules amending AGM procedure
October, 2019	AGM conducted under new Rules



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: April 18, 2019
Subject: **Anti-Money Laundering and Terrorist Financing Rules: cash transaction and trust account rules**

1. This matter was considered by the Benchers at the meeting in April. I attach my memorandum and the extract from the report of the Federation of Law Societies working group, which were in the agenda package for that meeting.
2. At that meeting, some Benchers expressed concern with the removal from the “no cash” rule of the exemption for court-ordered return of cash that had been seized by law enforcement officers.
3. Since that meeting I have been in touch with the Benchers concerned. The proposal has been reduced to a single provision that can be added to Rule 3-59(2). In that context, the proposed addition would look like this:
 - (2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (c) pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer’s client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown in an official capacity.
 - (d) to pay a fine, penalty or bail, or
 - (e) from a financial institution or public body.
4. I attach redlined and clean versions of the draft changes showing the original provision recommended by the Act and Rules Committee as Option 1 and the proposal with the additional provision as Option 2. I also attach a suggested resolution with the same options.

5. Once a decision has been made between the options, the Benchers can adopt the resolution with the appropriate option.

Attachments: memo dated March 26
 report extract
 drafts
 resolution

JGH



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: March 26, 2019
Subject: **Anti-Money Laundering and Terrorist Financing Rules: cash transaction and trust account rules**

1. In December 2018 the Benchers approved the report of the Anti-Money Laundering and Terrorist Financing Working Group of the Federation of Law Societies of Canada and instructed Mr. Van Ommen to vote for its adoption at the Federation Council meeting. The report and the model rules included in the report have since been adopted by the Federation Council.
2. The report comprises three major parts. For your reference, I attach the parts of the report dealing with two topics, cash transactions and trust accounting. The third and most complex topic, client identification and verification, will be dealt with at a later Bencher meeting.
3. The Act and Rules Committee has considered amendments to the BC Law Society Rules to give effect to the Federation model rules. I attach redlined and clean version of the proposed amendments, along with a suggested resolution to effect the changes. The Act and Rules Committee recommends adoption.
4. In 2004, when these rules were first proposed in the form of Model Rules, the Act and Rules Committee of the day considered the original model at a number of meetings and produced a set of rules that it felt was a better fit with the LSBC Rules than the Model Rules, and addressed some issues that were not included in the Model Rules at the time. As a result, the Act and Rules Committee has taken care to ensure to recommend that the Benchers adopt rule changes that are at least as effective as the model rules adopted by other law societies while respecting the integrity of the existing BC rules.

Drafting notes

5. In Rule 1, the definition of “trust funds” is narrowed so that money received that is not “directly related to legal services” is not considered trust funds. That will assist in prohibiting the use of a trust account for non-law-related transactions.
6. Although the CIV rules as a whole are not before this meeting, some changes to the definitions in that area are made so that they can be adopted by reference in the cash transactions area, Rule 3-53.
7. The trust accounting rule prohibiting use of trust accounts for non-law-related transactions is inserted after “deposit of trust funds” and before “cash transactions”. There is also a clear heading, “Trust accounts only for legal services,” which is intended to assist getting out the message that broad use of trust accounts is not permitted.
8. In the cash transactions provision, Rule 3-59, the draft follows the language of the model rule fairly closely while maintaining the more usual order of establishing the application of the rule before stating the substance.
9. The Act and Rules Committee recommends that adoption of the attached rule amendments by approving the suggested resolution.

Attachments: Working Group report
draft amendments

JGH

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Anti-Money Laundering and Terrorist Financing Working Group

Final Report on the Model Rules

Amended October 1, 2018



INTRODUCTION

1. The Federation of Law Societies of Canada and its member law societies have been actively engaged in the fight against money laundering and the financing of terrorist activities for more than 15 years. Ensuring effective anti-money laundering and terrorist financing rules and regulations for the legal profession continues to be a strategic priority of the Federation.
2. Two model rules, aimed at limiting the handling of cash by members of the legal profession and ensuring legal counsel engage in due diligence in identifying their clients, have been the cornerstone of the regulators' anti-money laundering and anti-terrorism financing initiatives. The No Cash and Client Identification and Verification Model Rules (the "Model Rules") adopted in 2004 and 2008 respectively have been implemented by all Canadian law societies.
3. In October 2016, the Federation Council asked the CEOs Forum to establish a working group of senior staff to review the Model Rules. The Council recognized that a review of the Model Rules was overdue, particularly in light of a number of developments on the anti-money laundering and counter-terrorist financing landscape, including amendments to federal anti-money laundering and terrorist financing regulations, and the report of the mutual evaluation of Canada's federal anti-money laundering regime by the Financial Action Task Force ("FATF").
4. The Anti-Money Laundering and Terrorist Financing Working Group (the "Working Group") is co-chaired by Jim Varro, Director, Office of the CEO at the Law Society of Ontario and Frederica Wilson, Executive Director, Regulatory Policy and Public Affairs and Deputy CEO at the Federation. The other members of the Working Group are:
 - Susan Robinson – Executive Director, Law Society of Prince Edward Island
 - Chioma Ufodike – Manager, Trust Safety, Law Society of Alberta
 - Elaine Cumming – Professional Responsibility Counsel, Nova Scotia Barristers' Society
 - Deb Armour – Chief Legal Officer, Law Society of British Columbia
 - Jeanette McPhee – CFO and Director of Trust Regulation, Law Society of British Columbia
 - Leah Kosokowsky – Director, Regulation, Law Society of Manitoba
 - Anthony Gonsalves – Team Manager, Professional Regulation, Law Society of Ontario
 - Sylvie Champagne – Secrétaire de l'Ordre et Directrice du contentieux, Barreau du Québec
 - Nicholas Handfield – Chef, Services juridiques et relations institutionnelles, Chambre des notaires de Québec
 - Brenda Grimes – Executive Director, Law Society of Newfoundland and Labrador

5. From October 2017 until mid-March 2018 the Working Group held a consultation on a number of proposed amendments to the Model Rules and the introduction of a new Trust Accounting Model Rule. The Working Group received comments on the proposed rule changes from nine of the 14 law societies, the Canadian Bar Association, the Ontario Bar Association and several individual lawyers. In addition to providing feedback on the amendments proposed by the Working Group and on the proposed new Trust Accounting Model Rule, a number of commentators recommended other changes to the rules. Where such additional changes were consistent with ones explored in the consultation, or were simple matters of wording, the Working Group has responded to them in the final amendments. There were, however, some recommendations that were outside the scope of the consultation. That development, together with the fact that the government introduced new amendments to the federal anti-money laundering regulations part-way through the consultation period that are relevant to the rules, led the Working Group to conclude that there would be merit in a second, focused review of the rules in the near future. Finally, the Working Group's research highlighted the potential value of a risk-based approach to law societies' anti-money laundering and anti-terrorism financing regulation. The Working Group suggests that the Federation may wish to consider a move in that direction in the future.
6. The final proposed amendments and the new trust accounting rule for approval by the Council are set out in full in appendices to this report. The proposed amendments and new rule, the rationale for them and a summary of the feedback received together with the Working Group's response to the feedback are discussed in the body of the report.

NO CASH MODEL RULE

Definitions

7. In its consultation report, the Working Group proposed the addition of several definitions to the No Cash rule. Those additions have been maintained, but additional changes have been made to the definitions section to ensure consistency with the definitions in the Client Identification and Verification rule. This includes revisions to the definitions of "financial institution" and "public body" and the addition of a definition of "financial services cooperative".

Exceptions

8. To reflect the intention to restrict the situations in which legal counsel can accept large amounts of cash, the Working Group had recommended the deletion of some of the exceptions in the rule. In response to feedback from a number of law societies and others, the Working Group reconsidered some of the proposed amendments to the circumstances in which legal counsel may accept more than \$7,500 in cash. It is now proposed that exceptions for cash received from a peace officer, law enforcement agency or other agent of the Crown and to pay bail be maintained. The only exception that has been eliminated is that relating to cash received pursuant to a court order.

Other Amendments

9. The Working Group has maintained amendments to section 1 of the rule to clarify the amount of cash a lawyer may accept. The rule now specifies that a lawyer must not accept cash in an amount greater than \$7,500. In response to feedback received during the consultation, the section has also been amended to delete the words “or transaction”. The Working Group agreed that it is clearer to tie the cash limit to client matters. Pursuant to the amended rule, legal counsel may not accept cash in an aggregate amount greater than \$7,500 for any one client matter.
10. Also for greater clarity, the Working Group has removed the words “from a person” from section 1 and has changed “shall” to “must” or “will” (as appropriate) throughout the rule.

CLIENT IDENTIFICATION AND VERIFICATION RULE

Definitions

11. The Working Group is proposing a number of amendments to the definitions in the Client Identification and Verification rule, primarily to align with amended definitions in the federal regulations where similar terms are used in the Model Rule. These include the addition of definitions of “credit union central”, “disbursements”, “expenses”, “financial services cooperative” and “professional fees” and the deletion of the definition of “proceedings”. Amendments are also proposed to existing definitions including “financial institution”, “funds”, “public body”, and “securities dealer”. With the exception of additional changes to ensure the definitions refer to provinces and territories, the amendments to the definitions are unchanged from the version contained in the consultation document.
12. As reported in the consultation report, the Working Group discussed whether a band defined under the *Indian Act* (Canada) should be added to the definition of “public body”, although the corresponding definition in the federal regulations do not include Indian bands. This issue first arose some years ago and was the subject of research by the Federation, but no determination was made at that time. The Working Group considers this an important issue and to ensure that it is carefully considered, it is conducting additional research and will report on the issue at a later date.

Requirement to Identify Client

13. One of the amendments proposed in the consultation was the addition of language to subsection 2(1) of the client identification rule to situate the requirements of the section in the broader context of lawyers’ due diligence obligations. The amended provision reads (new language underlined):

2(1) Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the lawyer’s obligation to know their client, understand the client’s dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

dishonesty, fraud, crime or illegal conduct.” It was suggested that this sets too high a standard. The Working Group notes that members of the legal profession are bound by rules of professional conduct not to “knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct.” To address the concerns that were raised in the consultation, the provision has been amended to be consistent with the existing professional conduct obligation.

Other amendments

38. The Working Group is proposing a few other minor amendments for greater clarity and consistency. These include the substitution of “must” or “will” for the word “shall” as appropriate throughout the rule.

TRUST ACCOUNTING MODEL RULE

39. The consultation report included a new trust accounting model rule intended to restrict the use of lawyers’ trust accounts to purposes directly connected to the provision of legal services. As noted in the report, a number of law societies already have such rules. In the view of the Working Group, allowing members of the legal profession to use their trust accounts for purposes unrelated to the provision of legal services unnecessarily increases the risk of money laundering or other illegal activity even when the money in question is not cash.
40. The proposed rule was generally well received, but there were some criticisms and questions about the drafting. The Working Group has redrafted the rule in response. In keeping with the general drafting style of law society rules and regulations, the proposed new model rule now makes it clear that the obligations are imposed on individual lawyers. In response to concerns that the commentary seemed to impose additional obligations on lawyers, it has been removed in the final draft. The Working Group will instead provide guidance on the rule in the guidelines for the profession that are being prepared. Finally, a definition of “money” has been added to the rule for clarity. The proposed rule now reads as follows:

Definitions

“money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions

1. A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer’s law firm is providing.
2. A lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

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Model Rule on Cash Transactions

“cash” means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

“disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

“financial institution” means

- (a) a bank that is regulated by the *Bank Act*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
- (c) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a financial services cooperative,
- (f) a credit union central,
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (h) a trust company or loan company that is regulated by a provincial or territorial Act,

- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

“funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

1. A lawyer must not receive or accept cash in an aggregate amount of greater than \$7,500 Canadian in respect of any one client matter.
2. For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency the lawyer will be deemed to have received or accepted the cash converted into Canadian dollars at
 - (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or
 - (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.
3. Section 1 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:
 - (a) receiving or paying funds;
 - (b) purchasing or selling securities, real properties or business assets or entities;
 - (c) transferring funds by any means.
4. Despite section 3, section 1 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm
 - (a) from a financial institution or public body,
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
 - (c) pursuant to pay a fine, penalty, or bail, or
 - (d) for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.

Model Rule on Recordkeeping Requirements for Cash Transactions

“cash” means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

“money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

1. Every lawyer, in addition to existing financial recordkeeping requirements to record all money and other property received and disbursed in connection with the lawyer’s practice, shall maintain
 - (a) a book of original entry identifying the method by which money is received in trust for a client, and
 - (b) a book of original entry showing the method by which money, other than money received in trust for a client, is received.
2. Every lawyer who receives cash for a client shall maintain, in addition to existing financial recordkeeping requirements, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature authorized by the lawyer who receives cash and of the person from whom cash is received.
3. The financial records described in paragraphs 1 and 2 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.
4. The financial records described in paragraphs 1 and 2 shall be entered and posted so as to be current at all times.

5. A lawyer shall keep the financial records described in paragraphs 1 and 2 for at least the six year period immediately preceding the lawyer's most recent fiscal year end. [This paragraph does not apply to lawyers in Quebec as the Barreau requires that such records be retained without any limitation.]

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Model Rule on Cash Transactions

“cash” means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

“disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

“financial institution” means

- (a) a bank that is regulated by the *Bank Act*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
- (c) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a financial services cooperative,
- (f) a credit union central,
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (h) a trust company or loan company that is regulated by a provincial or territorial Act,

- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

“funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act (Ontario)* [or equivalent legislation] or similar body incorporated under the law of another province or territory.
- (d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

1. A lawyer ~~shall~~must not receive or accept ~~from a person,~~ cash in an aggregate amount of greater than \$7,500 ~~or more~~ Canadian ~~or more dollars~~ in respect of any one client matter ~~or transaction~~.
2. For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency ~~from a person~~ the lawyer ~~shall~~will be deemed to have received or accepted the cash converted into Canadian dollars at
 - (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or
 - (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.
3. ~~Paragraph~~Section 1 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:
 - (a) receiving or paying funds;
 - (b) purchasing or selling securities, real properties or business assets or entities;
 - (c) transferring funds by any means.
4. Despite ~~paragraph~~section 3, ~~paragraph~~section 1 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm
 - (a) from a financial institution or public body,
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
 - (c) pursuant to a court order, or to pay a fine, penalty, or bail, or
 - (d) in an amount of \$7,500 or more for professional fees, disbursements, or expenses or bail, provided that any refund out of such receipts is also made in cash.

- ~~(a) pursuant to a court order, or to pay a fine or penalty, or~~
- ~~(b) in an amount of \$7,500 or more for professional fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.~~

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MODEL TRUST ACCOUNTING RULE

Definitions

“money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders, and electronic transfer of deposits at financial institutions

1. A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer's law firm is providing.
2. A lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“trust funds” means funds directly related to legal services provided by a lawyer or law firm received in trust by the 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;

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

“disbursements” means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

“financial institution” means

- (a) an authorized foreign bank within the meaning of section 2 [*Definitions*] of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (c.1) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,

LAW SOCIETY RULES

- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial or territorial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

“lawyer” includes a law firm;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;

“public body” means

- (a) a ministry or department of the government of Canada or of a province or territory,
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory,
- (c) a body incorporated by or under an Act of a province or territory for a public purpose, or
- (d) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

Trust account only for legal services

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate.

Cash transactions

- 3-59** (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:
- (a) receiving or paying funds;
 - (b) purchasing or selling securities, real property or business assets or entities;

LAW SOCIETY RULES

(c) transferring funds or securities by any means.

OPTION 1

- (2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
- (a) [rescinded]
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (c) to pay a fine, penalty or bail, or
 - (d) from a financial institution or public body.

OPTION 2

- (2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
- (a) [rescinded]
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (c) pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer's client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown in an official capacity,
 - (d) to pay a fine, penalty or bail, or
 - (e) from a financial institution or public body.

- (3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than \$7,500 in respect of any one client matter.
- (4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount greater than \$7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.
- (5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than \$7,500 under subrule (4) must make any refund greater than \$1,000 out of such money in cash.

LAW SOCIETY RULES

- (6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, must
 - (a) make no use of the cash,
 - (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
 - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
 - (d) comply with all other rules pertaining to the receipt of trust funds.
- (7) For the purposes of this rule, a lawyer or law firm that receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on
 - (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or
 - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day.

Division 11 – Client Identification and Verification

Definitions

- 3-98** (1) In this division,
- “disbursements”** has the same meaning as in Rule 3-53 [*Definitions*];
 - “expenses”** has the same meaning as in Rule 3-53;
 - “financial institution”** has the same meaning as in Rule 3-53;

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“trust funds” ~~includes means~~ funds directly related to legal services provided received ~~in trust~~ by a lawyer or law firm received in trust by the 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;

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

“disbursements” means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

“financial institution” means

- (a) an authorized foreign bank within the meaning of section 2 [Definitions] of the Bank Act (Canada) in respect of its business in Canada or a bank to which the Bank Act applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (c) an association that is regulated by the Cooperative Credit Associations Act (Canada),
- (c.1) a financial services co-operative that is regulated by An Act respecting financial services cooperatives, CQLR, c. C-67.3, or An Act respecting the Mouvement Desjardins, SQ 2000, c. 77, other than a caisse populaire,

LAW SOCIETY RULES

- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial or territorial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

“lawyer” includes a law firm;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;

“public body” means

- (a) a ministry or department of the government of Canada or of a province or territory, ~~or~~
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory, -
- (c) a body incorporated by or under an Act of a province or territory for a public purpose, or
- (d) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

Trust account only for legal services

3-58.1 (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

(2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate.

Cash transactions

3-59 (1) This rule applies ~~to when~~ a lawyer ~~or law firm when engaged~~ engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real property or business assets or entities;

LAW SOCIETY RULES

(c) transferring funds or securities by any means.

OPTION 1

- (2) ~~Despite subrule (1), This~~ this rule does not apply ~~to when~~ a lawyer or law firm ~~when receives or accepts cash in connection with the provision of legal services by the lawyer or law firm~~
- (a) ~~[rescinded] engaged in activities referred to in subrule (1) on behalf of his employer, or~~
 - (b) ~~receiving or accepting cash~~
 - ~~(i)~~ from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - ~~(ii)~~ pursuant to the order of a court or other tribunal,
 - ~~(iii)~~ to pay a fine, ~~or~~ penalty, or bail, or
 - ~~(iv)~~ from a ~~savings~~ financial institution or public body.

OPTION 2

- (2) ~~Despite subrule (1), This~~ this rule does not apply ~~to when~~ a lawyer or law firm ~~when receives or accepts cash in connection with the provision of legal services by the lawyer or law firm~~
- (a) ~~[rescinded] engaged in activities referred to in subrule (1) on behalf of his employer, or~~
 - (b) ~~receiving or accepting cash~~
 - ~~(i)~~ from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - ~~(ii)~~ pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer's client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown in an official capacity,
 - ~~(iii)~~ to pay a fine, ~~or~~ penalty, or bail, or
 - ~~(iv)~~ from a ~~savings~~ financial institution or public body.

- (3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not ~~receive or~~ accept cash in an aggregate amount ~~in cash of greater than~~ \$7,500 ~~or more~~ in respect of any one client matter ~~or transaction~~.

LAW SOCIETY RULES

- (4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount ~~in cash of greater than~~ \$7,500 ~~or more~~ in respect of a client matter ~~or transaction~~ for professional fees, disbursements, ~~or~~ expenses ~~or bail in connection with the provision of legal services by the lawyer or law firm.~~
- (5) A lawyer or law firm ~~who that receives or~~ accepts cash in an aggregate amount ~~in cash of greater than~~ \$7,500 ~~or more~~ under subrule (4) must make any refund greater than \$1,000 out of such money in cash.
- (6) A lawyer or law firm that ~~who~~ receives cash, unless permitted under this rule to accept it, must
- (a) make no use of the cash,
 - (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
 - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
 - (d) comply with all other rules pertaining to the receipt of trust funds.
- (7) For the purposes of this rule, a lawyer or law firm that receives or accepts cash in foreign currency is deemed to have received or accepted the cash ~~to be~~ converted into Canadian dollars based on
- (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily ~~Memorandum of Exchange~~ Noon Rates in effect at the relevant time, or
 - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day that the client would use for that currency in the normal course of business at the relevant time.

Division 11 – Client Identification and Verification

Definitions

3-98 (1) In this division,

“disbursements” has the same meaning as in Rule 3-53 [Definitions];

“expenses” has the same meaning as in Rule 3-53;

“financial institution” has the same meaning as in Rule 3-53; means

LAW SOCIETY RULES

- ~~_____ (a) an authorized foreign bank within the meaning of section 2 [Definitions] of the Bank Act (Canada) in respect of its business in Canada or a bank to which the Bank Act applies,~~
- ~~_____ (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,~~
- ~~_____ (c) an association that is regulated by the Cooperative Credit Associations Act (Canada), _____~~
- ~~_____ (d) a company to which the Trust and Loan Companies Act (Canada) applies,~~
- ~~_____ (e) a trust company or loan company regulated by a provincial Act,~~
- ~~_____ (f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or~~
- ~~_____ (g) an organization controlled by a financial institution;~~

CASH TRANSACTIONS TRUST ACCOUNTING

SUGGESTED RESOLUTION:

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

1. *In Rule 1, by rescinding the definition of “trust funds” and substituting the following:*

“**trust funds**” means funds directly related to legal services provided by a lawyer or law firm received in trust by the 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;.

2. *In Rule 3-53:*

- (a) *by rescinding the definition of “public body” and substituting the following:*

“**public body**” means

- (a) a ministry or department of the government of Canada or of a province or territory,
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory,
- (c) a body incorporated by or under an Act of a province or territory for a public purpose, or
- (d) a subsidiary of a public body whose financial statements are consolidated with those of the public body., *and*

- (b) *by adding the following definitions:*

“**disbursements**” means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

“**expenses**” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

“financial institution” means

- (a) an authorized foreign bank within the meaning of section 2 [Definitions] of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (c.1) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,
- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial or territorial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;

3. ***By rescinding Rule 3-59 and substituting the following:***

Trust account only for legal services

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate.

Cash transactions

3-59 (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real property or business assets or entities;
- (c) transferring funds or securities by any means.

OPTION 1

- (2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (c) to pay a fine, penalty or bail, or
 - (d) from a financial institution or public body.

OPTION 2

- (2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (c) pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer's client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown in an official capacity,
 - (d) to pay a fine, penalty or bail, or
 - (e) from a financial institution or public body.

(3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than \$7,500 in respect of any one client matter.

(4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount greater than \$7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.

- (5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than \$7,500 under subrule (4) must make any refund greater than \$1,000 out of such money in cash.
- (6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, must
 - (a) make no use of the cash,
 - (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
 - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
 - (d) comply with all other rules pertaining to the receipt of trust funds.
- (7) For the purposes of this rule, a lawyer who receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on
 - (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or
 - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day..

4. ***In Rule 3-98,***

(a) by rescinding the definition of “financial institution” and substituting the following:

“financial institution” has the same meaning as in Rule 3-53;, ***and***

(b) by inserting the following definitions:

“disbursements” has the same meaning as in Rule 3-53;

“expenses” has the same meaning as in Rule 3-53;.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

From: [AG WEBFEEDBACK AG:EX](#)
To: [President](#)
Subject: AG File No. 560182
Date: April-11-19 1:45:47 PM

Ms. Nancy G. Merrill, QC
President
The Law Society of British Columbia
Email: president@lsbc.org

Dear Ms. Merrill:

Thank you for your correspondence of March 27, 2019, regarding *Roads to Revival – An External Review of Legal Aid Service Delivery in British Columbia* and funding for legal aid.

As you know, in *Budget 2018*, government announced a significant investment of \$26 million over the following three fiscal years to expand legal aid, including family law services. This included the \$1 million authorized for tariff incentives. On October 31, 2018, LSS announced a \$500 incentive payment for each family and child protection contract accepted by a lawyer in a community where LSS has difficulty placing cases with local lawyers.

In addition, the government has committed to fund up to \$2 million in 2019/20 to pilot legal clinics in up to eight communities throughout British Columbia. The clinics will provide free legal advice and advocacy to ensure British Columbia's most vulnerable citizens have equal access to justice. The ministry also continues to consider recommendations from reviews and reports, to inform initiatives such as the Indigenous Justice Strategy and BC's Poverty Reduction Plan.

Last week I announced that government was making a further \$8 million available for bonus payments for legal aid lawyers and starting a formal process for a long-term agreement with legal aid lawyers. Collectively, these investments are the highest provincial investments in legal aid in 16 years.

Taking these steps demonstrates government's commitment to increasing access to justice and continuing to make key improvements to legal aid in British Columbia.

I appreciate your writing.

Yours truly,

David Eby, QC
Attorney General