

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday, May 8, 2009
- PRESENT:**
- | | |
|--|---------------------|
| Gordon Turriff, QC, President | Jan Lindsay |
| Glen Ridgway, QC, 1 st Vice-President | David Mossop, QC |
| Gavin Hume, QC, 2 nd Vice-President | Thelma O'Grady |
| Haydn Acheson | Peter Lloyd |
| Rita Andreone | Robert Punnett, QC |
| Kathryn Berge, QC | David Renwick, QC |
| Joost Blom, QC | Meg Shaw, QC |
| Robert Brun, QC | Richard Stewart, QC |
| Leon Getz, QC | Ronald Tindale |
| Carol Hickman | Herman Van Ommen |
| William Jackson | James Vilvang, QC |
| Patrick Kelly | Kenneth Walker |
| Stacy Kuiack | Dr. Maelor Vallance |
| Bruce LeRose, QC | David Zacks, QC |
| Barbara Levesque | |
- ABSENT:**
- | | |
|------------------------|------------------|
| Terence La Liberté, QC | Art Vertlieb, QC |
|------------------------|------------------|
- STAFF PRESENT:**
- | | |
|---------------------|------------------|
| Tim McGee | Bill McIntosh |
| Michael Bernard | Jeanette McPhee |
| Barbara Buchanan | Lesley Pritchard |
| Stuart Cameron | Susanna Tam |
| Su Forbes, QC | Alan Treleaven |
| Jeffrey Hoskins, QC | Adam Whitcombe |
| Howard Kushner | |
| Michael Lucas | |
- GUESTS:**
- Dom Bautista, Executive Director, Law Courts Center
 - Johanne Blenkin, Executive Director, BCCLS
 - Dean Mary Anne Bobinski, Faculty of Law, University of British Columbia
 - James Bond, Vice-President, CBABC
 - Ron Friesen, Acting-Executive Director, CLEBC
 - Dean Donna Greschner, Faculty of Law, University of Victoria
 - Robert Holmes, President, Trial Lawyers Associations of BC
 - Drew Jackson, Consultant to BCCLS
 - Jamie Maclaren, Executive Director, Pro Bono Law of BC
 - Jane Mundy, Reporter, Lawyers Weekly
 - Caroline Nevin, Executive Director, CBABC
 - Linda Robertson, Lawyer Coach and Management Consultant
 - Wayne Robertson, QC, Executive Director, Law Foundation of BC
 - Michael Roman, Chair, CLEBC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on April 3, 2009 were approved as circulated.

Consent Resolutions

The following resolutions were **passed unanimously and by consent**.

2. Approval of Revised Statement of Investment Policy and Procedures

Resolved: to adopt the 'Statement of Investment Policies and Procedures' (appended as Appendix 1), which replaces Appendix 1 – Investment Guidelines of the Benchers Governance Policies.

3. Revision of Continuing Professional Development (CPD) Restrictions on Accreditation and Teaching

Resolved: to approve the recommendations of the Lawyer Education Advisory Committee as set out in the report included in the meeting materials at Tab 3, pages 303-304, as follows:

1) overall subject matter:

The subject matter of accredited learning modes, including courses, will contain material primarily designed and focused for an audience that includes, as a principal component, lawyers, paralegals, articling students and/or law school students, but not if the subject matter is targeted primarily at clients, the public, other professions, or other students;

2) teaching and writing:

The law-related teaching and writing must be for

- a) an audience that includes, as a principal component, lawyers, paralegals, articling students and /or law school students, or
- b) a continuing professional education or licensing course or program for another profession, or
- c) a post-secondary educational program, but not targeted primarily at clients.

REGULAR AGENDA – for Discussion and Decision

4. President's Report

Mr. Turriff opened the meeting by paying tribute to the Honourable Chief Judge Hugh Stansfield, who passed away on May 7th. Mr. Turriff said that Chief Judge Stansfield was both passionate and persuasive about making the BC Provincial Court more accessible to all British Columbians. Mr. Turriff extended the Law Society's sincere condolences to Chief Judge Stansfield's family. A Special Sitting of the Court will be held from 9:00 to 10:00 am on Thursday, June 4, 2009 in the Law Courts Great Hall at Robson Square.

Mr. Turriff briefed the Benchers on early planning for a series of forums or gatherings of BC's major legal organizations to discuss policy issues of mutual concern. He advised that the first such "Law Bodies Forum" will be hosted by the Law Society in the fall of 2009.

Mr. Turriff updated the Benchers on the progress of the 125th Anniversary President's Tour, reporting that last week he spoke in 100 Mile House, next week he will speak in Richmond, and in the coming weeks he will visit Prince Rupert and Trail. Mr. Turriff thanked Mr. Renwick and Mr. Walker for the support they provided during his recent visits to their communities; and he thanked Ms. Hickman and Mr. Mossop for appearing and speaking on his behalf recently at events he was unable to attend.

Mr. Turriff congratulated Pro Bono Law of BC Executive Director Jamie Maclaren on his receipt of the UBC Law Alumni Association's Outstanding Young Alumnus Award for 2009.

Mr. Turriff briefed the Benchers regarding early progress in the Law Society's development of a course to address the duties owed by counsel to the Court.

Mr. Turriff also reported briefly on various public appearances he made as Law Society President through the month of March 2009.

5. **CEO's Report**

Mr. McGee joined Mr. Turriff in expressing the Law Society's condolences to the family of the late Chief Judge Stansfield.

Mr. McGee summarized highlights of the Law Society's financial results for the first quarter of 2009. He said that the General Fund shows an overall positive variance in the quarter of \$590,000, resulting from a combination of member revenues running slightly higher than budget and some expense savings. The Trust Assurance Program (TAP) shows a positive overall increase on the quarter of \$167,000, due to expense savings. However, TAP revenues are forecast to decline 9 per cent on a full year basis versus 2008, due to significant declines in commercial real estate activity.

Chief Financial Officer Jeanette McPhee provided further details, noting that projected revenue combined with the current TAP reserve should be sufficient to fund the TAP through 2009. Ms. McPhee also reported that the net value of the Lawyers Insurance Fund (LIF) investment portfolio declined by 3 % in the first three months of 2009, compared to the benchmark return rate of -2.7%, reflecting the investment market decline in the first quarter. She also noted that the market recovery in March sparked a 4.4% increase in the market value of LIF's portfolio over the previous month.

Mr. McGee reported that a Federation of Law Societies (FLS) working group is preparing a roadmap for developing national standards for admission to the legal profession. The three main elements of the project are:

- to develop a set of national competency standards
- to articulate a national standard for good character and fitness
- to develop national standards for professional training courses, including exams and articling

Mr. McGee set out three factors underlying the importance of national admission standards:

- commitment to national mobility
- meeting external challenges to self-regulation
 - Manitoba and Ontario already have legislated standards to meet the Competition Bureau's recent report on self-regulated professions needs to be addressed
- pursuit of efficiencies in teaching, administration and reporting

Mr. McGee said that the working group will report to the Council of the Federation in June, identifying the key issues and outlining the process to address them. The group's goal is to have a detailed work plan and budget in place by the end of the year.

6. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

STRATEGIC PLANNING AND PRIORITIES MATTERS – for Discussion and/or Decision

7. Effective Education: Proposed Program for Accredited Mentoring

Lawyer Education Advisory Committee Chair Bruce LeRose, QC briefed the Benchers on the Committee's development of a program for Continuing Professional Development (CPD)-accredited mentoring, proposed for implementation effective January 1, 2010.

Mr. LeRose said that mentoring under this program should focus on broader practice issues and skills. CPD accreditation will require the submission of an on-line mentoring plan, including an agreement that each mentoring session will be for a minimum of 30 minutes, and that the parties plan to meet for a minimum of six hours over the course of the year. He also noted that a key goal of the Law Society's mentoring program is to ensure alignment with the CPD program already in place. Therefore, mentoring must meet the following criteria to qualify for CPD credit:

- significant intellectual or practical content, with the primary objective of increasing lawyers' professional competence
- substantive, procedural, ethical or practice management (including client care and relations) matters relating to the practice of law

Mr. LeRose moved (seconded by Mr. Getz) that the program for CPD-accredited mentoring outlined in the Lawyer Education Advisory Committee report included in the meeting materials at Tab 7, pages 700-704.

The motion was carried.

Mr. LeRose thanked Linda Robertson, Lawyer Coach and Management Consultant, for her significant contribution to the development of the proposed mentoring program, Michael Carroll, QC and Mary Ruhl, for sharing insights gained through their work with the in-house mentoring program at Davis & Company, LLP, and Alan Treleaven, Lesley Small and Michael Lucas for leading the Law Society staff work on the project.

REGULAR AGENDA – Other Matters for Discussion and/or Decision**8. 2009 Annual General Meeting Planning**

Mr. McGee briefed the Benchers on the threat to the annual general meeting's validity posed by the risk of telecommunication failure in the context of Rule 1-7's strict requirements: whenever the telephone connections and/or service do not allow all the registered participants attending at any of the remote meeting locations to hear and be heard by one another, the annual general meeting cannot continue.

Mr. McGee outlined the Executive Committee's recommendations for addressing that threat and risk:

- add a saving or curative provision to Rule 1-7 to the effect that a technical failure preventing one or more members from participating in or voting at a general meeting would not in and of itself invalidate the meeting
 - subject to other requirements, such as quorum

Mr. McGee advised the Benchers that the proposed Rules amendment requires the support of two-thirds of the membership voting in a referendum.

Mr. Ridgway moved (seconded by Mr. Brun) that Mr. McGee be instructed to conduct a referendum ballot of all the members of the Law Society on the following question:

Are you in favour of the Benchers amending the Rules respecting general meetings to ensure that a meeting would not be invalidated by reason alone of a technical failure that prevented one or more members from participating in or voting at the meeting, provided that a majority of the people participating have voted to continue the meeting?

The motion was carried.

9. Recommendations for Revision of the Law Society's Marketing Rules

Ethics Committee Gavin Hume, QC briefed the Benchers on the Committee's recommendations for a number of changes to the marketing rules presently contained in Chapter 14 of the *Professional Conduct Handbook* and the Law Society Rules. He advised that the purpose of the proposed changes is to make the Law Society's marketing rules more focused, easier to understand and less intrusive.

Mr. Hume highlighted several core principles and goals followed by the Committee in developing its recommendations for changes to the Law Society's approach to regulating marketing and advertising by lawyers:

- advertising must be true, not misleading, verifiable and consistent with the public interest
- rules that are simply elaborations on these core principles hinder comprehension and compliance and should be eliminated
- the rules should be shorter and more focused

- rules not directed primarily at the regulation of advertising but otherwise useful should be moved from Chapter 14 of the Handbook to the Rules

Following an extended discussion Mr. Hume moved (seconded by Mr. Zacks) that the Benchers approve a resolution setting out various amendments to Ch. 14 of the *Professional Conduct Handbook* (appended as Appendix 2), and a second resolution setting out various amendments to the Law Society Rules (appended as Appendix 3).

The motion was carried by a two-thirds majority of the Benchers present.

FOR INFORMATION ONLY

10. Lawyers Insurance Fund Investments (LIF) Investments Review – Update

Mr. Lloyd reported that Price Waterhouse Coopers said their audit of the LIF investment portfolio went very smoothly. Mr. Lloyd advised that usually a number of internal control lapses are noted by the auditors; however none were noted by PWC in this instance. He said that great credit goes to Law Society CFO Jeanette McPhee and her financial team.

11. Introduction of BCCHLS's Clicklaw Website

Law Foundation Executive Director Wayne Robertson, QC introduced Clicklaw, a new web portal that provides the public with a unified point of access to legal resources on the internet. Mr. Robertson explained that Clicklaw is managed by the BC Courthouse Library Society, was developed and will be maintained with the support of the Law Foundation of BC. Consultant and Clicklaw designer Drew Jackson provided the Benchers with a demonstration of some of Clicklaw's capabilities.

IN CAMERA SESSION

12. Discussion of Bencher Concerns

This matter was discussed *in camera*.

WKM

2009-05-29

Appendix 1 – Benchers Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: July 18, 2005

Revised: May 8, 2009

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1. General

1.1 Application

These investment guidelines (“Investment Guidelines”) apply to the investment funds (the “Funds”) owned and controlled by the Law Society of British Columbia (the “Law Society”) for which the Law Society has retained external investment management.

An investment manager providing services in connection with the Law Society’s investment assets must adhere to these guidelines.

1.2 Compliance

All Funds will be managed in accordance with all applicable legal requirements notwithstanding any indication to the contrary which may be construed from these guidelines.

All investment activities by the investment managers will be made in accordance within the scope of the Code of Ethics and Standards of Practice of the CFA Institute and the Code of Ethics established by the investment management firms retained to manage the Fund assets.

1.3 Pooled Funds

Pooled funds are managed under guidelines established by the investment manager for each pooled fund approved for use within the Investment Guidelines. It is recognized that from time to time, when pooled funds are used, it may not be entirely possible to maintain complete adherence to the Investment Guidelines, however, the investment manager is expected to advise the Law Society in the event that the pooled fund exhibits, or may exhibit, any significant departure from the Investment Guidelines.

1.4 Effective Date

A reasonable transition period is expected to bring assets, now subject to these Investment Guidelines, into compliance.

2. Responsibilities

2.1 Plan Administration

The Benchers have the sole power to amend or terminate the application of the Investment Guidelines.

2.2 Delegation

The Benchers may delegate all of their responsibilities related to the Investment Guidelines, except for changes to these Investment Guidelines, to a Committee, to Law Society staff or to investment managers.

2.3 Investment Manager

The investment manager is responsible for:

- Selecting securities within the asset classes assigned to them, and the mix of asset classes, subject to applicable legislation and the constraints set out in these Guidelines;
- Providing the Law Society with a monthly report of portfolio holdings;
- Providing the Law Society with a quarterly compliance report and a review of investment performance and future strategies;
- Attending meetings at the Law Society at least twice per year to review performance and to discuss investment strategies;
- Informing the Law Society promptly of any investments which do not comply with these guidelines and what actions will be taken to remedy this situation; and
- Advising the Law Society of any element of these Guidelines that could prevent attainment of the Law Society's investment objectives.

2.4 Standard of Care

In exercising their responsibilities the Benchers, Committees, and Law Society staff shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

In exercising their responsibilities, the investment managers, as persons who possess, or because of their profession, business or calling, ought to possess, a particular level of knowledge or relevant skill, shall apply that particular knowledge to the administration of these guidelines.

3. Account Management

3.1 Overview of Accounts

The Law Society maintains several investment accounts for which different portions of the Investment Guidelines have application.

3.2 Lawyers Insurance Fund - LT Account

The Lawyers Insurance Fund - LT Account is subject to all of the provisions of the Investment Guidelines.

3.3 BC Courthouse Library Society Account

The BC Courthouse Library Society Fund Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1.75% per year
- the Benchmark Portfolio shall consist of 25% fixed income and 75% short term investments.

3.4 Unclaimed Trust Funds Account

The Unclaimed Trust Funds Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 3.5% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments .

3.5 Captive Insurance Company Account

The Captive Insurance Company Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 3.5% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments.

3.6 Lawyer Insurance Fund - ST Account

The Lawyers Insurance Fund – ST Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1% per year
- the Benchmark Portfolio shall consist of 100% short term investments.

4. Fund Objectives

4.1 Investment Philosophy

The overall investment philosophy of the Funds is to maximize the long-term real rate of return subject to an acceptable degree of risk.

4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period 2009 to 2018, the target rate of return of the investments is at least 6.5% per year, net of investment management expenses.

The Law Society's long-term funding requirements and relatively low level of liquidity dictate a moderate portfolio with a mix of fixed income and equity securities. It is expected that the value of the portfolio will fluctuate as market conditions and interest rates change.

4.3 Investment Constraints

- Time Horizon: The portfolio has a long-term time horizon.
- Liquidity Requirements: Liquidity requirements are expected to be low.
- Tax Considerations: The Law Society is a non-taxable entity.
- Legal and Regulatory Considerations: Other than regulations governing the tax-exempt status of the Society, there are no legal constraints on the portfolio outside the provisions of the Legal Profession Act.
- The Law Society has no unique preferences in regard to its investment approach.

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

The Benchmark Portfolio is the portfolio consisting of specified asset class indices combined in specified percentages that is intended to meet the investment objectives. The Law Society has established the following Benchmark Portfolio that is expected to achieve the investment objectives. Each asset class shall be maintained within the minimum and maximum, as set out below.

Asset Class	Asset Class Benchmark Index	Asset Class Percentages (market value)		
		Minimum	Benchmark	Maximum
Canadian Equities	S&P / TSX Composite Index	10%	20%	30%
Foreign Equities	MSCI-World Index (CAD)	15%	30%	40%
Total Equities		25%	50%	65%
Bonds	DEX Universe Bond Index	30%	45%	75%
Cash and Short Term	DEX 91-Day Treasury Bill Index	0%	5%	20%

5.2 Investment Management Structure

As of March 2009, the Funds will be invested by two investment managers, initially in equal shares. The Law Society will review the allocation to the two investment managers on a quarterly basis. If the amount (by market value) invested by one of the investment managers exceeds 53% of the total value of the Funds at that time, the Law Society will consider whether to re-balance the Funds so that each investment manager will manage approximately 50% of the Funds.

5.3 Investment Manager Mandates

Each investment manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the Benchmark Portfolio over that period, plus 1%.

5.4 Active Asset Mix Management

In the event that an investment manager has the mandate to actively manage the asset mix of their portion of the Funds, the investment manager shall maintain the asset mix of their portion of the Funds within the ranges set out in Section 5.1.

5.5 Re-Balancing

In the event that an investment manager does not actively manage the asset mix of their portion of the Funds, the investment manager shall review the asset mix once each month. Should the percentage invested in any asset class exceed the benchmark percentage for that asset class, as set out in section 5.1, plus 4%, or fall short of the benchmark percentage for that asset class minus 4%, the investment manager shall restore the asset allocation of their portion of the Funds to the percentages set out for the benchmark in section 5.1.

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

Common and preferred stocks, income trusts, debt securities that are convertible into equity securities, rights and warrants.

b. Foreign Equities:

- Common and preferred stocks, depository receipts, debt securities that are convertible into equity securities, rights, warrants; any of which may be denominated in foreign currency

c. Short-term instruments, subject to limitations in Section 7.3:

- Cash;
- Demand or term deposits;
- Short-term notes;
- Treasury Bills;
- Bankers acceptances;
- Commercial paper; and
- Investment certificates issues by banks and insurance and trust companies

d. Fixed Income instruments, subject to limitations in Section 7.3:

- Bonds, debentures and other evidence of indebtedness issued or guaranteed by Canadian federal, provincial and municipal governments and agencies, Canadian corporations, non-Canadian government and corporate issuers, issued in Canadian or non-Canadian currency;
- Private Placements;
- Debentures (convertible and non-convertible);
- Mortgages, mortgage-backed securities; and
- Any other securities with debt-like characteristics that are constituents of the DEX Universe Bond Index.

e. Pooled funds and closed-end investment companies in any or all of the above permitted investment categories are allowed.

6.2 Derivatives

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution

for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

6.3 Prohibited Transactions

Investment managers will not engage in the following unless first permitted in writing by the Benchers:

- Purchase of securities on margin;
- Loans to individuals;
- Short sales; and
- Investments in real estate, venture capital, resource properties, hedge funds and commodity funds.

6.4 Securities Lending

Securities lending is permitted only in pooled funds, and only if the investment manager has disclosed to Law Society the terms and conditions that apply to securities lending within each pooled fund.

7. Investment Restrictions

7.1 Canadian Equities

- a. No more than 8% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.

- b. At any given time, a Canadian equity portfolio is expected to be invested in no less than seven subsectors of the S&P/TSX Composite Index. The portion of a Canadian equity portfolio invested in a subsector shall not exceed the lesser of 40% or the subsector weight of the index plus 10%. At no time shall more than 25% of a Canadian equity portfolio be invested in the bank component of the financial services subsector of the index.

- c. No more than 10% of the market value of the assets of the Canadian equity portfolio may be invested in companies with a capitalization of less than \$1 billion.

- d. The 10 largest stocks by market capitalization of a Canadian equity portfolio may not account for more than 50% of the market value of the assets of that equity portfolio.

7.2 Foreign Equities

- a. No more than 8% of the market value of the assets of a foreign equity portfolio may be invested in the equity securities of any one company.

- b. No more than 30% of the market value of the assets of a foreign equity portfolio may be invested in a single country, except the United States.

- c. No more than 55% of the market value of the assets of a foreign equity portfolio may be invested in the United States.

- d. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in companies with a capitalization of less than \$2 billion.

- e. The 10 largest stocks by market capitalization may not account for more than 40% of the market value of the assets of the foreign equity portfolio.

7.3 Fixed Income, including Short-Term Securities

- a. Maximum holdings of a fixed income portfolio by credit rating are: 100% AAA ratings, 70% AA ratings, 40% A ratings, and 15% BBB ratings. Short-term and fixed income instruments rated below BBB are not permitted.

- b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for asset-backed securities of which 10% will be A rated or above and a maximum of 5% of BBB or investment grade, 15% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.
- c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poors or Moodys. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.
- d. Canadian federal government (or federal government guaranteed agencies) shall make up a minimum of 25% of the market value of the fixed income portfolio.
- e. No more than 4% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies) with an A-rating or lower.
- f. Private Placements are permitted subject to the following conditions:
 - i. The restrictions and limitations identified in the Investment Guidelines for publicly traded securities must be adhered to,
 - ii. Maximum 3% of the market value of any one private placement,
 - iii. Sufficient liquidity to ensure the sale of the private placement in a reasonable time and a reasonable price.
- g. The minimum rating for short-term securities is R1 (low).

8. Other Matters

8.1 Valuation of Investments

- a. Investments in publicly traded securities shall be valued no less frequently than monthly at their market value.

- b. Investments in pooled funds comprising of publicly traded securities shall be valued according to the unit values published at least monthly by the investment manager.

- c. If a market valuation of the investment is not readily available, then the investment manager shall determine a fair value. For each such non-traded investment, an estimate of fair value shall be provided by the investment manager quarterly. In all cases, the methodology should be applied consistently over time.

- d. The Benchers shall be provided with a qualified independent appraiser's evaluation of all such non-traded investments not less frequently than every three years, or annually where the investments represent more than 2% of the invested assets.

8.2 Conflict of Interest

- a. It is a conflict of interest for anyone with authority or control over the invested assets to have an interest in the invested assets of sufficient substance and proximity to impair their ability to render unbiased advice or to make unbiased decisions affecting the investments.

- b. Anyone who has a potential or actual conflict of interest as defined in section 8.2.a must disclose it as soon as possible to the President who, in turn, shall disclose it all to the Benchers at an appropriate time.

8.3 Proxy Voting Rights

- a. Proxy voting rights on securities held are delegated to the investment manager.
- b. The investment manager maintains a record of how voting rights of securities in each fund were exercised.

9. Monitoring

9.1 Monthly Investment Reports

Each month, each investment manager will provide an investment report containing the following information:

- a. Portfolio holdings at the end of the month;
- b. Portfolio transactions during the month;
- c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and
- d. Commentary on any material changes with the investment manager.

9.2 Quarterly Investment Reports

At the end of each calendar quarter, each investment manager will provide an investment report containing the following information:

- a. Rates of return for the portfolio and each asset class;
- b. The rate of return of the Benchmark Portfolio;
- c. Details of all asset-backed securities held;
- d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and
- e. A commentary on the markets including market outlook and management strategy.

9.3 Quarterly Compliance Reports

Each investment manager will provide the Law Society with a report at the end of each quarter. Such report will contain:

- a. Confirmation that each pooled fund managed by the investment manager complies with the Investment Guidelines established by the investment manager, and, if not, an explanation of the areas of non-compliance and the plan by the investment manager to put the pooled fund into compliance;
- b. Confirmation that each pooled fund managed by the investment manager agrees with these Investment Guidelines, and, if not, an explanation of the areas of non-compliance; and

- c. Confirmation that the Funds have been managed in accordance with these Investment Guidelines.

9.4 Meetings with the Law Society

Each investment manager will meet at least twice per year with the Law Society. At these meetings, the investment manager will:

- a. Review the rate of return achieved by the funds;
- b. Review capital market performance and expectations of future returns;
- c. Discuss any areas of non-compliance with the Investment Guidelines, and comment on the implications of such non-compliance;
- d. Provide any information concerning new developments affecting the firm and its services;
and
- e. Comment on the continued appropriateness of the Investment Guidelines.

10. Investment Guidelines Review

10.1 Review

The Investment Guidelines will be reviewed within three years of each previous review.

10.2 Material Changes

Material changes in the following areas may require a need for a revision of the Investment Guidelines:

- a. Long-term risk/return/correlation tradeoffs in capital markets;
- b. Risk tolerance of the Benchers;
- c. Legislation or regulation; and
- d. Shortcomings of the Investment Guidelines that emerge in its practical application or significant modifications that are recommended to the Benchers by the investment managers
- e. Change in objectives and/or constraints of the funds.

11. Investment Guidelines Approval

The Benchers have approved the Investment Guidelines originally at the Benchers meeting in November 2001 and updated in July 2005 and April 2009, as amended with approval of the Audit Committee in January 2002 and May 2005, and as amended with approval of the Finance Committee in April 2009.

**MARKETING PCH AMENDMENTS
RESOLUTION:**

BE IT RESOLVED to amend the Professional Conduct Handbook as follows:

1. *In chapter 4, by adding the following rule:*

Public representations

8. A lawyer must not endorse or lend his or her credibility as a lawyer to the promotion or advertisement of any product, property, investment or service for sale to the public except:
 - (a) a law practice with which the lawyer is affiliated,
 - (b) a book or other publication that the lawyer has written or assisted in writing, or
 - (c) a product designed to assist in the practice of law and with which the lawyer has experience.

2. *In chapter 8,*

(a) by adding the following rules:

23. A lawyer must not:
 - (a) comment publicly on the validity, worth or probable outcome of a legal proceeding in which the lawyer acts, or
 - (b) state publicly that the lawyer speaks on behalf of the legal profession unless the lawyer has been expressly authorized to state the official position of the legal profession.
24. Before making a public statement concerning a client's affairs, a lawyer must be satisfied that any communication is in the best interests of the client and made with the client's consent.⁴

(b) by adding the following footnote:

4. The lawyer owes a duty to the client to be qualified to represent the client effectively before the public and not to permit any personal interest or other cause to conflict with the client's interests.

3. *By rescinding chapter 14 and substituting the following:*

CHAPTER 14

MARKETING OF LEGAL SERVICES

Application of Chapter

1. This Chapter applies to any marketing activity undertaken or authorized by a lawyer in which he or she is identified as a lawyer, mediator or arbitrator.

Definitions

2. In this Chapter:

“**marketing activity**” includes any publication or communication in the nature of an advertisement, promotional activity or material, letterhead, business card, listing in a directory, public appearance or any other means by which legal services are promoted or clients are solicited; and

“**lawyer**” includes a member of the Law Society, and a person enrolled in the Law Society Admission Program.

Content and format of marketing activities

4. Any marketing activity undertaken or authorized by a lawyer must not be:
- (a) false,
 - (b) inaccurate,
 - (c) unverifiable,
 - (d) reasonably capable of misleading the recipient or intended recipient, or
 - (e) contrary to the best interests of the public.

Examples

5. For example, a marketing activity violates Rule 4 if it:
- (a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,
 - (b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results which the lawyer can achieve, or
 - (c) otherwise brings the administration of justice into disrepute.

Former firm of current judge or master

- 7.2 A lawyer must not state on any letterhead or business card or in any other marketing activity the name of a judge or master as being a predecessor or former member of the lawyer's firm.

Notary Public

8. A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:
- (a) uses the term "Notary," "Notary Public" or any similar designation, or
 - (b) in any other way represents to the public that the lawyer is a notary public,
- must also indicate in the same publication or marketing activity the lawyer's status as a lawyer.

Designation

10. A lawyer must not list a person not entitled to practise law in British Columbia on any letterhead or in any other marketing activity without making it clear in the marketing activity that the person is not entitled to practise law in British Columbia.

In particular, a person who fits one or more of the following descriptions must not be listed without an appropriate indication of the person's status:

- (a) a retired member,
- (a.1) a non-practising member,
- (b) a deceased member,
- (c) an articled student,
- (d) a legal assistant,
- (e) a patent agent, if registered as such under the *Patent Act*,
- (f) a trademark agent, if registered as such under the *Trade-marks Act*, or
- (g) a practitioner of foreign law, if that person holds a valid permit issued under Law Society Rule 2-18.

Preferred areas of practice

16. A lawyer may state in any marketing activity a preference for practice in any one or more fields of law if the lawyer regularly practises in each field of law in respect of which the lawyer wishes to state a preference.

Specialization

18. Unless otherwise authorized by the *Legal Profession Act*, the Rules, or this *Handbook* or by the Benchers, a lawyer must:
 - (a) not use the title “specialist” or any similar designation suggesting a recognized special status or accreditation in any marketing activity, and
 - (b) take all reasonable steps to discourage use, in relation to the lawyer by another person, of the title “specialist” or any similar designation suggesting a recognized special status or accreditation in any marketing activity.

Real estate sales

22. When engaged in marketing of real property for sale or lease, a lawyer must include in any marketing activity:
 - (a) the name of the lawyer or the lawyer’s firm, and
 - (b) if a telephone number is used, only the telephone number of the lawyer or the lawyer’s firm.

4. *By rescinding Appendix 7.*

**MARKETING RULES AMENDMENTS
RESOLUTION:**

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

1. In Rule 2-54, by adding the following subrules:

- (4) A lawyer who has served as a judge or master in any court must not use any judicial title or otherwise allude to the lawyer's former status in any marketing activity.
- (5) Subrule (4) does not preclude a lawyer who has served as a judge or master from referring to the lawyer's former status in
 - (a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,
 - (b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,
 - (c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or
 - (d) informal conversation or correspondence.
- (6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or master.

2. In Rule 3-20, by adding the following subrule:

- (3) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT