

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

**MEETING:** Benchers

**DATE:** Friday, July 9, 2010

**PRESENT:**

Glen Ridgway, QC, President	Benjimen Meisner
Gavin Hume, QC, 1 <sup>st</sup> Vice-President	David Mossop, QC
Bruce LeRose, QC, 2 <sup>nd</sup> Vice-President	Suzette Narbonne
Haydn Acheson	Thelma O'Grady
Satwinder Bains	Lee Ongman
Kathryn Berge, QC	Gregory Petrisor
Joost Blom, QC	David Renwick, QC
Patricia Bond	Claude Richmond
Robert Brun, QC	Alan Ross
E. David Crossin, QC	Catherine Sas, QC
Tom Fellhauer	Richard Stewart, QC
Leon Getz, QC	Herman Van Ommen
Carol Hickman	Art Vertlieb, QC
Stacy Kuiack	Kenneth Walker
Peter Lloyd, FCA	

**ABSENT:**

Rita Andreone	Jan Lindsay, QC
David Loukidelis, Deputy Attorney General of BC	

**STAFF PRESENT:**

Tim McGee	Michael Lucas
Deborah Armour	Bill McIntosh
Andrea Brownstone	Jeanette McPhee
Stuart Cameron	Doug Munro
Robyn Crisanti	Lesley Pritchard
Lance Cooke	Susanna Tam
Charlotte Ensminger	Alan Treleaven
Su Forbes, QC	Adam Whitcombe
Jeffrey Hoskins, QC	

**GUESTS:**

Dean Chris Axworthy, Faculty of Law, Thompson Rivers University  
Johanne Blenkin, Executive Director, BCCLS  
Anne Chopra, Equity Ombudsperson  
Katherine Corrick, Director, Policy & Tribunals, Law Society of Upper Canada  
Rob Seto, Director of Programs, CLEBC  
Jamie Maclaren, Executive Director, Access Pro Bono Law  
Stephen McPhee, Vice-President, CBABC  
Caroline Nevin, Executive Director, CBABC

## **BENCHER'S OATH OF OFFICE**

Mr. Ridgway welcomed appointed Benchers Satwinder Bains, Benjimen Meisner and Claude Richmond to their first Benchers meeting and administered the Bencher the Bencher's oath of office to each of them, pursuant to Rule1-1.2.

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on June 12, 2010 were approved as circulated.

## **REGULAR AGENDA – for Discussion and Decision**

### **2. President's Report**

Mr. Ridgway referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President during the period of June 13 to July 7, 2010 (Appendix 1 to these minutes).

### **3. CEO's Report**

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 2 to these minutes), including the following matters:

- a. 2009 – 2011 Strategic Plan – implementation update
- b. 2010 Core Processes Review – implementation update
- c. Financial Report – Operating Results to May 31, 2010
- d. 2009 Human Resources Strategic Plan - implementation update
- e. Audit Committee Review of Key Performance Measures – progress report
- f. Continuing Professional Development Program – 2010 progress report
- g. New Senior Management Hire – Kate Jenkins, LIF Claims Manager, effective September 7, 2010

### **4. Report on Outstanding Hearing and Review Reports**

The Benchers received and reviewed a report on outstanding hearing decisions.

### **5. Presentation of the 2010 Law Society Scholarship to Jeffrey Yuen**

Mr. Ridgway congratulated Mr. Jeffrey Yuen on being named by the Benchers as the recipient of the 2010 Law Society Scholarship and presented him with a Law Society cheque for \$12,000.

**STRATEGIC PLANNING AND PRIORITIES MATTERS – for Discussion and/or Decision****6. Discipline Guidelines Task Force: Interim Report**

Task Force Chair Herman Van Ommen briefed the Benchers. He noted that the policy recommendations set out in the task force's interim report (page 6000 of the meeting materials) are based on four main ideas:

- No presumption of abeyance
  - the Law Society will do its job in administering its discipline process
- Investigate as far as possible before granting any abeyance
  - make any abeyance decision at the latest possible time in the discipline process
- No abeyance until interim protections are in place
- Abeyances must be justified
  - there must be a reasonable prospect that
    - proceeding with the Law Society's discipline process will cause prejudice
    - abeyance will produce valuable information via parallel proceedings in other regimes.

Mr. Van Ommen noted the views of task force members John Hunter, QC and Anna Fung, QC that the Discipline Committee's discretion should extend to fine-tuning the proposed abeyance guidelines, but not to changing the core principles of the proposed abeyance policy.

Mr. Van Ommen moved (seconded by Mr. Kuiack) that the abeyance policy set out at page 6010 of the meeting materials (*Abeyance Policy – General Principles*) be adopted by the Benchers and then sent to the Discipline Committee for review.

In the ensuing discussion a number of issues were raised, including:

- whether or how the Discipline Committee's broad direction and narrow discretion under the proposed abeyance policy can or should be reconciled with the Discipline Committee's broad discretion under the abeyance guidelines set out at page 6012 of the meeting materials (*Guidelines for Abeyance Decisions*)
- whether the abeyance policy defines the parameters within which the Discipline Committee may exercise its discretion in applying the abeyance guidelines
- whether the interim report should be sent back to the task force and to the Discipline Committee for review of the language of the abeyance guidelines, before the abeyance guidelines are submitted to the Benchers for approval

The motion was carried.

The Benchers confirmed that while they had adopted the abeyance policy in principle, the Discipline Committee will still be welcome to return to the Benchers table with requests for the policy's refinement.

Mr. LeRose moved (seconded by Ms. Berge) that the Interim Report of the Discipline Guidelines Task Force be referred back to the task force and to the Discipline Committee for consideration of the language of the abeyance guidelines set out at page 6012 of the meeting materials (*Guidelines for Abeyance Decisions*).

The motion was carried.

Mr. Van Ommen thanked Mr. Cooke for his valuable service he has performed for the task force to date.

## **REGULAR AGENDA – Other Matters for Discussion and/or Decision**

### **7. Separation of Functions Task Force: Report and Recommendations**

Task Force Chair Ken Walker briefed the Benchers. Mr. Walker reviewed the task force's research, and noted [that](#) notwithstanding judicial authority for the current model of adjudication, the public could well perceive an apparent conflict between the Benchers' adjudicative and investigative roles. Mr. Walker stated that the task force believes that in the future a complete separation of the two roles would be advisable (i.e. no current Benchers will serve on hearing panels). He reported that at this stage the task force is recommending as 'the easiest first step' the creation of a pool of individuals who can be appointed to hearing panels that includes:

- sitting Benchers (the "Benchers pool")
- life Benchers, former lawyer Benchers and other lawyers, subject to meeting criteria to be established by the Benchers (the "lawyer pool")
- life appointed Benchers, former appointed Benchers, and other non-lawyer non-Benchers, also subject to meeting criteria to be established by the Benchers (the "public pool")

as outlined at pages 7007-7008 of the meeting materials. Mr. Walker informed the Benchers that the task force views an incremental approach as advisable, and recommends a review period of at least three years for monitoring the effectiveness of its recommendations, should the Benchers approve them.

Mr. Walker moved (seconded by Mr. Acheson) that the Benchers:

- adopt the Separation of Functions Task Force recommendations as set out at pages 7008-7009 of the meeting materials (Appendix 3 to these minutes) for implementation for a trial period of three years
- refer the Separation of Functions Task Force recommendations to the Act & Rules Subcommittee for consideration of the need for Rule changes to give their implementation proper effect

In the ensuing discussion a number of issues were raised, including:

- the importance of maintaining enough administrative flexibility during the trial period to ensure the timely population and convening of hearing panels
- whether, when and how to address the policy and budget issues of payment of honoraria to non-Bencher members of hearing panels
  - it was suggested that the inclusion of appointed Benchers and other non-lawyers on hearing panels would entail cost implications, which should be tracked during the trial period and assessed thereafter

The motion was carried.

Mr. Walker acknowledged the valuable service and support provided by Mr. Lucas to the Separation of Functions Task Force, and noted that with the adoption of its recommendations by the Benchers, the task force's mandate has been discharged.

Mr. Walker moved (seconded by Mr. Acheson) that the Benchers terminate the Separation of Functions Task Force.

The motion was carried.

#### **8. A & R Subcommittee: Proposed Legislative Amendments (Part 2)**

Subcommittee Chair Leon Getz, QC referred to a memorandum prepared by Mr. Hoskins on behalf of the Subcommittee for a review of proposed amendments to the following provisions of the *Legal Profession Act* (page 8003-8033 of the meeting materials, Appendix 4 to these minutes):

- section 3 — Public interest paramount
- section 12 — Rules requiring membership approval
- section 13 — Implementing resolutions of general meeting
- section 18.1 (proposed) — Regulation of law firms
- section 26 — Complaints from the public (powers to aid investigations)
- section 31 — Special compensation fund
- section 36 — Discipline rules
- section 38 — Discipline hearings
- section 38.1 (proposed) — Resignation of membership
- section 43 — Right to counsel
- section 44 — Witnesses
- section 47 — Review on the record (review board)
- section 48 — Appeal
- section 87 — Certain matters privileged
- section 88 — Non-disclosure of privileged and confidential information
- section 89 — Confidential documents

Mr. Crossin and Mr. Petrisor requested that section 3 be dealt with separately.

Mr. Getz moved (seconded by Ms. Berge) that the Benchers approve all of the proposed amendments set out in Appendix 4 (except section 3), for inclusion with the Law Society's requests to the provincial government for legislative changes in 2011 that were approved by the Benchers at their June meeting.

The motion was carried.

The Benchers then discussed section 3 of the Act, which presently states:

**(3) It is the object and duty of the society**

- (a) to uphold and protect the public interest in the administration of justice by
  - (i) preserving and protecting the rights and freedoms of all persons,
  - (ii) ensuring the independence, integrity and honour of its members, and
  - (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and
- (b) subject to paragraph (a),
  - (i) to regulate the practice of law, and
  - (ii) to uphold and protect the interests of its members.

The nature and purpose of the proposed amendment of section 3 is explained at pages 8002-8003 of the meeting materials:

**NATURE OF CHANGE PROPOSED**

Eliminate the two-tiered nature of the Law Society's statutory mandate by eliminating the express object of furthering the interests of lawyer and making the regulation of the legal profession a full partner with the primary objects.

**WHY CHANGE IS NEEDED**

Section 3 sets out the objects and duties of the Law Society. There has been much discussion over the last years about the primary and secondary mandate of the Law Society. The primary mandate of the Society is to protect the public interest. Subject to that primary mandate, the Law Society is to regulate the practice of law and uphold and protect the interest of its members.

Insofar as the Law Society is making significant efforts to distinguish itself as the body responsible for looking after the public interest and regulation of the profession, leaving to the Canadian Bar Association the responsibility for representing the interest of members in the profession, it might make some sense to move the duty to regulate the practice of law into the primary mandate of the Society, and to remove altogether the requirement to uphold and protect the interest of members. This may permit the Law Society to more clearly distinguish its public interest duties from any suggestion of it being a "member interest" body. The statutes of other Canadian law societies, with the exception of New Brunswick, do not have the "dual purpose" mandate in the legislation.

Removing the mandate to uphold and protect the interest of the members would not necessarily mean that the Law Society could never act in the interest of its members. Currently, it can only do so if the interests of its members coincide with the public interest, and there is no reason to suggest that would change by removing that provision from the Act.

That would provide the opportunity to make the regulation of the practice of law, which is now relegated to secondary status in the section, to full partnership as a primary object along with preserving rights, ensuring independence and integrity and establishing standards.

This is what a revised section 3 might look like, with the member interest removed and the regulation objective elevated to a primary position and expanded to include "the provision of legal services" as well as "the practice of law".

**Public interest paramount****(3) It is the object and duty of the society to uphold and protect the public interest in the administration of justice by**

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission, and
- (d) regulating the practice of law.

Benchers expressed a range of views for and against the proposed amendment, including:

- for the amendment
  - the “uphold and protect the interests of members” language in subsection ( b) fundamentally conflicts with the duty to “uphold and protect the public interest in the administration of justice” in subsection (a), and risks the loss of public and political confidence in the Law Society’s ability and resolve regulate the profession
  - the amendment would bolster public confidence and would not hinder the Society’s ability to support good practice by the profession, because supporting good professional practice also supports the public interest
  - New Brunswick is the only other provincial law society with a “protecting members’ interest” in its statute
  - political appetite for public oversight is already evident in other professions, and the current language of subsection (b) will whet that appetite
  - the unfortunate language of subsection (b) is the issue, not the provision’s intention or effect
    - replacing “uphold and protect” with language along the lines of “assist” should be considered
- against the amendment
  - subsection (b) as presently worded is important to many members, giving them confidence that the Law Society is their ally in their daily struggle
  - subsection (b) as presently worded contains no evil or mischief that needs to be addressed
  - the Law Society needs the confidence of the Bar to be able carry out its mandate
  - the duality of section 3’s present wording supports effective self-regulation by highlighting the potential conflict between public and membership interest
    - the paramountcy of the public interest is already evident

- protection of members' interests is not inconsistent with protection of the public interest

Ms. Hickman moved (seconded by Mr. Acheson) that the Executive Committee be requested to consider the language of subsection (b), with the view to replacing "uphold and protect" with language that conveys the sense of "assist".

The motion was carried.

## 9. Finance Committee: Approval of 2011 Fees

Finance Committee Chair Gavin Hume, QC referred the Benchers to the updated 2011 Budget and Fee presentation (Tab 9 in the meeting materials). Mr. Hume advised that updated figures are displayed in red, indicating adjustments made following the Finance Committee's review of YTD 2010 financial results and economic conditions.

Mr. Hume reviewed management's budgeting process and the Finance Committee's deliberations leading to the proposed 2011 fee, which includes:

- 6.1% increase in the overall mandatory fees
- \$82 increase in the Law Society portion of the General Fund Fee
  - the first increase in two years for the Law Society portion of the General Fund Fee
  - mainly relating to the Benchers' decision made in November 2009 to fund Forensic Accounting with the practice fee starting January 2010
- \$150 increase in the Lawyers Insurance Fund assessment to \$1,750
  - reflecting the continuing exposure of the profession to claims arising from the economic downturn
- \$45 decrease in the Special Compensation Fund assessment to \$5
  - reflecting the assumption of defalcation coverage under Part B of the insurance program and the resolution of almost all the outstanding claims arising prior to May 2004
- \$14 increase in the Courthouse Libraries BC levy to \$180
  - the first increase in two years, reflecting inflation on operating costs and static Law Foundation funding (driven by the current economic downturn)

Mr. Hume moved (seconded by Mr. LeRose) the adoption of the following practice fee resolution, for presentation to the membership at the Law Society's 2010 annual general meeting:

### WHEREAS:

- A. the Benchers have determined that the amount of \$1,399.04 per practising lawyer is required to maintain and operate the programs of the Law Society and to otherwise discharge its statutory mandate during the year 2011; and
- B. the Benchers have determined that it is appropriate to advance the interests of the Law Society by paying per practising lawyer the amounts to the organizations indicated below:



The Federation of Law Societies of Canada	\$20.00
The Canadian Legal Information Institute (CanLII)	\$32.25
The Law Foundation of BC (pro bono contribution)	\$14.35
Courthouse Libraries BC	\$180.00
Lawyers Assistance Program	\$56.00
Vancouver Bar Association ( <i>The Advocate</i> )	\$27.50

BE IT RESOLVED THAT, commencing January 1, 2011, the practice fee be set at \$1,729.14 pursuant to s. 23(1)(a) of the *Legal Profession Act*.

The motion was carried.

Mr. Hume moved (seconded by Mr. Kuiack) the adoption of the following insurance fee resolution:

***Be it resolved that:***

- the insurance fee for 2011 pursuant to section 30(3) of the *Legal Profession Act* be fixed at \$1,750
- the part-time insurance fee for 2011 pursuant to Rule 3-22(2) be fixed at \$800
- the insurance surcharge for 2011 pursuant to Rule 3-26(2) be fixed at \$1,000

The motion was carried.

Mr. Hume moved (seconded by Mr. Walker) that the Benchers approve the following Special Compensation Fund assessment:

***Be it resolved that:***

- the Special Compensation Fund Assessment for 2011 be set at \$5.00

The motion was carried.

## **10. 2010 Advisory Committees: Mid-year Reports**

Reports on the work of the Law Society's Advisory Committees through 2010 to date were provided by: David Mossop, QC, Chair of the Access to Legal Services Advisory Committee; Robert Brun, QC, Chair of Equity and Diversity Advisory Committee; Herman Van Ommen, member of the Independence and Self-Governance Advisory Committee (on behalf of 2010 Chair Jan Lindsay, QC); and Thelma O'Grady, Chair of the Lawyer Education Advisory Committee.

## ***IN CAMERA SESSION***

The Benchers discussed other matters *in camera*.

WKM  
2010-07-29

## **APPENDIX 1**

### **PRESIDENT'S REPORT**

**July, 2010**

This is the President's Report spanning the period from June 13, 2010, to July 7, 2010. This is a very short period of time, and accordingly, I do not have much to say.

Our retreat in fabulous Parksville ended on June 13. I am hopeful that everyone had a good time in Parksville and will visit Vancouver Island often. The Beach Club was an enjoyable place to stay; however, the Beach Club will not be as popular in our very near future decision-making.

After leaving Parksville, I raced to Victoria, as it was Naval Week. The Royal Canadian Navy, or whatever it's called now, is 100 years old, and they have had quite substantial celebrations on the southern tip of Vancouver Island. Similar celebrations were held last week in Halifax, presided over by the Queen. A similar event was held in Victoria, presided over by the USS Ronald Reagan, almost as good as the namesake, which is almost as good as the Queen. Unfortunately, the Reagan had left by the time I arrived, putting a real damper on the rest of my day, month and year.

On June 15 I participated in a telephone meeting with Mr. McGee, Hayden Acheson, and Peter Lloyd, wherein we discussed appointed Benchers and the Office that makes such appointments on behalf of the Provincial Government. It has always been our policy to remain hands off with respect to the appointment of such individuals and with respect to their re-appointment, but I believe it is necessary that we provide materials to the Resourcing Board so that they are knowledgeable as to the scope of the Bencher function.

That evening I journeyed to Vancouver to participate the following day in the Law Society's presentation at UBC for Aboriginal students. It was a function honouring, in part, Judge Scow, the first Aboriginal lawyer and Provincial Court Judge. It provided a networking event for young aboriginal lawyers and law students, and I was very pleased with the turnout. I was also pleased with the turnout and support shown by Chief Justice Finch, Chief Justice Bauman, and Chief Judge Crabtree. I was a little disappointed in the number of Benchers who attended.

I think it was a very useful first step in our process to ensure that the number of Aboriginal lawyers in our province increases. We have a difficult history in this regard.

In 1919 the Benchers of the day passed a resolution prohibiting our Indigenous people and other "ethnic" groups from membership.

On June 17 I participated in the CBA Golf Tournament, which was a fundraiser for scholarships for law students at UBC and UVIC. The following day, June 18, I had my usual weekly meeting with Mr. McGee and then attended the Lawyers Assistance Program lunch in Vancouver. The Lawyers Assistance Program is one that is substantially funded by the Law Society and is a useful service for our members.

On June 24 I again attended in Vancouver for my weekly meeting with Mr. McGee, the Annual Meeting of the Courthouse Library Society and, finally, the Executive Committee meeting.

I did absolutely nothing for the balance of June and early July.

In addition to the above, I have been participating (but don't check my attendance records) in the Steering Committee for the BC Branch CBA commission on legal aid.

## **APPENDIX 1**

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Stephen McPhee, Vice-President until August of 2010, then President, has been carrying the ball in terms of the public comment on the commission. Presumably, Len Doust, who is the commissioner, will assume that function once the actual commission is out on the road and functioning. Former Bencher, now Life Bencher, Pat Kelly, is on the Education Committee established as part of the commission's function.

If you have any questions, don't be afraid to ask.

APPENDIX 2



***Chief Executive Officer's Monthly Report***

A Report to the Benchers by

Timothy E. McGee

July 9, 2010

### Introduction

The July Benchers meeting is the mid-year mark in the Benchers 2010 meeting calendar and I would like to take this opportunity to update you on progress and developments in a number of key areas: 2009 – 2011 Strategic Plan, Core Processes Review, Financial Results, Human Resources Strategic Plan, Key Performance Measures, and the Continuing Professional Development program.

#### 1. 2009 – 2011 Strategic Plan

We are now at the halfway mark of the Law Society's three year 2009 – 2011 Strategic Plan.

Implementation of the plan is progressing well and on schedule. There are a total of 20 implementation initiatives divided among the 3 overarching strategic goals in the plan. Of those 20 initiatives, 8 have been completed, 9 are work in progress and the commencement of work on 3 is pending.

A detailed progress report and commentary on the Strategic Plan is attached to this report as Appendix 1. Adam Whitcombe, Chief Information and Planning Officer and Michael Lucas, Manager of Policy and Legal Services, will be available to answer any questions regarding the progress report.

In the fall, the Benchers will undertake their annual review of the Strategic Plan. The annual review has two objectives: to confirm that the priorities set out in the current plan continue to have the support of the Benchers and, secondly, to review the annual reports of the four Advisory Committees to identify and assess any emerging priorities for the current or next iteration of the Strategic Plan, starting in 2012.

#### 2. Core Processes Review

Our most important operational initiative for 2010 is our Core Processes Review project led by Kensi Gounden. The Core Processes Review is a comprehensive operational review of each of our core regulatory areas. The purpose is to assess how our processes, resources, policies and budget choices support or hinder our efforts to fulfill our public interest mandate.

Because we need to ensure that we are being as effective and as efficient as possible, every aspect of how we do our work has been broken down into its various steps so that it can be viewed objectively, analyzed and improved. This approach often reveals opportunities to reduce duplication of effort, optimize interactions with other departments and replicate good practices in other areas.

Kensi will be presenting a midyear progress report at the meeting and he will be available to answer any questions.

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### **3. Financial Report – Operating Results to May 31, 2010**

Highlights of the financial results for the year to May 31, 2010 are summarized in Appendix 2 to this report. Normally we present results on a quarterly basis but the third quarter results to June 30 are not yet available and we wanted to make sure the Benchers had the most current information available before the summer break. As you will see, the Law Society continues to be in a solid financial position. Jeanette McPhee, our CFO, and I will be available to answer any questions you may have at the meeting.

### **4. Human Resources Strategic Plan - Update**

In 2009 management introduced a Human Resources strategic plan with two primary goals: first, to ensure that the Law Society is an Employer of Choice and second, to develop a comprehensive online Human Resources Information System.

Our current priority as an Employer of Choice is the implementation of a Leadership Program for management and a Skills Development program for employees. In the past two years we have made a significant investment in these programs utilizing the assistance of the Kwela organization and involving almost every employee in some fashion. For example, all managers have completed individual 360° assessments and each has created a personal development plan highlighting strengths and a list of development goals for improvement. One-on-one coaching sessions have included all managers working with Kwela and peer coaching groups were established to provide peer feedback and to generate ideas. In addition, five workshops have been held in the following areas: Coaching and Developing People, Influencing Skills, Conflict Resolution, Teams and Teamwork, and Leading Change. The overall level of participation in the workshops has been approximately 75% and self evaluation surveys indicate that management competencies are improving.

At the start of 2010 we conducted a skills development survey that gave staff an opportunity to help shape their learning program. The response rate to the survey was excellent and has allowed us to better assess the needs and requirements for the program. Seminars and workshops will continue to be offered in 2010 and into 2011 in such areas as Writing for Administrative Professionals, Personal Productivity, Change Management, Leadership for Administrative Professionals and Dealing with Difficult Interactions.

Finally, our Human Resources team is working with our Information Services/ Information Technology department to continue the build-out of our Human Resource Information Services site. Good progress is being made. When completed all staff will be able to access all their personal Human Resources information at one interactive and secure intranet location.

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The goal in pursuing these strategic initiatives and in making these investments in time and resources is to build at the Law Society a strong culture of leadership and a continuous learning environment.

### **5. Audit Committee Process re: Key Performance Measures**

The Audit Committee has been delegated the authority by the Benchers to work with management to monitor and oversee the continuing development of the Key Performance Measures (KPMs) and to recommend modifications and changes as may be desirable. The Audit Committee under the Chair of Rita Andreone met in June to begin this review and assessment process. This work of the Committee will continue into the fall and will incorporate the results of the Core Processes Review as that work is finalized.

### **6. Continuing Professional Development Program – Update**

I would like to provide a brief update on the statistics for our CPD program as at June 30, 2010. Out of 10,267 lawyers required to complete CPD in 2010:

1,511	completed the required 12 hours, including required ethics;
450	completed the required 12 hours but did not report on ethics;
3,216	reported some hours, but fewer than the required 12; and
5,090	reported 0 hours.

While there is still a significant portion of the membership who have yet to record any hours, compared to last year there are significantly more members who have completed the requirement by this date and significantly fewer lawyers who are reporting no hours of CPD. The first email reminder of the year will be sent to all lawyers in mid July.

### **7. New Senior Management Hire**

I am delighted to report that after an extensive search Su Forbes, Director of the Lawyers Insurance Fund (LIF) has hired Kate Jenkins to fill the position of Claims Manager for LIF. Kate obtained her LLB from the University of Victoria before articling with the firm of Lindsay Kenney. Following her call to the Bar, Kate practiced with Gary Somers where she ran her own litigation practice. In 2006, she joined Manulife Financial as counsel where she was responsible for significant insurance claims arising from Manulife's business in BC and Alberta. Most recently, Kate has worked as Litigation Manager with Intrawest where she supervised more than 200 litigation files from across North America. Kate brings a practical approach and solid experience in civil litigation and insurance

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claims management to the position and we're very much looking forward to her joining us. Kate's first day in the office will be September 7th.

Timothy E. McGee  
Chief Executive Officer





2009 – 2011 Strategic Plan  
Progress Report – July 2010

**For: The Benchers**

**Date: July 9, 2009**

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**Purpose of Report:** Information  
**Prepared on behalf of:** Executive Committee

## INTRODUCTION

The principal aim of the Law Society is a public well-served by a competent, honourable and independent legal profession. The Law Society's mandate described in s. 3 of the *Legal Profession Act* is to uphold and protect the public interest in the administration of justice.

In order to develop strategies to discharge the Law Society's mission and mandate, the Benchers have created a process to plan for and prioritize strategic policy development. This process was created to enhance the ability of the Benchers to focus on policy development that would best ensure proper fulfillment of the mandate of the Society, and to optimize staff resources in the development of those policies and strategies.

Through this process, the Benchers have identified three principal goals, and a number of policy initiatives that will achieve those goals. In identifying these goals and strategies, the Benchers have been mindful not only of what the role of the Law Society is in relation to its mandate, but also of what may be achievable within that mandate.

This Strategic Plan is aimed at achieving concrete results that will improve the public interest in the administration of justice. The process has tried to avoid simply identifying issues on which the only action would be to make general comments on matters within the mandate of the Society.

The strategic policy setting process is also to be distinguished from the operation of the Law Society's core regulatory programs, such as discipline, credentials, and practice standards. These programs are fundamental to fulfilling the Law Society's mandate and will always be priorities for the Law Society. The Benchers have established a set of Key Performance Measures against which the performance of the core regulatory programs will continue to be measured on an annual basis.

## PRINCIPAL GOALS

The three principal goals of the 2009 - 2011 Strategic Plan are:

1. Enhancing access to legal services.
2. Enhancing public confidence in the legal profession through appropriate and effective regulation of legal professionals.
3. Effective education, both of legal professionals and those wishing to become legal professionals, and of the public.

## PROGRESS REPORT AS OF July 2010

GOAL 1: Enhancing access to legal services.

### Strategy 1-1

Increase the public's access to legal services by developing a new regulatory paradigm that may broaden the range of persons permitted to provide certain legal services.

#### Initiative 1-1

The Delivery of Legal Services Task Force will work in 2010 toward making recommendations about whether and how the delivery of competent legal services might be improved in a number of ways.

#### *Status – July 2010*

*The Task Force gave a report at the June 2010 Benchers' Retreat in Parksville that focused on increasing the availability of effective and affordable legal services through the use of supervised paralegals who would be allowed expanded responsibilities. Staff are identifying, from the discussion at the Retreat, what recommendations can be contained in a final report from the Task Force, which will be expected in the early fall.*

### Strategy 1-2

Find ways to reduce the impact of financial barriers to accessing justice.

### Initiative 1-2

The Access to Legal Services Advisory Committee is currently analysing issues relating to costs in the legal system. The deliberations of that Committee and their research and findings will be passed on to the Delivery of Legal Services Task Force for consideration when addressing the substantive mandate of that Task Force.

#### *Status – July 2010*

*The Access to Legal Services Advisory Committee has been studying issues relating to costs in the legal system, through the lens of legal aid, over the first half of 2010, and reported on this analysis in its mid-year report. Given the time lines of the Delivery of Legal Services Task Force's efforts to report for the June Benchers Retreat, it has not been feasible to pass the Committee's analysis on to the Task Force as contemplated in the Strategic Plan. However, strategies identified by the Committee are before the Benchers, who may wish to consider whether, and if so how, to incorporate them into the Strategic Plan.*

### Strategy 1-3

Improve the retention rate of lawyers in the legal profession including, in particular, Aboriginal lawyers.

#### Initiative 1-3a

Preparing a business case for the retention of female lawyers in private practice.

#### *Status – July 2010*

*The business case was presented to the Benchers for consideration at the July 2009 Benchers meeting. The Task Force also presented its final report to the Benchers at that meeting, outlining a series of recommendations aimed at improving the retention of women in the profession that may be considered for development by the Law Society. Some of these recommendations (Recommendations 1, 2 and 3) contemplated early implementation, and some (Recommendations 4 and 5) contemplated the creation of a body to consider the cost and feasibility of implementation. Staff has been asked to follow up regarding the feasibility of implementing Recommendations 4 and 5 of the Report. Staff is currently focused on exploring the feasibility of developing a "Think Tank" for British Columbia*

*Since the Report has been released, the Law Society has undertaken a comprehensive communications plan to publicize the Report, which has taken up much of the fall.*

#### Initiative 1-3b

Developing a plan to deal with the aging of the legal profession and the potential regulatory and access to legal services issues that might result.

#### *Status – July 2010*

*This initiative remains with the Equity and Diversity Committee. Census data related to aging of the profession is currently being gathered and analyzed. The Advisory Committee expects to make recommendations for next steps after this data is reviewed.*

#### Initiative 1-3c

Prepare a business case for enhancing diversity in the legal profession and retaining Aboriginal lawyers in particular.

The Equity and Diversity Advisory Committee will review recent research regarding retention of lawyers from diverse communities, and Aboriginal lawyers in particular, and develop a business case for diversity and the retention of Aboriginal lawyers in British Columbia.

#### *Status – July 2010*

*The Advisory Committee is currently reviewing research related to retention of lawyers and is awaiting results from the demographic data-gathering project, which will serve as the foundation of the business case for enhancing diversity and retaining Aboriginal lawyers.*

#### Strategy 1-4

Developing in collaboration with interested parties a research project, through a suitable agency, of an economic analysis of the justice system in British Columbia in order to better understand in empirical terms the economic benefit of funding justice and the systems that support the rule of law.

#### *Status – July 2010*

*The Sauder School of Business at the University of British Columbia has been approached in connection with this initiative and has expressed an interest in it. The School is currently trying to identify a suitable professor to supervise the project but has as of yet been unable to do so. The Committee will be pursuing this matter with the School shortly in the hope*

*of finalizing arrangements. If a suitable professor cannot be identified, the Committee will be required to find another interested organization.*

GOAL 2: Enhancing public confidence in the legal profession through appropriate and effective regulation of legal professionals.

Strategy 2-1

Effectively regulate those lawyers who have received or who receive a significant number of complaints, but which complaints, individually, are not sufficiently serious to result in formal disciplinary action or referral to the Practice Standards Committee.

Initiative 2-1

A staff group has been created to examine a series of projects to reduce the number of complaints that complaints-prone lawyers receive.

*Status – July 2010*

*The staff group has identified and is currently working on several projects aimed at reducing the number of complaints that complaint-prone lawyers receive.*

*The Benchers considered “ungovernability” and referred to the Act and Rules Subcommittee consideration and development of rules and possible Professional Conduct Handbook amendments. Rule 4-35(5) has been passed by the Benchers, but changes to the Handbook have not yet been approved and remain with the Subcommittee.*

*The staff group has underway the early intervention project in conjunction with the Discipline Committee. A Report on that project has been made to the Benchers at the July 9, 2010 meeting. The complaint rates of the lawyers in the groups will be compared periodically with the complaint rates of a historically comparable group to determine whether the interventions had any impact on the target groups.*

*The staff group is also working on developing criteria for referral of lawyers to the Discipline Committee on the basis of their complaints history and referring lawyers who are Practice Standards graduates to the Discipline Committee if the lawyer repeats conduct of concern. The staff group has identified several other projects for consideration when resources allow and several other projects that do not look promising although sufficient consideration has not yet been given to rule them out definitively.*

## Strategy 2-2

Assess possible roles of an oversight or review board for Law Society core functions.

## Initiative 2-2

Is there a method to enhance the public confidence in the Law Society's decision making processes that does not run contrary to the fundamental constitutional principle of, and public right to, lawyer independence?

*Status – July 2010*

*The Benchers considered this subject at the 2009 retreat in Whistler. Guests at the retreat presented the nature of oversight as it exists in some other jurisdictions, and the Benchers heard from the Ombudsman's office in British Columbia about the Ombudsman's oversight function of regulatory bodies in this province. The Executive Committee discussed this topic at its September 2009 meeting and determined that the Law Society would best focus on regulatory oversight models that incorporated voluntary external review or review incorporating the Ombudsman's processes should be developed further. Staff presented a further report to the Executive Committee in May 2010, and were instructed to include a policy analysis of a third model similar to the organizational audit or peer review process the accounting profession utilizes to ensure best practices. Staff expects to have a final report available for the Benchers by the fall of 2010.*

## Strategy 2-3

Enhance public confidence in hearing panels by examining the separation of adjudicative and investigative functions of the Law Society.

## Initiative 2-3

The Benchers have created a Task Force to develop models by which the separation of the adjudicative and investigative functions of the Law Society could be accomplished and to make recommendations about which model to adopt.

*Status – July 2010*

*The Task Force Examining the Separation of Adjudicative and Investigative Functions of the Benchers will present its report and recommendations at the July 9, 2010 Benchers Meeting.*



## Strategy 2-4

Effective data gathering to inform equity and diversity issues.

## Initiative 2-4

Through the Equity and Diversity Advisory Committee, the Law Society will develop strategies for gathering appropriate demographic data on the profession and assess such data to inform the development of initiatives to promote equity and diversity.

*Status – July 2010*

*The Equity and Diversity Advisory Committee is currently working with a statistics analyst who is examining 2006 Census data to develop an accurate demographic picture of the profession in BC, particularly regarding the representation of Aboriginal lawyers. Census data regarding the demographics of the profession is currently being gathered and analyzed, particularly as it relates to the participation of Aboriginal lawyers. The Advisory Committee has prioritized completion of this initiative because it will serve as the foundation for two other initiatives: the strategy to support Aboriginal lawyers and student; and the business case for enhancing diversity and retaining Aboriginal lawyers in the profession.*

## Strategy 2-5

Develop and propose legislative amendments to improve lawyer regulation.

## Initiative 2-5

The *Legal Profession Act* has not been substantively amended for a decade. Given the particular legislative cycle, the Law Society should consider if any amendments to legislation are needed to improve the Law Society's ability to meet its objects and duties.

*Status – July 2010*

*The Act and Rules Subcommittee has reviewed and considered proposed amendments to the Legal Profession Act and has presented a report to the Benchers accordingly. The Benchers, by the end of the July 9, 2010 meeting, will have considered and approved amendments to the Act. The Attorney General's Ministry has been notified that the Law Society is interested in a significant number of amendments in order to improve its ability to regulate effectively in the public interest.*

## Strategy 2-6

Prepare a considered response to the Competition Bureau's "Study on Self-Regulated Professions."

#### Initiative 2-6a

Reconsidering rules relating to multi-disciplinary partnerships. The Ethics Committee will consider the issue and present its conclusions to the Benchers.

#### *Status – July 2010*

*The Ethics Committee has completed its analysis. The issue was considered by the Benchers in July 2009 at which time the Benchers resolved in principle to permit multi-disciplinary partnerships on the Ontario model subject to the preparation of draft Rules to ensure that important values of the legal profession are not compromised, as well as liability insurance issues. Rules to implement the decision came into effect on July 1, 2010.*

#### Initiative 2-6b

Enhancing lawyer mobility by adopting rules to finalize and implement agreements made through the Federation of Law Societies to permit mobility between members of the Barreau du Québec and the common-law law societies.

#### *Status – July 2010*

*The Barreau du Québec has implemented provisions permitting the mobility of common law lawyers to practise the law of their home province and federal law as members of the Barreau du Québec in Québec, and through the Federation of Law Societies, the rest of the provinces are finalizing reciprocal arrangements with Québec and the preparation of model rules through which to implement that arrangement. The Benchers passed rules to implement this arrangement on April 23, 2010 and they came in to effect July 1, 2010.*

#### Initiative 2-6c

Modernizing provisions relating to lawyers' advertising.

#### *Status – July 2010*

*The Ethics Committee presented its recommendations on this subject to the Benchers, and the Benchers approved changes to provisions relating to advertising in the Professional Conduct Handbook in May 2009.*

#### Initiative 2-6d

Reconsidering policies regarding referral fees.

*Status – July 2010*

*The Ethics Committee has had this matter on its agenda for consideration, and has debated and made recommendations on fee sharing in the context of multi-disciplinary partnerships. Other policy considerations relating to referral fees are on the Committee's agenda, but no substantive reconsideration of the policies has occurred. Further examination is anticipated later in 2010.*

## Strategy 2-7

Re-examine the rules and internal processes of the Law Society relating to complaints, investigations and dispositions of professional conduct and competence matters in order to identify methods to improve the timely, thorough, fair and appropriate disposition of complaints and hearings.

## Initiative 2-7

A task force will re-examine Law Society rules and processes for handling complaints and discipline hearings to determine if there are methods by which to improve the timely, thorough, fair and appropriate disposition of professional conduct concerns, including the consistency of decisions and sanctions.

*Status – July 2010*

*The Discipline Guidelines Task Force presented its interim report to the Benchers on July 9, 2010 in connection with its review and recommendations concerning holding in abeyance the investigation of a complaint.*

GOAL 3: Effective public and lawyer education.

Strategy 3-1

Design and implement a plan to support the mentoring of lawyers.

Initiative 3-1

A mentoring program is to be presented to the Benchers for consideration.

*Status – July 2010*

*The Lawyer Education Advisory Committee developed and presented a mentoring program to the Benchers, which the Benchers adopted at their May 2009 meeting. Rules necessary to implement the program were approved by the Benchers in November 2009. The program was implemented commencing January 1, 2010.*

Strategy 3-2

Develop and implement initiatives to more effectively educate lawyers on the topic of professionalism.

Initiative 3-2

An examination of programs available in other jurisdictions, together with the development of options for such programs in British Columbia, for consideration by the Benchers.

*Status – July 2010*

*A working group of the Lawyer Education Advisory Committee is currently meeting to discuss options for a program to more effectively educate lawyers on the topic of professionalism and expects to present its final recommendations by the end of 2010.*

Strategy 3-3

Develop and implement initiatives to improve advocacy skills for lawyers.

Initiative 3-3

The Lawyer Education Advisory Committee will examine initiatives relating to the teaching of advocacy skills and present options to the Benchers for consideration.

*Status – July 2010.*

*A working group of the Lawyer Education Advisory Committee is currently meeting to discuss options for a program or other initiatives to improve advocacy skills for lawyers and expects to present its final recommendations by the end of 2010.*

#### Strategy 3–4

Educate the public regarding the legal system on a variety of levels.

##### Initiative 3–4a

The Law Society is developing an instructional video for use in high schools.

*Status – July 2010*

*The instructional video has been completed (and was shown to the Benchers in April 2009), as has the Teachers' Guide that accompanies the instructional video. The complete program has been delivered to high schools around the province.*

##### Initiative 3–4b

The President of the Law Society – Gordon Turriff, QC – is undertaking a speaking tour across the province during 2009 to commemorate the 125<sup>th</sup> anniversary of the Law Society. He will address a variety of topics relating to the legal profession and its regulation.

*Status – July 2010*

*Mr. Turriff has now completed his tour.*

## 1. **Financial Report**

Attached are the financial highlights and results to May 31, 2010.

### **General Fund**

#### **General Fund (excluding TAF)**

The General Fund operating results has a positive variance of \$597,000 to May 31, 2010.

Revenue is \$8,964,000, \$205,000 (2%) ahead of budget due to the following:

- The Wirick custodianship generated an unexpected recovery of \$100,000.
- Practicing membership is 39 members ahead of budget to date, resulting in \$50,000 in additional revenue
- PLTC students are 14 ahead of budget, resulting in \$40,000 in additional revenue
- CPD penalty fees resulted in an unbudgeted \$15,000

Operating expenses are \$6,326,000, \$392,000 below budget, of which \$118,000 relates to the timing of expenditures, and \$274,000 arises mainly from staff vacancies unexpected at the time the 2010 was established in July 2009.

- One manager position has been eliminated
- Two senior management positions (CLO and Communications manager) were vacant for the first quarter of this year
- Two forensic accounting positions are being actively recruited
- Two vacant positions are currently being assessed and have not been filled at this time

#### *2010 Forecast - General Fund (excluding TAF)*

The 2010 General Fund (excluding TAF) budget was expected to have an operating deficit of \$1,242,000 as a result of incorporating the forensic accounting program into the General Fund. With the additional revenue received and reduced operating expenses, the deficit is projected to be reduced to \$400,000.

This 2010 forecast assumes the following:

#### Revenue

- Wirick custodianship recovery - \$100,000
- 10,365 projected members to year end compared to 10,300 budget - \$80,000
- Additional 26 PLTC students - \$60,000
- CPD penalty revenue - \$14,000

The 2011 General Fund budget has this increased base for projecting 2011 levels for practicing members and PLTC students, and a projection for CPD penalty fees has been incorporated. Custodianship recoveries have been budgeted at historical levels.

#### Operating Expenses

For the 2010 year, operating expenses are projected to be less than expected as a result of the following:

- Elimination of one manager position
- Elimination of the leased car policy
- Lower custodian fees due to continued movement of custodian files to our in-house counsel and reduced use of outside custodians - \$100,000
- Expected lower expenses due to staff vacancies of \$460,000, offset by a budgeted \$200,000 as a vacancy contingency. This level of savings experienced in 2010 is unusual and is not expected to continue into 2011.

The reduction in the General Fund operating expenses arising from the first three items have been incorporated into the 2011 practice fee/ General Fund budget and the 2011 vacancy contingency has been increased to \$300,000. Although we do expect to have significant vacancy savings this year, our turnover rate is still quite low.

#### **TAF-related Revenue and Expenses**

TAF revenue received to May 31, 2010 reflects only the first quarter of 2010 but remains consistent with our budget. Operating expenses are also tracking to budget.

The BC Real Estate Association has revised their market projection for 2010, now projecting a 3.1% decrease in real estate unit sales, down from the previous projection of an increase of 6%. We will continue to monitor changes in the TAF revenue levels and economic forecasts

**Special Compensation Fund**

The Special Compensation Fund is on track. The positive variance in Special Compensation Fund relates to the timing of costs and recoveries, as there was little activity in the Fund during the first five months of the year.

**Lawyers Insurance Fund**

The markets were up during the first quarter of this year, but have been in a downward trend over the past few months. With this drop in the markets, the market value of the long term investments at May 31<sup>st</sup> was \$94,170,000, down \$1.2 million on a year to date basis. The investment return of -1.2% for the year-to-date to May 31, 2010 was slightly better than the comparative benchmark which declined -1.6%. There were few investment changes during the five months, therefore little realization of investment income through the income statement.

LIF operating expenses are \$280,000 below budget in the first five months due to savings related to one unfilled position and reduced investment management fees.





**Summary of Financial Highlights - 2010**  
(\$000's)

<b>2010 General Fund Results - YTD May 2010</b>				
	<b>Actual</b>	<b>Budget</b>	<b>\$ Var</b>	<b>% Var</b>
<b>Revenue</b>				
Membership fees	7,263	7,216	47 *	0.65%
PLTC and enrolment fees	687	646	41	6.35%
Electronic filing revenue	237	238	(1)	-0.42%
Interest income	159	159	-	0.00%
Other revenue	618	500	118 **	23.60%
	8,964	8,759	205	
<b>Expenses including 845 Cambie</b>	6,326	6,718	392 ***	5.84%
	2,638	2,041	597	

\* Membership numbers are 10,288 to date  
 \*\* CPD late fees 14k not budgeted, Custodianship recoveries 93k over budget  
 \*\*\* Mainly unplanned vacancies

<b>2010 General Fund Year End Forecast (excluding Capital &amp; Depreciation)</b>		
	<b>Ave # of Members</b>	<b>Forecast Variance</b>
<b>Practice Fee Revenue</b>		
2008 Actual	10,035	
2009 Actual	10,213	
2010 Budget	10,300	
2010 YTD	10,288	
2010 Forecast	10,365	
<b>Revenue</b>		
Custodian recovery		93
Membership revenue (65 members over budgeted membership of 10,300)		80
PLTC fees (26 additional students)		60
Other revenue		33
		266
<b>Expenses</b>		
Unplanned vacancies savings (net of budget - \$200k)		261
Reduction management position		107
External counsel fees overage		(46)
Elimination of leased car policy		20
Custodian fees savings, Reduction of external custodians, files moved in-house		100
Other savings		128
		570
<b>2010 General Fund Forecast - Variance</b>		836
<b>2010 General Fund Budget</b>		(1,242)
<b>2010 General Fund Forecast</b>		(406)

## APPENDIX 2

## Appendix 2

### *Trust Assurance Program Forecast*

	2010 Forecast	2010 Budget	Variance
<b>TAF Revenue</b>	2,467	2,467	-
Trust Administration Department	2,371	2,371	-
<b>Trust Assurance Program</b>	96	96	-
Use of TAF Reserve	-	-	-
<b>Net Trust Assurance Program</b>	96	96	-

Most recent Real Estate Association projection - 3.1% decrease in unit sales from 2009 to 2010.  
First quarter revenue is tracking to budget.

### *2010 Lawyers Insurance Fund Long Term Investments - YTD May 2010*

<b>Market Value</b>	
May 31, 2010	94,169,818
December 31, 2009	95,359,569
<b>YTD Performance</b>	-1.2%
<b>Benchmark Performance</b>	-1.6%

**The Law Society of British Columbia**  
**General Fund**  
**Results for the 5 Months ended May 31, 2010**  
(\$000's)

	<b>2010 Actual</b>	<b>2010 Budget</b>	<b>\$ Var</b>	<b>% Var</b>
<b>Revenue</b>				
Membership fees (1)	7,263	7,216		
PLTC and enrolment fees	687	646		
Electronic filing revenue	237	238		
Interest income	159	159		
Other revenue	618	500		
<b>Total Revenues</b>	<b>8,964</b>	<b>8,759</b>	<b>205</b>	<b>2.3%</b>
<b>Expenses</b>				
Regulation	2,402	2,676		
Education and Practice	1,134	1,211		
Corporate Services	947	936		
Bencher Governance	624	615		
Communications and Information Services	681	725		
Policy and Legal Services	547	542		
Depreciation	127	148		
<b>Total Expenses</b>	<b>6,462</b>	<b>6,853</b>	<b>391</b>	<b>5.7%</b>
General Fund Results before 845 Cambie and TAP	2,502	1,906	596	
<b>845 Cambie net results</b>	<b>136</b>	<b>134</b>	<b>2</b>	
<b>General Fund Results before TAP</b>	<b>2,638</b>	<b>2,040</b>	<b>598</b>	
<b>Trust Administration Program (TAP)</b>				
TAF revenues	539	520	19	
TAP expenses	865	928	63	7%
<b>TAP Results</b>	<b>(326)</b>	<b>(408)</b>	<b>82</b>	
<b>General Fund Results including TAP</b>	<b>2,312</b>	<b>1,632</b>	<b>680</b>	

(1) Membership fees include capital allocation of \$1.806m (YTD capital allocation budget = \$1.797m).

**The Law Society of British Columbia**  
**General Fund - Balance Sheet**  
**As at May 31, 2010**  
(\$000's)

	May 31 2010	Dec 31 2009
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	57	3
Unclaimed trust funds	1,525	1,439
Accounts receivable and prepaid expenses	6,854	1,372
B.C. Courthouse Library Fund	1,661	724
Due from Lawyers Insurance Fund	2,505	16,302
	<u>12,602</u>	<u>19,840</u>
<b>Property, plant and equipment</b>		
Cambie Street property	11,789	11,886
Other - net	1,486	1,439
	<u>25,877</u>	<u>33,165</u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	1,367	4,305
Liability for unclaimed trust funds	1,525	1,439
Current portion of building loan payable	500	500
Deferred revenue	7,707	14,893
Deferred capital contributions	88	92
B.C. Courthouse Library Grant	1,661	724
Due to Special Compensation Fund	9	9
Deposits	33	28
	<u>12,890</u>	<u>21,990</u>
<b>Building loan payable</b>	<u>5,100</u>	<u>5,600</u>
	<u>17,990</u>	<u>27,590</u>
<b>Net assets</b>		
Invested in P,P&E, net of associated debt	7,710	7,226
Capital Allocation	1,924	957
Unrestricted	(1,747)	(2,608)
	<u>7,887</u>	<u>5,575</u>
	<u>25,877</u>	<u>33,165</u>

**The Law Society of British Columbia**  
**General Fund - Statement of Changes in Net Assets**  
**For the 5 Months ended May 31, 2010**  
(\$000's)

	Invested in P,P & E net of associated debt \$	Capital Allocation \$	Unrestricted \$	2010 Total \$	2009 Total \$
<b>Net assets - December 31, 2009</b>	7,226	957	(2,608)	5,575	5,059
Net (deficiency) excess of revenue over expense for the period	(355)	1,806	861	2,312	516
Repayment of building loan	500	(500)	-	-	-
Purchase of capital assets:					
LSBC Operations	217	(217)	-	-	-
845 Cambie	122	(122)	-	-	-
<b>Net assets - May 31, 2010</b>	<u>7,710</u>	<u>1,924</u>	<u>(1,747)</u>	<u>7,887</u>	<u>5,575</u>

**The Law Society of British Columbia  
Special Compensation Fund  
Results for the 5 Months ended May 31, 2010  
(\$000's)**

	<b>2010 Actual</b>	<b>2010 Budget</b>	<b>\$ Var</b>	<b>% Var</b>
<b>Revenue</b>				
Annual assessment	222	215		
Recoveries	33	-		
<b>Total Revenues</b>	<b>255</b>	<b>215</b>	<b>40</b>	<b>18.6%</b>
<b>Expenses</b>				
Claims and costs, net of recoveries	77	306		
Administrative and general costs	29	13		
Loan interest expense	(17)	-		
<b>Total Expenses</b>	<b>89</b>	<b>319</b>	<b>(230)</b>	<b>-72.1%</b>
<b>Special Compensation Fund Results</b>	<b>166</b>	<b>(104)</b>	<b>270</b>	

**The Law Society of British Columbia**  
**Special Compensation Fund - Balance Sheet**  
**As at May 31, 2010**  
(\$000's)

	May 31 2010	Dec 31 2009
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	1	1
Due from Lawyers Insurance Fund	821	2,753
Due from General Fund	9	9
	<u>831</u>	<u>2,763</u>
	<u>831</u>	<u>2,763</u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	4	8
Current portion of claims payable	-	1,886
Deferred revenue	297	505
	<u>301</u>	<u>2,399</u>
<b>Net assets</b>		
Unrestricted net assets	530	364
	<u>530</u>	<u>364</u>
	<u>831</u>	<u>2,763</u>

**The Law Society of British Columbia**  
**Special Compensation Fund - Statement of Changes in Net Assets**  
**For the 5 Months ended May 31, 2010**  
(\$000's)

	<b>Unrestricted</b>
	\$
<b>Net assets - December 31, 2009</b>	364
Net excess of revenue over expense for the period	<u>166</u>
<b>Net assets - May 31, 2010</b>	<u><u>530</u></u>



**The Law Society of British Columbia**  
**Lawyers Insurance Fund**  
**Results for the 5 Months ended May 31, 2010**  
(\$000's)

	<b>2010 Actual</b>	<b>2010 Budget</b>	<b>\$ Var</b>	<b>% Var</b>
<b>Revenue</b>				
Annual assessment	5,039	5,039		
Investment income (1)	146	1,389		
Other income	22	-		
<b>Total Revenues</b>	<b>5,207</b>	<b>6,428</b>	<b>(1,221)</b>	<b>-19.0%</b>
<b>Expenses</b>				
<b>Insurance Expense</b>				
Provision for settlement of insurance deductibles	6,409	6,409		
Salaries and benefits	857	953		
Contribution to program and administrative costs of General Fund	542	583		
Office	270	324		
Actuaries, consultants and investment brokers' fees	100	154		
Allocated office rent	48	48		
Premium taxes	9	5		
	<b>8,235</b>	<b>8,476</b>		
<b>Loss Prevention Expense</b>				
Contribution to co-sponsored program costs of General Fund	250	287		
<b>Total Expenses</b>	<b>8,485</b>	<b>8,763</b>	<b>278</b>	<b>3.2%</b>
Lawyers Insurance Fund Results before 750 Cambie	(3,278)	(2,335)	(943)	
<b>750 Cambie net results</b>	<b>136</b>	<b>134</b>	<b>2</b>	
<b>Lawyers Insurance Fund Results</b>	<b>(3,142)</b>	<b>(2,201)</b>	<b>(941)</b>	

(1) There is an unrealized loss of \$1,393k for the year recognized through net assets (not through income statement). See Statement of Changes in Net Assets.

**The Law Society of British Columbia**  
**Lawyers Insurance Fund - Balance Sheet**  
**As at May 31, 2010**  
(\$000's)

	<b>May 31 2010</b>	<b>Dec 31 2009</b>
<b>Assets</b>		
Cash and cash equivalents	5,028	20,573
Accounts receivable and prepaid expenses	324	377
Due from members	49	35
General Fund building loan	5,600	6,100
Investments	103,689	105,082
	<u>114,690</u>	<u>132,167</u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	1,085	1,690
Deferred revenue	7,047	6,075
Due to General Fund	2,505	16,302
Due to Special Compensation Fund	821	2,753
Provision for claims	56,808	54,471
Provision for ULAE	8,156	8,073
	<u>76,422</u>	<u>89,364</u>
<b>Net assets</b>		
Unrestricted net assets	20,768	25,303
Internally restricted net assets	17,500	17,500
	<u>38,268</u>	<u>42,803</u>
	<u>114,690</u>	<u>132,167</u>

**The Law Society of British Columbia**  
**Lawyers Insurance Fund - Statement of Changes in Net Assets**  
**For the 5 Months ended May 31, 2010**  
(\$000's)

	Unrestricted \$	Internally Restricted \$	Total \$
<b>Net assets - December 31, 2009</b>	25,303	17,500	42,803
Net deficiency of revenue over expense for the period	(3,142)	-	(3,142)
			-
Unrealized gains on available-for-sale financial assets arising during the period	(1,393)	-	(1,393)
<b>Net assets - May 31, 2010</b>	<u>20,768</u>	<u>17,500</u>	<u>38,268</u>

benchers. The proposed amendment would authorize the benchers to make rules concerning the appointment of the review board. In this manner, the benchers can continue the current process of having reviews heard by the benchers, if they so desire, by making rules that would appoint the benchers to the review board. The amendment would also allow for more future latitude in the composition of review boards, including the appointment of other lawyers or even non-lawyers, should that course ever be desired as being in the public interest. The Task Force makes no recommendation in this regard.

## **Recommendation**

### **1. Individuals Qualified to Sit on Panels**

The Task Force recommends that a model based on Model 3 above be created at this time.

To accomplish this outcome, the Task Force recommends the following:

1. The Benchers resolve to create a pool of individuals who can be appointed to hearing panels.
2. The Task Force recommends that this pool include
  - sitting benchers (the “bencher pool”)
  - life and former lawyer benchers and other lawyers, subject to meeting criteria to be established by the Benchers (the “lawyer pool”); and
  - life and former appointed benchers, as well as non-lawyer non-benchers also subject to meeting criteria to be established by the Benchers (the “public pool”).<sup>2</sup>

There are several methods through which non-lawyer non-benchers could be identified for inclusion in the public pool, and if the Task Force recommendation is approved, the benchers will need to consider this issue. For example:

- Benchers themselves could recommend individuals from their region of the province, although appointments through this method might be criticized as being associated too much with the organization.
- Advertisements could be published for non-lawyers to sit on hearing panels and candidates could be chosen on the basis of the criteria established.<sup>3</sup>

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<sup>2</sup> The Task Force does not propose to make any recommendations about what the criteria should be for lawyers or for non-lawyers.

<sup>3</sup> This is a model recently introduced in Manitoba. The weakness of the Manitoba model, in the view of the Task Force, is that the candidates are chosen *by the Law Society* from those who applied. If advertisements are to be considered, some more formalized method of choosing candidates may have to be created.

- The Law Society could identify adjudicators from some of the other self-regulatory colleges or professions in the province, and invite them to be included in the hearing pool if they otherwise meet the criteria established by the Benchers.<sup>4</sup>

The Task Force notes that the Law Society takes a “hands-off” approach to the issue of who the government should appoint as appointed benchers, and strongly believes that a similar “hands-off” approach should be taken to the appointment of non-bencher non-lawyers to the public pool. For that reason, the Task Force is attracted to a model by which other professional regulatory bodies would be approached to identify an adjudicator to be included in the public pool. Such adjudicators are already chosen, often by government, and the Law Society would not therefore have to identify or assess such individuals itself. The Task Force has not assessed whether this model is feasible, however, but does believe it is especially worth considering.

## **2. Appointments to Hearing Panels**

The Task Force reviewed both the initial Discussion Paper and the Independence Committee Report and noted that the efficient use of resources and the ability to increase the public involvement in the adjudication process were central to the discussion.

After discussion, the Task Force concluded that the model proposed above creates a pool that can be filled with individuals that permit expertise, experience and public input to be appointed to panels. Benchers are elected in part because they are senior members of the Bar, skilled in practice, and are persons of integrity and good reputation and who will impose the appropriate sanctions for misconduct in order to protect the reputation of the profession in the eyes of the public. Other lawyers can be identified for skills that can be identified through the criteria for appointments created by the Law Society. Non-lawyers can also be identified for skills identified through the criteria established, and also for the additional public face that can be brought, through them, to panels.

The Task Force therefore recommends that when panels are appointed, one member is chosen from the bencher pool, one from the lawyer pool, and one from the public pool. There may be exceptional reasons to stray from this formula (such as where a delay to the appointment of a panel would exist due to difficulties in finding an available member within one of the pools), and the Task Force therefore does not recommend that this appointment method be formalized at this time. For the time being, the Task Force recommends that appointments from the available “pool” to a particular panel be made formally by the President.

## **3. Effect of Recommendations**

The Task Force has concluded that the recommendations made through the model proposed above will meet the objectives of the resolution passed by the Benchers in December 2009. In order to accomplish this end, the Rule 5-4 will need to be amended

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<sup>4</sup> The Law Society of Upper Canada has used this approach to identify the non-lawyer, non-benchers that legislation allows to be appointed to hearing panels in Ontario.

That would provide the opportunity to make the regulation of the practice of law, which is now relegated to secondary status in the section, to full partnership as a primary object along with preserving rights, ensuring independence and integrity and establishing standards.

This is what a revised section 3 might look like, with the member interest removed and the regulation objective elevated to a primary position and expanded to include “the provision of legal services” as well as “the practice of law”.

### **Public interest paramount**

- 3** It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
- (a) preserving and protecting the rights and freedoms of all persons,
  - (b) ensuring the independence, integrity, honour and competence of lawyers,
  - (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission, and
  - (d) regulating the practice of law.

The Benchers considered the sensitivity of this particular proposed amendment and referred the issue to the Independence and Self-Governance Advisory Committee for its opinion. This is the report that was addressed to the Act and Rules Subcommittee as a result:

The Committee concluded that amendments to s. 3 should be pursued, in order to ensure that the Law Society is able to identify itself as a public interest regulatory body rather than a member interest body. While there is a recognition that, where the two interests are consistent, the Law Society should continue to have an ability to act in the member’s interest, the majority of the Committee was concerned that leaving the section as it is currently worded was problematic because it created an opportunity for opponents to the current self regulatory model to argue that the Law Society is not sufficiently detached from a member interest function.

The Committee believes that the provision in s. 3(b)(i) (the “regulation of the practice of law” provision) should be included within the primary mandate of the Law Society under s. 3(a).

The Committee also concluded that s. 3(b)(ii) should be removed. There was some discussion about whether removing s. 3(b)(ii) would detract from the Law Society's ability to create programs that were in the interest of members such as the maternity benefit loan program, and the practice advice function. The Committee thought that such concerns could be addressed by including, in s. 3(a)(iii) by adding the words "and programs" between the words "standards" and "for". The Committee also urges consideration be given to including the word "competence" in s. 3(a)(ii).

There were, however, some questions raised about whether subsection (b) should be completely eradicated. It was postulated that a requirement that the Law Society provide assistance to members was not inconsistent with requirements to uphold and protect the public interest in the administration of justice, as long as the assistance provided by the Law Society was toward that end. Subparagraph (b)(ii) currently permits the Law Society to uphold and protect members' interests subject to the public interest. Perhaps, some on the Committee proposed, subparagraph (b)(ii) should be reworded to permit the Law Society to support members toward achieving the objects of subparagraph (a).

#### **HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

This change would allow the Law Society to focus entirely on the regulation of lawyers and the protection of the public interest. The Law Society would also be seen to do so, thereby increasing public confidence in the Law Society, lawyers and the justice system as a whole.

#### **CONSEQUENTIAL AMENDMENTS**

None

#### **HISTORY OF PROPOSED AMENDMENT**

This originates in the concern for the independence and self-governance of the legal profession, since the legal profession in jurisdictions outside Canada has had its independence jeopardized and even removed apparently as a result of combining the regulatory and advocacy functions. While that is not the case in British Columbia, some Benchers have been of the view that the amendment would help dispel any appearance of an advocacy role on behalf of lawyers that the public or government may discern.

#### **RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 12 – RULES REQUIRING MEMBERSHIP APPROVAL

#### *General meeting to have authority to approve certain rule changes*

##### NATURE OF CHANGE PROPOSED

Approval of rule changes in certain areas enumerated in section 12, to be sought through a general meeting of members, including an Annual General Meeting, as an alternative to the requirement to hold a referendum.

##### WHY CHANGE IS NEEDED

Under section 12 of the *Legal Profession Act*, the Benchers were initially required to enact certain Rules that were consistent with the previous statute and they may not amend those rules without a referendum vote of all the members approving the change by a two-thirds majority.

The Rules in question are generally to do with the governance of the Law Society and involve some degree of real or perceived self-interest on the part of the Benchers:

- the offices of president, first vice-president or second vice-president;
- the term of office of benchers;
- the removal of the president, first vice-president, second vice-president or a bencher;
- the electoral districts for the election of benchers;
- the eligibility to be elected and to serve as a bencher;
- the filling of vacancies among elected benchers;
- the general meetings of the society, including the annual general meeting;
- the appointment, duties and powers of the auditor of the society;
- life benchers;
- the practising fee;
- the qualifications to act as auditor of the society when an audit is required under this Act.

The fact that a referendum is required to change some rules tends to inhibit the Benchers and staff from pursuing changes that might otherwise benefit the organization. For example, the change that saved a general meeting from termination when one “remote”



location is affected by technological failure was several years in the making. A province-wide referendum is expensive in money and in staff and Benchers time, even when the proposed change is noncontroversial and of little consequence.

It is proposed that the alternative of taking proposed changes to a general meeting, presumably usually the annual general meeting. The Benchers would have to decide which issues were appropriate for which forum.

#### **HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

The amended provisions would mean less expenditure of resources is necessary to obtain approval of changes to improve the efficiency of the Law Society. Since a general meeting is held at least once a year in any case, the cost of obtaining membership approval should not inhibit moving forward with changes. The Law Society could then focus its resources more on regulation rather than referenda

#### **CONSEQUENTIAL AMENDMENTS**

None

#### **HISTORY OF PROPOSED AMENDMENT**

The change from either referendum or general meeting being required to amend these rules to only a referendum was made on the spur of the moment in the course of the AGM in about 1993. The Benchers of the day felt that they had to abide by that commitment, but the cost of several referenda and the delay in achieving changes after they are identified as desirable has been significant. New Benchers and staff coming into the organization have noted that the provision is very unusual.

#### **RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 13 – IMPLEMENTING RESOLUTIONS OF GENERAL MEETINGS

#### *Five per cent of members required to requisition referendum*

##### NATURE OF CHANGE PROPOSED

Increase the number of lawyers necessary to require a referendum on implementation of a general meeting resolution from 100 lawyers to 5 per cent of lawyers. Increase the elapse of time before a requisitioned referendum can be required from six months after the general meeting to 12 months in which the Benchers have not implemented the resolution.

##### WHY CHANGE IS NEEDED

Section 13 as it is currently worded permits a very small number of lawyers (100) to require the Law Society to hold a province-wide referendum to force the Benchers to implement a resolution previously adopted by a general meeting. By contrast, the Law Society Rule on special general meetings requires the signatures of 5 per cent of the members in good standing, or currently about 600, to require the Law Society to hold a special general meeting. That was increased in 2003 from 150, following a convincing vote (73.2%) in favour of the change in a province-wide referendum.

Currently, a petition to requisition a referendum can take effect after the Benchers have not acted on the resolution for six months. The Act and Rules Subcommittee was of the view that, for many matters, six months is not enough time to allow the Benchers, particularly if a significant change to the Law Society budget is required. The Subcommittee recommends changing that provision to allow a full year before a referendum can be requisitioned.

##### HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

The changes will better ensure that the resources spent on a referendum about a general meeting resolution will only be necessary when a significant percentage of lawyers call for the referendum. They will also allow the Law Society to better focus its resources on the regulation of the profession and the protection of the public.

##### CONSEQUENTIAL AMENDMENTS

None

**HISTORY OF PROPOSED AMENDMENT**

The need for more flexibility has become evident in recent years as the Law Society has tried to implement resolutions that cannot easily be done in a short period.

**RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 18.1 (PROPOSED) – REGULATION OF LAW FIRMS

***Benchers to be able to make rules that apply to law firms and non-lawyers with ownership interest in a firm***

#### NATURE OF CHANGE PROPOSED

Add a specific section empowering the Benchers to make rules to regulate the conduct of law firms and non-lawyers who have an interest in law firms, such as a Multi-Disciplinary Practice (MDP). This will require a definition of “law firm” in section 1 similar to that in the Law Society Rules. In addition several sections, mostly dealing with financial responsibility and trust accounting, should be amended to apply expressly to law firms as well as individual lawyers.

#### WHY CHANGE IS NEEDED

Under the current legislation, the only way for the Law Society to regulate law firms is indirectly through the individual lawyers who make up the firm. However, as the organization of law practices becomes more complex and varied, and particularly with the advent of MDPs, this will become more problematic.

As a result, the present rules are unnecessarily complex and difficult to understand because the Law Society has to regulate legitimate firm activity, such as trust accounting, by means of regulating the individual lawyers in the firm.

The Law Society of Alberta regulates firms when it comes to handling client money, while the Nova Scotia Barristers’ Society has legislation that is more comprehensive, including provisions for discipline of law firms leading to the imposition of a substantial fine or other consequences. How the Benchers are inclined to proceed if the amendment is made can be determined at the time that Rules are adopted.

#### HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

The proposed amendments would allow the Law Society to deal more effectively with non-lawyer partners and with trust accounting, advertising and other law firm activities. They will simplify the regulation of law practices by reducing steps necessary to regulate activities through lawyers to simple requirements for the law firm itself.

**CONSEQUENTIAL AMENDMENTS**

Section 1 — Definition of “law firm”

Section 32 — Financial responsibility

Section 33 — Trust accounts

Section 34 — Unclaimed trust money

Section 62 — Interest on trust accounts

Section 63 — Security and investment of trust accounts

Section 64 — Definitions

**HISTORY OF PROPOSED AMENDMENT**

The Act and Rules Subcommittee has discussed this proposal several times over the past two or three years, particularly in association with the difficulty of drafting rules to enforce obligations on firms in connection with client identification and verification and, more recently, MDPs.

**RECOMMENDATION**

The Subcommittee recommends seeking amendments to the *Legal Profession Act* that will make it easier to ensure compliance of law firms with rules intended to protect their clients and the public.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 26 – COMPLAINTS FROM THE PUBLIC

#### ***Law Society investigator to have power to enter premises, require production of documents, summon and examine witnesses under oath***

##### NATURE OF CHANGE PROPOSED

Add an express authority for the Law Society to compel a lawyer under investigation or others to provide documents or information in connection with the investigation. Clarify the Law Society's power to compel evidence from a third party.

##### WHY CHANGE IS NEEDED

The discipline and professional conduct staff are concerned that investigators acting on behalf of the Law Society of British Columbia do not have powers to investigate in a lawyer's office, to require production of documents and to question law firm staff such as exists in Ontario. This is section 49.3(2) of the *Law Society Act* (Ontario), which has been in effect since 2006:

##### **Powers**

- (2) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section has a reasonable suspicion that a licensee being investigated under subsection (1) may have engaged in professional misconduct or conduct unbecoming a licensee, the person conducting the investigation may,
  - (a) enter the business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee;
  - (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
  - (c) require the licensee and people who work with the licensee to provide information that relates to the matters under investigation.

Staff are also concerned that investigators ought to have clearer power to compel evidence from third parties, particularly in the investigation stage, rather than to subpoena to a hearing. This provision gives that authority to investigators under the *BC Securities Act*:

**Investigator's power to compel evidence**

- 144** (1) An investigator appointed under section 142 or 147 has the same power
- (a) to summon and enforce the attendance of witnesses,
  - (b) to compel witnesses to give evidence on oath or in any other manner, and
  - (c) to compel witnesses to produce records and things and classes of records and things

as the Supreme Court has for the trial of civil actions.

(2) The failure or refusal of a witness

- (a) to attend,
- (b) to take an oath,
- (c) to answer questions, or
- (d) to produce the records and things or classes of records and things in the custody, possession or control of the witness

makes the witness, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

It would be consistent with the scheme of the *Legal Profession Act* to give the Benchers the power to make rules giving investigators powers similar to those of the Ontario investigators under the provision reproduced above. That would not be necessary or appropriate with respect to powers similar those under the BC *Securities Act*. I would expect the *Legal Profession Act* provision to confer the powers directly, as that Act does.

Since the focus of both provisions is on powers to be used during the investigation phase, rather than after the decision to cite and order a hearing, I suggest locating the provision under section 26, Complaints from the public.

**HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

This change would enable the Law Society to be proactive in investigating complaints so that it can fulfill its mandate to protect the public effectively and efficiently.

**CONSEQUENTIAL AMENDMENTS**

None

**HISTORY OF PROPOSED AMENDMENT**

This is a recent request of those charged with enforcement and investigation partly in response to recent concerns of Benchers and others to ensure that the investigation of complaints is efficient and timely.

**RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.



## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 31 – SPECIAL COMPENSATION FUND

#### *Providing compensation through insurance*

##### NATURE OF CHANGE PROPOSED

Replace most of the current very detailed requirement for the maintenance and operation of a particular kind of compensation fund with a more general provision that would require the Law Society to continue to maintain a process through which victims of lawyer misappropriation could be compensated, but allow the Benchers to determine the details.

The Act and Rules Subcommittee also recommends a provision that would transfer any funds remaining in the Special Compensation Fund for compensation to victims of lawyer misappropriation to the new program to be applied for that purpose.

##### WHY CHANGE IS NEEDED

Section 31 currently requires the Benchers to continue the Special Compensation Fund and sets some fairly specific requirements for the administration of the fund and payment of compensation from the fund. In 2004, the Benchers decided to address the issue of compensating victims of lawyer defalcation and misappropriation through an insurance model rather than through the special compensation fund. Despite section 31, rules have had to be created to require victims to first exhaust their remedies through the insurance program, as well as placing other limitations on access to the Special Compensation Fund.

Since the Benchers have concluded that the insurance program is the most effective way to protect the public interest by ensuring the victims of a lawyer's defalcation are properly compensated, an amendment to s. 31 is required to bring the legislation in line with what the Law Society is actually doing in this regard. It is proposed to seek an amendment to s. 31 to provide the Benchers with a broad discretion to implement a model for compensation as a result of a lawyer theft, defalcation or misappropriation as it deems appropriate. This would allow the Benchers the latitude of designing a scheme for compensation that would, for example, include an insurance based model.

**HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

The insurance program provides faster and more certain recoveries than the discretionary SCF and ensures through insurance regulation of the Law Society's captive insurance company that funds are available to cover expected losses.

**CONSEQUENTIAL AMENDMENTS**

Section 23(1)(b) — Annual fees and practising certificate

**HISTORY OF PROPOSED AMENDMENT**

This proposal is the natural consequence of the Benchers having decided to change the program for compensation of victims of lawyer misappropriation in 2004. The Special Compensation Fund has continued to be necessary for the intervening six years in order to complete the investigation and determination of claims made regarding misappropriations before May 1, 2004, in particular the many Wirick-related claims.

**RECOMMENDATION**

The Act and Rules Subcommittee recommends an amendment that would eliminate the requirement to maintain the Special Compensation Fund and allows the Benchers the flexibility to determine the scheme under which victims of lawyer defalcation can be compensated, including the flexibility to change the program in the future if necessary.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 36 – DISCIPLINE RULES

#### ***Summary disbarment or suspension on conviction of an indictable offence***

##### NATURE OF CHANGE PROPOSED

Amend the section to allow for rules permitting summary suspension or disbarment of a lawyer convicted on indictment, or the equivalent in a foreign jurisdiction

##### WHY CHANGE IS NEEDED

Section 36(h) authorizes the Benchers to make rules for the summary suspension or disbarment of “a lawyer convicted of an offence that may only be prosecuted on indictment.” The rules enacted under that provision (Rules 4-40 to 4-42) provide some degree of due process for a respondent who has been so convicted.

The problem with this provision is that it does not apply to a number of very serious offences where the Crown is permitted to proceed by summary conviction, the so-called “hybrid offences”. The 1988 *Legal Profession Act* extended the effect of this provision to all indictable offences, including “mixed” or “hybrid” offences, which give the Crown the option to proceed summarily. It was amended in 1992 at the request of the Benchers, but at the July 2009 Benchers meeting, the question was referred to the Act and Rules Subcommittee to consider whether a further amendment was in order.

The Act and Rules Subcommittee considered this issue and decided to recommend an amendment that would allow the Benchers to summarily disbar a lawyer who was convicted of an indictable offence if the Crown proceeded on indictment, even if the summary conviction option had been open under the *Criminal Code* or other statute. The principle being that, if the Crown viewed the offence as sufficiently serious to proceed on indictment, the Law Society would likely be justified in taking the step of dealing with the lawyer summarily.

A related issue has arisen in the past when a BC lawyer has been convicted in the United States of a “felony”, which is roughly equivalent of an indictable offence in Canada. Since the language of section 36 refers only to “indictable offences”, it is not possible to summarily disbar a lawyer convicted of a serious offence in another jurisdiction. The Subcommittee also recommends that the amended section 36(h) apply to equivalent offences outside of Canada.

**HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

This amendment would allow the Benchers to act against a lawyer convicted of an offence serious enough for the Crown to proceed on indictment, even if there was an option to proceed on summary conviction; in other words, if the Crown treats something as a serious offence, the LSBC can do so also. Also allow the Benchers to act when a lawyer is convicted of a serious offence in a foreign jurisdiction

**CONSEQUENTIAL AMENDMENTS**

None

**HISTORY OF PROPOSED AMENDMENT**

The limitation of the current provision was a problem recently when a lawyer was tried and convicted of a serious sexual offence that could have been prosecuted by summary conviction, but the Crown proceeded on indictment resulting in a well-publicized Supreme Court trial

**RECOMMENDATION**

The Act and Rules Subcommittee recommends that an amendment as described form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 36 – DISCIPLINE RULES

#### *Mirror-imaging rules*

##### NATURE OF CHANGE PROPOSED

Add a power to make rules for the protection of privacy when the Law Society copies electronic records in an investigation.

##### WHY CHANGE IS NEEDED

The report of the working group on mirror-imaging has been accepted by the Benchers. Among the recommendations adopted was one that would create a dispute resolution scheme involving reference of privacy issues to a retired or former judge. There is no current express provision allowing special steps to be taken to protect private information when a hard-drive is copied for forensic purposes. Although the Benchers could likely adopt such a program under their general authority for regulation and discipline of the legal profession, it would be helpful to have specific authority in the Act.

##### HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

This amendment would help ensure that a Law Society investigation is not held up or frustrated by claims to privacy over records stored together with law practice records.

##### CONSEQUENTIAL AMENDMENTS

None

##### HISTORY OF PROPOSED AMENDMENT

This proposal arises out of the report of the Working Group on Mirror-Imaging.

##### RECOMMENDATION

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 38 – DISCIPLINE HEARINGS

#### *Publication of decisions identifying respondents*

##### NATURE OF CHANGE PROPOSED

Include in section 38 a requirement for publication of the results of discipline hearings, including the name of a lawyer found guilty of a discipline infraction, subject only to serious harm to a third party.

##### WHY CHANGE IS NEEDED

The discussion at the Benchers meeting in July 2009 included recognition that the *Health Professions Act* and other legislation governing professions in British Columbia had imposed a higher threshold for anonymous publication of discipline decisions than the Law Society Rules had established in 2003. The Act and Rules Subcommittee indicated that it would reserve its judgment as to whether a legislative amendment was required until after the Benchers had considered Rule changes that were then in development. In December 2009, the Benchers adopted changes that make the standard comparable to that in Health Professions Act.

In the view of the Subcommittee, it is in keeping with the general scheme of the *Legal Profession Act*, which is that most regulatory decisions are assigned to the Benchers to establish through the Law Society Rules, and with the actual and apparent independence of the profession to leave the decision to publish with or without identification to the Rules and not amend the Act.

##### RECOMMENDATION

The Act and Rules Subcommittee recommends that the amendment **not** form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 38(4) – DISCIPLINE HEARINGS

#### ***Panels not to have undefined third option between guilty and not guilty***

##### NATURE OF CHANGE PROPOSED

Limit panels to findings of guilty or not guilty of professional misconduct or other discipline infractions by repealing s. 38(4)(c), “make any other disposition of the citation that it considers proper”.

##### WHY CHANGE IS NEEDED

Section 38(4) sets out what a panel must do after a hearing. Subsections (4)(a) and (b) set out the standard findings that a panel can make. Subsection (4)(c) provides a “basket” provision, allowing a panel to make “any other disposition of the citation that it considers proper.”

What such a disposition might be, however, is not clear. After the evidence has been heard, a decision to dismiss or make one of the findings available under subsection (4)(b) would be the usual result. If the evidence established that the citation should not be dismissed, it is difficult to envision some finding other than a finding available under subsection (4)(b). If it does not, then (4)(a) would be equally compelling. If a hearing panel considers that the evidence made out an discipline infraction that was not alleged in the citation, it is not open to the panel to make that finding. *Sheddy v. Law Society of BC*, 2007 BCCA 96.

As might be expected, a finding under subsection 4(c) is rarely made, and resort to it in the past has proved problematic. In one instance, a panel decided not to dismiss the citation, but instead to reconstitute the proceedings after the hearing had finished as a conduct review and to appoint itself as a conduct review subcommittee. Such a finding is problematic as it affects (at the very least) the transparency of the outcome of a process that was initially public until the order was made changing the process to a conduct review. Moreover, such a result usurps the powers assigned to the Discipline Committee to determine what to do with a complaint.

If one considers that a panel’s function at a hearing is to make a finding, on the evidence, about whether the facts alleged have been proved or not and, if they have, to impose the appropriate sanction, there does not seem to be an appropriate function for section 38(4)(c). It is sensible for the panel to have the power to make a “disposition it considers

proper” *after* an adverse finding against a respondent had been made if for some reason none of the other dispositions available to it under section 38(5) was appropriate. Such a power is, in fact, found in section 38(7).

#### **HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

The amendment would make it clear that the panel’s function is to determine whether the respondent is guilty of a discipline infraction, based on the allegation in the citation and the evidence heard in the hearing.

#### **CONSEQUENTIAL AMENDMENTS**

None

#### **HISTORY OF PROPOSED AMENDMENT**

It has been a project in the Policy Department for some time to study the purpose and possible effect of section 38(4) so that panels can be advised appropriately. The informal conclusion is that there is no proper purpose and the appropriate place for flexibility and creativity is at the penalty stage, after a determination has been made.

#### **RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.



## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 38(9) (PROPOSED) – DISCIPLINE HEARINGS

***An order of a Law Society tribunal to pay money can be filed in the Supreme Court and executed as a court order***

#### NATURE OF CHANGE PROPOSED

Add a subsection to section 39 that would allow the Law Society (or presumably another party) to file the order of a Law Society tribunal for a fine or for costs in the Supreme Court to be enforced as a judgment of the Court. This is similar to the process set out in section 76(3) for the enforcement of a registrar's certificate resulting from the assessment of a lawyer's bill.

#### WHY CHANGE IS NEEDED

Currently, the Law Society must sue to collect fines and awards of costs, which makes it easier for some disciplined lawyers and especially former lawyers to escape punishment.

#### HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

This amendment would enable the Law Society to enforce orders more efficiently, and provide a more effective deterrence to other lawyers regarding disciplinary infractions.

#### RELATED AMENDMENTS

s. 27 Practice standards

s. 46 Costs

#### HISTORY OF PROPOSED AMENDMENT

This is a recent request of those charged with monitoring and enforcing orders of Law Society tribunals.

#### RECOMMENDATION

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 38.1 – RESIGNATION OF MEMBERSHIP

#### *Permission required to resign without hearing*

##### NATURE OF CHANGE PROPOSED

Add a new provision requiring a lawyer who is the subject of citation, investigation or a practice review to obtain the permission of the Benchers in order to resign membership in the LSBC.

##### WHY CHANGE IS NEEDED

Currently, any lawyer may resign membership in the Law Society as of right and without conditions. When there is a citation outstanding, an investigation in progress or a practice review ordered by the Practice Standards Committee, the lawyer concerned can resign his or her Law Society membership in an attempt to frustrate the Law Society process. This makes it difficult to proceed with an investigation or practice review and makes a discipline hearing moot to the extent that it is difficult to enforce a monetary penalty and only symbolic to disbar or suspend the respondent.

Some other professional bodies have provisions in their legislation that require the agreement of the regulator before a registrant is permitted to resign from membership, particularly when the member is facing disciplinary proceedings or an investigation that could lead to disciplinary proceedings. This allows the regulator to impose conditions and require other concessions to protect the public interest without having to rely on the undertaking of the soon-to-be former member.

As an example, here is the provision from the Alberta *Legal Profession Act*, which has been in effect for several years:

#### **Resignation instead of continued proceedings**

- 61** (1) Subject to the rules, a member whose conduct is the subject of proceedings under this Division may at any time during the proceedings apply to the Benchers for their approval of the member's resignation as a member instead of having the proceedings continue.
- (2) The Benchers may hold a hearing of an application under this section if they consider that a hearing is warranted in the circumstances.
- (3) The Benchers may reject the application or, if they accept it,

- (a) may make their acceptance of the application subject to any conditions the Benchers consider appropriate in the circumstances, and
  - (b) shall give directions as to the information to be entered in the roll in relation to the member's resignation.
- (4) If a person resigns as a member pursuant to this section, then, subject to any conditions prescribed by the Benchers pursuant to subsection (3)(a), proceedings under this Division shall be discontinued in respect of the conduct that was the subject of the proceedings and to which the resignation relates.
- (5) The Benchers may delegate any of their authority under this section to a committee of the Benchers.

This is a provision from the BC *Notaries Act* that applies more broadly and is stated more simply:

**Resignation must be approved by the directors**

- 12** (1) A member may not resign from membership in the society without the consent of the directors.
- (2) The directors may attach conditions to the granting of their consent to a resignation.

**HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

This new provision would enable the Law Society to ensure that lawyers do not resign to escape responsibility for their actions or frustrate an investigation. The Law Society will be able to impose conditions to ensure that the public interest is protected.

**CONSEQUENTIAL AMENDMENTS**

Section 1 — Definition of “disciplinary proceeding”

**HISTORY OF PROPOSED AMENDMENT**

This is a recent request of those charged with enforcement and investigation partly in response to recent concerns of Benchers and others to ensure that the investigation of complaints is efficient and timely.

**RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 43 – RIGHT TO COUNSEL

#### *Right to counsel in all Law Society proceedings*

##### NATURE OF CHANGE PROPOSED

Add to the current provision that the Law Society and a respondent or applicant may be represented by counsel in a proceeding under Part 5, which includes a review on the record.

##### WHY CHANGE IS NEEDED

Section 43(2) outlines when the Society may employ or retain legal advice in connection with investigations and hearings. The meaning of the phrase “or on the issue of a citation” is, however, unclear when read with the fact that the Society can retain counsel in connection with the investigation out of which the citation would issue, or at the hearing that would result from the issuance of the citation. That phrase should therefore be deleted.

Further, while “hearing” might include a “review,” the two words are not used interchangeably in the Act and it would perhaps be prudent to clarify (both in s 43(1) and (2)) the issue by adding in the word “review.”

##### **Right to counsel**

- 43(1)** An applicant or respondent may appear at any hearing or review with counsel.
- (2) The society may employ or retain legal or other assistance in conducting an investigation under Part 2, 3 or 4 and may be represented by counsel with respect to any hearing or review.

##### HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

Ensures that full procedural rights are provided to respondents and applicants and provides more transparency as to the nature of Law Society proceedings.

##### CONSEQUENTIAL AMENDMENTS

None

**HISTORY OF PROPOSED AMENDMENT**

This appears to be a housekeeping matter to correct an oversight in the original statute.

**RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 44 – WITNESSES

#### ***Law Society tribunals to have express powers under the Legal Profession Act***

##### **NATURE OF CHANGE PROPOSED**

Put the powers of Law Society tribunals, now given by reference to the Administrative Tribunals Act, into the Legal Profession Act in language appropriate to the Law Society context.

##### **WHY CHANGE IS NEEDED**

The current section 44 was enacted in 2007 when the *Inquiry Act* was replaced by the *Public Inquiry Act*. We were offered the choice (or at least consulted on the choice) between reference to tribunal powers in the new Act or in the *Administrative Tribunals Act*. For reasons that I don't recall, the latter was chosen. Discipline staff are now concerned that the provisions are hard to understand. They are less accessible than they might be if located in the *Legal Profession Act* itself. I suggest re-locating the provisions from the *Administrative Tribunals Act* to the *Legal Profession Act* and using language that is more in keeping with the *Legal Profession Act* and the Law Society.

##### **HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

The proposed amendments would provide better accessibility and transparency of powers of Benchers and panels to conduct hearings and compel documentary and oral evidence.

##### **CONSEQUENTIAL AMENDMENTS**

None

##### **HISTORY OF PROPOSED AMENDMENT**

This is a recent request from discipline staff.

##### **RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 47 – REVIEW ON THE RECORD

#### ***Reviews of hearing panel decisions to be conducted before a “review board” established in the rules***

##### **NATURE OF CHANGE PROPOSED**

Change the body that reviews hearing panel decisions from the Benchers to a review board.

##### **WHY CHANGE IS NEEDED**

Under the current section 47, “reviews” of a decision of a hearing panel are referred to the Benchers for a review on the record. While there is no immediate plan to change this, the Separation of Functions Task Force has been examining options that would more clearly separate the adjudicative and investigative functions of the Benchers. This includes appointing to hearing panels more non-lawyers and more lawyers who are not currently Benchers. To maximize the options open to the Law Society in the future, it would be advisable to remove the statutory requirement that reviews be heard by the Benchers.

It is therefore suggested that the statute be amended to provide that reviews are heard by a “review board” and that the Benchers be authorized to make rules concerning its appointment. In this manner, the Benchers can continue the current process of having reviews heard by the Benchers, if they so desire, by making rules that would allow the appointment of only Benchers to the review board, or perhaps only Benchers not currently members of the Discipline Committee. The amendment would also allow for more future latitude in the composition of review boards, including the appointment of other lawyers or even non-lawyers, should that course ever be desired as being in the public interest.

##### **HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

Allows review of hearing panel decisions by a body called the review board, which is potentially more independent of the Benchers and the Benchers committee that ordered the hearing.

##### **CONSEQUENTIAL AMENDMENTS**

section 6 — Meetings

section 9 — Committees

section 42 — Failure to attend

section 43 — Right to counsel

section 48 — Appeal

#### **HISTORY OF PROPOSED AMENDMENT**

This proposal developed as a result of the Separation Task Force. It appeared that the work of that group to make a more apparent division between the hearing panels and those who ordered the hearing could go for naught if the decision of the more independent panel could be reversed by the Benchers.

#### **RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.



## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 48 – APPEAL

#### ***Right to appeal a hearing panel decision to the Court of Appeal by Discipline or Credentials Committee***

##### **NATURE OF CHANGE PROPOSED**

Allow the Discipline Committee and the Credentials Committee to appeal decisions of panels or review board to Court of Appeal

##### **WHY CHANGE IS NEEDED**

Currently, the regulatory committees are able to refer a panel decision for a review by the Benchers. Only the applicant or respondent to a citation have a right of appeal to the court. Either party should be able to get a judicial ruling on important questions

Under the recent amendments to the *Health Professions Act*, each of the colleges has a statutory right of appeal to the Supreme Court from a decision of the Discipline Committee of the college, which is the equivalent of Law Society hearing panels.

Under the *Legal Profession Act*, either the respondent or the Discipline Committee, or the applicant or the Credentials Committee, can initiate a Benchers review of a hearing panel decision, but only the respondent or applicant can appeal a decision of either a hearing panel or a Benchers review to the Court of Appeal. That could have an uneven effect on the jurisprudence of lawyer discipline. It also suggests that there is no external appeal by the Discipline Committee or Credentials Committee because the Committee and the tribunal are essentially the same entity, an impression that ought to be dispelled.

##### **HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

Allows the Court to make a final ruling on regulatory issues, not just when that is in the interest of individuals affected but also when it is in the interests of the public. Makes for a more complete and balanced jurisprudence.

##### **CONSEQUENTIAL AMENDMENTS**

None

**RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

## LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

### SECTION 87 – CERTAIN MATTERS PRIVILEGED

### SECTION 88 – NON-DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL INFORMATION

### SECTION 89 – CONFIDENTIAL DOCUMENTS

#### ***Clarification of provisions dealing with privileged and confidential information***

#### **NATURE OF CHANGE PROPOSED**

Clarify and reduce current language, which is difficult to understand and may not be adequate to protect the integrity of Law Society investigations

#### **WHY CHANGE IS NEEDED**

The Benchers accepted a suggestion that it might be useful to consider seeking amendments to sections 87 and 88 to set out in a clearer manner the various confidentiality requirements that are placed on Law Society reports, as well as the responsibilities of the Law Society in connection with information obtained during the course of the discharge of its mandate.

In particular, section 87 should be amended to

- make it clear that it applies to proceedings under Part 5 of the Act;
- specify that a person who is in possession of confidential information acquired as an employee or agent of the Law Society continues to be non-compellable as a witness, and in fact incompetent to testify, without the consent of the Executive Director even if no longer in the employ of the Law Society.

The current sections cover the requirements, but they could be written in clearer fashion, and should be revised in light of the decision in *Skogstad v. Law Society of BC*, 2007 BCCA 310, to make it clear to lawyers that the Law Society can demand and receive privileged information without the lawyer breaching the duty of confidentiality and privilege and without jeopardizing the privilege of the lawyer's client.

Section 89 is based on a provision from the *Criminal Code* that was declared unconstitutional in 2002 and, again in light of the *Skogstad* decision may itself need substantial revision or repeal.

**HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST**

The proposed amendments would provide better protection of the client's right to privilege over information provided to his or her lawyer and greater clarity around what may be disclosed in the course of Law Society investigations without impugning that right. They would also better protect the integrity of LSBC investigations by ensuring that sensitive information and material does not end up being put in evidence in a proceeding outside the Law Society. Finally, it would provide expressly that the evidence necessary for an effective investigation must be produced

**CONSEQUENTIAL AMENDMENTS**

None

**RECOMMENDATION**

The Act and Rules Subcommittee recommends that the amendments form part of the Law Society request for legislation in 2011.