

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday, July 15, 2011
- PRESENT:**
- | | |
|--|---------------------|
| Gavin Hume, QC, President | Peter Lloyd, FCA |
| Bruce LeRose, QC, 1 st Vice-President | Benjimen Meisner |
| Art Vertlieb, QC, 2 nd Vice-President | Nancy Merrill |
| Haydn Acheson | David Mossop, QC |
| Rita Andreone | Suzette Narbonne |
| Satwinder Bains | Thelma O'Grady |
| Kathryn Berge, QC | Lee Ongman |
| Joost Blom, QC | Gregory Petrisor |
| Patricia Bond | David Renwick, QC |
| Robert Brun, QC | Claude Richmond |
| E. David Crossin, QC | Alan Ross |
| Tom Fellhauer | Catherine Sas, QC |
| Leon Getz, QC | Richard Stewart, QC |
| Carol Hickman, QC | Herman Van Ommen |
| Stacy Kuiack | Kenneth Walker |
| Jan Lindsay, QC | |
- STAFF PRESENT:**
- | | |
|---------------------|------------------|
| Tim McGee | Bill McIntosh |
| Deborah Armour | Jeanette McPhee |
| Lance Cooke | Doug Munro |
| Charlotte Ensminger | Lesley Pritchard |
| Su Forbes, QC | Susanna Tam |
| Jeffrey Hoskins, QC | Alan Treleaven |
| Michael Lucas | Adam Whitcombe |
- GUESTS:**
- Elizabeth Adgin-Tetty, Associate Dean, Faculty of Law, University of Victoria
 - Christopher Axworthy, QC, Dean, Faculty of Law, Thompson Rivers University
 - Dom Bautista, Executive Director, Law Courts Center
 - Johanne Blenkin, Executive Director, Courthouse Libraries BC
 - Kari Boyle, Executive Director, Mediate BC Society
 - Anne Chopra, Equity Ombudsperson of British Columbia
 - Jeremy Hainsworth, Reporter, Lawyers Weekly
 - Azool Jaffer-Jeraj, President, Trial Lawyers Association of BC
 - Caroline Nevin, Executive Director, CBABC
 - Allan Parker, QC, Program Consultant, Access Pro Bono
 - Kerry Simmons, Vice-President, CBABC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on June 18, 2011 were approved as amended.

Consent Resolutions

The following resolutions were passed unanimously and by consent.

2. Act & Rules Subcommittee: Amendments to Rule 4-43 (investigations of books and accounts)

BE IT RESOLVED: to rescind Rule 4-43(1) and (1.1) and substitute the following:

- (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.
 - (1.1) When electronic records have been produced or copied pursuant to an order under this Rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.
 - (1.2) The lawyer must make a request under subrule (1.1) in writing to a person designated under subrule (2) within 7 days of receiving a copy of the order under this rule.
 - (1.3) An order under this Rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (1.1).

3. Act & Rules Subcommittee: Amendments to Rule 5-4 (cross-examination of applicant or respondent)

BE IT RESOLVED: to rescind Rule 5-4 and substitute the following:

Compelling witnesses and production of documents

- 5-4** (1) In this Rule “**respondent**” includes a shareholder, director, officer or employee of a respondent law corporation.
- (2) A panel may
 - (a) compel the applicant or respondent to give evidence under oath, and
 - (b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant’s or respondent’s possession or control that may be relevant to the matters raised by the application or in the citation.
 - (3) A person who is the subject of an order under subrule (2)(a) may be cross-examined by counsel representing the Society.

4. External Appointments: Appointments to the Board of Directors of the Legal Services Society and the QC Appointments Advisory Committee

BE IT RESOLVED: to re-appoint Thomas Christensen and David Crossin, QC to the board of directors of the Legal Services Society, each for a two-year terms effective September 7, 2011.

BE IT RESOLVED: to appoint First Vice-President LeRose to join President Hume as the Law Society's representatives on the 2011 QC Appointments Advisory Committee.

5. For Bencher Approval: Finance Committee Recommendations for Changes to the Executive Limitations

BE IT RESOLVED: to rescind Part 2.C.3 of the Executive Limitations and substitute the following:

“ the CEO must ensure that Law Society budgeting:

3. in the General Fund ...

(c) ensures that Trust Administration Fee (TAF) revenue is accounted for separately from other revenues and is allocated to fund Trust Assurance program costs and then TAF net assets, until the TAF net assets have reached an amount equal to six months of Trust Assurance program costs. Any additional TAF revenue above this level must then be allocated to Part B insurance funding.

REGULAR AGENDA – for Discussion and Decision

6. President's Report

Mr. Hume referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President since his last report, and elaborated on a number of matters, including those outlined below.

a. June 23, 2011 (Attend Courthouse Libraries BC Annual General Meeting)

The main topic of discussion was a progress report on Courthouse Libraries BC's current governance review process. Board Chair David Zacks, QC advised that a discussion paper with recommendations will be completed by early fall for review by the directors and members.

b. July 13, 2011 (Attend UBC Faculty of Law News Conference)

The gift of \$11.86 million by UBC Law alumnus Peter Allard was announced as the single largest donation ever made to UBC's Faculty of Law and one of the largest donations ever to a Canadian law school. Mr. Allard's gift will support the UBC Faculty of Law's new building, establish an international prize that supports freedom, integrity and human rights, and fund an online historical faculty archive. In honour of Mr. Allard's contribution, the new UBC Faculty of Law building will be named Allard Hall.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

a. 2012 Budget and Fees

b. New Strategic Plan – 2012 – 2014

c. Buildings and Premises – 9th Floor “Facelift” & Space Usage Assessment

8. Report on Outstanding Hearing and Review Reports

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

GUEST PRESENTATION

9. Rural Education and Access to Lawyers Initiative (REAL): Funding

Mr. Hume invited Kerry Simmons, Vice-President the BC Branch of the Canadian Bar Association (CBABC), to present a request for Law Society funding support for the final two years of the five-year CBABC Rural Education and Access to Lawyers Initiative (REAL).

Ms. Simmons explained that REAL is a coordinated set of programs to address the current and projected shortage of lawyers practising in small communities and rural areas of BC, in order to protect access to legal services in these areas. She outlined REAL’s background and history, noting that the Law Foundation’s REAL operating grant expires at the end of 2011, with two years remaining in the program. Ms. Simmons noted that of the approximately 10,500 lawyers practising in BC, 82% are in Vancouver, Victoria and Westminister Counties; and that about 90% of BC’s 2011 articulated students are with firms in those urban counties. Ms. Simmons also provided information on the effectiveness of REAL’s primary summer student program and secondary stakeholder engagement and profile-raising programs.

Bencher questions and discussion followed. Mr. Hume confirmed that this matter will be referred to the Executive Committee for consideration and development of a recommendation, to be presented to the Benchers at their September meeting.

2009-2011 STRATEGIC PLAN IMPLEMENTATION – for Discussion and/or Decision

10. 2011 Advisory Committees: Mid-year Updates by Committee Chairs

Mr. Vertlieb, Mr. Brun, Ms. Lindsay and Ms. O’Grady delivered the mid-year reports of the Access to Legal Services, Equity and Diversity, Independence and Self-Governance and Lawyer Education Advisory Committees, respectively. The Chairs referred the Benchers to the advisory committees’ written reports in the meeting materials (Access to Legal Services at page 10000, Equity and Diversity at page 10007, Independence and Self-Governance at page 10012, and Lawyer Education at page 10019) for details.

2012-2014 STRATEGIC PLAN DEVELOPMENT – for Discussion and/or Decision

11. 2012-2014 Strategic Planning

Mr. Hume introduced this introductory Benchers’ discussion as the first of several planning sessions, to culminate in the formulation of the Law Society’s 2012 -2014 Strategic Plan by the Benchers meeting in December. Mr. Hume noted that no decisions will be made in the course of or as a result of today’s deliberation.

Mr. McGee stressed the governance value and importance of the Benchers’ full and free expression of their personal views in today’s discussion. He outlined the strategic planning process to be followed for

the balance of 2011 and referred to the four goal statements set out in Mr. Lucas's memorandum (at page 11000 of the meeting materials) as today's discussion framework:

1. Enhance public confidence in the administration of justice
2. Be a model professional regulatory body
3. Establish appropriate standards for admission to and continued practice in the legal profession and to ensure that programs exist to aid applicants and legal professionals to meet those standards
4. Promote and improve access to legal services

Mr. Lucas explained that the four statements comprise potential organizational goals for the Law Society, presented as possible expressions of aspects of the Society's mandate as formulated in the proposed amendment of section 3 of the *Legal Profession Act* that was submitted to the Legislature last fall:

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, regulating the practice of law, and
- (d) supporting and assisting lawyers in fulfilling their responsibilities in the practice of law.

Mr. Lucas noted that his memorandum also outlines a number of issues previously identified by the Benchers for consideration as potential strategies or initiatives for the Law Society's next strategic plan:

- Aging of the legal profession
- Examination of the rationale or purpose of the Admission Program
- Role of the Law Society as Regulator and Insurer
- Study to analyze the benefits of the public right to an independent lawyer
- Independent oversight
- Governance

The Benchers were asked to discuss the four organizational goals noted by Mr. Lucas, and to focus on three questions set out in Mr. Lucas's memorandum:

1. Are the four organizational goals described above the right goals for the Law Society?
2. On a preliminary examination, what are the most important issues or matters arising from the Advisory Committee Reports?
3. On a preliminary examination, what are the most important issues or matters arising from the "carry over" matters listed above?

An extended Benchers' discussion followed, at the conclusion of which Mr. Hume confirmed that the issues raised will be summarized in a memorandum to be delivered to the Benchers in advance of their September meeting.

OTHER MATTERS – For Discussion and/or Decision

12. Finance Committee: Approval of 2012 Fees

As Chair of the 2011 Finance Committee, Mr. LeRose presented the Law Society’s proposed 2012 Fees and Budget to the Benchers for their approval. Mr. LeRose noted that the presentation’s title (*Improving Regulation*) was chosen to signal the fact that a number of important elements of the 2012 budget address planned changes to Law Society discipline and governance processes that were decided in 2011.

Mr. LeRose advised that the Finance Committee reviewed and considered budgets for the General Fund, the Special Compensation Fund and the Lawyers Insurance Fund at three meetings in May and June, following which the Committee prepared and presented the overall 2012 fee proposal to the Executive Committee at its July meeting. Mr. LeRose referred the Benchers to page 12001 of the meeting materials for a summary of the 2012 fee proposal highlights:

- Overall mandatory fee increase of 3.1%
- Law Society portion of General Fund Fee increased by \$104, relating mainly to staff market-based salary adjustments, enhanced regulation department and hearing panel membership expansion
- Special Compensation Fund assessment reduced from \$5 to \$1
- Lawyers Insurance Fund assessment remains at \$1,750
- Trust Administration Fee remains at \$10
- CanLII contribution increased from \$32.25 to \$34.71
- LAP increased by \$4 to \$60
- No change in Advocate, Federation of Law Societies or Courthouse Libraries BC fees or Pro Bono percentage

Mr. LeRose moved (seconded by Mr. Vertlieb) that the Benchers approve the following practice fee resolution:

BE IT RESOLVED: to recommend to the members at the 2011 Annual General Meeting a practice fee of \$1,840.41 commencing January 1, 2012, consisting of the following amounts:

• General Fund	\$1,503.17
• Federation of Law Societies	20.00
• CanLII	34.71
• Pro Bono Contribution	15.03
• Courthouse Libraries BC	180.00
• LAP	60.00
• Advocate	27.50
Practice Fee	\$1,840.41

The motion was carried.

Mr. LeRose moved (seconded by Mr. Walker) that the Benchers approve the following insurance fee resolution:

BE IT RESOLVED that:

- the insurance fee for 2012 pursuant to section 30(3) of the Legal Profession Act be fixed at \$1,750;
- the part-time insurance fee for 2012 pursuant to Rule 3-22(2) be fixed at \$875; and
- the insurance surcharge for 2012 pursuant to Rule 3-26(2) be fixed at \$1,000.

The motion was carried.

Mr. LeRose moved (seconded by Ms. Hickman) that the Benchers approve the following Special Compensation Fund resolution:

BE IT RESOLVED: to recommend to the members at the 2011 Annual General Meeting that the Special Compensation Fund Assessment for 2012 be set at \$1.

The motion was carried.

Mr. LeRose thanked the other members of the 2011 Finance Committee (Art Vertlieb, QC (Vice-Chair), Rita Andreone, Stacy Kuiack, David Renwick, QC and Kenneth Walker) and CFO Jeanette McPhee and her staff for their dedication and hard work.

13. Commitment to “Complete the Ladder Cycle” from Candidates for Benchers’ Nomination for Second Vice-President: for Discussion

Mr. Vertlieb outlined his view that candidates for the position of Benchers’ nominee for Second Vice-President-elect should be asked to commit to make every reasonable effort to complete the terms of Second Vice-President, First Vice-President and President. Mr. Vertlieb proposed that, commencing with the election of the Law Society’s 2012 Second Vice-President, the Benchers’ nominee be required to make a commitment comparable to the condition set out in the terms of reference for the Law Society of BC Member of the Council of the Federation of Law Societies:

The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.¹

Mr. Vertlieb moved (seconded by Ms. Hickman) that the Benchers adopt the following resolution:

BE IT RESOLVED that, commencing with the election of the Law Society’s 2012 Second Vice-President, the person selected as the Benchers’ nominee be required, as a condition of accepting that position, to make genuine efforts to complete his or her terms of office as Second Vice-President, First-Vice President and President, and more particularly, to agree not to accept a judicial appointment or other position that requires withdrawing from any of those offices.

¹Terms of Reference for LSBC Member of FLSC Council, page 2 (approved by the Executive Committee at their September 16, 2010 meeting).

The motion was carried.

14. Report of the Cloud Computing Working Group

Mr. Hume briefed the Benchers on the background of the Cloud Computing Working Group (comprising four Benchers: Mr. Hume as Chair, Mr. LeRose, Mr. Lloyd and Mr. Kuiack) and the work underlying its report at page 14000 of the meeting materials. Mr. Hume referred to page 14002 for a statement of the purpose of the Cloud Computing Working Group report:

The purpose of this report is to identify the risks associated with lawyers using electronic data storage and processing, accessed remotely over a network (like the Internet), particularly circumstances where those services are provided by a third party vendor, and to suggest how lawyers can use those technologies/services while still meeting their professional obligations.

Mr. LeRose moved (seconded by Mr. Vertlieb) that the Benchers adopt the working group's 11 recommendations (the Cloud Computing Working Group Recommendations, at pages 14022-14025 of the meeting materials and Appendix 2 to these minutes). Mr. Crossin moved (seconded by Ms. Lindsay) that Cloud Computing Working Group Recommendations be taken as read and their adoption be considered by the Benchers in aggregate.

In the ensuing discussion several Benchers stressed the importance of consultation with and input from the profession regarding the working group's report and recommendations. Mr. Hume noted that the report is already posted to the Law Society website² and confirmed that the profession will be invited to comment on the report and its recommendations.

The motion was carried.

Mr. Hume noted the working group's gratitude for the input it received on legal, technical, investigative and accounting matters from external consultant Doug Arnold, and Lorene Novakowski of Fasken Martineau; and from Law Society staff: David Bilinsky, Andrea Chan, Felicia Ciolfitto, Danielle Guglielmucci, Graeme Keirstead, Karen Keating, Nancy Lee, Michael Lucas, David McCartney, Doug Munro, Liza Szabo; and from Margrett George in the Lawyers Insurance Fund. Mr. Hume noted particularly the value the support provided by Staff Lawyer Doug Munro, in guiding the working group's research and deliberations and in leading the drafting of its report.

15. Family Law Task Force: Best Practice Guidelines

Ms. Hickman briefed the Benchers on the background of the Family Law Task Force and its report, *Best Practice Guidelines for Lawyers Practising Family Law* at page 15001 of the meeting materials. She noted that the "heavy lifting" in the development and drafting of the Family Law Guidelines was performed by a CBABC working group (David Dundee and Kerry Simmons). Ms. Hickman credited the members of the CBABC working group for the quality of their work and their cooperation and collaborative spirit in accepting the request of the Family Law Task Force that the scope of the Family Law Guidelines be restricted to a set of best practice guidelines for lawyers. Ms. Hickman referred the Benchers to Appendix A of the task force report for the resulting guidelines (the Family Law Guidelines, at page 15004 of the meeting materials and Appendix 3 to these minutes).

² See: <http://www.lawsociety.bc.ca/page.cfm?cid=99&t=Committee-and-Task-Force-Reports> under Records – Filing – Technology.

Ms. Hickman moved (seconded by Mr. Stewart) that the Benchers endorse the Family Law Guidelines as aspirational standards for lawyers practising family law, to be included for publication in the Law Society's practice resources.

The motion was carried.

The Benchers acknowledged the work of the Family Law Task Force (comprising Ms. Hickman as Chair, Benchers Berge, Bond, Merrill, Petrisor and Stewart, and Life Bencher Patricia Schmit, QC). Ms. Hickman acknowledged the value of the contributions of Staff Lawyer Doug Munro to the work of the task force. Ms. Hickman also noted that while the development of the Family Law Guidelines constitutes the heart of the Family Law Task Force's mandate, the task force has been tasked by the Benchers with two other discrete projects, and will continue its work on those projects for reporting with recommendations at a later date.

16. FLSC Council Update

Mr. Hume referred the Benchers to the report of Ronald MacDonald, QC, President of the Federation of Law Societies of Canada, at page 16000 of the meeting materials and provided additional comments regarding progress and ongoing work of the Federation's Discipline Standards Committee and Model Code Standing Committee.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

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The Law Society
of British Columbia



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

July 15, 2011

Introduction

This month's Bencher meeting focuses on two significant items of business namely the recommendations regarding the Law Society's budgets and fees for 2012 and the initial planning discussions for the new 2012 – 2014 Strategic Plan. In this report, I will briefly introduce the 2012 budgets and fees item, which will be presented at the meeting by Bruce LeRose, QC as Chair of the Finance Committee. I will also provide my thoughts on the importance of the strategic planning exercise and suggest an additional substantive item for consideration. As this is the last Bencher meeting until September I will also provide an informal update at the meeting on the financial results through May 31 of this year. Full second quarter results to June 30 are not yet available but will be presented at the next Bencher meeting in September.

1. 2012 Budget and Fees

The budget and fees planning process, which commenced in April of this year with departmental reviews of budget requirements and resourcing priorities, has culminated in the Finance Committee report to the Benchers recommending the fees for 2012 and presenting the underlying operational budgets. The approach that Management has taken again this year is to present recommendations to the Finance Committee reflecting balanced budgets, no use of reserves and sufficient funding for the proper performance of our core regulatory responsibilities. While the basic elements of our budgets vary little from year to year, each year we generally have an area that generates particular needs and requirements. This year we have given special emphasis to strengthening our professional conduct and discipline processes and this is reflected in our budgetary requirements. Jeanette McPhee, our Chief Financial Officer, and the rest of the senior management team will be at the meeting to address any specific questions and to provide additional details as requested.

2. New Strategic Plan – 2012 – 2014

The Bencher materials for this month's meeting include a memorandum to the Benchers from Michael Lucas, Manager Policy & Legal Services, entitled "Strategic Planning – Introduction for 2012 – 2014 Planning". When you review this memorandum, I would ask you to please pay particular attention to the three suggested "Next Steps" listed on page four. This is really the best description of the Benchers' assignment for this initial meeting in the planning process. I would also like to add a few more thoughts in this report for your consideration.

Good strategic planning usually starts with agreement on a few pivotal goals or objectives. There are four possible pivotal goals/objectives set out in Mike's

memorandum. These are very similar to the three “Principal Goals” set out in the current plan. That is fine. We do not need to completely overhaul our key goals/objectives every three years but we do need to critically assess what strategies will have the best chance of leading to favourable outcomes during the life of the plan.

To develop good strategies it is important to articulate and understand the issues that your strategies will address. We are fortunate to have a number of issues already under Bencher consideration. Six of those are listed in the memorandum as carry forward items. Several others are set out in the Advisory Committee Reports, which are part of the Bencher materials.

As you consider how these issues relate to the principal goals/objectives, also start to consider which ones in your view, if addressed, could make the most favourable impact on the public interest.

It is also not too early to start thinking about which ones seem more difficult or complex versus easier to achieve. This thinking will feed into the latter stages of the Bencher planning process in the fall when priorities will be established. These are priorities both with respect to what makes it into the new plan and for those items that do, which ones will take priority in terms of available resources. When the Benchers are doing this prioritization work in the fall we will have the benefit of an assessment tool which divides proposed initiatives into one of four categories based upon a two scale ranking: importance or urgency on the one hand, and feasibility on the other.

There is one additional substantive issue which is not presently before the Benchers for this meeting, but which I would like the Benchers to consider as part of the planning process. The topic generally stated is Law Society “Relationships”. This would include government relations as the main focus but would also include relationships with all external stakeholders, e.g. community organizations, the judiciary and the courts, the media, law related organizations, etc.

In my view, we have made a lot of progress on these fronts in the past few years. However, as an organization I think we need to take a fresh look at our approaches and, in particular, the amount of time and effort we put into this area. As we heard at the Bencher retreat this year, there is probably a rather large window of opportunity for us to open on this front and I think we should take the time to consider the strategic aspects of what we can and should be doing. I have shared some preliminary ideas with the Executive Committee and look forward to including this in the Bencher planning discussions.

3. **Buildings and Premises – 9th Floor “Facelift” & Space Usage Assessment**

I am pleased to provide you with an update on the 9th floor “facelift”, which will start shortly.

As reported earlier, the 9th floor will undergo a series of improvements designed to modernize the meeting facilities and freshen up the look and feel. Specifically new ergonomic meeting room chairs will be arriving and new meeting room tables, all equipped with table top power “pop-ups”, are being installed. New audiovisual equipment is being installed in rooms 914, 910 and the Hearing Room. For those of you that have had the exhilarating experience of tripping over polycom lines and power cords in these rooms, I must tell you that those cheap thrills are over. In addition, a new heat pump is being added on the floor to help better balance the heating/cooling of rooms 909, 910 and the President’s office. Last, but not least new carpeting and floor tiles are being installed, as well as new washroom sinks equipped with environmentally friendly auto faucets.

This work will start on July 29 and finish on August 22. During this time there will be no working access to the 9th floor. If you need to have access to working facilities at the Law Society during this time please contact Bernice Chong, Manager, Operations by telephone at 604-443-5751 or by email at bchong@lsbc.org.

The interim report of the overall Law Society space usage assessment for 845 Cambie, which has been conducted by SSDG Design consultants, is being finalized and will be reviewed next week. This work is on track and we expect to be able to brief the Executive Committee regarding options and recommendations regarding all LSBC space in the fall.

Timothy E. McGee
Chief Executive Officer

RECOMMENDATIONS

Recommendation 1: The Law Society should adopt and publish the attached due diligence guidelines for lawyers using third party electronic data storage and processing (see **Appendix 1**).

Recommendation 2: In order to ensure the Law Society's regulatory process keeps pace with evolutions in data storage and processing technology, and to ensure the audit process remains robust, the Act and Rules Subcommittee should draft rules that capture the following concepts:

1. Rule 3-68(0.1) should include reference to Rule 3-59 in order to facilitate the Trust Regulation Department auditing and investigation of accounting records;
2. Rule 3-68 should be amended to remove reference to the "chief place of practice" requirement with respect to electronic records, and instead should require that electronic records be made available at the time of request in a format acceptable to the Law Society (the Law Society should publish guidelines as to what the Trust Regulation Department requires as an acceptable format);
3. The general retention period in Rule 3-68(1) should be 10 years from the final accounting transaction;
4. There should be a general rule regarding records in electronic form that gives the Law Society the discretion to accept copies of those electronic records in paper or another form;
5. There should be a general rule regarding records in electronic form that the Law Society has the discretion to require the lawyer to provide the meta data associated with those records;
6. There should be a general rule that requires lawyers to ensure their electronic records are capable of meeting the prevailing electronic discovery standards of a British Columbia superior court;
7. The Act and Rules Subcommittee should determine how to incorporate the following trust rule requirements:
 - (a) If monthly reconciliations are prepared and stored electronically, the reconciliation must show the date it was completed. Each of the monthly reconciliations must be available with appropriate back up documentation and not overwritten by the system.
 - (b) If billing records are stored electronically, they must include the creation date as well as any modification dates.
 - (c) All accounting records must be printable on demand in a comprehensible format (or exported to acceptable electronic format (ie. PDF)) and available for at least 10 years from the final accounting transaction. If the

member scans all his supporting documentation such as 3rd party documents like bank statements the full version meaning all the pages front and back even if there it is blank page.

- (d) A sufficient “audit trail” must be available and printable on demand in a comprehensible format (this should be a requirement of all accounting software whether it’s in the cloud or a stand-alone program such as ESILAW or PCLAW etc.).
 - (e) Audit trail transaction reports must be complete, showing all postings into the software with specifically assigned transactions that correspond chronologically with dates etc.
 - (f) Cash receipts must always be retained in hard copy.
 - (g) Ability of system to provide creation dates, what changes were made, and how often the documents (i.e. Word, Excel and/or Adobe) were changed. Ensuring that metadata information is not lost when stored on a cloud.
 - (h) Ability for LSBC to have view only access & printing access to all items stored on cloud (i.e. emails, documents, accounting records) when required. This does not derogate from any rule that allows the Law Society to copy a record or have that record provided on request. The purpose is to allow for a forensic investigation that does not alter the underlying record.
8. There should be a rule that recognizes, in circumstances where the Law Society has had to copy electronic records held by a third party, the Law Society may rely on the copies as best evidence and the onus is on the lawyer to provide a forensic copy of those records if the lawyer wishes to dispute the quality of the evidence.
 9. The Act and Rules Subcommittee should consider, as part of future revisions to the *Legal Profession Act*, amending s. 37 to permit orders for copying or duplication of records, as an alternative to “seizing” records.

Recommendation 3: For the purposes of interpreting Rule 3-68(4), and subject to the other recommendations in this report, if a lawyer ensures through contractual safeguards that custody or control of his or her records does not pass to a third party, the lawyer can use a third party for the storage or processing of those records. If the lawyer is unable to access those records and provide them on demand during an audit or Law Society investigation, however, the lawyer may be found to have lost custody or control of the records, which may lead to disciplinary consequences.

Recommendation 4: In circumstances where the Law Society Rules require a lawyer to either provide the Law Society the lawyer's records or make copies of the records available to the Law Society, and the lawyer either refuses to comply, or is unable to comply by virtue of having used a service provider that does not make the records available in a timely fashion, the lawyer should be suspended until such time as the lawyer complies with the disclosure requirements under the Law Society Rules. The Act and Rules Subcommittee should consider whether this requires creating a new administrative suspension rule, or proceeding by way of Rule 3-7.1. In circumstances where the lawyer is suspended, the Law Society should consider seeking a court order for a custodianship in order to protect the public and ensure the suspended lawyer's clients continue to be served.

Recommendation 5: The Law Society should encourage the CBA BC Branch and CLE BC to include as part of future courses on cloud computing (or similar technology), information about the best practices and Law Society Rules.

Recommendation 6: The Ethics Committee should review its ethics opinions regarding the use of third party service providers and update them to address the concerns arising from the use of cloud computing, or similar technology.

Recommendation 7: Law Schools and PLTC should teach students that lawyers' have an obligation to ensure their use of technology is consistent with their professional obligations.

Recommendation 8: The Law Society's Trust Regulation Department, and the Professional Conduct and Investigation Department, when dealing with investigations involving a lawyer who uses cloud computing, should identify circumstances in which the approach proposed in this report is failing to protect the public interest, in the event modifications to the policy and rules is necessary for the Law Society to fulfill its public interest mandate. Because technology will continue to develop, and standards will emerge, it is important to ensure the Law Society keeps pace with these changes, and staff will play an important role in keeping the Benchers apprised of the potential need for amendments to the policies and rules recommended in this report.

Recommendation 9: The Practice Advice group should modify their resources to reflect the recommendations in this report. This may involve creating checklists to better assist lawyers.

Recommendation 10: Because cloud computing is an emerging technology, the Law Society should ascertain whether any lawyers who use cloud computing are willing to have the Trust Assurance Department determine whether their system meets the present requirements, and the investigators determine whether the system meets the requirement for a 4-43 investigation. This would not be for the purpose of endorsing a

particular system. It would be for the purpose of identifying any concerns to ensure the Law Society's auditing program can address cloud computing.

Recommendation 11: Because cloud computing stores records in a manner where the Law Society may not be able to make forensic copies of hard drives, or segregate irrelevant personal information that is stored in the cloud, Rule 4-43 should be amended to make it clear that the process for protecting personal information during investigations is subject to the lawyer using a record keeping system that supports such a process. If lawyers choose to use systems that do not support that process, they do so at their own risk, and the Law Society may end up having to collect or access personal information that is irrelevant to an investigation.

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**APPENDIX:
BEST PRACTICE GUIDELINES FOR LAWYERS PRACTICING FAMILY LAW**

Lawyers involved in a family law dispute should strive to ensure it is conducted in the following manner:

1. Lawyers should conduct themselves in a manner that is constructive, respectful and seeks to minimize conflict and should encourage their clients to do likewise.²
2. Lawyers should strive to remain objective at all times, and not to over-identify with their clients or be unduly influenced by the emotions of the moment.
3. Lawyers should avoid using inflammatory language in spoken or written communications, and should encourage their clients to do likewise.
4. Lawyers should caution their clients about the limited relevance of allegations or evidence of conduct.
5. Lawyers should avoid actions that have the sole or predominant purpose of hindering, delaying or bullying an opposing party, and should encourage their clients to do likewise.
6. Lawyers cannot participate in, and should caution their clients against, any actions that are dishonest, misleading or undertaken for an improper purpose.
7. Lawyers should keep their clients advised of, and encourage their clients to consider, at all stages of the dispute:
 - a. the risks and costs of any proposed actions or communications;
 - b. both short and long term consequences;
 - c. the consequences for any children involved; and
 - d. the importance of court orders or agreements.
8. Lawyers should advise their clients that their clients are in a position of trust in relation to their children, and that
 - a. it is important for the client to put the children's interests before their own; and
 - b. failing to do so may have a significant impact on both the children's well-being and the client's case.
9. Lawyers should advise their clients of and encourage them to consider, at all stages of the dispute, all available and suitable resources for resolving the dispute, in or out of court.

² Lawyers are not obliged to assist persons who are being disrespectful or abusive.