



Minutes

Benchers

Date: Friday, June 12, 2015

Present: Ken Walker, QC, President
Herman Van Ommen, QC, 2nd Vice-President
Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Pinder Cheema, QC
David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Miriam Kresivo, QC

Dean Lawton
Peter Lloyd, FCA
Jamie Maclaren
Sharon Matthews, QC
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Lee Ongman
Greg Petrisor
Phil Riddell
Elizabeth Rowbotham
Sarah Westwood
Tony Wilson

Excused: David Crossin, QC, 1st Vice-President
Edmund Caissie
Claude Richmond
Cameron Ward

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins Goult
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan

Michael Lucas
Jeanette McPhee
Doug Munro
Jack Olsen
Tim Travis
Alan Treleven
Adam Whitcombe

Guests: Dom Bautista Executive Director, Law Courts Center
Prof. Janine Benedet Associate Dean of Academic Affairs, University of British
Columbia
Caroline Cassidy Scottish Civil Litigation Solicitor
Anne Chopra Equity Ombudsperson, Law Society of BC
Jennifer Chow Vice President, Canadian Bar Association, BC Branch
Gavin Hume, QC Law Society Member of the Council of the Federation of Law
Societies of Canada
Carmen Marolla Vice President, BC Paralegal Association
Susan Munro Director of Publications, Continuing Legal Education Society
of BC
Caroline Nevin Executive Director, Canadian Bar Association, BC Branch

INTRODUCTION

1. President Walker presentation of the 2015 Law Society Scholarship Yun Li-Reilly

Mr. Walker acknowledged Ms. Yun Li-Reilly who was in attendance to receive her award of the 2015 Law Society Scholarship, which will help further her study of privacy laws and the “right to be forgotten”.

Though unable to attend, Mr. Darcy Lindberg was also acknowledged as the winner of the Law Society Aboriginal Scholarship.

Magna Carta celebrations

Mr. Walker remarked on 800th Anniversary of the original signing of the Magna Carta, calling it a watershed moment in the development of our constitutional structure, and a foundational document to the rule of law and basic human rights. He noted the celebrations planned in both Victoria and Vancouver, and invited Benchers to attend.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on May 9, 2015 were approved as circulated.

The *in camera* minutes of the meeting held on May 9, 2015 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

RESOLUTION 1

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

1. In Rule 2-32.01

- (a) ***in subrule (1) by striking out “Subject to any prohibition in law,” and substituting “Subject to subrule (2) or any other prohibition in law,”***

(b) by rescinding subrule (2) (a) (iii) and substituting:(iii) a proceeding by way of indictment,, **and****(c) by adding the following subrule:**

(3) Despite subrule (2)(a)(iii), an articulated student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date.;

2. By rescinding Rule 2-43 and substituting the following:**Court and tribunal appearances by temporary articulated students****2-43(1)** Despite Rule 2-32.01 [*Legal services by articulated students*], a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(b) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(c) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(d) in the Provincial Court of British Columbia

(i) on any summary conviction proceeding,

(i.1) on any matter that is within the absolute jurisdiction of a provincial court judge,

- (ii) on any matter in the Family Division or the Small Claims Division, or
 - (iii) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, only on
 - (A) an application for an adjournment,
 - (B) setting a date for preliminary inquiry or trial,
 - (C) an application for judicial interim release,
 - (C.1) an application to vacate a release or detention order and to make a different order, or
 - (D) an election or entry of a plea of Not Guilty on a date before the trial date,
 - (e) on an examination of a debtor,
 - (f) on an examination for discovery in aid of execution, or
 - (g) before an administrative tribunal.
- (2) A person enrolled in temporary articles is not permitted to do any of the following under any circumstances:
- (a) conduct an examination for discovery;
 - (b) represent a party who is being examined for discovery;
 - (c) represent a party at a pre-trial conference.

RESOLUTION 2

BE IT RESOLVED to amend the Law Society Rules 2015 as follows:

1. In Rule 2-60

- (a) ***in subrule (1) by striking out*** “Subject to any prohibition in law,” ***and substituting*** “Subject to subrule (2) or any other prohibition in law,”
- (b) ***by rescinding subrule (2) (a) (iii) and substituting:***
 - (iii) a proceeding by way of indictment,, ***and***
- (c) ***by adding the following subrule:***
 - (3) Despite subrule (2) (a) (iii), an articulated student may appear without the student’s principal or another practising lawyer in attendance and directly supervising the student in a proceeding
 - (a) within the absolute jurisdiction of a provincial court judge, or
 - (b) by way of indictment with respect to

- (i) an application for an adjournment,
- (ii) setting a date for preliminary inquiry or trial,
- (iii) an application for judicial interim release,
- (iv) an application to vacate a release or detention order and to make a different order, or
- (v) an election or entry of a plea of Not Guilty on a date before the trial date.;

2. By rescinding Rule 2-71 and substituting the following:

Court and tribunal appearances by temporary articulated students

2-71(1) Despite Rule 2-60 [*Legal services by articulated students*], a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

- (a) in the Supreme Court of British Columbia in Chambers on any
 - (i) uncontested matter, or
 - (ii) contested application for
 - (A) time to plead,
 - (B) leave to amend pleadings, or
 - (C) discovery and production of documents, or
 - (iii) other procedural application relating to the conduct of a cause or matter,
- (b) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,
- (c) in the Provincial Court of British Columbia
 - (i) on any summary conviction proceeding,
 - (ii) on any matter that is within the absolute jurisdiction of a provincial court judge,
 - (iii) on any matter in the Family Division or the Small Claims Division, or
 - (iv) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, only on
 - (A) an application for an adjournment,
 - (B) setting a date for preliminary inquiry or trial,
 - (C) an application for judicial interim release,
 - (D) an application to vacate a release or detention order and to make a different order, or

- (E) an election or entry of a plea of Not Guilty on a date before the trial date,
 - (d) on an examination of a debtor,
 - (e) on an examination for discovery in aid of execution, or
 - (f) before an administrative tribunal.
- (2) A person enrolled in temporary articles is not permitted to do any of the following under any circumstances:
- (a) conduct an examination for discovery;
 - (b) represent a party who is being examined for discovery;
 - (c) represent a party at a pre-trial conference..

BE IT RESOLVED to authorize the Benchers to amend the Law Society Rules 2015 to allow appointed Benchers to

- a) attend general meetings as of right;***
- b) speak at a general meeting as of right;***
- c) act as a local chair at a general meeting if appointed by the Executive Director.***

EXECUTIVE REPORTS

3. President's Report

Mr. Walker announced the upcoming election of the nominee for Second Vice-President, noting the receipt of Miriam Kresivo's candidacy, and called for any other candidates. Hearing none, Mr. Walker confirmed Ms. Kresivo as the Benchers' nominee for Second Vice-President, with the formal election to take place at the Annual General Meeting in October.

Mr. Walker also briefed the Benchers on matters discussed at the Executive Committee meeting May 27, 2015. Federation governance was discussed, and Mr. Hume attended to receive direction from the Executive in advance of the Federation Council meeting June 1, 2015.

Mr. McGee provided his CEO Mid-Year Report on operations, and the Executive reviewed the draft Bencher Agenda as a regular part of its mandate to determine which projects are ready for Bencher consideration, and which require further staff input. Finally, the Executive received in camera reports from Ms. Morellato and Ms. Kresivo regarding the Notaries Working Groups.

Mr. Walker also reported on various Law Society matters to which he has attended since the last meeting. He thanked everyone for their attendance and participation in the 2015 Law Society Retreat, and particularly thanked David Crossin, Michael Lucas and Lance Cooke for their excellent work organizing the Retreat Agenda.

He attended at UBC to award the 2014-2015 Gold Medal to recipient Kayla Strong, and thanked Master McDiarmid for attending at TRU to award the Gold Medal to Lou Hamel. He also noted the Victoria and Vancouver Calls to the Bar, at which there were 199 admissions to the Bar collectively; Mr. Walker thanked numerous Benchers for their attendance.

Mr. Walker attended the CBA Benevolent Society's AGM to appoint the Law Society's representative on that Board for the coming year, and Mr. Van Ommen was thanked for his attendance at the Prince George Continuing Professional Development event. Finally, Mr. Walker provided highlights of the Law Society of Alberta's annual Retreat in Jasper attended by both himself and Mr. McGee.

4. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 1 to these minutes) which was a Mid-Year Report on operations. In clarifying the relevance of the operational review for Benchers, he expanded on the relationship between operations and strategy, noting that operational policies evolve from the Bencher's focus on strategic direction and priority. As examples, he referred to the Trust Assurance Program, which took three years to design and develop, and now leads the country, the Continuing Professional Development program that is now engrained in operations and provides the model adopted by most other jurisdictions, and the Small Firm Online Course, which originated from a Bencher Task Force and is now a fully implemented course.

He specifically reviewed the five elements of this year's Operational Plan:

- Knowledge Management Project, to aid staff in accessing information quickly and efficiently;
- Law Society Precedents system, to consolidate and oversee the development, access and use of precedents used by Law Society lawyers;
- Computer Literacy working group, to ensure and enhance a level of technological literacy required by modern standards;
- Public issues voice working group, to give voice to the many talented and diverse staff who have interest in participating in issues of social importance; and
- Core Values working group, to ensure our Code of Conduct reflects the dynamics of the current work force and the people who make up the Law Society

Mr. McGee also noted that staff and the Governance Committee are working on the possibility of electronic voting and webcasting at the 2015 Annual General Meeting.

Additionally, he reviewed financial information, confirming that the Law Society is on budget for all areas of discretionary spending, but is experiencing budgetary pressure in the area of work supported by external counsel. Flexibility is required around such work which has required more time and proven more complex than in years past. Managers are working to offset this pressure in other areas. In answer to questions, Mr. McGee confirmed that the use of external counsel is a necessary tool to address issues of capacity, conflict or expertise that cannot be substituted internally.

Finally, he echoed Mr. Walker's observations of the Alberta Retreat, noting that collaboration and engagement with other Law Societies assists us in finding our own ways to improve.

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

Gavin Hume, QC briefed the Benchers as the Law Society's member of the FLSC Council, confirming that the Council met June 1 to discuss issues raised by the Federation's Interim Report on Governance (attached as Appendix 2). The draft report articulated two potential structures for decision making: one that improves the status quo; and, a second that creates a different structure, consisting of a general assembly of Presidents and a skills-based Board of Directors.

Points that have been identified for consideration include: the need for an enhanced role for Law Society Presidents; the recognition and better utilization of CEO expertise; the formalization of the Council Agenda process; the need to ensure the commitment and competencies of Council members; and the review of the Presidential rotation system, including consideration of a merit-based system to replace or enhance the current geographical rotation.

Mr. Hume noted that no decisions were made in the June meeting; rather, the discussion and feedback will result in a fuller, revised report for the October Federation Council meeting. Mr. McGee reiterated that the report will focus on articulating both what the role of the Federation is, and how the Federation should operate to fulfill that role.

Additionally, Mr. Hume reported that the Federation has taken initiative to encourage further debate of legislation that will impact patent and trade mark agents, has been requested to add its support of a stalled Quebec Mobility Agreement, and has been called upon by the Truth and Reconciliation Commission to ensure that lawyers receive more comprehensive training on cultural and aboriginal issues.

Mr. Van Ommen, the Law Society's representative on the Federation's National Requirement Review Committee, reported on the first meeting of the committee, at which it began development of a work plan to:

- consider a non-discrimination requirement for approval of common law degrees;

- review the requirements for approving common law degrees, including how the requirements are implemented; and
- review generally the overall continuity of the admission process (law degree approvals, National Committee on Accreditation, National Admission Standards).

He anticipates a further committee meeting in the Fall, and will continue to report and circulate materials amongst those interested. Upon the request, Mr. Van Ommen confirmed the Terms of Reference of the National Requirement Review Committee will be circulated to Benchers, together with a listing of its members.

DISCUSSION/DECISION

6. Amendment to BC Code Rule 3.6-3: Statement of Account

Mr. Walker opened discussion of this item with the acknowledgment of Mr. Caissie's request to further consult the members before discussing this Agenda item, and with the recognition of the consensus reached amongst Benchers to continue with the item on the strength of the consultation that had already occurred. Mr. Van Ommen, as Chair of the Ethics Committee, noted that this issue last appeared before Benchers in 2013; thus, Benchers elected or appointed since that time may not have been aware of the previous consultation.

On the issue itself, Mr. Van Ommen reported that the proposed amendments are to the commentary accompanying the Rule, rather than to the rule itself. Consultation with the profession revealed a lack of support for the 2013 revision to the commentary requiring a different form of account. A revised commentary articulating specific requirements for disbursements on accounts was drafted by the 2014 Ethics Committee, but rejected by the 2015 Ethics Committee which favoured a more general approach; given that the Law Society does not regulate fees, it would be anomalous to require specific rules around disbursements.

The result is a proposed amendment to the commentary that acknowledges a lawyers' general duty of candour, which in turn requires transparent communication of how a client will be charged on an account.

Mr. Van Ommen moved, seconded by Ms. Merrill, for acceptance of the following resolution:

BE IT RESOLVED to amend the Code of Professional Conduct for British Columbia by adding the following as commentary [1] to rule 3.6-3:

A lawyers' duty of candour to a client requires the lawyer to disclose to the client at the outset, in a manner that is transparent and understandable to the client, the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges.

In response to subsequent questions, Mr. Van Ommen clarified that, while it may not be strictly necessary to articulate a duty of transparency with regard to accounts given the overarching duty of candour required of lawyers generally, the Ethics Committee felt it was important enough to specifically mention. Further, he clarified that the earlier consultation took the form of meetings with and input from a collection of law firm managing partners, rather than a member-wide consultation. Mr. Felhauer noted that the proposed amendment satisfied all the concerns he had received regarding the 2013 revision.

The motion was passed unanimously.

7. Revised Statement of Investment Policy and Procedures

On behalf of the Finance and Audit Committee, Mr. Lloyd briefed the Benchers on the recent review of the Statement of Investment Policy and Procedures and Lawyers Insurance Fund ("LIF") portfolio, which examined the investment structure, the current manager performance and the asset mix. The Committee recommends revising the benchmark asset mix to improve diversification of the LIF portfolio, retaining the current investment managers and management structure for equities, bonds and short term securities, but at a lower percentage of the fund (40% each for the two balanced managers), and hiring additional managers with a real estate fund and a mortgage fund, each holding 10% of the LIF investment fund.

The Finance and Audit Committee, along with Management and independent investment advisors George & Bell, undertook a review of the Law Society Statement of Investment Policies and Procedures and the LIF long term investment portfolio. The review consisted of examining the investment structure, the current manager performance and the asset mix, following the recent sale of 750 Cambie Street.

Following questions relating to the particular asset mix suggested, as well as how our managers respond to market forces, Mr. Lloyd moved that the Benchers adopt the Statement of Investment Policies and Procedures (attached as Appendix 3) which replaces Appendix 1 of the Investment Guidelines of the Bencher Governance Policies, as recommended by the Finance and Audit Committee. The motion was seconded by Mr. Felhauer, and passed unanimously.

8. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

RCG
2015-06-12



CEO's Report to the Benchers

June 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

As this is my mid-year report I would like to update the Benchers regarding progress on our 2015 Operational Priorities Plan and on the 2015 – 2017 Strategic Plan as well as some additional items described below.

2015 Operational Priorities Plan

At the beginning of each year I present management's top 5 operational priorities for the ensuing year. When I present these to the Executive Committee and the Benchers I always emphasize that these priorities do not derogate from our day-to-day responsibility to perform our core regulatory functions to the highest standards. However, in each year there are certain items that are designed to enhance our operational capabilities and which require extra attention and focus to ensure success. The priorities for 2015 (in no particular order) are set out below with a brief status update at mid-year.

1. Knowledge Management Project

We are committed to the development and implementation of an organization wide knowledge management system. Knowledge management involves capturing and sharing knowledge with the goal of making that knowledge easily accessible through a range of distribution methods. Knowledge includes facts, information, expertise and skills, as well as the theoretical and practical understanding of a subject, acquired by a person through experience or education.

Because so much of what we do at the Law Society involves the development, evaluation and sharing of knowledge having a modern, effective system for doing so is a critical operational tool and also part of the Law Society's strategic goal to be a more innovative and effective regulator. The knowledge management project is looking at this capability from a broad perspective including, for example, our practice support and advice group, our PLTC program, our policy group and communications.

In 2014, the working group researched knowledge management systems and set the mandate and definition of the project. In May 2015, a Senior Project Management Specialist was appointed and detailed project planning began. In a staff wide contest to name the Knowledge Management project we received over 170 entries and the winner will be announced next week. We are expecting that the implementation of a new knowledge management capability will take several phases with initial roll-out commencing in 2016.

2. Computer Literacy Working Group

We believe that computer literacy and being able to fully exploit the benefits of technology in everything we do will enhance our effectiveness as an organization. Consequently, we have established a cross departmental working group to develop a plan which will have as one of its goals the attainment of a new, high minimum standard of computer/technical literacy for all our staff.

We recognize that this direction might be daunting for some staff who have less training and skill in this area today. This is why we are focusing on a cooperative, supportive approach so that, no matter what an individual's current skill level may be, they will be supported in achieving a new higher competency level within an achievable timeframe.

I can report that the Computer Literacy Working Group has been busy so far this year in defining a base skill level as well as the competencies expected above and beyond this level based upon the requirements of specific positions. This work has included examining the models of other organizations and evaluating the learning platforms used to achieve the goals. The working group is planning to deliver a report on its findings and provisional recommendations for discussion this fall.

3. Public Issues Voice Working Group

The Public Issues Voice Working Group was created as one of the means to support Initiative 3-2 (b) of the Strategic Plan namely "Identify strategies to express a public view on the justice system, including public forums". The working group is focusing on how to communicate more effectively with the public regarding the role of the Law Society and broader justice system topics and issues.

This working group is comprised of staff with diverse interests and backgrounds and is chaired by Michael Lucas our Manager of Policy and Legal Services. The group has had two meetings to date and more are scheduled. We are hopeful that the perspectives of the working group and any recommendations from it will complement and be useful to the Rule of Law and Lawyer Independence Advisory Committee as it follows up on this topic of discussion at last month's Benchers retreat.

4. Core Values Working Group

All staff adhere to a code of conduct as part of their employment with the Law Society. The code refers to workplace values and our mission and is incorporated into our annual performance review process. But we are aware that since the code of conduct was established almost 15 years ago we have seen shifts in our demographic profile and changing workplace habits and expectations. With those

changes we felt now was a good time to reexamine, refresh and perhaps restate the values under which we agree to serve as Law Society staff.

The mandate of the working group is to identify and develop a set of values that are aligned with and support the Law Society's mandate, mission and strategic plans and create a common bond for staff. The group has consulted broadly within the organization and has conducted workshops and discussion forums as part of its work. At the time of writing the working group is finishing its report and recommendations. I look forward to sharing this with you at the meeting in July.

5. E-Voting and Webcasting Capability

We are committed to the development of a highly reliable and resilient e-voting and webcasting capability for our annual general meetings. In the past several months, we have been actively addressing issues such as the need for voting security, verification and audio/visual quality across different platforms and receiving devices. In addition, both the Governance Committee and the Act and Rules Committee have been working with staff to ensure that our plans are within the ambit of the existing member authorization to move in this direction. I understand the Governance Committee expects to make recommendations regarding the conduct of this year's 2015 annual general meeting and future general meetings in its mid-year report to the Benchers in July.

Strategic Plan Progress – Mid-Year Report

I am attaching a chart entitled "Strategic Plan 2015 – 2017 Implementation Plan" for your review and information. We use this document as a quick reference guide to track the nature and status of work pursuant to the strategic plan. As this is the first year of the new 3 year plan progress is not even across all initiatives and, indeed, some initiatives are not scheduled to commence until 2016/2017. However, you will see that initiatives to evaluate PLTC, to develop a framework for the regulation of law firms, to examine the meaning and scope of section 3 of the Legal Profession Act and to consider whether the Manitoba Family Law Project might assist access to justice here in BC, are all on track.

Our work in support of the initiatives to amend the Legal Profession Act to create new classes of legal service providers and to pursue a merger with the Society of Notaries Public of BC are each underway but in the formative stages. We will have more to report on those significant undertakings at the meeting.

Financial Update

As reported at the last Benchers meeting the financial results for the first fiscal quarter were on track. However it is still early in the year and we will have a better sense of our year end budget forecast when the second quarter results are available in early July.

Our main concern at this stage is the increasing pressure on our budget due to greater than expected external counsel costs associated with professional conduct, discipline and credentials matters. Secondly, we are concerned with our ability to attain the level of savings forecasted this year due to staff vacancies. Each year our annual budget builds in an estimate for savings in the year due to unplanned staff vacancies in the year. So far this year we are not seeing those savings as per our estimate and this is creating budget pressure. While this can change without notice at any time it is largely beyond our control.

To help mitigate these pressures management is reviewing all opportunities to realize cost savings in operations without adversely impacting our regulatory obligations. This is an ongoing process and we will be making adjustments and reassessing our position as the year progresses.

External Relationships

I recently reviewed with the Executive Committee the various events I have attended and/or participated in so far this year on behalf of the Law Society in connection with the profession and the legal community. I have listed these events and future plans below for your information.

January 16 – UVIC Law Student Awards and Donor Recognition Reception

I attended a reception recognizing UVIC Law student award winners and donor organizations on behalf of LSBC, which was well attended by the local and Vancouver bars.

January 19 & 20 - Federation CEO's Strategic Issues Roundtable

I organized and hosted a meeting of all Federation CEO's at the Law Society, with the purpose of reviewing key initiatives under our respective strategic plans, including the timing and prospects for implementation in 2015.

February 10 – New Westminster Bar Association Meeting and Dinner

Ken and I attended this meeting and dinner together with Phil Riddell and Martin Finch, QC, and a strong turnout from the New Westminster bar.

February 22 & 23 - CSAE -Tecker Symposium for Chief Elected and Chief Staff Officers

Ken and I attended the 2015 CSAE Symposium for Chief Elected and Chief Staff Officers in Toronto on February 21-23, 2015 given by Glenn Tecker. This symposium is a very well attended and useful conference for Presidents and CEOs of organizations like ours. In attendance in Toronto were also the Presidents and CEOs of the Law Societies of Nova Scotia, New Brunswick, and Saskatchewan as well as the Society of Notaries Public of BC and the Law Foundation of BC. This gave us an extra opportunity to compare notes on common governance issues with our sister and related organizations.

February 26 – IONA Campagnolo Lecture in Restorative Justice in Courtney

Ken and I attended a reception and dinner with a large turnout from the local bar, at which Chief Justice Beverley McLachlin was the keynote speaker.

March 16 – Speaking engagement at UVIC Law School

As I have done in past years, I was a guest presenter at Professor Pirie's Legal Ethics and Professionalism class at UVIC Law School.

March 25 – 29 FLSC Semi-Annual Conference in Ottawa

I attended this conference together with Gavin Hume, QC (Council member), Ken Walker, QC, David Crossin, QC, Herman Van Ommen, QC, Miriam Kresivo, QC, Lynal Doerksen, Alan Treleaven and Adam Whitcombe. The major theme of the meeting was Federation Governance Review.

April 16 - Victoria Bar Association Spring Dinner

I attended this event which had an excellent turnout, particularly among younger members of the local bar. Benchers Pinder Cheema, QC and Dean Lawton were on hand as well as Life Bencher Kathryn Berge, QC.

April 21 - UBC Alumni Association Lunch for Dean Bobinski

The Law Society purchased a table at the UBC Law Alumni Association celebration luncheon for Dean Mary Anne Bobinski to celebrate her many accomplishments prior to her upcoming retirement. I attended as part of a 10 person contingent from the LSBC in a sold out Hotel Vancouver ballroom.

April 23 – CBABC Women Lawyers Forum Awards Luncheon

Along with several others from the Law Society, I attended the CBABC Women Lawyers Forum Awards luncheon honoring the BC WLF Award of Excellence recipients as well as the recipients of the Debra Van Ginkel, QC Mentoring Award.

May 27 - Commemorative Certificate Luncheon

I attended together with President Walker and several Benchers, the annual 50 and 60 year Commemorative Certificate luncheon hosted by LSBC at the Hotel Vancouver. The event is always a highlight of the calendar for me and others as the honorees are very gracious and have wonderful stories of their many years of practice.

May 28 - Victoria Call Ceremony

I attended a Victoria Call Ceremony together with President Walker, QC organized by Benchers Pinder Cheema, QC and Dean Lawton. Chief Justice Hinkson presided over the ceremony which was inspiring and very well attended by friends, relatives and the local bar.

June 3 to 5 - Alberta Law Society Retreat

President Walker and I attended the Law Society of Alberta retreat on June 3-5 in Jasper. The theme of the retreat was “Embracing Sustainable Change” and focused on the need for law regulators to show leadership in initiating and supporting change which will serve the public interest. In addition to the Alberta contingent, in attendance were Presidents and CEOs from 4 law societies and the Federation. This made for excellent exchanges of ideas and conversation.

Upcoming Events

Below is a list of upcoming events, which I plan to attend:

July 27 – FLSC International Conference of Regulators in Toronto

July 29 – Attorney General’s Magna Carta Event in Vancouver

September 9 to 13 – ILLACE Conference in Washington D.C.

September 18 to 20 - Kootenay Bar Association Fall Meeting in Kaslo

PLTC Update

I would like to thank the Benchers and Life Benchers who taught Professional Ethics to PLTC students on May 27:

Kathryn A. Berge, QC (Vancouver) – Life Bencher

Elizabeth Rowbotham (Vancouver) – Elected Bencher

Terence E. La Liberté, QC (Vancouver) – Life Bencher

Cameron Ward (Vancouver) – Elected Bencher

Pinder Cheema, QC (Victoria) – Elected Bencher

Richard S. Margetts, QC (Victoria) – Life Bencher
Thomas Fellhauer (Kamloops) – Elected Bencher

As always, your contributions to PLTC and to the students themselves is greatly appreciated.

Timothy E. McGee
Chief Executive Officer

Strategic Plan 2015 - 2017 Implementation Plan

Goals	Strategies	Initiatives	Group	Assigned To	Start	Status
GOAL 1: THE PUBLIC WILL HAVE BETTER ACCESS TO JUSTICE	Strategy 1-1: Increase the availability of legal service providers.	Initiative 1-1(a) Continue the Legal Services Regulatory Framework Task Force and its work in developing a framework for regulating non-lawyer legal service providers to enhance the availability of legal service providers while ensuring the public continues to receive legal services and advice from qualified providers.	Legal Services Regulatory Framework Task Force	Michael Lucas, Doug Munro	Ongoing	Letter has been sent to government requesting statutory amendment. Work will be done at staff level addressing legislative amendment issues. Once confirmation is given, newly constituted task force will begin examining mandate items 4- 6 of Task Force mandate.
		Initiative 1-1(b) Continue work on advancement of women and minorities including through the Justicia Program and the Aboriginal Mentoring Program.	Equity and Diversity Advisory Committee	Andrea Hilland	Ongoing	Initiatives on both Aboriginal and Gender continue through the Aboriginal Mentoring Program and the Justicia Program. Efforts have been made to improve diversity on the bench and work is underway to consider ways to encourage more involvement of equity seeking groups in Law Society governance.
	Strategy 1-2: Increase assistance to the public seeking legal services	Initiative 1-2(a) Evaluate the Manitoba Family Justice Program and determine if it is a viable model for improving access to family law legal services in British Columbia.	Access to Justice Advisory Committee or New Task Force	Doug Munro, Jeanette McPhee	early 2015	The Access to Justice Committee has examined this program and considered whether it is viable in BC. The Committee is expected to make recommendations later in 2015.
		Initiative 1-2(b) Examine the Law Society's role in connection with the advancement and support of Justice Access Centres.	Access to Justice Advisory Committee	Doug Munro	Ongoing	This work has been ongoing for some time through the Access to Legal Services Advisory Committee. Next stages will involve consultations with government and examining the use of technology to facilitate JACs in rural locations. Policy discussions will likely complete in 2015.
		Initiative 1-2(c) Examine the Law Society's position on legal aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified.	New Task Force	Doug Munro	Preparatory Work could start in 2015, Task Force could aim to start September 2015	The topic is complex and engages political considerations as well as the Law Society's own positions in the past. At present, there is no work underway on this issue. A dedicated task force with a limited mandate and timeframe would be the most effective way to address this initiative.
GOAL 2: THE PUBLIC WILL BE WELL SERVED BY AN INNOVATIVE AND EFFECTIVE LAW SOCIETY	Strategy 2-1: Improve the admission, education and continuing competence of students and lawyers	Initiative 2-1(a) Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.	Lawyer Education Advisory Committee	Alan Treleaven Andrea Hilland/ Charlotte Ensminger	01/01/2015	The Lawyer Education Advisory Committee is currently considering the PLTC portion of the bar admission program. It is examining whether there is a role for online learning in the delivery of PLTC. It has also identified several issues related to articles that it will examine in more detail once it completes its PLTC review. The Committee expects to issue a report with recommendations later in the year.

Goals	Strategies	Initiatives	Group	Assigned To	Start	Status
		Initiative 2-1(b) Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.	Credentials Committee Lawyer Education Advisory Committee, and staff	Alan Treleaven, Michael Lucas, Lesley Small, Lynn Burns	early 2015	When the Lawyer Education Advisory Committee receives consultation reports and recommendations from the Federation, the Committee will review them, and report to the Benchers and Credentials Committee as appropriate.
		Initiative 2-1(c) Conduct a review of the Continuing Professional Development program.	Lawyer Education Advisory Committee	Alan Treleaven, Charlotte Ensminger	2015(?)	This topic will be considered in 2016. In the interim, user enhancements are being made to the CPD website.
		Initiative 2-1(d) Examine Practice Standards initiatives to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating high risk lawyers.	Practice Standards Department	Kensi Gouden	01/01/2015	Work on this project is underway. It is expected to complete before the end of 2015.
		Initiative 2-1(e) Examine alternatives to articling, including Ontario's new legal practice program and Lakehead University's integrated co-op law degree program, and assess their potential effects in British Columbia.	Lawyer Education Advisory Committee	Alan Treleaven, Charlotte Ensminger	Ongoing	The Lawyer Education Advisory Committee's discussions about these programs are underway as part of its examination of the current admission program. The Committee's conclusions will form part of its Report under Initiative 2-1(a).
	Strategy 2-2: Expand the options for the regulation of legal services	Initiative 2-2(a) Consider whether to permit Alternate Business Structures and, if so, to propose a framework for their regulation.	New Task Force	TBD	early 2016	The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis of ABSs, and the UK and Australia, which have permitted ABSs. The Law Society is monitoring consideration of ABSs currently taking place in the Prairie provinces. No task force has yet been created to examine the subject independently in BC.
		Initiative 2-2(b) Continue the Law Firm Regulation Task Force and the work currently underway to develop a framework for the regulation of law firms.	Law Firm Regulation Task Force	Lance Cooke (Deb Armour, Kerry Garvie, Michael Lucas)	Ongoing	The Law Firm Regulation Task Force has been created. Staff is currently developing a framework for consideration by the Task Force.
		Initiative 2-2(c) Continue discussions regarding the possibility of merging regulatory operations with the Society of Notaries Public of British Columbia.	Chief Executive Officer/Executive Committee	Tim McGee, Adam Whitcombe	Ongoing	Discussion on this topic continues. Working Groups have been created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examined governance issues that would arise in a merged organization.

<i>Goals</i>	<i>Strategies</i>	<i>Initiatives</i>	<i>Group</i>	<i>Assigned To</i>	<i>Start</i>	<i>Status</i>
GOAL 3: THE PUBLIC WILL HAVE GREATER CONFIDENCE IN THE RULE OF LAW AND THE ADMINISTRATION OF JUSTICE	<i>Strategy 3-1: Increase public awareness of the importance of the rule of law and the proper administration of justice</i>	Initiative 3-1(a) Develop communications strategies for engaging the profession, legal service users, and the public in general justice issues.	Communication s Department, Policy Department Rule of law and Lawyer Independence Advisory Committee	Taylor Ashlie, Michael Lucas	early 2015	The Communications department has developed a communications plan, and it is being engaged to, for example, obtain interviews on local radio stations on relevant issues.
		Initiative 3-1(b) Examine the Law Society's role in public education initiatives.	TBD	TBD	01/01/2017	Work on this initiative is expected to begin no earlier than the fall of 2015
		Initiative 3-1(c) Identify ways to engage the Ministry of Education on high school core curriculum to include substantive education on the justice system.	TBD	TBD	01/01/2017	Some work has begun by, for example, creating the high school essay competition on Magna Carta as developed by the Rule of Law and Lawyer Education Advisory Committee and promoted through the Communications Department. Work on engaging in the Ministry of Education has not yet begun.
	<i>Strategy 3-2: Enhance the Law Society voice on issues affecting the justice system</i>	Initiative 3-2(a) Examine and settle on the scope and meaning of s. 3 of the Legal Profession Act.	Rule of Law and Lawyer Independence Advisory Committee	Lance Cooke, Michael Lucas	Ongoing	This topic was introduced for discussion at the Benchers Retreat in May, 2015. The information gathered at that retreat will be considered by the Rule of Law and Lawyer Independence Advisory Committee, which will provide some further direction and guidance to the benchers later in 2015
		Initiative 3-2(b) Identify strategies to express a public voice on the justice system, including public forums.	Communication s Department	Taylor Ashlie, Michael Lucas	early 2015	A proposal from the Rule of Law and Lawyer Independence Advisory Committee has been prepared and will be considered by the benchers in June 2015. A staff working group has been struck by the Chief Executive Officer in order to engage staff on how the Law Society may express a public voice on issues.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

FEDERATION GOVERNANCE REVIEW 2015

Interim Report of the Governance Review Committee

May 13, 2015

INTRODUCTION

In June of 2014, the Council of the Federation established a Governance Review Committee with a mandate to undertake a broad-based review of governance and to bring forward proposals for change where warranted.

We have now completed the first two phases of our work program. Since our Committee's inception¹ we have met over a dozen times and carried out a work program consisting of:

- A series of preparatory meetings during the fall, combined with the development of a program of field visits encompassing every jurisdiction;
- Drafting of an extensive package of briefing material that was made available to all law societies through the Federation's intranet;
- Field consultations across the country;
- Publication in March of a report on the results of those consultations;
- Planning and implementation of the workshop held at the end of March in Ottawa to discuss the findings in that report; and
- Further interviews during April with a range of current and past leaders and committee members to ensure that we have touched all relevant bases.

ABOUT THIS REPORT

It was anticipated from the start of our work that further discussions related to governance reform would be held in June 2015. Up to this point, our Committee has refrained from making any recommendations. Our entire work program from September 2014 through to May 2015 was designed simply to elicit the widest possible range of views from within the Federation, and to provide us with the opportunity to listen carefully to what others had to say.

The present report opens up a major new phase in our work program, in which we start to move towards specific recommendations aimed at addressing issues revealed through our

¹ The committee members are:

- (a) Marie-Claude Bélanger-Richard, Federation Past-President (Chair);
- (b) Jeff Hirsch, Federation Vice President;
- (c) Sheila Greene, Council member for the Law Society of Newfoundland and Labrador;
- (d) Sheila MacPherson, Council member for the Law Society of the Northwest Territories;
- (e) Steve Raby, Council member for the Law Society of Alberta;
- (f) Johanne Brodeur, former Bâtonnière of the Barreau du Québec;
- (g) Robert Lapper, CEO, Law Society of Upper Canada; and
- (h) Tim McGee, CEO, Law Society of British Columbia.

The Committee is supported by Jonathan Herman, Federation CEO and by Tim Plumptre and Associates, a consulting firm specializing in governance work with particular expertise in the governance of federations.

consultations. However, as in our two earlier phases of work, in this third phase we wish to proceed carefully in steps suited to the complexity of the issues we are dealing with and to ensure that we respond to what we heard from the Federation's member law societies.

It seems clear to us that some adjustments to the governance of the Federation are warranted. However, we are not providing any firm proposals in this document. Rather, we outline the orientation of our thinking in a number of areas. Where appropriate, we also set forth options designed to prompt discussion at the next Council meeting to be held this coming June.

Overall, the good news arising from our work is that our Committee has the sense that in several areas, the beginnings of a consensus regarding the direction of reform are becoming visible. This report is divided into several sections each of which addresses an important dimension of Federation governance. Toward the beginning of each section, we outline some principles where we think that consensus may be starting to emerge. We are hoping that readers of this report will review these orientations carefully, discuss or reflect upon them, and let us know if indeed they are prepared to endorse these initial directions for change.

In addition, in some sections of the report, we outline additional areas where we believe agreement may be more difficult to achieve. In these areas, we set forth questions or options for the consideration of law society leaders and others. We look forward to hearing feedback on these matters and further exchanges of views among leaders.

Reference points for reform

The Federation is extraordinarily diverse in terms of the size, geography, resources, culture and level of sophistication of its members. So one might expect that there would be a very diverse range of opinions regarding Federation governance, and indeed this has proven to be the case. This diversity has presented our Committee with a challenge as we work towards reform proposals.

For instance, on the matter of the mode of appointment of the President of the Federation, some members are firmly of the view that the existing system of rotation by region has been satisfactory. They are of the view that a rotation is more appropriate for a federation of member organizations. They look forward to their "turn" to insert someone from their region into this leadership position.

On the other hand, other individuals believe with equal conviction that the method of selecting the President needs to be re-thought. In their view, the complex and demanding nature of the President's responsibilities has to be taken into account in the process itself. The incumbent selected for the position needs to have the experience and attributes that will enable him or her to perform the President's role with distinction. A new method of appointment is needed as a result. These members may also incline to the view that the job is now full time or close to it, and that changes to the term and compensation of the position may need to be considered.

When there are divergences of opinion of this nature with respect to a critical governance issue such as the appointment of the President, it is clear that whatever approach our Committee may recommend is likely to leave some Federation members pleased and others unhappy. One way

of dealing with this situation would be for our Committee to simply recommend whatever approach seems to be supported by the greatest number of members.

However, we do not think "majority rule" should serve as the guiding philosophy for decision-making, particularly since many law society leaders with whom we spoke during our field visits told us they knew very little about the Federation. Rather, our Committee has used two main criteria to guide its thinking. First, we have borne in mind the fiduciary responsibilities that, in law, are incumbent upon any board of directors. These call upon us to ask, not, "What approach to governance would be most popular?" but rather, "What approach would best serve the interests of the Federation as an organization, and enable it to discharge its responsibilities most effectively on behalf of member law societies?"

Second, in seeking answers to this question, we have taken account of recent research into effective governance, and have drawn upon principles and standards of sound governance that are observed by non-profits recognized as top performers in their field.

THE ROLE OF THE FEDERATION

The point of departure for any consideration of governance modalities needs to be the Federation's role. Here are areas where we believe most if not all law society leaders may be able to agree:

1. The Federation is a valuable instrument, and if it did not exist, it would have to be invented as a way of promoting conversation and collaboration among law societies on issues of common interest.
2. The ultimate responsibility for regulation of the legal profession rests with each member law society.
3. A key function of the Federation is to act as a coordinator or facilitator among members, establishing forums such as conferences, committees and other meetings where members may be brought together to discuss issues of mutual interest.
4. Members look to the Federation, as part of its facilitative function, to bring to their attention important emerging issues that may warrant the attention of the governors of the legal profession. The Federation may likewise provide recommendations for members' consideration regarding initiatives that might be taken to deal with such issues.
5. There may be instances when it makes sense for the Federation to take on certain responsibilities on behalf of law societies, as it has in the past on issues such as mobility or approval of international credentials. When the Federation does so, it is more appropriate to describe it as an agent of the law societies rather than as "regulator" which is a term that more aptly describes the role of law societies themselves.
6. When law societies wish the Federation to assume a responsibility of this kind, including taking action on their behalf, all parties must be clear that it is doing so on the basis of a

mandate accorded by all law societies.

7. Asymmetry: There may be occasions when it is appropriate for the Federation to assume certain responsibilities on behalf of some, but not all, law societies. Action will then depend upon what kind of specific mandate is accorded by the participating law societies.
8. The Federation is the national and international spokesperson for the law societies but only in respect of such matters for which consent has been provided by all law societies.

Question: Is there agreement with the foregoing principles? Are there any areas where modifications or improvements might be desirable?

Issues Requiring Further Reflection and Discussion

The Committee believes that a number of issues would benefit from further reflection and discussion before knowing where additional opportunities for consensus may emerge. The following questions are among them:

- If members confirm that in principle, asymmetrical initiatives may be accommodated within the Federation, should the agreement of all law societies be required to authorize the Federation to act in relation to some of its members, even though the others may not wish to participate at that time?
- How should the financial burden associated with such initiatives be shared?
- Is it possible to develop a list of initiatives that require consensus among all members for the Federation to take action, or criteria for the identification of such initiatives?
- Could another list be developed outlining areas where the Federation could move forward with the approval of only some of its members?

COUNCIL AND DECISION-MAKING

The key decision-making body for the Federation is the Council. During our visits to law societies, we received many comments about how it works, most of them indicating that changes should be made. It is apparent to us that there are many opportunities for improvement here.

As a point of departure, we would hope that there may be agreement with respect to the following principles as they relate both to Council and the general practice of decision-making at the Federation.

1. Federation decision-making procedures should be predictable and transparent.
2. The roles and relationships of key players in respect of decision-making need to be clearly articulated.
3. Federation governance structures or practices must provide for the engagement of political leaders of law societies on highly important or sensitive matters. These include the major priorities of the Federation and the levy.
4. Presidents' role in respect of important decisions should be articulated either through structural arrangements, revised processes, or a combination of both.
5. A formal place should be provided in the governance structures or processes of the Federation to allow for law society CEOs to assist in decision-making. However the accountability for decisions in respect of major issues should be reserved for elected representatives of law societies.
6. In general, the role of CEOs should be both to provide advice on strategic issues and major policies, and also to assume responsibilities with respect to implementation within their law societies of decisions taken at the political level of the Federation.
7. Particularly on important matters, the structures and processes related to the representation of each law society at the Federation need to ensure, insofar as possible, that there is seamless communication from the Federation to the leadership of each law society, and in some instances, to the Benchers or council table in each jurisdiction.
8. Reciprocally, appropriate measures must be taken to ensure that views expressed at the Federation on behalf of each law society accurately represent the opinions of law society leaders, and when necessary, of the Benchers or council in the relevant jurisdiction.
9. The quality of Federation governance is dependent on the individuals put forward by law societies to take part in decision-making. In the interests of effective governance at the Federation, law societies should ensure that individuals designated to act on their behalf have the experience and attributes to perform their governance responsibilities effectively.

Question: Is there agreement with the foregoing principles? Are there any areas where modifications or improvements might be desirable?

Issues Requiring Further Reflection and Discussion

One of the factors giving rise to difficulties at Council is that there is a lack of clarity and consistency in the way in which its members may interpret its role. On the one hand, Council members are encouraged to see themselves as emissaries from their law society, or

spokespersons for it. Under this interpretation of their role, there is little or no room for independent judgment. This view seems to be quite strongly rooted in some quarters. It is apparent when, at a Council meeting, a member may preface a comment on an issue by saying, "The view of my law society in respect of this issue is...." or when in the course of an electronic vote, support is expressed as "the law society of x votes in favour of the motion".

The alternative interpretation of Council members' role is that they have a fiduciary duty to the Federation itself. What is in the best interests of the Federation, as a national body, may not always accord with the particular interests of a member law society. In such circumstances, Council members who give precedence to their fiduciary role may not consider it necessary or even desirable to seek instruction from "home base" on how to deal with a particular issue. We suspect that this ambivalence may contribute to the reluctance of some members to engage in debate around the Council table.

To improve Federation governance, we need to adopt a broad lens. Council cannot be viewed in isolation. In our view, there are multiple factors contributing to its deficiencies. They reside not only in Council's **structure**, but also in the prevalent **culture** surrounding decision-making, the *processes* involved in it and the **lack of clarity surrounding the roles of key players**, including not only Council members but also law society leaders.

Our Committee has developed two options as to how these issues might be addressed. We believe that the adoption of one of these options, or perhaps some variation thereof, is needed. We look forward to comments and advice on them.

Option One – A Better Status Quo

This option maintains many of the features of the existing governance arrangements of the Federation, but incorporates various adjustments aimed at improving decision-making.

Council:

- Council would remain in place, more or less as currently constituted.
- Council members would continue to be nominated by their law society, but law societies would be encouraged to ensure they put forward nominees who have the experience and attributes necessary to the effective performance of their responsibilities.
- Law societies would agree on a list of competencies considered desirable in Council members and the list would serve as guidance for the law societies, but the decision regarding nominations would rest solely with each law society.
- Processes would be improved to ensure that there is excellent communication from the Council members to law society leaders, and from the law societies to the Federation, particularly in relation to matters of a strategic nature.

- Law societies would agree to appoint Council members for a term of three years, renewable once, in order to ensure consistency and the ability to effectively develop knowledge and understanding about what the Federation does and how it works.
- A comprehensive orientation program would be put in place for incoming Council members to train them about the Federation, as well as about their role and responsibilities.
- Opportunities for more meaningful debate at Council would be built-in through an improved agenda-setting process that would include an annual calendar for meetings that would forecast topics for discussion, thereby allowing for better meeting preparation.
- The role of Council as a place for strategic discussion would be emphasized and reflected in how meeting agendas are set.
- Council would meet four times a year, once or twice in concert with the Presidents of law societies in order to enhance discussions involving strategic or political issues.
- A cultural shift would be encouraged that would value debate and embrace the possibility of dissent.
- As is currently the case, the President of the Federation and other members of the Executive Committee would not have a vote at Council meetings.
- A Nominating Committee, accountable to the Council and appropriately constituted with qualified individuals, would recommend appointments to Federation committees.
- A Finance and Audit Committee, accountable to the Council and appropriately constituted with qualified individuals, would be established.

Law Society Presidents:

- At the same time as Council meetings, a "President's Forum" would be convened once or twice a year; CEOs would be present at the table. This Forum would replace the current informal "President's Roundtable" which typically occurs during Federation conferences, and would have a more structured agenda and purpose than does the current Roundtable, which takes place over a lunch.
- The Forum would provide an opportunity for Presidents to discuss the priorities of the Federation and to provide input on major issues with political sensitivity, and also to discuss the annual levy, as required. However, the Forum would play an advisory role vis-à-vis Council and would have no decision-making function.
- Presidents would be able to attend Council meetings and take part in debate but would not have voting rights.

Law Society CEOs:

- In recognition of the valuable role that law society CEOs play in supporting the work of the Federation, the practice of having occasional informal CEO meetings would be replaced by the establishment of a "CEOs' Forum".
- This Forum would be convened from time to time to discuss issues pertinent to the Federation, and would in particular, once a year, provide collective advice to law society Presidents and to Council with regard to the Federation's strategic plan and its priorities.
- As in the case of the Presidents Forum, the CEOs' Forum would play an advisory role vis-à-vis Council.

Pros and Cons of Option One*Pros:*

- If effectively implemented by both law societies and the Federation, this option should effect some improvements in the functioning of Council.
- It somewhat clarifies the role of both law society Presidents and CEOs in decision-making.
- It does not involve significant change to existing Federation structures, which may make it attractive to some individuals.

Cons:

- This option does not deal with the basic lack of clarity in the role of Council members (fiduciary vs. representative functions).
- Restricting Presidents to an advisory role vis-à-vis Council may be seen as paradoxical.
- It is not clear whether this option would deal effectively with the problem of "corridor decision-making" or "rubberstamping" which were concerns raised with respect to Council as currently constituted.
- This option relies heavily on law societies to adopt new practices with respect to appointments and communication. There may be a risk that these practices will erode over time, leading to a recurrence of problems now facing the Federation with respect to its governance.
- This option may not adequately address concerns expressed with regard to the need for more transparency and clarity in Federation decision-making.

Option Two – A New General Assembly and Board of Directors

This option involves a restructuring of Federation decision-making with a view to more clearly delineating responsibilities for different types of decisions. Those that are more strategic in nature, and thus appropriately taken by representatives of law societies, are assigned to a General Assembly. Those that are more fiduciary or operational in nature, having to do with ongoing oversight of the Federation as an organization and its key initiatives, would be assigned to a new entity that we are provisionally calling the Federation Board of Directors. Under this option, Council would be discontinued in favour of these two bodies.

General Assembly of Law Societies:

- The Federation currently has an Annual General Meeting of members as required by law, but it is only a pro forma process. Under this option, the role of the General Assembly would be amplified or extended. This would be the forum for members to exercise strategic control of the Federation.
- The role of the General Assembly would be to determine the major priorities of the Federation, to approve its strategic plan, to determine how to deal with major policy issues, and to approve the annual levy of the Federation.
- Opportunities for meaningful debate at the General Assembly would be built-in through an agenda-setting process that would include an annual calendar for meetings (as in Option One) that would forecast topics for discussion, thereby allowing for effective meeting preparation.
- The General Assembly would meet twice per year.
- As a General Assembly of members, each law society would be entitled to one vote exercised by the law society President or delegate.
- The Presidents would be joined at the General Assembly table by their CEOs who would have the right to speak and take part in debate, but not the right to vote.
- Members of the Board of Directors (see below) and the Federation CEO would be present at the General Assembly with the right to speak and take part in debate, but not the right to vote.
- The Federation President would be the Chair of the General Assembly.
- Law society Benchers or council members, as well as designated law society and Federation personnel would be entitled, indeed encouraged, to observe meetings of the General Assembly without the right to take part in debate or to vote.

Federation Board of Directors:

- Under this option, Council would be replaced by a new decision-making body, which might be called the Federation Board of Directors. This Board would closely resemble the conventional board of directors of any non-profit organization.
- The new Board would be smaller than the current Council with no more than seven members, would be skills-based and not representative of the law societies.
- Three Board members would be the officers on the presidential ladder: the President, the Vice-President and President-elect and the Vice President.
- The Past-President would not be a member of the Board.
- The current Executive Committee would no longer be required since the entire Board would be small and nimble enough to effectively oversee the Federation on an ongoing basis and implement the priorities set by the General Assembly.
- The four members of the Board that are not on the Presidential ladder would be appointed on the basis of their competency and experience, not on the basis of where they came from. These board members would serve staggered three-year terms.
- A Nominating Committee, accountable to the General Assembly, would recommend any elections or replacement candidates, as required, among the merit-based appointments to the Board based on a competency matrix in a way that is comparable to how the CanLII Board Nominating Committee currently functions.
- The role of Board members would be more clearly fiduciary in nature. Its role would be to carry out ongoing oversight of the administration and operations of the Federation, implement the strategic plan and priorities set by the General Assembly, and oversee the performance of the Federation CEO.
- The Board would ensure that Federation committees are appropriately mandated and constituted on the advice of a Nominating Committee.
- Committees, once appointed, would be accountable to the Board. There may be exceptions where the reporting function of a Committee may be to the General Assembly.
- A Finance and Audit Committee, accountable to the Board of Directors and appropriately constituted with qualified individuals, would be established. This committee's terms of reference would be subject to approval by the General Assembly.

Law Society CEOs:

- A CEOs' Forum would be established with responsibilities similar to those outlined in Option One, adapted as required.

Pros and Cons of Option Two*Pros:*

- This option directly addresses the issue of Presidents' ill-defined role in decision-making by providing for greater clarity as to who does what. It more clearly situates strategic decision-making in the hand of the political leaders of the Federation's members without creating a confusing role for Council members as "messengers" for their law societies.
- Likewise the Board of Directors that would replace Council would have a more clearly defined mandate, and its role would be more in line with recent legislative developments related to non-profit organizations in Canada.
- It addresses directly the issue of board competence.
- It removes the issue of role confusion that plagues current Council members.
- This Option provides more opportunity than does Option One to address issues of gender balance and diversity in Federation governance.

Cons:

- Change is often seen as leading to too much uncertainty. This option involves a restructuring of Federation governance that some may find unsettling.
- This option more clearly illustrates the challenges of leaving strategic decisions in the hands of a body (the General Assembly) whose membership is frequently changing (law society Presidents).

If Option Two is considered worthy of exploration, more work will be required to elaborate on its details, and answer any questions that might be raised with respect to its composition or functioning.

Question: Which of these options appears to be more promising? Are there modifications that might strengthen one or the other? Would there be merit in doing further work to flesh out the details of Option Two?

LEADERSHIP OF THE FEDERATION

When the Governance Review Committee was established, some individuals perceived the issue of presidential rotation as the most important governance issue facing the Federation. However in our consultations, others saw this issue as somewhat less important relative to other areas of concern. Either way, it seems clear that the leadership of the Federation has a significant impact on its effectiveness.

The President

In our Committee's view, the job of the President involves complex and demanding responsibilities that make very significant demands upon the incumbent's time. While a President may be able to keep his or her legal practice going, doing the President's job certainly requires at least a half time commitment and may well require much more. The job involves the following responsibilities:

- Developing and maintaining key relationships with law society leaders;
- Building and maintaining political connections external to the Federation;
- Acting as a spokesperson for the Federation with the media;
- Representing the Federation at international meetings and at other legal forums;
- Providing overall leadership to the Federation;
- Guiding the deliberations of the Federation's key decision-making bodies, including the development or refinement of the strategic plan, the setting of priorities, and the establishment of agendas for governance meetings in concert with the CEO;
- Chairing Council or other governance meetings;
- Liaison with Executive Committee members;
- Crisis management as necessary; and
- Objective setting and performance evaluation for the CEO.

In principle, the incumbent of this position would seem to require the following capabilities or competencies:

- Strong leadership skills and personal credibility;
- An ability to foster and build effective relationships;
- Excellent political antennae;

- An effective public speaker;
- A broad understanding of the major issues facing the legal profession in Canada;
and
- If possible, reasonable fluency in both of Canada's official languages.

Question: Can we agree on this as a valid description of the responsibilities and basic competencies for the Federation President?

We suggest for consideration two options with regard to the President's role and the method of his or her appointment.

Option A – A Clearer Regional Rotation

This option is reasonably close to the current status quo.

- The process would be a slightly modified regional rotation system for the position of Vice President based on a selection from a region that would rotate over a nine year cycle, where the four southern regions (West, Ontario, Quebec and Atlantic) would rotate twice per cycle and the northern region would rotate once per cycle.
- The current provision for a "wildcard" year would be removed.
- The policy with respect to what happens if a region defers its turn would be clarified.
- The policy with respect to what happens in the case of a vacancy would be clarified.
- The selection of the candidate would be determined within each region.
- A policy would be added to deal with situations where the law societies within a region cannot reach consensus as to who their candidate should be in a given year.
- The President would continue to serve for a one year term.
- The President would likely receive an increased honorarium based on benchmarking against similar organizations.
- The role would not formally be considered a full-time position.
- An agreed list of presidential competencies and eligibility criteria (such as that outlined above) would be recommended to law societies as guidance for the relevant region.

Pros and Cons of Option A

Pros:

- The path of least resistance with which many people will feel comfortable.
- The rotation will guarantee that a region will “see itself” reflected in the Presidency from time to time over a fixed number of years.
- The selection process will be made clearer and more predictable even in situations that are not routine, such as when vacancies or other unforeseen circumstances arise.
- The merit concept, though not dominant, will be addressed by competency guidelines.

Cons:

- The status quo will not satisfy those who believe that the best qualified candidates may be overlooked because it is not the turn of the region or jurisdiction where the best candidate is thought to be located.
- The use of a competency guideline, though an improvement over the status quo, may not be seen as having enough weight since its application is left to the discretion of the jurisdictions putting forward potential candidates.

Option B – Merit Applied to Regional Rotation

This option goes further towards ensuring that the individual selected as Vice President (and ultimately President) has the appropriate mix of attributes and capabilities to be able to perform the job effectively. There may be other permutations of this option to consider as well.

- A Vice Presidential Nominating Committee is convened to make a recommendation of one or more candidates who are put forward by designated regions according to a rotation sequence agreed to by the law societies.

Sub-Option 1 – the system is designed in a way that each region continues to have a guaranteed nominee over a period of time such that it may be possible for the overall preferred candidate to be overlooked in a given year because of the operation of the guarantee that year in favour of a different region than the one where the overall preferred candidate is located; or

Sub-Option 2 – the system is designed in a way where there is a guarantee for a region to be considered but no guarantee for a region to be selected over a period of time since the overall preferred candidate can come from any region.

- The Nominating Committee would be composed of the Vice President and President elect of the Federation, the Past President and possibly one member at large with no political stake in the outcome.
- A candidate whose name is put forward would be evaluated on the basis of a list of competencies agreed upon by the law societies.
- The Nominating Committee recommends one or more candidates.
- The final selection rests with all of the law societies.
- The President would continue to serve for a one-year term.
- The President would likely receive an increased honorarium based on benchmarking against similar organizations.
- The role would not formally be considered a full-time position.

Pros and Cons of Option B

Pros:

- This option will satisfy those who wish to place more emphasis on the merit principle than the regional rotation.
- It may be possible to devise a system that results in selecting the best candidate most of the time, and still preserve the regional rotation principle.

Cons:

- This option is more complicated than Option A and would make the presidential selection process less predictable.
- Depending on the pool from which potential candidates may be drawn, having regard to whether we preserve the current Council structure, the unpredictability of the process may affect who might be willing to allow their name to be considered for the position.
- Unless a culture of healthy competition for the position takes hold, individuals may prefer to opt out in order to favour another candidate deemed more “deserving” of a turn, something which could defeat the idea of the best candidate being selected.

Question: Which of these options appears to be more promising? Are there modifications that might strengthen one or the other? Would there be merit in doing further work to flesh out the details of Option B?

The Executive

Questions around effective leadership of the Federation also involve what if any improvements can be made with regard to the Executive Committee. We believe some of these answers are linked to the overall decision-making structures that are ultimately agreed upon.

In Option One (A Better Status Quo), the overall functioning of the Council would be improved by more clearly focusing its role on strategic matters and encouraging effective communication between the Council member and law societies. In this scenario, we do not envisage significant change in the role or composition of the Executive Committee. Given its relatively small size, it continues to be practical for such a body to have day-to-day oversight of the Federation with accountability to the Council. Concerns around matters relating to appointment of Committees or financial oversight would be addressed by the addition of a Nominating Committee and a Finance and Audit Committee.

Option Two (A New General Assembly and Board of Directors) would eliminate the Executive Committee concept entirely, since the smaller Board that includes all of the officers would carry out all of the functions now performed by the Executive. The current Executive consists of four individuals plus the CEO and the new Board would consist of seven. It may be marginally more cumbersome for the new Board to meet compared to the current Executive given the realities that come with involving a few more people with busy schedules across Canada's time zones. Option Two will also benefit from the addition of a Nominating Committee and a Finance and Audit Committee.

When reflecting on which options to prefer, whether in respect of decision-making generally or ongoing leadership of the Federation, it will be important to bear in mind the practical matter of ensuring solid and effective ongoing stewardship of the organization in between the meetings of deliberative bodies, whether Council or the General Assembly, whose primary focus will be on strategic issues.

MORE SPECIFIC ISSUES

In addition to the foregoing areas related to broad aspects of the Federation's governance, we identified a number of areas related to more specific improvements that we believe most members will agree should be implemented. These are set forth below.

- A more effective and accessible Federation intranet site.
- A formalized CEO performance review.
- Implementation of a Federation orientation program for individuals in leadership positions (in both Option One and Option Two).
- Refinement of role statement and development of competencies for the Federation President.

- Refinement of role statement and development of competencies for Council members (Option One) or Board members (Option Two).
- An evaluation process for the members of Council or the Board, as the case may be.

CONCLUSION

It is our hope that with further discussion, we will continue to be able to shape the contours of the governance improvements that are required. Our next conversation will take place in June in Ottawa. At that time, the Committee will still be in listening mode, and it may be that we will come close to arriving at a consensus on many, but not all, issues. Hopeful as we may be, we are also mindful that progress will depend on the level of comfort and buy-in expressed by law societies with the direction in which we are headed. We are committed to taking all perspectives into account, and respecting individual law society deliberative processes as we move forward with our reflection and analysis through the summer.



Appendix 1 – Benchers Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: July 18, 2005

Revised: May 8, 2009

Revised: March 5, 2010

Revised: June 30, 2015

Table of Contents

	Page
1. General	3
2. Responsibilities	4
3. Account Management	5
4. Fund Objectives	6
5. Asset Allocation and Investment Management Mandates	7
6. Permitted Investments	10
7. Investment Restrictions	12
8. Other Matters	14
9. Monitoring	15
10. Investment Guidelines Review	17
11. Investment Guidelines Approval	18

1. General

1.1 Application

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

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

1.2 Compliance

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

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

1.3 Pooled Funds

Pooled funds are managed under guidelines established by the investment manager for each pooled fund approved for use within the Investment Guidelines. It is recognized that from time to time, when pooled funds are used, it may not be entirely possible to maintain complete adherence to the Investment Guidelines. However, the investment manager is expected to advise the Finance Committee if a pooled fund exhibits, or may exhibit, any significant departure from the Investment Guidelines. The Finance Committee may accept the non-compliance, or take such further action as may be required, and the Finance Committee shall report any such action to the Benchers on a quarterly basis.

1.4 Effective Date

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

2. **Responsibilities**

2.1 **Plan Administration**

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

2.2 **Delegation**

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

2.3 **Investment Managers**

The investment managers are responsible for:

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

2.4 **Standard of Care**

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

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

3. Account Management

3.1 Overview of Accounts

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

3.2 Lawyers Insurance Fund - LT Account

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

3.3 Courthouse Libraries BC Account

The Courthouse Libraries BC Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections, the investments are invested as directed by the Courthouse Libraries BC.

3.4 Unclaimed Trust Funds Account

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

- the investment objective is to earn a rate of return of 3.0% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments.

3.5 Captive Insurance Company Account

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

- the investment objective is to earn a rate of return of 3.0% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments.

3.6 Lawyer Insurance Fund - ST Account

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

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

4. **Fund Objectives**

4.1 **Investment Philosophy**

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

4.2 **Investment Objectives**

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period 2015 to 2024, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

The Law Society's long-term funding requirements and relatively low requirement for asset liquidity dictate a moderate risk portfolio with a mix of fixed income, equity, real estate and mortgages. It is expected that the value of the portfolio will fluctuate as market conditions and interest rates change.

4.3 **Investment Constraints**

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

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

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

Asset Class	Asset Class Benchmark Index	Asset Class Percentages (market value)		
		Minimum	Benchmark	Maximum
Canadian Equities	S&P / TSX Composite Index	8%	17.5%	24%
Foreign Equities	MSCI-World Index (CAD)	16%	27.5%	36%
Total Equities		24%	45%	56%
Bonds	FTSE TMX Canada Universe Bond Index	24%	30%	56%
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	5%	16%
Mortgages	FTSE TMX Canada Short Term Bond Index + 1%	8%	10%	12%
Real Estate	REALpac / IPD Canada Quarterly Property Index	8%	10%	12%

5.2 Investment Management Structure

As of approximately July 2015, the Funds will be invested by four managers as follows:

Manager	Asset Class Percentages (market value)		
	Minimum	Benchmark	Maximum
Balanced Manager 1	37%	40%	43%
Balanced Manager 2	37%	40%	43%
Real Estate Manager	8%	10%	12%
Mortgage Manager	8%	10%	12%

a. Balanced Managers' Asset Mix

Each Balanced Manager shall have the following Balanced Benchmark Portfolio and shall manage its assets within the following allowable ranges for each asset class.

Asset Class	Asset Class Benchmark Index	Asset Class Percentages (market value)		
		Minimum	Benchmark	Maximum
Canadian Equities	S&P / TSX Composite Index	10%	22%	30%
Foreign Equities	MSCI-World Index (CAD)	20%	34.5%	45%
Total Equities		30%	56.5%	70%
Bonds	FTSE TMX Canada Universe Bond Index	30%	37.5%	70%
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	6%	20%

b. Real Estate Manager Asset Mix

The Real Estate Manager shall invest its assets in a Real Estate Pooled Fund.

c. Mortgage Manager Asset Mix

The Mortgage Manager shall invest its assets in a Mortgage Pooled Fund.

5.3 Investment Manager Mandates

a. Balanced Managers

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

b. Real Estate Manager

The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the REALpac / IPD Canada Quarterly Property Index for real estate.

c. Mortgage Manager

The Mortgage Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the FTSE TMX Canada Short Term Bond Index + 1%.

5.4 Active Asset Mix Management

Each Balanced Manager shall maintain the asset mix of their portion of the Funds within the ranges set out in Section 5.2a.

5.5 Re-Balancing

The Law Society will review the Funds' allocation to each manager on a quarterly basis. Periodically, the Law Society shall consider whether to re-balance the Funds so that the manager assets are in line with the targets in Section 5.2.

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions.

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

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

b. Foreign Equities:

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

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

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

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

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

e. Real estate investments made either through closed or open-ended pooled funds, or through participating shares or debentures of corporations or partnerships formed to invest in commercial real estate.

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

6.2 Derivatives

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

6.3 Prohibited Transactions

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

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

6.4 Securities Lending

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

7. Investment Restrictions

7.1 Canadian Equities

- a. No more than 10% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.

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

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

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

7.2 Foreign Equities

- a. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in the equity securities of any one company.

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

- c. No more than 60% of the market value of the assets of a foreign equity portfolio may be invested in the United States.

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

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

7.3 Fixed Income, including Short-Term Securities

- a. No more than 15% of a fixed income portfolio shall be invested in bonds with a BBB rating. Short-term and fixed income instruments rated below BBB are not permitted.

- b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for investment-grade asset-backed securities of which 10% will be rated at least A, 15% for

domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poor's or Moody's. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.

d. No more than 10% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies).

f. Private Placements are permitted subject to the following conditions:

- i. The restrictions and limitations identified in the Investment Guidelines for publicly traded securities must be adhered to,
- ii. Maximum 3% of the market value of any one private placement,
- iii. Sufficient liquidity to ensure the sale of the private placement in a reasonable time and a reasonable price.

g. The minimum rating for short-term securities is R1 (low).

8. Other Matters

8.1 Valuation of Investments

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

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

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

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

8.2 Conflict of Interest

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

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

8.3 Proxy Voting Rights

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

9. **Monitoring**

9.1 **Monthly Investment Reports**

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

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

9.2 **Quarterly Investment Reports**

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

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

9.3 **Quarterly Compliance Reports**

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

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

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

9.4 Meetings with the Law Society

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

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

10. Investment Guidelines Review

10.1 Review

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

10.2 Material Changes

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

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

11. Investment Guidelines Approval

The Benchers have approved the Investment Guidelines originally at the Benchers meeting in November 2001 and updated in July 2005 and April 2009, as amended with approval of the Audit Committee in January 2002 and May 2005, and as amended with approval of the Finance Committee in May 2009, March 2010 and June 2015.