

The Law Society  
of British Columbia



# The Law Society of BC Appointments Guidebook

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**Law Society of BC appointments to other organizations: an outline of the responsibilities, powers and duties of the Law Society and its appointees**

Update as at September 8, 2017

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## President's Message

For many years the Law Society of British Columbia has appointed lawyers and judges to boards, councils and committees of outside bodies. The appointments are made by the Society's Benchers, Executive Committee or President, under authority conferred by the [Legal Profession Act](#), (S.B.C 1998, c. 9.), the Law Society Rules (adopted by the Benchers under the authority of the Act), Bencher resolutions, and the governing statutes, constitutions and by-laws of those outside bodies. The appointments carry various statutory and common law responsibilities, powers and duties.

This guidebook is the Law Society's attempt to gather and organize the information needed to manage and participate in that appointment process and the resulting relationships between the Society and its appointees. Section 1 sets out the Law Society's appointments policy and protocol. Section 2 outlines the key responsibilities, powers and expectations facing the Law Society and its appointees to other bodies, and provides Appointment Profiles for those bodies (appended by category and then tabbed alphabetically). Section 3 provides background information and directions for submitting expressions of interest and submitting applications.

We hope that the *Law Society Appointments Guidebook* serves as a useful reference for appointees and the bodies they serve, and those who may be interested in putting their names forward as potential appointees.

We have done our best to outline the relevant issues and principles, and to ensure that the guidebook's information is current and accurate. For clarification or additional information regarding any specific body, we encourage you to contact the body directly: for contact information, see the various body profiles (appendices to Section 2).

For more information on the Law Society appointment process, please contact:

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# **1 Law Society Appointments: Policy and Process**

## **1.1 Law Society Appointments Policy**

The objective of the Law Society Appointments Policy (see Appendix 1) is “... to ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability to undertake the duties of the position are appointed.”

The Appointments Policy outlines various selection and appointment guidelines, including:

### ***1.1.1 Term of office***

Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to the particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment.

### ***1.1.2 Benchers or non-Benchers***

A Bencher should be appointed to an outside body only if that body’s legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases there is a presumption against appointing Benchers to other bodies. An example of a circumstance in which that presumption might be rebutted is in the case of a newly created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body’s procedures are well established.

### ***1.1.3 Geographic considerations***

The Law Society should consider geographical representation when making appointments to organizations which have a province-wide scope.

### ***1.1.4 Equity***

The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

### ***1.1.5 Appointment of judges***

Where the legislation or by-laws of the body permit, judges are eligible to be appointed to positions by the Law Society.

### **1.1.6 Communication expectations**

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
  - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
  - including any plans, policies or events that
    - materially change the bodies' objects or operations, or
    - could reasonably be considered to be inconsistent with the public interest in the administration of justice
  - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies
  - to protecting and promoting the public interest in the administration of justice
  - to supporting good governance practice by the Law Society and those bodies
  - to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain a listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization

- outline of the appointee’s responsibilities
- contact information for inquiries
- directions for submitting expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.

## 1.2 Law Society Appointments Process

The Appointments Subcommittee manages Law Society appointments and nominations on behalf of the Executive Committee, which makes recommendations “to the appointing bodies on Law Society appointments to outside bodies (see Rule 1-49(g), the Law Society Rules),” and makes appointments to a number of those bodies, including the Law Foundation of British Columbia.<sup>1</sup>

The Appointments Subcommittee comprises:

“... the President, First Vice-President and Second Vice-President (the Ladder), and, in the event that the Ladder comprises members of the same gender, a Bencher-at-large who is a member of another gender.”<sup>2</sup>

The Appointments Subcommittee meets monthly and otherwise as needed. At the first meeting of the year, Law Society staff provides the Subcommittee with an outline of the year’s expected appointments and their turnover dates. Replacement scenarios (where the incumbent is not eligible for re-appointment under the appointee organization’s rules or the Law Society Appointments Policy) are flagged for special attention. Preparation for all appointments and nominations begins well in advance with staff review of any selection criteria and board needs assessment, requests or recommendations already provided by the organization. Law Society consultation with the external organization’s board chair and senior management follows, directed at the identifying or clarifying selection criteria and the board’s requests or recommendations. The Subcommittee Chair (i.e. the President) is often directly involved and is always briefed by staff on those consultations.

The Appointments Subcommittee then meets to consider a detailed information package, which includes names and resumes of candidates recommended by the outside organization, and of suitable prospects who may have already contacted the Law Society to express interest. The Subcommittee may decide to make its appointment recommendation on the basis of that information package. It may also decide to defer its recommendation and request more

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<sup>1</sup> [Section 59 of the \*Legal Profession Act\*](#). The Executive Committee also makes appointments to the BC Law Institute, the CBABC Rural Education & Access of Lawyers Advisory Committee, the Committee on Relations with the Judiciary and the LTSA Stakeholder Advisory Committee. See Appendices 2 and 3.

<sup>2</sup> Minutes of the February 17, 2011 meeting of the Executive Committee, page 7.

background on the candidates; or it may determine that a broader or stronger pool of candidates is needed. In the latter case, the Subcommittee may canvass the Executive Committee or the Benchers for recommendations, or direct the posting of a call for interest in service on the boards of outside organizations in the Benchers' Bulletin or on the Law Society website.

The Appointments Subcommittee strives to ensure that its recommendations for appointment or nomination to the Law Society's appointing authority (the Benchers, the Executive Committee or the President) are well informed, appropriately considered and timely. To those ends, the Law Society has developed the following appointments protocol, which applies to all of its appointments to outside bodies.

### **1.3 Law Society Appointments Protocol**

- Confirm the current version of the body's governing legislation and by-laws
- Review the Law Society Appointments Policy and the appointment provisions of the body's governing legislation and by-laws
- Consult with the body's board chair and senior management regarding applicable appointment parameters, which include
  - the body's requirements, needs or interests to be addressed by the appointment, including
    - skills, experience and background desired in an appointee
  - prospective appointees who have expressed interest in the appointment to the body, including
    - names, current contact information and resumes
    - the body's receptiveness to their appointment
  - appointment timing preferences and requirements, including
    - term of office, commencement date and date of appointment
  - re-appointment factors, including
    - the incumbent's eligibility and readiness to continue to serve
    - the body's receptiveness to re-appointment of the incumbent
- Assess the body's applicable appointment parameters
- Review expressions of interest in the Law Society's appointment prospects database
- Determine whether a broader call for interest or other active canvassing of the profession for candidates is warranted



- If so, determine the appropriate canvassing strategy and execute it in a professional and timely fashion
- Prepare appropriate confirming correspondence, update relevant Law Society records and diarize for review
  - one year from expiry of the current appointment
  - beginning of calendar year of appointment expiry

## 2 Responsibilities, Powers and Duties of the Law Society and its Appointees

This section outlines the responsibilities, powers and duties of the Law Society as an appointing or nominating authority and of its appointees to other bodies. We have divided those bodies into two broad categories: those whose objects are related to the Law Society's mandate (Category 1); and those not so related (Category 2).

Category 1 is subdivided into directorship (1a) and non-directorship (1b) appointments, with directorships entailing higher levels of responsibility, power and duty than non-directorships (see section 2.1.1). In the absence of a connection of the host body's organizational purpose and objects to the Law Society's mandate, there is no expectation of post-appointment briefing or information-sharing by a Category 2 appointee to the Law Society (except as may be called for by the body's by-laws).

In reviewing the key responsibilities, powers and duties of the Law Society as an appointing or nominating authority and of its appointees to other bodies, we first considered the *Legal Profession Act* and Law Society Rules; second, each appointee body's statutory and governance framework; and third, the appointees' statutory and common law duties (if applicable).

Section 3 of the [Legal Profession Act](#) sets out the Law Society's primary mandate:

- 3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
  - (a) preserving and protecting the rights and freedoms of all persons,
  - (b) ensuring the independence, integrity, honour and competence of lawyers,...

That object and duty guide the Law Society's appointments policy and protocol, and frames the Society's approach to communications with its appointees to outside bodies.

This guidebook separates Law Society appointments to outside bodies into two categories:

- Category 1 – appointments to bodies whose objects are related to the Law Society's mandate (see Chart 1, page 12)
  - (a) directorship appointments
  - (b) non-directorship appointments

- Category 2 – appointments to bodies whose objects are not related to the Law Society’s mandate (see Chart 2, page 24)<sup>3</sup>

Note that the Law Society Appointments Policy—and this guidebook—set out higher communication expectations for Law Society appointees to bodies whose objects are related to the Society’s public interest mandate (Category 1) than for those appointees to bodies whose objects are not so related (Category 2).

The baseline expectation of all Law Society appointees and nominees to other bodies (i.e. both Category 1 and Category 2) is to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body’s objects or operations, or
- could reasonably be considered inconsistent with the Society’s mandate to uphold and protect the public interest in the administration of justice
  - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Category 1 appointees to bodies whose objects are related to the Society’s public interest mandate should expect to be requested

- to provide periodic updates on those bodies’ affairs to the Executive Committee or the Appointments Subcommittee
  - including any plans, policies or events that
    - materially change the bodies’ objects or operations, or
    - could reasonably be considered to be inconsistent with the public interest in the administration of justice
  - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society’s public interest mandate

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<sup>3</sup> Note that unlike Category 1, Category 2 is not subdivided into (a) directorship and (b) non-directorship appointments. The Law Society’s communication expectations are the same for all Category 2 appointees (whether or not they are directors). See Section 2.2.

- reflect and enhance the mutual commitment of the Law Society and those bodies
  - to protecting and promoting the public interest in the administration of justice
  - to supporting good governance practice by the Law Society and those bodies
  - to supporting continuous improvement of the Law Society’s processes for making appointments and nominations to outside bodies<sup>4</sup>

The Law Society will maintain a listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee’s responsibilities
- contact information for inquiries
- directions and forms to submit expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.

It is important for all appointee bodies to provide new members and directors with effective orientation and training tailored to the needs of the particular body. It is equally important for new members and directors to ensure that they acquire a clear understanding of their responsibilities, duties and obligations to the body to which they have been appointed. They should do so by reviewing the body’s governing statute, constitution and by-laws, and by contacting the body for clarification.

## **2.1 Appointments to Related Bodies (Category 1)**

Most of the Law Society’s appointments are in Category 1: to bodies whose purposes and objects are related to the Society’s mandate to uphold and protect the public interest in the administration of justice (see Chart 1). Category 1a appointees are members or directors; Category 1b appointees serve in non-directorship roles.

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<sup>4</sup> See Appendix 1, Law Society Appointments Policy (Communication Expectations) or Section 1.1.F.

## Chart 1

### 1a. Directorship and Membership Appointments to Related Bodies

#### Governed by the *Society Act*

British Columbia Law Institute Board of Directors

CBABC Benevolent Society Board of Directors

Continuing Legal Education Society of BC Board of Directors

#### Governed by Other Statutory Authority

Federation of Law Societies of Canada – Council

Law Foundation of British Columbia

Legal Services Society

Land Title and Survey Authority of BC

### 1b. Non-Directorship Appointments to Related Bodies

#### Councils

CBA National Council

CBABC Provincial Council

Provincial Judicial Council

#### Committees

CBABC Rural Education & Access to Lawyers (REAL) Initiative Advisory Board

Committee on Relations with the Judiciary

Federal Judicial Advisory Committee for British Columbia

#### 2.1.1 Appointments of Members and Directors to Related Bodies (Category 1a)

Category 1a appointments and nominations command the highest level of responsibility: for the Law Society in carrying out its appointment process and supporting good governance; for both the Society and its appointees or nominees in meeting the communication expectations set out in the Law Society Appointments Policy; and for the appointees or nominees in honouring their duties of loyalty and care to the bodies they have been appointed to serve.

Category 1a appointments entail the following qualities, responsibilities and duties:

- the body's objects are related to the Law Society's mandate
- the appointee or nominee is a member of the body's central policy-making body
  - with governance responsibilities including creation and amendment of the body's by-laws
  - with directorship responsibilities, including the fiduciary duties

- to exercise independent judgment in supporting and promoting the body’s best interests
- to respect and protect the absolute priority of the body’s best interests over their personal interests or other parties’ interests (see Section 2.1.1D)

Some Category 1a bodies are governed by BC’s *Society Act* (see the [Society Act](#), R.S.B.C., 1996, c. 433) and others by other statutes. This guidebook will address the *Society Act* bodies as a group, and then cover the other four Category 1a bodies separately (see Section 2.1.1B).

### **2.1.1.1 Category 1a Bodies Governed by the *Society Act***

The *Society Act* is the legal framework for the formation and governance of not-for-profit societies in BC. Societies are corporations controlled by members (which may be persons or corporations) rather than shareholders.<sup>5</sup> Section 6 requires societies to create by-laws providing for, among other things, the admission, expulsion, rights and obligations of members, and the appointment, removal, powers and duties of directors.

The Law Society is either a member or an appointing body for members of all of the Category 1 bodies incorporated under the [Society Act](#).

#### **i. The Law Society’s Responsibilities as a Member of a *Society Act* Body**

Members of [Society Act](#) bodies have important powers and responsibilities. Only members can change the body’s constitution and create or amend its by-laws (by special resolution) (see Sections 20 and 23 of the [Society Act](#)),<sup>6</sup> and only members may (in accordance with the by-laws) nominate, elect or appoint directors (see Subsection 24(1) of the [Society Act](#)).

The Law Society’s responsibilities as a member of a *Society Act* body fall into two distinct areas. The first area is governance: collaborating with the *Society Act* body (usually through the Board Chair and Executive Director), and with other members to support the body’s governance, including periodic review of its constitution and by-laws. The second area is the appointment, nomination or election of directors, in accordance with the body’s by-laws.<sup>7</sup>

While these two areas of responsibility are distinct in theory, in practice they overlap. Supporting good governance requires effective communication between the body and its members, and between the members and their board appointees. Also, the Law Society’s responsibility for supporting good governance underlies its responsibility to appoint effective members and

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<sup>5</sup> The [Society Act](#) does not permit the use of share capital or the division of capital into shares. See section 8.

<sup>6</sup> Special resolutions require the support of 75% of the voting members – see subsection 1(a) of the *Society Act*.

<sup>7</sup> In some cases, the by-laws spell out the authority of the members—or their elected representatives—to appoint directors; in other cases the by-laws provide for the appointment of members, deeming members to be directors for so long as they are members. See Appendix 2.

directors, with backgrounds and skill sets appropriate to the body’s leadership and governance needs.

## ii. The Law Society’s Responsibilities as an Appointing Authority for Members

As an appointing authority for members of a *Society Act* body, the Law Society’s governance responsibility is expressed in two ways: appointing effective and appropriate members, and seeking to maintain good relationships and effective communication with the body and the appointed members.<sup>8</sup>

## iii. Directors’ Responsibilities, Powers and Duties under the *Society Act*

The [Society Act](#) applies the standard Canadian statutory terms<sup>9</sup> in defining the core responsibilities, powers and duties of directors of not-for-profit organizations incorporated under the Act.

Subsection 24(2) sets out the responsibilities and powers of directors:

- (2) Subject to this Act and the constitution and bylaws of the society, the directors
  - (a) must manage, or supervise the management of, the affairs of the society, and
  - (b) may exercise all of the powers of the society.

Section 25 defines the directors’ duties of loyalty and care:

- (1) A director of a society must
  - (a) act honestly and in good faith and in the best interests of the society, and
  - (b) exercise the care, diligence and skill of a reasonably prudent person, in exercising the powers and performing the functions as a director.
- (2) The requirements of this section are in addition to, and not in derogation of, an enactment or rule of law or equity relating to the duties or liabilities of directors of a society.

Section 26 provides that a society’s contracts, constitution and by-laws cannot be used to create exceptions to directors’ obligations and duties under the Act; nor from “... liability that by a rule

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<sup>8</sup> When a *Society Act* body’s constitution or by-laws call on the Law Society to appoint a member, usually the by-laws make the member a director as well.

<sup>9</sup> Barry Reiter, *Directors’ Duties in Canada*, 4<sup>th</sup> ed. (Toronto: CCH Canadian, 2009) (“Reiter”), 42-43.

of law would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.”

We note that the *Society Act* does not expressly impose the duty of loyalty on its members; nor does it prescribe principles and rules for identifying and handling confidential society information in the hands of members or directors. The Law Society accepts that like its directors, the members of a *Society Act* body should seek always to act in the body’s best interests.<sup>10</sup>

The obligation to protect confidential information is an aspect of the fiduciary duty of every director to act in the best interests of the corporation he or she serves, whether the body is established as a for-profit or not-for-profit entity.<sup>11 12</sup>

As noted earlier (see Section 2.1.1A), the Law Society is committed to supporting the governance of the *Society Act* bodies to which it belongs as a member, and those to which it appoints members and directors. There is a vital connection between that commitment and the Law Society’s reliance on timely and effective communication from its appointees and nominees, as set out in the Communication Expectations section of the Law Society Appointments Policy (see Appendix 1, The Law Society Appointments Policy (Communication Expectations)).

### **2.1.1.2 Category 1a Bodies Governed by Other Statutory Authority**

#### **i. The Federation of Law Societies of Canada (Council)**

Incorporated as a not-for-profit organization under *Part II of the Canada Corporations Act*, R.S.C, 1970, c. C-32 in 1972, the Federation of Law Societies of Canada (the Federation)

(see Appendix 2(B) Tab 1) is the coordinating body for Canada’s provincial and territorial law societies. Under the Federation’s by-laws, each member law society is a “governing body” and is expected to appoint one director to Council, which is the Federation’s central decision-making authority. The Law Society’s Council member is selected by the Benchers, and must be a current elected Bencher or Life Bencher.

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<sup>10</sup> See Schedule B of the *Society Act* for standard members’ compliance by-law:

“Part 2 – Membership Section 5. Every member must uphold the constitution and comply with these bylaws.”

<sup>11</sup> Peter Broder, Coordinating Editor, Primer for Directors of Not-for-Profit Corporations, Industry Canada, 2002 (“Industry Canada”)([http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h\\_cl00688.html](http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_cl00688.html) as at January 9, 2017).

See also: Ronald Hirshhorn and David Stephens, Organizational and Supervisory Law in the Nonprofit Sector, Canadian Policy Research Networks Inc., 1997 (Ottawa: Renouf Publishing Co. Ltd.), (“Hirshhorn and Stephens”), 4 and 23.

<sup>12</sup> See Reiter, *supra* note 9, 46-47.



The Terms of Reference for the Appointment and Service of the Law Society's Council Member of the Federation of Law Societies of Canada Council defines the member's appointment process and responsibilities for representing the Society's interests at Council.<sup>13</sup>

## ii. The Land Title and Survey Authority of British Columbia

The Land Title and Survey Authority of BC (the LTSA) (see Appendix 2(B) Tab 4) was formed as a not-for-profit corporation in 2005 under the [Land Title and Survey Authority Act](#), S.B.C. 2004, Chapter 66. The LTSA's purposes are defined in section 4(1) of the Act:

4 (1) The purposes of the LTSA are

- (a) to manage, operate and maintain the land title and survey systems of British Columbia,
- (b) to facilitate the execution of Crown grants, and
- (c) to carry on other necessary or advisable activities related to land title or survey systems.

(2) All money earned by the LTSA must be used for the purposes of the LTSA.

Section 1(b) names the Law Society of BC as one of the LTSA's stakeholder entities. Sections 6 and 7 set out the process to be followed for appointing eleven directors (from pools of nominees to be provided by each stakeholder entity) to the board of directors.<sup>14</sup> Sections 14, 15 and 16 set out the standard powers, role and duties of directors.<sup>15</sup> Section 19 confirms the scope of the directors' responsibility for preparing LTSA by-laws, including a skills and experience profile to be included in the by-laws.<sup>16</sup>

## iii. The Law Foundation of British Columbia

The Law Foundation of British Columbia (the Law Foundation) (see Appendix 2(B) Tab 2) is governed by [Part 7 of the Legal Profession Act](#). Subsection 59(1) prescribes the composition of the board of governors and authority for appointment of governors to the board:

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<sup>13</sup> Report to the Benchers by Law Society of BC Council member Gavin Hume, QC, April 15, 2011: the Federation Council has recently undertaken a review of its governance process, focusing on the role and responsibilities of the various member law societies' Council representatives. Early deliberations indicate the Federation Council's expectation that its members act as directors, with the fiduciary obligation to act in the best interests of the Federation.

<sup>14</sup> <https://ltsa.ca/about-ltsa/governance> (as at January 9, 2017): "The LTSA is governed by an eleven-member board of directors which is responsible for strategic oversight of the LTSA's business and setting policy. The board is accountable to the 'principals' of the LTSA, namely the users of BC land title and survey systems."

<sup>15</sup> See Reiter, *supra* note 9, 42-43.

<sup>16</sup> <https://ltsa.ca/about-ltsa/governance> (as at January 9, 2017): Schedule A of the LTSA Consolidated By-laws, 32.

**59** (1) The foundation is administered by a board of governors consisting of 18 governors as follows:

- (a) the Attorney General or his or her appointee;
- (b) 3 persons, not lawyers, appointed to the board by the Attorney General;
- (c) 12 lawyers or judges appointed by the executive committee [of the Law Society], of whom at least one must be from each county referred to in the *County Boundary Act*;
- (d) 2 lawyers appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association.

The Law Foundation is not required by the Act to create by-laws and has not done so, relying on its Board of Governors' Manual to articulate its governance regime.<sup>17</sup>

#### **iv. The Legal Services Society**

The Legal Services Society (LSS) (see Appendix 2(B) Tab 3) is governed by its own statute, the [\*Legal Services Society Act\*](#), S.B.C. 2002, c. 30. Subsections 4(2) and 4(3) prescribe the composition of the LSS board, and ss. 4(5) specifies the factors to be considered by the Attorney General and the Law Society in appointing LSS directors. Those provisions warrant reproduction here as an example of clear and helpful direction (both to appointing bodies and to appointees):

**4** (1) The board consists of 9 directors

(2) Five directors are to be appointed by the Lieutenant Governor in Council, on the recommendation of the Attorney General.

(3) Four directors are to be appointed by the Law Society of BC after consultation with the executive of the British Columbia branch of the Canadian Bar Association.

(4) The members of the board must elect one of their members to be chair of the board.

(5) For the purposes of subsections (2) and (3), the Attorney General and the Law Society must make the recommendations or appointments, as the case may be, that they consider will provide to the board as a whole knowledge, skills and experience in the following areas:

- (a) business, management and financial matters of public and private sector organizations;

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<sup>17</sup> Interview with Wayne Robertson, QC, Executive Director of the Law Foundation of BC, April 15, 2011.

- (b) law and the operation of courts, tribunals and alternate dispute resolution processes;
  - (c) the provision of legal aid;
  - (d) the cultural and geographic diversity of British Columbia;
  - (e) the social and economic circumstances associated with the special legal needs of low income individuals.
- (6) The term of office of a director must be not longer than 3 years from the date on which the appointment becomes effective.
- (7) A director must not hold office for more than 6 consecutive years.
- (8) Despite anything else in this section, a director whose term of office has expired may continue to hold office until a successor is appointed ...
- (9) The board must meet at least quarterly.
- (10) Subject to subsection (9), the board must control and direct the business of the society and may, by resolution, determine its own procedure.
- (11) A director must be reimbursed for reasonable out of pocket travelling and other expenses incurred in the discharge of duties and may be paid a fee for services.

[LSS's by-laws](#)<sup>18</sup> provide clear direction regarding a LSS director's responsibilities, powers and duties. The Law Society takes note of that direction in managing its appointments of LSS directors, and its ensuing relationships and communications with them.

More broadly, the Law Society acknowledges that any director it appoints to the board of an outside body owes that body the fiduciary duty of loyalty, including the obligation to act always in its best interests.

### **2.1.1.3 Communication Expectations**

The Law Society trusts that the members and directors it appoints to the boards of Category 1a bodies will honour the communication expectations set out in the Law Society Appointments Policy (see Appendix 1). The Communications Expectations section of the policy is repeated here for ease of reference:

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<sup>18</sup> Legal Services Society, Board Governance By-Laws as amended and adopted by the board May 16, 2013. <http://www.legalaid.bc.ca/assets/aboutUs/boardGovernance/boardGovernanceBy-Laws.pdf> (as at January 9, 2017).

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
  - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
  - including any plans, policies or events that
    - materially change the bodies' objects or operations, or
    - could reasonably be considered to be inconsistent with the public interest in the administration of justice
  - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies to
  - to protecting and promoting the public interest in the administration of justice
  - to supporting good governance practice by the Law Society and those bodies
  - to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain a listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities

- contact information for inquiries
- directions and forms to submit expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.

#### **2.1.1.4 Directors’ Duties of Loyalty and Care**

All directors owe their organizations (whether they are “not-for-profit” or “for-profit” bodies) the duties of loyalty and care, both originally developed by the courts at common law and now enshrined in the statutes governing all corporations—federal or provincial—incorporated in Canada.<sup>19</sup>

The duty of loyalty (also known as the fiduciary duty), requires directors to respect the absolute priority of the best interests of the organization over their personal interests or other parties’ interests. To discharge their duty of loyalty, directors must:

- act honestly and openly
- maintain confidences
  - disclosure of which would be contrary to the body’s interest
- act independently
- avoid conflicts of interest and the appropriation of corporate opportunities<sup>20</sup>

The duty of care requires directors “[...] to act carefully and on an informed basis and to exhibit the diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duty of care encompasses an objective standard of what a reasonably prudent person would be expected to do in comparable circumstances.”<sup>21</sup>

#### **2.1.1.5 Divergent Interests, Bencher Appointments as Directors and Conflicts of Interest**

Because their mandates are related and their objects generally overlap or at least align, only rarely will the Law Society and a Category 1 body find themselves in situations where their interests diverge. On the other hand, the very fact that the Law Society and Category 1 bodies so

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<sup>19</sup> Reiter, *supra* note 9, 42-43. See also: Hirshorn and Stephens, *supra* note 11, 12; and Hugh Lindsay, FCA, *20 Questions Directors of Not-for-profit Organizations Should Ask About Governance*, (Toronto: Canadian Institute of Chartered Accountants, 2006), 16.

<sup>20</sup> Reiter, *supra* note 9, 44-45.

<sup>21</sup> *Ibid*, 43.

often share common ground means that strategic differences will arise. Benchers appointed as members or directors to those bodies must take care to avoid conflicts of interest.

Industry Canada's [Primer for Directors of Not-for-Profit Corporations](#) provides a cautionary example and good advice:

### **EXAMPLE**

This may happen when an affiliated organization is represented on a corporation's board of directors. As the mandates of the two organizations evolve over time, one organization may want to move away from providing support or complementary services to being the exclusive service provider. So the question of merging the two organizations or folding one of them may arise. Once this has been contemplated, it may be impossible for the individual to continue to hold both positions.

When an organizational conflict of interest becomes apparent at a meeting of the board of directors, the director should declare the conflict. He or she should then leave the room for the discussion and abstain from voting on any matter that affects the other organization of which he or she is a director or employee. If the conflict is insurmountable, the director may have to resign from one or both organizations.

Both the corporation and the directors should have a clearly defined policy to follow in the event of a conflict of interest. However, the legal validity of any policy that allowed a board to disregard a conflict of interest in breach of its fiduciary obligations is doubtful.<sup>22</sup>

Reiter notes the usual corporate practice for dealing with transactional conflicts between parent and subsidiary corporations — and ensuing directors' conflicts—requires a committee of independent directors:

... [T]he usual practice is to assign responsibility for consideration of the transaction to a committee of independent directors. However, in order for this solution to be effective, it is essential that the members of the independent committee be effective and truly independent.<sup>23</sup>

It bears repeating here that the Law Society's Appointments Policy sets out a presumption that Benchers will not be appointed to the boards of outside organizations, unless the appointment of a Bencher is called for by the outside organization's governing legislation or by-laws:

### **Benchers or non-Benchers**

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<sup>22</sup> Industry Canada, *supra* note 11, 25.

<sup>23</sup> Reiter, *supra* note 9, 53-54.

A Bencher should be appointed to an outside body only if that body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases there is a presumption against appointing Benchers to other bodies. An example of a circumstance in which that presumption might be rebutted is in the case of a newly created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body's procedures are well established (see Appendix 1).

### **2.1.2 Non-Directorship Appointments to Related Bodies (Category 1b)**

The Law Society also makes non-directorship appointments to a number of other bodies' councils or committees (see Appendix 3), the objects and operations of which are related to the Society's mandate to uphold and protect the public interest in the administration of justice. These Category 1b appointments are generally of a liaison or administrative nature, and entail more narrowly defined responsibilities (both for the Law Society and its appointees) than Category 1a's appointments of members and directors (see Sections 2.1.1 and 2.1.1D).

These appointees serve as representatives of the Law Society in important liaison and oversight roles that require technical knowledge, good judgment and strong communication skills, without raising the fiduciary obligations, duties of care and associated liabilities of directorship appointments.

#### **2.1.2.1 The Law Society's Communication Expectations for Category 1b Appointees**

All Category 1 appointees support bodies with objects that are related to the Law Society's public interest mandate. Accordingly, the Society has the same communication expectations of all its Category 1 appointees, whether serving in 1a directorship or 1b non-directorship roles. (set out in the Law Society Appointments Policy) See Appendix 1 for the Law Society Appointments Policy; the Communication Expectations section is repeated here for ease of reference:

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
  - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
  - including any plans, policies or events that
    - materially change the bodies' objects or operations, or
    - could reasonably be considered to be inconsistent with the public interest in the administration of justice
  - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies to
  - to protecting and promoting the public interest in the administration of justice
  - to supporting good governance practice by the Law Society and those bodies
- to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain a listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities
- contact information for inquiries
- directions and forms to submit expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.



## 2.2 Appointments to Unrelated Bodies (Category 2)

It will not surprise most readers of this guidebook that it is uncommon for the Law Society to become an appointing authority for bodies whose objects are not related to the Society's mandate "... to promote and protect the public interest in the administration of justice ..."

(see [Section 3\(a\) of the \*Legal Profession Act\*](#)). If the Society agrees to take on the responsibilities of an appointing authority for a Category 2 body (see Chart 2 and Appendix 4), generally it will be because that body's objects and operations have significant community and public impact.

### Chart 2

City of Vancouver Building Permit Board of Appeal  
Hamber Foundation Board of Governors  
Vancouver Airport Authority Board of Directors  
Vancouver Foundation Board of Directors

The Law Society's view of its role and responsibilities in relation to making appointments or nominations to Category 2 bodies is focused by two goals:

- ensuring that the Law Society Appointments Policy is applied with integrity, consistency and respect for the by-laws of those bodies
- ensuring that the appointments or nominations are conducted in a manner consistent with the Society's mandate to uphold and protect the public interest in the administration of justice

### 2.2.1 *The Law Society's Communication Expectations for Category 2 Appointees*

Category 2 appointees are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
  - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies (see Appendix 1, Law Society Appointments Policy (Communication Expectations))

### 3 Expressions of Interest

Individuals who wish to express their interest in being considered as a appointee or nominee are encouraged to submit an online application for consideration on the Law Society website: [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca).

The online expressions of interest form can be found under About Us > Volunteers and Appointments > [Apply Online for Consideration](#). Applicants are requested to submit a current resume, a brief expression of interest and an outline of related skills and experience. Applicants are also asked to indicate the organizations and appointments of particular interest to them.

We will keep each applicant's expression of interest and related information for two years from the date of submission, or until the date a resulting appointment takes effect, whichever comes first. You will be contacted if you are short-listed for an upcoming appointment or nomination.

If you have questions about Law Society appointments to other organizations, please contact Renee Collins, Manager, Executive Support ([rcollins@lsbc.org](mailto:rcollins@lsbc.org)).

## **Appendix 1 - Law Society of BC Appointments Policy**

(approved by the Benchers on October 21, 2011)

### ***Objective***

The objective of the Law Society in making appointments or nominations to boards, councils or committees of outside bodies is to ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability to undertake the responsibilities of the position are appointed. The Law Society recognizes that each of its appointees has a duty to serve the best interests of the body to which he or she is appointed, keeping in mind the protection of the public interest in the administration of justice.

### ***Term of office***

A Law Society appointment to any position will normally be for a term not exceeding three years, and a total period not exceeding six years, provided that other considerations relating to the particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment.

### ***Benchers or non-Benchers***

A Bencher should be appointed to an outside body only if that body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases there should be a presumption against appointing Benchers to outside bodies. An example of a circumstance that might rebut that presumption is a Law Society appointment to a newly created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body's procedures are well established.

### ***Consultation***

#### **Canadian Bar Association**

- It is generally desirable that a consensus be reached in cases where a body's governing legislation, by-laws or governance policy call for a Law Society appointment in consultation with the Canadian Bar Association.
- A consensus should be attempted in all cases, recognizing that there may be rare instances where the Law Society will appoint someone not approved or acceptable to the Canadian Bar Association.

## **Outside Body**

- It is generally desirable that, before making an appointment or nomination to an outside body, the Law Society consult the body's chair and senior management regarding applicable appointment parameters
  - appointment parameters include
    - the body's requirements, needs or interests to be addressed by the appointment, including
      - skills, experience and background desired in an appointee
    - prospective appointees who have expressed interest in the appointment to the body, including
      - names, current contact information and resumes
      - the body's receptiveness to their appointment
    - appointment timing preferences and requirements, including
      - term of office, commencement date and date of appointment
    - re-appointment factors, including
      - the incumbent's eligibility and readiness to continue to serve
      - the body's receptiveness to re-appointment of the incumbent

## **Geographic considerations**

The Law Society should consider geographical representation when making appointments to organizations which have a province-wide scope.

## **Equity**

The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

## **Appointment of judges**

Where the legislation or by-laws of the body permit, judges are eligible to be appointed to positions by the Law Society.

## ***Communication Expectations***

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
  - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
  - including any plans, policies or events that
    - materially change the bodies' objects or operations, or
    - could reasonably be considered to be inconsistent with the public interest in the administration of justice
  - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies
  - to protecting and promoting the public interest in the administration of justice
  - to supporting good governance practice by the Law Society and those bodies
  - to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain a listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities
- contact information for inquiries
- directions for submitting expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.

## Appendix 2 - Category 1a Profiles: Law Society Directorship Appointments to Related Bodies

### A. Governed by the *Society Act*

Tab	Body	Governing Statute / Applicable By-laws / Other Authority	Law Society Appointing Authority	Law Society Appointee/Nominee Profiles
1	British Columbia Law Institute ("BCLI") Board of Directors	<i>Society Act</i> BCLI By-law 4(1)	Law Society Executive Committee	2 persons as members of BCLI (members are also directors)
2	Canadian Bar Association of British Columbia Benevolent Society ("CBABS") Board of Directors	<i>Society Act</i> CBABS By-law 26	Law Society President	1 Bencher or Life Bencher as a director
3	Continuing Legal Education Society of BC ("CLE") Board of Directors	<i>Society Act</i> CLE By-law 9(a):	Law Society President	2 Law Society Benchers as directors
		CLE By-law 9(c)	Law Society and Canadian Bar Association of BC Presidents (jointly)	10 practising Law Society members as directors: 3 from county of Vancouver; 1 each from counties of Victoria, Nanaimo, Prince Rupert, Cariboo, Yale, Kootenay and Westminster as directors

## 1. British Columbia Law Institute

Appendix 2(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
1	British Columbia Law Institute (“BCLI”) Board of Directors	Society Act BCLI By-law 4(1)	Law Society Executive Committee	2 persons as members of BCLI (members are also directors)

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Jan Christiansen	3 years	1	12/1/2012	11/30/2018
Margaret Mason	3 years	0	5/1/2015	4/30/2018

### Contact Information

Mailing Address	Physical Address	Phone/Fax/Email:
British Columbia Law Institute 1822 East Mall University of British Columbia Vancouver, BC, V6T 1Z1	Law Annex I 6050 Walter Gage Road University of British Columbia Vancouver, BC	Phone: 604.822.0142 Fax: 604.822.0144 E-mail: <a href="mailto:bcli@bcli.org">bcli@bcli.org</a>

### Applicable Statutes

Governed by: *Society Act*, RSBC, 1996, c 433. Subsection 35(1): Divisions 8, 9 and 10 of Part 3 (Finance) of the *BC Business Corporations Act* (BCBCA) apply

Generally do not apply: *Canada Corporations Act* (CCA), *Canada Business Corporations Act* (CBCA) and BCBCA

### Objects

**BCLI Constitution, Article 2 - The purposes of the society are to:**

- promote the clarification and simplification of the law and its adaptation to modern social needs,
- promote improvement of the administration of justice and respect for the rule of law, and



- promote and carry out scholarly legal research.

## **Law Society's Appointment Authority**

### **1. BCLI By-laws<sup>24</sup>:**

#### **a. Appointment of BCLI Members**

*By-law 4(1):* The society shall consist of 14 members as follows

- (a) two persons appointed by the Attorney General;
- (b) two persons appointed by the executive committee of the Law Society of British Columbia;
- (c) two persons appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association;
- (d) one person appointed by the Dean of the Faculty of Law, University of British Columbia;
- (e) one person appointed by the Dean of the Faculty of Law, University of Victoria;
- (f) five persons appointed by the persons appointed under clauses (a) to (e);
- (g) one person appointed by the persons appointed under clauses (a) to (f).

*BCLI By-law 25:* The directors of the society shall be the members of the society from time to time ... every person who becomes a director, ceases to be a director at the time the person ceases to be a member.

#### **b. Revocation of Appointment**

*By-law 25:* A person or body entitled to appoint a member ... may revoke the appointment of a member so appointed during that member's term of office.

#### **c. Term of Office**

*By-law 4(3):* Membership in the society is for a term of 5 years, or such shorter term as the appointing person, group, or organization may designate, or until successors are appointed, and a member may be reappointed.

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<sup>24</sup> By-laws of British Columbia Law Institute, consolidated to 5 October, 2007, By-law 4(1)

## ***Appointees' Obligations, Powers and Duties (as Members and Directors):***

### **1. Internal Sources: BCLI Constitution and By-laws**

#### **a. Promoting Purposes of BCLI and Avoiding Personal Gain**

*BCLI Constitution, Article 3:* The business of the society shall be conducted so as to promote the purposes of the society, and the society must not carry on activities for the personal financial gain of its members. This provision is unalterable.<sup>25</sup>

*By-law 5:* Every member must uphold the constitution and comply with these bylaws.

#### **b. Exercising Powers of and Acting on behalf of the Society**

*By-law 24(1):* The directors may exercise all the powers and do all the acts and things that the society may exercise and do, and that are not by these bylaws or by statute or otherwise lawfully directed or required to be exercised or done by the society in a general meeting, but subject, nevertheless, to

- (a) all laws affecting the society,
- (b) these bylaws, and
- (c) rules, not being inconsistent with these bylaws, that are made from time to time by the society in a general meeting.

#### **c. Amending Constitution and By-laws**

*By-law 62:* These bylaws must not be altered or added to except by special resolution.<sup>26</sup>

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<sup>26</sup> Only Society members can vote on and pass special resolutions. Under section 1 of the *Society Act*, "special resolution" means:

- (a) a resolution passed in a general meeting by a majority of not less than 75% of the votes of those members of a society who, being entitled to do so, vote in person or, if proxies are allowed, by proxy
  - (i) of which the notice that the bylaws provide, and not being less than 14 days' notice, specifying the intention to propose the resolution as a special resolution has been given, or
  - (ii) if every member entitled to attend and vote at the meeting agrees, at a meeting of which less than 14 days' notice has been given,
- (b) a resolution consented to in writing by every member of a society who would have been entitled to vote on it in person or, if proxies are allowed, by proxy at a general

## 2. External Sources: *Society Act* (statutory duties of honesty and care)

*Society Act*, s. 25 (1): A director of a society must:

- (a) act honestly and in good faith and in the best interests of the society, and
- (b) exercise the care, diligence and skill of a reasonably prudent person,
- (c) in exercising the powers and performing the functions as a director.

(2) The requirements of this section are in addition to, and not in derogation of, an *enactment* or rule of law or equity relating to the duties or liabilities of directors of a society.

*Society Act*, s. 26: Nothing in a contract, the constitution or the bylaws, or the circumstances of a director's appointment, relieves a director

- (a) from the duty to act in accordance with this Act and the regulations, or
- (b) from a liability that by a rule of law would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.

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meeting of the society, and a resolution so consented to is deemed to be a special resolution passed at a general meeting of the society,

(c) if a society has adopted a system of indirect or delegate voting or voting by mail, a resolution passed by at least 75% of the votes cast in respect of the resolution, or

(d) an extraordinary resolution passed before January 5, 1978;

## 2. Canadian Bar Association of BC Benevolent Society

Appendix 2(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
3	Canadian Bar Association of BC Benevolent Society (“CBABS”) Board of Directors	<i>Society Act</i> CBABS By-law 26	Law Society President	1 Bencher or Life Bencher as a director

Current Appointment	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Lee Ongman	1 year, to a maximum of 6 years	0	5/31/2017	to be reviewed annually in conjunction with the Benevolent Society’s annual general meeting

### Contact Information

Mailing Address	Phone/Fax/Email:
Canadian Bar Association of BC Benevolent Society c/o The Canadian Bar Association, BC Branch 10th Floor, 845 Cambie Street Vancouver, BC V6B 5T3	The Canadian Bar Association, BC Branch: Phone: 604.687.3404 Toll Free: 888.687.3404 Fax: 604.669.9601 E-mail: cba@bccba.org

### Applicable Statutes

Governed by: *Society Act*, RSBC, 1996, c 433. Subsection 35(1): Divisions 8, 9 and 10 of Part 3 (Finance) of the *BC Business Corporations Act* (BCBCA) apply

Generally do not apply: *Canada Corporations Act* (CCA), *Canada Business Corporations Act* (CBCA) and BCBCA

## **Objects**

### **1. CBABS Constitution, Article 2 - The purposes of the society are to:**

- a. to provide assistance to lawyers or articled students who have suffered an illness or injury arising from any cause whatsoever including but not limited to alcohol, drugs, stress and physical injury; and
- b. to provide assistance to the families of lawyers or articled students who are affected by such lawyers' or articled students' illness or injury.

## **Law Society's Appointment Authority**

### **1. CBABS By-laws<sup>27</sup>:**

#### **a. CBABS Membership**

*By-law 3:* Upon application and acceptance for membership, the following shall be the only members of the Society:

- (a) Canadian Bar Association, BC Branch;
- (b) the Law Society of British Columbia
- (c) the President of Law Society of British Columbia;
- (d) the President of Canadian Bar Association, BC Branch;
- (e) such other person or persons who apply and who the members may at that time unanimously agree to admit to membership in the Society.

*By-law 4(a):* ... [T]he Law Society of British Columbia shall be a member of the Society in perpetuity.

*By-law 4(b):* ... [T]he President of the Law Society of British Columbia shall be a member of the Society so long as that person shall hold the office of President.

#### **b. CBABS Directors**

*By-law 26(2):* The Board of Directors shall comprise the following persons:

- (a) A Bencher or Life Bencher of the Law Society of BC appointed by the President of the Law Society of BC...

#### **c. Revocation of Membership and Directorship**

*By-Law 7:* General membership can cease on being expelled.

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<sup>27</sup> CBABC Benevolent Society Constitution and By-laws, amended June 2011

*By-Law 8:* Expulsion can occur by special resolution of the members, passed at a general meeting, but must accompany reasons for the proposed expulsion, and the person facing expulsion must be given an opportunity to speak before the special resolution is put to vote.

*By-Law 29:* a Director may be removed before his term expires by special resolution of the Members and may appoint a successor.

*Society Act, s. 31:* A director may be removed from office by special resolution and another director may be elected, or appointed by ordinary resolution, to serve during the balance of the term.

#### **d. Term of Office of Directors**

*By-law 26(1):* The Directors shall retire from office at each annual general meeting when their successors shall be appointed.

*By-law 26(3):* If no successor is appointed the person previously elected or appointed continues to hold office.

Obligations, Powers and Duties of Members and Directors:

### **1. Internal Sources: CBABS Constitution and By-laws**

#### **a. Upholding the Society's Constitution and Complying with Its By-laws**

*By-law 5:* Every member shall uphold the Society's Constitution and comply with its by-laws.

#### **b. Exercising Powers of and Acting on behalf of the Society**

*By-law 24:* Directors may exercise all the powers and do all the acts or things that the Society may do, and which are not by the by-laws or by statute or otherwise lawfully directed or required to be exercised or done by the Society in general meeting, nevertheless subject to all laws affecting the Society, the by-laws, and rules not inconsistent with the by-laws, that are made from time to time by the Society in a general meeting.

*By-law 40(1):* In carrying out the purposes of the Society to provide assistance to lawyers, articulated students and their respective families, the Directors shall use their discretion in determining who receives assistance, the amount of assistance, the period of time for which the assistance will be made and the nature of the assistance whether by way of gift, loan or otherwise.

**c. Indemnification of Directors**

*By-Law 30:* Directors are indemnified against any liability or cost actually and reasonably incurred by him or her in any civil, criminal or proceeding action or proceeding to which he or she is made a party because of being or having been a director, including an action brought by the Society or any subsidiary of the Society, if

- (a) he or she acted honestly and in good faith with a view to the best interests of the Society or its subsidiary of which he or she is or was a director, and
- (b) in the case of a criminal or administrative action or proceeding, he or she had reasonable grounds for believing his or her conduct was lawful.

**d. Amending the Society's By-laws**

*By-law 61:* The by-laws shall not be altered or added to except by special resolution.

**2. External Sources: *Society Act* (statutory duties of honesty and care)**

*Society Act*, s. 25 (1): A director of a society must:

- (a) act honestly and in good faith and in the best interests of the society, and
- (b) exercise the care, diligence and skill of a reasonably prudent person,

in exercising the powers and performing the functions as a director.

(2) The requirements of this section are in addition to, and not in derogation of, an *enactment* or rule of law or equity relating to the duties or liabilities of directors of a society.

*Society Act*, s. 26: Nothing in a contract, the constitution or the bylaws, or the circumstances of a director's appointment, relieves a director

- (a) from the duty to act in accordance with this Act and the regulations, or
- (b) from a liability that by a rule of law would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.

### 3. Continuing Legal Education Society of BC

Appendix 2 (A)	Body	Governing Statute/Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
4	Continuing Legal Education Society of BC (“CLE”) <i>Board of Directors</i>	<i>Society Act</i> CLE By-law 9(a):	Law Society President	2 Law Society Benchers as directors
		CLE By-law 9(c)	Law Society and Canadian Bar Association of BC Presidents (jointly)	10 practising Law Society members as directors: 3 from county of Vancouver; 1 each from counties of Victoria, Nanaimo, Prince Rupert, Cariboo, Yale, Kootenay and Westminster as directors

Law Society member, appointed by: Presidents of Law Society of BC/Canadian Bar Association of BC jointly

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Amy Mortimore Vancouver County	3 years, maximum of 2 terms	0	9/1/2016	8/31/2019
Jennifer Chan Vancouver County	3 years, maximum of 2 terms	0	9/1/2016	8/31/2019
Jay Fogel Westminster County	3 years, maximum of 2 terms	1	9/1/2013	8/31/2019



Heidi Zetzsche Cariboo County	3 years, maximum of 2 terms	0	9/1/2015	8/31/2018
Frances Kelly Vancouver County	3 years, maximum of 2 terms	1	9/1/2012	8/31/2018
John Hogg, QC Yale County	3 years, maximum of 2 terms	2	9/1/2009	8/31/2017
Karen Whonnock* Prince Rupert County	3 years, maximum of 2 terms	1	9/1/2012	8/31/2018
Scott Farquhar Victoria County	3 years, maximum of 2 terms	1	9/1/2013	8/31/2019
Maggie Melnychuk Kootenay County	3 years, maximum of 2 terms	1	9/1/2013	8/31/2019
Kristin Rongve Nanaimo County	3 years, maximum of 2 terms	1	9/1/2013	8/31/2019

Note\* Karen Whonnock resigned prior to term end, appointed to the Bench.

Bencher, appointed by: President

<b>Current Appointments</b>	<b>Term Allowance</b>	<b>Number of Terms Already Served</b>	<b>Date First Appointed</b>	<b>Expiry Date</b>
Martin Finch, QC	3 years, maximum of 2 terms	0	9/1/2014	8/31/2017
Dean Lawton, QC	3 years, maximum of 2 terms	0	9/1/2014	8/31/2017

**Contact Information**

Mailing Address	Phone/Fax/Email:
The Continuing Legal Education Society of British Columbia 500, 1155 West Pender Street Vancouver, BC V6E 2P4	Phone: 604.669.3544 Fax: 604.669.9260 Email: custserv@cle.bc.ca

**Applicable Statutes**

Governed by: *Society Act*, RSBC, 1996, c 433. Subsection 35(1): Divisions 8, 9 and 10 of Part 3 (Finance) of the *BC Business Corporations Act* (BCBCA) apply

Generally do not apply: *Canada Corporations Act* (CCA), *Canada Business Corporations Act* (CBCA) and BCBCA

**Objects**

- 1. **CLE Society Constitution, Article 2 (as amended) - The objects of the Society are to:**
  - a. to conduct, develop and operate educational programs for the legal profession in the Province of British Columbia in order to improve and extend the knowledge of the legal profession regarding present laws and legal processes;
  - b. to conduct, develop and operate Bar admission courses and educational programs for articulated students if and when requested to do so by the Law Society of British Columbia;
  - c. to direct attention of the legal profession to newly developing areas of law and legal processes;
  - d. to bring to the attention of the legal profession practices and information gained from other professional disciplines or from business which may be useful to the legal profession and to co-operate with other professional and lay groups in developing and offering education programs involving the study of law;
  - e. to encourage members of the legal profession to take further formal education *in* law;
  - f. to co-operate on programs involving a knowledge of law and projects for education in the law;
  - g. to publish books, manuals, articles, periodicals and written materials and to acquire and maintain the necessary plant and equipment for this object;
  - h. to conduct, develop and operate programs through the use, production and distribution of audio and audio-visual films, tapes and materials and to acquire and maintain the necessary plant and equipment for this object;

- i. to acquire, hold, mortgage, dispose of, and otherwise deal with real and personal property for the purposes of the Society
- j. to report any judicial or administrative decision to the legal profession and inform them of the status of any proceedings before any judicial or administrative authority;
- k. to acquire, establish, operate or use any technology, means or system to carry out any purpose, activity, program or publication of the Society.

### ***Law Society's Appointment Authority***

#### **1. CLE Society By-laws<sup>28</sup>:**

##### **a. CLE Society Membership**

*By-law 3:* The members of the society are only:

- (a) the Law Society of British Columbia;
- (b) the chief elected officer of the Law Society of British Columbia;
- (c) the British Columbia Branch of the Canadian Bar Association;
- (d) the chief elected officer of the British Columbia Branch of the Canadian Bar Association;
- (e) the University of British Columbia, and
- (f) the University of Victoria.

*By-law 4:* The Law Society of British Columbia, the British Columbia Branch of the Canadian Bar Association, the University of British Columbia and the University of Victoria are members of the society in perpetuity.

*By-law 5:* Each chief elected officer of the Law Society of British Columbia is a member of the Society until that person ceases hold that office.

##### **b. CLE Society Directors**

*By-law 9:* The board of directors of the society at all times must be composed of:

- (a) two Benchers of the Law Society of British Columbia appointed to the board by the chief elected officer of that society;
- (b) ...
- (c) 10 lawyers who are practising law in British Columbia as members of the Law Society of British Columbia appointed to the board jointly by the chief elected officer of that society and the chief elected officer of the British Columbia Branch of the Canadian Bar Association as follows:

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<sup>28</sup> Continuing Legal Education Society of BC Constitution and By-laws, effective February 7, 2002

- (i) three from the County of Vancouver;
- (ii) one from the County of Victoria;
- (iii) one from the County of Nanaimo;
- (iv) one from the County of Prince Rupert;
- (v) one from the County of Cariboo;
- (vi) one from the County of Yale;
- (vii) one from the County of Kootenay;
- (viii) one from the County of Westminster;

(d) ...

**c. Revocation and Replacement of Directorship Appointments**

*By-law 10(8)*: The members may remove directors from office by ordinary resolution, and can subsequently appoint replacement directors to fill the resultant vacancies, also by ordinary resolution.

*Society Act, s.31*: A director may be removed from office by special resolution<sup>29</sup> and another director may be elected, or appointed by ordinary resolution, to serve during the balance of the term.

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<sup>29</sup> Only members can vote on and pass special resolutions. Under section 1 of the *Society Act*, "special resolution" means:

- (a) a resolution passed in a general meeting by a majority of not less than 75% of the votes of those members of a society who, being entitled to do so, vote in person or, if proxies are allowed, by proxy
  - (i) of which the notice that the bylaws provide, and not being less than 14 days' notice, specifying the intention to propose the resolution as a special resolution has been given, or
  - (ii) if every member entitled to attend and vote at the meeting agrees, at a meeting of which less than 14 days' notice has been given,
- (b) a resolution consented to in writing by every member of a society who would have been entitled to vote on it in person or, if proxies are allowed, by proxy at a general meeting of the society, and a resolution so consented to is deemed to be a special resolution passed at a general meeting of the society,
- (c) if a society has adopted a system of indirect or delegate voting or voting by mail, a resolution passed by at least 75% of the votes cast in respect of the resolution, or
- (d) an extraordinary resolution passed before January 5, 1978;

**d. Term of Office of Directors**

*By-law 10(3):* The term of office of each successive director begins on September 1 (Appointment Date) in the year of the appointment of the director, but by special resolution the members may change the Appointment Date from time to time.

*By-law 10(4):* The term of office of each of the directors appointed ... on an Appointment Date is three years or until a successor is appointed.

*By-law 10(5):* Each director is eligible for re-appointment at the end of the term of office of the director.

**Obligations, Powers and Duties of Members and Directors:**

**1. Internal Sources: CLE Society Constitution and By-laws**

**a. Upholding the Society's Constitution and Complying with Its By-laws**

*By-law 8:* The duties of the members are:

- (a) each member must uphold the constitution of the society and comply with these bylaws;
- (b) the chief elected officer of the Law Society of British Columbia and the chief elected officer of the British Columbia Branch of the Canadian Bar Association must appoint directors of the society in accordance with Part 3 of these bylaws;...

**b. Exercising Powers of and Acting on behalf of the Society**

*CLE Society Constitution, Article 4:* The Society shall be carried on without purpose of gain for its members, and any profits or other accretions of the Society shall be used for promoting its objects.

*By-law 11(1):* The directors must manage, or supervise the management of the affairs of the society and may exercise all the powers of the society and do all the acts and things that the society may do subject to:

- (a) all laws affecting the society;
- (b) the by-laws and constitution of the society, and
- (c) rules not being inconsistent with these bylaws that are made from time to time by the society in a general meeting.

**c. Indemnification of Directors**

*By-law 10(9):* Directors are indemnified against any liability or cost actually and reasonably incurred by him or her in any civil, criminal or proceeding action or proceeding

to which he or she is made a party because of being or having been a director, including an action brought by the Society or any subsidiary of the Society, if

- (a) he or she acted honestly and in good faith with a view to the best interests of the Society or its subsidiary of which he or she is or was a director, and
- (b) in the case of a criminal or administrative action or proceeding, he or she had reasonable grounds for believing his or her conduct was lawful.

**d. Amending the Society's By-laws**

*By-law 58*: The by-laws must not be altered or added to except by special resolution.<sup>30</sup>

**2. External Sources: *Society Act* (statutory duties of honesty and care)**

*Society Act*, s. 25 (1): A director of a society must:

- (a) act honestly and in good faith and in the best interests of the society, and
- (b) exercise the care, diligence and skill of a reasonably prudent person,

in exercising the powers and performing the functions as a director.

(2) The requirements of this section are in addition to, and not in derogation of, an *enactment* or rule of law or equity relating to the duties or liabilities of directors of a society.

*Society Act*, s. 26: Nothing in a contract, the constitution or the bylaws, or the circumstances of a director's appointment, relieves a director

- (a) from the duty to act in accordance with this Act and the regulations, or
- (b) from a liability that by a rule of law would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.

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<sup>30</sup> Only members can vote on and pass special resolutions. See Note 31.

## B. Governed by Other Statutory Authority:

Tab	Body	Governing Statute / Applicable By-laws / Other Authority	Law Society Appointing Authority	Law Society Appointee/Nominee Profiles
1	Federation of Law Societies of Canada (“FLSC”) Council	Federation of Law Societies of Canada FLSC By-laws, s.6	Law Society Benchers	1 Law Society Bencher or Life Bencher, as BC’s voting member of Council
2	Law Foundation of British Columbia (“Law Foundation”)	<i>Legal Profession Act</i> S. 59(1)(c) of the Act	Law Society Executive Committee	12 lawyers or judges, 1 from each county, as governors
3	Legal Services Society (“LSS”) Board of Directors	<i>Legal Services Society Act</i> S. 4(3) of the Act	Law Society Benchers, after consultation with Canadian Bar Association of BC executive	4 Law Society members, as directors
4	Land Title and Survey Authority (“LTSA”) Board of Directors	<i>Land Title and Survey Act</i>	Law Society Benchers (nomination) Land Title and Survey Authority Board of Directors (appointment)	2 Law Society members, as directors

## 1. Federation of Law Societies of Canada – Council

Appendix 2(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
1	Federation of Law Societies of Canada – Council (“FLSC”) Council	Federation of Law Societies of Canada By-laws, s.6	Law Society Benchers	1 Law Society Bencher or Life Bencher, as BC’s voting member of Council

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Herman Van Ommen, QC	3 years, maximum of 2 terms	0	11/15/2016	11/14/2019

### Contact Information

Mailing Address	Phone/Fax/Email:
Federation of Law Societies of Canada World Exchange Plaza 45 O’Connor Street Suite 1810 Ottawa, Ontario Canada K1P 1A4	Phone: 613.236.7272 Fax: 613.236.7233 E-mail: info@flsc.ca

### Applicable Statutes

Governed by: *Canada Corporations Act* (Part II) (R.S.C., 1970, c. C-32)<sup>31</sup>

The Federation of Law Societies of Canada (FLSC or the Federation)

### Objects

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<sup>31</sup> The Federation was incorporated under Part II of the *Canada Corporations Act* by Letters Patent issued by the Minister of Consumer and Corporate Affairs of Canada on July 21, 1972.



**1. FLSC By-laws<sup>32</sup>, RECITALS (a) - The objects of FLSC are:**

- (i) to identify and study matters of essential concern to the legal profession in Canada and to further co-operation among the governing bodies of the legal profession in Canada with a view to achieving uniformity in such matters;
- (ii) to operate as a forum for the exchange of views and information of common interest to the governing bodies of the legal profession in Canada and facilitate the governing bodies working together on matters of common concern;
- (iii) to improve the understanding of the public respecting the work of the legal profession in Canada; and
- (iv) in appropriate cases, to express the views of the governing bodies of the legal profession on national and international issues in accordance with directions of the members of the Federation.

***Law Society's Authority to Appoint a Member of FLSC Council (Director)***

**1. Appointment and Eligibility**

*FLSC By-law 6.2:* Council shall consist of one director appointed by each governing body<sup>33</sup> by notice in writing to the secretary of the Federation, together with the president and a vice-president as determined by Council to be the president elect. Council may appoint the immediate past president as an ex-officio member of the Council. The term of office of a director appointed by a governing body shall be at the pleasure of his or her governing body.

*FLSC By-law 6.3:* To be eligible to serve as a director a person must be an individual who is not less than 18 years of age and who has the legal capacity to contract. A previous director shall be eligible for reappointment.

Terms of Reference for the Law Society of British Columbia Member of Federation Council<sup>34</sup> (Appointment)

Appointment:

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<sup>32</sup> FLSC By-laws, consolidated to 5 October, 2006.

<sup>33</sup> FLSC By-law 1.1: "governing body" means The Law Society of British Columbia, The Law Society of Alberta, The Law Society of Saskatchewan, The Law Society of Manitoba, The Law Society of Upper Canada, Barreau du Québec, Chambre des notaires du Québec, Law Society of New Brunswick, Nova Scotia Barristers' Society, The Law Society of Prince Edward Island, The Law Society of Newfoundland, The Law Society of Yukon, Law Society of the Northwest Territories and Law Society of Nunavut, and "governing bodies" means all of them.

<sup>34</sup> See Appendix 2(B) Tab 1: Terms of Reference for Law Society of British Columbia Member of the Federation of Law Societies of Canada Council. Approved by the Law Society's Executive Committee September 16, 2010.

1. All current elected and Life (elected) Benchers are eligible to be nominated and to serve as Law Society of British Columbia's FLSC Council Member, provided that they are members in good standing.
2. The Benchers appoint Law Society of British Columbia's Council member from the pool of nominees presented by the Executive Committee.
3. The Executive Committee manages the appointment process, which includes:
  - setting the term of appointment (generally a period of three years, unless the Executive Committee directs otherwise);
  - inviting and reviewing nominations;
  - preparing a pool of nominees from the nominations received for the Benchers' consideration; and
  - notifying the nominees and FLSC of the Benchers' appointment decision.
4. The Council member, on completing a first term, may be considered by the Executive Committee to be appointed by the Benchers for one further term.

*By-law 25:* A person or body entitled to appoint a member ... may revoke the appointment of a member so appointed during that member's term of office.

**a. Term of Office**

*FLSC By-law 6.2:* ... The term of office of a director appointed by a governing body shall be at the pleasure of his or her governing body.

Terms of Reference for the Law Society of British Columbia Member of Federation Council:

3. The Executive Committee manages the appointment process, which includes:
  - setting the term of appointment (generally a period of three years, unless the Executive Committee directs otherwise)

**b. Vacation of Office**

*FLSC By-law 6.4:* The office of director shall be automatically vacated upon happening of any of the following events:

- 6.4.1: if a director resigns by delivering a written resignation to the secretary of the Federation; and

6.4.2: if a special resolution<sup>35</sup> is passed requiring that the director be removed from office.

***Appointees' Obligations, Powers and Duties (Law Society Members of the Federation and Directors):***

**1. Internal Sources: Terms of Reference for the Law Society Member of Federation Council**

*Service:*

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

2. If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the full term of the Council appointment.

3. The Council member will strive to:

- attend all FLSC Council meetings (currently three in person and one telephone meeting per year)
- report after each Council meeting to the Benchers at their next meeting, and where appropriate, to the Executive Committee at their next meeting
- provide supporting documentation received from FLSC to Law Society of British Columbia as appropriate to ensure that the Law Society of British Columbia is fully informed about national initiatives and the FLSC agenda
- attend Benchers meetings to facilitate this obligation and answer questions
- attend all FLSC Conferences (currently semi-annual)
- obtain instructions from the Law Society of British Columbia, where necessary regarding matters on the FLSC agenda
  - which instructions may come from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers

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<sup>35</sup> FLSC By-law 1.1: "special resolution" means a resolution passed at a duly convened meeting of the members of the Federation by two-thirds (2/3) of the members eligible to vote on such resolution present in person or by proxy at such meeting.

- Bencher approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments
- remain fully informed about the work of the Law Society of British Columbia and in particular, the Benchers' strategic priorities and current issues
- where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding the Law Society of British Columbia's ability to deal with FLSC agenda issues
- as appropriate, convey the Law Society of British Columbia 's desire for FLSC to achieve certain objectives
- facilitate an exchange of information between the Law Society of British Columbia and other law societies on matters of common interest
- participate fully in the national deliberations and work of whatever Council committee(s) the Council member may join

## **2. External Sources: Federation By-laws**

### **a. Directors**

*FLSC By-law 1.1:* "director" means a member of Council.

### **b. Powers of Council**

*FLSC By-law 6.1:* The management of the business and affairs and the property of the Federation shall be vested in Council, who, in addition to the powers and authorities by these by-laws or otherwise expressly conferred upon them, may exercise all such powers and do all acts and things as may be exercised or done by the Federation and are not hereby or by the *Act* expressly directed or required to be exercised or done by the members.<sup>36</sup>

### **c. Voting**

*FLSC By-law 4.3:* The representative of each of the governing bodies on Council, or such other person as designated by a governing body by notice to the secretary of the Federation, shall for all purposes represent the governing body at meetings of members and shall, subject to any direction given to them by the governing body, exercise the voting rights of such governing body at meetings of the members and in respect of such other matters as may be properly brought before the members.

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<sup>36</sup> FLSC By-law 1.1: "members" means the members of the Federation and "member" means any one member.

**d. Delegation and Committees**

*FLSC By-law 6.5:* Council may delegate any of their powers to any other person or persons whether a director or not, and appoint such committees (including an executive or management committee) as it thinks fit, with such duties, responsibilities and authority and upon such other terms and conditions as determined by Council, and may at any time revoke such delegation or appointment, and any such person or persons or committees so appointed shall, in the exercise of power so delegated conform to these by-laws and the *Act* and to any other requirements that may from time to time be imposed upon such person or persons by Council ...

**e. Remuneration**

*FLSC By-law 6.6:* A director, delegate or committee member shall not, as such, be entitled to any remuneration or compensation for his or her services; provided however, if any director, delegate or committee member is called upon to perform extraordinary services for the Federation, as determined by Council, the Federation may remunerate him or her for the said services by such sum as may be determined by Council. A director, delegate or committee member is entitled to be reimbursed by the Federation for his or her reasonable out-of-pocket expenses in carrying out his or her duties as a director, delegate or committee member of the Federation.

**f. Amending By-laws**

*FLSC By-law 10.5:* By-laws of the Federation may be enacted, repealed or amended by a resolution of Council and sanctioned by a special resolution<sup>37</sup> passed at a meeting of the members duly called for the purpose of considering the said enactment, repeal or amendment, provided that the enactment, repeal or amendment shall not be enforced or acted upon until the approval of the minister has been obtained.

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<sup>37</sup> FLSC By-law 1.1: "special resolution" means a resolution passed at a duly convened meeting of the members of the Federation by two-thirds (2/3) of the members eligible to vote on such resolution present in person or by proxy at such meeting.

**The Law Society**  
*of British Columbia*



**LSBC Member of the Federation of Law Societies of  
Canada Council**

**Terms of Reference**

**To: Benchers and Life Benchers**

**From: Executive Committee**

**Date: September 16, 2010**

LSBC Member of the Federation of Law Societies of  
Canada Council

## TERMS OF REFERENCE

### ***Background***

The Federation of Law Societies of Canada (FLSC) is the national coordinating body of Canada's 14 law societies mandated to regulate Canada's 95,000 lawyers and Quebec's 3,500 notaries. The Federation is the common voice of Canada's law societies on a wide range of issues critical to the protection of the public and the rule of law, including solicitor-client privilege, the importance of an independent and impartial judiciary, and the role of the legal profession in the administration of justice. The Federation is governed by a national Council that includes a representative from each of the 14 member law societies.

### ***Appointment***

1. All current elected and Life (elected) Benchers are eligible to be nominated and to serve as LSBC's FLSC Council Member, provided that they are members in good standing.
2. The Benchers appoint LSBC's Council member from the pool of nominees presented by the Executive Committee.
3. The Executive Committee manages the appointment process, which includes:
  - setting the term of appointment (generally a period of three years, unless the Executive Committee directs otherwise);
  - inviting and reviewing nominations;
  - preparing a pool of nominees from the nominations received for the Benchers' consideration; and
  - notifying the nominees and FLSC of the Benchers' appointment decision.
4. The Council member, on completing a first term, may be considered by the Executive Committee to be appointed by the Benchers for one further term.

Note that Appendix 3, section 2 of the Bencher Governance Policies applies: "Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to that particular appointment may result in a shortening or

lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment for up to six years.”<sup>3</sup>

## **Service**

1. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.
2. If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the full term of the Council appointment.
3. The Council member will strive to:
  - attend all FLSC Council meetings (currently three in person and one telephone meeting per year)
  - report after each Council meeting to the Benchers at their next meeting, and where appropriate, to the Executive Committee at their next meeting
  - provide supporting documentation received from FLSC to LSBC as appropriate to ensure that LSBC is fully informed about national initiatives and the FLSC agenda
  - attend Benchers meetings to facilitate this obligation and answer questions
  - attend all FLSC Conferences (currently semi-annual)
  - obtain instructions from LSBC, where necessary regarding matters on the FLSC agenda
    - which instructions may come from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers
    - Bencher approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments
  - remain fully informed about the work of LSBC and in particular, the Benchers' strategic priorities and current issues<sup>1</sup>
  - where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding LSBC's ability to deal with FLSC agenda issues
  - as appropriate, convey LSBC 's desire for FLSC to achieve certain objectives
  - facilitate an exchange of information between LSBC and other law societies on matters of common interest
  - participate fully in the national deliberations and work of whatever Council committee(s) the Council member may join



## 2. Law Foundation of British Columbia

Appendix 2(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
2	Law Foundation of British Columbia (“Law Foundation”) Board of Directors	<i>Legal Profession Act</i> S. 59(1)(c) of the Act	Law Society Executive Committee	12 lawyers or judges, 1 from each county, as governors

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
James Sullivan Vancouver County	3 years, maximum of 2 terms	0	1/1/2016	12/31/2018
Frederick Fatt Cariboo County	3 years, maximum of 2 terms	1	1/1/2013	12/31/2018
Ajeet Kang, QC Westminster County	3 years, maximum of 2 terms	1	1/1/2013	12/31/2018
Sean Rowell Prince Rupert County	3 years, maximum of 2 terms	0	1/1/2016	12/31/2018
Eileen Vanderburgh Vancouver County	3 years, maximum of 2 terms	1	1/1/2014	12/31/2019
Deanna Ludowicz, QC Kootenay County	3 years, maximum of 2 terms	0	1/1/2014	12/31/2016
Bill Younie, QC Nanaimo County	3 years, maximum of 2 terms	0	1/1/2016	12/31/2018
Jan Lindsay, QC Any County	3 years, maximum of 2 terms	0	1/1/2015	12/31/2017
The Honourable Mr. Justice Len Marchand Kamloops County	3 years, maximum of 2 terms	0	1/1/2017	12/31/2019

The Honourable Judge Patricia Bond Any County (Westminster)	3 years, maximum of 2 terms	0	1/1/2017	12/31/2019
Lindsay LeBlanc Victoria County	3 years, maximum of 2 terms	0	1/1/2017	12/31/2019
Geoffrey White Okanagan County	3 years, maximum of 2 terms	0	1/1/2015	12/31/2017

### **Contact Information**

<b>Mailing Address</b>	<b>Phone/Fax/Email:</b>
The Law Foundation of British Columbia 1340-605 Robson Street Vancouver, BC Canada V6B 5J3	Phone: 604.688.2337 Fax: 604.688.4586 E-mail: lfbc@tlfbc.org

### **Applicable Statutes**

Governed by: *Legal Profession Act*, S.B.C. 1998, c. 9

### **Objects**

***Legal Profession Act*, ss. 61(1):** The purpose of the foundation is to establish and maintain a fund to be used for [legal education and research, legal aid, law reform and establishing and maintaining law libraries in BC].

### **Law Society's Appointment Authority**

#### **1. Composition and Appointment of the Board of Governors**

*Legal Profession Act*, ss. 59(1): The foundation is administered by a board of governors consisting of 18 governors as follows:

- (a) the Attorney General or his or her appointee;
- (b) 3 persons, not lawyers, appointed to the board by the Attorney General;
- (c) 12 lawyers or judges appointed by the executive committee of the Law Society of BC, of whom at least one must be from each county referred to in the *County Boundary Act*;
- (d) 2 lawyers appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association.

a. **Revocation of Appointment**

*Legal Profession Act*, ss. 59(4): The Benchers may revoke the appointment of a governor appointed by the executive committee, during that governor's term of office.

*Legal Profession Act*, ss. 50(1)(d): A governor ceases to hold office if the governor... contravenes a provision of this Act or the rules, and a majority of the other governors considers that the contravention is sufficiently serious to justify the governor's removal from the board.

b. **Term of Office**

*Legal Profession Act*, ss. 59(2): Governors, other than the Attorney General, hold office for a term of 3 years or until their successors are appointed, and they may be re-appointed.

***Appointees' Obligations, Powers and Duties (as Governors):***

**1. Internal Sources: Law Foundation of BC Board of Governors' Manual<sup>38</sup>**

c. **Applying the Funds of the Foundation for the Foundation's Purposes**

*Legal Profession Act*, ss. 61(2): The board may apply the funds of the foundation for the purposes of the foundation in the manner that the board may decide and may grant loans of the funds on terms and conditions the board determines.

**2. External Sources: (Common law / *Legal Profession Act*)**

a. **Directors' or Governors' Common Law Duties of Honesty and Care**

All directors owe their organizations (whether they are “not-for-profit” or “for-profit bodies”) the duties of loyalty and care, both originally developed by the courts at common law and now enshrined in the statutes governing all corporations—federal or provincial—incorporated in Canada.<sup>39</sup>

The duty of loyalty (also known as the fiduciary duty), requires directors to respect the absolute priority of the best interests of the organization over their personal interests or other parties' interests. To discharge their duty of loyalty, directors must:

- act honestly and openly
- maintain confidences

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<sup>38</sup> Interview with Wayne Robertson, QC, Executive Director of the Law Foundation of BC, April 15, 2011: The Law Foundation is not required by the Act to create by-laws and has not done so, relying on its Board of Governors' Manual to articulate its governance regime.

<sup>39</sup> Reiter, *supra* note 9, 42-43. See also: Hirshorn and Stephens, *supra* note 11, 12; and Lindsay *supra* note 19, 16.

- act independently
- avoid conflicts of interest and the appropriation of corporate opportunities<sup>40</sup>

The duty of care requires directors “[...] to act carefully and on an informed basis and to exhibit the diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duty of care encompasses an objective standard of what a reasonably prudent person would be expected to do in comparable circumstances.”<sup>41</sup>

**b. Applying the Foundation’s Funds and Employing Lawyers to Advance the Foundation’s Purposes**

*Legal Profession Act*, ss. 61(2): The board may apply the funds of the foundation for the purposes of the foundation in the manner that the board may decide and may grant loans of the funds on terms and conditions the board determines.

*Legal Profession Act*, ss. 61(3): The foundation may employ lawyers to advance the purposes of the foundation.

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<sup>40</sup> Reiter, *supra* note 9, 44-45.

<sup>41</sup> *Ibid*, 43.

**3. Legal Services Society**

<b>Appendix 2(B)</b>	<b>Body</b>	<b>Governing Statute/ Other Authority</b>	<b>Law Society Appointing Authority</b>	<b>Law Society Appointee/ Nominee Profiles</b>
3	Legal Services Society (“LSS”) Board of Directors	<i>Legal Services Society Act</i> (the Act) S. 4(3) of the Act	Law Society Benchers, after consultation with Canadian Bar Association of BC executive	4 Law Society members, as directors

<b>Current Appointments</b>	<b>Term of Office</b>	<b>Number of Terms Already Served</b>	<b>Date First Appointed</b>	<b>Expiry Date</b>
Alison MacPhail	3 years, maximum of 3 terms	1	1/1/2014	12/31/2019
Jean Whittow, QC	3 years, maximum of 3 terms	0	9/7/2015	09/06/2018
Dinyar Marzban, QC	3 years, maximum of 2 terms	0	1/1/2015	12/31/2017
Philip A. Riddell	3 years, maximum of 2 terms	0	5/1/2017	4/30/2020

**Contact Information**

<b>Mailing Address</b>	<b>Phone/Fax/Email:</b>
Legal Services Society 400 – 510 Burrard Street Vancouver, BC V6C 3A8	Phone: 604.601.6000 Fax: 604.601.6293

**Applicable Statutes**

Governed by: *Legal Services Society Act*, S.B.C. 2002, c. 30 (*LSS Act*)

*LSS Act*, ss. 3(1): The *Business Corporations Act* and the *Society Act* do not apply to the society.

*LSS Act*, ss. 3(2): Despite subsection (1), the Lieutenant Governor in Council may order that one or more provisions of the *Business Corporations Act* apply to the society.

## **Objects**

*LSS Act*, ss. 9(1): [The objects of the Society are to assist individuals with their legal problems and facilitate their access to justice, to establish and administer an efficient and effective system for providing legal aid to B.C. individuals, and to provide advice to the Attorney General respecting legal aid and access to justice for individuals in B.C.]

## **Law Society's Appointment Authority**

### **1. Membership**

*LSS Act*, ss. 2(2): The members of the Society are the appointed directors

### **2. Board Composition and Appointment of Directors**

*LSS Act*, ss. 4(1): The board consists of 9 directors.

*LSS Act*, ss. 4(2): Five directors are to be appointed by the Lieutenant Governor in Council, on the recommendation of the Attorney General.

*LSS Act*, ss. 4(3): Four directors are to be appointed by the Law Society of BC after consultation with the executive of the British Columbia branch of the Canadian Bar Association.

*LSS Act*, ss. 4(5): For the purposes of subsections (2) and (3), the Attorney General and the law society must make the recommendations or appointments, as the case may be, that they consider will provide to the board as a whole knowledge, skills and experience in the following areas:

- (a) business, management and financial matters of public and private sector organizations;
- (b) law and the operation of courts, tribunals and alternate dispute resolution processes;
- (c) the provision of legal aid;
- (d) the cultural and geographic diversity of British Columbia;
- (e) the social and economic circumstances associated with the special legal needs of low income individuals.

### 3. Term of Office

*LSS Act*, ss. 4(6) and (7): The term of office of a director must be not longer than 3 years from the date on which the appointment becomes effective. A director must not hold office for more than 6 consecutive years.

#### ***Appointees' Obligations, Powers and Duties (as Governors):***

##### **1. Internal Sources: LSS By-laws<sup>42</sup>**

###### **a. Board Responsibilities**

*LSS By-law 2.2*: Key responsibilities of the board include:

- (a) articulating the society's vision and mission, developing strategic objectives to implement the vision and mission, and monitoring the performance of those objectives;
- (b) ensuring that effective risk management is in place and monitoring the society's fiscal performance, consistent with its fiduciary duties;
- (c) advising the executive director, when requested, on issues related to supervision, management and administration of the business of the society;
- (d) supporting effective communication between the society and the public, funders, appointing bodies, service providers, and others concerned with legal aid service delivery;
- (e) appraising its own effectiveness and implementing strategies to enhance its governance capacity; and
- (f) hiring, supporting, evaluating, compensating, planning for the succession of and, if necessary firing the executive director.

###### **b. A Directors's Role and Responsibilities**

*LSS By-law 7.3*: The role of a director is to engage actively in board business with prudence, diligence, honesty and loyalty to the society.

*LSS By-law 7.4*: Directors' key responsibilities include:

- (a) orienting themselves to the business of the board and the society;

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<sup>42</sup> Legal Services Society, Board Governance By-laws as amended and adopted by the board on May 16, 2013. <http://www.legalaid.bc.ca/assets/aboutUs/boardGovernance/boardGovernanceBy-Laws.pdf> (as at January 9, 2017).

- (b) keeping informed on issues related to the society;
- (c) preparing for board meetings;
- (d) attending board meetings;
- (e) listening to and engaging in debate, and exercising good judgment in decision-making at board meetings;
- (f) asking questions of staff as required to fulfill the director's fiduciary duty;
- (g) being aware of and disclosing conflicts of interest;
- (h) performing diligently specific duties allocated to the director by the chair;
- (i) furthering the society's interest with stakeholders;
- (j) providing the society with external perspectives on issues of relevance to the society; and
- (k) evaluating themselves as directors.

**c. Directors' Limitations**

*LSS By-law 7.5:* In fulfilling their role and responsibilities, a director will not:

- (a) engage in board business when the director's personal interest interferes with the director's capacity to act in the interests of the society;
- (b) disclose confidential board and society business;
- (c) publicly disagree with the collective decisions of the board;
- (d) speak on behalf of the board unless authorized to do so by the board, the chair or the executive director; or
- (e) direct staff or distract them unduly from the business operation of the society.

**d. Ceasing to be a Director**

*LSS By-law 7.2:* A director ceases to be a director:

- (a) on the appointment of a successor;
- (b) on termination of their appointment by order of the Lieutenant Governor in Council or by resolution of the benchers of the Law Society;



(c) on resignation; or

(d) on death.

**e. Conflict of Interest Policy and Principles**

*LSS By-law 8.1:* The Legal Services Society (“the society”) has a policy for avoiding a conflict of interest or the appearance of a conflict of interest on the part of the society’s directors in the fulfillment of their duties.

A director owes a fundamental duty of loyalty to the society. This duty requires directors at all times to act honestly, in good faith, and in the society’s best interests. Directors must uphold the highest ethical standards in order to maintain and enhance public confidence and trust in the society’s integrity, objectivity, and impartiality.

The society also recognizes that it is to the great benefit of the society and the low-income individuals it is mandated to serve to have as directors, lawyers who make legal aid a part of their practice, and who consequently have particular knowledge and experience in the provision of legal aid. For this reason, the society does not want to preclude lawyers from being directors just because they, or their firms, do a significant amount of legal aid work. At the same time, the society recognizes that if too many directors are receiving remuneration from the society, the board may not have, or may be perceived not to have, the necessary focus on the clients’ interests.

Balancing these concerns, the society has a policy that tolerates a conflict of interest in restricted circumstances, to the extent of allowing participation in board decision-making of up to two directors who, as individual lawyers, or through their firms, receive significant financial remuneration from the society. Any question as to the meaning of “significant financial remuneration” will be decided by the society’s board.

*By-law 5:* Every member must uphold the constitution and comply with these bylaws.

**f. Indemnification of Directors, Officers and Others**

*LSS By-law 9.1:* Every director or officer of the society or other person who has undertaken or is about to undertake any liability on behalf of the society — and his executors, administrators, and estate — are at all times indemnified against and saved harmless (out of the society’s funds) from:

- a) all costs, charges, and expenses that such director, officer, or other person incurs in any action, suit, or other proceeding that is brought against him, or for any action whatsoever, carried out or permitted by him in good faith in the execution of his duties or in respect of any such liability; and

b) all other costs or expenses that he sustains or incurs in relation to the affairs of the society, except such costs, charges, or expenses as are occasioned by his own wilful neglect or default.

**g. Amending the By-laws**

*LSS By-law 10.0*: These by-laws are adopted as the general principles of governance by the board of the society and cannot be amended or altered except by an extraordinary resolution of the board.<sup>43</sup>

**2. External Sources: *Legal Services Society Act (LSS Act)***

**a. Guiding Principles**

*LSS Act*, ss. 9(2): The society is to be guided by the following principles:

- (a) the society is to give priority to identifying and assessing the legal needs of low-income individuals in British Columbia;
- (b) the society is to consider the perspectives of both justice system service providers and the general public;
- (c) the society is to coordinate legal aid with other aspects of the justice system and with community services;
- (d) the society is to be flexible and innovative in the manner in which it carries out its objects.

**b. Powers and Capacity**

*LSS Act*, s. 10:

- (1) For the purposes of its objects, the society has, subject to subsections (2) and (3) all the powers and capacity of an individual and, without limiting this, may
- (a) establish priorities for the types of legal matters and classes of persons for which it will provide legal aid,
  - (b) establish policies for the kinds of legal aid to be provided in different types of legal matters,

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<sup>43</sup> *LSS By-law 1.1(d)* defines extraordinary resolution as “a resolution of which at least fourteen days notice has been given to the directors and that requires a two-thirds majority of the directors present to pass.”

- (c) determine the method or methods by which legal aid is to be or may be provided, with power to determine different methods for different types of legal matters and different classes of persons,
  - (d) determine who is and who is not eligible for legal aid based on any criteria that the society considers appropriate,
  - (e) undertake, inside or outside British Columbia, commercial activities that it considers appropriate for the purposes of obtaining funds for the pursuit of its objects,
  - (f) recover, through client contributions or any other methods it considers appropriate, its costs of providing legal aid, and
  - (g) facilitate coordination among the different methods, and the different persons and other entities, by which legal aid is provided.
- (2) The society must not provide prescribed services to prescribed persons or classes of persons in prescribed circumstances unless it does so without using any of the funding provided to it by the government.
- (3) The society must not engage in an activity unless
- (a) it does so without using any of the funding provided to it by the government, or
  - (b) it does so in accordance with this Act, the regulations and the memorandum of understanding referred to in section 21 and money for that activity is available within the budget approved by the Attorney General under section 18.
- (4) The society is not an agent of the government or of the law society.

#### 4. Land Title and Survey Authority

Appendix 2(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
4	Land Title and Survey Authority (“LTSA”) Board of Directors	<i>Land Title and Survey Authority Act</i>	Law Society Benchers (nomination) Land Title and Survey Authority Board of Directors (appointment)	2 Law Society members, as directors

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Scott Smythe	3 years, maximum of 3 terms	0	4/1/2017	3/31/2020
William Cottick	3 years, maximum of 3 terms	1	4/1/2012	3/31/2018

#### Contact Information

Mailing Address	Phone/Fax/Email:
Land Title and Survey Authority Corporate Office Suite 200 1321 Blanshard Street Victoria, BC V8W 9J3	Phone: 250.387.7280 Fax: 250.387.1830

#### Applicable Statutes

Governed by: *Land Title and Survey Authority Act*, S.B.C. 2004, c. 66. (LTSA Act)

Applies in part: *BC Business Corporations Act*

LTSA Act, ss. 40(1): The following Acts do not apply to the LTSA:

- (a) Budget Transparency and Accountability Act;
- (b) BC Business Corporations Act, except Part 10 of that Act or as provided by this Act;
- (c) Financial Administration Act, except section 14.

LTSA Act, ss. 40(2): The Lieutenant Governor in Council, by regulation, may direct that some or all of the following provisions apply to the LTSA:

- (a) the provisions of *the Business Corporations Act* other than sections 10 to 41, 52 to 89, 107 to 126, 128, 130 to 133, 135, 136, 140, 142, 143, 147 to 153, 159 to 191, 196, 204 to 206, 228, 269 to 300 and 302 to 311 and Parts 11 and 14;
- (b) the regulations made under the *Business Corporations Act* other than
  - (i) regulations made in respect of sections 10 to 41, 52 to 89, 107 to 126, 128, 130 to 133, 135, 136, 140, 142, 143, 147 to 153, 159 to 191, 196, 204 to 206, 228, 269 to 300 and 302 to 311 and Parts 11 and 14, and
  - (ii) regulations that expressly indicate that they do not apply to special Act corporations, as defined in the *Business Corporations Act*.

LTSA Act, ss. 40(3): If there is a conflict or inconsistency between a provision of this Act or the regulations made under this Act and a provision of the *Business Corporations Act* or its regulations made applicable under subsection (2), the provision of this Act or the regulations made under this Act prevails.

## **Objects**

LTSA Act, s.4: The purposes of the LTSA are

- (a) to manage, operate and maintain the land title and survey systems of British Columbia,
- (b) to facilitate the execution of Crown grants, and
- (c) to carry on other necessary or advisable activities related to land title or survey systems.

## **Law Society's Nomination Authority**

### **1. Board Composition**

LTSA Act, ss. 6(1): The board of directors of the LTSA is to consist of 11 individuals of whom

- (a) 6 are to be appointed from the nominees provided under section 7 (1) by stakeholder entities, with 2 directors being appointed out of the nominees provided by each of the 3 stakeholder entities, and
- (b) 5 are to be appointed from nominees provided under section 7 (2) by stakeholder entities, with one director being appointed out of the nominees provided by each of the 5 stakeholder entities.

## **2. Nomination and Appointment of Directors**

*LTSA Act*, ss. 7(1): Each of the government, the Law Society of British Columbia and the Association of British Columbia Land Surveyors must provide, at least 3 months before the expiry of the term of each director appointed from its nominees, to the directors of the LTSA a list of at least 3 and not more than 5 qualified nominees for appointment as director.

...

*LTSA Act*, ss. 7(3): After receiving a list of nominees provided under subsection (1) or (2), the directors of the LTSA whose terms of office do not expire at the end of the fiscal year in which the list was received must, subject to section 13 [*factors to be considered in appointments*], appoint as director one of the nominees from the submitted list.

*LTSA Act*, ss. 7(4): If a stakeholder entity does not comply with subsection (1) or (2), the directors of the LTSA must, subject to section 13, on or before the expiry of the term of the director for whose replacement the list was required under subsection (1) or (2), appoint an individual as director, and that director is deemed to be appointed from the nominees of that stakeholder entity.

## **3. Term of Office**

*LTSA Act*, ss. 6(2): The term of office of a director of the LTSA is 3 years.

*LTSA Act*, ss. 6 (3): A director may be appointed for not more than 3 consecutive terms.

*LTSA Act*, ss. 6 (4): A person who has served the maximum number of consecutive terms under this section is not eligible to be reappointed as a director until after a break in service of at least 3 years.

## **4. Conditions on Power of Appointment**

### **a. Directors' Qualifications**

*LTSA Act*, ss. 9(1): A person must not become or act as a director unless that person is an individual who is qualified to do so.

*LTSA Act*, ss. 9(2): An individual is not qualified to become or to act as a director if that individual is

- (a) under the age of 18 years,
- (b) not a Canadian citizen,
- (c) not a resident of British Columbia,
- (d) an officer of the LTSA, other than the chair or vice chair of the board of directors,
- (e) an elected official or employee of the government of British Columbia, the government of Canada, a local government, a regional district or an aboriginal organization exercising governmental functions,
- (f) an officer, director or employee of a stakeholder entity,
- (g) found by a court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,
- (h) an undischarged bankrupt, or
- (i) convicted inside or outside of British Columbia of an offence in connection with the promotion, formation or management of a corporation or an unincorporated business, or of an offence involving fraud, unless
  - (i) the court orders otherwise,
  - (ii) 5 years have elapsed since the last to occur of
    - (A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,
    - (B) the imposition of a fine,
    - (C) the conclusion of the term of any imprisonment, and
    - (D) the conclusion of the term of any probation imposed or
  - (iii) a pardon was granted or issued under the *Criminal Records Act* (Canada).

**b. Directors' Skills and Experience Profile**

*LTSA By-law 4.8*: In accordance with sections 13 and 19(2) of the Act, the skills and experience profile that must be represented on the board is as set out in Schedule "A" to the by-laws.

*LTSA By-law Schedule A*: in addition to statutory requirements as set out in s.9, a list of personal attributes [teamwork and integrity qualities] are required, as are enumerated "core competencies." Similarly, "Key Skills and Experience" are described.

Schedule A, Item 4: The board should attempt, in its composition, to reflect the geographic representation and diversity of the people and interests served by the land title and survey systems of British Columbia.

**c. Revocation of Appointment**

*LTSA Act*, ss. 9(3): A director who ceases to be qualified to act as a director must promptly resign.

***Appointees' Obligations, Powers and Duties (as Governors):***

**1. Internal Sources: LTSA By-laws<sup>44</sup>**

**a. Board Powers**

*LTSA By-law 4.1*: ... The board must manage, or supervise the management of, the business and affairs of the LTSA in accordance with the Act and the by-laws and may exercise all such powers and do all such acts and things as may be exercised or done by the LTSA and are not by the Act or the by-laws expressly directed or required to be done in some other manner.

**b. Directors' and Officers' Duties**

*LTSA By-law 4.2*: Every director and officer of the LTSA in exercising his or her powers and discharging his or her duties must:

- (a) act honestly and in good faith with a view to the best interests of the LTSA; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

*LTSA By-law 4.4*: Every director and officer of the LTSA must comply with the Act and the bylaws.

**c. Directors' Remuneration**

*LTSA By-law 5.1*: The LTSA will pay the following remuneration to the directors:

- (a) to the Chair of the Board, an annual stipend of \$52,000.00;
- (b) to each director who
  - (i) is the chair of a committee, and
  - (ii) (does not occupy a position referred to in subsection (a), an annual stipend of \$19,000.00; and

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<sup>44</sup> LTSA Bylaws – Restated February 27, 2012. See: <http://www.ltsa.ca/docs/Consolidated-Bylaws.pdf> (as at January 9, 2017)



- (c) to each director who is not referred to in subsection (a) or (b), an annual stipend of \$10,000.00.

*LTSA By-law 5.3:* Subject to section 5.5 and in addition to the remuneration referred to in section 5.1, the LTSA will pay each director, except the Chair of the Board, \$700.00 for each day spent by that director attending in person

- (a) any meeting, of 30 minutes or more in duration, of the board or of any committee, or
- (b) the annual general meeting of the LTSA.

*LTSA By-law 5.5:* The maximum aggregate amount payable to a director entitled to a payment under sections 5.3 and 5.4 for a particular day is \$700.00, regardless of the number and types of meetings attended by or participated in by that director on that day.

## **2. External Sources: (*LTSA Act*)**

### **a. Directors' Duty to Manage**

*LTSA Act*, ss. 14(1): The directors must (subject to the *LTSA Act*, regulations and bylaws, manage or supervise the management of the business and affairs of the LTSA).

*LTSA Act*, ss. 15(3): The directors may pass the resolutions they consider necessary or advisable for the exercise of their powers or performance of their duties including, without limitation, resolutions respecting the calling and holding of meetings of the directors and the procedure to be followed at the meetings.

### **b. Directors' and Officers' Duties**

*LTSA Act*, ss. 16(1) [repeated in By-Law 4.4]: A director or senior officer of the LTSA, when exercising the powers and performing the duties and functions of a director or senior officer of the LTSA, must do all of the following:

- (a) act honestly and in good faith with a view to the best interests of the LTSA;
- (b) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances;
- (c) act in accordance with this Act, the regulations and the bylaws.

*LTSA Act*, ss. 16(2): This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors and officers of a corporation.

**c. Indemnification of Directors**

*LTSA Act*, ss. 23(1): In this section, "**costs, charges and expenses**" includes an amount actually and reasonably incurred by a person and paid to settle an action or satisfy a judgment, including an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which the person is made a party because of being or having been a director or officer, including an action brought by the LTSA.

*LTSA Act*, ss. 23 (2): The LSTA may indemnify a person who is a director, officer, former director or former officer of the LTSA, and the person's heirs and personal representatives, against all costs, charges and expenses if

- (a) the person acted honestly and in good faith with a view to the best interests of the LTSA in respect of the conduct at issue in the action or proceeding, and
- (b) in the case of a criminal or administrative action or proceeding, the person had reasonable grounds for believing that the person's conduct was lawful.

**d. Disclosure of Conflicts of Interest**

*LTSA Act*, ss. 27: ... [A] director or senior officer of the LTSA holds a disclosable interest in a contract or transaction if

- (a) the contract or transaction is material to the LTSA,
- (b) the LTSA has entered, or proposes to enter, into the contract or transaction, and
- (c) either of the following applies to the director or senior officer:
  - (i) the director or senior officer has a material interest in the contract or transaction;
  - (ii) the director or senior officer is a director or senior officer of, or has a material interest in, a person who has a material interest in the contract or transaction.

## Appendix 3 - Category 1b: Law Society Non-Directorship Appointments to Related Bodies

### A. Councils:

<b>Tab</b>	<b>Body</b>	<b>Governing Statute /Applicable By-law/ Other Authority</b>	<b>Law Society Appointing Authority</b>	<b>Law Society Appointee/Nominee Profiles</b>
1	Canadian Bar Association (“CBA”) National Council	11-12 Geo V. c. 79 CBA National By-laws, s. 73(2)	Law Society President	Law Society President or designate, as non-voting, ex officio member
2	Canadian Bar Association of British Columbia Branch (“CBABC”) Provincial Council	11-12 Geo V. c. 79 CBABC By-laws, s.15	Law Society President	Law Society President or designate, as non-voting, ex officio member
3	Provincial Judicial Council	Provincial Court Act, s.21(2)	Law Society President	1 Law Society Bencher, as a voting member of Council

## 1. Canadian Bar Association National Council

Appendix 3(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
1	Canadian Bar Association (“CBA”) National Council	11-12 Geo V. c. 79 CBA National By-laws, s. 73(2)	Law Society President	Law Society President or designate, as non-voting, ex officio member

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Sarah Westwood	Maximum of 1 year, maximum of 6 terms	3	9/1/2014	8/31/2018

### Contact Information

Mailing Address	Phone/Fax/Email:
The Canadian Bar Association National Office 500 - 865 Carling Avenue Ottawa, Ontario K1S 5S8	Phone: 613.237.2925 or 613.237.1988 Toll Free: 800.267.8860 Fax: 613.237.0185 E-mail: info@cba.org

### Applicable Statutes

Governed by: *11-12 Geo. V, c. 79*. sub nom. *An Act to Incorporate the Canadian Bar Association*

Generally do not apply: *Canada Corporations Act (CCA)*, *Canada Business Corporations Act (CBCA)* and *BCBCA*

### Objects

#### 1. Act of Incorporation, 11-12 George V. Chap. 79, Section 2:

(2) The objects of the Association shall be to advance the science of jurisprudence; promote the administration of justice and uniformity of legislation throughout Canada so far as is consistent with the preservation of the basic systems of law in the respective

provinces; uphold the honour of the profession of the law, and foster harmonious relations and co-operation among the incorporated law societies, barristers' societies and general corporations of the Bars of the several provinces and cordial intercourse among the members of the Canadian Bar; encourage a high standard of legal education, generally to do all further or other lawful acts and things touching the premises.

### ***Law Society's Appointment Authority***

#### **1. Canadian Bar Association By-law Number 1 (and informal)**

##### **a. Appointment of National Council Members**

*CBA By-law* No. 1, Section 73(2) and informal: for many the years the CBA BC Branch has used one of its non-voting appointments to select the Law Society President or his/her designate as a non-voting, ex officio member of the CBA National Council.

##### **b. Term of Office**

Term of the current Law Society President.

### ***Appointee's Obligations, Powers and Duties:***

Non-voting liaison.

## 2. Canadian Bar Association of British Columbia Branch Provincial Council

Appendix 3(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
2	Canadian Bar Association of British Columbia Branch (“CBABC”) Provincial Council	11-12 Geo V. c. 79 CBABC By-laws, s.15	Law Society President	Law Society President or designate, as non-voting, ex officio member

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Sarah Westwood	Maximum of 1 year, maximum of 6 terms	3	9/1/2014	8/31/2018

### Contact Information

Mailing Address	Phone/Fax/Email:
The Canadian Bar Association, BC Branch 10th Floor, 845 Cambie Street Vancouver, BC V6B 5T3	Phone: 604.687.3404 Toll Free: 888.687.3404 Fax: 604.669.9601 Toll Free Fax: 877.669.9601 Email: cba@bccba.org

### Applicable Statutes

Governed by: 11-12 Geo. V. c. 79. sub nom. *An Act to Incorporate the Canadian Bar Association*

Generally do not apply: *Canada Corporations Act (CCA)*, *Canada Business Corporations Act (CBCA)* and *BCBCA*

### Objects

*CBABC By-law 2* Objects and Powers: The objects of the CBABC shall be and it shall have the power to:

- a. carry out the objects of the CBA;
- b. enter into arrangements with the Law Society of British Columbia for the assumption by the CBABC of such non-statutory functions of the Law Society of British Columbia as may be appropriate;
- c. participate in and promote law reform;
- d. promote the interests of the members of the CBABC;
- e. support CBABC members' professional education;
- f. provide a voice for the legal profession;
- g. provide services to the members;
- h. promote inclusiveness and diversity in the law schools, the CBABC and the profession;
- i. enhance communications with the membership;
- j. promote and enhance the image of lawyers; and
- k. work for the total elimination from the legal profession of discrimination on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or irrelevant mental disability, sex, sexual orientation, and age.

## **Law Society's Appointment Authority**

### **1. CBABC By-laws:**

#### **a. Appointment of CBABC Council**

*CBABC By-law 15:* Non-voting, ex-officio members of CBABC Council, with the right to appoint a designate to attend CBABC Council in their place, shall be:

- (a) the Chief Justice of British Columbia;
- (b) the Chief Justice of the Supreme Court of British Columbia;
- (c) the Chief Judge of the Provincial Court of British Columbia;
- (d) the Attorney General of British Columbia;
- (e) the President of the Law Society of British Columbia;
- (f) the Dean of a university Faculty of Law in the Province of British Columbia;
- (g) the President of the British Columbia Crown Counsel Association;

- (h) the Chair of the British Columbia Courthouse Library Society;
- (i) the Chair of the British Columbia Law Institute;
- (j) the Chair of the Continuing Legal Education Society;
- (k) the Chair of the Law Foundation of British Columbia;
- (l) the Chair of the Legal Services Society;
- (m) the President of the Trial Lawyers Association of British Columbia; and
- (n) such further ex-officio members of CBABC Council as are appointed by CBABC Council from time to time.

**b. Term of Office**

Term of the current Law Society President.

***Appointee's Obligations, Powers and Duties:***

Non-voting liaison.



### 3. Provincial Court of BC Judicial Council

Appendix 3(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
3	Provincial Court of BC Judicial Council	<i>Provincial Court Act</i> , s.21(2)(c)	Law Society President	Law Society President or his/her nominee, as a voting member of Council

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Herman Van Ommen, QC	Tenure of current President	0	1/1/2017	12/31/2017

#### Contact Information

Mailing Address	Physical Address	Phone/Fax/Email:
Provincial Court of British Columbia Office of the Chief Judge P.O. Box 10287, Pacific Centre Vancouver, BC V7Y 1E8	Provincial Court of British Columbia Suite 602 - 700 West Georgia Vancouver, BC V7Y 1E8	Phone: 604.660.2864 Fax: 604.660.1108 Email: info@provinciacourt.bc.ca

#### Applicable Statutes

Governed by: *Provincial Court Act*, RSBC, 1996, Chapter 379

Generally do not apply: *Canada Corporations Act (CCA)*, *Canada Business Corporations Act (CBCA)* and *BCBCA*

#### Objects

*Provincial Court Act*, s. 22: The object of the council is to improve the quality of judicial service, and its functions include the following:

- (a) considering proposed Lieutenant Governor in Council appointments of judges and justices;
- (b) conducting inquiries respecting judges and justices;

- (c) considering proposals for improving the judicial services of the court;
- (d) continuing the education of judges and organizing conferences of judges;
- (e) preparing and revising, in consultation with the judges, a code of ethics for the judiciary;
- (f) reporting to the Attorney General on the matters the Attorney General considers necessary.

## ***Law Society's Appointment Authority***

### **2. Provincial Court Act:**

#### **a. Appointment of Provincial Judicial Council Members**

*Provincial Court Act*, s. 21: Judicial Council

(2) The members of the council are the following:

- (a) the chief judge as presiding member;
- (b) the associate chief judge as alternate presiding member or, if 2 or more associate chief judge designated, the associate chief judge designated as alternate presiding member by the Lieutenant Governor in Council;
- (c) the president of the Law Society of British Columbia or a person nominated by the president;
- (d) the president of the British Columbia Branch of the Canadian Bar Association or a person nominated by the president;
- (e) by appointment of the Lieutenant Governor in Council for a term of not longer than 3 years, a judge and not more than 4 other persons.

### ***Term of Office***

Term of the current Law Society President.

### ***Appointee's Obligations, Powers and Duties:***

#### **1. Internal Sources: *Provincial Court Act* and By-laws**

##### **a. Council Members' Remuneration:**

*Provincial Court Act*, s. 21: Judicial Council

(5) The Lieutenant Governor in Council may authorize payment to council members who are not judges an allowance for their duties on the council in an amount the Lieutenant Governor in Council considers appropriate.

**b. Exercising Powers of and Acting on behalf of the Council**

*By-law 3:* All powers of the Council may be exercised by resolution. An act or proceeding of the Council is valid when authorized or adopted by resolution at a meeting of the Council, provided that:

- (a) A resolution to approve an applicant for appointment will be defeated if any two members vote against approval. A resolution that an applicant not be approved for appointment will succeed if two or more members vote in favour of the resolution. Members present for such resolutions may not abstain.
- (b) A resolution to approve an applicant for interview will succeed if any three members vote in favour of the resolution.
- (c) To pass any other resolution at a meeting of the Council there must be a majority vote of the quorum in favour of the resolution. Each member has one vote but in the event of a tie, the Chair must cast a second and deciding vote.

***Amending By-laws***

Judicial Council of British Columbia Procedure By-law: 10: A bylaw relating to the procedure of the Council may be made or amended by a general resolution passed at a meeting of the Council of which written notice was given in advance to all members.

## B. Committees:

Tab	Body	Governing Statute /Applicable By-law/ Other Authority	Law Society Appointing Authority	Law Society Appointee/Nominee Profiles
1	Canadian Bar Association of British Columbia Rural Education & Access to Lawyers Initiative Advisory Board	11-12 Geo V. c. 79 CBABC By-laws, ss. 123-124	Law Society Executive Committee	1 Law Society Benchers, as a committee member
2	Committee on Relations with the Judiciary	<i>Legal Profession Act</i> 1997 Protocol 2004 Protocol	Law Society Executive Committee	1 Law Society member, as a committee member
3	Federal Judicial Advisory Committee for British Columbia	<i>Judges Act</i> and Guidelines for Members of Judicial Advisory Committees	Law Society President	3 Law Society members are nominated, 1 of whom is appointed by the Minister of Justice as a voting member of the BC Committee
4	Land Title and Survey Authority (“LTSA”) Stakeholder Advisory Committee	LTSA By-laws, Part 9	Law Society Executive Committee (nomination) Land Title and Survey Authority Chief Executive Officer (appointment)	1 Law Society member, as a committee member
5	University of British Columbia Faculty of Law Curriculum, Teaching and Learning Committee	Faculty Council resolution, May 12, 1983	Law Society President	1 Law Society member, as a non-voting member

**1. Canadian Bar Association of British Columbia Rural Education & Access to Lawyers Initiative Advisory Board**

Appendix 3(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
1	Canadian Bar Association of British Columbia Rural Education & Access to Lawyers Initiative (“REAL”) Advisory Board	<i>11-12 Geo V. c. 79</i> CBABC By-laws, ss. 123-124	Law Society President	1 Law Society Bencher, as a committee member

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Tom Fellhauer	Maximum of 1 year, maximum of 6 terms	6	6/1/2010	12/31/2017

**Contact Information**

Mailing Address	Phone/Fax/Email:
Canadian Bar Association of British Columbia Rural Education & Access to Lawyers Advisory Board c/o The Canadian Bar Association, BC Branch 10th Floor, 845 Cambie Street Vancouver, BC V6B 5T3	Phone: 604.687.3404 Toll Free: 888.687.3404 Fax: 604.669.9601 Toll Free Fax: 877.669.9601 Email: cba@bccba.org

**Background of the REAL Initiative**

Established in March 2009 as a 3-year initiative of the Canadian Bar Association BC Branch

Funded by the Law Foundation of British Columbia, supported by the Law Society of BC, UBC and UVic Law Schools, CLEBC, CBA National Rural Lawyer Task Force, the Legal Services Society and local bar associations

Comprises a set of programs (coordinated by a CBABC Regional Legal Careers Officer) to address the current and projected shortage of lawyers practising in small communities and rural areas of BC, in order to protect access to legal services in these areas.

Has a number of key components, including:

1. Funding for second year summer student placements in rural and small communities throughout British Columbia;
2. Financial and promotional support to assist with the marketing of regions to law students and new lawyers;
3. Professional support from the CBABC Regional Legal Careers Officer for students who are interested in practicing in rural and small communities; and
4. Professional support from the CBABC Regional Legal Careers Officer to assist law firms and practitioners with the recruitment, hiring and retention of students and new lawyers in rural and small communities.

### ***Purpose and Composition of the REAL Advisory Board***

Provides guidance and direction to the CBABC Regional Legal Careers Officer.

Membership includes lawyers from around the province with expertise and interest in legal education and regional issues, representatives of the law schools and CBA Executive and staff members.

### ***Law Society's Appointment Authority***

- a. **By invitation of CBABC (President appoints a Bencher).**
- b. **Term of Office**

One year.

### ***Appointee's Obligations, Powers and Responsibilities***

Provision of policy advice, guidance and oversight to CBABC staff, particularly to the Regional Legal Careers Officer responsible for administering the REAL initiative.

Role does not entail directorship responsibilities or duties.

## 2. Committee on Relations with the Judiciary

Appendix 3(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
2	Committee on Relations with the Judiciary (“CRJ”)	<i>Legal Profession Act</i>	Law Society President	1 Law Society member, as a committee member

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Ian Donaldson, QC	Not fixed	N/A	9/27/2011	To be reviewed annually
J. Kenneth McEwan, QC	Not fixed	N/A	9/27/2011	To be reviewed annually
Dinyar Marzban, QC	Not fixed	N/A	9/27/2011	To be reviewed annually

### Contact Information

Mailing Address	Phone/Fax/Email:
c/o Law Society of British Columbia Attn: Renee Collins Manager, Executive Support 845 Cambie Street Vancouver, BC V6B 4Z9	Phone: 604.443.5706 Fax: 604.669.5232 Email: rcollins@lsbc.org

### Statutory or other Authority

*Legal Profession Act*, S.B.C. 1998, c. 9

1997 Protocol between the BC Courts and the Law Society respecting concerns that may arise in ongoing proceedings regarding the conduct of counsel and judges (the 1997 Protocol)

## ***Purposes***

### **1. 1997 Protocol**

[T]he services of an independent panel of senior and respected barristers should be available to judges in such circumstances to provide advice and assistance to the lawyer, in accordance with the protocol ....

No judge or lawyer is bound to avail themselves of the services of the CRJ – participation is voluntary.

The special panel is also available to give advice and assistance to a lawyer who feels that a judge's conduct has been inappropriate. The panel may advise on whether or not to proceed to a complaint and may canvass the options of making a complaint to the appropriate judicial council, raising as a legal issue in the trial whether the judge's actions manifest a bias against the lawyer's client or asking the Law Society to raise the matter informally with the appropriate Chief Justice or Chief Judge.

## ***Law Society's Appointment Authority***

### **1. Report of the Law Society Committee on Relations Between the Law Society and the Judiciary (February 1997)**

The Committee recommended the formation of the special panel, to be guided by the Protocol, as follows:

#### **a. Appointment of CRJ Members**

- The President of the Law Society makes appointments of senior members of the civil, criminal and family litigation bars to the CRJ, upon appropriate consultation with the Chief Justices of BC and the BC Supreme Court and the Chief Judge of the BC Provincial Court, and on the advice of the Executive Committee.
- CRJ members are not to be current Benchers or members of any committee or subcommittee of the Law Society. Life Benchers are eligible to be members of the CRJ.

#### **b. Term of Office**

Not fixed, to be reviewed annually.

## ***Appointees' Obligations, Powers and Responsibilities***

CRJ members act independently of the Law Society in carrying out the terms of the 1997 Protocol (see Appendix 3(B) Tab 2).



CRJ members should expect to be requested to report to the Law Society from time to time on the general effectiveness of the 1997 Protocol and the CRJ, but not on specific cases.

# **Protocol between the Law Society and the BC courts respecting concerns that arise in ongoing proceedings (1997)**

## ***Background on the protocol***

Under the 1997 protocol concluded between the Law Society and all three levels of court in BC, a special panel is available to assist with problems that might occasionally arise between judges and lawyers in ongoing proceedings before the Provincial Court, Supreme Court of BC or the BC Court of Appeal.

The special panel can provide emergency assistance or advice to a lawyer in the course of a trial or other proceeding when such assistance is requested by a judge who has concerns about that lawyer's conduct or competence. The panel is also available to provide advice and assistance to lawyers who have complaints about judges. Members of the panel will act in accordance with the protocol approved by the Law Society, and their services are entirely optional – no judge or lawyer is obliged to participate.

This panel was recommended by a special Law Society Committee on Relations between the Law Society and the Judiciary, comprised of Leonard Doust, QC, as Chair, Bruce Fraser, QC, Marguerite Jackson, QC, Charles Maclean, QC, Karl Warner, QC and Karen Nordlinger, QC

Under the protocol, when a judge has concerns that a litigant is receiving inadequate representation, the judge may adjourn the matter so the litigant can retain other counsel, or may alternatively attempt to control the process to ensure the case is decided fairly. As noted in 1997 by the Committee on Relations between the Law Society and the Judiciary, the urgency of an issue before the court may in some instances preclude a judge from adjourning the matter, or it may be difficult for the judge to control the process to ensure fairness.

In the Committee's view, it is not appropriate for the Law Society to take any action on a judge's complaint about a lawyer until the ongoing proceedings have been completed or adjourned, except in the most unusual circumstances. The concern was that there be no miscarriage of justice or appearance of unfairness to the lawyer about whom the complaint is made, or to the lawyer's client.

The Committee recommended that the services of an independent panel of senior and respected barristers should be available to judges in such circumstances to provide advice and assistance to the lawyer, in accordance with the protocol set out below. No judge or lawyer is bound to avail themselves of the services of the special panel - participation is voluntary.

The special panel is also available to give advice and assistance to a lawyer who feels that a judge's conduct has been inappropriate. The panel may advise on whether or not to proceed to a

complaint and may canvass the options of making a complaint to the appropriate judicial council, raising as a legal issue in the trial whether the judge's actions manifest a bias against the lawyer's client or asking the Law Society to raise the matter informally with the appropriate Chief Justice or Chief Judge.

### ***Text of the Protocol***

1. The judge who has concerns should seek advice from the Chief Justice or Associate Chief Justice or, in the case of the Provincial Court, with the Chief Judge or an Associate Chief Judge.
2. No steps under this protocol will be taken if the judge, after receiving advice, concludes that the interests of the litigant can be adequately protected by the judge or that the matter can be adjourned.
3. If the interests of the litigant cannot be adequately protected by the judge or the matter cannot be adjourned, the Chief Justice, Associate Chief Justice, Chief Administrative Judge or Assistant Chief Administrative Judge may approach the special panel for assistance.
4. When the special panel receives a request for assistance, it will immediately contact the lawyer affected and attempt to provide assistance.
5. Other than informing the judge who contacted the special panel of the fact that the lawyer has been contacted (and nothing further), the special panel will provide no information to anyone and, in particular, will not inform the Law Society of its activities with respect to any specific case.
6. If the lawyer declines the assistance offered, no further steps will be taken by the special panel. The panel will not report to anyone on whether the assistance it offered has been declined or accepted by the lawyer.
7. A judge will be free to report a lawyer's conduct to the Law Society at any time and have the complaint dealt with in accordance with the Society's normal procedures. However, where a complaint relates to a trial that is still proceeding, the Society will take no action on the complaint unless:
  - (a) the trial or interlocutory matter is completed or adjourned,
  - (b) a mistrial is declared,
  - (c) counsel is no longer acting on the matter, or
  - (d) Law Society representatives are satisfied that the continued practice of the lawyer would be dangerous or harmful to the public or the lawyer's clients.

Except in extraordinary circumstances, where a judge makes a complaint against a lawyer to the Law Society, the lawyer will receive notice of the complaint from the Law Society.

8. Where a judge hearing a case requests the assistance of the special panel directly, the panel will, nevertheless, respond to that judge's request in the same way as if the request had been made by an administrative judge.

9. Where a judge approaches the Law Society, outside of the complaints process, to intervene in a matter, the Society should only do so when:

- (a) Law Society representatives are satisfied that the continued practice of the lawyer would be dangerous or harmful to the public, the lawyer's client in the proceedings or other clients, and
- (b) the judge making the approach is unwilling to follow the usual protocol, or the protocol has been followed but has not succeeded in resolving the matter.

**3. Federal Judicial Advisory Committee for British Columbia**

<b>Appendix 3(B)</b>	<b>Body</b>	<b>Governing Statute/ Other Authority</b>	<b>Law Society Nominating Authority</b>	<b>Law Society Appointee/ Nominee Profile</b>
3	Federal Judicial Advisory Committee for British Columbia	<i>Judges Act*</i> and Guidelines for Members of Judicial Advisory Committees**	Law Society President	3 Law Society members are nominated, 1 of whom is appointed by the Minister of Justice as a voting member of the BC Committee

\* See Footnote 46

\*\*See Footnote 47

<b>Current Appointments</b>	<b>Term of Office</b>	<b>Number of Terms Already Served</b>	<b>Date First Appointed</b>	<b>Expiry Date</b>
Jan Lindsay, QC	3 years, maximum of 2 terms	0	1/1/2017	12/31/2019

**Contact Information**

<b>Mailing Address</b>	<b>Phone/Fax/Email:</b>
Judicial Appointments Secretariat Office of the Commissioner for Federal Judicial Affairs Canada 99 Metcalfe Street, 8th floor Ottawa, Ontario K1A 1E3	Phone: 613.992.9400 Toll Free: 877.583.4266 Fax: 613.941.0607 Email: <a href="mailto:jacs-snm@fja-cmf.gc.ca">jacs-snm@fja-cmf.gc.ca</a>

**Applicable Authority**

*Judges Act*, RSC 1985, c J-1<sup>45</sup>. The Act designates the Commissioner for Federal Judicial Affairs Canada to act on behalf of the Minister of Justice in matters related to the administration of Part I

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<sup>45</sup> Current version in force since June 18, 2009. See: <http://laws-lois.justice.gc.ca/eng/acts/J-1/index.html> (as at January 9, 2017)

of the *Judges Act*, which deals with the terms of appointment, age limit and salaries applicable to federally appointed judges.

Government policy for federal judicial advisory committees<sup>46</sup> has been in place since 1988 and is revised from time to time. The current policy is set out in the Office of the Commissioner for Federal Judicial Affairs Canada's [Guidelines for Advisory Committee members](#) (see footnote 47).

The Judicial Appointments Secretariat of the Office of the Commissioner for Federal Judicial Affairs Canada administers 17 judicial advisory committees responsible for evaluating candidates for federal judicial appointments.

### **Objects**

Independent judicial advisory committees are responsible for assessing the qualifications of the lawyers who apply for federal judicial appointments. Candidates are assessed by the regional advisory committee established for the judicial district of their practice or occupation, or by the committee judged most appropriate by the [Commissioner for Federal Judicial Affairs](#).<sup>47</sup>

The Commissioner has overall responsibility for the administration of the appointments process on behalf of the Minister of Justice. The Commissioner is expected to carry out his responsibilities in such a way as to ensure that the system treats all candidates for judicial office fairly and equitably. It is the Commissioner's and the Executive Director's particular responsibility, on behalf of the Minister, to ensure that all assessments are completed expeditiously and thoroughly.

### **Law Society's Nomination Authority**

#### **1. [Federal Judicial Advisory Committee Membership](#)**<sup>48</sup>

Each federal judicial advisory committee consists of eight members representing the bench, the bar, the law enforcement community and the general public, and one ex-officio non-voting member: the Commissioner for Federal Judicial Affairs Canada or the Executive Director, Judicial Appointments.

The Chief Justice or senior judge of the province or territory is invited by the federal Minister of Justice to choose one judicial representative.

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<sup>46</sup> <http://www.fja.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html> (as at January 9, 2017)

<sup>47</sup> <http://www.fja.gc.ca/home-accueil/index-eng.html> (as at January 9, 2017)

<sup>49</sup> <http://www.fja.gc.ca/appointments-nominations/committees-comites/members-membres/index-eng.html> (as at January 9, 2017)

The provincial or territorial Law Society, the Canadian Bar Association, the provincial Attorney General or Territorial Minister of Justice, and the law enforcement community are invited to submit a list of [three] nominees from whom an appointment to the relevant committee can be made.

The federal Minister of Justice, with the assistance of the Commissioner for Federal Judicial Affairs Canada, then selects persons to serve on each committee who reflect factors appropriate to the jurisdiction, including geography, gender, language and multiculturalism.

### ***Term of Office***

Committee members are appointed by the Minister of Justice to serve a three-year term, with the possibility of a single renewal.

### ***Guidelines for Judicial Advisory Committee Members***

The Office of the Commissioner for Federal Judicial Affairs has prepared detailed [guidelines for advisory committee members](#) (Federal JAC Guidelines). Note particularly the “Law Society Clearance” section:

Before submitting a candidate’s file to a Committee, the Executive Director, Judicial Appointments obtains a confirmation from the appropriate Law Society certifying that the candidate has a minimum of 10 years membership plus current standing with the Law Society. This is a requirement for appointment. A candidate's file will not normally be forwarded to the Committee without this confirmation from the Law Society.

The Law Society is also asked to provide information concerning any current or past discipline matter, and any information that could affect a candidate’s fitness for judicial appointment. Information on the candidate’s insurance claims history is also provided by most Law Societies. All information received is transmitted to the Committee with the candidate’s file. Candidates are required to sign a form authorizing the Law Society to provide this information.

The representative of the Law Society on the Committee is expected to possess full particulars concerning any Law Society report on a candidate, for communication to the Committee when the candidate is assessed. **This implies a prior inquiry by the representative with the Law Society concerning the report in question. (emphasis added)**

Where there exists an outstanding matter of discipline not yet resolved, the Committee should defer the completion of its assessment for that candidate (unless the Committee otherwise intends to assess the candidate "Unable to Recommend").

The Law Society member of the Federal JAC (BC) is expected to understand the Society's disciplinary and insurance processes and to be able to explain them to the Committee in the context of applications being considered. This may arise, for example, if **an applicant for judicial appointment has one or more citations, conduct reviews, other forms of discipline, orders or complaints on his/her Professional Conduct Record.**

The Law Society sends summaries of applicants' known bankruptcy, discipline and insurance history directly to Federal Judicial Affairs Canada for eventual distribution to the Committee. Committee members receive a briefing package on the relevant applicants about six weeks in advance of each review meeting. The Law Society member of the Committee is expected to make inquiries as needed with Law Society staff for the purposes of providing appropriate context to the other Committee members on applicants' known bankruptcy, discipline and insurance history, and assessing applicants' fitness for judicial appointment.

### ***Nominees' Commitment not to Accept Judicial Appointment***

It is the Benchers' policy to ask Law Society nominees to agree not to accept a federal judicial appointment while a member of the Committee and for two years thereafter. The Federal JAC Guidelines provide that "[1] Lawyer members of the Committees cannot themselves be candidates for judicial appointment for one year following the end of their term of office on the Committee."



#### 4. Land Title and Survey Authority Stakeholder Advisory Committee

Appendix 3(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
4	Land Title and Survey Authority (“LTSA”) Stakeholder Advisory Committee	LTSA By-laws, Part 9	Law Society Executive Committee (nomination) Land Title and Survey Authority Chief Executive Officer (approval)	1 Law Society member, as a committee member

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Edward Wilson	Appointment is not for any fixed term	N/A	8/1/2013	To be reviewed annually

#### Contact Information

Mailing Address	Phone/Fax/Email:
Land Title and Survey Stakeholder Advisory Committee c/o Land Title and Survey Authority Corporate Office Suite 200 1321 Blanshard Street Victoria, BC V8W 9J3	Phone: 250.387.7280 Fax: 250.387.1830

#### Applicable Statutes

Governed by: *Land Title and Survey Authority Act*, S.B.C. 2004, c. 66. (LTSA Act)

Applies in part: *BC Business Corporations Act*

LTSA Act, ss. 40(1): The following Acts do not apply to the LTSA:

- (a) *Budget Transparency and Accountability Act*;
- (b) *BC Business Corporations Act*, except Part 10 of that Act or as provided by this Act;
- (c) *Financial Administration Act*, except section 14.

LTSA Act, ss. 40(2): The Lieutenant Governor in Council, by regulation, may direct that some or all of the following provisions apply to the LTSA:

- (a) the provisions of *the Business Corporations Act* other than sections 10 to 41, 52 to 89, 107 to 126, 128, 130 to 133, 135, 136, 140, 142, 143, 147 to 153, 159 to 191, 196, 204 to 206, 228, 269 to 300 and 302 to 311 and Parts 11 and 14;
- (b) the regulations made under the *Business Corporations Act* other than
  - (i) regulations made in respect of sections 10 to 41, 52 to 89, 107 to 126, 128, 130 to 133, 135, 136, 140, 142, 143, 147 to 153, 159 to 191, 196, 204 to 206, 228, 269 to 300 and 302 to 311 and Parts 11 and 14, and
  - (ii) regulations that expressly indicate that they do not apply to special Act corporations, as defined in the *Business Corporations Act*.

## **Objects**

*By-law 9.1:* The board hereby establishes a stakeholder advisory committee to provide advice or recommendations to the board and the chief executive officer on the operations of the LTSA, including advice or recommendations on the effectiveness of and improvements to the activities, programs, services and special projects of the LTSA and on any other matter requested by the board or the chief executive officer.

## **Law Society's Nomination Authority**

### **1. LTSA By-laws:**

#### **a. Committee Composition**

*By-law 9.2:* The stakeholder advisory committee will consist of:

- (a) the chief executive officer, who is a permanent member and the chair of the committee; and
- (b) one nominee, approved by the chief executive officer, of each of the stakeholder entities (as that term is defined in the Act) and of the British Columbia Historical Federation, the British Columbia Assessment Authority, the Canadian Bankers

Association, the Canadian Bar Association and Central 1 Credit Union, to the extent such entities choose to make nominations.

*By-law 9.3:* The chief executive officer will report to the board from time to time with a list of the members of the stakeholder advisory committee and the name of the entity that nominated each person on that list.

*By-law 9.4:* The stakeholder advisory committee is not a committee of the directors and no director may be nominated for or appointed to the committee. The committee is not a decision making body.

### ***Term of Office***

Not fixed; subject to annual review.

### **1. Conditions on the Law Society's Power of Nomination**

*LTSA By-law 9.5:* The LTSA chief executive officer may in his or her discretion:

- (a) make appointments to the stakeholder advisory committee in addition to the members of the committee approved under section 9.2;
- (b) establish subcommittees of the stakeholder advisory committee and make appointments thereto;
- (c) rescind a person's membership in the stakeholder advisory committee or any of its subcommittees.

## Appendix 4 - Category 2: Law Society Appointments to Unrelated Bodies

Tab	Body	Governing Statute /Applicable By-law/ Other Authority	Law Society Appointing Authority	Law Society Appointee/Nominee Profiles
1	Building Board of Appeal, City of Vancouver	<i>Local Government Act</i> Vancouver Charter, Part IX, s. 306B	Law Society Benchers (nomination) Vancouver City Council (appointment)	1 Law Society member, as an appeal panellist
2	Hamber Foundation Board of Governors	<i>Society Act</i> By-law 2.2(d)	Law Society Benchers	2 Law Society members, as Foundation members (and governors)
3	Vancouver Airport Authority Board of Directors	<i>Canada Corporations Act</i> , Part II; Letters patent Vancouver Airport Authority By-law 1, ss. 1.1	Law Society Benchers	1 Law Society member, as Vancouver Airport Authority member (automatically a director)
4	Vancouver Foundation Board of Directors	<i>Vancouver Foundation Act</i> <i>Vancouver Foundation Amendment Act, 2010</i> By-laws, Part 2	Law Society Benchers (nomination) Vancouver Foundation Board of Directors (appointment)	1 Law Society member, as a director

## 1. Vancouver Building Board of Appeal, City of Vancouver

Appendix 4	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
1	Building Board of Appeal, City of Vancouver	<i>Local Government Act Vancouver Charter, Part IX, s. 306B</i>	Law Society Benchers (nomination) Vancouver City Council (appointment)	1 Law Society member, as an appeal panelist

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Edna Cheung	3 years, maximum of 2 terms	2	2/1/2009	1/31/2018

**Note\*** Edna Cheung has been nominated for re-appointment for a third three-year term, effective at such date as Vancouver City Council may direct.

### Contact Information

Mailing Address	Phone/Fax/Email:
Chief Building Official Community Services Group City of Vancouver 453 West 12th Avenue Vancouver, BC V5Y 1V4	Phone: 604.873.7524 Email: <a href="mailto:patrick.ryan@vancouver.ca">patrick.ryan@vancouver.ca</a>

### Applicable Statutes

Local Government Act, RSBC 1996, Ch 323

Vancouver Charter, Part IX, s. 306B

The Building Board of Appeal was originally established under Building By-law No. 4833 (1973), but is now authorized by the Building Board of Appeal By-law, No. 6135.<sup>49</sup>

<sup>49</sup> <https://vancouver.ca/your-government/building-board-of-appeal.aspx> (as at January 9, 2017)

## ***Jurisdiction***

On Building By-law matters, the Board hears appeals of any decision of the City Building Inspector (Director of Permits and Licenses) in respect of interpretation of the By-law, use of new methods of construction or materials, determination of extent of upgrading existing buildings, determination of an unsafe condition, determination of extent of building upgrading affected by Change of Occupancy and reasons for revoking a permit.

## ***Law Society's Appointment Authority***

### **1. Building Board of Appeal By-laws:**

#### **a. Appointment of Members of City of Vancouver to Building Board of Appeal,**

Building Board of Appeal By-law 6135:

The Board consists of eight members, appointed by Council for a term of three years, one member being selected from each of the following societies or associations:

- (a) Architectural Institute of BC
- (b) Association of Professional Engineers and Geoscientists of BC (Structural)
- (c) Association of Professional Engineers and Geoscientists of BC (Mechanical or Electrical)
- (d) Amalgamated Construction Association
- (e) Building Owners and Managers Association of BC (Management)
- (f) Greater Vancouver Home Builders Association
- (g) Insurers Advisory Organization
- (h) Law Society of BC
- (i) a representative of a self-supporting Association located within the Greater Vancouver Region chiefly concerned with the economic or social interests of Building Users but generally independent of the interests of building owners, regulatory authorities, and the associations mentioned above.

#### **b. Revocation of Appointment**

City Council may remove any member by resolution of Council supported by not less than two-thirds of all its members.<sup>50</sup>

#### **Term of Office**

Three years or until successor is appointed, but may be reappointed for a further term or terms (3.4).

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<sup>50</sup> <https://vancouver.ca/your-government/building-board-of-appeal.aspx> (as at January 9, 2017f)

***Appointee's Obligations, Powers and Duties:***

**1. Building Board of Appeal By-law 6135:**

On Building By-law matters, the Board hears appeals of any decision of the City Building Inspector (Director of Permits and Licenses) in respect of interpretation of the By-law, use of new methods of construction or materials, determination of extent of upgrading existing buildings, determination of an unsafe condition, determination of extent of building upgrading affected by Change of Occupancy and reasons for revoking a permit.

## 2. Hamber Foundation

Appendix 4	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
2	Hamber Foundation Board of Governors	<i>Society Act</i> By-law 2.2(d)	1 Law Society Member	2 Law Society members, as Foundation members (and governors)

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Todd L. Kerr	3 years, maximum of 2 terms	0	3/1/2015	2/28/2018
Mark Killas	3 years, maximum of 2 terms	1	3/1/2012	2/28/2018

### Contact Information

Mailing Address	Physical Address	Phone/Fax/Email:
Hamber Foundation 18th Floor 700 West Georgia St. Toronto Dominion Tower PO Box 10083, Pacific Centre Vancouver, BC V7Y 1B6	Hamber Foundation 18th Floor 700 West Georgia St. Toronto Dominion Tower Pacific Centre Vancouver, BC V7Y 1B6	Phone: 604.659.7448 Fax: 604.659.7469

### Applicable Statutes

Governed by: *Society Act*, RSBC, 1996, c 433. Subsection 35(1): Divisions 8, 9 and 10 of Part 3 (Finance) of the *BC Business Corporations Act* (BCBCA) apply

Generally do not apply: *Canada Corporations Act* (CCA), *Canada Business Corporations Act* (CBCA) and BCBCA



## **Objects**

### **1. Hamber Foundation Constitution, Article 2 - The purposes of the society are to:**

- a. to receive, hold, distribute, and, as provided in the By-laws, to invest and reinvest contributions from donors for the inauguration, maintenance and support of charitable work and charitable institutions within the Province of British Columbia.
- b. To maintain and support charitable organizations and charitable institutions coming within the scope of the following definition, that is to say:
  - (i) any charitable organization carrying on its activities in British Columbia;
  - (ii) any special relief organization which carries on activities in British Columbia; set up and administered by and under the direction of the Government of Canada or the Government of any Province of Canada or any Municipal authority in Canada and in particular any such organization whose objects include the alleviation of human suffering.
- c. To make grants for the purpose of establishing, maintaining and supporting scholarships, bursaries, professorships, lectureships, loan funds and other forms of assistance, to:
  - (i) Any degree-granting university or college in British Columbia operating under a charter from the Crown or appropriate legislation enacted by the Parliament of Canada or of any Province thereof;
  - (ii) Any charitable organization carrying on its principal charitable activities...
- d. To establish, maintain and support scholarships, open to any student having the required university or college entrance qualifications for entrance to any degree-granting university or college operating under a charter from the Crown, or appropriate legislation enacted by the Parliament of Canada or of any Province thereof.

## **Law Society's Appointment Authority**

### **1. Hamber Foundation By-laws:**

#### **a. Appointment of Hamber Foundation Members**

*By-law 2.2:* The nine Members shall be appointed as follows:

- (a) Two Members shall be appointed by the Board of Governors of the Society on recommendation of the Council of the Institute of Chartered Accountants of British Columbia;

- (b) Two Members shall be appointed by the Board of Governors of the University of British Columbia;
- (c) Two Members shall be appointed by the British Columbia division of the Canadian Medical Association or in the event that the British Columbia division of the Canadian Medical Association shall cease to exist then by a like successor organization;
- (d) Two Members shall be appointed by the Benchers of the Law Society of British Columbia; and
- (e) One Member shall be appointed by the Board of Governors of the Society

## **2. Revocation of Appointment**

*Society Act*, s. 31: A director may be removed from office by special resolution and another director may be elected, or appointed by ordinary resolution, to serve during the balance of the term.

## **3. Term of Office**

*By-law 2.3*: Subject to By-Laws 2.4 and 2.5, each Member shall hold office for a term of three years, or such shorter term as may be specified by the body appointing such Member. Notwithstanding the foregoing, if a Member is not appointed on the date of an Annual General Meeting, his or her term of office shall be computed from the date of the next Annual General Meeting after appointment.

*By-law 2.4*: Members may serve a maximum of two terms. Notwithstanding the foregoing and notwithstanding the provisions of By-Law 2.3, a Member who is President of the Society shall continue to be a Member and a Governor until the end of the term of such presidency.

*By-law 2.5*: Notwithstanding the provisions of By-Law 2.3, Members and Governors of the Society as of the date these By-Laws take effect shall continue as Members and Governors until their existing terms of office end. All terms of office served by such Members and Governors, whether before or after these By-Laws take effect, shall be included in the computation of the number of terms served for the purposes of By-Law 2.4.

*By-law 2.6*: Notwithstanding that the term of office of a Member may come to an end, such Member shall continue to act as a Member and as a Governor until his or her successor is appointed or until four months after the end of his or her term of office, whichever comes first. If no new appointment is made within four months of the end of the term of office of a Member or if any office remains vacant for more than four months for any other reason, the remaining Members may, in their sole discretion, appoint a Member to fill the vacancy until the next Annual General Meeting.

## ***Appointees' Obligations, Powers and Duties:***

### **1. Internal Sources: Hamber Foundation Constitution and By-laws**

#### **a. Promoting Purposes of Hamber Foundation and Avoiding Personal Gain**

*By-law 10.1:* No Member of the Society shall in his or her individual capacity, be liable for any debts or liabilities of the Society.

*By-law 10.2:* No Member of the Society shall be liable for any fee with respect to his or her membership in the Society and any Member may apply to the Secretary-Treasurer for reimbursement of his or her personal disbursements in carrying out the objects of the Society.

*By-law 11.1:* Subject to the *Society Act* (British Columbia), the Trust Company and every Member, Governor, auditor, secretary, agent or other officer or employee for the time being of the Society, if the Governors so approve, may be indemnified out of the assets of the Society against any liability incurred by the Trust Company or any such person in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the Trust Company or any such person or in which an acquittal is given or in respect of which release is granted by a court of competent jurisdiction.

#### **b. Exercising Powers of and Acting on behalf of the Society**

*By-Law 6.4 (as amended):* The Governors of the Society shall have full responsibility and authority to determine the manner in which income arising from the fund and/or property of the Society shall be distributed in carrying out the objects of the Society and the determination of the Governors with respect to expenditures made or authorized under this By-law shall be final.

#### **Amending Constitution and By-laws**

*By-law 8.1:* The Members of the Society may in respect of their duties as Members and Governors and the business of the Society, make such rules and regulations and carry on their duties hereunder in such manner as the majority of the Members of the Society may from time to time determine.

*By-law 8.2:* The By-Laws may be amended by Special Resolution of the Members of the Society at any meeting of which due notice shall have been given at least fourteen days prior to the date of such meeting.

External Sources: *Society Act* (statutory duties of honesty and care)

*Society Act*, s. 25 (1): A director of a society must:

- (a) act honestly and in good faith and in the best interests of the society, and
- (b) exercise the care, diligence and skill of a reasonably prudent person,

in exercising the powers and performing the functions as a director.

(2) The requirements of this section are in addition to, and not in derogation of, an *enactment* or rule of law or equity relating to the duties or liabilities of directors of a society.

*Society Act*, s. 26: Nothing in a contract, the constitution or the bylaws, or the circumstances of a director's appointment, relieves a director

- (a) from the duty to act in accordance with this Act and the regulations, or
- (b) from a liability that by a rule of law would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.

**3. Vancouver Airport Authority**

Appendix 4	Body	Governing Statute /Applicable By-law/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
3	Vancouver Airport Authority Board of Directors	<i>Canada Corporations Act</i> , Part II; Letters patent Vancouver Airport Authority By-law 1, ss. 1.1	Law Society Benchers	1 Law Society member, as Vancouver Airport Authority member (automatically a director)

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Anna Fung, QC	3 year term, maximum of 3 terms	1	6/30/2013	5/31/2019

**Contact Information**

Mailing Address	Phone/Fax/Email:
Vancouver Airport Authority PO Box 23750 Richmond, BC V7B 1Y7	Phone: 604.276.6500 Fax: 604.276.6505

**Applicable Statutes**

*Canada Corporations Act*, Part II; Letters patent, some of Part I, some specific *Canada Corporations Act* sections explicitly incorporated.

**Objects**

1. **Vancouver Airport Authority Constitution, Article 3 - The objects of the Authority are:**
  - a. to acquire all of or an interest in property comprising the Vancouver International Airport and other airports of the lower mainland, by lease or other form of transfer

- b. to undertake the management and operation of YVR et al. in efficient manner and safe manner for the benefit of the public
- c. to undertake the development of the land at YVR et al. to make them compatible with air transport activities
- d. to generate, suggest and participate in economic development projects etc. intended to expand B.C.'s transportation facilities and generate economic activity in all areas compatible with air transportation and,
- e. to assemble information, advise on and otherwise contribute to the advancement of air transportation

### ***Law Society's Appointment Authority***

#### **1. Vancouver Airport Authority By-laws<sup>51</sup>:**

##### **a. Appointment of Vancouver Airport Authority Members**

*By-law 1, s. 1.1: Qualification of Members* - Collectively, the Members must possess knowledge in relation to transportation, aviation, business, finance, law, government, the organization of workers and the representation of the interests of consumers, and

- (a) one Member may be appointed by the Association of Professional Engineers and Geoscientists of British Columbia;
- (b) one Member may be appointed by the City of Richmond;
- (c) one Member may be appointed by the City of Vancouver;
- (d) two Members may be appointed by the Government of Canada;
- (e) one Member may be appointed by the Greater Vancouver Regional District;
- (f) one Member may be appointed by the Institute of Chartered Accountants of British Columbia;
- (g) one Member may be appointed by The Law Society of British Columbia;
- (h) one Member may be appointed by the Vancouver Board of Trade; and
- (i) one Member will be the person who holds the office of President.

*By-law 1, s. 1.4: Appointment of Additional Members* - The Members, after receiving the recommendations of the Governance Committee, may from time to time appoint additional Members not at any time exceeding five in number. The term of an additional Member so appointed will begin at the close of the meeting of the Members at which the appointment is made or at such other time as is specified in the resolution making the appointment and will end at the close of the annual meeting of the Members held in the third year after the year in which the term begins or in such earlier year as is specified in the resolution.

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<sup>51</sup> By-law No. 1 of Vancouver Airport Authority

## **2. Revocation of Appointment**

*By-law 1, s. 1.9: Termination of Membership* - A person will cease to be a Member if such person:

- (a) resigns by delivering a written resignation to the Secretary;
- (b) becomes a person described in Section 1.8;
- (c) is declared no longer to be a Member by a Special Resolution ; or
- (d) dies.

## **3. Term of Office**

*Members' Resolution passed September 29, 2011: Appointment of Members* - A person appointed by a Nominating Entity<sup>52</sup> may serve as a Member for not more than three terms of three years.

### ***Obligations, Powers and Duties:***

#### **1. Internal Sources: Vancouver Airport Authority Constitution and By-laws**

##### **a. Promoting Objects of Vancouver Airport Authority and Avoiding Personal Gain**

*By-law 1, s. 1.7 Obligations of Membership and Conflict of Interest:* Every Member shall uphold the objects of the Authority and comply with its bylaws. Every Member shall, at the time of appointment, sign an acknowledgement that the Member has read and is bound by the Authority's conflict of interest guidelines.

*Canada Corporations Act, s. 15:* All powers given to a company by letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this Part.

*Canada Corporations Act, s. 93:* Every director of the company, and his heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the company, given at any meeting of the shareholders thereof, from time to time and at all times, be indemnified and saved harmless out of the funds of the company, from and against,

- (a) all costs, charges and expenses whatever that such director sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing whatever, made, done or permitted by him, in or about the execution of the duties of his office, and

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<sup>52</sup> The Law Society of BC is a nominating entity. By-law 15(4)k(k): "Nominating Entity" means the nominating entities described in Section 1(1).

- (b) all other costs, charges and expenses that he sustains, or incurs, in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

*Canada Corporations Act*, s. 99 (1): The directors of the company are jointly and severally liable to the clerks, labourers, servants and apprentices thereof, for all debts not exceeding six months wages due for services performed for the company while they are such directors respectively.

*By-law 1*, s. 6.1: Indemnities: Every Director or officer of the Authority and their respective heirs, executors and administrators, and estates and effects, will from time to time and at all times, be indemnified and saved harmless out of the funds of the Authority from and against:

- (a) all costs, charges and expenses whatever that such Director, officer or other person sustains or incurs in or about any action, suit or commenced or prosecuted against such person, for or in respect of any act, deed, matter or thing whatever, made, done or permitted by such person, in or about the execution of the duties of such person's office; and
- (b) all other costs, charges and expenses such person sustains or incurs, in or about or in relation proceeding that is brought, to the affairs of the Authority, except such costs, charges or expenses as are occasioned by such person's own wilful neglect or default.

The indemnity authorized by this Section 6.1 will be applicable only to the extent that it does not duplicate any indemnity or reimbursement which the person seeking indemnity has received or will receive otherwise than by virtue of this Section 6.1.

**b. Exercising Powers of and Acting on behalf of the Authority**

*By-law 1*, s. 3.2: Powers of Directors: The Board shall administer the affairs of the Authority in all things and may make or cause to be made for the Authority, in its name, any kind of contract which the Authority may lawfully enter into and, except as hereinafter provided, generally may exercise all other powers and do all other acts and things as the Authority is by its charter or otherwise authorized to exercise and do.

**c. Amending Constitution and By-laws**

*By-law 1*, s. 11.3: Amendment of *By-law No. 1*: This By-law may be repealed or amended by an amending by-law enacted by a resolution of the Board and sanctioned by a Special



Resolution<sup>53</sup>, but no such repeal or amendment may be enforced or acted upon until approved by the Minister of Industry and the provisions of Parts 1 and 14 and this Section 11.3 of this By-law may be amended only with the consent of the Minister of Transport.

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<sup>53</sup> By-law 15(4)(o): “Special resolution” means a resolution passed by at least two-thirds of the votes cast at a meeting of the members.

#### 4. Vancouver Foundation

Appendix 4	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
4	Vancouver Foundation Board of Directors	<i>Vancouver Foundation Act</i> <i>Vancouver Foundation Amendment Act, 2010</i> By-laws, Part 2	Law Society Benchers (nomination) Vancouver Foundation Board of Directors (appointment)	1 Law Society member, as a director

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Rita Andreone, QC	3 year term, maximum of 2 terms	0	5/1/2017	4/30/2020

#### Contact Information

Mailing Address	Physical Address	Phone/Fax/Email:
Vancouver Foundation Suite 1200 555 West Hastings St. Box 12132, Harbour Centre Vancouver, BC Canada V6B 4N6	Vancouver Foundation Suite 1200 555 West Hastings St. Vancouver, BC Canada V6B 4N6	Phone: 604.688.2204 Fax: 604.688.4170 Email: <a href="mailto:info@vancouverfoundation.ca">info@vancouverfoundation.ca</a>

#### Applicable Statutes

*Vancouver Foundation Act* [SBC 2000] Chapter 32, *Vancouver Foundation Amendment Act, 2008*, *Vancouver Foundation Amendment Act, 2010*.

#### Objects

*Vancouver Foundation Act*, s. 4: The objects of the foundation, all of which are deemed to be charitable, are the following:

- (a) to provide care for needy men, women and children, and in particular the sick, aged, destitute and helpless;
- (b) to promote educational advancement and scientific or medical research for the increase of human knowledge and the alleviation of human suffering;
- (c) to better underprivileged or delinquent persons;
- (d) to promote recreational activities and the conservation of human, natural and heritage resources;
- (e) to provide for any other charitable purposes that the board considers contribute to the mental, moral, cultural and physical improvement of the inhabitants of British Columbia.

### ***Law Society's Nomination Authority***

#### **1. Vancouver Foundation Amendment Act, 2010 & Bylaws:**

##### **a. Appointment of Vancouver Foundation Members/Directors**

*Vancouver Foundation Amendment Act, 2010*, s. 5: (1) The board of directors of the foundation is to consist of at least 10 and not more than 18 persons, with the directors determining the number of directors from time to time in the bylaws of the foundation., and

(1.1) If the number of directors is below the minimum number set out in subsection (1) or in the bylaws, as applicable, the board continues to have the Authority to carry out its duties and exercise its powers until all vacancies are filled.

(1.2) Subject to section 6, the board consists of the following members:

- (a) the Chief Justice of the Supreme Court of British Columbia or, if applicable, the judge appointed by the Chief Justice under that section;
- (b) a member of the Law Society of British Columbia who has been nominated by the Law Society of British Columbia in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;
- (c) a member of the Institute of Chartered Accountants of British Columbia who has been nominated by the Institute of Chartered Accountants of British Columbia in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;
- (d) a person who has been nominated by the United Way of the Lower Mainland in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;
- (e) other persons that are elected from time to time by the board.

(1.3) The board may decline a nomination under subsection (1.2) (b), (c) or (d) if, in the opinion of the board, the nominee does not have the skills, knowledge or experience to benefit the foundation.

**b. Revocation of Appointment**

*By-law 2.9: Ceasing to be a Director* - A person ceases to be a Director on:

2. 9.1: the expiry of his or her term of office;

2. 9.2: his or her resignation, submitted in writing to the Chair of the Board, or if the resignation be that of the Chair, to the Vice-Chair of the Board or the President and Chief Executive Officer of the Foundation;

2.9.3: non-attendance by a Director at three consecutive meetings of the Board, provided that the Directors may, by a resolution approved by not less than 75% of the Directors then holding office, decide that the non attending Director shall not cease to be a Director;

2. 9.4: on the approval, by not less than 75% of the Directors then holding office, of a resolution removing a Director from office; or

2.9.5: death.

**c. Term of Office**

*By-law 2.6 Term:* A Director shall be elected or appointed for a term of three years. A Director's term of office shall be deemed to commence on May 1st of the year in which the Director was elected or appointed and such term shall expire three years after the deemed commencement date.

***Appointee's Obligations, Powers and Duties to the Board***

**2. Internal Sources: *Vancouver Foundation Act* and *By-laws***

**a. *By-law 2.1: Powers of the Board***

The Directors may exercise all the powers and do all the acts and things that the Foundation may exercise and do, but subject, nevertheless, to:

2.1.1: all laws affecting the Foundation;

2.1.2: these Bylaws; and

2. 1. 3 all rules and guidelines, including the Board of Directors Roles and Responsibilities, made from time to time by the Board which are not inconsistent with these Bylaws.

**b. Indemnification of Directors and Officers**

*By-law 8.5:* Each Director and each Officer of the Foundation will be indemnified by the Foundation against all costs, charges and expenses reasonably incurred in connection with any claim, action, suit or proceeding to which that person may be made a party by reason of being or having been a Director or Officer of the Foundation.

**c. Amending By-laws**

*By-law 9.1 Resolution to Amend Bylaws:* These Bylaws of the Foundation will not be amended, altered, abrogated or otherwise varied except by resolution of the Board passed by at least 75% of the Directors then holding office present at a meeting and entitled to vote thereon.

*By-law 9.2 Notice to Amend Bylaws:* Notice of the intention to amend these Bylaws shall be given to each Director at least seven days before such meeting.

**3. External Sources: Common Law**

**a. Directors’ or Governors’ Duties of Honesty and Care**

All directors owe their organizations (whether they are “not-for-profit” or “for-profit bodies”) the duties of loyalty and care, both originally developed by the courts at common law and now enshrined in the statutes governing all corporations—federal or provincial—incorporated in Canada.<sup>54</sup>

The duty of loyalty (also known as the fiduciary duty), requires directors to respect the absolute priority of the best interests of the organization over their personal interests or other parties’ interests. To discharge their duty of loyalty, directors must:

- act honestly and openly
- maintain confidences
- act independently
- avoid conflicts of interest and the appropriation of corporate opportunities<sup>55</sup>

The duty of care requires directors “[...] to act carefully and on an informed basis and to exhibit the diligence and skill that a reasonably prudent person would exercise in

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<sup>54</sup> Reiter, *supra* note 9, 42-43. See also: Hirshorn and Stephens, *supra* note 11, 12; and Lindsay, *supra* note 19, 16.

<sup>55</sup> Reiter, *supra* note 9, 44-45.

comparable circumstances. The duty of care encompasses an objective standard of what a reasonably prudent person would be expected to do in comparable circumstances.”<sup>56</sup>

<sup>1</sup> Therefore the Council member will be included in the distribution of agendas and supporting materials (including *in camera*) for Benchers and Executive Committee meetings.

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<sup>56</sup> *Ibid*, 43.

## Appendix 5 - Other Opportunities

### 1. Justice Education Society

Appendix 5	Body	Governing Statute/Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
5	Justice Education Society (“JES”) Board of Directors	<i>Society Act</i> JES By-law 3.2(f)	Law Society Benchers	1 person, as a JES member (members are also directors)

Current Appointment	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Ardith Walkem	2 years, maximum of 3 terms	0	9/1/2016	8/31/2018

### Contact Information

Mailing Address	Phone/Fax/Email:
Justice Education Society - Head Office 260-800 Hornby St. Vancouver, BC V6Z 2C5	Phone: 604.660.9870 Fax: 604.775.3476 E-mail: info@justiceeducation.ca

### Applicable Statutes

Governed by: the *Society Act*, RSBC, 1996, c 433. Subsection 35(1): Divisions 8, 9 and 10 of Part 3 (Finance) of the *BC Business Corporations Act* (BCBCA) apply

### Objects

#### 1. JES Constitution, Article 2

The purposes of the Society are to organize and carry on educational programs on the court system and legal system for the benefit of the community as a whole.

## ***Law Society's Appointment Authority***

### **1. JES By-laws<sup>57</sup>:**

#### **a. Appointment of JES Members**

*By-law 3.2:* A person is eligible to become a member if he/she:

- (a) supports the objects of the Society and
- (b) applies for membership to the Directors or their designate.

#### **b. Revocation of Appointment**

*By-law 3.5(7):* A person shall cease to be a member of the Society:

- (a) by delivering his/her resignation in writing to the Secretary of the Society or by mailing or delivering it to the address of the Society, or
- (b) on his/her death or in the case of a corporation on dissolution, or
- (c) on being expelled,
- (d) on having been a member not in good standing for a period of 30 days.
- (e) on revocation or expiry of his nomination.

*By-law 28:* The members may by special resolution remove any Director.

#### **c. Term of Office**

*By-law 3.4:* There in after a member shall be a member for 2 years from the time he/she becomes a member. Membership can be renewed for recurring two-year periods thereafter.

## **Appointee's Obligations, Powers and Duties (as Members and Directors):**

### **1. Internal Sources: JES Constitution and By-laws**

#### **a. Promoting Purposes of JES and Avoiding Personal Gain**

*JES Constitution, Article 4:* The above purposes of the Society shall be carried out without purpose of gain for its members, and any profits or other accretions to the Society shall be used for promoting its purposes, its purposes, and all of the above purposes shall be carried on an exclusively charitable basis.

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<sup>57</sup> Bylaws of Justice Education Society Approved September 1989. Revised: February 1990, April 1992, October 1999, June 2003, September 2003, September 2004, and February 2011



*JES Constitution, Article 5:* No Director or Officer shall be remunerated for being or acting as a Director or Officer, but a Director or Officer may be reimbursed for all expenses necessarily and reasonably incurred by him while engaged in the affairs of the Society.

**b. Exercising Powers of and Acting on behalf of the Society**

*By-law 23(1):* The Directors may exercise all such powers and do all such acts and things as the Society may exercise and do, and which are not by these by-laws or by statute or otherwise lawfully directed or required to be exercised or done by the Society in general meeting, but subject, nevertheless, to the provisions of:

- (a) all laws affecting the Society
- (b) these by-laws, and
- (c) rules, not being inconsistent with these by-laws, which are made from time to time by the Society in general meeting.

*By-law 23(3):* Notwithstanding any other by-law if a director is a judge, such a director shall have the power, duties, responsibilities and voting privileges as a director in the "judge's area of responsibility" only, except that a director who is a judge may act as chairperson at any meeting of the directors or a committee whether or not the matters dealt with are within the "judge's area of responsibility",

*By-law 42(3):* The Directors or members may add additional duties to any Director or officer or transfer duties among Directors or officers.

*By-law 44:* A member of the Directors shall

- (a) act honestly and in good faith and in the best interests of the Society,
- (b) exercise the care, diligence and skill of a reasonable and prudent person in exercising power and performing functions as a member of the Directors.

**c. Directors' Duty to Disclose Interests**

*By-law 45:* A member of the Directors who is directly or indirectly interested in a proposed contract or transaction with the Society shall disclose fully and promptly the nature and extent of his/her interest to each member of the Directors and otherwise comply with the requirements of the *Society Act*.

**d. Amending Constitution and By-laws**

*JES Constitution, Article 6:* There shall be no amendment to the Constitution or By-Laws without the written consent of the Attorney General of B.C. and this provision is unalterable.

## 2. External Sources: *Society Act* (statutory duties of honesty and care)

*Society Act*, s. 25 (1): A director of a society must:

- (a) act honestly and in good faith and in the best interests of the society, and
- (b) exercise the care, diligence and skill of a reasonably prudent person,

in exercising the powers and performing the functions as a director.

(2) The requirements of this section are in addition to, and not in derogation of, an *enactment* or rule of law or equity relating to the duties or liabilities of directors of a society.

*Society Act*, s. 26: Nothing in a contract, the constitution or the bylaws, or the circumstances of a director's appointment, relieves a director

- (a) from the duty to act in accordance with this Act and the regulations, or
- (b) from a liability that by a rule of law would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.