THE LAW SOCIETY OF BRITISH COLUMBIA

AGENDA

MEETING: Benchers

DATE: Friday, March 5, 2010

TIME: **7:30 am** Continental breakfast
8:30 am 2009 Group Benchers Photo (Atrium)
8:45 am Meeting begins (immediately following photo)

PLACE: **Benchers Room, 9th Floor, Law Society Building**

BENCHERS' OATH OF OFFICE: At the next regular Benchers meeting attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office (in the form set out in Rule 1-1.2) before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher.			
CONSENT AGENDA: The following matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. If any Bencher wishes to debate or have a separate vote on an item on the consent agenda, he or she may request that the item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.			
1	**Minutes of January 22, 2010 meeting**	Minutes of the regular session Minutes of the *in camera* session (Benchers only)	Tab 1 p. 100
2	**A&RS Proposed Rules Amendment: Extraordinary Action to Protect the Public: Rule 3-7.1**	Memorandum from Mr. Hoskins	Tab 2 p. 200
3	**Ethics Committee Proposed *Handbook* Amendment: Chapter 4, Rule 5, footnote 2**	Memorandum from the Ethics Committee	Tab 3 p. 300
4	**Revision to Section 1.3 - Statement of Investment Policy and Procedures**	Memorandum from the Finance Committee	Tab 4 p. 400
REGULAR AGENDA			
5	**President's Report**	Written report to be distributed electronically prior to meeting	

6	**CEO's Report**	Written report to be distributed electronically prior to meeting	
7	**Report on Outstanding Hearing & Review Reports**	Report to be distributed at the meeting	
2009-2011 STRATEGIC PLAN IMPLEMENTATION: MATTERS FOR DISCUSSION AND/OR DECISION			
8	**2009 AGM Members Resolutions on Participation of Aboriginal Lawyers in the Profession: Update**	Memorandum from Mr. Lucas and Ms. Tam Mr. Lucas to report	Tab 8 p. 800
9	**Discipline Guidelines Task Force: Proposed Mandate**	Memoranda from Mr. Cooke and the Discipline Guidelines Task Force Mr. Van Ommen to report	Tab 9 p. 900
OTHER MATTERS FOR DISCUSSION AND/OR DECISION			
10	**A&RS and Ethics Committee – Proposed Amendments: Ungovernability, R. 4-35 and *PCH* Ch 13 R. 3**	Memorandum from Mr. Hoskins Mr. Getz to report	Tab 10 p. 1000
11	**Publishing Benchers Agenda Packages to Law Society Website**	Memorandum from the Executive Committee Mr. McGee to report	Tab 11 p. 1100
FOR INFORMATION ONLY			
12	**LIF: Program Report for 2009**	Presentation from Ms. Forbes	
13	**Law Foundation of BC Funding Report: 2009 Pro Bono Law in BC**	Report from the Law Foundation	Tab 13 p. 1300
14	**2009 Benchers Survey Results**	Report from Ms. Papove	Tab 14 p. 1400
15	**Report on National CBA Council Conference**	Mr. LeRose to report	Tab 15 p. 1500
16	**2010 Benchers' Retreat Planning Update**	Memorandum from Mr. McIntosh Mr. McIntosh to report	Tab 16 p. 1600
17	**Bencher Meeting Seating**	2010 Bencher Meeting Seating Chart	Tab 17 p. 1700
IN CAMERA SESSION			
18	**Credentials Update: Revising the Mental Fitness Question**	Ms. Hickman to report	

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, January 22, 2010

PRESENT:

Glen Ridgway, QC, President
Gavin Hume, QC, 1st Vice-President
Bruce LeRose, QC, 2nd Vice-President
Haydn Acheson
Rita Andreone
Kathryn Berge, QC
Joost Blom, QC
Robert Brun, QC
E. David Crossin, QC
Leon Getz, QC
Carol Hickman
Patrick Kelly
Stacy Kuiack
Barbara Levesque
Jan Lindsay, QC
Peter Lloyd, FCA
David Mossop, QC
Suzette Narbonne
Thelma O'Grady
Lee Ongman
David Renwick, QC
Alan Ross
Catherine Sas, QC
Richard Stewart, QC
Dr. Maelor Vallance
Herman Van Ommen
Art Vertlieb, QC
Kenneth Walker

ABSENT:

Patricia Bond
Ronald Tindale

STAFF PRESENT:

Tim McGee
Stuart Cameron
Lance Cooke
Su Forbes, QC
Jeffrey Hoskins, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Lesley Pritchard
Susanna Tam
Adam Whitcombe
Carmel Wiseman

GUESTS:

Dom Bautista, Executive Director, Law Courts Center
Johanne Blenkin, Executive Director, BCCLS
Dean Mary Ann Bobinski, Faculty of Law, University of BC
Ron Friesen, CEO, CLEBC
Dean Donna Greschner, Faculty of Law, University of Victoria
Robert Holmes, President, Trial Lawyers Associations of BC
Jamie Maclaren, Executive Director, Pro Bono Law of BC
Stephen McPhee, Vice-President, CBABC
Mary Mouat, Chair, Law Foundation Board of BC Board
Jane Mundy, Reporter, Lawyers Weekly
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Joanne Silver, Director of Stakeholder Relations, CBABC
Ryan Williams, President, TWI Surveys Inc.

BENCHERS' OATH OF OFFICE

The Honourable Lance Finch, Chief Justice of British Columbia, administered the swearing / affirming of

- the President's Oath of Office by the Law Society's President for 2010, G. Glen Ridgway, QC
- the Vice-President's Oath of Office by the Law Society's First and Second Vice-Presidents for 2010, Gavin H.G. Hume, QC and Bruce A. LeRose, QC, respectively
- the Bencher's Oath of Office by Haydn Acheson, Rita Andreone, Kathryn A. Berge, QC, Joost Blom, QC, Robert C. Brun, QC, E. David Crossin, QC, Leon Getz, QC, Carol W. Hickman, Patrick Kelly, Stacy Kuiack, Barbara Levesque, Jan Lindsay, QC, Peter Lloyd, FCA, David W. Mossop, QC, Suzette Narbonne, Thelma O'Grady, Lee Ongman, David M. Renwick, QC, Alan Ross, Catherine A. Sas, QC, Richard N. Stewart, QC, Herman Van Ommen, Art Vertlieb, QC, Kenneth Walker.

CONSENT AGENDA.

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

A. ***BE IT RESOLVED*** that the Benchers create the Discipline Guidelines Task Force, with a mandate to be drafted by the Task Force and submitted to the Benchers for approval at the next opportunity.

1. Minutes

The minutes of the meeting held on December 11, 2009 were approved as circulated.

REGULAR AGENDA – for Discussion and Decision

2. President's Report

Mr. Ridgway referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President during the month of January (Appendix 1).

Mr. Ridgway also outlined his priorities as the Law Society's President for 2010:

- Supporting the effective and timely enhancement of the Law Society's discipline process, particularly in relation to the work of
  - the Discipline Guidelines Task Force
  - the Adjudication / Prosecution Task Force
- Supporting the development of a public oversight process to monitor the Law Society's effectiveness in promoting and protecting the public interest in the administration of justice, as called for by the Benchers at their 2009 Retreat
- Supporting the development of recommendations for enhancing access to and affordability of legal services in BC, particularly in relation to the work of
  - the Delivery of Legal Services Task Force

- the Access to Legal Services Advisory Committee

- Supporting the development of recommendations for enhancing the participation of Aboriginal people in BC's legal profession, particularly in relation to the work of
  - the Equity and Diversity Advisory Committee
- Supporting the "100 flowers that bloom" throughout the year
  - one or two compelling issues that may be brought forward for urgent action during the year by Benchers, staff or external events

3. CEO's Report

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

- Management's top five operational priorities for 2010
  - Task Force and Advisory Committee Support
  - Key Performance Measures (KPMs) – Process Review
  - Leadership Development and Skills Training
  - Managing in Turbulent Economic Times
  - Communications Strategy and Plan
- Update – Continuing Professional Development (CPD) Program
- 2009 Employee Survey
  - TWI Surveys President Ryan Williams presented an overview of the results of the 2009 Employee Survey
    - Fourth year that we have conducted a survey of all employees
    - Results are used to help us measure how we are doing as an organization and to help management develop action plans to better engage employees in the work and life of the Law Society
- Update – Search for New Chief Legal Officer (CLO) and Manager of Communications and Public Affairs
- Update – 2010 Olympics Planning
- Update – Bencher Orientation Session
- Paperless Meeting Pilot Project

4. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

GUEST PRESENTATIONS

5. Law Foundation of BC Annual Review

Law Foundation Board Chair Mary Mouat delivered a presentation to the Benchers, reviewing the Law Foundation's

- Legislative mandate
- Mission statement
- Vision
- Values
- Strategic Priorities
- Finances
- Programs and Projects Funded
- 2009 Highlights

Ms. Mouat thanked the Law Society for its support in 2009, noting particularly the contribution of the Trust Assurance department, led by Manager Felicia Ciofitto, in raising more than $400,000 for the Law Foundation by identifying trust account balances upon which interest should have been paid to the Foundation.

6. University of Victoria Law School Report

Dean Donna Greschner delivered a presentation to the Benchers, reviewing

- Renovations to the Diana M. Priestly Law Library
- UVic Law Demographics
- LL.B. Curriculum
- Experiential Learning Programs
  - Clinical Programs
  - Skills-based learning
  - Mooting
- Post-graduate Plans of the Class of 2009
- Locations of articles for the Class of 2009
- UVic Law Alumni (locations as of 2009)
- Tuition at Selected Law Schools
- Challenges & Opportunities

Dean Greschner thanked the Canadian Bar Association and the Law Society for their ongoing support of the University of Victoria's Faculty of Law.

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

7. Updating the 2009-2011 Strategic Plan

Mr. Lucas briefed the Benchers on proposed revisions to the Strategic Plan, referring them to his memorandum and the draft revised 2009-2011 Strategic Plan (at pages 700 and 714, respectively, of the meeting materials) for the substance of the suggested changes:

- The addition of Initiative 1-1 to reflect the next steps of the work of the Delivery of Legal Services Task Force;
- Re-wording of Strategy 1-3 to incorporate Aboriginal lawyers into the strategy, as well as the addition of initiative 1-3c to address the work being planned by the Equity and Diversity Advisory Committee aimed at retaining Aboriginal lawyers in the profession;
- Addition of Strategy 1-4 to include the decision to work (in cooperation with interested parties) toward developing an economic analysis of the justice system in British Columbia in order to better understand in empirical terms the economic benefit of funding the justice system and the systems that support the rule of law;
- Re-wording of Initiative 2-2 to reflect the direction given by the Executive Committee in the Fall of 2009;
- Re-wording of Initiative 2-3 to reflect the Benchers' resolution concerning this subject made in December, 2009;
- Re-wording of Initiative 2-3 to better reflect the purpose of this initiative;
- Addition of Strategy 2-7 and Initiative 2-7 to reflect the work to be done in connection with discipline processes.

Mr. Lucas advised that the proposed revisions arise from the discussion at the December 11, 2009 Benchers meeting and were vetted by the Executive Committee on January 14, 2010 for submission to the Benchers. He also identified two issues of importance that were not specifically mentioned in the revisions to the Plan:

- Implementation of two outstanding recommendations of the Retention of Women in Law Task Force (Recommendations 4 and 5)
  - 4. Consider the Feasibility of Creating a BC Think Tank for Regional/Mid-Size and Smaller Firms
  - 5. Consider the Feasibility of Additional Law Society Programs
- The current status of legal aid in British Columbia
  - Already being addressed under Goal 1 of the current plan – "Enhancing access to legal services"
  - Major focus of the 2010 Access to Legal Services Advisory Committee

Mr. Hume moved (seconded by Mr. Van Ommen) that the revised 2009-2011 Strategic Plan be approved.

Discussion followed, during which a number of issues were raised, including:

- The feasibility of implementing Recommendations 4 and 5 from the Retention of Women in Law Task Force is being studied by Law Society staff
- The three members resolutions passed at the 2009 Annual General Meeting were reviewed: it was noted that
    1. Resolution 1 (to amend the Strategic Plan to include Aboriginal lawyers as a priority under Strategy 1-3) will have been implemented if the changes to the Plan as proposed are approved
    2. Resolution 2 (to strike a Working Committee comprised of Benchers, Aboriginal Lawyers and Aboriginal law students that will review and update the 2000 report on "Addressing Discriminatory Barriers facing Aboriginal Law Students and Lawyers") will be substantially implemented through the focus of the Equity and Diversity Advisory Committee's attention on supporting Aboriginal lawyers and law students in 2010
    3. Resolution 3 (to establish a full time staff lawyer position whose sole purpose is to support Aboriginal law students, articling students and lawyers) will be discussed by the Benchers at their March 5, 2010 meeting
- In house counsel
    - Ethical issues and implications
- To be considered by the Ethics Committee during 2010
- Enhancement of access to legal services for British Columbians
    - Importance of the work of the Delivery of Legal Services Task Force in 2010
- Addressing the cost of legal services
    - Major focus of the Access to Legal Services Advisory Committee in 2010

The motion was carried.

REGULAR AGENDA – Other Matters for Discussion and/or Decision

8. LSBC Submission to the Special Committee of the Legislature for Review of the Freedom of Information and Protection of Privacy Act ("LSBC Submission")

Mr. Hoskins briefed the Benchers on the Law Society's participation in previous statutory reviews of the Freedom of Information and Protection of Privacy Act (the "Act"). He outlined the four recommendations set out in the draft LSBC Submission (at page 801 of the meeting materials – see Appendix 3), noting that the recommendations have been approved by the Executive Committee for submission to the Benchers.

Mr. LeRose moved (seconded by Mr. Ross) that the draft LSBC Submission and the four recommendations contained therein be approved and submitted to the all-party committee of the Legislative Assembly currently reviewing the Act.

The motion was carried.

9. FLS Council and Executive Committee Update

Ian Donaldson, QC reported to the Benchers as the Law Society's representative on the FLS Council and Executive Committee. Mr. Donaldson commented on the strength of LSBC's contribution to FLS projects and initiatives. He noted the quality and importance of the work being done by the Federation and suggested that the Benchers should try to view national initiatives through the lens of "the collective good" – using the "No-cash Rule" and the Model Code of Conduct as examples. Mr. Donaldson also commented that, since his election, he has found the proceedings of the FLS Council to be highly relevant and functional. He pointed to items 10, 11 and 14 on the current Benchers agenda as illustration.

Mr. Ridgway presented Mr. Donaldson with a gift on behalf of the Law Society's Benchers and staff. Mr. Donaldson expressed his deep appreciation for the kind thoughts and good wishes he and his family received from so many Benchers, members and staff of the Law Society during his recent illness.

10. Accreditation of the Canadian Common Law Degree

Mr. Stewart briefed the Benchers as Chair of the 2009 Credentials Committee. He provided background on the work of the FLS Task Force on the Canadian Common Law Degree (chaired by John Hunter, QC) leading to the release of the task force's Final Report in October 2009. Mr. Stewart noted that a Credentials subcommittee (Mr. LeRose, Ms. Fung and himself) was formed to review the report, following the Executive Committee's request to Credentials for such a review. He outlined the subcommittee's consultations with the deans of the UBC and UVic law schools and the task force chair and summarized their feedback.

Mr. Stewart advised the Benchers that the subcommittee carefully reviewed the Final Report in comparison to the Recommendations previously provided by the Benchers in relation to the task force's Consultation Paper. While the subcommittee noted some minor differences between the two, it was satisfied that these differences were not critical in consideration of its recommendation to approve the Final Report. After hearing from the UBC and UVic law deans and the task force chair, the subcommittee concluded that the Benchers should not deviate from the responses they previously provided. The subcommittee noted the suggestions (made by both the deans and Mr. Hunter)

- that an implementation committee should
    - be formed to give effect to the Final Report's recommendations
    - be given a clear mandate, sufficient to address any concerns surrounding compliance structures for law schools.

The subcommittee viewed the participation and support of the law schools as crucial to the success of any implementation of the recommendations set out in the Final Report.

Mr. Stewart moved (seconded by Mr. LeRose) that the Benchers adopt the draft resolution at page 1002 of the meeting materials:

> ***Be it resolved*** that:
>
> 1. The Law Society of British Columbia approves the Final Report of the Federation of Law Societies Task Force on Accreditation of the Canadian Common Law Degree issued October, 2009, and
> 2. The implementation issues arising from the recommendations in the report should be referred to an implementation committee that includes appropriate representation from Canadian Law Schools.

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

- whether the various law societies would have opportunity to review the implementation committee's conclusions before their approval by the Federation
    - Mr. Treleaven confirmed that the law societies would be able to review the implementation committee's conclusions before providing their respective Council representatives with voting instructions
- the concerns expressed on behalf of the Council of Canadian Law Deans
- the importance of appropriate representation of and participation by Canadian law schools in the implementation process
- the need for caution regarding the risk of compromising the quality of Canadian legal education
- the importance of ensuring that the work of any implementation committee be adequately funded

The motion was carried.

Mr. Ridgway thanked Dean Bobinski and Dean Greschner for their constructive comments and assured them that the Benchers had heard their concerns.

11. FLS Model Code of Conduct

Mr. Hume briefed the Benchers on behalf of the Ethics Committee. He reviewed the background of the development of the Federation's Model Code, outlined a process for considering the Model Code as a replacement for Law Society's current *Professional Conduct Handbook*, and set out the Ethics Committee's provisional views about adoption of the Model Code.

Mr. Hume referred to the Ethics Committee's memorandum (page 1101 of the meeting materials):

> It is our view that we ought to recommend adoption of the Code to you, with appropriate changes that are necessary to recognize local issues or improve the rules in some important areas. To the extent that the LSBC makes changes to the Code, we are of the view that those changes should, nevertheless, be done in the style of the Model Code and be consistent with its organization. It may be that where changes are made to the Model Code those changes should be highlighted in some way to draw attention to features that

> may not be common to other provinces or territories. We have not determined what changes we will recommend to the Code before it can be adopted in place of the current *Professional Conduct Handbook*, but we expect to consider carefully the views Benchers expressed in 2007 concerning various issues raised by the Code …

Mr. Hume noted that the Code's conflicts provisions and future harm/public safety exception rule are not yet completed and will have to be reviewed at a later date.

14. Quebec Mobility Agreement

Mr. Stewart briefed the Benchers as Chair of the 2009 Credentials Committee. He reported that there is a proposal presently before the Council of the Federation of Law Societies of Canada to vote on the Quebec Mobility Agreement ("QMA") which would allow reciprocity with members of the Barreau du Quebec.

Mr. Stewart outlined the background and purpose of the QMA:

- Background
  - In August 2002 the Federation of Law Societies of Canada accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers
  - Eight law societies, including the Barreau du Quebec ("the Barreau"), signed the National Mobility Agreement ("NMA") on December 9, 2002
  - The NMA recognized that special circumstances applicable to the Barreau would necessitate additional provisions to implement mobility between the Barreau and the common law jurisdictions
    - The signatories also recognized that the requirement for the Barreau to comply with regulations applicable to all professions in Quebec would delay implementation of the NMA with respect to the Barreau
  - In 2006, the law societies of all 10 provinces, including the Barreau, signed the Territorial Mobility Agreement, along with the law societies of all three territories
    - Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces, for a five-year period ending January 1,2012
- Purpose
  - The purpose of the Mobility Agreement ("QMA") is to extend the scope of the NMA in facilitating the reciprocal permanent mobility between the common law jurisdictions and the Barreau

Mr. Stewart noted that the Credentials Committee considered and endorsed the Quebec Mobility Agreement at its December 11, 2009 meeting for referral to the Benchers.

Mr. Stewart moved (seconded by Ms. Hickman) that that the Benchers direct the Law Society's Federation Council delegate to vote in favour of the draft motion of the Federation Executive which provides:

> **WHEREAS** the Barreau du Quebec (the "Barreau") has established a special category of membership known as the Canadian Legal Advisor to permit members of other Canadian law societies to practise law in Quebec on a restricted basis;
>
> **WHEREAS** the other Canadian law societies have indicated a desire to establish reciprocal mobility for members of the Barreau on a similar basis;
>
> **RESOLVED THAT** the Quebec Mobility Agreement attached as Appendix "A" be approved by Council for submission to member law societies for their execution.

The motion was carried.

15. Nominations to 2010 Finance Committee

Mr. Ridgway confirmed that two Benchers-at-large (at least one of whom is not a member of the Executive Committee) and one appointed Bencher are to be nominated to the 2010 Finance Committee. If more than two Benchers or more than one appointed Bencher are nominated, the vote must be by secret ballot (Rule 1-39(11)(a)).

Kathryn Berge, QC and David Renwick, QC were nominated as the Benchers-at-large members of the 2010 Finance Committee.

Stacy Kuiack was nominated as the appointed Bencher member of the 2010 Finance Committee.

16. Election of Appointed Bencher to 2010 Executive Committee

Mr. Ridgway reminded the Benchers that at their December 11, 2009 Benchers meeting, Barbara Levesque was elected as the appointed Bencher member of the 2010 Executive Committee. Ms. Levesque has since submitted her resignation as a member of the Executive Committee, following the provincial government's announcement that she was not re-appointed as an appointed Bencher for 2010-2011.

Rule 1-39(12) provides that if a vacancy occurs for any Bencher elected to the Executive Committee, "…the Benchers or the appointed Benchers, as the case may be, must hold an election to fill the vacancy at the next regular meeting of the Benchers."

Peter Lloyd, FCA was declared elected as the appointed Bencher member of the 2010 Executive Committee.

18. Discussion of Costs Awarded by Hearing Panels

Mr. Vertlieb reported as Chair of the Discipline Committee. He reviewed the background of the Law Society's present partial indemnity costs model and outlined three options for the Benchers' consideration:

- a no costs model
- a partial indemnity costs model

- a full indemnity costs model

Mr. Vertlieb referred the Benchers to the statement of policy goals at page 1807 of the meeting materials:

> The policy goals behind costs awards include:
>
> - indemnifying the successful party
> - encouraging both parties to settle issues
> - penalizing unreasonable behaviour
> - penalizing behaviour that increases costs
> - discouraging meritless claims
> - increasing accessibility to the legal system
>
> The Manitoba Law Reform Commission in *Costs Awards in Civil Litigation* (September 2005) adds to those goals (somewhat differently expressed) the following objectives for a costs regime:
>
> - simplicity and clarity
> - flexibility
>
> We suggest that these goals should be kept in mind in considering the different costs models.

Mr. Vertlieb endorsed the staff assessment that a "partial indemnity costs model" is the best approach (at page 1814):

> The partial indemnity model fares well when viewed through the policy goals lens:
>
> - it indemnifies the successful party although only partially
> - it encourages parties to settle issues
> - it penalizes unreasonable behaviour
> - it penalizes behaviour that increases costs
> - it discourages meritless claims
> - it increases access to the legal system
> - by allowing the successful party to recover at least a portion of the costs expended
> - it is flexible.

Mr. Vertlieb suggested that the use of a tariff system to administer the partial indemnity model would simplify claims for costs and add transparency to the Law Society's cost recovery process. He noted that the tariffs can fall out of touch with current market conditions unless reviewed at regular intervals.

Mr. Vertlieb also pointed out that there is an anomaly in the treatment of costs in discipline proceedings resolved by admissions under Rules 4-21 and 4-22, as discussed in Section 8 of the staff memorandum (at page 1816 of the meeting materials):

> Rule 4-21 was originally used, and probably originally designed, for admissions of minor misconduct that did not require a discipline outcome. However, it is most often used today in cases of serious misconduct where the member resigns and, typically undertakes not to practise for a period of time, recognizing that any hearing is likely to result in disbarment. There is no hearing pursuant to Rule 4-21. Rather, the respondent tenders his or her admission of a disciplinary violation to the Discipline Committee who may accept or reject it.
>
> Rule 4-22 is a hearing process used for all agreed disciplinary resolutions (i.e. reprimands, fines and suspensions) short of resignation. There is always a costs component to a Rule 4-22 resolution, even though the underlying conduct may be far less serious than in Rule 4-21 cases.
>
> There are also cases in which the respondent has indicated from the outset a willingness to be fully co-operative, admits the applicable misconduct freely, and agrees to and proposes a reasonable penalty. Despite that, the nature of the process is such that costs are inevitably incurred, notwithstanding the respondent's full co-operation from the outset. In such a case, the imposition of costs – or anything more than nominal costs – might be considered to be unfair, as the costs are incurred simply by the nature of the process, and not because of the conduct of the respondent in the proceedings.

Mr. Vertlieb moved (seconded by Mr. LeRose) that the Benchers adopt the partial indemnity model for recovering the costs of the Law Society's discipline and credentials processes, as set out at page 1817 of the meeting materials as Option 2, on the understanding that:

- a tariff system will be developed by staff for the administration of the Law Society's cost recovery process
    - to be presented to the Benchers at the first reasonable opportunity for review and approval in principle, and then
    - to be referred to the Act and Rules Subcommittee to draft appropriate Rules amendments
        - to be returned to the Benchers for review and approval
            - at the first reasonable opportunity, and
            - thereafter at least once every five years
- a policy work-up and recommendations will be provided by staff
    - to ensure consistency in the cost recovery policies and practices employed throughout the Law Society's regulatory processes, including
        - the Rules 4-21 / 4-22 costs anomaly discussed in Section 8 of the staff memorandum (at page 1816 of the meeting materials)

- to confirm the policy goal of providing panels with maximum flexibility, such that they can order "no costs" or "full indemnity" in appropriate cases, and
    - to consider the jurisdictional and legislative amendment issues associated with "full indemnity"

Discussion ensued, during which a number of issues were addressed, including:

- advantages of a tariff system, particularly transparency, consistency and simplicity
- advantages of flexibility in a tariff system, particularly capability to address vexatious proceedings
- whether the current full-day hearing fee of $750 (Rule 5-9)
    - is an adequate measure of the value of hearing panelists' time
    - is an adequate deterrent to vexatious proceedings
- importance of clarity and transparency in the Law Society's policy for recovery of regulatory costs
- challenges of balancing the policy goals of consistency and flexibility, particularly in hard cases

The motion was carried.

***IN CAMERA* SESSION**

Discussion of Bencher Concerns

This matter was discussed *in camera*.

WKM
2010-01-29

PRESIDENT'S REPORT
January, 2010

It has been a tradition for Law Society Presidents to let the other Benchers know what they have been doing over the period of time between Bencher meetings. Accordingly, this report is to let you know what I have been doing since January 1, 2010.

On January 1, 2 and 3, I did absolutely nothing.

On January 4, I attended the Welcoming Ceremony for Mr. Justice Brian MacKenzie, who is now the resident Supreme Court Judge in Nanaimo, having previously served as a Provincial Court Judge for about nineteen years, a short period of time as a lawyer, and periods of time with the Canadian National Basketball team and the New York Yankees.

On the afternoon of January 4, I spent two hours doing pro bono work, without any involvement with pro bono hierarchies or organizations.

On January 6, I received a telephone call from a constituent. This constituent indicated to me that he had done his CPD, but had not had it registered prior to December 31. As such, he was being fined. I asked him if he was called me to do something about his fine. He said "Yes." I indicated to him that this was the equivalent of someone getting a parking ticket in Crofton, British Columbia, and calling Queen Elizabeth for relief. He got the point. It is my understanding that staff is going to give some leeway to those members of the profession who completed their CPD's, but were unable, due to system problems or individual incapabilities, to register that participation, to be accorded the benefit of the CPD requirement.

On January 8, I traveled to our capital city and participated in the "kickoff" of the 100th anniversary celebrations of the British Columbia Court of Appeal. This involved a Special Sitting at the old Victoria courthouse, located in Bastion Square. It is the building now occupied by the Maritime Museum, but the courtrooms still exist on the top floor and apparently are still used by the Tax Court and our Provincial Courts from time to time. Twenty-three of the twenty-six Justices attended the Victoria event.

Local Member of Parliament and Minister in the Federal Cabinet, Gary Lunn, who is a lawyer, spoke at the event, as did I, our Attorney General, the President of the Canadian Bar Association (James Bond), and the President of the Victoria Bar Association (Charlotte Salomon).

I then had an opportunity for about an hour-long meeting with Gavin Hume and our Chief Executive Officer, Tim McGee.

In the evening we all went to a tremendous dinner featuring venison, at the home of a former member of the Law Society, the Lieutenant Governor. The speeches were "light," and surprisingly, the inhabitants of two positions—the Chief Justice of British Columbia and the Chief Justice of our Supreme Court—proved to be individuals who could perhaps save the prime time schedule of NBC, which apparently Jay Leno and Conan O'Brien have not been able to do.

On the evening of Wednesday, January 13, I journeyed to Vancouver, British Columbia, and on Thursday, January 14, I participated in some continuing Legal education, and later that afternoon I attended a meeting of the Executive Committee of the Law Society. It is my intention this year to attend continuing legal education, as I hope all Benchers do, to stress the importance we place on this direction that we have given to our membership.

I spent the morning of Friday, January 15, participating in Bencher orientation, the weekly meeting with the CEO, and in learning office and technological procedures. The Bencher orientation session will have to be given again to catch two of our newly-elected members who could not attend, whoever is elected from the Okanagan to replace Meg Shaw, and our newly-appointed Benchers. It will be held sometime in March, and we hope to coordinate that with the educational sessions on "Hearing Panels." The program put together by our staff is very informative, and I would certainly suggest that all Benchers consider attending some or all of the orientation sessions. Mr. Hume, Mr. LeRose and Mr. Vertlieb, all of whom have the propensity to give off the air of "knowing it all," found the sessions very useful.

As this comes to you early on January 20, I anticipate the late afternoon of January 20 being spent with award-winning students at the University of Victoria Law School, and January 21 being spent at the weekly meeting with the Chief Executive Officer, dropping in on some Committee meetings at the Law Society, and attending the tribute dinner for former Chief Justice Brenner. Friday, January 22, will be spent attending the Benchers' meeting, including the swearing in by Chief Justice Finch, and at about 2 o'clock journeying out to the River Rock Casino to participate in the meeting of Local and County Bar Presidents put on by the Canadian Bar Association, BC Branch. In the late afternoon and evening, I will be attending the Robert Guile Memorial Debate at the Law Courts Inn.

Future events include attending in Vancouver on January 28 for my meeting with Mr. McGee and the Law Society Town Hall Meeting, attending in Vancouver on February 4, and on the afternoon of February 5, journeying to the Kootenays for the Kootenay Mid-Winter Meeting. It looks as if I will be returning home on Sunday, February 7, and as a result of this service to the Law Society and my dedication to my position, missing all or part of the Super Bowl.

The Law Society of British Columbia

Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

January 22, 2010

Introduction

This is my first CEO's report to the Benchers for 2010 and I would like to wish you all the very best of the New Year. I would also like to extend a warm welcome on behalf of all the staff to our new President Glen Ridgway, QC. We look forward to working with all of you in the coming year.

In this report I would like to share with you senior management's operational priorities for the year. I have discussed these with the management team and with President Ridgway and with the Executive Committee. I have also met with Glen to review his Presidential priorities for 2010 (which he will speak to at the Bencher meeting) and I have incorporated the operational aspects of those into the priorities set out below. I have also included updates on a variety of different items.

1. Operational Priorities for 2010

The top 5 operational priorities for management in 2010 are as follows:

(a) Task Force and Advisory Committee Support

This year is an important year for execution of key items in our 2009-2011 Strategic Plan. The Delivery of Legal Services Task Force will be setting an aggressive timetable to be ready to report to the Benchers at the retreat in June. The Task Force on the separation of the prosecutorial and adjudicative function will be ramping up soon and establishing its work plan as will the planned Task Force on discipline guidelines. The Equity and Diversity Advisory Committee will take the lead in addressing the issues associated with aboriginal lawyers which are proposed additions to the Strategic Plan as well as monitoring and overseeing the outstanding recommendations from the former Task Force on the Retention of Women in the Law. The Policy group will be heavily engaged in supporting all of this work. We will also need to draw on other resources within the Law Society to help assess the operational impacts and feasibility of options before they become recommendations.

(b) Key Performance Measures (KPMs) – Process Review

The KPMs were first adopted by the Benchers in 2007 as the dashboard for monitoring the outcomes of our core regulatory functions to ensure we are meeting our objectives. Since then we have shared the KPMs with the government, media and the public at large to demonstrate our commitment to operational transparency and accountability. It is now time to re-assess and re-evaluate the appropriateness of the specific measures to ensure they continue to serve our public interest mandate effectively. To do this we will start

with a process review of each of our core functions. The Audit Committee oversaw the development of the KPMs in 2007 and will oversee this review in 2010. This project will require dedicated resources within the Law Society and a well developed project plan. I will be working with management and staff on these items in the coming weeks and I will report to the Benchers in more detail at the March meeting.

(c) Leadership Development and Skills Training

In the past two years we have made a significant investment in professional development and skills training for our managers and staff. Most recently, all managers completed individual 360° assessments and received customized feedback from our administrators. They are now working with the assessment results, and participating in training on coaching techniques, conflict resolution and team building. Each manager has also created an individual development plan focused on areas for personal development in 2010 to enhance their effectiveness as leaders. Seminars in the most sought after skills areas have also been held for staff and attendance in 2009 was oversubscribed in most cases. The goal in 2010 is to build on these important investments in our people and not lose momentum in terms of building a strong culture of leadership and a continuous learning environment.

(d) Managing in Turbulent Economic Times

In my initial report to the Benchers in 2009 I commented on the meltdown in the financial markets in Canada and around the world and said that while the impact of these turbulent conditions on the Law Society was difficult to predict we would be alert to demands on our services and manage our finances prudently. In the past year, we have seen a modest although not unexpected rise in the number of complaints against lawyers and insurance claims to LIF. TAF revenues (generated mostly by the real estate market) declined year over year but mostly in accordance with our projections. We finished the year on a solid financial footing and without the need for any service or program cutbacks. In short, I can say we were able to manage through the times reasonably well. While the intensity of the financial turmoil is lower as we head into 2010 we still face considerable external uncertainties. In response, we will continue to pay very close attention to our budgetary commitments and stay on track. The planning process at the Finance Committee resulted in much of the expense contingency for 2010 being removed. Because of this we will need to be particularly diligent throughout the year in tracking actual and projected expense. Our CFO, Jeanette McPhee, will be reporting to the Benchers on this and related matters throughout the year.

(e) Communications Strategy and Plan

2009 was a very challenging year on the communications front for a number of reasons: the demands of planning and supporting President Turriff's provincial speaking tour; exceptional media interest in an number of complex and controversial discipline cases and decisions; and a seemingly endless series of announcements of funding cutbacks to various justice agencies and corresponding requests for LSBC to comment. This was complicated by the fact that throughout most of the year we did not have a full complement of communications department staff. Most importantly perhaps we also lacked a communications plan and strategy which would enable us to be more proactive and responsive. In 2010 our priority will be to develop a strategic plan for communications with specific initiatives identified, and to move forward with implementing that plan. A new Manager of Communications will be appointed shortly who will have direct responsibility for overseeing this important work.

While the foregoing are our top operational priorities for 2010 we will continue to deliver our core regulatory services and member assistance services with a focus on efficiency and service excellence. In addition we will be also be allocating resources to a number of areas including the continuous refinement and administration of the CPD program, our government relations program, and the national initiatives of the Federation of Law Societies of Canada.

2. Update – Continuing Professional Development (CPD) Program

I would like to provide a brief update on the statistics for our CPD program as at January 1, 2010. Out of approximately 10,000 practising lawyers:

8,815	Completed the required 12 hours and answered "yes" to the ethics question
149	Completed the required 12 hours but did not report whether they met the ethics requirement
288	Reported some hours, but fewer than the required 12
602	Reported 0 hours

As of January 19, 2010 these numbers have improved slightly. Alan Treleaven will be available at the meeting to discuss these results and to report on steps being taken to follow up on members with incomplete results.

3. 2009 Employee Survey

Ryan Williams of TWI Surveys Inc. will present an overview of the results of the 2009 Employee Survey. This is the fourth year that we have conducted a survey of all employees. The results are used to help us measure how we are doing as an organization and to help management develop action plans to better engage employees in the work and life of the Law Society. I would welcome any feedback or questions you may have on the results or on the survey generally.

4. Update – Search for New Chief Legal Officer (CLO) and Manager of Communications and Public Affairs

I am pleased to report that we will be conducting short list interviews for the vacant CLO position in the next few weeks and that the short list interviews for the vacant Manager of Communications position are underway. The plan is to have final decisions made on candidates in early February (or shortly after the Olympics) so that we can have both positions filled by March 1st. I will be reviewing the shortlisted CLO candidates with the Ladder and providing them with opportunities to meet the candidates to provide any feedback.

5. Update – 2010 Olympics Planning

With the Vancouver 2010 Olympic Winter Games just a few weeks away, I thought it would be useful for the Benchers to have an update and review of the Law Society's planning for the Olympic period. Jeanette McPhee, in her capacity as chair of our staff committee for the Olympics, will be at the meeting to discuss these plans and to answer any questions.

6. Update – Bencher Orientation Session

Last week we conducted a new and improved one day orientation session for new Benchers. President Ridgway and the Ladder were in attendance and contributed to the program as did other Benchers who dropped in. The program materials are available to all Benchers and if there is sufficient interest we will repeat the session for all Benchers and tie that in with the arrival of our new Bencher from Kelowna.

7. Paperless Meeting Pilot Project

At the initial Bencher meeting in 2009 we announced the kick-off of a pilot project designed to test the feasibility of Benchers preparing for and attending Bencher and other Law Society meetings by using an electronic agenda and materials in conjunction with a laptop computer.

The three main reasons for the pilot project were:

(i) To take advantage of new information technology which is becoming increasingly widespread, convenient and effective;

(ii) To reduce the Law Society's photocopying costs for these meetings, which are substantial; and

(iii) To promote a greener working environment at the Law Society.

We said that depending on the results of the pilot project over the year we would consider whether the concept is one we should adopt more fully.

Look around the Bencher table at the meeting this week. Based on the increased number of "paperless" participants year over year, I think we can conclude that the pilot project has been a success. We are seeing similar success at the committee level as well. In particular, more than two-thirds of the Discipline Committee members now handle the voluminous materials for that committee electronically.

If you are not currently taking advantage of this capability and would like to, please contact Bill McIntosh, Manager of Executive Support. We will make all the necessary arrangements including providing "tech support" and training to help you get set up electronically and being available during meetings to assist with any issues.

Timothy E. McGee
Chief Executive Officer

The Law Society
of British Columbia

Submission to the Special Committee of the Legislative Assembly of British Columbia on the Review of the *Freedom of Information and Protection of Privacy Act*

January 22, 2010

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INTRODUCTION

The Law Society of British Columbia is the governing body of the legal profession in British Columbia. It was recognized and given statutory authority in legislation enacted in 1884. Today, the Law Society continues under the authority of the *Legal Profession Act*, which was adopted in 1998. The object and duty of the Law Society, as stated in s. 3 of the *Legal Profession Act*, is to uphold and protect the public interest in the administration of justice by, amongst other things, preserving and protecting the rights and freedoms of all persons.

The Law Society supports the principles of openness and accountability that the Freedom of Information and Protection of Privacy Act (the "*FOI Act*") is intended to promote. However, there are some concerns in connection with how the public interest in the administration of justice is affected by the *FOI Act* as well as about its application to a professional governing body such as the Law Society that we wish the Special Committee of the Legislative Assembly to consider. We have focused our attention on four points that we consider to be particularly important. The four points are set out in some detail below; however, they are best understood in the context of the Law Society's statutory mandate.

We start from the premise that both the *FOI Act* and the *Legal Profession Act* are intended to protect the public interest. The purposes of the *FOI Act* as set out in section 2(1) are to make public bodies more accountable to the public and to protect personal privacy by

- giving the public a right of access to records,
- giving individuals a right of access to, and a right to request,
- correction of, personal information about themselves,

- specifying limited exceptions to the rights of access,

- preventing the unauthorized collection, use or disclosure of personal information by public bodies, and

- providing for an independent review of decisions made under the Act.

The paramount duty of the Law Society under section 3 of the *Legal Profession Act* is to uphold and protect the public interest in the administration of justice by

- preserving and protecting the rights and freedoms of all persons,

- ensuring the independence, integrity and honour of its members, and

- establishing standards for the education, professional responsibility and competence of its members and applicants for membership.

In many respects the requirements of both Acts are congruent and the public is well served. However, in some respects the public interests served by the Acts are at crossed purposes. The Law Society's concerns arise from these points of tension. Dealing with information that is subject to solicitor-client privilege (a civil right of supreme importance in Canadian law) of is one place where such tension can arise; investigating allegations of lawyer misconduct or incompetence is another.

Some of the recommendations submitted by the Law Society in these submissions mirror recommendations made in 2004 (see recommendations 1 and 3 below). The balance of the recommendations are made as the result further developments in the law that we

consider affect the premises underlying the statute and therefore need to be addressed in the legislation.

I. SOLICITOR-CLIENT PRIVILEGE

1. Legal Advice

Section 14 of the *FOI Act* provides:

Legal Advice

> **14** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

In the *Lavallee* case (*Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink*, [2002] 3 S.C.R. 209, 2002 SCC 61) Madam Justice Arbour described solicitor-client privilege as a "*principle of fundamental justice and civil right of supreme importance in Canadian law*". The paramount duty to protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons means the Law Society's duty to protect the privilege of clients applies in all cases, not only in those where the Law Society is the custodian of the privilege as a result of its involvement with its members. The confidential relationship takes precedence over the rights of third parties to information, and only the client has the option of releasing privileged information arising from that relationship.

The Law Society's concern with section 14 of the *FOI Act* is that, by giving the head of a public body the discretion to refuse to disclose information that is subject to solicitor client privilege, it appears by implication to give discretion to disclose privileged information. In the *Lavallee* case Madam Justice Arbour concluded "*solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does*

not involve a balancing of interests on a case-by-case basis." In our view, there is no basis for a discretion to release privileged information. Disclosure must be refused.

RECOMMENDATION #1

The Law Society recommends that section 14 be made mandatory except when the public body is the client and can choose to waive privilege or, if the client is a third party, the client agrees to waive privilege.

2. Production to the Commissioner of information subject to solicitor-client privilege

Sections 44(1) and 44(3) of the *FOI Act* require production of any record to the Commissioner during an investigation or an inquiry under the *FOI Act*, and permit the Commissioner to examine such records, despite any privilege of the law of evidence. Subsection 44(2.1) provides that disclosure of a privileged document to the Commissioner at the Commissioner's request under subsection (1) does not affect the privilege. Although subsection 44(2.1) goes some way to limit the potential harm done by disclosure, in our respectful opinion, it does not go far enough.

The Law Society has a statutory obligation to investigate complaints made against lawyers, and in so doing may obtain privileged or confidential information of a lawyer's client. The Law Society can also be a party to litigation itself and, like other entities from time to time is required to seek advice and instruct counsel in connection with matters affecting its legal rights and obligations.

In the *Cypress Bowl* case (*B.C. Minister of Environment, Lands & Parks v. B.C. Information & Privacy Commissioner*, (1995) 16 B.C.L.R. (3d 64)), Mr. Justice Thackray confirmed that solicitor-client privilege is a principle that cannot be abridged by interpreting it narrowly, as the Commissioner had attempted to do by ordering the severance of certain documents related to giving legal advice. The Court held that s.4(2)

of the *FOI Act* (the "severance" provision) does not modify the common law principle of solicitor-client privilege which is incorporated into the *FOI Act* by s.14. Mr. Justice Thackray went on to say that the Commissioner does not need to look at documents that are subject to solicitor-client privilege in order to determine if they should be disclosed:

"*I have not seen Documents 254 and 311 and have no reason to do so. Neither, in my opinion, did the Commissioner. I am not suggesting that there are not cases wherein the Commissioner should not peruse the questioned documents. However, when a question of solicitor-client privilege is the issue that step should be taken only if necessary. It should never become routine."*

Since the *Cypress Bowl* case, the Supreme Court of Canada has had occasion to review in a significant manner, in a number of cases, the law concerning privilege, and has further and more firmly articulated the limits on disclosure of privileged documents. In the *Lavallee* case, the Supreme Court of Canada stated that solicitor-client privilege must remain as close to absolute as possible to retain its relevance, and that the Court must therefore adopt stringent norms to ensure its protection. In order to pass the scrutiny of the *Charter*, therefore, any statutory provision affecting the privilege must only do so as minimally as possible.

In *Lavallee*, the Court determined that the impugned statutory provision (s. 488.1 of the *Criminal Code)* more than minimally impaired solicitor-client privilege. Three problems identified in the *Lavallee* case included:

- the naming of clients
- the fact that notice may not be given to clients
- the possibility of access by the Attorney General to the information prior to the determination of privilege.

We are concerned that all three of those failings exist in s. 44(1) and (3) of the Act at present should the Commissioner compel a public body (such as the Law Society) to produce information or documents in its possession over which a claim of solicitor-client privilege of a lawyer's client may be made. Production of such information would, at the very least, name clients. There is no statutory provision for notifying the clients that their privileged information is being required to be produced. Should the privileged information disclosed amount to evidence of an offence, the Commissioner by virtue of s. 47(4) may disclose that information to the Attorney General. This provision constitutes a *substantial*, not a minimal impairment of privilege.

Moreover, the Supreme Court of Canada has made clear in *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* [2008] 2 S.C.R. 574 that an adjudication of privilege by the Federal Privacy Commissioner (or presumably anyone delegated by the Commissioner to make the decision), who is an administrative investigator and not an adjudicator, would be an infringement of privilege. While there are some differences between the federal *Personal Information and Protection and Electronic Documents Act* and the provincial Act that is the subject of these submissions, in our opinion the decision of the Supreme Court of Canada on this point is apposite. Consequently, the purpose for which s. 44(3) contemplates the production of documents over which a claim of privilege is made would itself be an infringement of the privilege and would apply equally whether the documents were third-party documents in the hands of the public body or of the public body itself.

The Supreme Court of Canada's decisions in *Goodis v. Ontario (Ministry of Correctional Services)* [2006] 2 S.C.R. 32 and in the *Lavallee* case state that any statutory provision permitting access to privileged documents must, in order to pass constitutional scrutiny, be "absolutely necessary" and "no more than minimally impair the privilege." In our submission, access to privileged documents by the Commissioner is not "absolutely necessary" in these cases. Nor would such access no more than "minimally impair privilege". If the Commissioner were, in error, to determine that the documents were not privileged, that privilege would be absolutely impaired as the documents would

ultimately be disclosed to the party seeking them, and the privilege would be lost. This outcome is not "absolutely necessary", as a process that allows the court to make a determination, in a manner that we have in the past suggested, is available. The Law Society therefore urges that a process be developed through which contested claims of privilege can be decided by the Courts, which is the ultimate and proper arbiter of privilege.

RECOMMENDATION #2

We recommend that section 44(3) be amended to exclude from disclosure to the Commissioner all records that are subject to solicitor-client privilege. We recommend that where an issue arises about the validity of a claim of privilege, a process be devised that would permit the Court to rule on the issue, on notice to all persons whose privilege may be affected by the order.

II. DISCLOSURE HARMFUL TO LAW ENFORCEMENT – Section 15(1) and Schedule 1: Definition of "law enforcement."

Section 15(1)(a) of the *FOI Act* applies to Law Society investigations leading to disciplinary proceedings involving a penalty or sanction. The Information and Privacy Commissioner confirmed this in Order 163-1997. However, there are several other methods by which the Law Society protects the public that require investigations to which section 15(1)(a) might not apply.

Under Part 2 of the *Legal Profession Act*, the Benchers and the Credentials Committee are responsible for ensuring that no person becomes a lawyer in B.C. who is not of good character and repute or is otherwise unfit. It is common for an extensive Credentials investigation of an applicant to take place when there is a question of character or fitness. Preventing unfit persons from becoming lawyers is obviously a more effective way of

protecting the public than attempting to discipline them for transgressions affecting memebers of the public after they become lawyers.

Credentials investigations should have the same protection as investigations related to disciplinary functions performed by the Law Society. In the course of Credentials investigations, the Law Society frequently receives confidential information, often from confidential sources. Section 15(1) might not apply to protect that confidential information because the investigation does not or might not lead to the imposition of a penalty or sanction, and therefore, does not fall within the definition of "law enforcement" in Schedule 1 of the *FOI Act*.

Similarly, the Law Society maintains programs to determine competence of individual members and, when they are found wanting, to assist them to achieve a higher level of competence. Again, investigations leading to voluntary remediation are arguably not included in the definition of "law enforcement" because the do not or might not lead to the imposition of a penalty or sanction.

The Law Society is authorized by section 33 of the *Legal Profession Act* to conduct audits to ensure that lawyers are maintaining proper records and following the requirements of the Act and the Law Society Rules concerning accounting for money held in trust. Audits may be initiated on the basis of confidential information, and confidential information is very often obtained during the audit. The purpose of the audit is to enforce the law with respect to lawyers' trust accounts, but it is not always clear that the audit could lead to the imposition of a penalty or sanction. We are concerned that other provisions of the *FOI Act* might not be able to prevent the disclosure of audit reports obtained through section 33 of the *Legal Profession Act* if they could be termed "routine inspections".

Our third recommendation reflects our view that the ability of the Law Society to conduct investigations in order to fulfill its statutory obligations should be the same whether the

issue is punishment and possible exclusion from practice of a current member, or preventing an applicant from becoming a member, or some other regulatory function.

RECOMMENDATION #3

We recommend that the definition of "law enforcement" in Schedule 1 be expanded to include:

> (d) proceedings or investigations authorized by an Act to be conducted by a professional governing body in furtherance of its duties and obligations in the public interest.

Alternatively, we recommend using more specific and restrictive language to define "law enforcement" as it applies to professional governing bodies:

> (d) proceedings or investigations conducted by a professional governing body in furtherance of its duties and obligations in the public interest, including but not limited to investigations or audits regarding
>
> (i) the qualification, character and fitness of an individual to become a member of the professional governing body or to be enrolled as a student under the authority of the professional governing body,
>
> (ii) the ability of a member of a professional governing body to practice and continue to practice a profession,
>
> (iii) a complaint, allegation or other information concerning the conduct of a member or former member of a professional governing body or a student under the authority of the professional governing body, and

compliance with rules or regulations governing the profession.

III. FEES – SECTION 75 AND REGULATIONS

The cost burden that has to be assumed by public bodies, and including in particular professional governing bodies, in complying with the provisions of the *FOI Act* remains of concern to the Law Society. Professional governing bodies receive no public funds. While the provincial government relies on a sizable tax base of over 3.7 million people, professional governing bodies are financed through assessments on relatively small groups of private individuals. Moreover, most of the applications under the *Act* made to governing bodies, such as the Law Society as an example, are made by persons who are not members of the governing body.

While it is, of course, appropriate for government to make the policy decision to provide certain services to members of the public at little or no cost and finance the cost of providing the services from general revenue, it is another thing to impose this requirement on relatively small organizations such as the professional governing bodies like the Law Society.

The *FOI Act* and the Regulations appear to contemplate that there are two types of persons who make applications under the *FOI Act*: individual applicants and commercial applicants. Policy considerations may militate in favour of ensuring that individuals who want to make applications are not precluded from doing so by reason of the risk of having to bear the costs of the public body in processing the request. Different policy considerations have been expressed, however, where the applicant is a commercial applicant. In such circumstances, where the application is made for information in connection with a business or venture for profit, the "actual cost" of the processing services is more justifiable, and this has been recognized in Reg 323/93.

In light of the Commissioner's Order F09-05, however, the Law Society submits that some statutory clarification is warranted. In that order, fees for certain services that the Law Society undertook in the course of processing an application under the *Act* were disallowed, including

- the cost of making working copies;
- staff time spent making working copies;
- staff time spent severing records;
- staff time spent drafting lists of records.

In many, and perhaps even all, circumstances, these sorts of services are inherent in or ancillary to the nature of activities listed in s. 75(1) of the *FOI Act.* Disallowing a fee for these services means, by necessity, that the public body cannot recover the actual cost of processing a request under the *Act* because some necessary services are, by virtue of the Commissioner's decision, apparently excluded by the *FOI Act*. Applicants, particularly commercial applicants, therefore are *not* having to pay the reasonable cost of their requests, and the public body is having to subsidize the cost of the service. It is not that the Commissioner considers these sorts of services to be necessarily *unreasonable*, just that it is not a s. 75(1)(a) "service."

In the past, a practice appears to have developed whereby a charge of 25¢ per photocopy (the "maximum fee" for photocopying) has been applied by public bodies through which, we expect, public bodies have attempted to recoup some of the ancillary or "overhead" services that may not be specifically provided for in the legislation. The charge of 25¢ per photocopy is the general charge allowed for photocopying services by the courts on costs matters and is generally approved by Registrars in reviews of lawyers' accounts. In Order F09-05, the Commissioner permits only the "actual cost" of photocopying. If this is to be the case, then the Law Society submits that the

ancillary costs must be recoverable at their actual cost. Otherwise, applicants, particularly commercial applicants, will receive a benefit at the cost of the public body. If the service is useful or reasonable in processing the application or is necessarily inherent in or ancillary to a service required to process a request, then the Law Society submits that it is reasonable to charge a commercial applicant the actual cost of that service. Statutory instruments should not place limits on the services that can be charged, at least to commercial applicants, provided they are reasonable services that aid in properly responding to the request.

RECOMMENDATION #4

We recommend that s. 75 and Regulation 323/93 be amended or clarified, in light of the Commissioner's Order F09-05 and particulary with respect to the cost of photocopying and ancillary services related to processing application. We recommend that public bodies be permitted to charge for *all* services that are useful or reasonable in the processing of a request made under the *FOI Act* by a commercial applicant.

Policy/Anna-ML/2010/Memos/0111foippa(subs)

Memo

The Law Society of British Columbia

To Benchers

From Jeffrey G. Hoskins, QC

Date February 2, 2010

Subject **Proposed Rule 3-7.1 -- Pre-citation suspension or practice conditions**

At the meeting in October 2009, the Benchers discussed options for interim measures that could be taken to increase public protection when a lawyer is under investigation by the Law Society or is charged in the criminal justice system. It was noted that, while the current section 39 and related Law Society Rules permitted the interim suspension of a lawyer who is the subject of a citation, or the imposition of conditions and restrictions on the lawyer's practice, there is no provision permitting that prior to the citation being authorized, even though, in rare cases, there may be a compelling public interest that requires such action.

The Benchers decided that the Law Society should seek an amendment to the *Legal Profession Act* to allow for the required power. In the interim, an amendment should be made to the Law Society Rules on the basis of the Benchers' general rule making power in the public interest.

Here is an extract from the *in camera* minutes of that meeting showing the resolution that was adopted:

> Mr. Vertlieb moved (seconded by Ms. Hickman) that the Law Society proceed with enactment of new rule(s) permitting the Law Society to impose interim measures before or without a citation, and proceed with appropriate amendment of the Legal Profession Act, on the understanding that the legislative amendment is to clarify and confirm the Law Society's authority to make the rule(s), not to confer or create new authority.
>
> The motion was carried.

I attach a draft of such rules considered and modified by the Act and Rules Subcommittee. A suggested resolution recommended by the Subcommittee is also attached for your consideration.

The following are some drafting notes:

- Unlike Rules 4-17 to 4-19, which govern interim suspension of a respondent to a citation pending the hearing of the citation, this proposed rule is intended to make it possible for the Law Society to suspend or place conditions on a lawyer who is under investigation, but not yet cited. That obviously would only happen in extraordinary circumstances, but because it is at the investigatory stage, the proposed rule is located in the complaint investigation part of the rules, not the disciplinary part;
- Subrule (1) establishes and limits the application of the Rule to lawyers and students who are under investigation by the Law Society, which could be the result of a criminal charge, but does not apply when the citation process has been invoked;
- Members of the Discipline Committee are disqualified from participating in a pre-citation proceeding to avoid the appearance of bias or conflict when the Discipline Committee decides on whether or not to cite;
- Subrules (4) to (13) provide for a "proceeding" (which is distinct from a "hearing" so as not to attract the full common law requirements that attach to a hearing), similar to that required in Rule 4-17;
- Subrule (5) allows for a proceeding to take place without notice to the lawyer or student concerned, but only if the majority of Benchers present are satisfied that notice to the lawyer or student would not be in the public interest;
- There is a procedure to reconsider, based on the same Benchers, if available, instead of setting up internal processes that will use up available Benchers and resources. Judicial review and/or an appeal to the Court of Appeal under section 48 would be available;
- An amendment to the provision allowing the proceeding for interim suspension when a citation has been authorized to proceed without notice to the respondent is recommended to make it consistent with the proposed Rule 3-7.1(5).

JGH
E:\Policy\Jeff\RULES\memo to Benchers on pre-cite suspension Feb 10.docx
Attachments: draft rule
suggested resolution

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Member in good standing

2-2 A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules ~~2-77(2), 3-18.5, 3-46(4), 3-74.1, 3-79.1, 4-17 or 4-40~~.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Extraordinary action to protect public

3-7.1 (1) This Rule applies to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) suspend a lawyer,

(b) impose conditions on the practice of a lawyer, or

(c) suspend the enrolment of an articled student.

(3) The Benchers referred to in subrule (2) must not include a member of the Discipline Committee.

(4) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.

(5) The proceeding referred to in subrule (4) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied that notice would not be in the public interest.

(6) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.

(7) All proceedings under this Rule must be recorded by a court reporter.

(8) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.

(9) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(10) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.

(11) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(12) Despite subrule (11), the Executive Director is not required to notify a complainant of a request made under subrule (10).

(13) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, to a specified date, time and place.

(14) An order made or varied under this Rule is effective until the first of

(a) final disposition of a citation, or

(b) rescission, variation or further variation under subrule (15).

(15) An order made under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articled student or discipline counsel.

(16) On an application under subrule (15) to vary or rescind an order,

(a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

(17) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (15), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate,

PART 4 – DISCIPLINE

Interim suspension, practice conditions or medical examination

4-17 (1) If there has been a direction under Rule 4-13(1) to issue a citation, any 3 Benchers may do one or more of the following ~~with or without notice to the respondent~~:

(1.111) The proceeding referred to in subrule (1.11) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Member in good standing

2-2 A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Extraordinary action to protect public

3-7.1 (1) This Rule applies to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

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(6) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.

(7) All proceedings under this Rule must be recorded by a court reporter.

(8) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.

LAW SOCIETY RULES

(9) Unless the Benchers present order otherwise, the proceeding is not open to the public.

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(11) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

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(17) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (15), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate,

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PRE-CITATION SUSPENSION OR CONDITIONS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules

1. ***By rescinding Rule 2-2 and substituting the following:***

2-2 A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.

2. ***By adding the following Rule:***

Extraordinary action to protect public

3-7.1(1) This Rule applies to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

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(17) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (15), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate,

3. ***In Rule 4-17:***

(a) In subrule (1) by striking the phrase "with or without notice to the respondent***"; and***

(b) By adding the following subrule:

(1.111) The proceeding referred to in subrule (1.11) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Chapter 4, Rule 5, footnote 2 of *Professional Conduct Handbook:* Change in obligation of insured

February 4, 2010

Purpose of Report: **Decision by Benchers**

Prepared by: **Ethics Committee**

Memo

The Law Society of British Columbia

To Benchers

From Ethics Committee

Date February 4, 2010

Subject **Chapter 4, Rule 5, footnote 2**

Chapter 4, Rule 5 and the footnote state:

> 5. A lawyer must comply with the terms of each professional liability insurance policy.[2]
>
> 2. Under both the Lawyers' Compulsory Professional Liability Insurance Policy and any excess professional liability insurance policy in effect, a lawyer is contractually required to give written notice to the insurer as soon as practicable after the lawyer becomes aware of any actual or alleged error or any circumstances which could reasonably be expected to be the basis of a claim or suit covered under the policy. A lawyer who fails to comply with this contractual requirement risks having coverage denied, assuming personal liability for any damages awarded. Rule 5 imposes an ethical duty to report to the insurer. Imposing such an ethical obligation is necessary, in the public interest, to reduce the risk of coverage being denied.

The Lawyers Insurance Fund has recently altered its policy to replace the words "as soon as practicable" with "immediately," and has asked to amend footnote 2 to reflect this change. The purpose of the change is to remove any argument that a lawyer might make that reporting late was, in fact, "as soon as practicable" for that particular lawyer, notwithstanding that a significant period of time has elapsed after the lawyer has become aware of circumstances that could reasonably be expected to be the basis of a claim under the policy.

We recommend the attached change to the *Professional Conduct Handbook* to give effect to the changed language in the policy.

Attachments:

- Draft revision to Chapter 4, Rule 5, footnote 2.

CHAPTER 4

AVOIDING QUESTIONABLE CONDUCT, INCLUDING IMPROPER COMMUNICATIONS

Errors and omissions

5. A lawyer must comply with the terms of each professional liability insurance policy.[2]

FOOTNOTES:

2. Under both the Lawyers' Compulsory Professional Liability Insurance Policy and any excess professional liability insurance policy in effect, a lawyer is contractually required to give written notice to the insurer ~~as soon as practicable~~ immediately after the lawyer becomes aware of any actual or alleged error or any circumstances which could reasonably be expected to be the basis of a claim or suit covered under the policy. A lawyer who fails to comply with this contractual requirement risks having coverage denied, assuming personal liability for any damages awarded. Rule 5 imposes an ethical duty to report to the insurer. Imposing such an ethical obligation is necessary, in the public interest, to reduce the risk of coverage being denied.

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Memo

The Law Society of British Columbia

To Benchers

From Finance Committee

Date February 24, 2010

Subject **Revision to Section 1.3 - Statement of Investment Policy and Procedures**

The Finance Committee recommends the following change to Section 1.3 of the Statement of Investment Policy and Procedures – Appendix 1 – Bencher Governance Policies.

Benchers Resolution:

'To adopt the attached 'Statement of Investment Policies and Procedures', which replaces Appendix 1 – Investment Guidelines of the Bencher Governance Policies.'

The changes are highlighted in the attached documents, and noted below:

Section 1.3 – Pooled Funds

The change authorizes the Finance Committee to review non-compliance issues reported by the investment managers of Pooled Funds, to accept the non-compliance, or take such further action as may be required, and to report any such action to the Bencher on a quarterly basis.

Appendix 1 – Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: July 18, 2005

Revised: May 8, 2009

Revised: March 5, 2010

Table of Contents

1. General

1.1 Application

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

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

1.2 Compliance

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

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

1.3 Pooled Funds

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

1.4 Effective Date

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

2. Responsibilities

2.1 Plan Administration

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

2.2 Delegation

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

2.3 Investment Manager

The investment manager is responsible for:

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

2.4 Standard of Care

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

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

3. Account Management

3.1 Overview of Accounts

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

3.2 Lawyers Insurance Fund - LT Account

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

3.3 BC Courthouse Library Society Account

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

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

3.4 Unclaimed Trust Funds Account

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

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

3.5 Captive Insurance Company Account

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

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

3.6 Lawyer Insurance Fund - ST Account

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

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

4. Fund Objectives

4.1 Investment Philosophy

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

4.2 Investment Objectives

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

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

4.3 Investment Constraints

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

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

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

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

5.2 Investment Management Structure

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

5.3 Investment Manager Mandates

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

5.4 Active Asset Mix Management

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

5.5 Re-Balancing

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

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

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

b. Foreign Equities:

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

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

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

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

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

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

6.2 Derivatives

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

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

6.3 Prohibited Transactions

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

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

6.4 Securities Lending

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

7. Investment Restrictions

7.1 Canadian Equities

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

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

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

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

7.2 Foreign Equities

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

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

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

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

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

7.3 Fixed Income, including Short-Term Securities

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

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for asset-backed securities of which 10% will be A rated or above and a maximum of 5% of BBB or investment grade, 15% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.
c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poors or Moodys. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.

d. Canadian federal government (or federal government guaranteed agencies) shall make up a minimum of 25% of the market value of the fixed income portfolio.

e. No more than 4% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies) with an A-rating or lower.

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

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

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

8. Other Matters

8.1 Valuation of Investments

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

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

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

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

8.2 Conflict of Interest

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

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

8.3 Proxy Voting Rights

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

9. Monitoring

9.1 Monthly Investment Reports

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

a. Portfolio holdings at the end of the month;

b. Portfolio transactions during the month;

c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and

d. Commentary on any material changes with the investment manager.

9.2 Quarterly Investment Reports

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

a. Rates of return for the portfolio and each asset class;

b. The rate of return of the Benchmark Portfolio;

c. Details of all asset-backed securities held;

d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and

e. A commentary on the markets including market outlook and management strategy.

9.3 Quarterly Compliance Reports

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

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

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

9.4 Meetings with the Law Society

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

a. Review the rate of return achieved by the funds;

b. Review capital market performance and expectations of future returns;

c. Discuss any areas of non-compliance with the Investment Guidelines, and comment on the implications of such non-compliance;

d. Provide any information concerning new developments affecting the firm and its services; and

e. Comment on the continued appropriateness of the Investment Guidelines.

10. Investment Guidelines Review

10.1 Review

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

10.2 Material Changes

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

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

11. Investment Guidelines Approval

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

Appendix 1 – Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: July 18, 2005

Revised: May 8, 2009

Revised: March 5, 2010

Table of Contents

1. General

1.1 Application

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

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

1.2 Compliance

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

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

1.3 Pooled Funds

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

1.4 Effective Date

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

2. Responsibilities

2.1 Plan Administration

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

2.2 Delegation

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

2.3 Investment Manager

The investment manager is responsible for:

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

2.4 Standard of Care

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

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

3. Account Management

3.1 Overview of Accounts

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

3.2 Lawyers Insurance Fund - LT Account

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

3.3 BC Courthouse Library Society Account

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

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

3.4 Unclaimed Trust Funds Account

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

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

3.5 Captive Insurance Company Account

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

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

3.6 Lawyer Insurance Fund - ST Account

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

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

4. Fund Objectives

4.1 Investment Philosophy

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

4.2 Investment Objectives

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

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

4.3 Investment Constraints

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

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

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

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

5.2 Investment Management Structure

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

5.3 Investment Manager Mandates

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

5.4 Active Asset Mix Management

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

5.5 Re-Balancing

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

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

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

b. Foreign Equities:

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

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

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

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

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

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

6.2 Derivatives

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

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

6.3 Prohibited Transactions

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

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

6.4 Securities Lending

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

7. Investment Restrictions

7.1 Canadian Equities

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

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

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

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

7.2 Foreign Equities

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

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

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

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

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

7.3 Fixed Income, including Short-Term Securities

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

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for asset-backed securities of which 10% will be A rated or above and a maximum of 5% of BBB or investment grade, 15% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.
c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poors or Moodys. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.

d. Canadian federal government (or federal government guaranteed agencies) shall make up a minimum of 25% of the market value of the fixed income portfolio.

e. No more than 4% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies) with an A-rating or lower.

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

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

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

8. Other Matters

8.1 Valuation of Investments

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

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

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

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

8.2 Conflict of Interest

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

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

8.3 Proxy Voting Rights

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

9. Monitoring

9.1 Monthly Investment Reports

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

a. Portfolio holdings at the end of the month;

b. Portfolio transactions during the month;

c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and

d. Commentary on any material changes with the investment manager.

9.2 Quarterly Investment Reports

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

a. Rates of return for the portfolio and each asset class;

b. The rate of return of the Benchmark Portfolio;

c. Details of all asset-backed securities held;

d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and

e. A commentary on the markets including market outlook and management strategy.

9.3 Quarterly Compliance Reports

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

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

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

9.4 Meetings with the Law Society

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

a. Review the rate of return achieved by the funds;

b. Review capital market performance and expectations of future returns;

c. Discuss any areas of non-compliance with the Investment Guidelines, and comment on the implications of such non-compliance;

d. Provide any information concerning new developments affecting the firm and its services; and

e. Comment on the continued appropriateness of the Investment Guidelines.

10. Investment Guidelines Review

10.1 Review

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

10.2 Material Changes

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

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

11. Investment Guidelines Approval

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

Memo

The Law Society of British Columbia

To Benchers

From Michael Lucas & Susanna Tam

Date February 22, 2010

Subject **2009 AGM Resolutions Related to Aboriginal Lawyers in the Profession - Update and Time Constraints**

This memo provides a progress update regarding three resolutions passed at the 2009 AGM related to the participation of Aboriginal lawyers in the profession. While resolutions passed at general meetings are not binding on the Benchers, members can attempt to compel a referendum on a resolution if it has not been substantially implemented within six months following the AGM; in this case, March 29, 2010. The Benchers should discuss these resolutions and communicate to the profession about any decisions made in connection with the resolutions in advance of March 29.

The Resolutions

A majority voting at the Law Society's 2009 AGM passed three resolutions regarding improving the representation and participation of Aboriginal lawyers in the profession. These resolutions arose out of the perceived lack of implementation of recommendations made in the Law Society's report from the Aboriginal Law Graduates Working Group in 2000, *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*.

The resolutions passed at the AGM directed that the Law Society:

- Amend the 2009-2011 Strategic Plan so as to include the retention of Aboriginal lawyers as a priority at Strategy 1-3 on page 4;
- Strike a working committee comprised of Benchers, Aboriginal lawyers and Aboriginal law students that will review and update the 2000 report on *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*; and
- Establish a full-time staff lawyer position whose sole purpose is to support Aboriginal law students, articling students and lawyers.

Implementing Resolutions

Section 13 of the *Legal Profession Act* provides:

13 (1) A resolution of a general meeting of the society is not binding on the benchers except as provided in this section.

(2) A referendum of all members must be conducted on a resolution if

(a) it has not been substantially implemented by the benchers within 6 months following the general meeting at which it was adopted, and

(b) the executive director receives a petition signed by at least 100 members in good standing of the society requesting a referendum on the resolution.

(3) Subject to subsection (4), the resolution is binding on the benchers if at least
(a) 1/3 of all members in good standing of the society vote in the referendum, and
(b) 2/3 of those voting vote in favour of the resolution.

(4) The benchers must not implement a resolution if to do so would constitute a breach of their statutory duties.

Progress Update

Resolution 1

Resolution 1 has been implemented. The Law Society's revised strategic plan includes the strategy of improving the retention rate of lawyers in the legal profession including, in particular, Aboriginal lawyers. This strategy, aimed at advancing the goal of enhancing access to legal services, includes an initiative to develop a business case for increasing diversity in the profession and retaining Aboriginal lawyers in particular.

Resolution 2

With respect to Resolution 2, rather than striking a new working group whose only purpose would be to review and update the 2000 report, the Equity & Diversity Advisory Committee plans to:

- Review the 2000 report;
- Examine the forthcoming results of the current demographic project;
- Review recent research regarding lawyer retention; and
- Consider recent reports from other jurisdictions.

The Advisory Committee (a Committee that includes the participation of Aboriginal lawyers) will review this material in order to develop a more comprehensive strategy to support Aboriginal lawyers and law students. This action plan meets the intent and purpose of Resolution 2, and therefore Resolution 2 should be viewed as having been substantially implemented.

Resolution 3

Resolution 3 has not yet been implemented. The Equity & Diversity Advisory Committee plans to make recommendations to support Aboriginal lawyers and law students after considering the data currently being gathered and reports that have been released since the 2000 report. While a full-time staff lawyer position may be an effective response, it may also be only one of several responses that can be developed and considered. Alternatively, the data and research being gathered and developed through other equity and diversity activities may identify other, possibly more effective, solutions that would be a better use of resources.

If the Benchers support this approach, their decision should be communicated to the membership in advance of the March 29, 2010 deadline.

Current Initiatives

The Equity & Diversity Advisory Committee continues to make progress on current initiatives and to identify opportunities to support Aboriginal lawyers. The demographic project is well underway; this project was initiated in response to the need for information regarding the representation and participation of Aboriginal lawyers in the profession. Data from the demographic project will also provide the foundation for the business case for diversity and advancing Aboriginal lawyers in particular.

In addition, Law Society staff is currently planning an event to celebrate and support Aboriginal lawyers, and to connect young Aboriginal lawyers, law students and those interested in the profession with senior, leading Aboriginal lawyers from various regions around the province. This event will be held either in June, to coincide with National Aboriginal Day (June 21), or in September, to maximize student participation. Staff will keep Benchers updated regarding this event.

With the support of a policy staff lawyer specifically responsible for equity issues, these current initiatives related to Aboriginal lawyers will comprise a considerable amount of the Equity & Diversity Advisory Committee's work for the year. Other tasks, of course, will include matters (such as follow up to the Report of the Retention of Women in the Law Task Force) that fall to the Committee as identified in the Strategic Plan.

Conclusion

The resolutions passed at the AGM were based on the perceived lack of action on the part of the Law Society to support Aboriginal lawyers and law students. It is important for the Benchers to communicate clearly the Law Society's commitment to increasing the participation of Aboriginal people in the profession.

Staff has already heard from members who are concerned about implementation of the resolutions, Resolution 3 in particular. If the Benchers choose to defer implementing Resolution 3 until recent research and potential responses are identified and considered as described above, then this decision and the reasons for it should be explained to the members.

Memo

The Law Society of British Columbia

To The Benchers

From Herman Van Ommen and Lance Cooke

Date February 24, 2010

Subject **Discipline Guidelines Task Force Mandate**

The Discipline Guidelines Task Force (the "Task Force") has considered the issue of its appropriate mandate. The Task Force regards the investigation and disposition of professional conduct complaints, leading to consistent and appropriate disciplinary outcomes in a reasonably timely manner, as a core function and as constitutive of the Law Society's ability to meet its primary mandate of protecting the public interest in the administration of justice. With that view in mind, the Task Force proposes the following two-part mandate statement for approval by the Benchers:

(A) To review the function and processes of the Discipline Committee and to make recommendations regarding the guidance and information that may be provided to members of the Discipline Committee to assist them in reaching appropriate and consistent dispositions of the professional conduct matters before them; and

(B) To review the Law Society's processes for professional conduct investigations, and the processes leading from directions to issue citations through to subsequent disciplinary hearings and results, and to make recommendations aimed at reducing the timelines currently required for these investigation and discipline processes, without sacrificing the Law Society's responsibility that its investigations and adjudications be careful and thorough and observant of the legal requirements of fairness and natural justice.

Background

At the September 2009 meeting the Benchers showed broad support for the proposition that the Law Society should work toward reducing the duration of its Professional Conduct investigations. Staff was directed to review the present investigation process, to consider measures for improving investigation timelines, and to report on the feasibility and means of achieving and maintaining timelines whereby almost all professional conduct investigations (well over 90%) would be completed within a one year timeframe and only exceptional cases, with specific justification, might extend beyond one year. In discussion it was noted that there had been no comprehensive review of the Law Society's complaints investigation and discipline processes for a number of years. Ultimately the response to the discussion at the September meeting, as well as to concerns raised in subsequent bencher discussions, has been two-pronged, in recognition

that there is a policy component as well as an operational processes component to the Law Society's regulatory function.

We understand that management's organization-wide operational processes review is now underway, under the guidance of Kensi Gounden, with the assistance of Stuart Cameron and the managers and staff of the Law Society's various departments. Mr. Gounden is at the same time coordinating the review and revision of the Law Society's Key Performance Measures, including those applicable to the Professional Conduct and Discipline Departments. The second prong of the response has been the creation of the Discipline Guidelines Task Force.

The Task Force will undertake a policy level review focusing first on part (A) of the mandate described above. The part (A) objective will be to recommend draft policy statements that, if adopted by the Benchers, could be provided to members of the Discipline Committee, to assist them in the consistent and appropriate disposition of the matters referred for their review. The Task Force will aim to cover the full range of disciplinary outcomes available to the Discipline Committee and to provide practical guidance on what makes specific outcome types appropriate or inappropriate in specific kinds of cases. (For example: what sort of conduct warrants a Conduct Review instead of a Conduct Meeting?) As part of this practical guidance approach, the task force will consider whether to recommend the adoption of a charging standard for those cases that may result in the Discipline Committee directing that a Citation be issued. It is also anticipated that the part (A) review will result in recommendations regarding the Law Society's policy on investigation abeyance requests and for handling situations in which abeyances are granted, as some policy-level issues regarding abeyances are discreet from the task of operating within the existing guidelines.

Part (B) of the mandate is intended to be as broad as a general review of relevant policies to determine what policy-level changes may be required or advisable to support and enhance the timely, efficient and effective handling of complaints through the investigation and discipline processes. It is anticipated that much of the Task Force's work under part (B) of its mandate will reflect the results of management's operational processes review. That is, it is anticipated that the operational level review may identify gaps or potential stumbling blocks in our present policy makeup, places where additional rules or the modification of existing rules and policies would provide Law Society staff with the tools required to further improve investigation and discipline timelines. The intention of the Task Force is to assist in meeting these needs by performing the required policy analysis and providing appropriate recommendations to the Benchers. The operational processes review may not be the only source of policy issues for the Task Force's attention. Members of the task force have significant personal experience through their involvements in various aspects of the Law Society's regulatory processes.

In addition, it is anticipated that comparative analyses focusing on other professional regulatory bodies may identify additional issues for the Task Force.

Timelines for Reporting

The intention of the Task Force is to work on parts (A) and (B) of the proposed mandate sequentially and to report on them in the same manner.

In advance of working some distance through the issues up for review, there is some uncertainty as to the time required to complete part (A) to the point of making recommendations to the Benchers. However, the Task Force anticipates reporting with recommendations on part (A) at the meeting scheduled for September 3, 2010. If matters progress such that the Task Force is able to issue a useful report on part (A) sooner, then it will do so at the earliest opportunity.

To some extent the Task Force's ability to progress through part (B) of the proposed mandate depends on the progress made by management's operational processes review and the volume of issues that review generates. There may also be some ordering of priorities required, depending on the outcome of the Benchers' debate on the part (A) recommendations. With those factors in mind, the Task Force will aim toward making a progress report to the Benchers on part (B) issues at the meeting scheduled for December 10, 2010. Any part (B) recommendations ready for Bencher debate at that time would be included with the general progress report.

Memo

The Law Society of British Columbia

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To Benchers

From Jeffrey G. Hoskins, QC

Date February 11, 2010

Subject **Proposed Rule and *Professional Conduct Handbook* amendments -- Ungovernability**

At the meeting at the Benchers Retreat in June 2009, the Benchers discussed options to incorporate the concept of ungovernability into the discipline process in order to better protect the public from lawyers who flout regulation by the Law Society. The Benchers referred the issue to the Act and Rules Subcommittee to consider and make recommendations as to amendments to the Law Society Rules so that discipline hearing panels could consider alleged ungovernability of a respondent at the penalty phase of any citation hearing. The Benchers also asked the Subcommittee to consider whether amendments to the *Professional Conduct Handbook* should also be considered. Further, the Benchers adopted a resolution calling for respondents to be notified at an early stage of the possibility of ungovernability being in issue. I attach the minute of the discussion at that meeting.

Law Society Rule amendments

The Subcommittee considered several approaches to this change in procedure, and came to the conclusion that it was not necessary to include in the Rules a great amount of procedural detail. The attached draft amends Rule 4-35, Penalty, by adding three subrules.

Proposed subrule (5) permits panels to consider ungovernability on the penalty phase of any discipline hearing, regardless of the nature of the conduct alleged in the citation. It leaves to hearing panels the job of working out a jurisprudence on what amounts to ungovernability and what the consequences are. That process has already begun in BC and has received extensive attention in some other jurisdictions.

Proposed subrule (6) provides a minimum of 30 days notice to a respondent before an enhanced penalty can be imposed for ungovernability. It is likely that the common law of fairness and natural justice would require a similar period of notice. It stops short of the opinion expressed by the Benchers that the earliest notice should be given. It was the view of the Subcommittee that that view should be implemented through a policy direction to discipline counsel, and not through a Rule that could then be the subject of challenge and litigation.

The Subcommittee was concerned that a discipline hearing panel ought to be able to raise the issue of ungovernability on its own motion and hear submissions from counsel. The panel should not be prevented from doing that by the notice requirement, which the panel could not comply with, not usually having information on the respondent's history in advance of the penalty hearing.

Subrule (7) is intended to allow for the issue of ungovernability to be considered, even if it only comes to light in the course of a penalty hearing, by adjourning the hearing until the respondent has had sufficient time to prepare a response.

Professional Conduct Handbook amendments

When the Benchers considered the issue of ungovernability, some were of the view that the *Professional Conduct Handbook* should include a requirement for lawyers to submit to the jurisdiction of the Law Society to regulate them and the practice of law. Other Benchers thought that it did not make sense to add that general obligation to the specific requirements in the Handbook.

The Subcommittee considered a number of possibilities, including amending the Canons of Ethics, but settled on expanding the current rule in Chapter 13, Responsibility to the Law Society. The current chapter addresses a number of duties, but so far as governability provisions, there is only the duty to respond to correspondence from the Law Society.

> **Responding to Law Society correspondence**
>
> 3. A lawyer must reply promptly to any communication from the Law Society.

In the end, the Subcommittee concluded that that requirement should be expanded to include other matters involved in accepting regulation from the Law Society, and the rule should be headed with a more general "Regulatory compliance".

Other matters that the Subcommittee says should be included in regulatory compliance are:

- filing documents and reports as required by the Law Society;
- cooperating with a Law Society investigation or audit;
- complying with orders made by panels, committees or the Benchers;

- not obstructing or delaying a Law Society investigation, audit or inquiry involving any lawyer.

There is also a general compliance provision requiring lawyers to comply with the Law Society' regulation of lawyers and law practices.

Having settled on that recommendation, the Act and Rules Subcommittee referred the proposed Handbook provisions to the Ethics Committee as the authority on revisions to the *Professional Conduct Handbook*. The Ethics Committee was prepared to approve the revisions as appropriate, but had some reservations about the concept of ungovernability. Here is the draft minute of that portion of the meeting:

> **4. CHAPTER 13, RULE 3: PROPOSED AMENDMENTS TO DEAL WITH LAWYER UNGOVERNABILITY**
>
> The Committee considered amendments to Rule 3 intended to give effect to the Bencher decision of June 2009 to permit the Law Society to apply the concept of ungovernability as a characterization of a respondent's conduct at the penalty stage of a discipline proceeding. The Committee agreed with the proposed amendment to Rule 3, but expressed concern that the undefined concept of ungovernability that the Benchers approved may complicate the discipline process while adding nothing to a discipline panel's ability to impose penalties on a respondent. The Committee noted that Law Society Rule 4-35(4) already permits a discipline panel to consider the professional conduct record of a respondent in determining a penalty.
>
> The Committee was of the view that the June 2009 Bencher decision should be reconsidered.

I have attached two suggested resolutions—one for amending the Law Society Rules, which will require a two-thirds vote of the Benchers present, and one for *Handbook* changes, which can pass by simple majority.

JGH
E:\Policy\Jeff\RULES\memo to Benchers on ungovernable Mar 10.docx
Attachments: minute extract
draft rule amendment
draft Handbook amendment
suggested resolutions

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Saturday, June 13, 2009

PRESENT:

Gordon Turriff, QC, President
Glen Ridgway, QC, 1st Vice-President
Gavin Hume, QC. 2nd Vice-President
Haydn Acheson
Rita Andreone
Kathryn Berge, QC
Joost Blom, QC
Robert Brun, QC
Leon Getz, QC
Carol Hickman
William Jackson
Patrick Kelly
Stacy Kuiack
Bruce LeRose, QC
Barbara Levesque
Jan Lindsay
David Mossop, QC
Thelma O'Grady
Peter Lloyd
Robert Punnett, QC
David Renwick, QC
Meg Shaw, QC
Richard Stewart, QC
Art Vertlieb, QC
Herman Van Ommen
James Vilvang, QC
Kenneth Walker
Dr. Maelor Vallance
David Zacks, QC

ABSENT: Terence La Liberté, QC; Ronald Tindale

STAFF PRESENT:

Tim McGee
Michael Bernard
Stuart Cameron
Su Forbes, QC
Jeffrey Hoskins, QC
Howard Kushner
Michael Lucas
Bill McIntosh
Jeanette McPhee
Alan Treleaven
Adam Whitcombe
Carmel Wiseman

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

5. Enhancing Public Confidence: Policy for Governability

Discipline Committee Chair Art Vertlieb, QC briefed the Benchers on the Report on Governability prepared on behalf of the Complaints Reduction Staff Group (page 500 of the meeting materials). He said that the issue of lawyers who routinely disregard the Law Society Rules goes beyond discipline to public confidence in the legal profession and its regulation by the Law Society. Mr. Vertlieb noted that Alberta, Manitoba and Ontario have already developed jurisprudence for regarding the repeated disregard of law society rules and communications as grounds for discipline proceedings and punishment, including disbarment.

Mr. Vertlieb said the Discipline Committee seeks the Benchers' direction on whether the Law Society should adopt the concept of "ungovernability" as a characterization of lawyer misconduct, and if so, on what regulatory framework should be used. He referred the Benchers to five framework options (page 512 of the meeting materials):

(i) to take no action but allow "ungovernability" to develop organically through the case law;

(ii) to adopt provisions in the *Professional Conduct Handbook* setting out a member's obligation to be governable;

(iii) to adopt rules setting out the procedure to be followed if the Law Society intends to seek disbarment on the basis of ungovernability;

(iv) a combination of (ii) and (iii);

(v) a combination of (i) and (iii).

Mr. Walker moved (seconded by Ms. Shaw) that the Benchers adopt option (iv) and that the Act and Rules Subcommittee be directed to:

(i) consider whether changes to the *Professional Conduct Handbook* are needed;

(ii) develop draft Rules for administering the regulation of professional conduct constituting ungovernability; and

(iii) report back to the Benchers with recommendations.

A full discussion ensued. Some Benchers felt that a provision in the PCH requiring lawyers to honour and obey Law Society Rules would be nonsensical and would undermine the authority of the Society and its rules. Some Benchers felt that "ungovernability" should be available both as an element of misconduct in a citation and as a penalty consideration; other Benchers felt that a citable offence of "ungovernability" would raise serious problems of proof and fairness, and accordingly that "ungovernability" should only be considered in the context of penalty. Some Benchers stressed that as a matter of fairness, notice should be given to the respondent at the earliest possible time in a discipline proceeding regarding the possibility that the issue of ungovernability might be raised at the penalty hearing.

The motion was carried.

Ms. Berge then moved (seconded by Mr. Zacks) that the Law Society may apply the concept of ungovernability as a characterization of a respondent's conduct at the penalty stage of a discipline proceeding, but not as an offence element in a citation.

The motion was carried.

There was further discussion on the issue of notice, and the Benchers agreed that notice should be given to the respondent at the earliest possible time in a discipline proceeding regarding the possibility that the issue of ungovernability might be raised at the penalty hearing.

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LAW SOCIETY RULES

PART 4 – DISCIPLINE

Penalty

4-35 (1) Following a verdict under Rule 4-34 adverse to the respondent, the panel must

(a) invite the respondent and discipline counsel to make submissions as to penalty,

(b) take one or more of the actions referred to in section 38(5) or (6) of the Act,

(c) include in its decision under this Rule

(i) any order, declaration or imposition of conditions under section 38(7) of the Act, and

(ii) any order under Rule 5-9 on the costs of the hearing, including any order respecting time to pay,

(d) prepare a written record, with reasons, of its action taken under subrule (b) and any action taken under subrule (c),

(e) if it imposes a fine, set the date by which payment to the Society must be completed, and

(f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.

(3) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (1)(d) to each party.

(4) The panel may consider the professional conduct record of the respondent in determining a penalty under this Rule.

(5) Regardless of the nature of the allegation in the citation, the panel may impose a penalty based on the ungovernability of the respondent by the Society.

(6) The panel must not impose a penalty under subrule (5) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the penalty hearing.

(7) The panel may adjourn the penalty hearing to allow compliance with the notice period in subrule (6).

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 13

RESPONSIBILITY TO THE LAW SOCIETY

~~Responding to Law Society correspondence~~Regulatory compliance

3. A lawyer must

(a) reply promptly to any communication from the Law Society;

(b) file documents or reports with the Law Society as required;

(c) cooperate with Law Society investigations and audits;

(d) comply with orders of panels, committees or Benchers;

(e) not obstruct or delay or otherwise interfere with investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm; and

(f) otherwise comply with the Law Society's regulation of the lawyer's practice.

The Law Society's disciplinary and competence procedures

4. A lawyer must not use the Law Society's disciplinary and competence procedures, or suggest to a client that such procedures be used, vexatiously or solely to further the client's civil claim against another lawyer.

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 13

RESPONSIBILITY TO THE LAW SOCIETY

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   (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

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UNGOVERNABILITY

SUGGESTED RESOLUTION (RULES):

BE IT RESOLVED to amend the Rule 4-35 by adding the following subrules:

(5) Regardless of the nature of the allegation in the citation, the panel may impose a penalty based on the ungovernability of the respondent by the Society.

(6) The panel must not impose a penalty under subrule (5) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the penalty hearing.

(7) The panel may adjourn the penalty hearing to allow compliance with the notice period in subrule (6).

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

DUTY TO LAW SOCIETY

SUGGESTED RESOLUTION (HANDBOOK):

BE IT RESOLVED to amend Chapter 13 of the Professional Conduct Handbook by rescinding rule 3 and substituting the following:

Regulatory compliance

3. A lawyer must

   (a) reply promptly to any communication from the Law Society;

   (b) file documents or reports with the Law Society as required;

   (c) cooperate with Law Society investigations and audits;

   (d) comply with orders of panels, committees or Benchers;

   (e) not obstruct or delay or otherwise interfere with investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm; and

   (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

REQUIRES SIMPLE MAJORITY OF BENCHERS VOTING

Memo

The Law Society of British Columbia

1100

To The Benchers

From The Executive Committee

Date January 28, 2010

Subject **Publishing the Benchers Agenda on the Law Society Website in Advance of Benchers' Meetings**

A suggestion was made at the December 11, 2009 Benchers' meeting that the Benchers' agendas be published on the Law Society website in advance of Law Society meetings. There was a general consensus expressed at that meeting that such a proposal would be consistent with the Law Society's desire to be open and transparent and provide advance notice of matters of important policy discussion to the public and media.

However, a Benchers' resolution passed on February 3, 2006 states as follows:

> It was moved (Preston/Zacks) to publish information considered by the Benchers at a Benchers meeting in open session *after* the minutes of the meeting have been approved. (emphasis added).

In light of this resolution, the posting of materials attached to the Bencher meeting agendas on the Law Society website before the meeting would be at odds with the resolution as passed by the Benchers.

The February 3, 2006 resolution was made after a consideration of options concerning the posting of the materials discussed at a Benchers' meeting, as discussed by the Disclosure and Privacy Task Force. The Report of that Task Force addressing the publication of information and documents used to develop policy is attached. Discussion of the particular issue of the publication of information provided to the Benchers for consideration in the open session of Bencher meetings commences at page 11.

The Executive Committee has reviewed the materials attached and has considered the suggestion for earlier publication made at the December 11, 2009 Benchers meeting. The Committee has concluded that the agendas should be published on the website in advance of the Benchers meetings and that therefore the resolution passed in February 2006 warrants reconsideration.

This matter is placed before the Benchers further to the suggestion made at the December 11, 2009 Benchers meeting, and further to the decision made at the recent Executive Committee meeting for the purposes of reconsideration by the Benchers of the resolution passed in February 2006.

MDL/al

Attachments.

The Law Society of British Columbia

DISCLOSURE OF INFORMATION AND DOCUMENTS USED TO DEVELOP POLICY

Date: January 12, 2006

Purpose of Report: Bencher Discussion and Decision

Prepared by: **Task Force on Disclosure and Privacy**
John Hunter, Q.C., Chair **June Preston**
Jean Whittow, Q.C. **Maureen E. Baird**

PART 1: INTRODUCTION

This memorandum examines disclosure and privacy issues with respect to information the Law Society uses to develop policy. This includes information provided to the Benchers to assist them in making decisions, and information obtained or generated in the policy development process but not distributed to the Benchers.

A brief examination of the policy development process is in order. It should be noted that the process is currently under review, however, changes to the process are unlikely to affect the nature of the information obtained.

The process starts with identifying a policy issue that needs to be addressed. Once that is done, the process of collecting information begins. Information may include legislation and case law, legal analysis including opinions from internal or external counsel, factual information from both internal and external sources, and information from other organizations about their policies.

Once the needed information has been gathered, a committee or task force, working with Law Society staff, or less frequently Law Society staff working on their own, analyzes the issue and develops policy options for consideration by the Benchers. The Benchers may require further research or analysis before reaching a decision. When the Benchers make a decision in principle, the matter moves to the implementation phase, which may require drafting and approving Rule amendments or amendments to the Professional Conduct Handbook or other Law Society policy statements.

PART 2: WHAT INFORMATION IS THERE?

The nature and source of the information may vary considerably. Information obtained or used in making policy decisions can be divided into three general categories:

1. Background information.
   - Published information such as: law, academic writing, reports from public, quasi-public and private organizations, news media, information on websites.
   - Consultation information such as surveys, submissions from individuals or organizations, and focus group results.
   - Statistical information from internal or external sources.
   - Confidential information such as: Law Society records that include personal information, draft legislation, information provided in confidence by other organizations.
   - Privileged information such as opinions from counsel.

2. Analysis and recommendations.
   - Policy analysis and recommendations may be prepared by committees, task forces, and Law Society staff. In any case, information may include internal

discussion papers, draft recommendations, and memoranda/reports provided to the Benchers.

3. End product
   - The end product is, of course a recorded decision that may take the form of Rules, Professional Conduct Handbook provisions, Bencher Policy statements, Law Society submissions to other organizations, or reports.

Information can also be categorized in terms of where in the policy development and decision-making process it is used. Again, there are three main categories:

1. Staff level: information that is gathered or analysis that is formulated at the staff level but does not form part of the material passed on to a committee, task force, or the Benchers.

2. Committee or task force: information or analysis that is either passed on to, obtained or formulated by a committee or task force, but does not form part of the material passed on to the Benchers.

3. Benchers: information or analysis provided to the Benchers. Within this category, we may draw a distinction between information or analysis considered in an open meeting and information or analysis considered *in camera*.

PART 3: GOVERNING PRINCIPLES

As has been discussed in relation to other kinds of information held by the Law Society, the *Legal Profession Act* and the *Freedom of Information and Protection of Privacy Act* (FOIPPA) restrict disclosure of confidential personal information and information subject to solicitor-client privilege. Those provisions apply to any information of that kind obtained or used in policy development. FOIPPA also includes provisions that permit a public body (which includes a local public body such as the Law Society) to refuse to disclose certain information that might be obtained or used in policy development, at least for a period of time. The relevant provisions are as follows.

FOIPPA s. 12(3) and s. 12(4)

> *(3) The head of a local public body may refuse to disclose to an applicant information that would reveal*
>
> > *(a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts or a draft of a private Bill, or*
> >
> > *(b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.*
>
> *(4) Subsection (3) does not apply if*

(a) the draft of the resolution, bylaw, other legal instrument or private Bill or the subject matter of the deliberations has been considered in a meeting open to the public, or

(b) the information referred to in that subsection is in a record that has been in existence for 15 or more years.

FOIPPA s. 13

***13** (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.*

(2) The head of a public body must not refuse to disclose under subsection (1)

(a) any factual material,

(b) a public opinion poll,

(c) a statistical survey,

(d) an appraisal,

(e) an economic forecast,

(f) an environmental impact statement or similar information,

(g) a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies,

(h) a consumer test report or a report of a test carried out on a product to test equipment of the public body,

(i) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body,

(j) a report on the results of field research undertaken before a policy proposal is formulated,

(k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,

(l) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body,

(m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or

(n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

(3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

FOIPPA s. 14

***14** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.*

FOIPPA s. 17(1)

***17** (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:*

(a) trade secrets of a public body or the government of British Columbia;

(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;

(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;

(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

(e) information about negotiations carried on by or for a public body or the government of British Columbia.

For the purposes of this analysis, the key point to note is that all the provisions in FOIPPA relevant to information obtained or used in policy development are permissive, with the exception of personal information, which must be protected. The head of a public body **may** refuse to disclose the information but is not required to refuse disclosure.

The Disclosure and Privacy Task Force has previously identified a number of factors to be considered in creating a disclosure policy that balances different interests. Particularly relevant to this discussion are the public interest, the profession's interest, Law Society operations, and collateral interests.

The public, often represented by the media, has some interest in Law Society policy and how it is developed, although arguably not as directly as the public interest in information

about individual lawyers. Clearly, Law Society policy decisions can affect the public in many ways, from the standards of competence and conduct set for lawyers, to their access to services from lawyers or other providers. Although the policy decisions themselves are probably of the greatest interest to the public, on occasion the information and analysis underlying the decisions may be important to the public's understanding. That said, there is no history of public requests for that kind of information.

Lawyers are directly affected by Law Society policy decisions, which affect aspects of their professional lives in some way. The more impact on lawyers a policy may have, the more interest lawyers have in how the policy is formulated. Disclosure of relevant background information and analysis may assist lawyers to understand the rationale for a policy decision and may engender support for, or at least compliance with, decisions.

Changes to disclosure policies may impact Law Society operations. When discussing changes to disclosure policy, we must always consider whether the proposed changes will require changes to the Law Society's budget, operations or staffing requirements and whether those changes represent good value in terms of the other interests being served.

Collateral interests include those of other participants in the justice system including government, the courts, and other organizations with which the Law Society has relationships. In some cases the Law Society may obtain either from or about another institution or organization information that is sensitive but not confidential, such that disclosure would not be improper but could cause harm or concern to that group. An example of such information was the results of a survey of the public conducted on behalf of the Law Society regarding perceptions of the legal profession and the courts. The results could be construed as critical of some aspects of the courts and judiciary, particularly if taken out of context. The Chief Justice was most unhappy that the Law Society disclosed the results publicly.

It should be noted that when the Law Society discloses any information, it loses absolute control of that information. Distribution of information to only one or two people may be so limited that for all practical purposes the information is not in the public domain. But the reality is that the Law Society no longer has complete control over that information and there is no way to stop the person who has received the information from distributing it further.

PART 4: CURRENT DISCLOSURE AND PUBLICATION PRACTICES

Information used at the staff level or the committee/task force level that does not find its way to the Benchers is not routinely disclosed. It is, of course, subject to FOIPPA and is disclosed to the extent required in response to a request for information. In general, when FOIPPA permits nondisclosure, information is not disclosed, although requests are considered on a case-by-case basis.

Disclosure of information that is provided to the Benchers in support of their policy-making function depends on whether the matter in question is considered in open session or *in camera*. Information intended for discussion in open session is distributed to

representatives of the organizations that regularly attend Benchers meetings (CBA, CLE, Law Foundation, law schools, Trial Lawyers, BCCLS), and in recent years to a member writing for the Lawyer's Weekly. Generally, these representatives are also members and, therefore, entitled to attend Benchers meetings, however, on occasion the representative of the BCCLS has not been a member, and for the first time a non-member journalist for the Lawyer's Weekly attended the Benchers meeting in September, 2005, with the President's permission. The practical reality is that material discussed by Benchers in open session is available to members and the public. Information intended for discussion in camera is distributed only to Benchers. In some cases, the Benchers make a specific decision to proactively publish information such as committee and task force reports.

The benchers have adopted the following policy about what matters will be considered in camera.

(a) The Benchers must meet in camera, with no staff, counsel or contractors present, to deliberate on a review of a panel decision or other matter that constitutes a hearing under the Legal Profession Act and Law Society Rules.

(b) The Benchers may meet in camera, with only those Law Society staff, counsel and contractors necessary for the discussion to be conducted, to discuss:

(i) matters relating to Law Society personnel; or

(ii) matters of a financial or personal nature or other matters in respect of which, in the opinion of the Benchers, the need for privacy outweighs the public interest in disclosure.

(c) The Benchers may meet in camera, with only Law Society staff, counsel and contractors, to discuss:

(i) litigation involving the Law Society and to seek or receive legal advice in any matter;

(ii) negotiations between the Law Society and another body or an individual, if the Benchers consider that disclosure might reasonably be expected to harm the interests of the Law Society;

(iii) any matter if, in the opinion of the Benchers, an open discussion would compromise the security of the Law Society or its property or of an identifiable individual; or

(iv) any matter if the Benchers consider that disclosure may reasonably be expected to harm the conduct of an investigation or enforcement of the Act, Rules or Professional Conduct Handbook.

If a request for information under FOIPPA is received that covers information circulated in support of an *in camera* discussion, disclosure is refused when permitted. Sometimes the need for confidentiality that causes the Benchers to consider a matter *in camera* is time limited. If the underlying reason for confidentiality no longer exists, information considered in support of a matter considered *in camera* may be disclosed in response to a request.

In theory a problem could arise if information considered by the Benchers *in camera* does not fall within an exception to disclosure under FOIPPA. In such cases, FOIPPA would prevail, but our experience to date has been that matters properly considered in camera are covered by exceptions to disclosure under FOIPPA, and the problem remains theoretical.

PART 5: ISSUES, OPTIONS AND RECOMMENDATIONS

The current disclosure practices differentiate between information obtained or used in the process leading up to consideration by the Benchers and information and analysis used by the Benchers to reach a decision. That distinction is real and useful. Between those two basic categories of information lies a third, which is the record of discussion and decisions made by committees and task forces (minutes). Sometimes committee or task force minutes are included in material provided to the Benchers, and sometimes they are not. The final category of information is material considered by the Benchers *in camera* .

For each category of information the following issues arise:

1. Should information be disclosed to persons outside the Law Society when disclosure is not prohibited by the *FOIPPA*?

2. If information will be disclosed to persons outside the Law Society,

    a. Should it be disclosed to members only, or to non-members as well?

    b. When should it be disclosed?

3. Should information be handled differently if it includes legal advice?

Accordingly, the following options and recommendations are developed from a consideration of these issues in relation to each category of information.

A: Information obtained or used at the staff or committee/task force level.

Option A1: Status Quo

This option would continue the practice of disclosing information obtained or generated by Law Society staff, committees or task forces only as required by *FOIPPA* and only in response to a request for information.

Option A2: Disclosure as permitted by *FOIPPA* in response to a request

This option would change the current practice in response to a request to allow the exercise of discretion to disclose information that may be but is not required to be withheld under *FOIPPA.*

Option A2(a): As for option 2 except for material containing confidential legal advice.

Option A3: Disclosure as permitted by *FOIPPA* without a request.

This option contemplates proactive distribution or publication of information without the pre-condition of a request.

Option A3(a): As for option 3 except for material containing confidential legal advice.

Recommendation

The task force recommends Option A1. The policy development process is intended to permit the Law Society staff and committees/task forces to consider the broadest range of options based on information from diverse sources. It is also intended to filter and select the most reliable and relevant information for consideration by the Benchers. Wide disclosure of information or analysis not considered by the Benchers would be of limited value to the public or members but would invite speculation and conjecture. It would also tend to reduce the willingness of other organizations to share potentially sensitive information and the willingness of staff or committees and task forces to explore potentially unpopular options. In terms of impact on Law Society operations greater resources would have to be devoted to assessing the permissibility of disclosure under *FOIPPA* and making the information available.

Under Option A1, confidential legal advice would not be disclosed because disclosure is not required under the *FOIPPA.* If information includes legal advice, the limited external interest is insufficient to warrant a waiver of confidentiality and privilege. Consequently, if Category A material is to be more widely disclosed (as in Options A2 or A3), the task force recommends excluding material containing confidential legal advice (Option A2(a) or A3(a).

B. Records of discussion and/or decision by committees and task forces that are not included in Bencher meeting materials.

Option B1: Status Quo

This option would continue the practice of disclosing minutes of committees or task forces only as required by *FOIPPA* and only in response to a request for information.

Option B2: Disclosure as permitted by *FOIPPA* in response to a request

This option would change the current practice in response to a request to disclose information that may be but is not required to be withheld under *FOIPPA*.

Option B2(a): As for Option A2 except for material containing confidential legal advice.

Option B3: Disclosure as permitted by *FOIPPA* without a request.

This option contemplates distribution or publication of information without the pre-condition of a request.

Option B3(a): As for option 3 except for material containing confidential legal advice.

Recommendation

In large measure the same considerations apply to Category B material as to Category A material. Committees and task forces might be unwilling to consider or discuss especially controversial issues or options if their deliberations will be made public. If a committee or task force discusses a sensitive matter and rejects a particular course of action, subsequent disclosure of the discussion might foment controversy unnecessarily. As with Category A material, considerable staff resources would have to be devoted to reviewing Category B material to ensure that no private or confidential information is disclosed. It might be argued that there is greater potential value or utility to members or the public in the information contained in committee and task force minutes because it permits a greater understanding of how a particular decision was reached. However, the task force [staff group] believes that the increase in value is still insufficient to outweigh the negative consequences of routine disclosure. Accordingly, the task force recommends Option B1.

As with respect to Category A material, the task force recommends Option B2(a) or B3(a) if broader disclosure of committee and task force minutes is contemplated.

C. Information provided to the Benchers for consideration in open session

Option C1: Status Quo

This option would continue the practice of distributing information to regular meeting attendees, including members and non-members, but not disseminating information more widely except in specific cases or pursuant to specific requests for information.

Option C2: Expanded disclosure to members.

This option would expand the disclosure of non-confidential information to members of the Law Society without specific reasons and without a specific request. The most likely means of achieving wider disclosure would be to make the information available on a members only portion of the Law Society website. Any other form of publication to members would be prohibitively expensive because of the volume of information.

Option C3: Expanded disclosure to members and non-members

This option would see the widest disclosure of non-confidential information considered by the Benchers. This would consist of publishing the parts of the Benchers meeting package that are discussed in open session. Materials considered *in camera,* that contain private and confidential information, or that were not actually discussed at the meeting would not be published. The reasons for not publishing private and confidential information or information considered *in camera* are obvious. The reason for not publishing material intended for discussion in open session but not actually discussed (because of time constraints or other reasons) is to avoid inviting external discussion or speculation about such information before the Benchers have had an opportunity to consider it. Material that is not discussed at one meeting but is discussed at a subsequent meeting would be published following the later meeting.

Benchers meetings are open to all members. Benchers meeting minutes are published on the Law Society website and are accessible to members and the public. Consequently, the argument that free discussion of issues and options might be curtailed is not applicable with respect to Category C material. Members have a clear interest in the Benchers' decisions and, therefore, an interest in the information the Benchers considered in making their decisions. Since the Law Society functions first to protect the public interest, the public also has an interest in Benchers' decisions and how they are made. In cases where member and/or public interest is known to be high, the Law Society already publishes information put before the Benchers. A wide range of committee and task force reports to the Benchers are available on the Law Society website. It is worth noting that the Law Society of Upper Canada publishes on its website all the material put before Convocation, except for matters considered *in camera*, after the meeting at which it was discussed. Essentially, the LSUC has adopted a practice that reflects Option C3.

The arguments against wider disclosure of Category C material are essentially practical. Both option 2 and option 3 would be prohibitively expensive using any method but publication on the Law Society website, and even making the information available on

the website could consume a quantity of Law Society resources that might not be justified in terms of the public or member interest in access to it. In practical terms both the public and the members are primarily interested in the outcome of policy decisions, and to the extent they are interested in the background and development of policy can obtain information on request. Requests for such information are relatively infrequent as compared to requests for information about specific cases (complaints, discipline, professional standards, and credentials matters) and a great deal of time and resources would be expended making available a large amount of interest of little or no interest. In some cases where the background information or analysis is of interest to either members or the public, the Benchers are likely to recognize that fact and proactively publish information. In the few remaining cases, disclosure can be made on the basis of specific requests, with reference to FOIPPA if necessary.

In keeping with the principle that the Law Society's processes should be as transparent as possible, subject to proper considerations of confidentiality and privacy, the task force [staff group] recommends widening the scope of proactive disclosure of Category C material. Considering that this material is already provided to some non-members, including a writer for the Lawyer's Weekly, it is difficult to justify restricting disclosure to Law Society members. Accordingly, the task force recommends Option C3.

There is a timing issue with respect to disclosure of Category C material. The current practice is to send material with the Benchers agenda to the regular guests who attend the meeting. This practice can result in matters being disclosed and/or discussed outside the Law Society before the Benchers have considered them. This effect is even more pronounced if discussion of a matter on the agenda is postponed for lack of time at the Benchers meeting or for some other reason.

One solution to this problem would be to restrict circulation of Category C material to Benchers and staff of the Law Society prior to the Benchers meeting. Guests would still receive the agenda before the meeting, but not the accompanying materials. They would received the materials at the meeting itself. The downside to this solution is that guests would have no opportunity to become informed before attending the meeting, and would derive less benefit from their attendance as a result. Some guests might also be offended at being "cut off". A soft solution, which the task force recommends, would be to continue the practice of sending material to guests in advance of the meeting but adding a request that they not disseminate it prior to the meeting.

D. Information provided to Benchers for consideration in camera session.

The task force does not consider there to be any sensible basis for considering expanded disclosure of information or analysis considered by the Benchers in camera, presuming that the matter is properly determined to be considered in a closed session. To do so would undermine the policy already established for deciding what matters should be considered in camera. In formulating that policy, the Benchers have already considered the balance between competing interests in privacy and openness and there is no pressing reason to reconsider that balance at this time. Accordingly, the task force recommends that information considered by the Benchers during an in camera session should be disclosed only as required by FOIPPA in response to a specific request.

THE LAW FOUNDATION OF BRITISH COLUMBIA

1340–605 Robson Street, Vancouver,
British Columbia, V6B 5J3 Canada
FAX 604/688-4586 • Phone 604/688-2337

February 8, 2010

Mr. Tim McGee
CEO and Executive Director
Law Society of BC
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. McGee:

Re: Pro Bono Law in British Columbia

I am writing to report to you on the use of the Law Society's pro bono funds in 2009. This report details funds advanced during the year, as opposed to grants made during the year. This, I believe, provides a more accurate picture of funding activities as some grants are made covering multiple years (for example, a grant might be made in 2007 which provides funding to an organization for the period 2007 to 2010).

As you know, the Law Foundation has, since 2001, been funding pro bono activities of the legal profession in the province. It has supported, together with the Law Society and the Canadian Bar Association, the development of Pro Bono Law BC. It has funded a variety of projects related to pro bono activities, including the development of the pro bono web site, the development of a poverty law training program for pro bono lawyers, the creation of a disbursement fund to pay for the disbursements incurred by lawyers doing pro bono cases, non-profit law seminars and the development of a cross referral system for pro bono service providers.

At the Benchers meeting of November 10, 2006, the Benchers of the Law Society passed a motion authorizing an annual payment to the Law Foundation of 1% of the general fund portion of the annual practice fee (approximately $100,000) to be distributed to organizations offering pro bono services to the public. In 2009, the amount received by the Law Foundation was $127,539.

Prior to 2006, the Law Foundation had funded a total of approximately $200,000 per year towards *pro bono* activities and committed to continuing to fund at least this amount out of its own, non-Law Society funds, in the future.

I am pleased to report to you that, in 2009, with this support from the Law Society, the Law Foundation was able to provide funding totalling $543,127 to pro bono organizations (if you include the Law Students Legal Assistance Program at UBC (LSLAP) and the Law Centre at the University of Victoria (UVic) the figure grows to $1,069,847, with those two programs receiving $166,920 and $359,800 respectively). Breakdowns of funding to, and statistics from, pro bono organizations in 2009 are attached.

As you will see from the attached statistics, there are a significant number of lawyers involved in pro bono activities in the province. There are a significant number of clients served. The profession can be proud of the pro bono contribution its members make.

On behalf of the Law Foundation, I want to thank you and the Benchers of the Law Society for your support of this important initiative.

I trust you will find the above in order. If you have any questions or comments, I can be reached at wrobertson@tlfbc.org or 604-688-7360.

Yours truly,

Wayne Robertson
Executive Director

cc: Bill McIntosh, Communication Officer

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***Pro Bono* projects funded in 2009**:

Pro Bono Law of BC (PBLBC):
- $30,000 Civil Chambers Pro Bono Duty Counsel Extension
- $10,000 Non-profit Law Seminars
- $150,000 Operating Grant

Pro Bono Law of BC and Western Canada Society to Access Justice:
- $60,000 Pro Bono Merger Project

Western Canada Society to Access Justice (AJ):
- $75,000 Transition and Merger Project;
- $75,000 Access Justice Pro Bono Clinic Enhancement Project

Salvation Army (SA): $50,000 Pro Bono Program

Multiple Sclerosis Society (MS): $50,000 Volunteer Legal Advocacy Program

Pro Bono Students Canada – UBC (PBS-UBC): $24,460 Community Placement Project

Pro Bono Students Canada – UVic (PBS-UVic): $18,667 Student Placement Program

In addition to these projects, the Foundation has provided PBLBC with a $100,000 fund from which to reimburse lawyers for their disbursements incurred in performing pro bono work. This fund was established in 2006 and is expected to be drawn down over a number of years.

Statistics
Pro Bono Activities by Lawyers in British Columbia
2009

Total number of lawyers participating in formal Pro Bono programs:

SA	AJ	PBLBC	MS	LSLAP	Total
209	379	388	28	80	1084

Number of lawyers volunteering in clinics:

SA	AJ	LSLAP	Total
209	379	80	668

Number of lawyers volunteering on roster programs:

PBLBC	MS	Total
388	28	416

Number of law students volunteering:

LSLAP	UVic	PBS-UBC	PBS-UVic	Total
200	42	55	44	297

Number of clinic locations:

SA	AJ	LSLAP	Total
23	78	23	113

Total number of clients served by clinics:

SA	AJ	LSLAP	UVic	Total
2,379	5,121	4,092	1,779	13,371

Number of clients served by roster programs:

PBLBC	MS	Total
405	163	568

Number of community organizations served:

PBS-UBC	PBS-UVic	Total
22	10	32

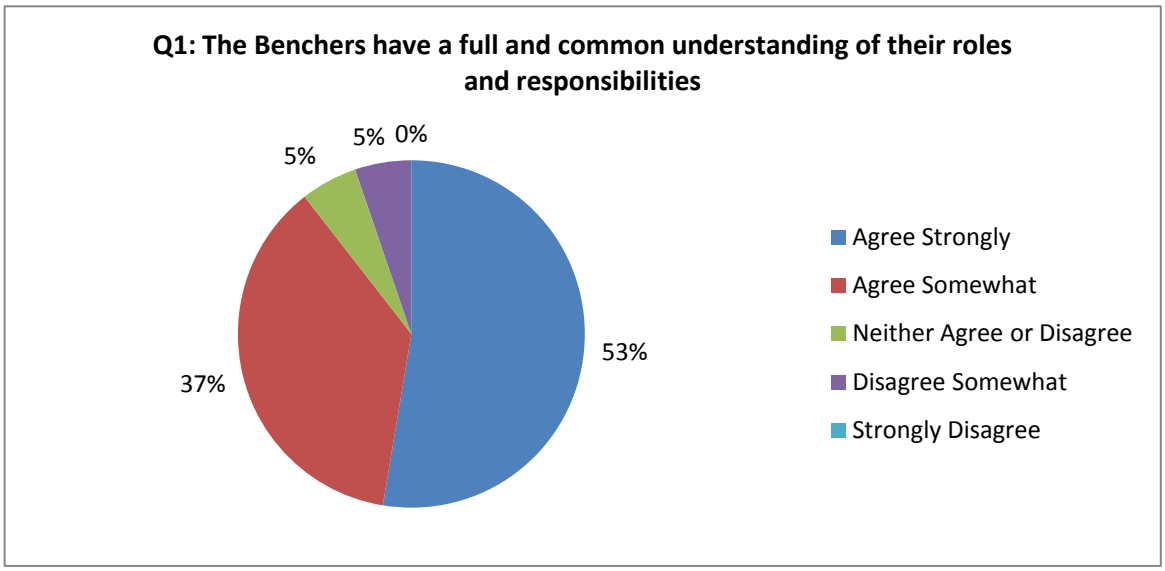
Number of lawyers volunteering on the Civil Chambers Pro Bono Duty Counsel project (PBLBC) : 48

Number of clients served by the Civil Chambers Pro Bono Duty Counsel project: 281

2009 Bencher Survey Results

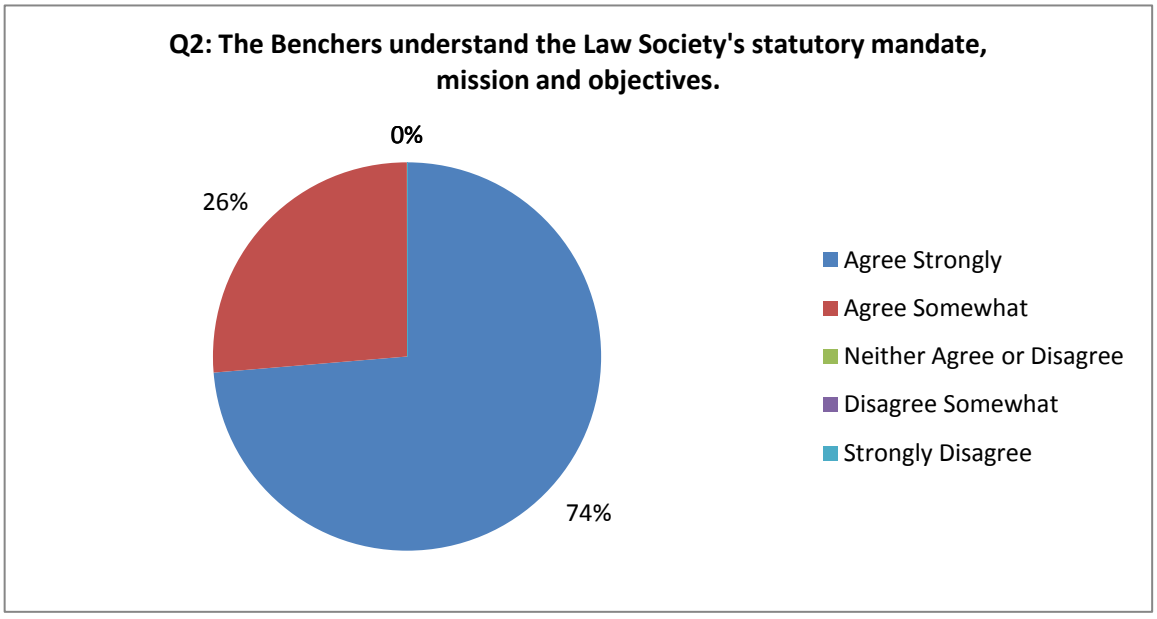
31 surveys distributed, 19 respondents

1. The Benchers have a full and common understanding of their roles and responsibilities



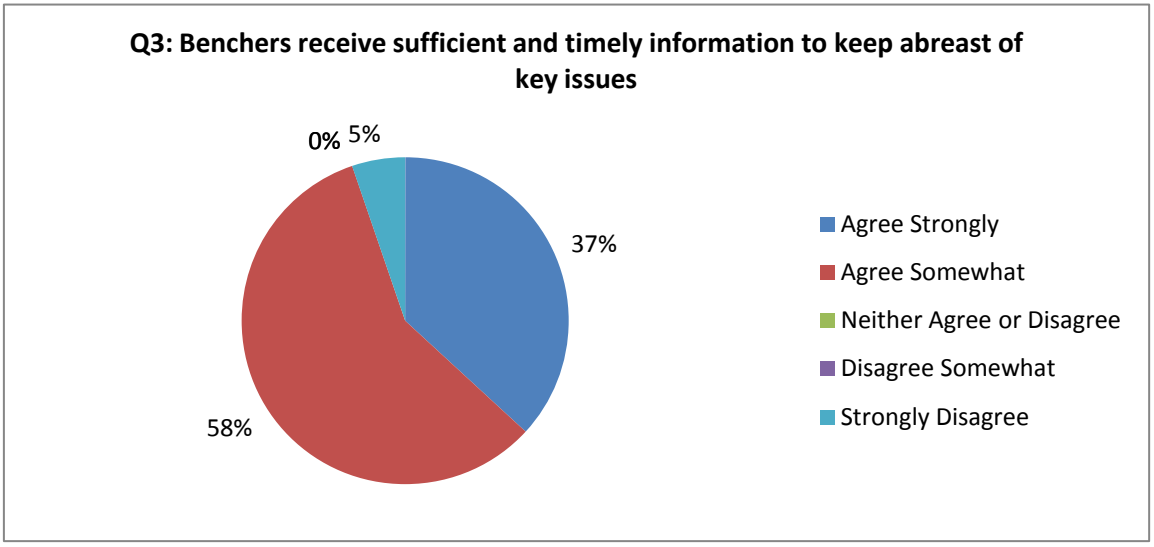
1				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
10	7	1	1	0

2. The Benchers understand the Law Society's statutory mandate, mission and objectives.



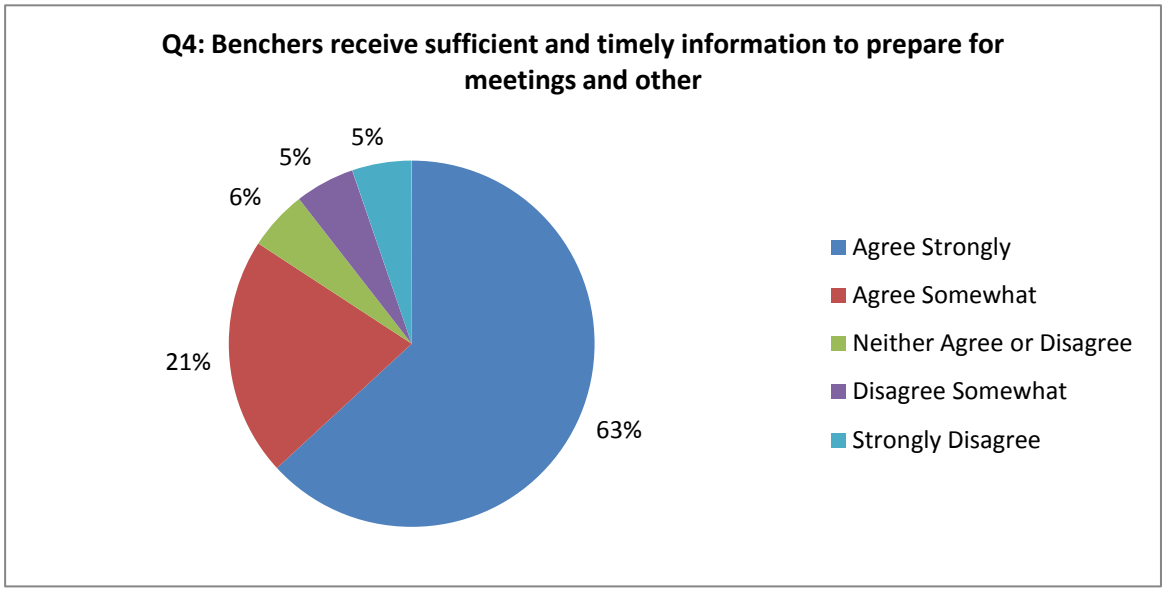
2				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
14	5	0	0	0

3. Benchers receive sufficient and timely information to keep abreast of key issues.



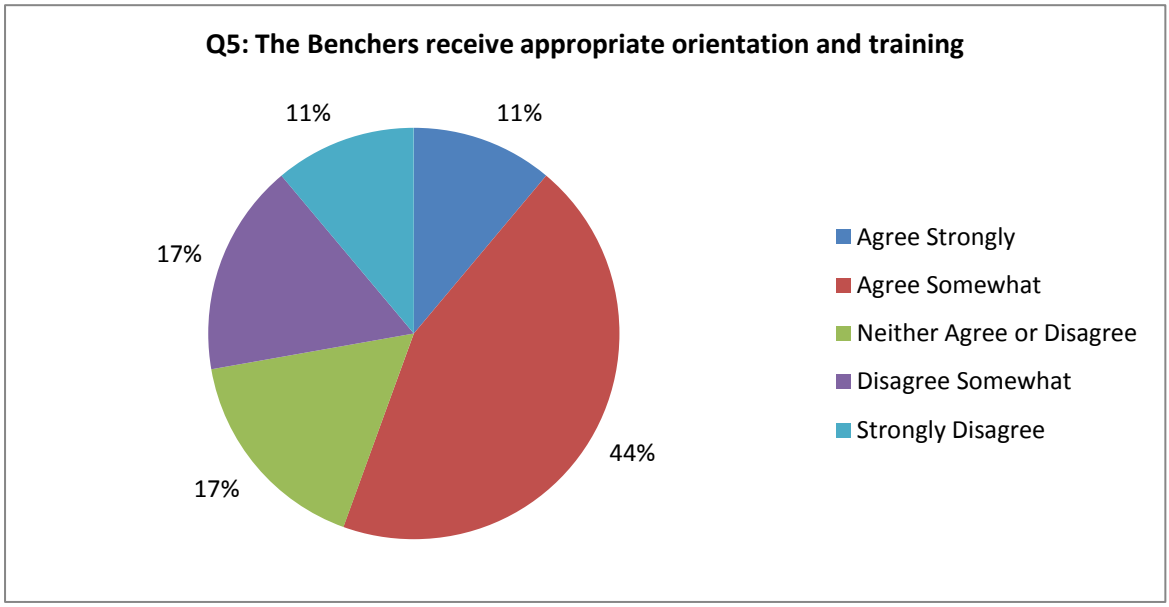
3				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
7	11	0	0	1

4. Benchers receive sufficient and timely information to prepare for meetings and other proceedings.



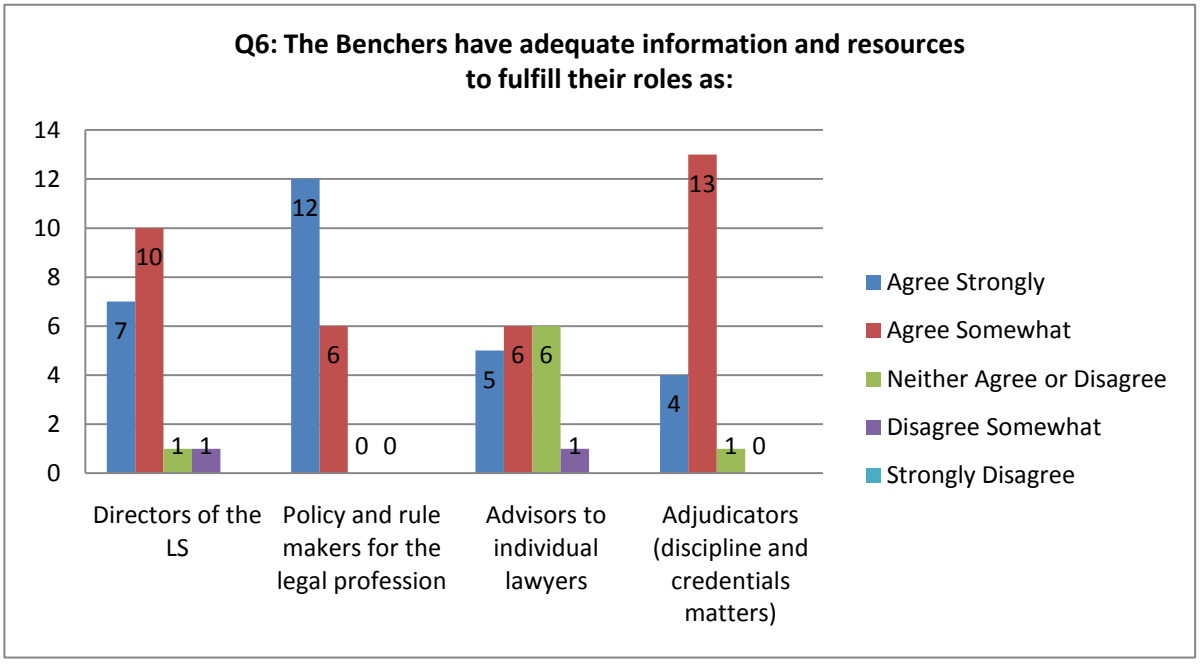
4				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
12	4	1	1	1

5. The Benchers receive appropriate orientation and training



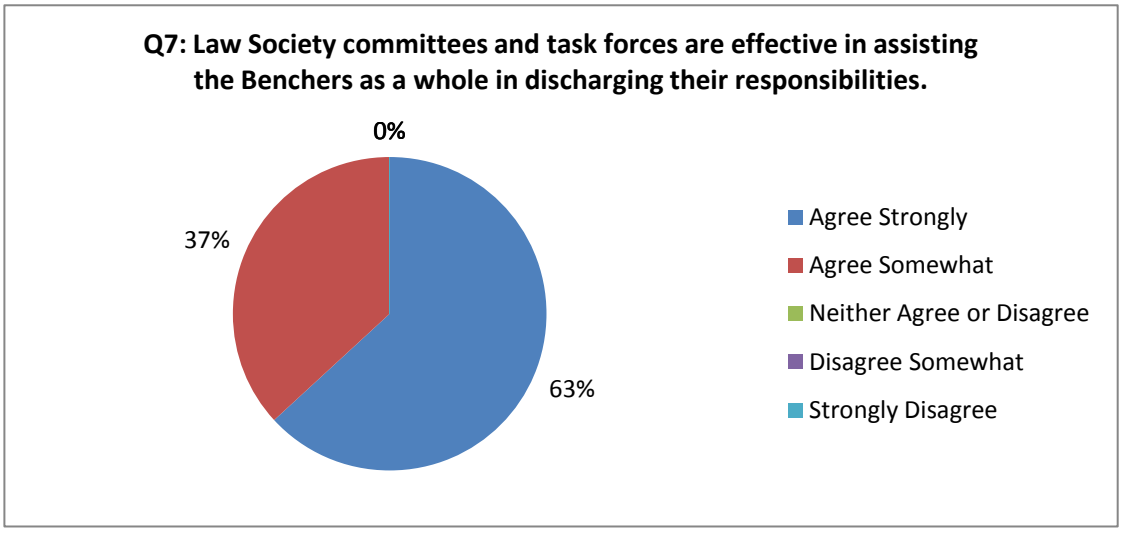
5				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
2	8	3	3	2

6. The Benchers have adequate information and resources to fulfill their roles as:
   a) directors of the Law Society
   b) policy makers and rule makers for the legal profession
   c) advisors to individual lawyers
   d) adjudicators (in discipline and credentials matters)



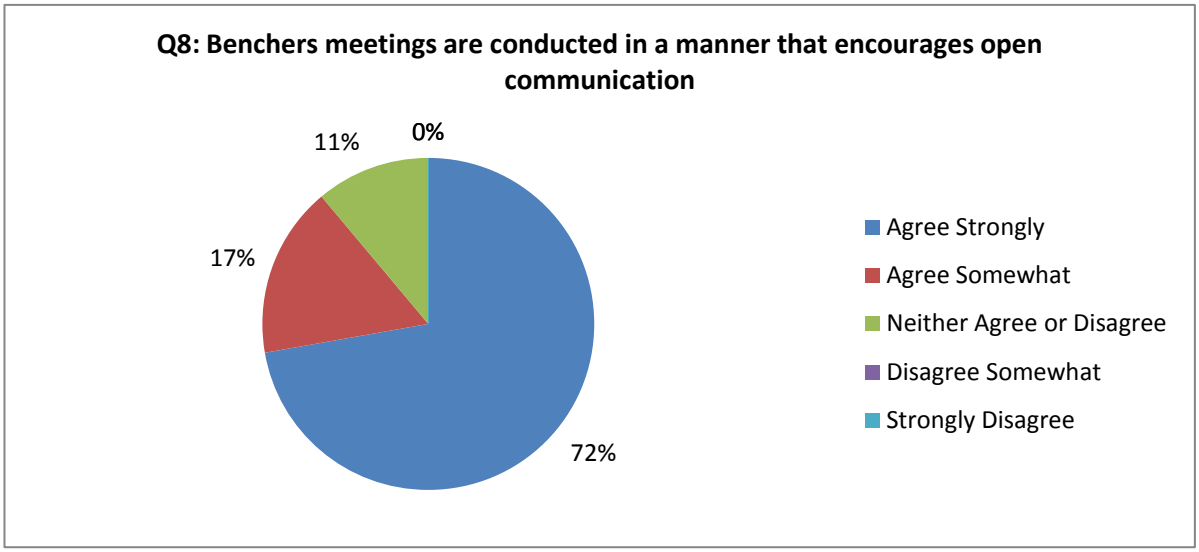
6				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
7	10	1	1	0
12	6	0	0	0
5	6	6	1	0
4	13	1	0	0

7. Law Society committees and task forces are effective in assisting the Benchers as a whole in discharging their responsibilities.



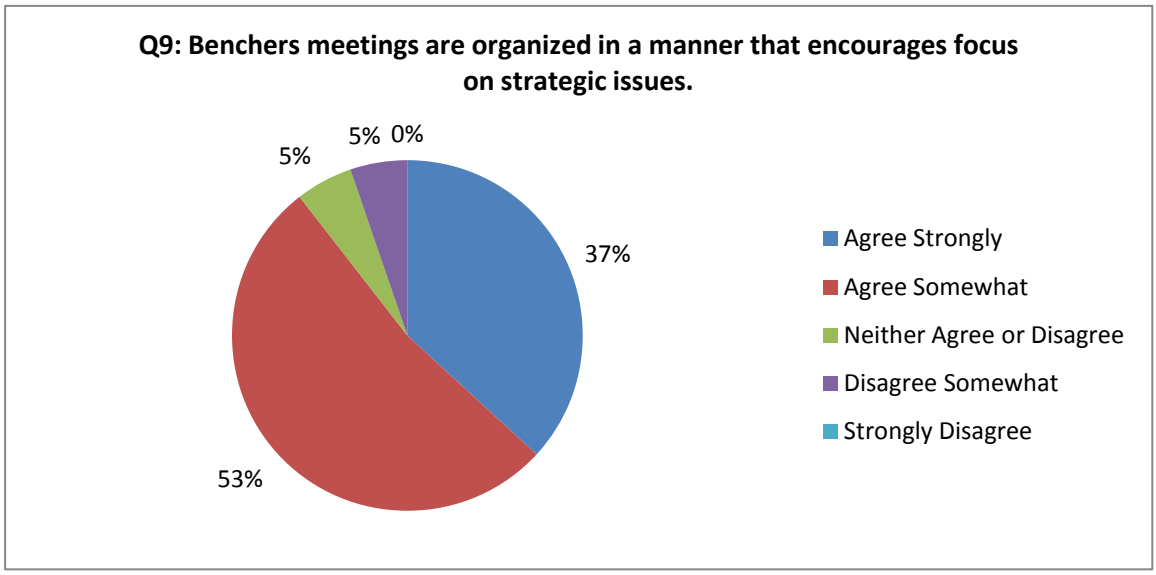
7				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
12	7	0	0	0

8. Benchers meetings are conducted in a manner that encourages open communication and participation of all Benchers.



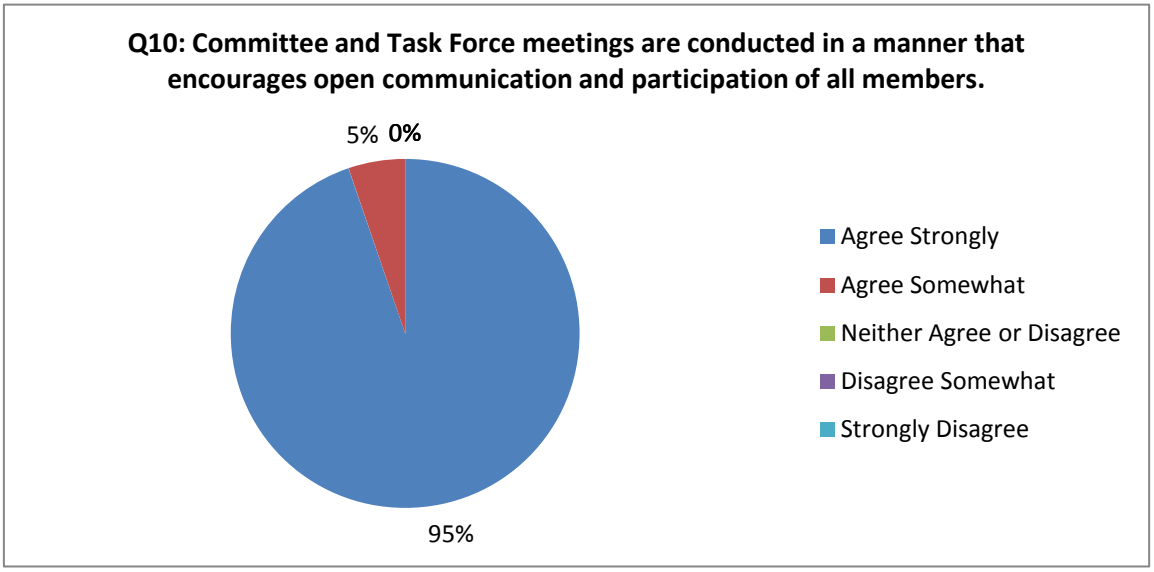
8				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
13	3	2	0	0

9. Benchers meetings are organized in a manner that encourages focus on strategic issues.



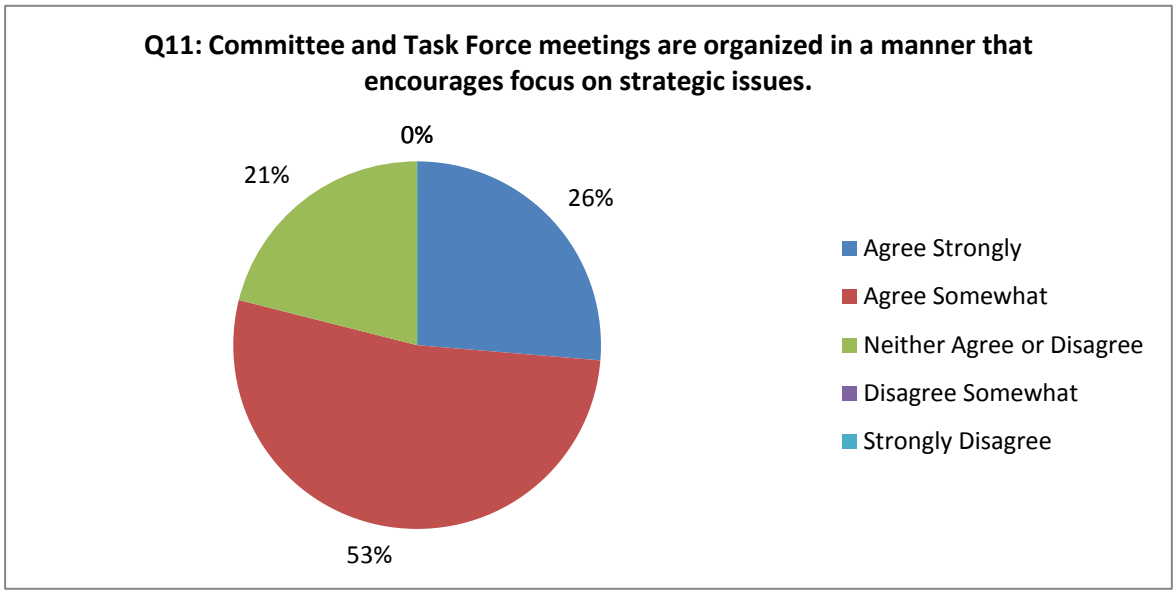
9				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
7	10	1	1	0

10. Committee and Task Force meetings are conducted in a manner that encourages open communication and participation of all members.



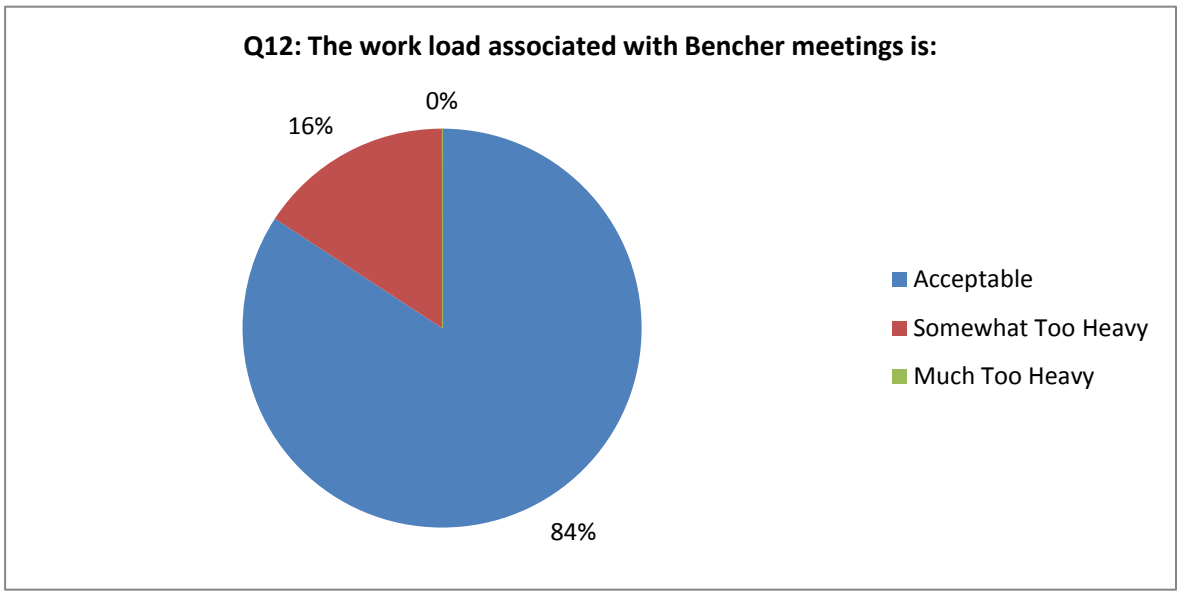
10				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
18	1	0	0	0

11. Committee and Task Force meetings are organized in a manner that encourages focus on strategic issues. **1405**



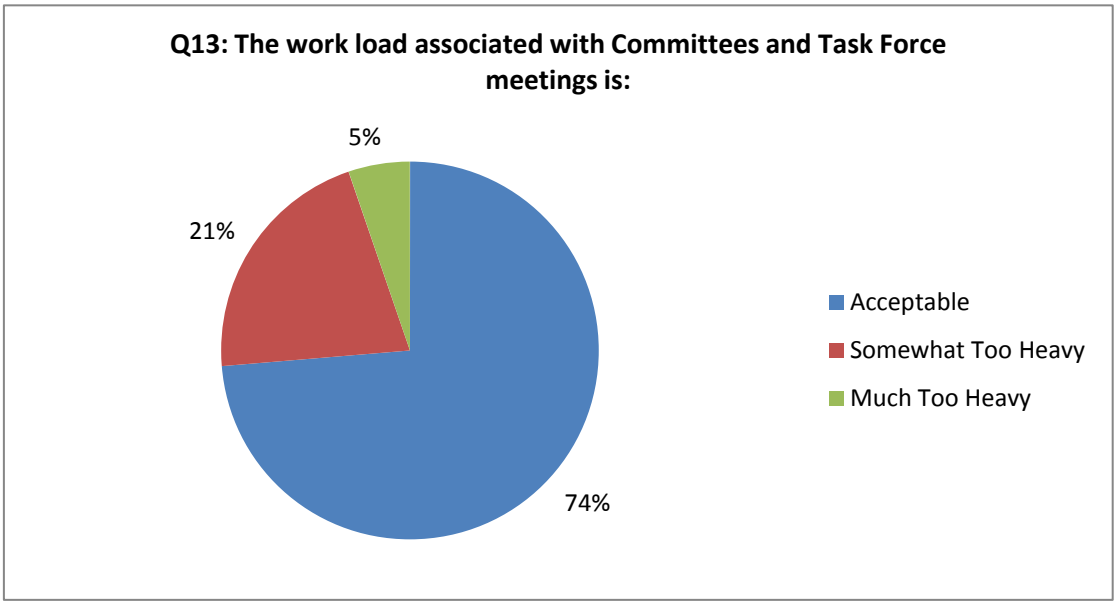
11				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
5	10	4	0	0

12. The work load associated with Bencher meetings is:



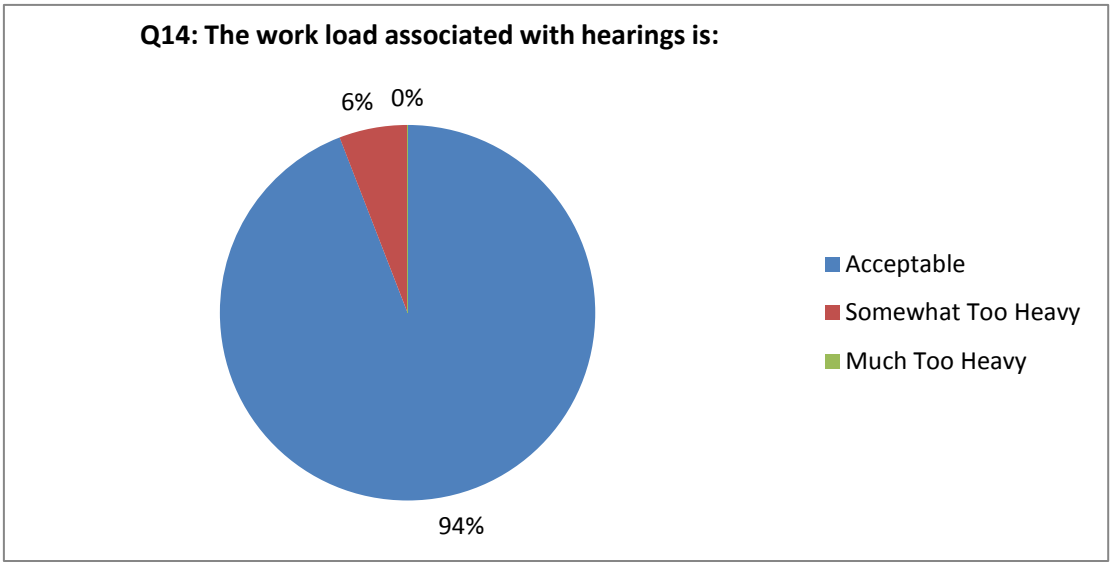
12		
Acceptable	Somewhat Too Heavy	Much Too Heavy
16	3	0

13. The work load associated with Committee and Task Force meetings is:



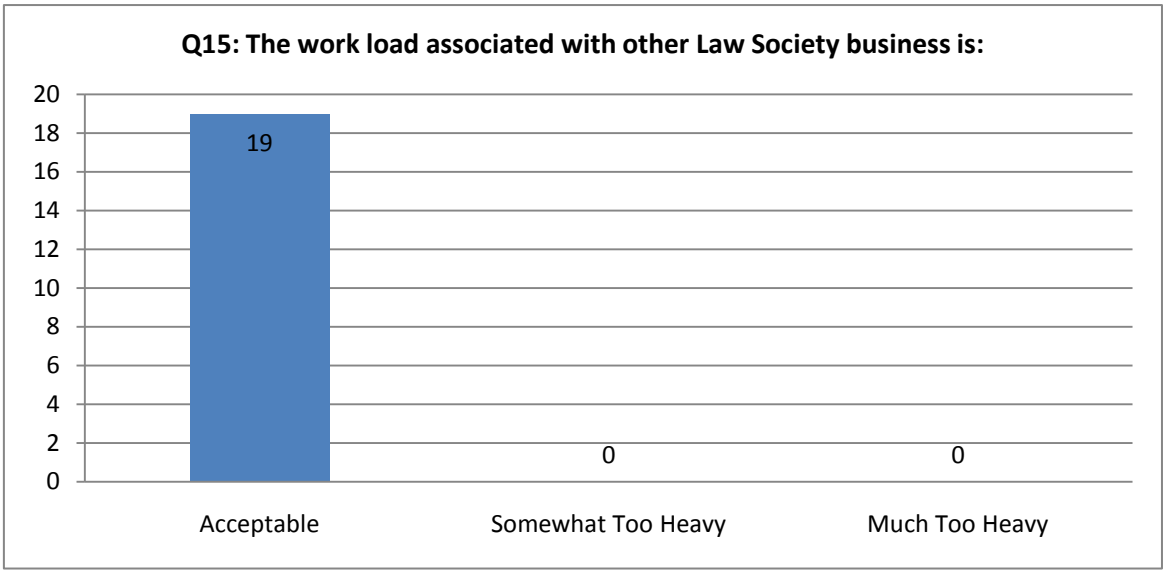
13		
Acceptable	Somewhat Too Heavy	Much Too Heavy
14	4	1

14. The work load associated with hearings is:



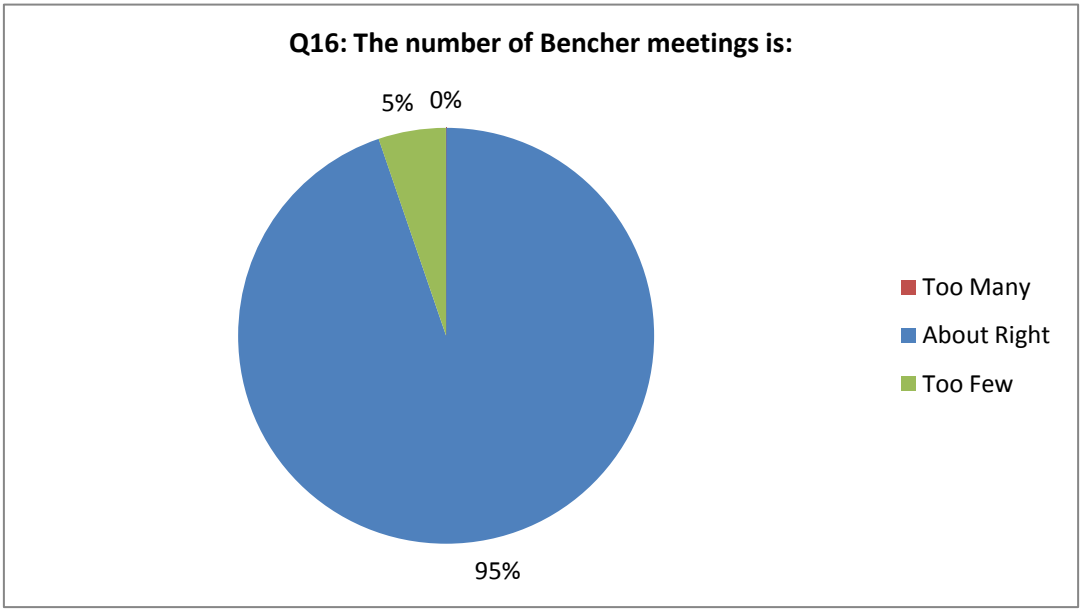
14		
Acceptable	Somewhat Too Heavy	Much Too Heavy
16	1	0

15. The work load associated with other Law Society business is:



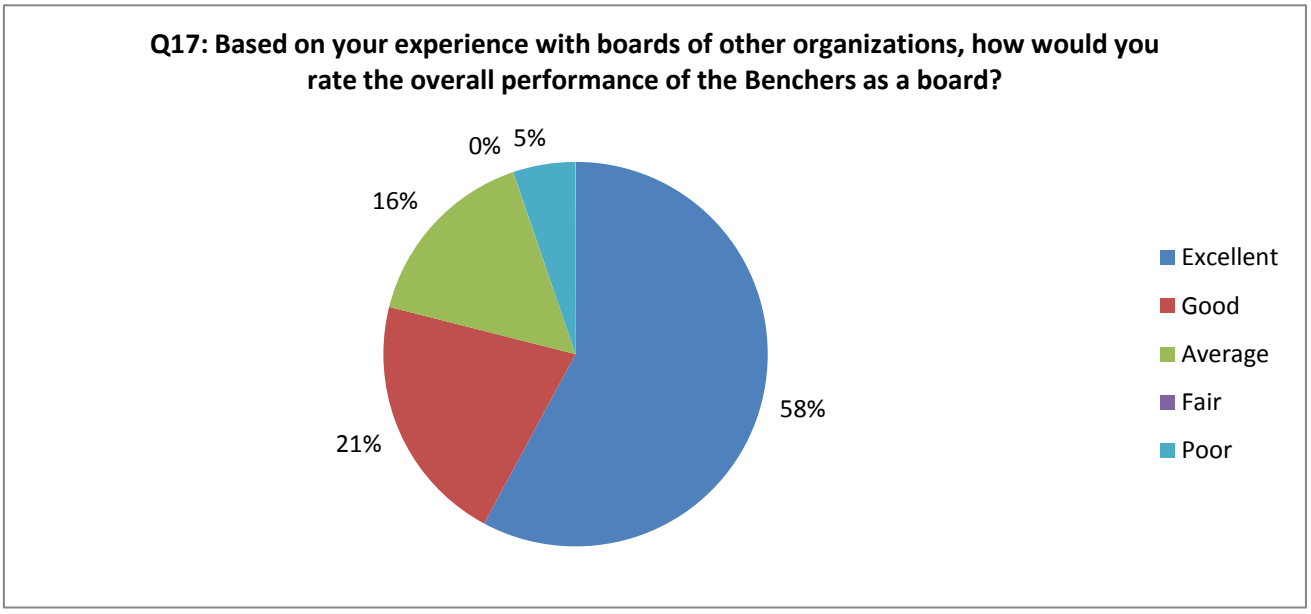
15		
Acceptable	Somewhat Too Heavy	Much Too Heavy
19	0	0

16. The number of Bencher meetings is:



16		
Too Many	About Right	Too Few
0	18	1

17. Based on your experience with boards of other organizations, how would you rate the overall performance of the Benchers as a board? **1408**



17				
Excellent	Good	Average	Fair	Poor
11	4	3	0	1

REPORT TO THE BENCHERS ON THE CBA MID-WINTER MEETING OF COUNCIL

Ottawa

February 12-14, 2010

I am pleased to provide my second Report to the Benchers as the Law Society of British Columbia representative to the Canadian Bar Association National Council. Although my predecessor, Bill Jackson, Q.C., accurately described this role as a "Boon Doggle", I must say that spending the Valentine's weekend in freezing cold Ottawa would not be my first choice. Perhaps because Mr. Jackson is from the frozen north (Dawson Creek) and the fact that his man, Stephen, now runs the show out there that he would appreciate the Boon Doggle more than I. I can say, however, that I did enjoy seeing Parliament and the Supreme Court for the first time, which I am sure I will never go to again in any official capacity. The other personal item I would like to share with you is that I did get a chance to skate on the Rideau Canal and enjoy a "Beaver Tail." Being an old hockey player, I will admit that it was a real thrill to skate in one direction for as far as you want. The only down-side was skating back to where I started. It was against the cold wind and by the time I got back to where I started I felt like a popsicle. I think in the future I will stick to the heated rinks.

The Conference started out with a speech from John Sims, the Deputy Minister of Justice and Deputy Attorney General of Canada. He reported that not much has been done since his report to the CBA Council in Lake Louise a year ago, although he does expect Law Reform to be a major initiative in the next Parliament. All those justice reform bills that died on the order paper when Parliament was prorogued should be resurrected as well as legislation to

create stronger measures to deal with repeat young offenders. His speech was really more of a welcome to Ottawa speech from the federal government.

The next presentation of any significance was the Treasurer's Report. The CBA National has an annual budget of around $15 Million and in 2009 they had a net profit of $739,000.00. They now have $14 Million in investments and a special reserve set aside that can fund four months of operation.

Perhaps the most interesting presentation of the first day was from the Honourable Chris Bentley, the Attorney General for Ontario. Mr. Bentley was a criminal lawyer for 25 years before going into politics. With the help of Ontario's branch of the CBA, he settled a 9 month boycott of Legal Aid Lawyers just this past January. He mentioned that in September 2009, he stood up in the Ontario legislature and had passed the single largest increase in the history of Ontario Legal Aid. This was done in the face of record deficits and drops in government revenues in Ontario. This was in stark contrast to what we are hearing from our Attorney General in British Columbia. It was clear to me that Mr. Bentley understood the critical importance of a well funded and properly operating justice system. He appreciated the fact that a good health care system and education system are a by-product of an enlightened free and democratic society that is sustained by a properly functioning justice system that protects and upholds the rule of law. He also spoke of the fact that the legal system in Ontario faces other challenges like being too slow and too expensive (sound familiar). He discussed how the system must become more responsive with quicker decision-making. He has initiated reforms

in the criminal, civil and family law areas all with the aforementioned goals in mind. His ministry is working very closely with the Ontario branch of the CBA to see these reforms through. I can provide more detail upon request.

The next report was provided by Simon Potter, a past president of the CBA. Remarkably, he managed to make a somewhat dry topic interesting and funny. His report was on the CBA initiative to deal with multi-jurisdictional class actions. Again, I can provide a little more detail on request, but I will say that three British Columbia lawyers (Rodney Hayley, Andrew Borrell and Ward Branch) are on this national task force along with Chief Justice Bauman.

Another "riveting" report was provided on changes to the Joint Policy Statement on Audit Inquiries. Practitioners all know about those requests for audit information from our clients' auditors. Well, apparently these requests are soon to become much more detailed because in 2011, Canada is adopting international auditing standards for publicly accountable organizations as opposed to Generally Accepted Accounting Principles. The CBA's concerns over this change are in four areas:

1. Preserve solicitor-client privilege;
2. Lawyers do not become involved in "joint undertakings with auditors;
3. Save lawyers from having to interpret accounting standards;
4. minimize costs (ie., time of lawyers involved and costs to clients).

Needless to say, the CBA is for a simple generic letter and the Auditing and Assurance Standards Board wants the letter to contain more detailed and quantified reports on claims or potential claims of our clients.

There were also numerous Committee Reports and Reports from CBA affiliates such as CBIA and CBA Financial Services. The guest speaker at the Saturday luncheon was the newest addition to the Supreme Court, Mr. Justice Thomas Cromwell. He was charming and witty, and perfectly succinct with his comments. I had the great pleasure and honour of having a glass of wine with him at the reception held later that evening at the Supreme Court foyer.

The Saturday session ended with an authentic Ottawa debate about the present state of Canada. It was moderated by Senator Pamela Wallin and the participants were Senator Hugh Segal *(who runs Conservative campaigns but was appointed by Prime Minister Martin) and Tom Axworthy. For a political junky like me, it was probably my favourite part of the meetings. All three were well informed, Ms. Wallin more about Washington D.C. and the two debaters provided an excellent historical perspective of the different approaches of their two parties.

The Saturday session finished off with the passing of four council resolutions:

1. Harmonization of pension laws;
2. Funding and Security of Pension Benefits;
3. Denunciation of Anti-Homosexuality Bill in Uganda
4. Standing Committee on Professional Development

The last resolution was really just a name change from Continuing Legal Education Committee to Professional Development Committee. For me, it was an endorsement of our labelling for CPD.

Sunday's session was highlighted by a report from the CBA CEO, John Hoyles. He spoke glowingly about the CBA's new vision Statement and Culture Statement as well as the adoption of the seven pillars for building a remarkable organization:

1. Member Loyalty;
2. Alignment of Productions and Services with Mission Statement;
3. Data Driven Strategies (know our Members);
4. Dialogue & Engagement;
5. CEO as the broker of ideas
6. Organizational Adaptability;
7. Alliance Building.

The last item of my report is to tell you that Bencher, Robert Brun, Q.C., and Past President of the BC Branch, Ken Walton, are the two candidates for 2nd Vice President of the National Council. Both gave excellent speeches and British Columbia will be well served by either Candidate as will CBA National. 2012 will be a great year for me as President of our Law Society because I will have two colleagues and friends from British Columbia as Presidents of the Federation of Law Societies and the CBA National.

All of which is respectfully submitted by Bruce LeRose.

Memo

The Law Society of British Columbia

1600

To 2010 Benchers' Retreat Attendees

From Bill McIntosh
Manager, Executive Support

Date February 25, 2010

Subject **2010 Law Society of BC Benchers' Retreat – June 10 to June 13**
Beach Club Resort, Parksville, BC

Please complete the questionnaire on the next page and return to Diana Papove by March 5, 2010. To send your reply electronically, click "Submit Form" at the top right hand side of your screen and follow the prompts. If you have any questions, please contact Diana Papove at dpapove@lsbc.org or (604) 443-5768. Your responses are important and will help us to make appropriate arrangements for your rooms, meals and recreational activities.

The current draft agenda and outline of activities planned for the 2010 Law Society of BC Benchers' Retreat are set out below. The Friday workshop will feature the report of the Delivery of Legal Services Task Force. Program details and materials will be circulated closer to the date.

Thursday, June 10	
1:00 pm	Group Coach Departure (from Law Society Building, 845 Cambie Street)
3:00 pm	Hotel Check-in Time (Beach Club Resort, Parksville)
5:30 pm	Group Coach Arrival and Check-in (Beach Club Resort, Parksville)
6:00 pm	Welcome Reception and Dinner (Beach Club Resort Patio)
Friday, June 11	
8:00 am	Breakfast (Buffet open until 10:00 am – Pacific Rim Restaurant)
9:00 am	Workshop: *Enhancing Delivery of Legal Services* (Oceanic Ballroom)
12:00 pm	Lunch (Buffet open until 2:00 pm – Pacific Rim Restaurant)
1:00 pm	Workshop Continued: *Enhancing Delivery of Legal Services* (Oceanic Ballroom)
5:30 pm	President's Reception with Local Bar (Oceanic Ballroom)
7:30 pm	Retreat Dinner (Bayside Restaurant)
Saturday, June 12	
7:30 am	Breakfast (Buffet open until 9:30 am - Pacific Rim Restaurant)
8:30 am	Benchers Meeting (Oceanic Ballroom)
11:30 am	Lunch (Buffet open until 1:30 pm - Oceanic Ballroom)
1:00 pm	Golf / Organized Recreation / Free Afternoon
6:00 pm	Optional Dinner / Free Evening (Tigh'na'mara Garden Patio)
Sunday, June 13	
8:00am	Breakfast (Buffet open until 10:00 am - Oceanic Ballroom)
9:00 am	Group Coach Departure (from Beach Club Resort, Parksville)
1:30 pm	Group Coach Arrival (LSBC Building, 845 Cambie Street)

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2010 Bencher Retreat Survey

Name:

ATTENDANCE

I will arrive on (date): Thursday, June 10, 2010

I will depart on (date): Friday, June 11, 2010

I will be bringing a spouse/guest: YES ☐ NO ☐ Name:

I will be bringing a child/children: YES ☐ NO ☐ Name(s):

Thursday, June 10

I will be attending the Welcome Reception and Dinner at the Beach Club Resort (informal BBQ):

YES ☐ NO ☐

I will be bringing my spouse/guest/child

YES ☐ NO ☐ How many:

Friday, June 11

I will be attending the Local Bar Reception at the Beach Club Resort: YES ☐ NO ☐

I will be bringing my spouse/guest: YES ☐ NO ☐

I will be attending the dinner at the Bayside Restaurant: YES ☐ NO ☐

I will be bringing my spouse/guest/child: YES ☐ NO ☐

How many:

My guest(s) will participate in one of the following activities:

Nature Walking Tour (3 hours) ☐ How many:

Grotto Spa at Tigh'na'mara ☐ How many:

Nanaimo Day Trip (6 hours) ☐ How many:

Sea Kayaking Tour (4 hours) ☐ How many:

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Saturday, June 12

I will be attending dinner at Tigh'na'mara Resort: YES ☐ NO ☐

I will be bringing my spouse/guest/child: YES ☐ NO ☐ How many:

I/my guest(s) will participate in the following Saturday afternoon activities:

Cathedral Grove, MacMillan Park Nature Tour(3 hours)	☐	Participants' names:
Coombs Market (2 hours)	☐	Participants' names:
Golf Tournament	☐	Participants' names:
Nanaimo Afternoon Trip (4 hours)	☐	Participants' names:
Sea Kayaking (2 hours)	☐	Participants' names:

ACCOMMODATION

Do you require a single or double occupancy room? *Please note that all rooms are non-smoking.*

Single ☐ Double ☐

Please note any special requirements or requests for your room.

DIETARY REQUIREMENTS

Please specify any dietary requirements.

TRANSPORTATION

Indicate your preferred mode of transportation from Vancouver to the Beach Club Resort, Parksville, and return to Vancouver (please check one).

☐ Group Motor Coach
Departing from the Law Society Building at 845 Cambie Street (between Smithe and Robson Streets) at 1:00 pm, Thursday, June 10th (taking 3:00 pm ferry) and returning to the Law Society Building by 1:30 pm on Sunday, June 13th (taking 10:30 am ferry)

☐ Self-drive

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RECREATIONAL ACTIVITY OPTIONS

We have researched the following recreational activity options for attendees of the 2010 Benchers' Retreat. Please note that most of the cost projections are approximate and based on individual pricing. Some projections may come down, depending upon enrollment. Attendees are responsible for their own recreation costs, including green fees for golf. Attendees are of course welcome to explore the Parksville area's many recreational and sight-seeing options on their own.

Friday, June 11: Spousal/Guest Program

1) Nature Walking/Hiking Tour (4 hours) Cost: TBA

   The tour will be determined on enrollment, as there are options to explore ancient rainforests with giant trees, make a nature trek to alpine flower meadows, or walk around the ocean tide pools in interactive tour programs.

2) Grotto Spa Cost: Varies per treatment.

   The Grotto Spa is the largest Resort Spa in British Columbia and features a stunning 2,500 square foot Mineral Pool fed by a two story cascading waterfall. This luxurious 20,000 square foot Spa offers 20 massage and esthetic treatment rooms as well as a manicure and pedicure room featuring "European Pedicure Thrones". Reservations need to be made months in advance. Please review the treatments online at http://www.grottospa.com/.

3) Nanaimo Day Trip Cost: Free

   Be your own tour guide and explore the natural beauty of Nanaimo. The city offers a thriving local arts and music scene, as well as an abundance of shopping opportunities in several major shopping centres. Walk through Nanaimo's winding downtown and checking out older buildings, many which have been transformed into charming shops and restaurants, particularly in the Old City Quarter. Only a ten-minute ferry boat ride away is Newcastle Island Marine Provincial Park. Newcastle Island has more than 15 km of well-marked interpretive trails that wind through shady forests, past historic sites, and around a lake. Some of the trails on the island are especially designated for cyclists. Biking is also a popular way to sightsee on nearby Protection Island, where you will find the floating Dinghy Dock Pub and Restaurant.

4) Sea Kayaking Cost: $59.95/ per person

   This four hour tour is geared for the beginner paddler and therefore it is not necessary to have had any previous experience in kayaking. It includes the kayak and all necessary gear, an introduction to the kayak and safety equipment, and basic instruction in paddling strokes and safety procedures. Paddling out of Northwest Bay, the tour ventures out to Mistaken Island where you may see harbour seals, turkey vultures, oyster catchers and river otters. The tour stops for a picnic on the beach, so you will need to bring your favourite snack or goodies for lunch.

Saturday, June 12

1) 2010 Michael Falkins Memorial Golf Tournament Green Fee: TBA

   The golf course is yet to be determined for the Golf Tournament.

2) Cathedral Grove, MacMillan Park Nature Tour — Cost: $50.00/ per person

Cathedral Grove/MacMillan Park is located at the top end of Cameron Lake, only minutes from Qualicum Beach and Parksville. Cathedral Grove is a BC Provincial Park preserving a section of lush old-growth forest that is unique to Vancouver Island. Spend a few hours wandering Cathedral Grove's trail system and gazing up at 800 year-old giants. Cathedral Grove gives the visitor a sense of what Vancouver Island and the west coast looked like before the arrival of European settlers.

3) Coombs Market — Cost: Free

Be your own tour guide at one of the top tourist destinations in British Columbia, the old country/"Coombs" market originated from a modest fruit stand in 1971 and later grew to support a hamburger stand alongside the fruit stand. The market is best known for its "goats on the roof". The original market building was built with a grass roof due to the owner's Norwegian heritage. After the grass had rooted a family of goats appeared (legend has it that a "few glasses" of wine inspired the idea of putting the goats up on the roof). The market sells international foods, imported gifts, in store baked goods, and homemade ice cream.

4) Nanaimo Afternoon Trip — Cost: Free

Be your own tour guide and explore the natural beauty of Nanaimo. The city offers a thriving local arts and music scene, as well as an abundance of shopping opportunities in several major shopping centres. Walk through Nanaimo's winding downtown and checking out older buildings, many which have been transformed into charming shops and restaurants, particularly in the Old City Quarter. Only a ten-minute ferry boat ride away is Newcastle Island Marine Provincial Park. Newcastle Island has more than 15 km of well-marked interpretive trails that wind through shady forests, past historic sites, and around a lake. Some of the trails on the island are especially designated for cyclists. Biking is also a popular way to sightsee on nearby Protection Island, where you will find the floating Dinghy Dock Pub and Restaurant.

5) Sea Kayaking — Cost: $39.95/ per person

This two hour tour is geared for the beginner paddler and therefore it is not necessary to have had any previous experience in kayaking. It includes the kayak and all necessary gear, an introduction to the kayak and safety equipment, and basic instruction in paddling strokes and safety procedures. The tour explores the bays and rocky seashore in Nanoose.

RANDOM BENCHER SEATING – March 2010