



AGENDA

MEETING: Benchers
DATE: Friday, September 9, 2011
TIME: 7:30 a.m. Continental breakfast
 8:30 a.m. Meeting begins
PLACE: Bencher Room

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.

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|---|---|------------------|
| 1 | Minutes of July 15, 2011 meeting | Tab 1
p. 1000 |
| | <ul style="list-style-type: none"> • Draft minutes of the regular session • Draft minutes of the <i>in camera</i> session (Benchers only) | |

REGULAR AGENDA

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| 2 | President's Report | |
| | <ul style="list-style-type: none"> • Written report to be distributed electronically prior to meeting | |
| 3 | CEO's Report | Tab 3
p. 3000 |
| | <ul style="list-style-type: none"> • Written report | |
| 4 | Report on Outstanding Hearing & Review Reports | |
| | <ul style="list-style-type: none"> • Report to be distributed at the meeting | |

2009-2011 STRATEGIC PLAN IMPLEMENTATION (FOR DISCUSSION AND/OR DECISION)

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| 5 | Lawyer Education Advisory Committee: Review of Continuing Professional Development Program | Tab 5
p. 5000 |
| | Ms. O'Grady to report <ul style="list-style-type: none"> • Report by Lawyer Education Advisory Committee | |

2012-2014 STRATEGIC PLAN DEVELOPMENT (<i>FOR DISCUSSION AND/OR DECISION</i>)		
6	Setting Goals for 2012-2014 Strategic Plan Benchers' Debate <ul style="list-style-type: none">• Memorandum from Mr. Hume and Mr. McGee• Memorandum from the Executive Committee	Tab 6 p. 6000
OTHER MATTERS (<i>FOR DISCUSSION AND/OR DECISION</i>)		
7	Approval of Addendum to the Quebec Mobility Agreement: extending mobility rights to members of the Chambres des notaires du Québec Mr. Renwick to report <ul style="list-style-type: none">• Memorandum from Ms. Small• Memorandum from the Federation of Law Societies of Canada, with Appended Addendum to the Quebec Mobility Agreement	Tab 7 p. 7000
8	CBABC Rural Education and Access for Lawyers (REAL) Initiative: 2012-2013 Funding Mr. Hume to report <ul style="list-style-type: none">• Memorandum from the Executive Committee	Tab 8 p. 8000
9	External Appointments: Law Society Appointments Guidebook and Revised Appointments Policy Mr. Hume and Mr. McGee to report <ul style="list-style-type: none">• Memorandum from the Executive Committee, with Law Society Appointments Guidebook and Proposed Revisions to Law Society Appointments Policy	Tab 9 p. 9000
10	Insurance Coverage for Trust Shortfalls Arising from "Bad Cheque" Scams Ms. Forbes to report <ul style="list-style-type: none">• Memorandum from Ms. Forbes	Tab 10 p. 10000
11	Federation Governance Policy Mr. Hume to report <ul style="list-style-type: none">• Email from the President of the Federation of Law Societies, with attachments	Tab 11 p. 11000
FOR INFORMATION ONLY		
12	Federation of Law Societies of Canada Update Mr. Hume to report <ul style="list-style-type: none">• Policy on Rotation of the Federation Presidency	Tab 12 p. 12000
13	2013 – 2014 Benchers and Executive Committee Meetings <ul style="list-style-type: none">• Memorandum from Mr. McIntosh and 2013 – 2014 Schedule of Benchers and Executive Committee Meetings	Tab 13 p. 13000

IN CAMERA SESSION		
14	Update from the Working Group on Hearing Panel Pools Mr. Hume to report <ul style="list-style-type: none">• Memorandum from Mr. Hoskins	Tab 14 p. 14000
15	Bencher Concerns	

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

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

CONSENT AGENDA

1. Minutes

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

Consent Resolutions

The following resolutions were passed unanimously and by consent.

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

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

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

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

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

Compelling witnesses and production of documents

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

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

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

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

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

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

“ the CEO must ensure that Law Society budgeting:

3. in the General Fund ...

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

REGULAR AGENDA – for Discussion and Decision

6. President's Report

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

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

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

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

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

7. CEO's Report

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

a. 2012 Budget and Fees

- b. New Strategic Plan – 2012 – 2014**
- c. Buildings and Premises – 9th Floor “Facelift” & Space Usage Assessment**

8. Report on Outstanding Hearing and Review Reports

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

GUEST PRESENTATION

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

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

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

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

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

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

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

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

11. 2012-2014 Strategic Planning

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

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

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

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

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

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

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

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

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

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

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

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

OTHER MATTERS – For Discussion and/or Decision

12. Finance Committee: Approval of 2012 Fees

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

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

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

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

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

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

The motion was carried.

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

BE IT RESOLVED that:

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

The motion was carried.

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

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

The motion was carried.

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

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

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

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

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

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

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

The motion was carried.

14. Report of the Cloud Computing Working Group

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

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

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

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

The motion was carried.

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

15. Family Law Task Force: Best Practice Guidelines

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

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

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

The motion was carried.

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

16. FLSC Council Update

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

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM
2011-08-26



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

July 15, 2011

Introduction

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

1. 2012 Budget and Fees

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

2. New Strategic Plan – 2012 – 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

Timothy E. McGee
Chief Executive Officer

RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACKNOWLEDGEMENTS

The working group is grateful for the input it received on a range of legal, technical, investigative and accounting matters from external consultant Doug Arnold, and Lorene Novakowski of Fasken Martineau; and from Law Society staff: David Bilinsky, Andrea Chan, Felicia Ciofitto, Danielle Guglielmucci, Graeme Keirstead, Karen Keating, Nancy Lee, Michael Lucas, David McCartney, Doug Munro, Liza Szabo; and from Margrett George in the Lawyers Insurance Fund.

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

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

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

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



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

September 9, 2011

Introduction

My report this month attaches highlights of the financial results for the six months ended June 30, 2011 and provides updates on a number of projects and initiatives.

1. Financial Report – First Half of Year Operating Results

Highlights of the financial results to June 30, 2011 are attached to this report as Appendix 1. Jeanette McPhee, our CFO, and I will be available to answer any questions you may have on the results at Friday's meeting.

2. Strategic Plan 2012 – 2014 - Update

This month's meeting is an important one on the path to developing a new three year Strategic Plan. Please take a little extra time to review the materials you will be provided in the Benchers' package regarding the planning process. Gavin and I will have more to say on what we hope to accomplish at the meeting.

3. Communications Updates

Public Education Program

Since the Public Education Program was presented to the Benchers in March 2011, the Communications team has developed a more detailed tactical plan and begun implementation of a number of those tactics, including obtaining broad media coverage around Law Week and developing the access to justice webpage. We expect that the majority of the work will be completed this fall, including a public inquiry strategy, a public relations awareness campaign and additional educational materials on various Law Society policy initiatives. Robyn Crisanti, Manager, Communications and Public Affairs, will be at the meeting, should you have any questions about the Program.

Communicating New Student Rules

Our Communications department is implementing a comprehensive communications plan to advise lawyers and students of the new student rules, including:

- Article in Benchers' Bulletin (mid-September)
- E-Brief mention (mid-September)
- Letter and flyer sent to all students and principals
- New website copy for Articling section

- Home page of website (Highlights section) (mid September)
- Mention in Advocate article regarding PLTC survey (November)
- Notice to law school publications (late September)

Please let Robyn Crisanti know if you have any questions about the above.

BencherNet Replaced by Lawyer Login Page

BencherNet has now been retired in favour of a more robust Lawyer Login page, which provides access to all Bencher and committee materials as appropriate, based on user profile. If there is any information that Benchers would like to see added to the new Bencher Resources section, please feel free to share your ideas.

4. 2011 Employee Survey

We will soon be conducting our annual employee survey. The purpose of the survey is to ensure that we engage all staff in providing their feedback on how we can improve job satisfaction and our effectiveness as an organization. We will be reviewing the survey results with the Benchers early in the new year.

5. Recruiting for New Hearing Panel Pools – Update

As you know, at the beginning of the Summer, we advertised for lawyers and non-lawyers willing to volunteer to sit on hearing panels with Benchers. The response was more than we expected: 130 non-Bencher lawyers and nearly 600 non-lawyers. The working group has met three times and set the criteria for selecting the best pool of panel members, starting with the guidelines established by the Benchers. We then outsourced the process of applying the criteria to the applications received to a professional executive search team. This not only made operational sense but also ensured that the selection process would be seen to be objective.

We have received reports on the two hearing panel pools, with recommended selections based on the criteria. We are now in the process of doing our due diligence to ensure that all of the selections are appropriate. That includes consulting the Benchers, which the President will speak to you about in the course of the meeting.

6. Electronic Document and Record Management Project – Update

In my May 2011 report, I introduced the Enterprise Content Management Working Group (now the Electronic Document and Records Management System “EDRMS” Project Team). The EDRMS project team’s mandate is to define our user needs in detail, consult on what would constitute the best

solution, and create the necessary business case for consideration. This work will be completed in three phases:

- Phase 1- Detailed needs analysis
- Phase 2 – Solution identification
- Phase 3 – Implementation of solution(s)

The EDRMS team has received the Phase 1 report from consultants KPMG, which is an analysis of the Law Society's needs, current systems and processes for electronic information and case management, and which makes general recommendations for moving forward. Once Management Board and the Executive Committee have completed their review of the report (end of September), a project manager will be assigned to lead Phase 2 – Solution Identification. During this phase, we will be working with consultants to identify specific software solutions for our information and case management requirements.

EDRMS co-chairs Jeanette McPhee and Adam Whitcombe will be at the meeting to answer questions about this project.

7. Government Relations / Legislative Ask – Update

The Ministry of the Attorney General is now actively working on the requests for amendments that the Benchers approved in the middle of 2010. Policy lawyers with the Ministry have been in touch with us several times to clarify and discuss our various proposals for more effective regulation in the public interest. We expect that a request for legislation will go to Cabinet for approval in the Fall. After that, it will go to Legislative Counsel for drafting of the specific amendments to be included in the legislative program when space can be found for it, hopefully in the Spring of 2012.

8. LSBC Annual General Meeting – September 20, 2011

This is a reminder that the Law Society's 2011 Annual General Meeting will be held at the Fairmont Hotel Vancouver in Vancouver and in 10 different satellite locations around the province on Tuesday, September 20, 2010. Registration begins at 11:30 a.m. with call to order at 12:30 p.m.

There is one member resolution this year, proposing that the Law Society allow payment of membership fees by monthly installment or by credit card. A message from the Benchers has been included in the AGM Second Notice, which advises that implementation of this resolution would result in increased practice fees, due to increased administrative requirements and loss of investment income on full member dues as well as additional expense due to merchant fees payable to the

credit card companies. The message also sets out the Benchers' concerns that monthly payments will make tracking and reporting of member status in an accurate and timely manner difficult.

If you have any questions about arrangements for the AGM, please do not hesitate to contact Bill McIntosh.

9. Advocate Article

I am attaching a copy of the Law Society's response, which was posted on the Law Society's website, to the recent Advocate article regarding the Western Law Societies Conveyancing Protocol, attached to this report as Appendix 2. I would be happy to discuss this in further detail at the meeting.

10. 9th Floor Facelift

I am pleased to report that we are 95% complete on our plans to upgrade the 9th floor facilities. I think you will agree with me that the renovations are a big improvement to our workspace on that floor. I would like to congratulate and thank Bernice Chong, Manager of Operations, and her team for all their hard work in bringing this project in on time and budget.

Timothy E. McGee
Chief Executive Officer

Appendix 1

CFO Quarterly Financial Report – First Six Months of 2011

Attached are the financial results and highlights for the first six months of 2011.

General Fund

General Fund (excluding TAF)

The General Fund operating result to June 30, 2011 has a \$243,000 positive variance to budget.

Revenue

Revenue is \$10,939,000, \$165,000 (1.5%) ahead of budget due primarily to the following:

- PLTC is expected to have 400 students this year, 15 ahead of budget, amounting to \$30,000 in additional revenue
- CPD penalty fees were much higher than expected, actual collection was \$130,000, compared to a budget of \$30,000

Operating Expenses

Operating expenses for the first half of the year were \$9.027 million, \$16,000 (0.2%) below budget. The Regulation area incurred a negative variance of \$222,000, mainly due to additional external counsel fees for professional conduct files and forensic accounting fees related to 4-43 investigations. This variance was offset by savings in other areas.

2011 Forecast - General Fund (excluding TAF)

Revenue

Practicing membership is expected to be in line with budget this year, projected at 10,575 members. There will be additional PLTC revenues of \$30,000 and CPD revenue of \$100,000, as noted above. Lease revenue will be reduced by \$85,000 in the fourth quarter of the year due to the vacancy in the heritage building. This will result in a \$45,000 positive variance for total revenue.

Expenses

With an increased focus on our regulatory mandate and reduced timelines, there are a number of initiatives which have increased the costs this year.

The following details the additional operating expenses:

- Additional external counsel costs in regulation - \$450,000
 - Additional files sent out in fall 2010 and first quarter 2011 due to staffing shortages (*Note: In the first half of 2011, there was \$350,000 in regulation vacancy savings, which is applied to the 2011 Salary Vacancy budget*)
 - Additional files sent out to close files and reduce timelines
 - A number of large, complex files, where specific expertise was required
 - Two files with court applications
 - Increases in external counsel rates to attract senior counsel
- Regulation Staffing Plan – increased costs in last six months of 2011 - \$125,000
- Hearing Panels – advertising for new hearing panel membership and resume reviews - \$70,000

At this time, we expect operating cost savings to year end. This consists of general operating expense savings, along with 'green' initiatives instituted by various departments at the Law Society. Some of the positive variances are noted below:

- Additional staff vacancy savings - \$250,000
- Reduction in travel and professional development - \$120,000
- Reduced usage of stationery and paper supplies - \$35,000
- Electronic distribution of annual report – \$20,000
- Reduced file storage costs, with reduced rates through renegotiation file storage contract and a focus on file destruction - \$35,000

Forecast

The General Fund year end projection is expected to be close to budget.

TAF-related Revenue and Expenses

The second quarter TAF revenue is not received until the July/August time period. The revenue received to date is tracking to budget.

The 2011 budget is \$2.5 million, 6% over 2010 revenue. The BC Real Estate Association market projection for 2011 real estate unit sales is 5% increase over 2010, so the 2011 revenue budget appears reasonable.

TAF operating expenses had a positive variance of \$70,000 for the first half of 2011.

Special Compensation Fund

The Special Compensation Fund is on track as there was little activity in the Fund during the first half of 2011.

Lawyers Insurance Fund

For the first six months of the year, LIF operating revenues very close to budget and LIF operating expense savings of \$227,000 due to unfilled positions and lower insurance costs.

The market value of the LIF long term investments increased \$1.9 million in the first half of the year. The year to date investment return was 1.9%, slightly better than the benchmark 1.7%.

Summary of Financial Highlights - Second Quarter 2011
(\$000's)

2011 General Fund Results - YTD June 2011 (Excluding Capital Allocation & Depreciation)				
	<u>Actual</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
Revenue				
Membership fees	7,160	7,160	- *	0.00%
PLTC and enrolment fees	689	632	57 **	9.02%
Electronic filing revenue	328	306	22	7.19%
Interest income	204	228	(24)	-10.53%
Other revenue	708	583	125 ***	21.44%
	<u>9,089</u>	<u>8,909</u>	<u>180</u>	
Expenses including 845 Cambie	<u>8,248</u>	<u>8,257</u>	<u>9</u>	<u>0.11%</u>
	<u>841</u>	<u>652</u>	<u>189</u>	

* Membership numbers are 10,514 to date, tracking to budget
 ** 15 Additional PLTC students
 *** CPD late fees over budget by \$100k

2011 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)		
	<u>Avg # of Members</u>	<u>Forecast Variance</u>
Practice Fee Revenue		
2008 Actual	10,035	
2009 Actual	10,213	
2010 Actual	10,368	
2011 Budget	10,575	
2011 YTD	10,514	
Revenue		
CPD late fees over budget		100
PLTC - 15 additional students		30
Leased space vacancy - Oct to Dec 2011		(85)
2011 General Fund Forecast		<u>45</u>
Additional Costs		
Regulation - external counsel fees		(450)
Regulation - Plan		(125)
Hearing Panels - advertising and resume review		(70)
Savings		
Vacancy savings		250
Custodianship - file storage		35
IT - servers now offsite		35
ERDMS - maintenance cost - delay until 2012		30
Stationery & supplies		35
Bencher travel		20
Other travel & PD		120
Annual report distribution		20
Miscellaneous		55
		<u>(45)</u>
2011 General Fund Forecast Variance		-
2011 General Fund Budget		-
2011 General Fund Forecast		<u>-</u>

Trust Assurance Program Forecast

	2011	2011	
	Forecast	Budget	Variance
TAF Revenue	2,500	2,500	-
Trust Administration Department	2,394	2,394	-
Trust Assurance Program	106	106	-
Use of TAF Reserve	-	-	-
Net Trust Assurance Program	106	106	-

Most recent Real Estate Association projection predicts an 5% increase in unit sales from 2010 to 2011.
 Second quarter revenue not yet received. Preliminary estimate shows that we are tracking close to budget.

2011 Lawyers Insurance Fund Long Term Investments - YTD June 2011

Market Value	
June 30, 2011	97,889,868
December 31, 2010	96,026,006
Performance	1.9%
Benchmark Performance	1.7%

The Law Society of British Columbia
General Fund
Results for the 6 Months ended June 30, 2011
(\$000's)

	2011 Actual	2011 Budget	\$ Var	% Var
Revenue				
Membership fees (1)	9,010	9,025		
PLTC and enrolment fees	689	632		
Electronic filing revenue	328	306		
Interest income	204	228		
Other revenue	708	583		
Total Revenues	10,939	10,774	165	1.5%
Expenses				
Regulation	3,438	3,216		
Education and Practice	1,581	1,661		
Corporate Services	1,339	1,360		
Bencher Governance	831	843		
Communications and Information Services	905	966		
Policy and Legal Services	796	822		
Depreciation	137	175		
Total Expenses	9,027	9,043	16	0.2%
General Fund Results before 845 Cambie and TAF	1,912	1,731	181	
845 Cambie net results	375	313	62	
General Fund Results before TAF	2,287	2,044	243	
Trust Administration Program (TAF)				
TAF revenues	524	535	(11)	
TAF expenses	1,068	1,137	69	6%
TAF Results	(544)	(602)	58	
General Fund Results including TAF	1,743	1,442	301	

(1) Membership fees include capital allocation of \$1.851m (YTD capital allocation budget = \$1.866m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at June 30, 2011
(\$000's)

	Jun 30	Dec 31
	2011	2010
Assets		
Current assets		
Cash and cash equivalents	416	177
Unclaimed trust funds	1,737	1,682
Accounts receivable and prepaid expenses	1,483	1,243
B.C. Courthouse Library Fund	1,474	635
Due from Lawyers Insurance Fund	7,175	17,578
	<u>12,285</u>	<u>21,315</u>
Property, plant and equipment		
Cambie Street property	11,729	12,002
Other - net	1,307	1,372
	<u>25,321</u>	<u>34,689</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,266	3,965
Liability for unclaimed trust funds	1,670	1,682
Current portion of building loan payable	500	500
Deferred revenue	7,278	16,014
Deferred capital contributions	76	81
B.C. Courthouse Library Grant	1,474	635
Due to Lawyers Insurance Fund	-	-
Due to Special Compensation Fund	-	-
Deposits	22	20
	<u>12,286</u>	<u>22,897</u>
Building loan payable	<u>4,600</u>	<u>5,100</u>
	<u>16,886</u>	<u>27,997</u>
Net assets		
Capital Allocation	2,464	1,221
Unrestricted Net Assets	5,971	5,471
	<u>8,435</u>	<u>6,692</u>
	<u>25,321</u>	<u>34,689</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 6 Months ended June 30, 2011
(\$000's)

	Invested in P,P & E net of associated debt	Unrestricted	Unrestricted Net Assets	Capital Allocation	2011 Total	2010 Total
	\$	\$		\$	\$	\$
Net assets - December 31, 2010	7,777	(2,306)	5,471	1,221	6,692	5,575
Net (deficiency) excess of revenue over expense for the period	(436)	328	(108)	1,851	1,743	1,117
Repayment of building loan	500	-	500	(500)	-	-
Purchase of capital assets:						
LSBC Operations	111	-	111	(111)	-	-
845 Cambie	(3)	-	(3)	3	-	-
Net assets - June 30, 2011	7,949	(1,978)	5,971	2,464	8,435	6,692

The Law Society of British Columbia
Special Compensation Fund
Results for the 6 Months ended June 30, 2011
(\$000's)

	2011 Actual	2011 Budget	\$ Var	% Var
Revenue				
Annual assessment	27	26		
Recoveries	67	65		
Total Revenues	94	91	3	3.3%
Expenses				
Claims and costs, net of recoveries	-	-		
Administrative and general costs	31	40		
Loan interest expense	(14)	-		
Total Expenses	17	40	(23)	-57.5%
Special Compensation Fund Results	77	51	26	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at June 30, 2011
(\$000's)

	Jun 30 2011	Dec 31 2010
Assets		
Current assets		
Cash and cash equivalents	1	1
Due from Lawyers Insurance Fund	946	895
	<u>947</u>	<u>896</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	14	14
Deferred revenue	26	52
	<u>40</u>	<u>66</u>
Net assets		
Unrestricted net assets	907	830
	<u>907</u>	<u>830</u>
	<u>947</u>	<u>896</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
For the 6 Months ended June 30, 2011
(\$000's)

	2011	2010
	\$	\$
Unrestricted Net assets - December 31, 2010	830	364
Net excess of revenue over expense for the period	<u>77</u>	<u>466</u>
Net assets - June 30, 2011	<u><u>907</u></u>	<u><u>830</u></u>

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 6 Months ended June 30, 2011
(\$000's)

	2011 Actual	2011 Budget	\$ Var	% Var
Revenue				
Annual assessment	6,801	6,787		
Investment income (1)	1,968	330		
Other income	6	21		
Total Revenues	8,775	7,138	1,637	22.9%
Expenses				
Insurance Expense				
Provision for settlement of insurance deductibles	7,257	7,257		
Salaries and benefits	1,109	1,234		
Contribution to program and administrative costs of General Fund Office	732	770		
Actuaries, consultants and investment brokers' fees	269	309		
Allocated office rent	214	225		
Premium taxes	74	74		
Income taxes	11	7		
	-	-		
	9,666	9,876		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	323	340		
Total Expenses	9,989	10,216	227	2.2%
Lawyers Insurance Fund Results before 750 Cambie	(1,214)	(3,078)	1,864	
750 Cambie net results	212	170	42	
Lawyers Insurance Fund Results	(1,002)	(2,908)	1,906	

(1) There is an unrealized loss of \$7k for the six month period recognized through net assets (not through income statement). See Statement of Changes in Net Assets.

**The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at June 30, 2011
(\$000's)**

	Jun 30 2011	Dec 31 2010
Assets		
Cash and cash equivalents	11,529	21,530
Accounts receivable and prepaid expenses	1,274	1,149
Due from members	38	25
Due from General Fund	-	-
General Fund building loan	5,100	5,600
Investments	106,821	108,287
	<u>124,762</u>	<u>136,591</u>
Liabilities		
Accounts payable and accrued liabilities	1,464	2,709
Deferred revenue	6,708	6,707
Due to General Fund	7,175	17,578
Due to Special Compensation Fund	947	895
Provision for claims	56,352	55,652
Provision for ULAE	7,693	7,618
	<u>80,339</u>	<u>91,159</u>
Net assets		
Unrestricted net assets	26,923	27,932
Internally restricted net assets	17,500	17,500
	<u>44,423</u>	<u>45,432</u>
	<u>124,762</u>	<u>136,591</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 6 Months ended June 30, 2011
(\$000's)

	Unrestricted	Internally Restricted	2011 Total	2010 Total
	\$	\$	\$	\$
Net assets - December 31, 2010	27,932	17,500	45,432	42,803
Net deficiency of revenue over expense for the period	(1,002)	-	(1,002)	(2,448)
Unrealized gains on available-for-sale financial assets arising during the period	(7)	-	(7)	5,077
Net assets - June 30, 2011	<u>26,923</u>	<u>17,500</u>	<u>44,423</u>	<u>45,432</u>

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- Downtown Vancouver firms: articling offers to stay open to August 12
- Progress on expanding roles for paralegals and articled students

SEPTEMBER 1 RULE CHANGES PERMIT SUPERVISED STUDENTS TO PROVIDE LEGAL SERVICES

[posted August 25, 2011]

Firms are encouraged to take advantage of new rules, which take effect on September 1, 2011, that allow articled students to provide certain legal services to the public, provided they are well supervised by a principal or another lawyer.

The changes were approved by the Benchers in May 2011 and stem from ongoing efforts by the Benchers to help make legal services more accessible and affordable for the public.

According to new Law Society Rule 2-32.01, an articled student may provide all legal services that a lawyer is permitted to provide, with some exceptions, but the supervising lawyer is responsible for ensuring the student is competent and properly prepared.

Subject to approval of the courts, which the Law Society hopes to secure in due course, students may appear as counsel if they are directly supervised by a practising lawyer in the following proceedings:

- an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;
- a civil or criminal jury trial;
- a proceeding on an indictable offence, unless the offence is within the absolute jurisdiction of a Provincial Court judge,

President Gavin Hume, QC and others have brought this initiative to the attention of the Provincial and Supreme Courts and have received encouragement to proceed. Discussions are continuing to ensure the expanded role for articled students aligns with judicial requirements

Since the authority granted to practising lawyers under s. 60 of the *Evidence Act* does not extend to articled students, they are not permitted to act as commissioners for oaths.

More information will be published in the Fall *Benchers' Bulletin*, which will be distributed in early September.

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LAW SOCIETY RESPONDS TO RECENT ADVOCATE ARTICLE REGARDING THE WESTERN LAW SOCIETIES CONVEYANCING PROTOCOL

[posted July 22, 2011]

The July 2011 edition of the *Advocate* includes an article written by James P. Taylor, QC entitled "The Western Law Societies Conveyancing Protocol and Lawyer's Insurance Premiums." The article makes certain inaccurate assumptions about the lawyers insurance program and the Protocol. The article also paints an incomplete picture of the underlying purpose of the Protocol and the Law Society's communication with the profession at the time the Protocol was introduced.

The following addresses these issues and provides additional information to assist the profession.

Purpose of the Protocol

At the time the Protocol was introduced, it was explained that financial institutions have long relied on solicitors' opinions to maintain enforceable mortgage security. The Protocol was therefore intended to help the legal profession enhance its position by offering Canadian financial institutions a more streamlined service. Under the Protocol in BC, institutional lenders have an alternative to requiring a building location survey in residential mortgages as they can instead rely on a lawyer's protocol opinion as a basis for funding the mortgage loan. There are also no charges related to the Protocol.

As a point of clarification, the author describes the primary purpose of the Protocol "is to allow a lawyer to advise a FI [financial institution] client in a residential mortgage transaction that the FI need not obtain an up-to-date-building location survey before the FI funds a loan secured by a mortgage...." This statement is incomplete as the Protocol continues to say "... secured by a mortgage, *provided no known building location defects exist.*"

Lawyers Insurance Fund and the Protocol

The writer says that he was moved to write his submission based on the Law Society's 2011 Spring *Insurance Issues: Program Report*. He states that a table in the report indicates that residential and commercial real estate accounts for 21% of all reported insurance claims and another table reports that the combined severity (cost) of real estate claims is 31% of all claims. While true, the Protocol actually relates only to residential real estate transactions and therefore only the residential figures should have been referenced. In 2010, residential real estate accounted for 12% of total claims for both the frequency and severity.

The writer speculates that "some number of these claims must arise from lawyers who have done negligent work but are protected by the Protocol." In the 10 years since the Protocol's introduction and of the 1,124 reports of claims and potential claims arising out of residential real estate, only one relates to the Protocol. Furthermore, there have been no expense or indemnity payments and no waived deductibles or surcharges or discounts in connection with the Protocol.

This was predicted by the Lawyers Insurance Fund working group that completed an extensive risk assessment prior to the introduction of the Protocol suggesting that the impact on the insurance program would be minimal. The assessment also reflected the fact that only certain loan transactions would qualify and that lawyers would be required to take specific steps as part of a Protocol closing to help manage the risk.

The article continues to say that lawyers who do not engage in the real estate work for which the Protocol is necessary end up paying more in insurance premiums to cover the Protocol's "negligence" exemption. However, lawyers have never paid a higher insurance fee associated with the Protocol.

Communication of the Protocol

The writer suggests that there was inadequate communication about the Protocol when it was introduced to the profession in 2001. However, at the time the Protocol was launched, the Law Society ran articles in both the 2001 January/February and 2001 March/April editions of the *Benchers' Bulletin*, introducing and explaining the Protocol to all lawyers. Both articles continue to be referenced in the Lawyers Insurance Fund section of the website and all Protocol-related materials are posted in the Practice Resources section.

Also in early 2001, the Law Society offered briefing sessions on the Protocol that reached a wide number of lawyers. A full 260 lawyers attended sessions held in Vancouver, Victoria and Kelowna and another 150 saw the presentation by video repeat in 14 locations across the province. Furthermore, a refresher on the Protocol was offered to real estate lawyers as part of the course content for CLE's "Residential Conveyance for Lawyers" in 2006.

If you would like any additional information about the Protocol, please refer to the Law Society website or contact a Law Society Practice Advisor.

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LAW FOUNDATION LEGAL RESEARCH FUND

[posted July 21, 2011]

The Law Foundation of BC has established a fund of \$100,000 per year to support legal research projects that advance the knowledge of law, social policy and the administration of justice. BC lawyers are invited to apply.

For more information on the Legal Research Fund and the application process, visit the Law Foundation's website.

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PRO BONO GOING PUBLIC 2011

[posted July 19, 2011]

- September 9 – Vancouver
- September 13 – Kelowna
- September 16 – Victoria

Access Pro Bono (APB) is looking for Vancouver, Kelowna and Victoria lawyers to volunteer for its free legal advice-a-thon in September. In each location, volunteer lawyers will work one-hour shifts throughout the day to advise individual clients in an open-air setting. Clients will be low- and modest-income individuals, including homeless people, who may otherwise have limited

The Law Society of British Columbia



Report of the Lawyer Education Advisory Committee: Continuing Professional Development Review and Recommendations

For: The Benchers

Date: September 9, 2011

Thelma O'Grady, Chair
Joost Blom, QC, Vice-Chair
Tom Fellhauer
Ben Meisner
Nancy Merrill
Catherine Sas, QC
Patricia Schmit, QC
Jim Vilvang, QC
Johanne Blenkin
Linda Robertson

Purpose of Report: Discussion and Decision

Prepared on behalf of: Lawyer Education Advisory Committee

**Staff: Alan Treleaven
Director, Education and Practice (604) 605-5354**

**Charlotte Ensminger
Staff Lawyer, Policy and Legal Services (604) 697-5843**

I. BACKGROUND

1. On November 16, 2007, the Benchers approved the former Lawyer Education Committee's recommendations for a mandatory continuing professional development ("CPD") program, to begin on January 1, 2009. Approval of CPD was premised, above all, on assuring the public and the profession that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the province.
2. Although CPD requirements for lawyers exist in many other jurisdictions, including England, Wales, Scotland, Ireland, 45 American states and 4 Australian jurisdictions, the Bencher decision marked the first time that a Canadian law society had introduced a comprehensive CPD requirement.
3. Today, seven provinces and one territory have or are about to introduce comprehensive CPD requirements.

II. PURPOSE OF THIS REPORT

4. This is the third year of the CPD program. The Committee conducted a comprehensive review of the program in 2011, and is reporting the results to the Benchers, together with recommendations for some specific modifications, in time to ensure that changes are in place beginning January 1, 2012.

III. CONSULTATION

5. The Committee surveyed BC lawyers in the spring of 2011 to assess the CPD program. Of the 1,419 lawyers who participated in the survey, 78% agreed that continuing education should be mandatory for lawyers, with more than half agreeing that the annual requirement is likely to strengthen the quality of legal services that BC lawyers provide to their clients. The results show that the overall assessment of the program has been very positive.
6. The Committee has also received input from lawyers and law-related organizations. That input has been mainly positive. Where concerns have been raised, they are mostly in connection with questions relating to approved subject-matter, cost and geographic barriers.
7. Some lawyers and law-related organizations suggest harmonizing the BC requirements with other provinces and territories, to reflect the increasing inter-jurisdictional mobility of lawyers. The Committee is recommending that such an initiative be the subject of the next CPD program review, which would include examining a role for other law societies and the Federation of Law Societies.

IV. COMMITTEE RECOMMENDATIONS AND COMMENTARY

8. The Committee has been guided in its analysis of a considerable number of options by wanting to ensure that the CPD program is as straight-forward and stream-lined as reasonably possible for lawyers, legal education providers, and the Law Society.

9. The Committee has developed the following detailed recommendations, to take effect January 1, 2012. Commentary is included as background or to explain the reasons for any proposed changes.

10. Recommendation 1 - The 12 Hour Requirement

- (a) Continue the annual 12 hour requirement.
- (b) Amend current Rule 3-18.3(1) so that the Benchers no longer need to approve on an annual basis the minimum number of CPD hours a practising lawyer is required to meet.

Comment: Rule 3-18.3(1) currently reads as follows: “Before the commencement of each calendar year, the Benchers must determine the minimum number of hours of continuing education that is required of a practising lawyer in the following calendar year.” The Committee has concluded that requiring annual Bencher approval serves no practical purpose.

11. Recommendation 2 – The Two Hour Requirement for Professional Ethics, Practice Management, Client Care and Relations

- (a) Continue the requirement that at least two of the annual 12 hours required must pertain to any combination of professional responsibility and ethics, practice management and client care and relations.
- (b) Professional responsibility and ethics, practice management, and client care and relations content that is embedded in the overall credit available for a course continues to comply with the two hour requirement.

Comment: CPD providers continue to be encouraged to also offer non-embedded or “stand-alone” content and courses that meet the two hour requirement.

12. Recommendation 3 - Overall Subject Matter Requirement

Eliminate the “audience test” requirement, so that the overall subject matter requirement would read as follows:

The subject matter of all accredited learning modes, including courses, must deal primarily with one or more of

- (a) substantive law,
- (b) procedural law,
- (c) professional ethics,
- (d) practice management (including client care and relations),

- (e) lawyering skills.

Comments:

This revised subject matter requirement focuses on subject matter content, and eliminates the current “audience test” component, which reads “... material primarily designed and focused for an audience that includes, as a principal component, lawyers, paralegals, articling students and/or law school students, but not if the subject matter is targeted primarily at clients, the public, other professions, or other students.” The revised subject matter requirement eliminates, for example, denial of credit for attending an Institute of Chartered Accountants’ tax course designed and focused at accountants.

See appendix A for the guiding descriptions, adopted by the Committee, of the following subject matter:

- *professional ethics,*
- *practice management (including client care and relations),*
- *lawyering skills.*

Credit continues to be available for subject matter related to the law of other countries, provinces and territories, and is not limited to BC or Canadian law.

13. Recommendation 4 - Subject Matter Exclusions

Continue to exclude credit for the following:

- (a) lawyer wellness topics,
- (b) topics relating to law firm marketing or profit maximization,
- (c) any activity designed for or targeted primarily at clients.

Comments:

The Committee’s rationale for continuing exclusions (a) and (b) is that accredited CPD should primarily enhance a lawyer’s legal knowledge and related legal skills.

The Committee discussed in detail whether content relating primarily to lawyer wellness or resiliency, for which CPD credit is not currently available, should be accredited for any or all of

- *courses and other educational programs,*
- *study groups,*
- *teaching,*
- *writing,*
- *mentoring.*

The Committee noted that although lawyer wellness is not currently an accredited subject matter, wellness content is not a complete barrier to accreditation. For example, a mentoring relationship that includes at least 6 hours of accredited subject matter, such as

a combination of family law and ethics, would be accredited for 6 hours, even though the balance of the time beyond the minimum 6 hours might focus on wellness.

The Committee concluded that engaging in wellness and resiliency activities can be of significant value to lawyers, and therefore serve the public interest, but decided that because wellness activity is not fundamentally professional education, it should continue to be ineligible for CPD credit.

The Committee observed, however, that there would be value in the Law Society developing initiatives that encourage lawyers to engage in activities promoting health and resiliency as they relate to law practice, and endorsed the idea of recommending such initiatives.

The Committee rationale for continuing exclusion (c), activity designed for or targeted primarily at clients, is that the CPD requirement is intended primarily to encourage lawyers to maintain and enhance their professional competence, not to encourage them to choose CPD activities on the basis that they will sustain and perhaps expand the firm's client base.

14. Recommendation 5 - Credit for Courses

(a) Continue to accredit courses based on the following criteria:

- (i) actual time in attendance,
- (ii) online real time courses, streaming video, webcast and / or teleconference courses, if there is an opportunity for lawyers to ask and receive answers to questions,
- (iii) local or county bar association educational programs, and CBA section meetings: credit for actual time, but excluding time not directed to educational activity,
- (iv) reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.

(b) Extend accreditation to reviewing a previously recorded course if a lawyer and articling student review it together, including by telephone or other real time communications technology.

Comments:

Credit for reviewing a recorded course with an articling student extends the two lawyer requirement. The Committee decided against extending credit to a lawyer who reviews a recorded program with a paralegal, on the basis that there is no paralegal accreditation or licensing in BC.

Lawyers continue to receive credit for repeating the same courses, including online courses year over year, but not for repeating a course within the same reporting year.

15. Recommendation 6 - Self Study Restriction

- (a) Continue to exclude self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception in recommendation 7 for approved interactive online programs;
- (b) Continue to recommend a minimum 50 hours of self-study annually, but not require lawyers to report their self-study, as it is not eligible for credit.

Comments: The Committee continues to see considerable value in lawyers meeting together to engage in continuing professional development. While this requirement can present an obstacle because of geography or scheduling demands, the wide range of ways to engage in continuing professional development, including through electronic means, study groups, mentoring, local bar events, teaching and writing, considerably alleviates such a concern.

16. Recommendation 7 - Credit for an Interactive Online Self Study Program

Continue credit for interactive online self-study education for up to a Law Society pre-assigned limit per online program, as well as for completing on one's own an audio, video or web program if the program includes each of the following characteristics:

- (a) a quiz component, where questions are to be answered, and where either the correct answer is provided after the question is answered, or an answer guide is provided after the lawyer completes the quiz;
- (b) the quiz is at the end of or interspersed throughout the program;
- (c) the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

Comment: For the quiz component, the lawyer is not required to submit the quiz responses for review.

17. Recommendation 8 - Study Group Credit

- (a) Continue credit for study group attendance at a meeting
 - (i) if at least two lawyers or a lawyer and articling student are together for educational purposes at the same time (including by telephone or other real time communications technology),

- (ii) of an editorial advisory board for legal publications, but not as a part of regular employment, or
- (iii) of a law reform body or group, but not as a part of regular employment,

if a lawyer chairs or has overall administrative responsibility for the meeting.

Comment: An educational purpose includes reviewing a recorded program.

(b) Continue to exclude credit for:

- (i) participation on committees, boards and tribunals,
- (ii) any time that is not related to educational activity,
- (iii) activity that is file specific,
- (iv) time spent reading materials, handouts or PowerPoint, whether before or after the study group session.

Comment: The Committee's rationale for continuing to exclude (b)(i), participation on committees, boards and tribunals, is that although there may be some professional development value in volunteering on some boards and committees, the primary focus of accrediting CPD activity should be focused on enhancing legal knowledge and legal skills.

18. Recommendation 9 - Mentoring Credit

(a) Continue the following provisions relating to mentoring:

- (i) a lawyer who has engaged in the practice of law in Canada, either full or part-time, for 7 of the 10 years immediately preceding the current calendar year, and who is not the subject of an order of the Credentials Committee under Rule 3-18.31(4) (c), is eligible to be a mentor;

Comment: This mirrors the requirement for approval as an articling principal.

- (ii) mentoring credit is available for mentoring another lawyer or an articling student, but not for an articling principal mentoring one's own articling student;
- (iii) mentoring credit is not available for mentoring a paralegal;

- (iv) mentoring goals must comply with the subject matter requirements applicable for any other CPD credit;
- (v) mentoring must not be file specific or simply answer questions about specific files;
- (vi) a mentor is entitled to 6 hours of credit per mentee, plus another 6 hours (for a total of 12 hours) if mentoring two mentees separately. If two or more mentees are mentored in a group, the mentor is entitled to 6 hours, and each mentee is entitled to 6 hours;
- (vii) credit is for time actually spent together in the mentoring sessions, and can be face to face or by telephone, including real time videoconferencing.

Comment: (ii) and (v) continue to exclude CPD credit for mentoring law school students, including students in law school clinical programs. The Committee's rationale for this exclusion is that such mentoring, while providing an important service, does not achieve the goal that accredited CPD should meaningfully enhance the mentor's legal knowledge and related skills.

(b) Implement the following changes to mentoring:

- (i) mentoring by email or similar electronic means qualifies for credit;
- (ii) no minimum time for each mentoring session. This waives the current 30 minute minimum;
- (iii) if less than 6 hours is spent in the year, continue the restriction that no time can be claimed for the mentoring relationship, but with a new exception for when the mentoring relationship ends prematurely under unexpected circumstances.

Comment: These changes are intended to reduce constraints on mentoring, thereby encouraging growth in the mentoring program.

19. Recommendation 10 - Teaching Credit

- (a) Continue to provide up to three hours of credit for each hour taught if the teaching is for
 - (i) an audience that includes as a principal component, lawyers, paralegals, articling students and / or law school students,
 - (ii) a continuing professional education or licensing program for another profession, or

(iii) a post-secondary educational program,

but not if the teaching is targeted primarily at clients or is file specific.

(b) Implement the following change if teaching is directed to an audience not listed in (a) (i), (ii), and (iii) above, such as the general public:

one hour of credit for each hour taught, but not if targeted primarily at clients or is file specific.

Comments:

Extending credit to teaching the general public is based on the rationale that there is professional development value in teaching to any audience and, in the case of the public, to doing so in a way that requires the skill to communicate to people who typically lack legal training. There would continue to be no credit if the teaching is targeted primarily at clients or is file specific.

The Committee's rationale for continuing to exclude credit for teaching designed for or targeted primarily at clients is that the CPD requirement is intended to encourage lawyers to maintain and enhance their professional competence, not to encourage them to choose CPD activities on the basis that they will sustain and perhaps expand the firm's client base.

(c) Continue the following provisions:

- (i) credit for volunteer or part-time teaching only, not as part of full-time or regular employment;
- (ii) if the lawyer only chairs a program, the time spent chairing the program is all that may be reported, not three hours for each hour of chairing;
- (iii) no cap on the number of hours for teaching;
- (iv) credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year;
- (v) credit for the same course from year to year, whether or not there are changes to the course;
- (vi) a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;
- (vii) no credit for setting or marking examinations, term papers or other assignments;

- (viii) no credit for preparation time if the lawyer does not actually teach the course. Examples include
 - assisting someone else in preparation without actually teaching,
 - acting as a teaching assistant without actually teaching,
 - preparing to teach, but the course is then cancelled.

20. Recommendation 11 - Writing Credit

- (a) Continue writing credit, as follows:
 - (i) for writing law books or articles intended for publication or to be included in course materials,
 - (ii) a maximum of 6 hours for each writing project, based on the actual time to produce the final product,
 - (iii) no cap on the overall credit hours available for writing,
 - (iv) in addition to credit for teaching and preparation for teaching,
 - (v) not for preparation of PowerPoint,

Comment: Time spent preparing PowerPoint is to be accounted for in teaching preparation time.

- (vi) not for writing for law firm websites,
- (vii) not for blogging or wikis,

Comment: At this time there are no generally accepted standards for posting to blogs or wikis, although postings typically range from informal chat to thoughtfully articulated expression in the nature of typical print publication. The Committee does not see it as feasible at this time to prescribe quality standards. The Committee resolved to reconsider this restriction as a part of the next CPD review.

- (viii) for volunteer or part-time writing only, not as a part of full-time or regular employment.
- (b) Extend credit to writing for any audience, except when targeted primarily at clients, thereby eliminating the current restriction that the writing must be for
 - (i) an audience that includes as a principal component, lawyers, paralegals, articling students and/or law school students,
 - (ii) a continuing education or licensing program for another profession, or
 - (iii) a post-secondary educational program.

Comment: The Committee concluded that this change would be consistent with its recommendation to accredit teaching to the general public, which is based on the rationale that there is professional development value in teaching to any audience and, in the case of the public, to doing so in a way that requires the skill to communicate to people who lack legal training.

21. Recommendation 12 - Pro Bono Exclusion

Continue to exclude CPD credit for providing pro bono legal services.

Comments:

The Committee concluded that engaging in pro bono, while highly laudable, is the practice of law, and not primarily continuing professional development. In so deciding, the Committee considered submissions arguing that providing legal services to lower income or impoverished clients has professional development and ethical responsibility value.

No other Canadian jurisdiction provides CPD credit for pro bono activity. Approximately 12 of the 45 American states with MCLE requirements provide some credit for pro bono.

22. Recommendation 13 - Compliance and Reporting Requirements

- (a) Continue to base the CPD requirement on the calendar year, with a reporting date of December 31.
- (b) Continue to exclude credit carry forward or averaging to a subsequent CPD reporting year.

Comments:

The Committee considered the following additional options for a CPD reporting cycle:

- *a multi-year reporting requirement,*
- *credit carry over or averaging from year to year,*
- *a three year reporting requirement, with a minimum number of hours required in each of the 3 years,*
- *a 15 hour CPD requirement with permitted carry over.*

The Committee discussed a concern that carry forward could be seen by the public as watering down the annual requirement, and that some lawyers would reduce what might otherwise be their annual 12 hour CPD consumption in ensuing years.

The Committee resolved to reconsider the restriction as a part of the next CPD review.

- (c) Continue the following requirements:
 - (i) a lawyer who fails to complete and report the requirements by December 31 is required to pay a late fee, and receives an automatic 3

month extension to complete the CPD requirement, without being suspended;

- (ii) the lawyer receives a 60 day prior written notice of the possible suspension;
- (iii) if the requirement is not met by April 1, the lawyer is administratively suspended until all required CPD requirements are completed;
- (iv) the Practice Standards Committee has the discretion to prevent or delay a suspension in special circumstances on application by the lawyer to do so;
- (v) a lawyer who is completing the prior year's CPD requirement by April 1 of a current year is subject to the provisions governing the prior year's CPD.

Comments:

Lawyers report their CPD hours by logging in to the Law Society website, and clicking on the CPD link, where they can review their individual credits and the time remaining to comply with the annual CPD requirement. After completing an accredited learning activity, lawyers add the credits to their record.

Lawyers are notified by email before the end of the year of the approaching deadline, and they are reminded of the consequences of non-compliance.

- (d) Implement the following revised late fee structure:
 - (i) lawyers who complete their CPD hours by December 31 but fail to report completion by the December 31 deadline will be levied a \$200 late fee plus applicable taxes;
 - (ii) lawyers who fail to complete the required CPD hours by December 31, and are therefore required to complete and report the required CPD hours by April 1 of the following year, will be levied a late fee of \$500 plus applicable taxes.

Comment: The \$500 late fee levy would be new, reflecting the differing gravity of failure to report and failure to complete the required CPD hours by the deadline. In 2012, "Schedule 1 – 2012 Law Society Fees and Assessments," would include this change.

There are two other instances in which lawyers are currently charged late fees: at annual fee billing and on filing of trust reports.

- *Lawyers are charged a late fee if they do not pay the annual fee by November 30 of the year preceding the year for which it is payable. (Practising lawyers are charged \$100 and non-practising lawyers are*

charged \$25. There is no late fee on a retired membership.) If the annual fee and late fee are not received by December 31, the lawyer's membership is ceased and the lawyer must apply to be reinstated. The reinstatement application fee is \$415.

- *A lawyer who fails to deliver a trust report by the date required is charged a late fee of \$200. If the trust report is not delivered within 30 days after it is due, the lawyer is subject to an additional assessment of \$400 per month or part of a month until the report is delivered. A lawyer who does not deliver the trust report within 60 days of its due date is suspended until the report is completed.*

23. Recommendation 14 - Exemptions and Extensions

Continue to require all lawyers with a practicing certificate, whether full or part-time, to fulfill the CPD requirement, subject to the following exceptions:

- (a) lawyers with a practicing certificate who submit a declaration that they are not practising law are exempt, such as lawyers who are
 - (i) inactive,
 - (ii) on medical or maternity leave,
 - (iii) taking a sabbatical;
- (b) lawyers who resume practice within the reporting year after having been exempt and, subject to (c), below, new lawyers by way of transfer, must complete one credit hour for each full or partial calendar month in the practice of law;
- (c) newly called lawyers who complete the bar admission program of a Canadian law society during the reporting year are exempt;
- (d) no exemption or reduction for
 - (i) being too busy (such as a long trial),
 - (ii) the practice of law being in another jurisdiction,
 - (iii) part-time practice.

Comments:

There has been little demand for a CPD reduction or exemption from BC lawyers who are also members in other jurisdictions, because educational activities in other jurisdictions generally meet the requirements for accreditation on BC. The Committee decided not to recommend at this time an exemption for lawyers who are also members in other jurisdictions, primarily practise law in another jurisdiction, and comply with a similar CPD requirement in that other jurisdiction. The Committee resolved to reconsider this restriction as a

part of the next CPD review, in consultation with other law societies and the Federation of Law Societies of Canada.

The Committee considered the issue of reduction for lawyers in part-time practice, including the discussion at the 2010 Law Society Annual General Meeting, and concluded that because part-time practitioners must perform at the same level of competence as full-time practitioners, there is no convincing rationale for reducing the requirement for part-time practitioners.

24. Recommendation 15 - Accreditation Model

Continue the current accreditation model, whereby

- (a) all applications by providers and lawyers are submitted electronically, and approval decisions are made by Law Society staff;
- (b) all credits are approved in either of two ways:
 - (i) pre-approve the provider (an individual course or other educational activity offered by a pre-approved provider does not require further approval); or
 - (ii) approve (before or after the event) individual courses and other educational activities on the application of either the provider or an individual lawyer;
- (c) an individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
- (d) providers are pre-approved and remain pre-approved if they maintain integrity and quality.

Comments:

BC, Saskatchewan, New Brunswick and Quebec have adopted an accreditation model. Manitoba, Nova Scotia and Northwest Territories have decided on a non-accreditation model. Ontario has a partial non-accreditation model combined with a paper-based spot audit.

All but one of the U.S. jurisdictions with mandatory CLE have an accreditation model, as do England, Wales, Scotland, Ireland, and the Australian jurisdictions with CPD requirements.

The Committee resolved to review the continuation of the accreditation model as a part of the next CPD review, when the Law Society has more experience with the current model and is able to compare its experience with other Canadian

jurisdictions that are introducing a non-accreditation and spot audit approach. If the Law Society were to move to a non-accreditation model, lawyers would, for example,

- *list the educational activities they complete without an accreditation step, but be guided by subject-matter criteria published by the Law Society, and*
- *possibly be subject to a random spot audit. For example, a paper-based CPD spot audit is a feature of the Ontario program, which is in its first year of operation.*

V. BUDGET IMPACT

25. The Committee proposals, if adopted and implemented, would not increase Law Society budgetary expenses, including required staffing resources.

VI. WHAT THE BENCHERS ARE BEING ASKED TO DO

26. The Committee requests that the Benchers approve the following recommendations.

27. Recommendation 1 – The 12 Hour Requirement

- (a) Continue the annual 12 hour requirement.
- (b) Amend current Rule 3-18.3(1) so that the Benchers no longer need to approve on an annual basis the minimum number of CPD hours a practising lawyer is required to meet.

28. Recommendation 2 – The Two Hour Requirement for Professional Ethics, Practice Management, Client Care and Relations

- (a) Continue the requirement that at least two of the annual 12 hours required must pertain to any combination of professional responsibility and ethics, practice management and client care and relations.
- (b) Professional responsibility and ethics, practice management, and client care and relations content that is embedded in the overall credit available for a course continues to comply with the two hour requirement.

29. Recommendation 3 – Overall Subject Matter Requirement

Eliminate the “audience test” requirement, so that the overall subject matter requirement would read as follows:

The subject matter of all accredited learning modes, including courses, must deal primarily with one or more of

- (a) substantive law,
- (b) procedural law,

- (c) professional ethics,
- (d) practice management (including client care and relations),
- (e) lawyering skills.

30. Recommendation 4 – Subject Matter Exclusions

Continue to exclude credit for the following:

- (a) lawyer wellness topics,
- (b) topics relating to law firm marketing or profit maximization,
- (c) any activity designed for or targeted primarily at clients.

31. Recommendation 5 – Credit for Courses

- (a) Continue to accredit courses based on the following criteria:
 - (i) actual time in attendance,
 - (ii) online real time courses, streaming video, webcast and / or teleconference courses, if there is an opportunity for lawyers to ask and receive answers to questions,
 - (iii) local or county bar association educational programs, and CBA section meetings: credit for actual time, but excluding time not directed to educational activity,
 - (iv) reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.
- (b) Extend accreditation to reviewing a previously recorded course, if a lawyer and articling student review it together, including by telephone or other real time communications technology.

32. Recommendation 6 – Self Study Restriction

- (a) Continue to exclude self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception in recommendation 7 for approved interactive online programs.
- (b) Continue to recommend a minimum 50 hours of self-study annually, but not require lawyers to report their self-study, as it is not eligible for credit.

33. Recommendation 7 – Credit for an Interactive Online Self Study Program

Continue credit for interactive online self-study education for up to a Law Society pre-assigned limit per online program, as well as for completing on one's own an audio, video or web program if the program includes each of the following characteristics:

- (a) a quiz component, where questions are to be answered, and where either the correct answer is provided after the question is answered, or an answer guide is provided after the lawyer completes the quiz;
- (b) the quiz is at the end of or interspersed throughout the program;
- (c) the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

34. Recommendation 8 – Study Group Credit

- (a) Continue credit for study group attendance at a meeting
 - (i) if at least two lawyers or a lawyer and articling student are together for educational purposes at the same time (including by telephone or other real time communications technology),
 - (ii) of an editorial advisory board for legal publications, but not as a part of regular employment, or
 - (iii) of a law reform body or group, but not as a part of regular employment,

if a lawyer chairs or has overall administrative responsibility for the meeting.

35. Recommendation 9 – Mentoring Credit

- (a) Continue the following provisions relating to mentoring:
 - (i) a lawyer who has engaged in the practice of law in Canada, either full or part-time, for 7 of the 10 years immediately preceding the current calendar year, and who is not the subject of an order of the Credentials Committee under Rule 3-18.31(4) (c), is eligible to be a mentor;
 - (ii) mentoring credit is available for mentoring another lawyer or an articling student, but not for an articling principal mentoring one's own articling student;

- (iii) mentoring credit is not available for mentoring a paralegal;
 - (iv) mentoring goals must comply with the subject matter requirements applicable for any other CPD credit;
 - (v) mentoring must not be file specific or simply answer questions about specific files;
 - (vi) a mentor is entitled to 6 hours of credit per mentee, plus another 6 hours (for a total of 12 hours) if mentoring two mentees separately. If two or more mentees are mentored in a group, the mentor is entitled to 6 hours, and each mentee is entitled to 6 hours;
 - (vii) credit is for time actually spent together in the mentoring sessions, and can be face to face or by telephone, including real time videoconferencing.
- (b) Implement the following changes to mentoring:
- (i) mentoring by email or similar electronic means qualifies for credit;
 - (ii) no minimum time for each mentoring session. This waives the current 30 minute minimum;
 - (iii) if less than 6 hours is spent in the year, continue the restriction that no time can be claimed for the mentoring relationship, but with a new exception for when the mentoring relationship ends prematurely under unexpected circumstances.

36. Recommendation 10 – Teaching Credit

- (a) Continue to provide up to three hours of credit for each hour taught if the teaching is for
- (i) an audience that includes as a principal component, lawyers, paralegals, articling students and / or law school students,
 - (ii) a continuing professional education or licensing program for another profession, or
 - (iii) a post-secondary educational program,
- but not if the teaching is targeted primarily at clients or is file specific.
- (b) Implement the following change if teaching is directed to an audience not listed in (a) (i), (ii), and (iii) above, such as the general public:

one hour of credit for each hour taught, but not if targeted primarily at clients or is file specific.

- (c) Continue the following provisions:
- (i) credit for volunteer or part-time teaching only, not as part of full-time or regular employment;
 - (ii) if the lawyer only chairs a program, the time spent chairing the program is all that may be reported, not three hours for each hour of chairing;
 - (iii) no cap on the number of hours for teaching;
 - (iv) credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year;
 - (v) credit for the same course from year to year, whether or not there are changes to the course;
 - (vi) a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;
 - (vii) no credit for setting or marking examinations, term papers or other assignments;
 - (viii) no credit for preparation time if the lawyer does not actually teach the course. Examples include
 - assisting someone else in preparation without actually teaching,
 - acting as a teaching assistant without actually teaching,
 - preparing to teach, but the course is then cancelled.

37. Recommendation 11 – Writing Credit

- (a) Continue writing credit, as follows:
- (i) for writing law books or articles intended for publication or to be included in course materials,
 - (ii) a maximum of 6 hours for each writing project, based on the actual time to produce the final product,
 - (iii) no cap on the overall credit hours available for writing,

- (iv) in addition to credit for teaching and preparation for teaching,
 - (v) not for preparation of PowerPoint,
 - (vi) not for writing for law firm websites,
 - (vii) not for blogging or wikis,
 - (viii) for volunteer or part-time writing only, not as a part of full-time or regular employment.
- (b) Extend credit to writing for any audience, except when targeted primarily at clients, thereby eliminating the current restriction that the writing must be for
- (i) an audience that includes as a principal component, lawyers, paralegals, articling students and/or law school students,
 - (ii) a continuing education or licensing program for another profession, or
 - (iii) a post-secondary educational program.

38. Recommendation 12 – Pro Bono Exclusion

Continue to exclude CPD credit for providing pro bono legal services.

39. Recommendation 13 – Compliance and Reporting Requirements

- (a) Continue to base the CPD requirement on the calendar year, with a reporting date of December 31.
- (b) Continue to exclude credit carry forward or averaging to a subsequent CPD reporting year.
- (c) Continue the following requirements:
 - (i) a lawyer who fails to complete and report the requirements by December 31 is required to pay a late fee, and receives an automatic 3 month extension to complete the CPD requirement, without being suspended;
 - (ii) the lawyer receives a 60 day prior written notice of the possible suspension;
 - (iii) if the requirement is not met by April 1, the lawyer is administratively suspended until all required CPD requirements are completed;

- (iv) the Practice Standards Committee has the discretion to prevent or delay a suspension in special circumstances on application by the lawyer to do so;
 - (v) a lawyer who is completing the prior year's CPD requirement by April 1 of a current year is subject to the provisions governing the prior year's CPD.
- (d) Implement the following revised late fee structure:
- (i) lawyers who complete their CPD hours by December 31 but fail to report completion by the December 31 deadline will be levied a \$200 late fee plus applicable taxes;
 - (ii) lawyers who fail to complete the required CPD hours by December 31, and are therefore required to complete and report the required CPD hours by April 1 of the following year, will be levied a late fee of \$500 plus applicable taxes.

40. Recommendation 14 – Exemptions and Extensions

Continue to require all lawyers with a practicing certificate, whether full or part-time, to fulfill the CPD requirement, subject to the following exceptions:

- (a) lawyers with a practicing certificate who submit a declaration that they are not practising law are exempt, such as lawyers who are
 - (i) inactive,
 - (ii) on medical or maternity leave,
 - (iii) taking a sabbatical;
- (b) lawyers who resume practice within the reporting year after having been exempt and, subject to (c), below, new lawyers by way of transfer, must complete one credit hour for each full or partial calendar month in the practice of law;
- (c) newly called lawyers who complete the bar admission program of a Canadian law society during the reporting year are exempt;
- (d) no exemption or reduction for
 - (i) being too busy (such as a long trial),
 - (ii) the practice of law being in another jurisdiction,
 - (iii) part-time practice.

41. Recommendation 15 – Accreditation Model

Continue the current accreditation model, whereby

- (a) all applications by providers and lawyers are submitted electronically, and approval decisions are made by Law Society staff;
- (b) all credits are approved in either of two ways:
 - (i) pre-approve the provider (an individual course or other educational activity offered by a pre-approved provider does not require further approval); or
 - (ii) approve (before or after the event) individual courses and other educational activities on the application of either the provider or an individual lawyer;
- (c) an individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
- (d) providers are pre-approved and remain pre-approved if they maintain integrity and quality.

APPENDIX A

PROFESSIONAL ETHICS, PRACTICE MANAGEMENT, LAWYERING SKILLS

The Committee has adopted the following guiding descriptions of the following items listed in the revised subject matter test:

- professional ethics,
- practice management (including client care and relations),
- lawyering skills.

I. PROFESSIONAL ETHICS

Content focusing on the professional and ethical practice of law, including conducting one's practice in a manner consistent with the *Legal Profession Act* and Rules, the *Professional Conduct Handbook*, and generally accepted principles of professional conduct.

II. PRACTICE MANAGEMENT

Content focusing on administration of a lawyer's workload and office, and on client-based administration, including how to start up and operate a law practice in a manner that applies sound and efficient law practice management methodology.

The Committee adopted the following list of topics that would satisfy the practice management requirement for CPD accreditation, working from and revising a list developed by the former Committee on December 10, 2009:

- (a) client care and relations, including managing difficult clients;
- (b) trust accounting requirements, including:
 - (i) trust reporting;
 - (ii) financial reporting for a law practice;
 - (iii) interest income on trust accounts;
 - (iv) working with a bookkeeper;
- (c) HST and income tax remittances, including employee income tax remittances;
- (d) technology in law practice including:
 - (i) law office systems;
 - (ii) e-filing;
 - (iii) legal document preparation and management, including precedents;
- (e) retainer agreements and billing practices relating to Law Society requirements, including:
 - (i) unbundling of legal services;
 - (ii) permissible alternative billing arrangements;
- (f) avoiding fee disputes;
- (g) file systems, including retention and disposal;
- (h) succession planning;

- (i) emergency planning, including law practice continuity for catastrophic events and coverage during absences;
- (j) managing law firm staff, including:
 - (i) *Professional Conduct Handbook* requirements;
 - (ii) delegation of tasks/supervision;
- (k) identifying conflicts, including:
 - (i) conflict checks and related systems;
 - (ii) client screening;
- (l) diary and time management systems, including:
 - (i) limitation systems;
 - (ii) reminder systems;
 - (iii) follow-up systems;
- (m) avoiding “being a dupe”/avoiding fraud;
- (n) complying with Law Society Rules.

The Committee identified a list of topics that would not satisfy the practice management definition for CPD accreditation, working from and revising a list developed by the former Committee on December 10, 2009:

- (a) law firm marketing;
- (b) maximizing profit;
- (c) commoditization of legal services;
- (d) surviving a recession;
- (e) basic technology and office systems (unless in the specific context of practising law, as listed above);
- (f) attracting and retaining law firm talent;
- (g) alternate work arrangements in a law firm;
- (h) business case for:
 - (i) retention of women, and
 - (ii) retention of visible minority lawyers and staff;
- (i) handling interpersonal differences within the law firm;
- (j) cultural sensitivity in working with law firm staff;
- (k) training to be a mentor.

III. LAWYERING SKILLS

The Committee decided that to be eligible for CPD credit, lawyering skills include:

- (a) effective communication, both oral and written;
- (b) interviewing and advising;
- (c) problem solving, including related critical thinking and decision making;
- (d) advocacy;
- (e) arbitration;
- (f) mediation;
- (g) negotiation;
- (h) drafting legal documents;
- (i) legal writing, including related plain writing;

- (j) legal research;
- (k) legal project management;
- (l) how to work with practice technology, including:
 - (i) e-discovery;
 - (ii) in the courtroom;
 - (iii) client record management;
 - (iv) converting electronically stored information into evidence;
 - (v) social networking technology to facilitate client communication (but excluding marketing and client development);

but not

- (a) general business leadership;
- (b) chairing / conducting meetings;
- (c) serving on a Board of Directors;
- (d) general project management;
- (e) skills and knowledge primarily within the practice scope of other professions and disciplines.

Memo

To: The Benchers
From: Gavin Hume, QC and Tim McGee
Date: September 9, 2011
Subject: Strategic Planning, 2012 - 2014

INTRODUCTION

Attached to this memorandum is a memorandum from the Executive Committee that explains the strategic planning process to date. The memorandum takes the various items that Advisory Committees and others have identified as being important to consider in the Strategic Planning process, and places them under the various organizational goals discussed at the July meeting in order to place the issues into context within the Law Society's mandate. From this, it will be (it is hoped) easier for the Benchers to identify where the issues fit within the organization, which will be helpful when discussing where priorities should lie.

An earlier draft of this categorization was discussed by the Executive Committee at its August 25 meeting, at which the Committee considered the items and gave some preliminary thought to where they considered priorities might lie. The Committee's attached memorandum outlines the discussion from that meeting so that the Benchers will have some sense of how the Executive Committee views matters.

THE SEPTEMBER BENCHERS MEETING

1. Purpose of the Meeting

At the September meeting, the Benchers will be considering the materials in the attached memorandum and will therefore begin the work on prioritizing the many strategies and initiatives that could form the basis of the next Strategic Plan.

The Benchers are asked to give some thought in advance of the meeting as to what each Benchers considers are the issues that should be included on the strategic plan and come to the meeting prepared to discuss their views.

At this stage, the Benchers are asked to identify priorities on the basis of the importance or urgency of a particular issue to the organization, ignoring, for the time being, considerations

relating to feasibility and cost. It is first necessary to understand what important and urgent issues must be addressed over the course of the Strategic Plan.

We know that prioritizing competing initiatives is never an easy task, but the process is helped immeasurably by being able to understand the perspectives that those who will ultimately make the decisions have on the relative importance of the issues. The Advisory Committee reports have been attached to the Executive Committee's memorandum which, together with the minutes from the July meeting found earlier in the agenda package, can be referred to for further information about the rationale for the inclusion of these issues in this process. One of the items identified at the July meeting – that of regulating law firms – does not appear in the Advisory Committee Reports, but has been considered in the context of seeking legislative amendments. An extract from that material concerning the issue of regulating law firms from the July 2010 Benchers Meeting agenda materials is attached as the last attachment. Context for some of the issues carrying over from the Strategic Plan can of course be found in the current Strategic Plan itself.

If any Bencher, however, has any questions about what is contained in the materials, we, Mr. Whitcombe or Mr. Lucas would be pleased to discuss matters with you in advance of the meeting.

If there are any other issues that have not been identified, now is the time to raise them. Issues should, of course, be strategies or initiatives that advance the organizational goals that have been identified.

2. Plan for the Meeting

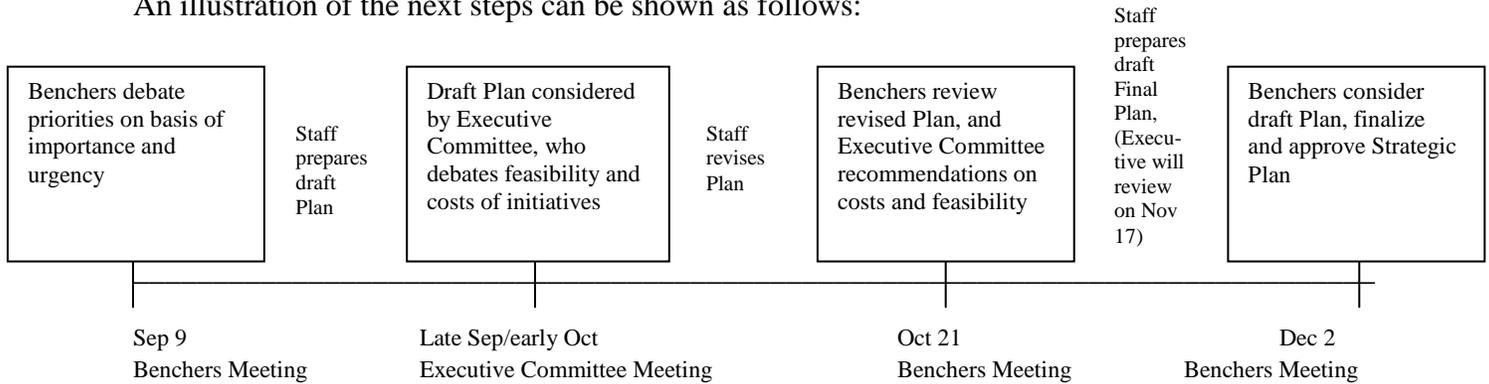
At the meeting itself, the Benchers will be asked to participate in a general discussion about the strategies and initiatives that have been raised and what their general level of importance is to the organization over the next three-year period. We hope that discussion can lead to an exchange of opinions and views from as many Benchers as possible about the relative importance and merits of the various strategies and initiatives that have been identified. Benchers should feel free to discuss their views openly and frankly.

The Benchers will also receive, at the meeting, a number of post-it notes. After the discussion has concluded, and probably during a break in the meeting, the Benchers will be asked to place their post-it notes on sheets of paper that will be posted around the Benchers Room on which the various strategies and initiatives have been written. From this, Benchers will be able to identify their priorities in a way that will visually record the views within the room. This will help to inform staff by recording the views of the Benchers as a group. It will assist staff to prepare a draft Strategic Plan for consideration at a later meeting.

NEXT STEPS

The September meeting will provide the basis from which staff can identify the matters which the Benchers consider to be most urgent and important. That information will allow staff to prepare a draft strategic plan that will be considered by the Executive Committee at a future meeting later in September or in early October. At that meeting, the Committee will begin to analyse the strategies and initiatives on the basis of feasibility and cost versus their importance and urgency. A report from the Executive Committee will be prepared together with a draft Plan, which will be considered by the Benchers at the meeting on October 21. It is hoped that final fine-tuning of the Plan can be made at that meeting, from which staff will be able to draft a final Plan for approval at the December 2 Benchers meeting.

An illustration of the next steps can be shown as follows:



CONCLUDING REMARKS

The structure categorizing the items into the organization goals in the attached memorandum cannot be viewed as a draft plan. This document is cast as broadly as possible to include and find a possible home for *all* the objectives, strategies and initiatives that are on the table to date. There are not enough time or resources to undertake all the work that would be contemplated in the attachment.

The Benchers should therefore read the text critically and start to assess what seems most important, what is clear and unclear, what seems repetitive, and what seems to be difficult versus easier to achieve. The Benchers’ goal should be to provide input and discussion on what are the most important issues, always keeping in mind that Strategic Planning is undertaken to help an organization do a better job by focusing its energy on the right goals.

There is no need to contemplate a long detailed plan. Focus, clarity and relevance to the organization’s mandate are the guiding objectives for this planning work. It will be better to have a plan which ultimately succeeds in a few areas of real importance than one which aspires to many things, with few memorable results. Staff can take direction from the discussion of the Benchers as a whole that takes place at this meeting and begin to develop a Strategic Plan that will be reviewed, in draft, at the next Executive Committee meeting.

Memo

To: The Benchers
From: The Executive Committee
Date: September 9, 2011
Subject: Strategic Planning

INTRODUCTION

In July, the Advisory Committees presented their Reports to the Benchers which in part outlined matters that the Committees recommended should be considered by the Benchers in the Strategic Planning process. The Benchers will recall that the Committees explained in their Reports the reasoning behind their recommendations. Those Reports are attached to this memorandum for reference should any Bencher wish to review them. Also in July, the Benchers were given a list of issues that had been considered in past planning sessions, but which had not been included on the Strategic Plan. A list of the issues as recommended by the Advisory Committees together with issues from past planning sessions is attached as Appendix 1 to this memorandum.

At the July meeting, the Benchers considered and reached a general consensus on four overarching organizational goals for the Law Society. The four goals were:

- 1. Be an innovative and effective professional regulatory body;**
- 2. Promote and improve access to legal services;**
- 3. Establish appropriate standards for admission to and practice in the legal profession and ensure that programs exist to aid applicants and legal professionals to meet those standards;**
- 4. Enhance public confidence in the administration of justice and the rule of law.**

The Benchers then discussed the goals in the context of the work of the Law Society and began to consider the various ways available to achieve the goals of the organization.

The President concluded the discussion in July by advising that the comments from the meeting would be considered, and staff would draft a discussion paper for consideration at the September meeting that would identify and summarize the issues in the context of the organization goals. A draft paper in this regard was considered by the Executive Committee at its August 25 meeting. The Committee considered the strategies and initiatives identified in that memorandum in the context of the organizational goals and began to discuss where the members of the Committee considered the priorities lay.

PURPOSE OF THIS MEMORANDUM AND MEETING

This memorandum has been prepared following the discussion by the Benchers in July and following the consideration given to an earlier draft by the Executive Committee in August. It groups the issues that the Advisory Committees have identified and that have been “left over” from previous planning sessions under relevant the various organizational goals that were discussed at the July Bencher meeting. This has been done to assist the Benchers by allowing them to see where the issues would “fit” within a strategic plan. This, the Committee believes, should help to focus the discussion when settling on what the final plan should look like. At this time, the Benchers are asked to assess priorities on the basis of how important or how urgent particular items are to the Law Society, regardless of cost or feasibility.

This memorandum also reviews and shares the discussion from the August Executive Committee meeting at which the Committee discussed where it considered the priorities might lie. The Committee’s discussion on this subject is not meant to be determinative, however. Rather, we have included it in order to provide a starting point for the discussion that the Benchers as a group now need to engage in.

Following the conclusion of this meeting, and after review of the materials on the agenda, we anticipate that staff can take direction from the discussion and begin to develop a draft Strategic Plan for 2012 - 2014. The draft will be considered by the Executive Committee at its next meeting, at which time considerations about cost and feasibility will be considered. A further report and draft Plan will be prepared for the Benchers to consider at the October meeting that will include a consideration of cost and feasibility, from which a final Plan can be prepared for consideration and approval in December.

STEP 1: CATEGORIZING THE ISSUES THAT HAVE BEEN IDENTIFIED INTO THE ORGANIZATIONAL GOALS

What follows is a revised version of the memorandum that the Executive Committee considered at its August 25 meeting. The issues that are listed in Appendix 1 are categorized into one of the four organizational goals in order to give a clearer picture about where they might fit strategically within the organization. The result should assist the Benchers by creating a clearer picture about where the issues might fit within the organization’s mandate. It is difficult to prioritize issues until one sees where they would fit within the organizational structure.

With that in mind, the draft effort at categorizing the issues follows. Issues that would best be described as “strategies” – that is, ways that organizational goals can be achieved – are listed with solid bullets. Issues that would best be described as “initiatives” – that is, specific tasks through which all or part of a strategy could be achieved – are listed with open bullets.

Goal 1 Be an innovative and effective professional regulatory body.

This goal captures strategies aimed at improving regulatory practice and ensuring public confidence that the Law Society is admitting and disciplining lawyers in the public interest.

- Pursue innovation in regulation
 - Develop of model of independent oversight
 - Examine whether the Law Society should regulate law firms
 - Examine whether the Law Society should regulate lawyers or legal service providers
- Be an effective regulator in the public interest
 - Examine the relationship between Law Society as regulator of versus Law Society as insurer of lawyers
 - Identify and examine issues particular to in-house counsel
 - Develop statutory or regulatory improvements for admissions and discipline (includes the outstanding “legislative ask”).
- Identify and develop processes to ensure continued good governance
 - Identify ways to enhance Bencher diversity
 - Revise APD to gather demographic information to inform regulatory and policy initiatives
 - Examine issues of governance generally and specifically consider evaluation of Benchers and performance feedback

Goal 2 Promote and improve access to legal services.

This goal captures strategies that are aimed not only at the obvious outcome of working to improve access to legal services, but also goals associated with how legal services are delivered and the economics of the market for legal services. Equity and diversity strategies can be included under this goal as well on the basis that increasing representation in the profession has been argued to increase access to legal services by various communities. Strategies aimed at retaining lawyers in the profession can be included, too.

- Enhance public communication and collaboration

- Work with government to better align shared objectives
- Support and retain Aboriginal lawyers
 - Mentoring program (currently under development with funding from the Law Foundation)
 - Developing a full time staff position dedicated to aboriginal issues within the Law Society
- Retain women lawyers
 - Implementing the Justicia program (presuming a decision is made in the fall of 2011 that it is feasible to do so).
- Understand the economics of the market for legal services in British Columbia
 - Conduct focused research into the economics of the legal profession to obtain good data to inform future decisions
- Improve Access to Justice in rural communities
 - Develop programs to address changing demographics of the legal profession and its effects, particularly in rural communities
 - Develop programs to improve articling opportunities in rural communities (note that this might be one of the possible programs identified by the bullet above).
- Increase the availability of legal service providers
 - Continued work on initiatives raised by recommendations by the Delivery of Legal Services Task Force
 - Consider qualification standards or requirements for differing types of legal services (presumes Initiative 3-5 of Current plan results in such a recommendation coming forward).
- Facilitate lawyer participation in Law Society initiatives to enhance access
 - Develop initiatives to encourage articling students to provide pro bono legal services, perhaps in a rotation in a public interest or pro bono program or organization or through the Provincial Court.

Goal 3 Establish appropriate standards for admission to and continued practice in the legal profession and ensure that programs exist to aid applicants and legal professionals to meet those standards.

This goal captures strategies through which the Law Society can identify initiatives that will ensure that lawyers are qualified when they begin practising law, and that they remain competent throughout their career at the bar. While this goal might also be viewed as a strategy toward

achieving Goal 2, it can justifiably be set out as a separate goal given its importance to the organization generally.

- Ensure that admission processes are appropriate and relevant
 - Examine the rationale and purpose of the Admission Program
 - Work on national admissions standards
- Ensure that lawyers are knowledgeable about the law and are competent and ethical in their delivery of legal services
 - Develop education programs about new Code of Conduct
 - Review relationship with the Continuing Legal Education Society
 - Assess feasibility of developing practice skills through law school education
 - Review effectiveness of CPD requirements

Goal 4 Enhance public confidence in the administration of justice and the rule of law.

This goal captures strategies through which the Law Society can ensure that the public interest is accounted for in matters relating to the justice system. It captures some of the work of the Independence and Self-Governance Committee, but also encompasses the development of strategies that allow the Law Society to comment more frequently on matters of interest within the justice system in order to improve its standing as a trusted voice advocating for the protection of the public interest in the administration of justice. To achieve the latter, we should look at developing broader and more meaningful relationships with all the stakeholders in the delivery of legal services and those interested in the administration of justice in British Columbia.

- Educate the public and lawyers about the importance of the rule of law and the role of the Law Society
 - Collaboration with Ministry of Education to include subject in high school curriculum
 - Identify methods of communicating the message through media
 - Identify the feasibility of commissioning academic writing (Study to analyze the benefits of the public right to an independent lawyer).
- Develop broader and more meaningful relationships with stakeholders
 - Build on relationship with Ministry of Attorney General and other government ministries
 - Identify non-governmental stakeholders and establish relationships to better understand public perspective and collaborate on mutual interests

- Be a trusted voice advocating for the protection of the public interest in the administration of justice
 - Develop a process for providing constructive comments on the effects of legislation on the public interest in the administration of justice.

CONSIDERATION BY THE EXECUTIVE COMMITTEE

The Executive Committee debated these strategies and initiatives at some length on August 25.

The Committee reached a general consensus that it was important to list the organizational goals in order of their current importance to the organization. Consequently, the Benchers will note that the numbering of the goals has been changed since the July meeting to reflect the consensus reached by the Committee in this regard. All four of the goals, of course, remain important to the organization. However, when considering which strategies and initiatives to choose, some goals might currently be of higher urgency. The Committee thought that this should be factored into the considerations of priorities.

Generally speaking, the Executive Committee believes that being an innovative and effective regulatory body is at the core of the existence of the Law Society, and consequently ought to be reflected as a key priority. Therefore, this goal has been renumbered as **Goal 1. *Innovation in regulation*** was considered to be a particularly important aspect of effective regulation, and therefore achieving outcomes under the “innovation strategy” would result in effective regulation. One initiative that resonated in particular was the one about *whether the Law Society should regulate only lawyers*, or whether it should regulate all legal service providers. The committee believes that this issue is important not only to effective regulation, but also to the question of access to legal services.

The Committee debated whether identifying and developing processes to *ensure continued good governance* should appear on the Strategic Plan or not, although there was a general consensus that the topic was important. There was some discussion that the question of *regulating law firms* and addressing the *relationship between the Law Society as regulator and insurer* could be addressed through an examination of governance.

The goal of improving access to legal services (**Goal 2**) also resonated strongly with the Committee members, and in particular strategies aimed at *increasing the availability of legal service providers* in general and improving access to legal services in rural communities figured highly in the debate, although there was also some considerable support for the strategies of *supporting and retaining Aboriginal and women lawyers*. The strategy of *enhancing public communication and collaboration* was also favourably considered. On the other hand, the general consensus of the Committee was that the strategy of understanding the *economics of the market for legal services in the province* ranked much lower on a scale of priorities.

Strategies and initiatives identified under **Goal 3** ranked much lower on a scale of priorities with Committee members. Several Committee members considered that a strategy of *ensuring that lawyers were knowledgeable, competent and ethical* were core aspects of the Law Society performed through the regulatory committees and that as a consequence, the issue need not be included on the Strategic Plan. The Committee recognized, however, that *new innovations in standard-setting* could be important strategic considerations for the organization. Some of these might be developed under Goal 1 (being an innovative and effective regulator).

Issues relating to the *admission process*, also identified under Goal 3, are, the Committee noted, being addressed through national initiatives in which the Law Society is involved. Broader questions about the purpose of the admission program are also currently being addressed by the Law Society of Upper Canada and, the Committee thought, might be able to be considered in British Columbia at a later date after it is determined what Ontario concludes (provided that there will be an opportunity to consider such matters then). As a consequence, the Committee did not attach a high priority to questions relating to the admission process at this time.

The issues identified under **Goal 4** were considered by the Committee to rank of the lowest priority at this time. Committee members were favourably disposed toward considering ways to *develop more meaningful relationships with stakeholders* and were interested in a strategy through which the Law Society could *develop ways to be a trusted voice for advocating for the protection of the public interest*. However, the Committee members did not consider that *educating the public and lawyers about the importance of the rule of law* and the role of the Law Society ranked highly as a priority at this juncture.

CONCLUSION: NEXT STEPS

As stated earlier, this memorandum has been prepared to assist the Strategic Planning process by creating a clearer picture about where the issues that have to date been identified as important fit into the organizational structure of the Law Society. We have set out the discussion of the relative importance attached by the Executive Committee to these issues in order to create a starting point for the next stage of the process. The next step is for that discussion to take place at the upcoming Benchers meeting, and to begin the work on prioritizing the many strategies and initiatives that could be worked on the basis of urgency and importance to the organization. From that discussion, staff will be able to begin to prepare a draft Strategic Plan that can be considered by the Executive Committee at its next meeting where the discussion will be able to address questions of cost and feasibility. A revised draft of the Plan will therefore be available for consideration and debate at the Benchers October meeting.

APPENDIX 1

Items identified for consideration in the Strategic Plan

Set out below is a list of the items or issues that have been identified by the Advisory Committees as matters that they consider deserve priority attention in the next Strategic Plan.

The list also includes items that arise from the work being completed in the current Plan which might continue past year's end, together with issues that the benchers have identified in the past as ones that *should* be considered in the next Plan.

Finally, the list identifies new items that were raised during the course of the last Benchers' meeting.

Readers will note that there is some overlap between the lists.

1. Access to Legal Services

- Enhancing Access to Legal Services:
 - Working with government to better align shared objectives
 - Enhancing public communication and collaboration
 - Facilitating lawyer participation in Law Society initiatives to enhance access.
 - Developing an economic analyses of the justice system in British Columbia in order to better understand the economics of the practice of law and of funding the justice system.

2. Equity and Diversity

- Supporting Aboriginal lawyers
 - Mentoring
 - Full time staff
 - Retaining Women Lawyers
 - Justicia
 - Demographic question to APD
 - Enhancing Bencher diversity
 - Aging

3. Independence and Self-Governance

- Examine relationship between Law Society as regulator and Law Society as insurer of lawyers
- Education strategies
 - Collaboration with Ministry of education to include subject in high school curriculum
 - Media strategies
 - Academic writing

4. Lawyer Education

- Review relationship with the Continuing Legal Education Society
- Develop education programs about new Code of Conduct
- Admission Program Review
- Improving articling and access to legal services in rural communities
- Articling and Pro Bono: developing initiatives to encourage articulated students to provide pro bono legal services
- Developing practice skills through law school education

5. Items already identified for consideration

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

7. Items Raised at the July Benchers meeting (see Minutes)

- Regulation of law firms
- Addressing issues of in-house counsel

The Law Society of British Columbia



Mid-Year Report: Access to Legal Services Advisory Committee

For: The Benchers

Date: July 15, 2010

Art Vertlieb, QC (Chair)
Glen Ridgway, QC (Vice-Chair)
Haydn Acheson
David Mossop, QC
Johanne Blenkin
Wayne Robertson, QC
Anthony Vecchio

Purpose of Report: Discussion and Decision

Prepared on behalf of: Access to Legal Services Advisory Committee

**Policy and Legal Services Department
Doug Munro 604-605-5313**

PURPOSE OF THE REPORT

The mid-year report of the Access to Legal Services Advisory Committee (“Committee”) has two main purposes. The first part of the report sets out the work the Committee has engaged in from January to July. The second part of the report sets out the Committee’s recommendations regarding the development of the 2012-2015 Law Society Strategic Plan.

JANUARY-JULY MEETING OVERVIEW

Due to the high profile nature of access to justice, both in British Columbia and around the world, a decision was made to increase the number of times the Committee meets. The Committee met each Thursday before Bencher day.

The Committee’s primary duty in 2011 is oversight of the work that arose from the Delivery of Legal Services Task Force Report (October 2010). The work arising from the Task Force report fell to the following groups:

- The Credentials Committee has overseen the proposed rule amendments to expand what articulated students are permitted to do. This work then went to the Act and Rules Subcommittee and was considered by the Benchers at their May 13, 2011 meeting. During this time, the Committee received regular updates as part of its monitoring function. The rules have been amended by the Benchers, with a September 1, 2011 implementation date;
- The Ethics Committee is responsible for changes to the *Professional Conduct Handbook* regarding expanded roles for paralegals. For the first part of 2011, the Ethics Committee has been focused on the Federation Model Code. The Ethics Committee will commence reviewing aspects of the Delivery of Legal Services Report at its July meeting;
- A Litigation Subgroup was created to liaise with the British Columbia Court of Appeal and the Provincial Court of British Columbia regarding expanded roles for articulated students and paralegals. The Litigation Subgroup consists of Anthony Vecchio, who reports to the Committee, Marina Pratchett, QC and Jim Vilvang, QC. Meetings were held with the British Columbia Supreme Court and the Provincial Court. Other participants in the meetings included, Art Vertlieb, QC, Gavin Hume, QC, Haydn Acheson, Ken Walker, Michael Lucas and Doug Munro. Discussions have been productive, and the Courts have identified some topics that they felt would be of assistance to their determination as to whether to permit expanded advocacy roles for paralegals, including issues surrounding certification or some measure equivalent to direct certification. The meetings with the courts are ongoing, and some of the work led to the Family Law Task Force getting involved in the analysis.
- The Family Law Task Force was asked to assist the Litigation Subgroup in designing a rough-proposal of a pilot project for enhanced roles for paralegals in

court. This work arose from the dialogue with the Supreme Court, but has the potential to have broader application. As of the date this report was drafted, that work is ongoing.

- A Solicitors Subgroup was created to draft best practice guidelines for lawyers supervising paralegals performing enhanced functions. The Subgroup consists of Mr. Ridgway, who reports to the Committee, Ralston Alexander, QC, and Christine Elliott. The Solicitors Subgroup drafted a set of guidelines, which have been shared with the courts for input, and have been provided to Jack Olsen to facilitate the work of the Ethics Committee. It is important that the draft guidelines be synchronized with the work of the Ethics Committee. Until we have amended the *Professional Conduct Handbook*, it would be premature to publish guidelines for supervising paralegals performing enhanced functions.

The efforts to advance expanded roles for paralegals and articulated students are ongoing. The Committee hopes that by the end of the year, the expansion of paralegal functions in the solicitors' side of practice, and the expansion of articulated student roles will be operational. The work with the courts will likely take longer.

Other matters

In addition to overseeing the work arising from the Delivery of Legal Services Task Force, the Committee continued its monitoring function. This included a monthly review of news materials, largely from British Columbia and Canada about access to justice matters.

Because of the importance of moving ahead with its primary work, the Committee shelved the idea of exploring new issues at this time. The Committee makes some observations regarding the Strategic Plan later in this report, and expects that in the second half of 2011 it will have more time to consider what the Law Society should be doing beyond the paralegal project.

In May the Committee held a special meeting and was pleased to have Leonard Doust, QC and Ian Mulgrew in attendance. Mr. Doust attended to speak with the Committee about the report of the Public Commission on Legal Aid. As the Benchers are aware, the report sets out a series of recommendations regarding how the delivery of legal aid can be improved in British Columbia. The Benchers also heard from Mayland McKimm, QC during his presentation about potential ways to improve legal aid in British Columbia.

Mr. Doust provided an overview of his experiences as Commissioner. He flagged a couple concepts that he felt were worth pursuing. Some of these concepts have already been identified by the Benchers, but they are worth reiterating.

First, Mr. Doust felt it was important to advance the proposition that legal aid is an essential public service, every bit as important as health care. He felt that the relationship between having legal assistance and accessing social benefits was real, and that in the absence of legal assistance many people are denied access to the basic necessities of life.

Mr. Doust felt it is important for the Law Society and other stakeholders to unite and work together to determine a shared vision for legal aid and make the case to government.

In order to better make the case for legal aid, Mr. Doust felt an economic analysis of the benefits of being represented, and the costs of self-representation are important. This concept is a variation on the idea that presently exists on the Law Society's Strategic Plan (Initiative 1-4), and which is discussed in more detail elsewhere in this report. The critical point is that Mr. Doust independently arrived at the view that the Benchers have already endorsed, that developing an economic analysis of the benefits of the justice system (or as Mr. Doust categorized it, legal aid) is central to convincing government of its importance. It would also be persuasive to the public.

Mr. Mulgrew has been writing about the courts and lawyers for many years and the Committee appreciated the opportunity to have him come and share his perspectives about the challenges facing British Columbians, and what the Law Society might do to improve access to justice. Mr. Mulgrew shared Mr. Doust's views, save that he was of the opinion that our focus should be on convincing political policy makers, rather than convincing the public, of what the future of legal aid needs to look like. Mr. Mulgrew felt the Law Society has a role to play, with other organizations such as the Legal Services Society and the Law Foundation, to form a multi-stakeholder task force to explore what the future should look like and quantify the benefits of legal aid.

The Committee was very impressed by the insight Mr. Mulgrew brought to the issues surrounding access to justice. A difficulty that can often arise in discussing a topic like access to justice is that the participants in the discussion form a closed circle of individuals with similar backgrounds and experience. In many instances the participants are lawyers, judges and academics. The opportunity to hear from a journalist with many years of experience covering legal issues, and communicating the concepts to the public, allowed the Committee to consider the issues it has been grappling with from a different perspective. Mr. Mulgrew's observations enriched the Committee's appreciation of how the public might view legal aid and access to justice issues in general.

Economic Analysis

At the January meeting, the Committee asked Ms. Blenkin to take Mr. Munro's place on the subgroup that is analyzing the potential for an economic analysis of the justice system. Mr. Robertson and Mark Benton, QC, continued on in the subgroup.

This topic has been reported to the Benchers on a number of occasions. There has been some interest in the topic from both Sauder School of Business and SFU. Part of the challenge has been to try and narrow the topic of a cost benefit analysis of the justice system to something that can be measured and still be beneficial.

The task of the Committee is to better identify the scope and potential cost of such a project and to report to the Benchers, with the idea that the Law Society, the Law

Foundation and the Legal Services Society (the latter two through a joint fund) will fund the economic analysis project.

Three potential ideas that are being discussed, but which require further refinement, are:

1. An analysis of what happens when trials can't proceed, perhaps by virtue of insufficient resources such as sheriffs. This would be a study internal to the formal justice system. Similarly, such a study might look at the cost benefit of small claims versus other ADR models.
2. An analysis of the cost benefit of funding legal aid, similar to the Perryman Study in Texas. This type of study often contains assumptions that make it vulnerable to attack, so further consideration is required before such an approach could be recommended.
3. A sophisticated analysis of the cost benefit of the justice system versus other systems, such as health care. This would likely be very complex, and as with other economic analyses can have difficulty measuring "value" as opposed to merely "cost".

Part of the challenge is trying to identify the proper scope of a question to be studied in order to arrive at a meaningful and defensible project. These efforts are ongoing.

The Law Foundation has a steering committee that has approved moving ahead with a research project, but the particulars will have to be worked out and when the particulars are better understood, the Access to Legal Services Committee will report to the Benchers with a recommendation regarding participating in the development and funding of the project.

It is likely that the Committee will recommend that Strategy 1-4 of the current Strategic Plan roll into the new plan, perhaps with revised wording once we have properly articulated the scope of the initiative.

STRATEGIC PLAN 2012-2014

At its June meeting, the Committee discussed whether the 2012-2014 Strategic Plan should carry over strategic goal #1 of the current plan, or whether that goal should be modified. The current goal is "Enhancing access to legal services" and the supporting commentary reads:

Protecting the public interest in the administration of justice requires the Law Society to work toward improving the public's access to legal services. Providing assurance about the competence and conduct of lawyers, who are able to advise clients independently of other interests, is a hollow goal if people cannot afford to retain such lawyers. Developing strategies to improve the public's ability to obtain affordable legal advice is a priority item.

The Committee believes that the goal of “Enhancing access to legal services” should be carried over to the 2012-2014 Strategic Plan.

Access to justice, achieved through access to legal services, aligns with the Law Society’s public interest mandate. Over the last decade, the Law Society has dedicated considerable resources to access to justice. This has led to initiatives such as being the first Law Society in Canada to create rules for unbundling, to the recent work of expanding roles for paralegals and articulated students. In recent years access to justice has become an increasing concern for governments, courts and regulators, and is receiving a higher media profile. The Committee believes the Law Society has an important role to play in advancing the discussion about access to legal services, and crafting practical solutions in the public interest. Along with being a model regulator, improving access to justice / legal services is central to what the Law Society should be committed to.

It is the understanding of the Committee that the discussion of the Strategic Plan in July is focused on the high level concept of what *goals* the Law Society should have. In anticipation of when the discussion moves on to involve consideration of *strategies* to advance those goals, the Committee had a preliminary discussion of strategies.

There are three potential strategies that the Committee discussed. The Committee believes the first two strategies bear serious consideration by the Benchers. The third is one the Committee has not entirely come to terms with, and it is listed here for sake of being complete.

Potential Strategy #1: Working with government to better align shared objectives regarding the public interest in access to justice / legal services.

The access to justice challenges that society faces are complex and will require numerous, coordinated responses. In many instances there will be a shared objective by government, the Law Society, and other interested parties. There is merit in identifying common ground and working cooperatively to engage in meaningful reform, to improve the public’s access to legal services and justice.

The Committee recognizes that there will be circumstances where interests diverge and the Law Society will pursue initiatives that the government is not interested in supporting and *vice versa*. However, for matters of common concern where consensus can be found the public interest favours a collaborative approach.

While first and foremost the Committee views this as the right thing to do in order to enhance access to justice, there are ancillary benefits from developing good relationships with government, particularly the Ministry of the Attorney General.

Potential Strategy #2: Enhancing public communication / collaboration.

As has been noted, most recently at the Benchers' Retreat, Law Society discussions on some topics lack input from the public. The Committee believes there is value in enhancing public communication and collaboration. This is not necessarily an "access to justice" issue, as much as a process issue for certain initiatives. However it is categorized, the Committee believes it is worth consideration by the Benchers for inclusion in the 2012-2014 Strategic Plan. Some thought will have to be given to what the object of such communication and collaboration is. It might include better educating the public on certain topics and initiatives. It might include an opportunity for the public to comment on consultation papers. It might include an opportunity for the public to provide input on its perspective of issues that are central to strategic initiatives.

Potential Strategy #3: Facilitate lawyer participation in LSBC initiatives to enhance access to legal services.

As noted, the Committee has not fleshed out what this might entail. In broad strokes, the concept is to focus inquiries about access to legal services specifically at lawyers, and in particular to find ways to increase lawyer participation in Law Society initiatives. An example might be follow up work on unbundling and, down the road, expanding roles for paralegals and articulated students. In essence, how to ensure policy development does not wither from disuse.

RECOMMENDATION

The Access to Legal Services Advisory Committee **recommends** that the Goal of "Enhancing access to legal services" be carried forward to the 2012-2014 Strategic Plan.

When the Benchers discuss strategies for the next Strategic Plan, the Committee **recommends** potential strategies 1 and 2 (above) be given serious consideration.

The Law Society of British Columbia



Equity and Diversity Advisory Committee 2011 Mid-Year Report

For: Benchers

Date: June 30, 2011

Robert Brun, QC (Chair)
Catherine Sas, QC (Vice-Chair)
Thelma O'Grady
Patrick Kelly
June Preston
Elizabeth Hunt
Jennifer Chow
Karen Whonnock

Purpose of report:

Information

Prepared on behalf of:

Equity and Diversity Advisory Committee

**Susanna Tam
Policy and Legal Services
604-443-5727**

EQUITY AND DIVERSITY ADVISORY COMMITTEE 2011 MID-YEAR REPORT

PURPOSE OF REPORT

This report reviews the 2011 work to date of the Equity and Diversity Advisory Committee, identifies key issues and presents priority considerations to the Benchers for strategic planning purposes. The Advisory Committee met in January and March 2011, and held a joint meeting with the CBABC Equality and Diversity Committee in May 2011.

ADVANCING THE STRATEGIC PLAN 2009-2011

The Equity and Diversity Advisory Committee has a number of responsibilities within the Law Society's 2009-2011 Strategic Plan. With respect to the goal of "enhancing access to legal services", the Advisory Committee is responsible for providing advice on improving the retention of rate of lawyers in the profession. This strategic objective includes examining issues related to the retention of Aboriginal lawyers and women lawyers. With respect to the goal of "enhancing public confidence in the legal profession", the Advisory Committee is responsible for effective data-gathering to inform equity and diversity issues.

Supporting Aboriginal Lawyers

The Law Society continues to look for opportunities to support Aboriginal lawyer organizations in their networking and outreach efforts. For example, the Law Society sponsored both the CBABC Aboriginal Lawyers Forum's speed mentoring event and PLTC information session. The Law Society also sponsored a reception to kick off an online auction in support of the CBABC Aboriginal Law Student Scholarship Trust. Most recently, the Law Society was pleased to sponsor a number of Aboriginal lawyers from northern communities to attend a National Aboriginal Day event co-hosted by the Legal Services Society and the Justice Institute of BC.

The Law Society has also developed a proposal to work with Aboriginal lawyer groups and organizations to build a collaborative mentoring initiative for Aboriginal lawyers throughout the province. This initiative aims to create a more inclusive environment by supporting community-building within the Aboriginal bar and within the legal profession. The initiative will be founded on research regarding best practices related to mentoring, and on an assessment of the range of mentoring needs of Aboriginal lawyers. This proposal has the support of the Indigenous Bar Association, the CBABC Aboriginal Lawyers Forum and the Legal Services Society's Aboriginal Program.

The Equity and Diversity Advisory Committee is also developing a business case for enhancing diversity and retaining Aboriginal lawyers in the profession, based on recent

research which indicates the underrepresentation of Aboriginal and visible minority lawyers in BC.

Retaining Women Lawyers

The Equity and Diversity Advisory Committee continues to follow up on recommendations made by the former Retention of Women in Law Task Force. The Advisory Committee continues to look for opportunities to promote the business case for retaining women lawyers and monitors the maternity leave benefit loan program and the equity ombudsperson program. The Law Society has also launched an equity webpage to bring together equity-related resources, including the business case, model policies and information about the equity ombudsperson program.

The Advisory Committee is considering the development of a change of status survey to gather information about lawyer career changes, particularly for women lawyers. The Advisory Committee is working with other law societies on the possibility of sharing survey questions, or a common survey, in order to gather comparable data between jurisdictions.

The Advisory Committee is currently assessing the feasibility of extending the *Justicia* project to BC. *Justicia* is the Law Society of Upper Canada's think tank working to develop initiatives to retain women lawyers, which has been very successful and well-received. Feedback in BC to date has been positive and a number of firms have indicated their interest in possibly participating in a BC version.

Understanding Lawyer Demographics

The Advisory Committee has long identified the need for accurate data regarding the demographics of the profession in BC. Without baseline measures and benchmarks, the Law Society is unable to measure progress regarding equity and diversity or make effective policy decisions.

The Advisory Committee has completed a draft demographic report regarding the participation of Aboriginal and visible minority lawyers in BC, based on analysis of 2006 census data. The findings of this report will form the foundation of the business case for diversity. Staff is currently working with the communications department regarding publication considerations, and developing a communications strategy for the report. Communications staff has recommended that the report be held until it can be released in conjunction with the upcoming business case, as the two initiatives are closely linked.

The Advisory Committee continues to monitor the Aboriginal self-identification data from the Annual Practice Declaration. The Advisory Committee is also considering proposing the addition of other demographic self-identification questions. The CBABC Equality and Diversity Committee has asked the Law Society to prioritize this issue and supports additional questions. Staff is currently working with other law societies to consider the possibility of shared or common questions, to increase comparability of data across jurisdictions.

TAKING LEADERSHIP FOR A REPRESENTATIVE PROFESSION

In addition to its strategic plan responsibilities, the Advisory Committee continues to monitor equity and diversity initiatives from other jurisdictions and has identified a number of key areas to pursue:

- Communicate diversity values – continue to seek opportunities to effectively promote the Law Society’s commitment to diversity and to profile equity issues in publications such as the Benchers’ Bulletin;
- Increase Bencher diversity – consider strategies to help enhance Bencher diversity by encouraging women, Aboriginal and visible minority lawyers to campaign for Bencher positions;
- Build partnerships – continue to work with other interested organizations including the CBABC Equality and Diversity Committee.

The Advisory Committee has also been participating in the Law Societies Equity Network (LSEN), a network of policy lawyers and equity ombudspersons from various law societies, including the Law Society of Upper Canada, the Barreau du Quebec, the Nova Scotia Barristers’ Society, and the law societies of Alberta, Manitoba and Saskatchewan. The LSEN is organized under the umbrella of the Federation of Law Societies of Canada and is currently chaired by BC. The LSEN has identified a number of areas for collaboration, including demographic data-gathering in particular.

CONSIDERING THE NEXT STRATEGIC PLAN 2012-2014

The Advisory Committee recommends that the next strategic plan continue to include the strategy of improving the retention of lawyers, women lawyers and Aboriginal lawyers in particular. The Advisory Committee further recommends that effective data-gathering also be included in the next strategic plan. Accurate data, properly interpreted, is essential to evidence-based policy and decision-making related to diversity issues.

The Advisory Committee is recommending the following initiatives related to these strategic objectives.

- Supporting Aboriginal Lawyers – The Advisory Committee recommends that the Law Society support the development of the proposed collaborative mentoring initiative for Aboriginal lawyers. The Advisory Committee further recommends that the Law Society establish a full-time staff lawyer position to support Aboriginal lawyers and students, given the resolutions passed at the 2009 Annual General Meeting related to increasing the participation of Aboriginal lawyers;
- Retaining Women Lawyers – depending on recommendations arising from the feasibility assessment, the Advisory Committee recommends that the Law Society implement *Justicia* in BC;

- Understanding Lawyer Demographics – the Advisory Committee recommends that the Law Society add further demographic questions to the APD.

In addition to these initiatives related to existing strategic objectives, the Advisory Committee recommends that the strategic plan also include an initiative to enhance Benchers diversity by encouraging women, Aboriginal and visible minority lawyers to campaign for Benchers positions. The Advisory Committee recognizes that women, Aboriginal and visible minority lawyers may need to be recruited for other participation with the Law Society, such as committees and task forces, before considering Benchers positions.

The Advisory Committee further recommends that the issue of aging of the profession be considered for the next strategic plan, outside of equity and diversity initiatives. The Advisory Committee recognizes that this issue has a number of policy and regulatory impacts and that an effective response needs to be coordinated across organizational departments and functions.

CONCLUSION

The Equity and Diversity Advisory Committee has worked hard to build a foundation for supporting Aboriginal lawyers and to build momentum for retaining women lawyers, and strongly recommends that the Law Society continue to focus on these key issues. As well, the Advisory Committee has now developed a snapshot of diversity in the legal profession to serve as a baseline, and strongly recommends that the Law Society continue to gather demographic data to measure progress and to monitor emerging trends. Encouraging women, Aboriginal and visible minority lawyers to engage with and advance to leadership with the Law Society will further enhance the Law Society's role in ensuring that the public is well-served by an inclusive and representative profession.

The Law Society of British Columbia



Independence and Self-Governance Advisory Committee: Mid-Year Report

For: The Benchers

Date: June 30, 2011

Jan Lindsay, Q.C., Chair
Haydn Acheson, Vice-Chair
Leon Getz, Q.C.
Herman Van Ommen
Claude Richmond
Craig Dennis
Hamar Foster
Cam Mowatt

Purpose of Report:

Information

Prepared on behalf of:

**The Independence and Self-Governance Advisory
Committee**

**Michael Lucas
Manager, Policy and Legal Services
604-443-5777**

Independence and Self-Governance Advisory Committee – Mid-Year Report

I. Introduction

The Independence and Self-Governance Committee is one of the four advisory Committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyse the policy implications of Law Society initiatives, and may be asked to develop recommendations for or policy alternatives regarding such initiatives.

The mandate of the Committee is to monitor developments on issues affecting the independence and self-governance of the legal profession and the justice system in BC. The Committee reports on those developments to the Benchers on a semi-annual basis. This is the mid-year report of the Committee, prepared to update the Benchers on the deliberations by the Committee to date in 2011 and to assist with the commencement of the development of the Law Society's next Strategic Plan.

This year, the Committee was also tasked with examining "Alternative Business Structures" and developing a report outlining a preliminary position for consideration by the Benchers later in 2011, which is described in Strategy 1-2b of the Law Society's current Strategic Plan.

II. Overview

As the Committee states at each opportunity, lawyer independence is a fundamental right of importance to the citizens of British Columbia and Canada. It is not a right that is well understood and, the Committee suspects, neither are the consequences of it being diluted or lost. Canadians are generally fortunate that they live in a society that recognizes the importance of the rule of law. The rule of law, through which everyone – including government – is subject to and held accountable by the law, is best protected by lawyers who operate and are regulated independent of government. Self-governance must therefore be vigilantly monitored to ensure that the obligation of self-governance is not lost.

Access to independent lawyers is therefore also of considerable importance. Citizens are best able to protect their rights and know their responsibilities through lawyers whose principal duty to is to represent their client's interests. This requires lawyer independence and self-governance. The Rule of Law would become much less robust if this protection were to be inaccessible to the majority of the population.

The Law Society must continue to deliver a clear message about the importance that independent lawyers play in the protection of rule of law. It is important to deliver this message in clear language that can be easily understood by the.

III. Topics of Discussion January – July 2011

With the above in mind, the Committee has to date met on February 1, May 11 and June 27. Given its specific task, it has understandably focused most of its energies on examining the literature on Alternative Business Structures and developing a position for the benchers to consider. A first draft report was reviewed in May, and further work is underway. The Committee's report will be completed in the fall.

The Chair of the Committee and Mr. Lucas had an opportunity in April to meet with representatives from "Lawyers Without Borders (Canada)," and to hear first-hand from a lawyer from Colombia about the difficulties and dangers of practising law in that country.

The Committee has also continued to monitor items in accordance with its mandate. In particular:

1. Regulatory Developments in other Jurisdictions

The Committee continues to follow the progress of the restructuring of the regulation of the legal profession in other jurisdictions, most notably in England and Wales and Australia. The relationship between the Legal Services Board and the "front-line regulators" such as the Bar Council and Law Society continues to develop. The President of the Law Society of England and Wales warned last year of a "looming threat to the profession's independence," noting that the proximity of the Legal Services Board to government could threaten the independence of the legal profession. The Chair of the Legal Services Consumer Panel also warned of threats to the independence of the profession arising from the close relationship between the government and the LSB. However, these concerns do not seem to have changed the direction of developments in England.

The Committee has monitored the efforts in Australia to create a national regulatory model for the legal profession, noting with some concern that the majority of the make-up of the proposed National Legal Services Board would be comprised of appointments by the host Attorney General, and also noting that board members can be terminated at any time by the host Attorney General "for unsatisfactory performance." A National Legal Services Commissioner would also be created, appointed by the host Attorney General on recommendation by the Standing Committee of Attorneys General ("SCAG"), who could also be terminated by the host Attorney General for unsatisfactory performance, but interestingly only after consulting with the SCAG. The Committee understands however that not all States may be in agreement with the proposal. The model has been criticised by the judiciary. The Committee will continue to monitor developments.

The Committee has also noted that changes seem to be coming to the regulation of lawyers in Ireland. Media reports suggest that the government plans to merge the Competition Authority with the National Consumer Agency and to create a stronger

agency in defence of consumers. The legal profession is not alone. Rather, all professions that are viewed as “closed shops” are targeted. The stated goal is to increase competition and make the market better for consumers. Interestingly, part of the impetus for this appears to come from the EU – IMF Memorandum of Understanding with the Irish government relating the “bail-out” package Ireland required.

The Committee will continue to monitor these interesting developments.

2. Developments concerning the Regulation of Professionals and Others

The Committee will continue to review the regulation of other professional bodies and other groups in British Columbia, as well as the issues that affect them that might be relevant to self-governance. In particular, the Committee has noted the creation by the government of a civil oversight board for police complaints as a result of recommendations in the Braidwood Report arising from the events surrounding the death of Robert Dziekanski. The Committee believes that the implementation and early practices of this organization merit close attention.

3. Incursions on the Rule of Law and Lawyer Independence Elsewhere

The Committee has been monitoring events in other countries where the rule of law and lawyer and judicial independence seem to be in some jeopardy. In particular the Committee has been monitoring events in China, where there have been several stories that call into question the health of the rule of law in that country, and that demonstrate the lack of lawyer independence. The Chair of the Committee, as mentioned above, had an opportunity to hear firsthand about the practice of law and its associated dangers in Colombia. Other areas of the world that bear monitoring on this subject include Zimbabwe, Venezuela, Belarus, and Russia.

While it is obvious that the Law Society is not in a position to fix problems existing elsewhere, it is important to understand the events or history that have given rise to the systems in place in some of these countries, which ought to better inform us should concerns develop in British Columbia. From time to time, as the Committee comes across stories exhibiting gross violations of the rule of law or lawyer or judicial independence in other jurisdictions, the Committee will advise the Executive Committee for that Committee’s consideration about whether the Law Society should make some public comment.

IV. Recommendations Concerning Strategic Planning

Recognizing that the Law Society will be creating a new strategic plan over the next months, the Committee understands that it should identify for that process the items that it believes merit consideration as strategic priorities and initiatives for the organization. The Committee recognizes that it is premature to consider the priorities in any detail until the goals of the Law Society are debated and the general strategic direction of the organization based upon those goals has been settled. However, it may be useful for the Benchers to know what the Committee, in its advisory and monitoring capacity, considers

to be important for the organization's strategic success in relation to the topic it has been tasked with monitoring.

The Committee believes that lawyer independence is integral to the protection of the Rule of Law. It continues to advocate that the Law Society should consider the effect that all programs and initiatives of the Law Society will have on lawyer independence and self-regulation before such programs or initiatives are implemented. The Committee is pleased that this recommendation is one that has generally been well-accepted by the Law Society over the past years.

The Committee is also pleased that strategic initiatives that it has recommended have been integrated into the current Strategic Plan. In particular, the Committee notes that Initiatives 1-2b, 2-2, 2-3 and 3-4a all had their genesis from recommendations developed by the Committee, and it is pleased to see that the initiatives have either been completed or are well on their way to being so.

For the current planning process, the Committee has considered the following:

1. Examination of Insurance

On the presumption that enhancing public confidence in the regulation of the legal profession, or something like that, will remain a goal of the organization, the Committee believes that examining whether the divergent interests of the Law Society as a whole and the Law Society operating through its insurance department poses any concern to the promotion and preservation of lawyer independence and effective self-governance of lawyers.

The Committee has debated this topic over the past years. The debate was not about any concern that the Committee has in the operation of the insurance program as a stand-alone program. Rather, the issue of debate concerned the divergent interests and duties of the Law Society as a whole and the Law Society acting as an insurer of lawyers, having noted in particular that the incursions on lawyer independence and self-governance in other jurisdictions arose, at least in part, due to an apparent loss of public confidence that the regulating body was acting first and foremost in the public interest. In 2007 and again in 2008, the Committee recommended that the benchers consider whether to debate and analyse the divergence of primary duties that the Committee identified exists arising from the operation of an insurance program within the auspices of a regulatory body. The Committee has recommended that this examination be contained as an initiative contained within the Strategic Plan in the past, and continues to do so.

2. Education

The Committee has noted that the rule of law is often talked about, and in fact appears not infrequently in media articles. It is almost invariably cited in a favourable light, and commentators and politicians like to extol its benefits. How to protect the rule of law is never discussed. Its continuation in Canada usually is taken for granted.

The Committee believes that the Law Society would be well advised to develop some initiatives to educate the public about not just the importance of the rule of law in the context of the Canadian legal system, but what protections exist to ensure its protection. Protection of the public interest in the administration of justice requires the public to understand what interests are being protected, and why it is important to do so. Otherwise, important principles are at risk of being eroded simply because their importance is not well understood. The Law Society could create, as a strategy toward an organizational goal of protecting the rule of law, an education strategy, under which it could create specific initiatives toward that strategy. Three examples are:

- (a) Engaging in dialogue with the Ministry of Education to include the subject in high school education

In 2007 the Committee recommended and the benchers approved the development of an initiative to produce materials, aimed at high school students, explaining the importance and value to society of having independent lawyers. This was manifested through the creation of a video in which the importance of having independent lawyers was described through a short instructive vignette. A lesson plan accompanied the video, and this has been distributed to high schools around the province. It is not, however, part of the required curriculum in the school system. The Committee suggests that the Law Society include in its plan an education strategy concerning the Rule of Law and lawyer independence, and that the Society develop initiatives through which such a strategy can be realized.

- (b) Media Initiatives

As explained above, the media often writes positively about the rule of law and its benefits to nations that adhere to this principle. Making the connection to the principles of lawyer and judicial independence that protect the rule of law should assist the media to better understand the rationale for self-regulation within the legal profession. It does not mean that the media will necessarily accept self-regulation without skepticism, but it may lead to a better understanding of the principles that the Law Society aims to protect through its regulatory and policy-making functions. The Committee suggests that a media symposium focusing on the rule of law be considered for some opportune time.

The Committee has also posited the idea that it would be advisable to prepare notes on salient issues concerning lawyer independence and self-governance as a cornerstone for the Rule of Law for use in the event an occasion presents itself for the development of articles or “Op-Ed” pieces in media. This may be more of an operational item than a matter for strategic planning purposes, but the Committee presents it for consideration.

(c) Academic-level support

In its March 2008 Report, the Committee outlined the case for lawyer independence as a necessary component of the rule of law. The Committee has noted a lack of academic writing in support of independence and self-governance and has thought about whether commissioning such a study would be a worthwhile exercise. Mr. Turriff attended a conference in London England in 2010 on lawyer regulation at which a number of academics were present. A follow up conference is to be held in Michigan later in 2011 at which Mr. Turriff will again attend. At the London conference, it was reported that there was little, if any, commentary (besides that of Mr. Turriff) concerning the value of lawyer independence. The Committee suggests that the Law Society consider commissioning an “academic” paper about the value of the principle of lawyer independence and self-regulation. The Committee has reviewed Professor Woolley’s recent paper entitled “Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation” and recognizes that it may partially answer this proposed initiative. The Committee intends to review the various points raised in the paper and determine how the Law Society compares to some of the proposals advanced by Professor Woolley.

The Committee has also considered the advisability of preparing a comparative study of Law Society regulatory processes to the processes in jurisdictions that have lost self-regulation as being a useful tool to demonstrate why circumstances in British Columbia might be different, and that why solutions from other jurisdictions may not be relevant or necessary here.

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The Law Society of British Columbia



2011 Mid-Year Report: Lawyer Education Advisory Committee

For: The Benchers

Date: July 15, 2011

Thelma O'Grady, Chair
Joost Blom, QC, Vice-Chair
Tom Fellhauer
Ben Meisner
Nancy Merrill
Catherine Sas, QC
Patricia Schmit, QC
James Vilvang, QC
Johanne Blenkin
Linda Robertson

Purpose of Report: Discussion and Decision

Prepared on behalf of Lawyer Education Advisory Committee:

**Alan Treleaven, Director, Education and Practice
Charlotte Ensminger, Policy and Legal Services**

INTRODUCTION

The Lawyer Education Advisory Committee mandate is to:

- (a) monitor developments affecting the education of lawyers in BC,
- (b) report to the Benchers on a semi-annual basis on those developments,
- (c) advise the Benchers annually on priority planning and respective issues affecting the education of lawyers in BC, and
- (d) attend to such other matters as the Benchers or the Executive Committee may refer to the advisory committee from time to time.

This is the Committee's 2011 mid-year report to the Benchers. It comprises two parts: Part 1 reports on Committee activities this year to date, and Part 2 outlines Committee recommendations for the Law Society 2012-14 Strategic Plan.

PART 1 - COMMITTEE ACTIVITY UPDATE FOR JANUARY TO JULY 2011

Part 1 updates the following key Committee priorities for 2011:

- (a) review the continuing professional development program,
- (b) professionalism and advocacy projects,
- (c) continuing professional development credit for pro bono service,
- (d) continuing professional development credit for mentoring,
- (e) reconcile the qualifications required to provide different types of legal service.

(a) Review the Continuing Professional Development Program

This is the third year of the continuing professional development ("CPD") program. The Committee is conducting a comprehensive review of the CPD program, and will report to the Benchers in September or October with recommendations, in time to ensure that any changes are in place effective January 1, 2012 for three years.

The Committee surveyed lawyers in the spring to assess the CPD program. Of the 1,419 lawyers who participated in the survey, 78% agreed that continuing education should be mandatory for lawyers, with more than half agreeing that the annual requirement is likely to strengthen the quality of legal services that BC lawyers provide their clients. The results show that the overall assessment of the program has been very positive.

(b) Professionalism and Advocacy Projects

Strategies 3-2 and 3-3 of the 2009 - 2011 Strategic Plan focus on initiatives to educate lawyers on the topic of professionalism and to improve advocacy skills. The Committee presented two sets of recommendations at the December 10, 2010 Bencher meeting.

(i) Professionalism Project

The two recommendations originated with the work of the Professionalism Education Working Group. The Benchers approved the following recommendations.

Recommendation 1

That the Law Society provide the Proposed Content Guideline and the sample resources template on undertakings, together with information on how they might be employed, to the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools;

Update: The Content Guideline and the sample resources template on undertakings have been provided to the CLE Society, CBA, and Trial Lawyers' Association. The Law Society will once again participate in the annual fall UBC and University of Victoria law school professional responsibility programs, and plans to introduce the Content Guideline and sample resources template on undertakings. There has also been a preliminary discussion with Thompson Rivers University law school.

Recommendation 2

That six months later the Law Society meet with the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools, and again periodically, to evaluate how effective this approach is in promoting the development of courses and resources in professionalism and ethics, and to collaborate strategically on next steps.

Update: Follow-up discussions are underway with the CLE Society, CBA and Trial Lawyers' Association, and will take place in the fall with the law schools.

(ii) Advocacy Project

The 7 recommendations originated with the Advocacy Education Working Group.

Recommendation 1 was that *the Law Society endorse and encourage exploration of the establishment of a new advocacy organization for BC lawyers with a mandate similar to the Advocates' Society in Ontario.*

The Benchers referred this recommendation to the Committee for further consideration.

Update: The Committee will report on Recommendation 1 by December 2011.

The Benchers approved recommendations 2 through 7, which relate to improving lawyers' advocacy skills:

Recommendation 2

That the Law Society endorse the development of an online advocacy skills training “toolkit” as a consolidated resource and guide for supporting and enhancing the oral advocacy skills and performance of BC lawyers, and that Courthouse Libraries BC and the CLE Society of BC be approached to explore developing this initiative.

Update: The Law Society has met with Courthouse Libraries BC and the CLE Society, and work is ongoing.

Recommendation 3

That the Law Society expand its promotion of the CPD mentoring program, including the focus on advocacy skills.

Update: The Law Society Communications Department is assisting in developing an effective promotional strategy for the CPD mentoring program, to include utilizing the Law Society website and the *Benchers Bulletin*. CBA and Law Society staff worked on a feature on mentoring for the June 2011 *BarTalk*.

Recommendation 4

That the Law Society approach the Access Pro Bono Society of BC to discuss the feasibility of Access Pro Bono introducing a pro bono civil duty counsel program in Small Claims Court.

Update: Staff met with Access Pro Bono to discuss the proposal. Access Pro Bono is interested in furthering the initiative, and will report to the Law Society on how the Law Society might assist Access Pro Bono to introduce a pilot project. Access Pro Bono indicated that a pilot project could potentially be rolled out as early as January 2012.

Recommendation 5

That the Law Society encourage the development of a province-wide roster of senior counsel to be available by telephone to assist inexperienced lawyers with advocacy basics during a trial.

Update: Law Society staff met with the CBABC staff to discuss the development of the roster. The CBA’s Practice Advisory Panel service is available to all lawyers, although non-CBA members cannot access the resource online without first contacting the CBA. In the fall of 2011, the CBA will update its Practice Advisory Panel list and issue a call for more volunteers. The CBA has offered to contact the Trial Lawyers’ Association to discuss working together to develop a broad-based roster of senior lawyers who would be available to assist lawyers throughout the province.

Once the CBA has updated its Practice Advisory Panel list, the practice resources area of the Law Society website can include a link to the CBA Practice Advisory Panels.

Recommendation 6

That the Law Society contact the Crown and the Provincial Court judiciary to discuss their reintroducing the Crown Counsel advocacy training program.

Update: In discussions with Crown Counsel, the Crown has been co-operative and understands the need to support the development of advocacy skills in junior lawyers. Crown Counsel formed a small working group to discuss the proposed initiative but decided to recommend against it at this time because resources are not available to support the scheduling, training and supervision required. On a positive note, the Law Society was asked not to forget about this initiative for the future and, accordingly, the Committee has directed staff to bring the issue forward again for discussion in two years.

Recommendation 7

That the Law Society develop a vigorous communication campaign to encourage law firms and senior lawyers to “take a junior to court”.

Update: The Law Society’s Communications Department is working to develop an effective promotional strategy, including utilizing the Law Society website and the *Benchers Bulletin*. The promotional strategy will be rolled out in the latter half of 2011.

(c) Continuing Professional Development Credit for Pro Bono Service

In 2009 the Benchers approved the following recommendation of the Access to Legal Services Advisory Committee: “The Benchers should direct the Lawyer Education Advisory Committee to consider whether lawyers who provide pro bono through clinic and roster programs should be able to claim a portion of that time toward the ethics / professional responsibility component of Continuing Professional Development (“CPD”). Because CPD requires a lawyer to spend at least two hours a year on matters of ethics and professional responsibility, the Lawyer Education Advisory Committee should consider whether there is a need to limit how many of the 12 hours of CPD may be met by providing pro bono.”

In 2010 the Committee considered whether pro bono service ought to be accredited for CPD, and deferred making a recommendation to the Benchers until the Committee reports to the Benchers in 2011 in the context of its full CPD review. The Committee’s CPD report to the Benchers will include an analysis and recommendation.

(d) Continuing Professional Development Credit for Mentoring

The mentoring program came into effect on January 1, 2010, and is being monitored by the Committee. The program permits both mentors and mentees to obtain CPD credit.

Mentoring applications have been modest in number, and mainly from within law firms. The Committee considers mentoring to be one of the most effective ways to provide support and guidance to lawyers, and is including new recommendations on mentoring in its upcoming CPD report to Benchers.

(e) Reconciling the Qualifications Required to Provide Different Types of Legal Services

On March 4, 2011 the Benchers considered the following issue.

Are there some legal services that require a general background in legal education, but may not require a full Bachelor of Laws (or Juris Doctor) degree? The [former Futures] Committee concluded in 2008 that it is in the public interest to expand the range of service providers who are adequately regulated concerning training, accreditation and conduct. The work done to date concerning paralegals is one aspect of the Futures Committee's recommendations, but there are other things that could be considered concerning reconciling the level of qualification required to provide differing types of legal services.

The Benchers asked the Lawyer Education Advisory Committee to present a preliminary report by the end of 2011 so that direction can be provided for this issue in the next strategic plan. The Committee will report to the Benchers by the year-end.

PART 2

COMMITTEE RECOMMENDATIONS FOR THE NEXT STRATEGIC PLAN

These are the Committee recommendations, for Bencher consideration and prioritization.

1. Review the Continuing Professional Development Program

Review the CPD program in time for any changes to be in place beginning in 2015.

The review would consider harmonizing the BC requirements with other provinces and territories, to reflect increasing inter-jurisdictional mobility of lawyers. Such recommendations could include a role for the Federation of Law Societies.

2. Review the Law Society Relationship with and Expectations of the CLE Society

The Law Society, CBA, and UBC and University of Victoria law schools established the CLE Society in 1976. Although the Law Society relies primarily on the CLE Society to provide effective, accessible, affordable education for lawyers, the Law Society has not formally reviewed its relationship with and expectations of the CLE Society since the CLE Society's founding 35 years ago. The Law Society as guardian of the public interest and regulator of lawyers should examine the effectiveness of lawyer education and other support services in fulfilling the key function of supporting professional competence.

The review would complement the current Law Society and Law Foundation joint review of Courthouse Libraries BC.

The review would include consideration of:

- (i) the CLE Society role in providing effective, accessible, affordable education, taking into account:
 - its relationship with, and the role of, Courthouse Libraries BC in providing legal information services,
 - the activity of other principal legal information providers such as the CBA and Trial Lawyers' Association,
 - rapid changes in the practice of law,
 - rapid changes in the role of technology,
 - impact of lawyer mobility in Canada,
 - the move toward national standards in governance of the legal profession.
- (ii) the Law Society's relationship with the CLE Society, including the extent, if any, to which the CLE Society might be accountable to the Law Society for fulfilling its role, and the related effectiveness of the CLE Society governance model,
- (iii) whether and to what extent the Law Society might also provide continuing education,
- (iv) whether the Law Society is in a position of conflict as the regulator of CPD and as:
 - a provider of some continuing legal education, and
 - a governing member of the CLE Society and Courthouse Libraries BC.

The Committee also recommends that the Benchers consider whether such a review would be carried out by a specially mandated Task Force or by the Committee.

3. BC Code of Conduct Education

The Law Society of Manitoba provides, free of charge, mandatory education for all lawyers on its new *Code of Professional Conduct*, which is based on the Federation of Law Societies' new *Model Code*. Nova Scotia is introducing mandatory online self-assessment for all lawyers and articling students to ensure comprehension of the new *Code*, and is offering educational programs, including a session at the Society's Annual Meeting. The Law Society of Upper Canada provides free continuing education in professional ethics and practice management to enable lawyers to meet the annual three hour CPD requirement in those subjects, and to regulate quality in professional ethics and practice management programming.

What education should be in place for BC lawyers as the Law Society implements the new *BC Code of Conduct*? Would the education be voluntary or mandatory? Who would be the provider? Would there be quality control? Would it be free of charge? Would the venues include the Law Society's Annual General Meeting, by web cast?

The Ethics Committee would have an important role in identifying content.

Such an initiative would not be entirely novel in BC. For years the Law Society conducted annual loss prevention seminars for the entire profession, free of charge and with a professional liability insurance premium credit.

4. Admission Program Review: PLTC and Articling

The Federation of Law Societies is developing national admission standards, which will impact the Admission program, including PLTC and articling. Law societies' adoption of the national admission standards will present an opportunity, and probably a necessity, to review and make recommendations relating to all aspects of the Admission Program.

The Committee recommends that, on adoption of national admission standards, there be a comprehensive review of the Admission Program, including formulation of proposals relating to the Professional Legal Training Course and articling program.

The Committee also recommends that the Benchers consider whether such a review would be carried out by the Committee, the Credentials Committee or a specially mandated Task Force.

5. Articling and Access to Legal Services in Rural Communities

There are growing concerns about availability of lawyers in rural and smaller communities. Should the Law Society develop initiatives to utilize and support articling students to enhance delivery of legal services in rural and smaller communities? Such initiatives may be within the mandate of the Access to Legal Services Advisory

Committee, working with the Credentials Committee, and would also relate to the goals of the CBA's REAL program, which promotes summer law student employment in rural and smaller communities.

6. Articling and Pro Bono

Should the Law Society develop initiatives to encourage articling students to provide *pro bono* legal services, perhaps in a rotation in a public interest or *pro bono* program or organization, or in Provincial Court? Such initiatives may be within the mandate of the Access to Legal Services Advisory Committee, working with the Credentials Committee.

7. Law School Education and Enhancing Law Student Practice Skills

Should the Law Society consult with BC law schools to support development of initiatives for enhancing law students' practical skills in law school, such as by expanding the availability of clinical or co-op programs? Such a recommendation would complement but not modify the new Federation standards for accrediting law degrees.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 18.1 (PROPOSED) – REGULATION OF LAW FIRMS

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

NATURE OF CHANGE PROPOSED

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

WHY CHANGE IS NEEDED

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

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

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS

Section 1 — Definition of “law firm”

Section 32 — Financial responsibility

Section 33 — Trust accounts

Section 34 — Unclaimed trust money

Section 62 — Interest on trust accounts

Section 63 — Security and investment of trust accounts

Section 64 — Definitions

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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

Memo

The Law Society
of British Columbia



To Benchers
From Lesley Small
Date August 31, 2011
Subject **Addendum to the Québec Mobility Agreement**

The Council of the Federation of Law Societies of Canada has approved an addendum to the Quebec Mobility Agreement (the QMA Addendum). The QMA Addendum can only be implemented with the approval of individual law societies. President Gavin Hume, QC has requested that this matter be considered by the Credentials Committee, which will take place on September 8. The Committee's recommendations will be reported by the Chair, David M. Renwick, QC at the Benchers September 9, 2011 meeting.

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 Québec ("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 Québec 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.

The Barreau subsequently implemented a scheme under which members of the law societies of the other provinces and the territories may become members of the Barreau and practise federal law and the law of their home jurisdictions as Canadian Legal Advisors. In 2010, the scope of the NMA was extended to include the provisions of the Quebec Mobility Agreement that the other provincial land territorial law societies reciprocate with the Barreau and implement provisions that permit members of the Barreau to become members of other law societies and practise federal and Québec law in other jurisdictions.

Addendum to the Québec Mobility Agreement

The purpose of the QMA Addendum is to extend mobility rights under the Canadian Legal Advisor (“CLA”) regime to members of the Chambre des Notaires. The QMA Addendum is an adaptation of the Quebec Mobility Agreement, but as the Chambre is not a party to the NMA, it is intended as a stand-alone agreement.

As with all CLA’s, a member of the Chambre acting as a CLA will not be practising the law of the host jurisdiction. The scope of the practice will be restricted to the law of Quebec, federal law and (where permitted by the host jurisdiction) public international law.

Discussion

If approved, the Law Society Rules will need to be amended to implement the provisions of the QMA Addendum (Rules are already in place in relation the new category of limited membership as a CLA, but those Rules are specific to members of the Barreau). Members of the Chambre des Notaires would hold the status and title in BC of a Canadian Legal Advisor (not as a notaire or notary).

The Memorandum from the Federation of Law Societies of Canada provides clarity around the nature of the notarial profession in Quebec as being equivalent to that practiced by lawyers; the meaning of the word “notary” in the Quebec context; and the distinction between notaries in Quebec and individuals who use a similar title, but do not have the equivalent professional credentials or status, outside of Quebec. The memorandum concludes with a discussion of the implications of the labour mobility provisions of the *Agreement on Internal Trade*.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

MEMORANDUM

FROM: Federation of Law Societies of Canada

TO: Canada's law societies

DATE: July 12, 2011

SUBJECT: Quebec Mobility Agreement and the Chambre des notaires du Québec

INTRODUCTION

1. The following motion was adopted by the Council of the Federation of Law Societies of Canada on June 6, 2011:

WHEREAS the Quebec Mobility Agreement was executed by all law societies except the Chambre des notaires du Québec on March 19, 2010;

WHEREAS the Quebec Mobility Agreement extends the scope of the National Mobility Agreement by facilitating reciprocal permanent mobility between the common law jurisdictions and the Barreau du Québec;

WHEREAS the Council of the Federation agreed to consider extending the provisions of the Quebec Mobility Agreement to members of the Chambre des notaires du Québec;

WHEREAS the National Mobility Policy Committee has studied the matter and has recommended that the Quebec Mobility Agreement be extended to members of the Chambre des notaires du Québec through an addendum to such agreement;

RESOLVED THAT the addendum to the Quebec Mobility Agreement attached as Appendix "A" be approved by Council for submission to member law societies for approval and execution.

2. Canada's law societies are now requested to approve the addendum to the Quebec Mobility Agreement attached as Appendix "A".

BACKGROUND

3. Facilitating the mobility of Canada’s legal profession has long been a cornerstone of the national mission and purpose of the Federation of Law Societies of Canada as determined by its fourteen member law societies.

4. The National Mobility Agreement (the “NMA”), the QMA and the Territorial Mobility Agreement (“TMA”) collectively provide the blueprint for the mobility regime currently in place across Canada in respect of all of the members of the legal profession who are governed by all of the members of the Federation, with one exception – the *Chambre des notaires du Québec* (the “Chambre”).

5. The inclusion of the *Chambre* within the national mobility regime will complete the mobility framework for all of the members of the Federation.

6. The unique nature of Quebec’s history and legal foundations may elicit questions among those less familiar with the notarial profession in Quebec. One purpose of this memorandum is to provide clarity around (i) the nature of that profession as being equivalent to that practiced by lawyers; (ii) the meaning of the word “notary” in the Quebec context; and (iii) the distinction between notaries in Quebec and individuals who use a similar title, but do not have the equivalent professional credentials or status, outside of Quebec.

7. Paragraphs 8 to 19 provide explanatory material with respect to the structure of the legal profession in Quebec and the division of the legal profession between notaries and advocates, and related matters. Paragraphs 20 to 28 deal specifically with the proposed addendum to the QMA. The memorandum concludes with a discussion of the implications of the labour mobility provisions in the *Agreement on Internal Trade* (the “AIT”).

BACKGROUND

Structure of the Legal Profession in Quebec

8. Quebec’s legal system is founded on the French civil law system and its institutions. Those institutions are reflected in the division of the legal profession in Quebec between “avocats” (advocates) who are members of and are governed by the *Barreau du Québec* (the “Barreau”) and “notaires” (notaries), who are members of and are governed by the *Chambre*. What distinguish the two branches of the legal profession in Quebec are their respective areas of exclusive jurisdiction: only notaries may prepare and authenticate certain types of documents, and only advocates litigate. The profession of advocate in Quebec today may be likened to the profession of barrister and solicitor in the rest of Canada, while the profession of notary in many ways resembles that of a UK solicitor.

Legal Education

9. The initial legal education for advocates and notaries is the same; both attend law school for three years to obtain a civil law degree. It is once they have obtained that degree that students choose to become either an advocate or a notary. Those wishing to become advocates must attend bar school and complete the *Barreau*’s requirements for

admission to the bar, including articling and bar exams, while those wishing to become notaries must complete an additional year at one of four designated law faculties (Université Laval, Université de Sherbrooke, Université de Montréal, or the University of Ottawa) to obtain either a Diplôme de droit notarial or a masters degree in law with a specialization in notarial law. Students must then complete a 32-week internship program (akin to articling), and successfully complete the final exam set by the Chambre before applying for admission to the Chambre and the right to practice as a notary.

Roles of Notaries

10. The Quebec *Notaries Act* (the “Act”) confers on notaries the status of both public officer and legal advisor. The *Act* also reserves to notaries exclusive jurisdiction to perform certain acts. Section 15 of the *Act* states

15. Subject to the provisions of section 16¹, no person other than a notary may, on behalf of another person,

- (1) execute acts which, under the Civil Code or any other legislative provisions, require execution in notarial form;
- (2) draw up acts under private signature relating to immovables and requiring registration in the land register or the cancellation of such registration;
- (3) prepare or draw up an agreement, motion, by-law, resolution or other similar document relating to the constitution, organization, reorganization, dissolution or voluntary winding-up of a legal person or the amalgamation of legal persons;
- (4) prepare or draw up the administrative declarations and applications prescribed by the legislative provisions relating to the legal publicity of sole proprietorships, partnerships and legal persons;
- (5) give legal advice or opinions;
- (6) send a demand letter arising from an act he or she has executed, provided there is no charge to the person to whom it is addressed;
- (7) represent clients in any non-contentious proceeding, prepare, draw up or present any related motion on their behalf or uncontested motions in adoption proceedings, for judicial recognition of the right of ownership, for the voluntary partition of property, for the acquisition of the right of ownership by prescription, for registration in the land register or in the register of personal and movable real rights, or the correction, reduction or cancellation of a registration in either of those registers, or for the cancellation of an entry or the filing of a declaration in the register instituted under the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (chapter P-45) or the correction or deletion of any inaccurate information appearing in that register.

11. In addition to the roles of public officer and legal advisor, notaries have been vested by the Quebec *Civil Code* with a quasi-judicial authority to conduct and conclude

¹ Section 16 of the *Act* provides that the provisions in section 15 do not restrict the rights conferred on advocates under the *Act concerning the Barreau du Québec*.

non-challenged proceedings in matters related to guardianship, curatorship and probate of wills and mandates (enduring power of attorney). In recent years, the *Civil Code* was amended to give notaries the authority to solemnize marriages and civil unions, and to dissolve civil unions when the rights of underage children are not at stake.

12. In the role of public officer, a notary has the power, delegated from the State, to authenticate or certify documents. In concrete terms, the notary has the authority to vest with an exceptionally high level of probative value the private deeds he or she prepares, provided the notary complies with the formalism required by law. This probative value is justified by the duties imposed by the law on the notary when acting as public officer, including the duty of impartial counselling to all parties to the deed. Notaries are prohibited by their *Code of ethics* from being partial to any one party. This duty does not require neutrality from the notary, but it does oblige the notary to enquire into the level of knowledge and understanding of each party and to provide necessary counselling and advice about the applicable law, the implications of the agreement or document in question and the parties' legal options to ensure, to the extent possible, that the parties all understand what they are agreeing to.

Areas of Notarial Practice

13. Quebec notaries may act in all areas of the law except litigation and advocacy², although traditionally they work primarily in areas requiring notarial deeds and instruments. In Quebec, mortgages must be drafted by notaries, and the conveyancing of immovables (real estate) and related legal services constitute, on average, 55% of total notarial activities.

14. The drafting of wills, and estates and succession planning also form a significant area of practice for notaries.

15. The establishment, sale, or purchase of a business, the constitution, amalgamation (merger) or reorganization of a company, commercial financing, and trademarks are the daily bread and butter of all notaries practising commercial law.

16. Many notaries have developed expertise in various new legal sectors such as international private law, international adoption, maritime mortgage, intellectual property (copyright), telecommunications law, family and commercial mediation and arbitration, etc.

Notaries Public in Other Jurisdictions

17. Quebec notaries should not be confused with notaries public in other jurisdictions in Canada. As noted above, the notarial profession is one branch of the legal profession in Quebec, with a status equal to that of members of the Barreau. Like advocates, notaries in Quebec receive a full legal education and article before being admitted to the profession. By contrast, notaries public are alternative service providers. They are not lawyers and in most jurisdictions they are not required to undertake any legal education. Although British Columbia does require notaries public in that jurisdiction to complete a master's degree in Applied Legal Studies, this is an 18-month program comprised

² There is a limited exception to this general rule: a limited number of federal statutes, most notably, the *Immigration and Refugee Protection Act*, grant Quebec notaries the right to represent parties in litigation matters.

largely of distance education and a curriculum that is much narrower and less intensive than the law school curriculum that Quebec notaries and all lawyers in Canada must complete.

18. The scope of the role of notaries public in British Columbia and elsewhere in the country is also quite circumscribed as compared to the role of Quebec notaries. Perhaps most significantly, legal counseling and the right to provide legal advice are essential parts of the Quebec notary's function, but notaries public in most other Canadian jurisdictions are not permitted to give legal advice at all and notaries public in British Columbia are permitted to do so only within their narrowly prescribed scope of authority.³

19. Even the powers of notaries public to draft and authenticate documents are limited in comparison to the powers and duties of Quebec notaries. While notaries public may take affidavits, draft deeds and contracts, and certify documents, the probative effect of certification by notaries public is limited. Unlike certification by a Quebec notary, the notary public's certificate is not deemed to certify or guarantee the facts stated in the document to which it is attached. The probative value of notarial instruments in Quebec, however, is exceptional. A notarial deed or act is rarely invalidated by the courts and has the same probative value as official documents of the Parliaments of Canada and Quebec, the governments of Canada and Quebec and the courts. The exceptionally high probative value of a notarial deed prepared by a Quebec notary is linked to the formalism in contracting and the weight placed on written documents that are hallmarks of the civil law system.

NATIONAL MOBILITY AGREEMENT AND THE CHAMBRE DES NOTAIRES

20. When the terms of the NMA were agreed upon in 2002, the issue of participation in the mobility regime by members of the Chambre was referred to a special working group. That working group identified two stumbling blocks to extending the provisions of the NMA to members of the Chambre, both related to the unique nature of the notarial profession in Quebec and the lack of its counterpart in the rest of the country: the difficulty in establishing reciprocity, and the apparent inability of the common law jurisdictions to grant limited licenses. The implementation by the Barreau of the Canadian Legal Advisor ("CLA") category of membership, and the reciprocal regime contemplated by the QMA, change the mobility landscape. The National Mobility Policy Committee has advised that in its view these changes eliminate both the previously identified barriers to mobility for members of the Chambre.

Reciprocity

21. Since the introduction of the CLA by the Barreau, members of all Canadian law societies outside of Quebec have been able to become members of the Barreau with the right to practice federal law, the law of their home jurisdiction and public international law. Adoption of the QMA and implementation of its provisions in the common law jurisdictions will satisfy the NMA requirement for reciprocity.

³ Proposals under consideration in British Columbia would increase the scope of practice of notaries public in that jurisdiction, but the resulting scope would remain comparatively limited. If approved, the amendments would expand the types of wills BC notaries public may draft, permit BC notaries public to act in simple probate matters, draft pre-nuptial, co-habitation and separation agreements and incorporate simple companies.

22. While the uniqueness of the notarial profession in Quebec may prevent the Chambre from offering a form of membership that is comparable to the CLA, the National Mobility Policy Committee has concluded that it is not necessary that they do so. The establishment of the CLA regime by the Barreau gives lawyers from elsewhere in Canada the right to practise their profession in Quebec (albeit on a restricted basis) and so confers on them the same benefits that underlie the requirement for reciprocity. In the circumstances the lack of direct reciprocity in the form of membership in the Chambre is not necessary to satisfy the principle of reciprocity established by the NMA.

Limited Licences

23. One of requirements set out in the NMA is that a member may not acquire more rights by transferring to another jurisdiction than she has in her home jurisdiction. It was this requirement, coupled with the unique nature of the notarial profession in Quebec that led the 2002 working group to conclude that the inability of law societies to grant limited licenses presented a barrier to extending mobility rights to members of the Chambre.

24. While the NMA requirement must still be respected, adoption and implementation of the QMA indicates that there is no longer a barrier to granting a limited licence. All signatories to the QMA have undertaken to establish a category of membership – the CLA – that has a restricted scope of practice. Arguably no other category need be established to accommodate members of the Chambre; what is required is an appropriate scope of practice.

25. Members of the National Mobility Policy Committee, working closely with representatives of the Chambre and the Barreau, have drafted language to reflect the scope of the authorized practice of notaries in Quebec. The proposed scope of practice provision is set out below.

SCOPE OF PRACTICE

26. Pursuant to the QMA a CLA is permitted to engage in the following activities:

- (1) give legal advice and consultations on legal matters involving the law of the Canadian province or territory where he or she is legally authorized to practise law or involving matters under federal jurisdiction;
- (2) prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts, but only with respect to matters under federal jurisdiction;
- (3) give legal advice and consultations on legal matters involving public international law; and
- (4) plead or act before any tribunal, but only with respect to matters under federal jurisdiction.

27. To reflect the existing scope of practice of Quebec notaries it is proposed to define the scope of practice for a member of the Chambre acting as a CLA as follows:

A member of the Chambre des notaires who is granted the status of a Canadian Legal Advisor in any jurisdiction outside of Quebec, may, in his her capacity as a Canadian Legal Advisor:

- (1) *give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;*
- (2) *prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations;*
- (3) *give legal advice and consultations on legal matters involving public international law; and*
- (4) *plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.*

28. In considering this proposed scope of practice, it is important to keep in mind that as with all CLAs, a member of the Chambre acting as a CLA will not be practising the law of the host jurisdiction; the scope of practice will be restricted to the law of Quebec, federal law and (where permitted by the host jurisdiction) public international law.

LABOUR MOBILITY AND QUEBEC NOTARIES

29. Amendments to the labour mobility provisions of the AIT introduced in 2008 require mandatory mutual recognition of credentials for members of regulated professions and trades. Given the existence of the mobility scheme established by the NMA and the TMA, these amendments had little impact on the legal profession in Canada. Extending the provisions of the QMA to members of the Chambre is unlikely to change that.

30. In considering whether giving Quebec notaries mobility as CLAs would trigger an obligation for one jurisdiction to recognize notaries public from other jurisdictions it is important to bear in mind exactly what it is that the AIT requires. Pursuant to its provisions, the obligation to recognize credentials applies only if a jurisdiction regulates the occupation in question. Paragraph 1 of Article 706 of the AIT states

. . . any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure. [emphasis added]

31. For the recognition of Quebec notaries as CLAs to give rise to an obligation to extend the CLA regime to notaries public from other jurisdictions, there would have to be a finding that notwithstanding their different titles, Quebec notaries and notaries public in other jurisdictions are practising the same occupation. In considering this question it is significant to note that the National Occupational Classification (“NOC”), the nationally accepted reference on occupations in Canada prepared and published by Human

Resources and Skills Development Canada,⁴ identifies Quebec notaries and notaries public in other jurisdictions as separate occupations.⁵ Quebec notaries are grouped with lawyers while notaries public are grouped with paralegals. The different educational, knowledge and skill levels of the two classifications and the differing complexity of the responsibilities performed within them are reflected in the relative skill levels of the occupations, Skill Level A for lawyers and Quebec notaries, Skill Level B for paralegals and notaries public.

32. It must also be recognized that the question of whether Quebec notaries and notaries public are the same or different occupations for purposes of the AIT will not arise in first instance upon extension of the CLA regime to members of the Chambre. In the two years since the changes to the labour mobility provisions of the AIT came into force there has been no suggestion that either Quebec or British Columbia (the only jurisdiction to licence notaries public) must recognize the credentials of notaries from the other jurisdiction. Indeed, while not determinative, this issue was raised with federal and provincial officials in the lead up to the amendments coming into force. Representatives of an ad hoc working group of law society staff were assured that due to the fundamental differences in the occupations mandatory mutual recognition would not be expected.

33. Permitting Quebec notaries to practice as CLAs in other Canadian jurisdictions does not change the character of the profession. The fundamental distinction between Quebec notaries and notaries public in other jurisdictions remains. In the circumstances there would seem to be no reason to believe that the experience under the AIT will be any different if Quebec notaries may become CLAs than it has been since the labour mobility amendments came into force.⁶

⁴ More information about the National Occupational Classification scheme may be found at: <http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/Introduction.aspx>

⁵ See: <http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/Occupations.aspx?val=4>

⁶ The New West Partnership Trade Agreement between the governments of British Columbia, Alberta and Saskatchewan (the successor to the Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta) also provides for mandatory mutual recognition of credentials. Its provisions mirror those of the AIT, however, and impose no greater or additional obligations.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Quebec Mobility Agreement

**Addendum to Extend Mobility Rights to Members
of the Chambre des notaires du Québec**

FEDERATION OF LAW SOCIETIES OF CANADA

(Date)

(Place)

Introduction

The purpose of this Agreement is to extend the scope of the Quebec Mobility Agreement (the “QMA”) in order to facilitate mobility between the Chambre des notaires du Québec (the “Chambre”) and law societies in common law jurisdictions, thereby completing the national mobility regime for all members of the Federation of Law Societies of Canada (the “Federation”) and both branches of Quebec’s legal profession.

Pursuant to the QMA, the Barreau du Québec (the “Barreau”) and the provincial and territorial law societies in common law jurisdictions have entered into an arrangement under which members of the Barreau may become members of the other law societies and practise federal and Quebec law as Canadian Legal Advisors. Accordingly, the QMA establishes mobility rights for members of the Barreau in the same manner as those that have been established by the Barreau for members of the other law societies, thereby meeting the reciprocity requirements set out in the National Mobility Agreement (the “NMA”).

It is the intention of the signatories to this Agreement that the provincial and territorial law societies in common law jurisdictions implement provisions that will permit members of the Chambre to practise federal and Quebec law in those jurisdictions within the scope set out in this Agreement.

The signatories recognize that,

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures,

while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Background

In August 2002 the Federation 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, signed the 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. The Chambre is not a signatory to the NMA.

In 2006, the law societies of all 10 provinces, including the Barreau, signed the Territorial Mobility Agreement (the "TMA"), along with the law societies of all three territories. The Chambre is not a signatory to the TMA. 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.

Quebec Mobility

In June 2008, the Government of Quebec enacted a "Regulation respecting the issuance of special permits of the Barreau du Québec", which is stated to be "made in order to facilitate the mobility of advocates." The Regulation provides, *inter alia*, that a member in good standing of a bar of another Canadian province or territory may apply for a "special Canadian legal advisor permit" in Quebec. A person granted such a permit may engage in the following activities on behalf of another person:

- (1) give legal advice and consultations on legal matters involving the law of the Canadian province or territory where he or she is legally authorized to practise law or involving matters under federal jurisdiction;
- (2) prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts, but only with respect to matters under federal jurisdiction;
- (3) give legal advice and consultations on legal matters involving public international law; and
- (4) plead or act before any tribunal, but only with respect to matters under federal jurisdiction.

In March 2010, recognizing the provisions of the Quebec Regulation, the common law governing bodies entered into the QMA with the Barreau to enable its members to exercise mobility in the common law jurisdictions on a reciprocal basis. It was recognized that members of other governing bodies will not be able to exercise the reciprocal right to practise public international law unless they have professional liability insurance coverage that specifically includes such practice.

Recognizing that Quebec's legal system is founded on the French civil law system and its institutions which are reflected in the division of the legal profession in Quebec between advocates, who are members of and are governed by the Barreau, and notaries, who are members of and are governed by the Chambre, it is desirable that mobility rights be extended to members of the Chambre on the basis set out in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this Agreement, unless the context indicates otherwise:

“**Advisor**” means a Canadian Legal Advisor;

“**Canadian Legal Advisor**” means a member of the Chambre who holds a current Canadian Legal Advisor certificate issued by a common law governing body;

“**Chambre**” means the Chambre des notaires du Québec;

“**common law governing body**” means the Law Society or Barristers' Society in a Canadian common law jurisdiction;

“**liability insurance**” means compulsory professional liability errors and omissions insurance required by the Chambre; and

“**Quebec notary**” means a member of the Chambre.

General

2. The signatory common law governing bodies and the Chambre will

- (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

- (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
 - (c) comply with the spirit and intent of this Agreement to facilitate mobility of Quebec notaries in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
 - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory common law governing bodies and the Chambre will subscribe to this Agreement and be bound by means of the signature of an authorized person affixed to any copy of this Agreement.
4. A signatory common law governing body will not, by reason of this agreement alone,
- (a) grant to a Quebec notary greater rights to provide legal services than are permitted to the Quebec notary by the Chambre; or
 - (b) relieve a Quebec notary of restrictions or limits on the Quebec notary's right to practise, except under conditions that apply to all members of the signatory common law governing body.

Canadian Legal Advisor

5. Signatory common law governing bodies will establish and maintain a program in order to issue Canadian Legal Advisor certificates to qualifying members of the Chambre.
6. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted as equivalent by the Chambre are not qualifying members of the Chambre for the purpose of clause 5.
7. A member of the Chambre who is granted the status of Advisor in any jurisdiction outside of Quebec, may, in his or her capacity as Advisor:
- (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;
 - (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a

matter under federal jurisdiction where expressly permitted by federal statute or regulations;

- (c) give legal advice and consultations on legal matters involving public international law; and
 - (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.
8. A signatory common law governing body will require no further qualifications for a Quebec notary to be eligible for status as Advisor than the following:
- (a) entitlement to practice the notarial profession in Quebec; and
 - (b) good character and fitness to be a member of the legal profession, on the standard ordinarily applied to applicants for membership.
9. Before granting Advisor status to a Quebec notary qualified under clause 8, a signatory common law governing body will not require the Quebec notary to pass a transfer examination or other examination, but may require the Quebec notary to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the Quebec notary is or has been a member;
 - (b) disclose criminal and disciplinary records in any jurisdiction; and
 - (c) consent to access by the governing body to the Quebec notary's regulatory files of all governing bodies of the legal profession of which the Quebec notary is a member, whether in Canada or elsewhere.
10. A signatory common law governing body will make available to the public information obtained under clause 9 in the same manner as similar records originating in its jurisdiction.
11. A signatory common law governing body must require that a member of the Chambre who is granted the status of a Canadian Legal Advisor continue to maintain his or her practising membership in the Chambre.

Liability Insurance

12. The Chambre will continue to make available to its members who are also Advisors in another jurisdiction ongoing liability insurance with minimum

occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member aggregate.

Transition Provisions

13. This agreement is a multi-lateral agreement, effective respecting the common law governing bodies that are signatories and the Chambre, and it does not require unanimous agreement of common law governing bodies and the Chambre.
14. Nothing in this Agreement is intended to affect the obligations of any party under the provisions of the NMA, the QMA or other agreements in effect.

Dispute Resolution

15. Signatory common law governing bodies and the Chambre adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

Withdrawal

16. A signatory common law governing body or the Chambre may cease to be bound by this agreement by giving each other party written notice of at least one clear calendar year.
17. A party that gives notice under clause 16 will immediately notify its members in writing of the effective date of withdrawal.

SIGNED on the ● day of ●, 2011.

Law Society of British Columbia

Per: _____
Authorized Signatory

Law Society of Saskatchewan

Per: _____
Authorized Signatory

Law Society of Upper Canada

Per: _____
Authorized Signatory

Law Society of New Brunswick

Per: _____
Authorized Signatory

Law Society of Prince Edward Island

Per: _____
Authorized Signatory

Law Society of Yukon

Per: _____
Authorized Signatory

Law Society of Nunavut

Per: _____
Authorized Signatory

Law Society of Alberta

Per: _____
Authorized Signatory

Law Society of Manitoba

Per: _____
Authorized Signatory

Chambre des notaires du Québec

Per: _____
Authorized Signatory

Nova Scotia Barristers' Society

Per: _____
Authorized Signatory

Law Society of Newfoundland and Labrador

Per: _____
Authorized Signatory

Law Society of the Northwest Territories

Per: _____
Authorized Signatory

Memo

To: Benchers
From: Executive Committee
Date: August 31, 2011
Subject: REAL Request for Funding

At the July 15 Bencher meeting, the Benchers heard a presentation from Kerry Simmons, Treasurer (now Vice-President) of the Canadian Bar Association BC Branch regarding the Rural Education and Access to Lawyers (REAL) initiative. The purpose of the presentation was to seek financial support from the Law Society for the continuation of the REAL initiative initially begun with funding from the Law Foundation. At the conclusion of the presentation and questions, the President indicated that the request would be considered by the Executive Committee at its August meeting with a view to making a recommendation to the Benchers at the September meeting.

The Committee discussed the request at its August 25th meeting and considered not only the merits of the program but also the Law Society's policy on funding external projects. The balance of this memorandum reviews the Committee's understanding of the background to the request, the Law Society's funding policy, the request itself and the factors the Committee took into consideration in reaching its recommendation to the Benchers.

Background

The Law Foundation provided initial funding of \$795,000 for the REAL initiative in 2008 based on a Canadian Bar Association BC Branch (CBABC) proposal for an initiative designed to attract new lawyers to small and rural BC communities.

As described in the initial press release, the REAL initiative has six main components:

1. Funding for a Regional Legal Careers Officer position to promote practice opportunities in smaller communities, and match students with opportunities in local Bars.
2. Development of marketing materials and profile for regions at major recruitment events in Western Canadian law schools.

3. Funding for student visits to local law firms in smaller communities.
4. Fully funded summer student positions.
5. Ongoing liaison with local Bars to support articling positions and recruitment of new lawyers.
6. Oversight committee of lawyers and representatives of the law schools at UBC and UVic, and the Law Society of BC.

The objective was to place law students in rural law firms for summer work experience and to facilitate the placement of articulated students in communities of less than 100,000 people and a greater than 500 person to lawyer ratio.

The REAL initiative reports placing 11 summer students in 2009 with 5 receiving articling offers, 21 in 2010 with 11 receiving articling offers and 20 placed in 2011.

The Law Foundation has indicated that it cannot provide further funding for the REAL initiative and a funding request by the CBABC to the national Access to Justice Fund for funding was denied.

Law Society Funding Policy

Part 3.K.1 of the Benchers Governance policies provides that:

It is the Benchers' policy that the Law Society will consider funding externally operated projects or programs only when the Law Society specifically sponsored or participated in the creation of the project or program

As Ms. Simmons noted in her presentation to the Benchers, the Small Firm Task Force Final Report delivered in January 2007 stated:

The Task Force considers it is more likely that students who choose to article in smaller communities would, if given the opportunity, stay in those communities after being called to the bar. An increase of articling students in sole and small firm practices, particularly outside the Lower Mainland and Greater Victoria regions, would in both the short and longer term be likely to support and strengthen the viability of law practices and the provision of legal services. (page14)

To address articling in small firms, the Task Force made four recommendations but did not suggest a program such as the REAL initiative.

The CBABC established an oversight committee for the REAL initiative and Ron Tindale was our initial appointment to that committee, with the current representative being Tom Fellhauer.

Ms. Simmons also expressed the view that the REAL initiative is consistent with current strategic objectives of increasing access to legal services and enhancing education.

Funding Request

Ms. Simmons indicated that bridge funding is needed for the remaining two years of what was considered a five-year program. In her view, five years will allow detailed reporting on the effectiveness of the initiative in increasing the number of new young lawyers who choose to take up practice outside Vancouver and Victoria.

The CBABC proposed two options for funding:

Option 1 would involve a Law Society contribution of \$75,000 and a CBABC contribution of \$75,000 for each of two years.

10 students, 3 months @ \$3,500 per month	\$105,000
Part-time Regional Career Officer	\$37,000
Marketing Materials	\$8,000
Annual Cost	<u>\$150,000</u>

Option 2 would involve a Law Society contribution of \$55,000 and a like contribution by the CBABC in each of the two years

10 students, 3 months @ \$2,000 per month	\$60,000
Part-time Regional Career Officer	\$37,000
Marketing Materials	\$8,000
Annual Cost	<u>\$110,000</u>

Considerations

The Committee noted that the Law Society did not specifically sponsor the creation of the REAL initiative. However, the Law Society did participate in discussions about how to most effectively encourage law students to consider practising outside Vancouver and Victoria. The Chair of the Small Firm Task Force also wrote a letter to the Law Foundation in support of the initiative. While these activities were not sufficient to bring the project within the specific requirements of the Law Society funding policy, the Committee considered that there were a number of points in favour of providing some bridge funding for the next two years of the REAL initiative:

1. The CBABC is willing to commit an equal amount to the continuation of the initiative.
2. It will allow completion of the initial five-year plan to permit a full assessment of the initiative.

3. It has a low cost structure with no permanent commitment to space, equipment or staffing so that funding can be withdrawn if necessary in the future with minimal disruption.
4. The initiative has made a promising start and the investment would not be throwing good money after bad.
5. It is one of the few programs currently in place directed at increasing access to legal services in smaller communities.

The Committee did note that the criteria placing articulated students in communities of less than 100,000 people and a greater than 500 person to lawyer ratio might require some reconsideration to maximize the opportunity for assisting lawyers and law firms in those communities most in need of attracting articling students. The Committee also had some questions about the functions of the part-time Regional Career Officer.

Against these considerations, the Committee expressed the obvious concern that providing funding for the two years as requested might be seen as a commitment to ongoing funding. The Committee was very much of the view that if the Benchers decide to provide the funding requested, it should be clearly understood that the Law Society only expects to be providing funding for the next two years.

Recommendation

At the conclusion of the discussion, the Committee agreed to recommend that the Benchers approve co-funding with the CBABC of the REAL initiative for 2012 and 2013 with a contribution of \$75,000 per year subject to a satisfactory due diligence regarding the criteria for the inclusion of communities and the part-time Regional Career Officer and the following conditions:

1. The Law Society will only provide funding for 2012 and 2013 to the conclusion of the original five-year program.
2. The Law Society reaches agreement with the CBABC about the criteria for inclusion of the communities entitled to benefit from the initiative.
3. The Law Society's contribution is recognized in communications and public relations about the program during the two years.
4. Conclusion of a satisfactory co-funding agreement with the CBABC consistent with the terms of the original proposal and grant from the Law Foundation.

Bruce LeRose offered to conduct the due diligence with the CBABC in respect of the part-time Regional Career Officer and the criteria for inclusion of communities. The CBABC has provided the attached memorandum for the Benchers' consideration.



Memorandum

To: Bruce LeRose, First Vice-President, Law Society of BC

From: Kerry L. Simmons, Vice-President, CBA, BC Branch

Re: Rural Education and Access to Lawyers Initiative (“REAL”) Application for Funding

Date: August 31, 2011

Thank you for providing the CBABC with an opportunity to address questions arising from the Executive Committee’s further consideration of the LSBC’s financial contribution to REAL in 2012 and 2013. I understand that this memorandum will be provided to the Benchers as they consider the Executive Committee’s recommendation at the September 9 meeting.

The three specific areas of interest were:

1. Allocation of \$37,000 in support of a part-time Regional Careers Officer;
2. Criteria for a community’s participation in REAL; and
3. LSBC participation in oversight and recognition of LSBC funding.

Regional Careers Officer

As indicated in the proposal, the RCO is essential to the success of REAL. The responsibilities of the RCO going forward include

- liaising with law firms and local bar associations in smaller communities to promote opportunities for law practice in those communities
- promoting opportunity for practice in smaller communities at western Canadian law schools, particularly through the career development officers
- facilitating placements of students with law firms
- supporting law firms and law students during the placement
- updating the REAL website
- administering surveys of participants and compiling and analyzing statistical information
- transitioning REAL to a self-sustaining initiative without placement funding
- liaising with and reporting to the Oversight Committee

The desired qualifications and characteristics the RCO include

- Lawyer with practice experience in a small community
- Self-motivated, enthusiastic and well-organized
- Ease and proven success in building relationships in boardrooms and small communities
- Excellence in motivating and guiding others

The estimate of \$37,000 for salary (including benefits and deductions) is based on a 2009 salary which was identified after consultation with a leading Vancouver legal recruiting consultant and which has been adjusted for inflation. This is not a junior position, nor is it contemplated that it will be an administrative position.

Criteria for Participation

The criteria for participation in the existing program is a community of less than 100,000 people and more than 500 citizens per lawyer. The calculation of the number of lawyers is based in part on statistics provided by the Law Society and on the ground discussion. For example, LSBC statistics may indicate there are five lawyers in a community, but upon discussion with lawyers in the community, it is discovered that in fact only 3 maintain practices.

Going forward, this criteria is not set in stone. In light of a different funding level and therefore fewer positions, the Oversight Committee may recommend a different approach such as the identification of communities with significant or anticipated significant need as priorities for student placement. We welcome further discussion on this point.

LSBC Involvement and Recognition

In the event that the Law Society accepts the invitation to partner with CBABC to continue REAL, CBABC welcomes its involvement and will happily acknowledge the partnership and share information and learning outcomes about the initiative with Law Society on an ongoing basis.

To date, the Oversight Committee has included one representative of the Benchers (currently Tom Fellhauer) and that Committee has met quarterly to receive program reports, survey results and discuss emerging issues. CBABC has reported to the current funder, the Law Foundation of BC, on a quarterly basis.

In the event of funding, the CBABC expects to discuss with the Law Society the process of information sharing, communication and reporting both on the Oversight Committee and at the staff level.

Thank you again for the opportunity to provide further information.

Memo

To: The Benchers
From: The Executive Committee
Date: August 31, 2011
Subject: For Approval: Revisions to the Law Society Appointments Policy

For Review: The Law Society Appointments Guidebook

We are recommending your approval of a number of revisions to the Law Society Appointments Policy that was adopted by the Executive Committee in February 1994 ([Appendix 3 in the Benchers' Governance Policies](#)). See Tab 1 for redline and Tab 2 for clean versions of the draft revised policy. We have adopted the proposed policy revisions, subject to your final approval.

We have also adopted the Law Society Appointments Guidebook, enclosed at Tab 3 for your review. The Appointments Subcommittee's memorandum dated August 19, 2011 (Tab 4) outlines the background and purpose of the Guidebook, and flags connections between its provisions and proposed revisions to the Appointments Policy.

LAW SOCIETY OF BC APPOINTMENTS POLICY

Adopted by the Executive Committee February 21, 1994.

Objectives

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

Term of office

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

Benchers or non-Benchers

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

Consultation

1. ~~Canadian Bar Association:~~

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

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2. ~~Chair~~ Outside Body:

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Last revised August 25, 2011

- It is generally desirable that, before making an appointment or nomination to an outside body, the Law Society consult the body's chair and senior management of an organization to whom an appointment is made will normally be consulted with respect to regarding the applicable appointment parameters

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- appointment parameters include
 - the body's requirements, needs or interests to be addressed by the appointment, including
 - ✓ skills, experience and background desired in an appointee
 - prospective appointees who have expressed interest in the appointment to the body, including
 - ✓ names, current contact information and resumes
 - ✓ the body's receptiveness to their appointment
 - appointment timing preferences and requirements, including
 - ✓ term of office, commencement date and date of appointment
 - re-appointment factors, including
 - ✓ the incumbent's eligibility and readiness to continue to serve
 - ✓ the body's receptiveness to re-appointment of the incumbent
 - ✓

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- requirements, needs or interests of the organization, although not specifically invited to submit the names of persons to be considered. The chair, however, should refer names of people who have expressed interest in serving on the board to the appointing authority, but the appointing authority should not solicit names directly. In the case of reappointments, it is suggested that the chair be consulted to solicit her or his views as to the reappointment. Appointees should be advised in the initial letter they receive that it is the practice of the Law Society to consult with the chair of the organization prior to reappointing anyone to a board.

Comment [BM1]: Covered in the guidebook

Geographic considerations

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

Equity

The Law Society should promote and strive to reflect gender equity and cultural diversity in its internal and external appointments ~~ensure adequate representation of minority groups among the appointments it makes.~~

Appointment of judges

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Last revised August 25, 2011

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

Reappointment

~~Each person whose appointment is concluding should be asked to provide a report for information, not accountability purposes. The report could take the form of a memorandum or letter. The chair should be consulted on reappointments, as well as the appointee as to whether she or he wishes to continue to serve.~~

~~If the Law Society appointee has been chair of the organization, another factor to be considered is whether the board in question includes the position of "past chair."~~

Communication

~~The staff keeps a cumulative file of information and correspondence regarding appointments. A list of the year's upcoming appointments should be provided at the initial Executive Committee meeting in January, together with dates and background information.~~

~~The letter confirming the appointment should advise the appointee of any policies affecting the appointment and of the name of the chair and Secretary of the organization. The appointee should also be advised of the Law Society's desire to receive feedback periodically or at the end of the appointee's term. The existence of these practices should also be communicated to the organizations. The Law Society should encourage each organization to develop an orientation program and information package for new appointees.~~

Communication Expectations

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

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

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

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee

Comment [BM2]: Covered in Term of Office, Consultation and Communication Expectations

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Last revised August 25, 2011

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

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

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

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Last revised August 25, 2011

LAW SOCIETY OF BC APPOINTMENTS POLICY

Objective

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

Term of office

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

Benchers or non-Benchers

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

Consultation

Canadian Bar Association:

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

Outside Body:

- It is generally desirable that, before making an appointment or nomination to an outside body, the Law Society consult the body's chair and senior management regarding applicable appointment parameters
 - appointment parameters include
 - the body's requirements, needs or interests to be addressed by the appointment, including

- ✓ skills, experience and background desired in an appointee
- prospective appointees who have expressed interest in the appointment to the body, including
 - ✓ names, current contact information and resumes
 - ✓ the body's receptiveness to their appointment
- appointment timing preferences and requirements, including
 - ✓ term of office, commencement date and date of appointment
- re-appointment factors, including
 - ✓ the incumbent's eligibility and readiness to continue to serve
 - ✓ the body's receptiveness to re-appointment of the incumbent

Geographic considerations

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

Equity

The Law Society should promote and strive to reflect gender equity and cultural diversity in its internal and external appointments.

Appointment of judges

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

Communication Expectations

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

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

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

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

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

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

The Law Society
of British Columbia



The Law Society of BC Appointments Guidebook

Law Society of BC Appointments to Other
Organizations: an Outline of the
Responsibilities, Powers and Duties of the
Law Society and Its Appointees

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President's Message

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

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

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

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

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

Bill McIntosh, Manager, Executive Support
(bmcintosh@lsbc.org or 604.443.5706)
The Law Society of BC
845 Cambie Street
Vancouver BC
V6B 4Z9

1. Law Society Appointments: Policy and Process

1.1 Law Society Appointments Policy

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

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

A. Term of office

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

B. Benchers or non-Benchers

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

C. Geographic considerations

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

D. Equity

The Law Society should promote and strive to reflect gender equity and cultural diversity in its internal and external appointments.

E. Appointment of judges

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

F. Communication Expectations

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

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

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

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

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

- reflect and enhance the mutual commitment of the Law Society and those bodies
 - to protecting and promoting the public interest in the administration of justice
 - to supporting good governance practice by the Law Society and those bodies

- to supporting continuous improvement of the Law Society’s processes for making appointments and nominations to outside bodies

1.2 Law Society Appointments Process

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

The Appointments Subcommittee comprises:

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

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

The Appointments Subcommittee then meets to consider a detailed information package, which includes names and resumes of candidates recommended by the outside organization, and of suitable prospects who may have already contacted the Law Society to express interest. The Subcommittee may decide to make its appointment recommendation on the basis of that information package. It may also decide to defer its recommendation and request more background on the candidates; or it may determine that a broader or stronger pool of candidates is needed. In the latter case, the

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

² Minutes of the February 17, 2011 meeting of the Executive Committee, page 7.

Subcommittee may canvass the Executive Committee or the Benchers for recommendations, or direct the posting of a call for interest in service on the boards of outside organizations in the Benchers' Bulletin or on the Law Society website.

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

1.3 Law Society Appointments Protocol

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

- Review expressions of interest in the Law Society’s appointment prospects database
- Determine whether a broader call for interest or other active canvassing of the profession for candidates is warranted
 - If so, determine the appropriate canvassing strategy and execute it in a professional and timely fashion
- Prepare appropriate confirming correspondence, update relevant Law Society records and diarize for review
 - one year from expiry of the current appointment
 - beginning of calendar year of appointment expiry

2. Responsibilities, Powers and Duties of the Law Society and Its Appointees

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

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

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

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

- 3 It is the object and duty of the society

(a) to uphold and protect the public interest in the administration of justice by

- (i) preserving and protecting the rights and freedoms of all persons,
- (ii) ensuring the independence, integrity and honour of its members, ...

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

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

- Category 1 – appointments to bodies whose objects are related to the Law Society's mandate (see Chart 1, page 14)
 - (a) directorship appointments
 - (b) non-directorship appointments
- Category 2 – appointments to bodies whose objects are not related to the Law Society's mandate (see Chart 2, page 28)³

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

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

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice

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

- unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

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

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

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

- reflect and enhance the mutual commitment of the Law Society and those bodies
 - to protecting and promoting the public interest in the administration of justice
 - to supporting good governance practice by the Law Society and those bodies
 - to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies⁴

It is important for all appointee bodies to provide new members and directors with effective orientation and training tailored to the needs of the particular body. It is equally important for new members and directors to ensure that they acquire a clear understanding of their responsibilities, duties and obligations to the body to which they

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

have been appointed. They should do so by reviewing the body's governing statute, constitution and by-laws, and by contacting the body for clarification.

2.1 Appointments to Related Bodies (Category 1)

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

Chart 1:

1a. Directorship and Membership Appointments to Related Bodies

Governed by the *Society Act*:

- British Columbia Law Institute
- Courthouse Libraries BC
- CBABC Benevolent Fund Society
- Continuing Legal Education Society of BC
- Justice Education Society

Governed by Other Statutory Authority:

- Federation of Law Societies of Canada – Council
- Law Foundation of British Columbia
- Legal Services Society
- Land Title and Survey Authority

1b. Non-Directorship Appointments to Related Bodies

Councils:

- Canadian Bar Association National Council
- Canadian Bar Association of British Columbia Branch Provincial Council
- Provincial Judicial Council
- University of British Columbia Faculty of Law, Faculty Council
- University of Victoria Faculty of Law, Faculty Council

Committees:

- Canadian Bar Association of British Columbia Rural Education & Access to Lawyers Initiative Oversight Committee
- Committee on Relations with the Judiciary
- Federal Judicial Advisory Committee for British Columbia
- Land Title and Survey Authority Stakeholders Advisory Committee
- Queen’s Counsel Appointments Advisory Committee
- University of British Columbia Faculty of Law Curriculum, Teaching and Learning Committee

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

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

- the bodies' objects are related to the Law Society's mandate
- the appointees are members of the bodies' central policy-making body
 - with governance responsibilities including creation and amendment of the bodies' by-laws
 - with directorship duties (see Section 2.1.1D)

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

A. Category 1a Bodies Governed by the *Society Act*

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

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

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

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

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

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

While these two areas of responsibility are distinct in theory, in practice they overlap. Supporting good governance requires effective communication between the body and its members, and between the members and their board appointees. Also, the Law Society's responsibility for supporting good governance underlies its responsibility to appoint effective members and directors, with backgrounds and skill sets appropriate to the body's leadership and governance needs.

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

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

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

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

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

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

The *Society Act* applies the standard Canadian statutory terms⁹ in defining the core responsibilities, powers and duties of directors of not-for-profit organizations incorporated under the Act.

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

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

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

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

Section 26 provides that a society's contracts, constitution and by-laws cannot be used to create exceptions to directors' obligations and duties under the Act; nor from "... liability that by a rule of law would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society."

We note that the *Society Act* does not expressly impose the duty of loyalty on its members; nor does it prescribe principles and rules for identifying and handling confidential society information in the hands of members or

⁹ Barry Reiter, *Directors' Duties in Canada*, 4th ed. (Toronto: CCH Canadian, 2009) ("Reiter"), 42-43.

directors. The Law Society accepts that like its directors, the members of a *Society Act* body should seek always to act in the body's best interests.¹⁰

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

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

B. Category 1a Bodies Governed by Other Statutory Authority

i. The Federation of Law Societies of Canada

Incorporated as a not-for-profit organization under [Part II of the *Canada Corporations Act*](#), R.S.C, 1970, c. C-32 in 1972, the Federation of Law Societies of Canada (the Federation) (see Appendix 2(B) Tab 1) is the coordinating body for Canada's provincial and territorial law societies. Under the Federation's by-laws, each member law society is a "governing body" and is expected to appoint one director to Council, which is the Federation's central decision-making authority. The Law Society's Council member is selected by the Benchers, and must be a current elected Bencher or Life Bencher.

The Terms of Reference for the Appointment and Service of the Law Society's Council Member of the Federation of Law Societies of Canada

¹⁰ See Schedule B of the *Society Act* for standard members' compliance by-law:

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

¹¹ Peter Broder, Coordinating Editor, *Primer for Directors of Not-for-Profit Corporations*, Industry Canada, 2002 ("Industry Canada") (http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_cl00688.html) as at August 16, 2011).

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

¹² See Reiter, *supra* note 9, 46-47.

Council defines the member's appointment process and responsibilities for representing the Society's interests at Council.¹³

ii. The Land Title and Survey Authority of British Columbia

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

4 (1) The purposes of the LTSA are

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

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

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

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

¹⁴ <http://www.ltsa.ca/about-the-ltsa/governance> (as at August 16, 2011): "The LTSA is governed by an eleven-member board of directors which is responsible for strategic oversight of the LTSA's business and setting policy. The board is accountable to the 'principals' of the LTSA, namely the users of BC land title and survey systems."

¹⁵ See Reiter, *supra* note 9, 42-43.

¹⁶ <http://www.ltsa.ca/about-the-ltsa/governance> (as at August 16, 2011): Schedule A of the LTSA Consolidated By-laws, 32.

iii. The Law Foundation of British Columbia

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

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

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

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

iv. The Legal Services Society

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

4 (1) The board consists of 9 directors

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

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

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

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

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

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

(6) The term of office of a director must be not longer than 3 years from the date on which the appointment becomes effective.

(7) A director must not hold office for more than 6 consecutive years.

(8) Despite anything else in this section, a director whose term of office has expired may continue to hold office until a successor is appointed ...

(9) The board must meet at least quarterly.

(10) Subject to subsection (9), the board must control and direct the business of the society and may, by resolution, determine its own procedure.

(11) A director must be reimbursed for reasonable out of pocket travelling and other expenses incurred in the discharge of duties and may be paid a fee for services.

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

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

C. Communication Expectations

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

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

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

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

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee

¹⁸ Legal Services Society, Board Governance By-Laws as amended and adopted by the board August 24, 2010. <http://www.lss.bc.ca/about/governancePractices.asp> (as at August 16, 2011). See Article 7.

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

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

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

D. Directors’ Duties of Loyalty and Care

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

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

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

- act honestly and openly
- maintain confidences
 - disclosure of which would be contrary to the body's interest
- act independently
- avoid conflicts of interest and the appropriation of corporate opportunities²⁰

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

E. Divergent Interests, Benchers Appointments as Directors and Conflicts of Interest

Only rarely will the Law Society and a Category 1 body find themselves in situations where their interests diverge, because their mandates are related and their objects generally overlap or at least align. On the other hand, the very fact that the Law Society and Category 1 bodies so often share common ground means that strategic differences will arise. Benchers appointed as members or directors to those bodies must take care to avoid conflicts of interest.

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

²⁰ Reiter, *supra* note 9, 44-45.

²¹ *Ibid*, 43.

EXAMPLE

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

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

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

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

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

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

Benchers or non-Benchers

A Bencher should be appointed to an outside body only if that body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases there is a presumption against appointing Benchers to other

²² Industry Canada, *supra* note 11, 25.

²³ Reiter, *supra* note 9, 53-54.

bodies. An example of a circumstance in which that presumption might be rebutted is in the case of a newly created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body's procedures are well established (see Appendix 1).

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

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

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

A. The Law Society's Communication Expectations for Category 1b Appointees

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

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

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

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

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

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

- reflect and enhance the mutual commitment of the Law Society and those bodies to
 - to protecting and promoting the public interest in the administration of justice
 - to supporting good governance practice by the Law Society and those bodies

to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

2.2 Appointments to Unrelated Bodies (Category 2)

It will not surprise most readers of this guidebook that it is uncommon for the Law Society to become an appointing authority for bodies whose objects are not related to the Society's mandate "... to promote and protect the public interest in the administration of justice ..." (see [Section 3\(a\) of the *Legal Profession Act*](#)). If the Society agrees to take on the responsibilities of an appointing authority for a Category 2 body (see Chart 2 and

Appendix 4), generally it will be because that body's objects and operations have significant community and public impact.

Chart 2:

- Building Permit Board of Appeal, City of Vancouver
- Hamber Foundation
- Vancouver Airport Authority
- Vancouver Foundation

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

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

A. The Law Society's Communication Expectations for Category 2 Appointees

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

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

3. Expressions of Interest

A portal at www.lawsociety.bc.ca is currently under development for submission of expressions of interest regarding the appointments referred to in this guidebook.

In the meantime, anyone wishing to be considered as a potential appointee is encouraged to submit a current resume to the Law Society:

- by email to: Bill McIntosh, Manager, Executive Support,
(bmcintosh@lsbc.org)
- or in writing to:

The Law Society of BC
845 Cambie Street
Vancouver BC
V6B 4Z9

Attention: Bill McIntosh, Manager, Executive Support

APPENDICES

Appendix 1 - Law Society of BC Appointments Policy

Law Society of BC Appointments Policy

Objective

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

Term of office

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

Benchers or non-Benchers

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

Consultation

Canadian Bar Association:

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

Outside Body:

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

Geographic considerations

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

Equity

The Law Society should promote and strive to reflect gender equity and cultural diversity in its internal and external appointments.

Appointment of judges

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

Communication Expectations

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

- materially change the body's objects or operations, or

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

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

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

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

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

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

A. Governed by the *Society Act*

Tab	Body	Governing Statute / Applicable By-laws / Other Authority	Law Society Appointing Authority	Law Society Appointee/Nominee Profiles
1	British Columbia Law Institute (“BCLI”)	<i>Society Act</i> BCLI By-law 4(1)	Law Society Executive Committee	2 persons as members of BCLI (members are also directors)
2	Courthouse Libraries BC (“CLBC”)	<i>Society Act</i> CLBC By-law A2.1	Law Society President	2 Law Society Benchers as directors 1 President or President’s Nominee as a director
3	Canadian Bar Association of British Columbia Benevolent Fund Society (“CBABF Society”)	<i>Society Act</i> CBABF Society By- law 26	Law Society President	1 Bencher or Life Bencher as a director
4	Continuing Legal Education Society of BC (“CLE”)	<i>Society Act</i> CLE By-law 9(a):	Law Society President	2 Law Society Benchers as directors
		CLE By-law 9(c)	Law Society and Canadian Bar Association of BC Presidents (jointly)	10 practising Law Society members as directors: 3 from county of Vancouver; 1 each from counties of Victoria, Nanaimo, Prince Rupert, Cariboo, Yale, Kootenay and Westminster as directors
5	Justice Education Society (“JES”)	<i>Society Act</i> JES By-law 3.2(f)	Law Society Benchers	1 Law Society member, as a JES member (members are also directors)

1. British Columbia Law Institute

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Peter Ramsay, QC	5 years	1	6/6/2002	6/22/2012
Fiona Hunter	5 years	0	5/1/2009	4/30/2012

A. Contact Information

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

B. Applicable Statutes

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

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

C. Objects

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

- a. promote the clarification and simplification of the law and its adaptation to modern social needs,
- b. promote improvement of the administration of justice and respect for the rule of law, and
- c. promote and carry out scholarly legal research.

D. Law Society's Appointment Authority

1. BCLI By-laws²⁴:

a. Appointment of BCLI Members

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

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

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

- (g) one person appointed by the persons appointed under clauses (a) to (f).

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

b. Revocation of Appointment

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

c. Term of Office

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

E. Appointees' Obligations, Powers and Duties (as Members and Directors):

1. Internal Sources: BCLI Constitution and By-laws

a. Promoting Purposes of BCLI and Avoiding Personal Gain

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

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

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

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

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

c. Amending Constitution and By-laws

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

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

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

(a) act honestly and in good faith and in the best interests of the society, and

(b) exercise the care, diligence and skill of a reasonably prudent person,

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

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

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

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

(a) a resolution passed in a general meeting by a majority of not less than 75% of the votes of those members of a society who, being entitled to do so, vote in person or, if proxies are allowed, by proxy

(i) of which the notice that the bylaws provide, and not being less than 14 days' notice, specifying the intention to propose the resolution as a special resolution has been given, or

(ii) if every member entitled to attend and vote at the meeting agrees, at a meeting of which less than 14 days' notice has been given,

(b) a resolution consented to in writing by every member of a society who would have been entitled to vote on it in person or, if proxies are allowed, by proxy at a general meeting of the society, and a resolution so consented to is deemed to be a special resolution passed at a general meeting of the society,

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

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

(a) from the duty to act in accordance with this Act and the regulations, or

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

2. Courthouse Libraries BC

Appendix 2(A)	Body	Governing Statute/Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
2	Courthouse Libraries BC (“CLBC”)	<i>Society Act</i> CLBC By-law A2.1	Law Society President	2 Benchers (directors) President or Law Society member as President’s Nominee (director)

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Thelma O’Grady	3 years per term (subject to annual review), maximum of 2 terms	0	1/1/2011	12/31/2013
Joost Blom, QC	3 years per term (subject to annual review), maximum of 2 terms	2	2/1/2006	12/31/2012

Law Society member, appointed by: President

Current Appointment	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
David Zacks, QC	Tenure of Current President	0	1/1/2011	12/31/2011

A. Contact Information

Mailing Address	Phone/Fax/Email:
Courthouse Libraries BC – Central Location 800 Smithe Street Vancouver BC V6Z 2E1	Phone: 604.660.2841 Fax: 604.660.2821 E-mail: librarian@courthouselibrary.ca

B. Applicable Statutes

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

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

C. Objects

1. CLBC Constitution, Article 2 - The purposes of the society are to:

- a. to provide, maintain, develop and improve law library services and collections for the benefit of members of the Law Society of British Columbia, members of the Judiciary of the Province of British Columbia, and members of the public.
- b. to assist public libraries to develop and improve collections of legal materials for use by the public;
- c. to develop and operate education programs designed to improve the research capabilities of the users of law libraries;

- d. to promote the development of improved sources of legal information; and
- e. to acquire, hold, mortgage, dispose of and otherwise deal with real and personal property for the purposes of the Society.

D. Law Society's Appointment Authority

1. CLBC By-laws²⁷:

a. CLBC Members

By-law 1.1.1: The Law Society of British Columbia shall be a member of the Society in perpetuity.

By-law 1.1.2: The President of the Law Society of British Columbia, or the President's nominee from time to time, shall be a member so long as the President holds office as such and thereafter, each person so elected to hold the office of President of the Law Society of British Columbia or the President's nominee from time to time shall be a member so long as the President holds office as such.

b. CLBC Directors

By-law 2.1: The Board of Directors shall consist of the following persons:

(a) two Benchers of the Law Society of British Columbia who shall be appointed by the President of the Law Society of British Columbia and who shall remain Directors of the Society, even if one or both of them subsequently cease to be Benchers, so long as they are not removed as Directors by the President of the Law Society of British Columbia;

(b) the President of the Law Society of British Columbia, or the President's nominee, but if the President recalls the nominee, the President of the Law Society of British Columbia shall thereupon again become a Director of the Society;

...

c. Revocation of Directorship Appointments

See *By-law 2.1.a* and *2.1.b* above.

²⁷ Courthouse Libraries BC Constitution and By-laws, amended June 2005

d. Term of Office of Directors

By-law 2.2.1: The term of office of any Director appointed under Article 2.1 shall be 3 years, and the maximum number of terms that any such director may serve shall be 2 terms.

E. Obligations, Powers and Duties of Members and Directors:

1. Internal Sources: CLBC Constitution and By-laws

a. Promoting Objects of CLBC and Avoiding Personal Gain

CLBC Constitution, Article 3: The Society shall be carried on without purpose of gain for its members, and any profits or other accretions to the Society shall be used for promoting its objects.

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

By-law 2.3: ... In addition to the powers and authority given by the by-laws or otherwise expressly conferred upon them, the Board of Directors may exercise all such powers of the Society and do all such acts on its behalf as are not by the *Society Act* or the Constitution and by-laws of the Society required to be exercised or done by the Society at a general or special meeting, and the Directors shall have full power to make such rules and regulations as they deem necessary, provided that such rules and regulations are not inconsistent with the Constitution and by-laws of the Society, and the Board of Directors may make such staff appointments and make provision for the payment of such salaries as the Board of Directors may, in its discretion, deem advisable to properly fulfil the objects of the Society.

2. External Sources: *Society Act* (statutory duties of honesty and care, and power to change by-laws)

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

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

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

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

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

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

Society Act, s. 23(1): A society may change its bylaws by special resolution²⁸ ...

²⁸ Only members can vote on and pass special resolutions. Under section 1 of the *Society Act*, "special resolution" means:

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

3. Canadian Bar Association of BC Benevolent Fund Society

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

Current Appointment	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Ian Donaldson, QC	1 year per term, to a maximum of 6 years	0	6/29/2011	to be reviewed annually in conjunction with the Benevolent Society’s annual general meeting

A. Contact Information

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

B. Applicable Statutes

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

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

C. Objects

1. CBABF Society Constitution, Article 2 - The purposes of the society are to:

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

D. Law Society's Appointment Authority

1. CBABF Society By-laws²⁹:

a. CBABF Society Membership

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

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

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

²⁹ CBABC Benevolent Fund Society Constitution and By-laws, amended June 2011

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

b. CBABF Society Directors

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

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

...

c. Revocation of Membership and Directorship

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

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

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

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

d. Term of Office of Directors

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

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

E. Obligations, Powers and Duties of Members and Directors:

1. Internal Sources: CBABF Society Constitution and By-laws

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

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

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

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

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

c. Indemnification of Directors

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

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

d. Amending the Society's By-laws

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

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

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

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

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

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

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

(a) from the duty to act in accordance with this Act and the regulations, or

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

4. Continuing Legal Education Society of BC

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

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Al Jina Vancouver County	3 years per term, maximum of 2 terms	1	9/1/2006	8/31/2012
Gwen Allison Vancouver County	3 years per term, maximum of 2 terms	1	9/1/2006	8/31/2012

Kirk Wirsig Westminster County	3 years per term, maximum of 2 terms	0	9/1/2010	8/31/2013
Patricia Schmit, QC Cariboo County	3 years per term, maximum of 2 terms	1	9/1/2006	8/31/2012
Nicole Garton-Jones Vancouver County	3 years per term, maximum of 2 terms	0	9/1/2009	8/31/2012
John Hogg, QC Yale County	3 years per term, maximum of 2 terms	0	9/1/2009	8/31/2012
Timothy Klaassen Prince Rupert County	3 years per term, maximum of 2 terms	1	9/1/2006	8/31/2012
David Ibbetson Victoria County	3 years per term, maximum of 2 terms	1	2/11/2008	8/31/2013
Gerald Kambeitz, QC Kootenay County	3 years per term, maximum of 2 terms	1	9/1/2007	8/31/2013
Ronald Lamperson Nanaimo County	3 years per term, maximum of 2 terms	0 1	9/1/2008 9/1/2011	8/31/2011 8/31/2014

Bencher, appointed by: President

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Richard Stewart, QC	3 years per term, maximum of 2 terms	1	2/7/2006	8/31/2012
Thelma O'Grady	3 years per term, maximum of 2 terms	0	9/1/2008	8/31/2011
		1	9/1/2011	8/31/2014

A. Contact Information

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

B. Applicable Statutes

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

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

C. Objects

1. CLE Society Constitution, Article 2 (as amended) - The objects of the Society are to:

- a. to conduct, develop and operate educational programs for the legal profession in the Province of British Columbia in order to improve and extend the knowledge of the legal profession regarding present laws and legal processes;
- b. to conduct, develop and operate Bar admission courses and educational programs for articulated students if and when requested to do so by the Law Society of British Columbia;
- c. to direct attention of the legal profession to newly developing areas of law and legal processes;
- d. to bring to the attention of the legal profession practices and information gained from other professional disciplines or from business which may be useful to the legal profession and to co-operate with other professional and lay groups in developing and offering education programs involving the study of law;
- e. to encourage members of the legal profession to take further formal education *in law*;
- f. to co-operate on programs involving a knowledge of law and projects for education in the law;
- g. to publish books, manuals, articles, periodicals and written materials and to acquire and maintain the necessary plant and equipment for this object;
- h. to conduct, develop and operate programs through the use, production and distribution of audio and audio-visual films, tapes and materials and to acquire and maintain the necessary plant and equipment for this object;
- i. to acquire, hold, mortgage, dispose of, and otherwise deal with real and personal property for the purposes of the Society
- j. to report any judicial or administrative decision to the legal profession and inform them of the status of any proceedings before any judicial or administrative authority;
- k. to acquire, establish, operate or use any technology, means or system to carry out any purpose, activity, program or publication of the Society.

D. Law Society's Appointment Authority

2. CLE Society By-laws³⁰:

a. CLE Society Membership

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

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

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

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

b. CLE Society Directors

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

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

³⁰ Continuing Legal Education Society of BC Constitution and By-laws, effective February 7, 2002

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

(d) ...

c. Revocation and Replacement of Directorship Appointments

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

Society Act, s.31: A director may be removed from office by special resolution³¹ and another director may be elected, or appointed by ordinary resolution, to serve during the balance of the term.

³¹ Only members can vote on and pass special resolutions. Under section 1 of the *Society Act*, "special resolution" means:

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

d. Term of Office of Directors

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

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

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

E. Obligations, Powers and Duties of Members and Directors:

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

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

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

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

...

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

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

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

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

c. Indemnification of Directors

By-law 10(9): Directors are indemnified against any liability or cost actually and reasonably incurred by him or her in any civil, criminal or proceeding action or proceeding to which he or she is made a party because of being or having been a director, including an action brought by the Society or any subsidiary of the Society, if

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

d. Amending the Society's By-laws

By-law 58: The by-laws must not be altered or added to except by special resolution.³²

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

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

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

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

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

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

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

³² Only members can vote on and pass special resolutions. See Note 31.

5. Justice Education Society

Appendix 2(A)	Body	Governing Statute/Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
5	Justice Education Society (“JES”)	<i>Society Act</i> JES By-law 3.2(f)	Law Society Benchers	1 Law Society member, as a JES member (members are also directors)

Current Appointment	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Leon Getz, QC	2 years per term, maximum of 3 terms	0	9/1/2010	8/31/2012

A. Contact Information

Mailing Address	Phone/Fax/Email:
Justice Education Society - Head Office 260-800 Hornby St. Vancouver, BC V6Z 2C5	Phone: 604.660.9870 Fax: 604.775.3476 E-mail: info@justiceeducation.ca

B. Applicable Statutes

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

C. Objects

1. JES Constitution, Article 2

The purposes of the Society are to organize and carry on educational programs on the court system and legal system for the benefit of the community as a whole.

D. Law Society's Appointment Authority

2. JES By-laws³³:

a. Appointment of JES Members

By-law 3.2: A person is eligible to become a member if he is nominated as follows:

- (a) three persons may be nominated by the Attorney General of B.C.,
- (b) one person may be nominated by the Chief Justice of B.C
- (c) one person may be nominated by the Chief Justice of the Supreme Court of B.C
- (d) one person may be nominated by the Chief Judge of the Provincial Court of B.C.;
- (e) one person may be nominated by the Canadian Bar Association (B.C. Branch);
- (f) one member may be nominated by the Law Society of British Columbia.
- (g) one member may be nominated by the Minister of Education.
- (h) one member may be nominated by the Minister of Public Safety and Solicitor General of British Columbia.
- (i) one person may be nominated by the Directors as a representative of the educational community;
- (j) one person may be nominated by the Directors as a representative of the francophone or multicultural communities;

³³ Bylaws of Justice Education Society Approved September 1989. Revised: February 1990, April 1992, October 1999, June 2003, September 2003, September 2004, and February 2011

(k) one person may be nominated by the Directors as a representative of the aboriginal communities.

(l) one member may be nominated by the Directors as a representative of the administrative law community in British Columbia

(m) up to three members may be nominated by the Directors as Members at Large. The Members at Large shall represent the general membership of the Society on issues of interest or concern to it.

By-law 3.3: In case of the first members, other than the applicants for incorporation, the following provisions apply:

(a) one member nominated and designated by the Attorney General of B.C. shall serve for one year.

(b) one member nominated and designated by the Chief Justice of the Supreme Court of B.C. shall serve for one year.

(c) the member nominated by the President of the Canadian Bar Association (B.C. Branch) shall serve for one year.

(d) the member nominated under by-law 3.2 (f) shall serve one year.

(e) all other members shall serve for two years.

b. Revocation of Appointment

By-law 3.5(7): A person shall cease to be a member of the Society:

(a) by delivering his/her resignation in writing to the Secretary of the Society or by mailing or delivering it to the address of the Society, or

(b) on his/her death or in the case of a corporation on dissolution, or

(c) on being expelled,

(d) on having been a member not in good standing for a period of 30 days.

(e) on revocation or expiry of his nomination.

By-law 28: The members may by special resolution remove any Director.

c. Term of Office

By-law 3.4: There in after a member shall be a member for 2 years from the time he/she becomes a member. Membership can be renewed for recurring two-year periods thereafter.

E. Appointee's Obligations, Powers and Duties (as Members and Directors):

1. Internal Sources: JES Constitution and By-laws

a. Promoting Purposes of JES and Avoiding Personal Gain

JES Constitution, Article 4: The above purposes of the Society shall be carried out without purpose of gain for its members, and any profits or other accretions to the Society shall be used for promoting its purposes, its purposes, and all of the above purposes shall be carried on an exclusively charitable basis.

JES Constitution, Article 5: No Director or Officer shall be remunerated for being or acting as a Director of Officer, but a Director or Officer may be reimbursed for all expenses necessarily and reasonably incurred by him while engaged in the affairs of the Society.

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

By-law 23(1): The Directors may exercise all such powers and do all such acts and things as the Society may exercise and do, and which are not by these by-laws or by statute or otherwise lawfully directed or required to be exercised or done by the Society in general meeting, but subject, nevertheless, to the provisions of:

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

By-law 23(3): Notwithstanding any other by-law if a director is a judge, such a director shall have the power, duties, responsibilities and voting privileges as a director in the "judge's area of responsibility" only, except that a director who is a judge may act as chairperson at any meeting of the directors or a committee whether or not the matters dealt with are within the "judge's area of responsibility",

By-law 42(3): The Directors or members may add additional duties to any Director or officer or transfer duties among Directors or officers.

By-law 44: A member of the Directors shall

- (a) act honestly and in good faith and in the best interests of the Society,
- (b) exercise the care, diligence and skill of a reasonable and prudent person in exercising power and performing functions as a member of the Directors.

c. Directors' Duty to Disclose Interests

By-law 45: A member of the Directors who is directly or indirectly interested in a proposed contract or transaction with the Society shall disclose fully and promptly the nature and extent of his/her interest to each member of the Directors and otherwise comply with the requirements of the *Society Act*.

d. Amending Constitution and By-laws

JES Constitution, Article 6: There shall be no amendment to the Constitution or By-Laws without the written consent of the Attorney General of B.C. and this provision is unalterable.

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

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

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

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

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

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

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

B. Governed by Other Statutory Authority:

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

1. Federation of Law Societies of Canada – Council

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Gavin Hume, QC	3 years per term, maximum of 2 terms	0	11/15/2010	11/14/2013

A. Contact Information

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

B. Applicable Statutes

Governed by: *Canada Corporations Act* (Part II) (R.S.C., 1970, c. C-32)³⁴

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

C. Objects

1. FLSC By-laws³⁵, RECITALS (a) - The objects of FLSC are:

(i) to identify and study matters of essential concern to the legal profession in Canada and to further co-operation among the governing bodies of the legal profession in Canada with a view to achieving uniformity in such matters;

(ii) to operate as a forum for the exchange of views and information of common interest to the governing bodies of the legal profession in Canada and facilitate the governing bodies working together on matters of common concern;

(iii) to improve the understanding of the public respecting the work of the legal profession in Canada; and

(iv) in appropriate cases, to express the views of the governing bodies of the legal profession on national and international issues in accordance with directions of the members of the Federation.

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

1. Appointment and Eligibility

FLSC By-law 6.2: Council shall consist of one director appointed by each governing body³⁶ by notice in writing to the secretary of the Federation, together with the president and a vice-president as determined by Council to be the president elect. Council may appoint the immediate past president as an ex-officio member of the

³⁴ The Federation was incorporated under Part II of the Canada Corporations Act by Letters Patent issued by the Minister of Consumer and Corporate Affairs of Canada on July 21, 1972.

³⁵ FLSC By-laws, consolidated to 5 October, 2006.

³⁶ FLSC By-law 1.1: "governing body" means The Law Society of British Columbia, The Law Society of Alberta, The Law Society of Saskatchewan, The Law Society of Manitoba, The Law Society of Upper Canada, Barreau du Québec, Chambre des notaires du Québec, Law Society of New Brunswick, Nova Scotia Barristers' Society, The Law Society of Prince Edward Island, The Law Society of Newfoundland, The Law Society of Yukon, Law Society of the Northwest Territories and Law Society of Nunavut, and "governing bodies" means all of them.

Council. The term of office of a director appointed by a governing body shall be at the pleasure of his or her governing body.

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

Terms of Reference for the Law Society of British Columbia Member of Federation Council³⁷ (Appointment)

Appointment:

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

³⁷ See Appendix 2(B) Tab 1: Terms of Reference for Law Society of British Columbia Member of the Federation of Law Societies of Canada Council. Approved by the Law Society's Executive Committee September 16, 2010.

4. The Council member, on completing a first term, may be considered by the Executive Committee to be appointed by the Benchers for one further term.

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

e. Term of Office

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

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

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

f. Vacation of Office

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

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

6.4.2: if a special resolution³⁸ is passed requiring that the director be removed from office.

³⁸ FLSC By-law 1.1: "special resolution" means a resolution passed at a duly convened meeting of the members of the Federation by two-thirds (2/3) of the members eligible to vote on such resolution present in person or by proxy at such meeting.

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

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

Service:

1. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.
2. If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the full term of the Council appointment.
3. The Council member will strive to:
 - attend all FLSC Council meetings (currently three in person and one telephone meeting per year)
 - report after each Council meeting to the Benchers at their next meeting, and where appropriate, to the Executive Committee at their next meeting
 - provide supporting documentation received from FLSC to Law Society of British Columbia as appropriate to ensure that the Law Society of British Columbia is fully informed about national initiatives and the FLSC agenda
 - attend Benchers meetings to facilitate this obligation and answer questions
 - attend all FLSC Conferences (currently semi-annual)
 - obtain instructions from the Law Society of British Columbia, where necessary regarding matters on the FLSC agenda
 - which instructions may come from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers

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

1. External Sources: Federation By-laws

a. Directors

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

b. Powers of Council

FLSC By-law 6.1: The management of the business and affairs and the property of the Federation shall be vested in Council, who, in addition to the powers and authorities by these by-laws or otherwise expressly conferred upon them, may exercise all such powers and do all acts and things as may be exercised or done by the Federation and are not hereby or by the *Act* expressly directed or required to be exercised or done by the members.³⁹

c. Voting

FLSC By-law 4.3: The representative of each of the governing bodies on Council, or such other person as designated by a governing body by notice to the secretary of the Federation, shall for all purposes represent the governing body at meetings

³⁹ FLSC By-law 1.1: "members" means the members of the Federation and "member" means any one member.

of members and shall, subject to any direction given to them by the governing body, exercise the voting rights of such governing body at meetings of the members and in respect of such other matters as may be properly brought before the members.

d. Delegation and Committees

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

e. Remuneration

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

f. Amending By-laws

FLSC By-law 10.5: By-laws of the Federation may be enacted, repealed or amended by a resolution of Council and sanctioned by a special resolution⁴⁰ passed at a meeting of the members duly called for the purpose of considering the said enactment, repeal or amendment, provided that the enactment, repeal or amendment shall not be enforced or acted upon until the approval of the minister has been obtained.

⁴⁰ FLSC By-law 1.1: "special resolution" means a resolution passed at a duly convened meeting of the members of the Federation by two-thirds (2/3) of the members eligible to vote on such resolution present in person or by proxy at such meeting.



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

Terms of Reference

To: Benchers and Life Benchers

From: Executive Committee

Date: September 16, 2010

LSBC Member of the Federation of Law Societies of Canada Council

TERMS OF REFERENCE

Background

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

Appointment

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

Note that Appendix 3, section 2 of the Benchers Governance Policies applies: “Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to that particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment for up to six years.”³

Service

1. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.
2. If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the full term of the Council appointment.
3. The Council member will strive to:
 - attend all FLSC Council meetings (currently three in person and one telephone meeting per year)
 - report after each Council meeting to the Benchers at their next meeting, and where appropriate, to the Executive Committee at their next meeting
 - provide supporting documentation received from FLSC to LSBC as appropriate to ensure that LSBC is fully informed about national initiatives and the FLSC agenda
 - attend Benchers meetings to facilitate this obligation and answer questions
 - attend all FLSC Conferences (currently semi-annual)
 - obtain instructions from LSBC, where necessary regarding matters on the FLSC agenda
 - which instructions may come from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers
 - Bencher approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments

- remain fully informed about the work of LSBC and in particular, the Benchers' strategic priorities and current issuesⁱ
- where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding LSBC's ability to deal with FLSC agenda issues
- as appropriate, convey LSBC 's desire for FLSC to achieve certain objectives
- facilitate an exchange of information between LSBC and other law societies on matters of common interest
- participate fully in the national deliberations and work of whatever Council committee(s) the Council member may join

ⁱ Therefore the Council member will be included in the distribution of agendas and supporting materials (including *in camera*) for Benchers and Executive Committee meetings.

2. Law Foundation of British Columbia

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

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Tamara Hunter Vancouver County	3 years per term, maximum of 2 terms	0	1/1/2010	12/31/2012
Patricia Schmit, QC Cariboo County	3 years per term, maximum of 2 terms	1	1/1/2007	12/31/2012
Samantha Hulme Westminster County	3 years per term, maximum of 2 terms	1	1/1/2007	12/31/2012
Ronald Toews, QC Prince Rupert County	3 years per term, maximum of 2 terms	0	1/1/2010	12/31/2012
The Honourable Judge Dennis Schmidt Vancouver County	3 years per term, maximum of 2 terms	1	1/1/2008	12/31/2013

Kelle Maag, QC Kootenay County	3 years per term, maximum of 2 terms	1	1/1/2008	12/31/2013
Sandra Dick Nanaimo County	3 years per term, maximum of 2 terms	0	1/1/2011	12/31/2013
Anna Fung, QC Any County	3 years per term, maximum of 2 terms	0	1/1/2009	12/31/2011
Frank Scordo Kamloops County	3 years per term, maximum of 2 terms	0	1/1/2009	12/31/2011
The Honourable Justice David Masuhara Any County	3 years per term, maximum of 2 terms	0	1/1/2009	12/31/2011
Eugene Raponi, QC Victoria County	3 years per term, maximum of 2 terms	0	1/1/2011	12/31/2013
Robert Groves Okanagan County	3 years per term, maximum of 2 terms	0	1/1/2009	12/31/2011

A. Contact Information

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

B. Applicable Statutes

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

C. Objects

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

D. Law Society's Appointment Authority

1. Composition and Appointment of the Board of Governors

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

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

a. Revocation of Appointment

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

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

b. Term of Office

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

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

1. Internal Sources: Law Foundation of BC Board of Governors' Manual⁴¹

a. Applying the Funds of the Foundation for the Foundation's Purposes

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

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

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

All directors owe their organizations (whether they are “not-for-profit” or “for-profit bodies”) the duties of loyalty and care, both originally developed by the courts at common law and now enshrined in the statutes governing all corporations—federal or provincial—incorporated in Canada.⁴²

The duty of loyalty (also known as the fiduciary duty), requires directors to respect the absolute priority of the best interests of the organization over their

⁴¹ Interview with Wayne Robertson, QC, Executive Director of the Law Foundation of BC, April 15, 2011: The Law Foundation is not required by the Act to create by-laws and has not done so, relying on its Board of Governors' Manual to articulate its governance regime.

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

personal interests or other parties' interests. To discharge their duty of loyalty, directors must:

- act honestly and openly
- maintain confidences
- act independently
- avoid conflicts of interest and the appropriation of corporate opportunities⁴³

The duty of care requires directors “[...] to act carefully and on an informed basis and to exhibit the diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duty of care encompasses an objective standard of what a reasonably prudent person would be expected to do in comparable circumstances.”⁴⁴

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

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

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

⁴³ Reiter, *supra* note 9, 44-45.

⁴⁴ *Ibid*, 43.

3. Legal Services Society

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
David Crossin, QC	3 years per term, maximum of 2 terms	2	9/7/2007	9/6/2013
Thomas Christensen	3 years per term, maximum of 2 terms	1	9/7/2009	9/6/2013
Deanna Ludowicz	3 years per term, maximum of 2 terms	0	1/1/2009	12/31/2011
Suzette Narbonne	3 years per term, maximum of 2 terms	0	5/1/2011	4/30/2014

A. Contact Information

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

B. Applicable Statutes

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

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

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

C. Objects

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

D. Law Society's Appointment Authority

1. Membership

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

2. Board Composition and Appointment of Directors

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

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

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

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

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

3. Term of Office

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

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

1. Internal Sources: LSS By-laws⁴⁵

a. Board Responsibilities

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

- (a) articulating the society's vision and mission, developing strategic objectives to implement the vision and mission, and monitoring the performance of those objectives;
- (b) ensuring that effective risk management is in place and monitoring the society's fiscal performance, consistent with its fiduciary duties;
- (c) advising the executive director, when requested, on issues related to supervision, management and administration of the business of the society;

⁴⁵ Legal Services Society, Board Governance By-Laws as amended and adopted by the board August 24, 2010. <http://www.lss.bc.ca/about/governancePractices.asp> (as at August 16, 2011).

- (d) supporting effective communication between the society and the public, funders, appointing bodies, service providers, and others concerned with legal aid service delivery;
- (e) appraising its own effectiveness and implementing strategies to enhance its governance capacity; and
- (f) hiring, supporting, evaluating, compensating, planning for the succession of and, if necessary firing the executive director.

b. Directors' Responsibilities

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

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

c. Directors' Limitations

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

- (a) engage in board business when the director's personal interest interferes with the director's capacity to act in the interests of the society;

- (b) disclose confidential board and society business;
- (c) publicly disagree with the collective decisions of the board;
- (d) speak on behalf of the board unless authorized to do so by the board, the chair or the executive director; or
- (e) direct staff or distract them unduly from the business operation of the society.

d. Conflict of Interest Policy and Principles

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

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

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

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

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

e. Indemnification of Directors, Officers and Others

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

- a) all costs, charges, and expenses that such director, officer, or other person incurs in any action, suit, or other proceeding that is brought against him, or for any action whatsoever, carried out or permitted by him in good faith in the execution of his duties or in respect of any such liability; and
- b) all other costs or expenses that he sustains or incurs in relation to the affairs of the society, except such costs, charges, or expenses as are occasioned by his own wilful neglect or default.

f. Amending the By-laws

LSS By-law 10.0: These by-laws are adopted as the general principles of governance by the board of the society and cannot be amended or altered except by an extraordinary resolution of the board.⁴⁶

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

a. Guiding Principles

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

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

b. Powers and Capacity

LSS Act, s. 10:

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

⁴⁶ *LSS By-law 1.1(d)* defines extraordinary resolution as “a resolution of which at least fourteen days notice has been given to the directors and that requires a two-thirds majority of the directors present to pass.”

(c) determine the method or methods by which legal aid is to be or may be provided, with power to determine different methods for different types of legal matters and different classes of persons,

(d) determine who is and who is not eligible for legal aid based on any criteria that the society considers appropriate,

(e) undertake, inside or outside British Columbia, commercial activities that it considers appropriate for the purposes of obtaining funds for the pursuit of its objects,

(f) recover, through client contributions or any other methods it considers appropriate, its costs of providing legal aid, and

(g) facilitate coordination among the different methods, and the different persons and other entities, by which legal aid is provided.

(2) The society must not provide prescribed services to prescribed persons or classes of persons in prescribed circumstances unless it does so without using any of the funding provided to it by the government.

(3) The society must not engage in an activity unless

(a) it does so without using any of the funding provided to it by the government, or

(b) it does so in accordance with this Act, the regulations and the memorandum of understanding referred to in section 21 and money for that activity is available within the budget approved by the Attorney General under section 18.

(4) The society is not an agent of the government or of the law society.

4. Land Title and Survey Authority

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Geoff Plant, QC	3 years per term, maximum of 2 terms	1	4/1/2008	3/31/2014
Richard Swift, QC	3 years per term, maximum of 2 terms	2	11/19/2004	3/31/2012

A. Contact Information

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

B. Applicable Statutes

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

Applies in part: *BC Business Corporations Act*

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

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

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

- (a) the provisions of *the Business Corporations Act* other than sections 10 to 41, 52 to 89, 107 to 126, 128, 130 to 133, 135, 136, 140, 142, 143, 147 to 153, 159 to 191, 196, 204 to 206, 228, 269 to 300 and 302 to 311 and Parts 11 and 14;
- (b) the regulations made under the *Business Corporations Act* other than
 - (i) regulations made in respect of sections 10 to 41, 52 to 89, 107 to 126, 128, 130 to 133, 135, 136, 140, 142, 143, 147 to 153, 159 to 191, 196, 204 to 206, 228, 269 to 300 and 302 to 311 and Parts 11 and 14, and

- (ii) regulations that expressly indicate that they do not apply to special Act corporations, as defined in the *Business Corporations Act*.

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

C. Objects

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

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

D. Law Society's Appointment Authority

1. Board Composition

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

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

2. Nomination and Appointment of Directors

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

...

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

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

3. Term of Office

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

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

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

4. Conditions on Power of Appointment

a. Directors' Qualifications

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

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

- (a) under the age of 18 years,
- (b) not a Canadian citizen,
- (c) not a resident of British Columbia,
- (d) an officer of the LTSA, other than the chair or vice chair of the board of directors,
- (e) an elected official or employee of the government of British Columbia, the government of Canada, a local government, a regional district or an aboriginal organization exercising governmental functions,
- (f) an officer, director or employee of a stakeholder entity,

(g) found by a court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,

(h) an undischarged bankrupt, or

(i) convicted inside or outside of British Columbia of an offence in connection with the promotion, formation or management of a corporation or an unincorporated business, or of an offence involving fraud, unless

(i) the court orders otherwise,

(ii) 5 years have elapsed since the last to occur of

(A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,

(B) the imposition of a fine,

(C) the conclusion of the term of any imprisonment, and

(D) the conclusion of the term of any probation imposed or

(iii) a pardon was granted or issued under the *Criminal Records Act* (Canada).

b. Directors' Skills and Experience Profile

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

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

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

c. Revocation of Appointment

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

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

1. Internal Sources: LTSA By-laws⁴⁷

a. Board Powers

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

b. Directors' and Officers' Duties

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

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

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

c. Directors' Remuneration

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

- (a) to the Chair of the Board, an annual stipend of \$52,000.00;
- (b) to each director who
 - (i) is the chair of a committee, and
 - (ii) does not occupy a position referred to in subsection (a), an annual stipend of \$19,000.00; and to each director who is not referred to in subsection (a) or (b), an annual stipend of \$10,000.00.

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

⁴⁷ LTSA Bylaws – Restated February 21, 2011. See: www.ltsa.ca/data/img/publication/Bylaws-Feb-2011.pdf (as at August 16, 2011)

(a) any meeting, of 30 minutes or more in duration, of the board or of any committee, or

(b) the annual general meeting of the LTSA.

2. External Sources: (*LTSA Act*)

a. Directors' Duty to Manage

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

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

b. Directors' and Officers' Duties

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

(a) act honestly and in good faith with a view to the best interests of the LTSA;

(b) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances;

(c) act in accordance with this Act, the regulations and the bylaws.

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

c. Indemnification of Directors

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

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

the person acted honestly and in good faith with a view to the best interests of the LTSA in respect of the conduct at issue in the action or proceeding, and

(b) in the case of a criminal or administrative action or proceeding, the person had reasonable grounds for believing that the person's conduct was lawful.

d. Disclosure of Conflicts of Interest

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

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

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

A. Councils:

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

1. Canadian Bar Association National Council

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Kathryn Berge, QC	Maximum of 1 year per term, maximum of 6 terms	0	1/28/2011	8/31/2011
			9/1/2011	8/31/2012

A. Contact Information

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

B. Applicable Statutes

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

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

C. Objects

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

(2) The objects of the Association shall be to advance the science of jurisprudence; promote the administration of justice and uniformity of legislation throughout Canada so far as is consistent with the preservation of the basic systems of law in the respective provinces; uphold the honour of the profession of the law, and foster harmonious relations and co-operation among the incorporated law societies, barristers' societies and general corporations of the Bars of the several provinces and cordial intercourse among the members of the Canadian Bar; encourage a high standard of legal education, generally to do all further or other lawful acts and things touching the premises.

D. Law Society's Appointment Authority

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

a. **Appointment of National Council Members**

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

b. **Term of Office**

Term of the current Law Society President.

E. Appointee's Obligations, Powers and Duties:

Non-voting liaison.

2. Canadian Bar Association of British Columbia Branch Provincial Council

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Kathryn Berge, QC	Maximum of 1 year per term, maximum of 6 terms	0	4/1/2010	3/31/2011
		1	4/1/2011	8/31/2011
		2	9/1/2011	8/31/2012

A. Contact Information

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

B. Applicable Statutes

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

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

C. Objects

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

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

D. Law Society's Appointment Authority

1. CBABC By-laws:

a. Appointment of CBABC Council

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

- (a) the Chief Justice of British Columbia;
- (b) the Chief Justice of the Supreme Court of British Columbia;
- (c) the Chief Judge of the Provincial Court of British Columbia;
- (d) the Attorney General of British Columbia;
- (e) the President of the Law Society of British Columbia;
- (f) the Dean of a university Faculty of Law in the Province of British Columbia;
- (g) the President of the British Columbia Crown Counsel Association;
- (h) the Chair of the British Columbia Courthouse Library Society;
- (i) the Chair of the British Columbia Law Institute;
- (j) the Chair of the Continuing Legal Education Society;
- (k) the Chair of the Law Foundation of British Columbia;
- (l) the Chair of the Legal Services Society;
- (m) the President of the Trial Lawyers Association of British Columbia; and
- (n) such further ex-officio members of CBABC Council as are appointed by CBABC Council from time to time.

b. Term of Office

Term of the current Law Society President.

E. Appointee's Obligations, Powers and Duties:

Non-voting liaison.

3. Provincial Judicial Council

Appendix 3(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
3	Provincial Judicial Council	<i>Provincial Court Act</i> , s.12(2)	Law Society President	1 Law Society Bencher, as a voting member of Council

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Kenneth Walker	Tenure of current President	2	1/1/2009	12/31/2011

A. Contact Information

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

B. Applicable Statutes

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

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

C. Objects

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

- a. considering proposed Lieutenant Governor in Council appointments of judges and justices;
- b. conducting inquiries respecting judges and justices;
- c. considering proposals for improving the judicial services of the court ;
- d. continuing the education of judges and organizing conferences of judges;
- e. preparing and revising, in consultation with the judges, a code of ethics for the judiciary;
- f. reporting to the Attorney General on the matters the Attorney General considers necessary.

D. Law Society's Appointment Authority

1. *Provincial Court Act*:

a. Appointment of Provincial Judicial Council Members

Provincial Court Act, s. 21: Judicial Council

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

- (a) the chief judge as presiding member;
- (b) the associate chief judge as alternate presiding member or, if 2 or more associate chief judge designated, the associate chief judge designated as alternate presiding member by the Lieutenant Governor in Council;
- (c) the president of the Law Society of British Columbia or a person nominated by the president;

(d) the president of the British Columbia Branch of the Canadian Bar Association or a person nominated by the president;

(e) by appointment of the Lieutenant Governor in Council for a term of not longer than 3 years, a judge and not more than 4 other persons.

b. Term of Office

Term of the current Law Society President.

E. Appointee's Obligations, Powers and Duties:

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

a. Council Members' Remuneration:

Provincial Court Act, s. 21: Judicial Council

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

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

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

(a) A resolution to approve an applicant for appointment will be defeated if any two members vote against approval. A resolution that an applicant not be approved for appointment will succeed if two or more members vote in favour of the resolution. Members present for such resolutions may not abstain.

(b) A resolution to approve an applicant for interview will succeed if any three members vote in favour of the resolution.

(c) To pass any other resolution at a meeting of the Council there must be a majority vote of the quorum in favour of the resolution. Each member has one vote but in the event of a tie, the Chair must cast a second and deciding vote.

c. Amending By-laws

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

4. University of British Columbia Faculty of Law, Faculty Council

Appendix 3(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
4	University of British Columbia Faculty of Law, Faculty Council	Informal	Law Society President	1 Law Society member, as non-voting liaison member of Council

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Alan Treleaven	2 years	2	3/26/2003	3/31/2013

A. Contact Information

Mailing Address	Phone/Fax/Email:
University of British Columbia Faculty of Law 1822 East Mall Vancouver, BC V6T 1Z1	Phone: 604.822.3151 Fax: 604.822.8108

B. Purpose

Meets monthly to determine faculty policy and consider committee reports and law society initiatives.

C. Law Society's Appointment Authority

a. Informal (President appoints a member of the Law Society)

b. Term of Office

Two years

D. Appointee's Obligations, Powers and Duties:

Non-voting liaison, without directorship responsibility or decision-making authority

5. University of Victoria Faculty of Law, Faculty Council

Appendix 3(A)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
5	University of Victoria Faculty of Law, Faculty Council	Informal	Law Society President	1 Law Society member, as non-voting liaison member of Council

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Alan Treleaven	2 years	1	5/13/2009	3/31/2013

A. Contact Information

Mailing Address	Physical Address	Phone/Fax/Email:
Faculty of Law University of Victoria PO Box 2400, STN CSC Victoria, BC V8W 3H7	Faculty of Law University of Victoria Murray and Anne Fraser Building, Room 102 McGill Road at Ring Road Victoria, BC V8P 5C2	Phone: 604.822.3151 Fax: 604.822.8108

B. Purpose

Meets monthly to determine faculty policy and consider committee reports and law society initiatives.

C. Law Society's Appointment Authority

a. Informal (President appoints a member of the Law Society)

b. Term of Office

Two years

D. Appointee's Obligations, Powers and Duties:

Non-voting liaison, without directorship responsibility or decision-making authority

B. Committees:

Tab	Body	Governing Statute /Applicable By-law/ Other Authority	Law Society Appointing Authority	Law Society Appointee/Nominee Profiles
1	Canadian Bar Association of British Columbia Rural Education & Access to Lawyers Initiative Oversight Committee	<i>11-12 Geo V. c. 79</i> CBABC By-laws, ss. 123-124	Law Society Executive Committee	1 Law Society Bencher, as a committee member
2	Committee on Relations with the Judiciary	<i>Legal Profession Act</i> 1997 Protocol 2004 Protocol	Law Society Executive Committee	1 Law Society member, as a committee member
3	Federal Judicial Advisory Committee for British Columbia	Federal government policy, April 1988	1 Law Society Member	1 Law Society member, as a voting member of Council
4	Land Title and Survey Authority (“LTSA”) Stakeholders Advisory Committee	LTSA By-laws, Part 9	Law Society Executive Committee	1 Law Society member, as a committee member
5	Queen’s Counsel Appointments Advisory Committee	<i>Queen’s Counsel Act</i>	Law Society Benchers approval	Law Society President Law Society 1 st Vice President, as committee members
6	University of British Columbia Faculty of Law Curriculum, Teaching and Learning Committee	Faculty Council resolution, May 12, 1983	Law Society President	1 Law Society member, as a non-voting member

1. Canadian Bar Association of British Columbia Rural Education & Access to Lawyers Initiative Oversight Committee

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Tom Fellhauer	Maximum of 1 year per term, maximum of 6 terms	1	6/1/2010	5/31/2012

A. Contact Information

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

B. Background of the REAL Initiative

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

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

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

Has a number of key components, including:

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

C. Purpose and Composition of the REAL Oversight Committee

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

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

D. Law Society's Appointment Authority

a. By invitation of CBABC (President appoints a Bencher).

b. Term of Office

One year.

E. Appointee's Obligations, Powers and Responsibilities

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

Role does not entail directorship responsibilities or duties.

2. Committee on Relations with the Judiciary

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Karen Nordlinger, QC	Not fixed		September 1999	To be reviewed annually
Vacant	Not fixed			To be reviewed annually
Vacant	Not fixed			To be reviewed annually

A. Contact Information

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

B. Statutory or other Authority

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

1997 Report of the Committee on Relations between the Law Society and the Judiciary

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

2004 Protocol between the Provincial Court and the Law Society respecting complaints (the 2004 Protocol)

C. Purposes

1. 1997 Report of the Committee on Relations between the Law Society and the Judiciary

The [CRJ]'s purposes would be to:

- (a) assist lawyers who need emergency assistance in the course of a trial or other proceeding in circumstances where such assistance is requested by the judiciary, and
- (b) provide advice and assistance to lawyers who wish to make complaints about judges, or who wish to argue that a judge's conduct has manifested a bias against the lawyer's client, and in suitable cases would raise the complaints directly with the judiciary.

The CRJ would have no reporting relationship to any person or body with respect to any individual request or complaint it received.

The CRJ would have a duty to advise the Law Society in general terms of its activities and indicate whether, in its view, the work it is doing is successful.

2. 1997 Protocol

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

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

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

D. Law Society's Appointment Authority

1. 1997 Protocol

a. Appointment of CRJ Members

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

b. Term of Office

Not fixed, to be reviewed annually.

E. Appointees' Obligations, Powers and Responsibilities

CRJ members act independently of the Law Society in carrying out the terms of the 1997 Protocol and the 2004 Protocol (see Appendix 3(B) Tab 2).

CRJ members should expect to be requested to report to the Law Society from time to time on the general effectiveness of the 1997 Protocol and the 2004 Protocol and the CRJ, but not on specific cases.

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

Background on the protocol

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

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

This panel was recommended by a special Law Society Committee on Relations between the Law Society and the Judiciary, comprised of Leonard Doust, QC, as Chair, Bruce Fraser, QC, Marguerite Jackson, QC, Charles Maclean, QC, Karl Warner, QC and Karen Nordlinger, QC. Their report is available in the Publications/Report section of the Law Society website at www.lawsociety.bc.ca.

Ms. Nordlinger of Vancouver currently serves on the special panel. At least one other senior practitioner is expected to be appointed in the near future to replace Mr. Justice Robert Johnston, who served on the panel up to the time of his recent judicial appointment.

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

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

The Committee recommended that the services of an independent panel of senior and

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

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

Text of the Protocol

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

- (b) a mistrial is declared,
- (c) counsel is no longer acting on the matter, or
- (d) Law Society representatives are satisfied that the continued practice of the lawyer would be dangerous or harmful to the public or the lawyer's clients.

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

8. Where a judge hearing a case requests the assistance of the special panel directly, the panel will, nevertheless, respond to that judge's request in the same way as if the request had been made by an administrative judge.
9. Where a judge approaches the Law Society, outside of the complaints process, to intervene in a matter, the Society should only do so when:
 - (a) Law Society representatives are satisfied that the continued practice of the lawyer would be dangerous or harmful to the public, the lawyer's client in the proceedings or other clients,
and
 - (b) the judge making the approach is unwilling to follow the usual protocol, or the protocol has been followed but has not succeeded in resolving the matter.

Protocol between the Provincial Court and the Law Society respecting complaints (2004)

Whereas:

1. Lawyers, judges and judicial justices of the peace (JJPs) have ethical duties to report misconduct to the appropriate disciplinary body; and
2. In some cases a lawyer or a judge or JJP may benefit from advice or assistance in making a complaint or deciding whether it is appropriate to do so.

Therefore, the following protocol has been mutually agreed upon between the Chief Judge of the Provincial Court of British Columbia and the President of the Law Society of British Columbia. Nothing in this protocol is intended to discourage complaints or replace existing complaint processes. Specifically, this protocol is intended to complement the protocol adopted by the Law Society in 1997, referred to as the Maclean/Fraser protocol, which pertains to complaints in the case of going proceedings.

Complaints by a judge or JJP about a lawyer

Where it appears to a judge that a complaint about a lawyer may be appropriate, and the judge desires assistance in making a complaint or deciding whether it is appropriate to do so, the judge may bring the matter first to the attention of his/her Administrative Judge before a formal complaint is pursued. After discussing the matter with the judge, the Administrative Judge may then raise the matter with the Chief Judge or an Associate Chief Judge, who will vet the complaint.

Where it appears to a JJP that a complaint about a lawyer may be appropriate, and the JJP desires assistance in making a complaint or deciding whether it is appropriate to do so, the JJP may bring the matter to the attention of an Associate Chief Judge or the Chief Judge before a formal complaint is pursued.

There may be situations where a formal complaint appears premature, does not appear to be necessary, or may not be the most constructive means of proceeding, such as where there are emotional problems or personal crises. In these cases, the Chief Judge or Associate Chief Judge may consider approaching a Bencher or member of the Discipline Committee to discuss how to proceed in the matter to determine, for instance, whether an appropriately placed word of advice might suffice, in the best traditions of the Bar and Bench.

If, after it is vetted through the above process, a complaint appears warranted or appropriate, all relevant materials should be forwarded to the Chief Judge by the judge or

JJP, including a court transcript, if available. The Chief Judge will then submit the complaint on behalf of the court, and future communications with the Law Society about the complaint will take place through the Chief Judge.

It is preferable, if possible, that such complaints proceed without the judge or JJP becoming a direct complainant or witness in the matter. The Law Society agrees that, where a formal complaint is advanced by the Chief Judge after this vetting process, it will be given due consideration, if possible without the judge or JJP who brought it becoming a party to the proceedings or indeed being further involved at all.

Unauthorized practice

When a judge or JJP becomes aware of a person who is not a lawyer holding him or herself out to be a member of the Law Society, this may be the subject of an immediate complaint, either directly to the Law Society Unauthorized Practice Committee or through the Administrative or Chief Judge if preferred. Confirmation of whether a person is registered with the Law Society may be obtained through the Law Society website at www.lawsociety.bc.ca or by telephone at 604 669-2533.

Complaints by a lawyer about a judge or JJP

Where it appears to a lawyer that a judge or JJP's conduct may be in question, and the lawyer desires assistance in making a complaint or deciding whether it is appropriate to do so, the lawyer may raise the matter with a Bencher before lodging a written complaint to the Chief Judge. In such circumstances, the Bencher may consider discussing the matter with the Chief Judge prior to deciding whether a formal complaint should proceed, or whether some other intervention short of a complaint may be appropriate.

If it is determined, after consultation with a Bencher and/or the Chief Judge, that a formal complaint should be made, it should be submitted in writing to the Chief Judge, with a copy of the transcript if one is available. It is preferable that the matter proceed on a transcript or other available written material, rather than placing the lawyer in the position of being a direct complainant or witness.

Lawyers may refer to the Provincial Court website at www.provincialcourt.bc.ca regarding the procedure for complaints.

3. Federal Judicial Advisory Committee for British Columbia

Appendix 3(B)	Body	Governing Statute/ Other Authority	Law Society Nominating Authority	Law Society Appointee/ Nominee Profile
3	Federal Judicial Advisory Committee for British Columbia	Federal government policy, April 1988	1 Law Society Member	1 Law Society member, as a voting member of the BC Committee

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Rita Andreone	3 years per term, maximum of 2 terms	1	11/1/2005	10/31/2011

A. Contact Information

Mailing Address	Phone/Fax/Email:
Judicial Appointments Secretariat Office of the Commissioner for Federal Judicial Affairs Canada 99 Metcalfe Street, 8th floor Ottawa, Ontario K1A 1E3	Phone: 613.992.9400 Toll Free: 877.583.4266 Fax: 613.995.5615 Email: jacs-snm@fja-cmf.gc.ca

B. Applicable Authority

Judges Act, RSC 1985, c J-1⁴⁸. The Act designates the Commissioner for Federal Judicial Affairs Canada to act on behalf of the Minister of Justice in matters related to the administration of Part I of the *Judges Act*, which deals with the terms of appointment, age limit and salaries applicable to federally appointed judges.

[Government policy for federal judicial advisory committees](#)⁴⁹ has in place since 1988 and is revised from time to time.

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

C. Objects

Independent judicial advisory committees are responsible for assessing the qualifications of the lawyers who apply for federal judicial appointments. Candidates are assessed by the regional advisory committee established for the judicial district of their practice or occupation, or by the committee judged most appropriate by the [Commissioner for Federal Judicial Affairs](#).⁵⁰

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

⁴⁸ Current version in force since June 18, 2009. See: <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-j-1/latest/rsc-1985-c-j-1.html> (as at August 25, 2011)

⁴⁹ <http://www.fja.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html#CommitteeMembership> (as at August 25, 2011)

⁵⁰ <http://www.fja.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html#CommissionerForFederalJudicialAffairsAndExecutiveDirectorJudicialAppointments> (as at August 25, 2011)

D. Law Society's Nomination Authority

1. Federal Judicial Advisory Committee Membership⁵¹

a. Nomination of Members

Each federal judicial advisory committee consists of eight members representing the bench, the bar, the law enforcement community and the general public, and 1 ex-officio non-voting member: the Commissioner for Federal Judicial Affairs Canada or the Executive Director, Judicial Appointments.

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

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

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

b. Term of Office

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

c. Nominees' Commitment not to Accept Judicial Appointment

It is the Benchers' policy to ask Law Society nominees to agree not to accept a federal judicial appointment while a member of the Committee and for two years thereafter.

d. Guidelines for Judicial Advisory Committee Members

The Office of the Commissioner for Federal Judicial Affairs has prepared detailed [guidelines for advisory committee members](#).⁵²

⁵¹ <http://www.fja.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html#CommitteeMembership> (as at August 25, 2011)

⁵² <http://www.fja.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html#FOREWORD> (as at August 25, 2011)

4. Land Title and Survey Authority Stakeholders Advisory Committee

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Ralston Alexander, QC	Appointment is not for any fixed term	1	3/1/2007	To be reviewed annually

A. Contact Information

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

B. Applicable Statutes

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

Applies in part: *BC Business Corporations Act*

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

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

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

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

C. Objects

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

D. Law Society's Nomination Authority

1. LTSA By-laws:

a. Committee Composition

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

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

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

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

b. Term of Office

Not fixed; subject to annual review.

2. Conditions on the Law Society's Power of Nomination

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

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

5. Queen's Counsel Appointments Advisory Committee

Appendix 3(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
5	Queen's Counsel Appointments Advisory Committee	<i>Queen's Counsel Act</i>	Law Society Benchers approval	Law Society President and another Benchers, as committee members

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Gavin Hume, QC	1 year	1	8/19/2010	12/31/2011
Bruce LeRose, QC	1 year	0	7/15/2011	12/31/2011

A. Contact Information

Mailing Address	Phone/Fax/Email:
Office of the Deputy Attorney General PO BOX 9290 STN PROV GOVT 11th Floor, 1001 Douglas St. Victoria, BC V8W 917	Phone: 250.356.0149 Fax: 250.387.6224 Email: AGDeputyQCAppt@gov.bc.ca

B. Applicable Statutes

Queen's Counsel Act, R.S.B.C. 1996, c. 393

C. Objects

The Lieutenant-Governor in Council, on the recommendation of the Attorney General, may bestow on lawyers in British Columbia the honorary title of Queen's Counsel (Q.C.) to recognize exceptional merit and contribution to the legal profession.

D. Law Society's Appointment Authority

1. *Queen's Counsel Act*, s. 2(2)

a. Term of Office

Annual

E. Appointees' Powers and Duties:

[Ministry of Attorney General of BC website](#)⁵³: All applications for QC appointments will be reviewed by an advisory committee, which will also recommend deserving candidates to the Attorney General.

The Attorney General continues to be able to directly appoint exceptional lawyers who meet the eligibility criteria. It is expected that this power will normally be exercised in exceptional circumstances only.

⁵³ <http://www.ag.gov.bc.ca/queens-counsel/index.htm> (as at August 16, 2011)

6. University of British Columbia Faculty of Law Curriculum, Teaching and Learning Committee

Appendix 3(B)	Body	Governing Statute/ Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
6	University of British Columbia Faculty of Law Curriculum, Teaching and Learning Committee	Faculty Council resolution, May 12, 1983	Law Society President	1 Law Society member, as a non-voting member

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Alan Treleaven	2 years	0	5/1/2011	4/30/2013

A. Contact Information

Mailing Address	Phone/Fax/Email:
University of British Columbia Faculty of Law Curriculum, Teaching and Learning Committee 1822 East Mall Vancouver, BC V6T 1Z1	Phone: 604.822.3151 Fax: 604.822.8108

B. Statutory or Other Authority

1. Faculty Council resolution, May 12, 1983

C. Purpose

Curriculum, Teaching and Learning Committee⁵⁴ considers the law school curriculum and makes recommendations regarding changes and improvements.

D. Law Society's Appointment Authority

a. Appointment of Members

Faculty Council resolution, May 12, 1983 (Law Society President)

b. Term of Office

Two years.

E. Appointee's Responsibilities

Supporting the curriculum review, teaching and learning improvement purposes of the committee

⁵⁴ www.ubclss.org/academic-issues/committees (as at August 16, 2011)

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

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

1. Building Permit Board of Appeal, City of Vancouver

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Edna Cheung	3 years per term, maximum of 2 terms	0	2/1/2009	1/31/2012

A. Contact Information

Mailing Address	Phone/Fax/Email:
Chief Building Official Community Services Group City of Vancouver 453 West 12th Avenue Vancouver, BC V5Y 1V4	Phone: 604. Fax: 604.

B. Applicable Statutes

Local Government Act, RSBC 1996, Ch 323

Vancouver Charter, Part IX, s. 306B

The Building Board of Appeal was originally established under Building *By-law No. 4833 (1973)*, but is now authorized by the Building Board of Appeal *By-law, No. 6135*.⁵⁵

C. Jurisdiction

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

D. Law Society's Appointment Authority

1. Building Permit Board of Appeal By-laws:

a. Appointment of Building Permit Board of Appeal, City of Vancouver Members

Building Board of Appeal By-law 6135:

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

- (a) Architectural Institute of BC
- (b) Association of Professional Engineers and Geoscientists of BC (Structural)
- (c) Association of Professional Engineers and Geoscientists of BC (Mechanical or Electrical)
- (d) Amalgamated Construction Association
- (e) Building Owners and Managers Association of BC (Management)
- (f) Greater Vancouver Home Builders Association
- (g) Insurers Advisory Organization

⁵⁵ <http://vancouver.ca/ctyclerk/civicagencies/building/index.html> (as at August 14, 2011)

(h) Law Society of BC

(i) a representative of a self-supporting Association located within the Greater Vancouver Region chiefly concerned with the economic or social interests of Building Users but generally independent of the interests of building owners, regulatory authorities, and the associations mentioned above.

b. Revocation of Appointment

City Council may remove any member by resolution of Council supported by not less than two-thirds of all its members.⁵⁶

c. Term of Office

Three years

E. Appointee's Obligations, Powers and Duties:

1. Building Board of Appeal By-law 6135:

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

⁵⁶ <http://vancouver.ca/ctyclerk/civicagencies/building/index.html> (as at August 14, 2011)

2. Hamber Foundation

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
William Everett, QC	3 years per term, maximum of 2 terms	0	3/1/2009	2/28/2012
Emily Reid, QC	3 years per term, maximum of 2 terms	0	3/1/2009	2/28/2012

A. Contact Information

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

B. Applicable Statutes

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

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

C. Objects

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

- a. to receive, hold, distribute, and, as provided in the By-laws, to invest and reinvest contributions from donors for the inauguration, maintenance and support of charitable work and charitable institutions within the Province of British Columbia.
- b. To maintain and support charitable organizations and charitable institutions coming within the scope of the following definition, that is to say:
 - i. any charitable organization carrying on its activities in British Columbia;
 - ii. any special relief organization which carries on activities in British Columbia; set up and administered by and under the direction of the Government of Canada or the Government of any Province of Canada or any Municipal authority in Canada and in particular any such organization whose objects include the alleviation of human suffering.
- c. To make grants for the purpose of establishing, maintaining and supporting scholarships, bursaries, professorships, lectureships, loan funds and other forms of assistance, to:

- i. Any degree-granting university or college in British Columbia operating under a charter from the Crown or appropriate legislation enacted by the Parliament of Canada or of any Province thereof;
 - ii. Any charitable organization carrying on its principal charitable activities...
- d. To establish, maintain and support scholarships, open to any student having the required university or college entrance qualifications for entrance to any degree-granting university or college operating under a charter from the Crown, or appropriate legislation enacted by the Parliament of Canada or of any Province thereof.

D. Law Society's Appointment Authority

1. Hamber Foundation By-laws:

a. Appointment of Hamber Foundation Members

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

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

b. Revocation of Appointment

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

c. Term of Office

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

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

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

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

E. Appointees' Obligations, Powers and Duties:

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

a. Promoting Purposes of Hamber Foundation and Avoiding Personal Gain

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

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

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

favour of the Trust Company or any such person or in which an acquittal is given or in respect of which release is granted by a court of competent jurisdiction.

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

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

c. Amending Constitution and By-laws

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

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

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

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

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

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

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

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

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

3. Vancouver Airport Authority

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Carol Kerfoot	3 year term, maximum of 2 terms	1	6/1/2006	5/14/2012

A. Contact Information

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

B. Applicable Statutes

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

C. Objects

1. Vancouver Airport Authority Constitution, Article 3 - The objects of the Authority are:

- a. to acquire all of or an interest in property comprising the Vancouver International Airport and other airports of the lower mainland, by lease or other form of transfer
- b. to undertake the management and operation of YVR et al. in efficient manner and safe manner for the benefit of the public
- c. to undertake the development of the land at YVR et al. to make them compatible with air transport activities
- d. to generate, suggest and participate in economic development projects etc. intended to expand B.C.'s transportation facilities and generate economic activity in all areas compatible with air transportation and,
- e. to assemble information, advise on and otherwise contribute to the advancement of air transportation

D. Law Society's Appointment Authority

1. Vancouver Airport Authority By-laws⁵⁷:

a. Appointment of Vancouver Airport Authority Members

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

- (a) one Member may be appointed by the Association of Professional Engineers and Geoscientists of British Columbia;
- (b) one Member may be appointed by the City of Richmond;
- (c) one Member may be appointed by the City of Vancouver;
- (d) two Members may be appointed by the Government of Canada;
- (e) one Member may be appointed by the Greater Vancouver Regional District;
- (f) one Member may be appointed by the Institute of Chartered Accountants of British Columbia;

⁵⁷ By-law No. 1 of Vancouver Airport Authority

- (g) one Member may be appointed by The Law Society of British Columbia;
- (h) one Member may be appointed by the Vancouver Board of Trade; and
- (i) one Member will be the person who holds the office of President.

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

b. Revocation of Appointment

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

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

c. Term of Office

By-law 1, s. 1.3: Appointment of Members - A person appointed by a Nominating Entity⁵⁸ will be a Member for a term beginning at the later of:

- (a) receipt by the Authority of a written communication from the Nominating Entity advising of the appointment; and
 - (b) the end of the term of the Member whom the appointee is to succeed or, in the case of a re-appointment, the end of the Member's previous term;
- and ending at the close of the annual meeting of the Members held in the third year after the year in which the term begins.

⁵⁸ The Law Society of BC is a nominating entity. By-law 15(4)k(k): "Nominating Entity" means the nominating entities described in Section 1(1).

E. Obligations, Powers and Duties:

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

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

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

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

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

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

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

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

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

(a) all costs, charges and expenses whatever that such Director, officer or other person sustains or incurs in or about any action, suit or commenced or prosecuted against such person, for or in respect of any act, deed, matter or thing whatever, made, done or permitted by such person, in or about the execution of the duties of such person's office; and

(b) all other costs, charges and expenses such person sustains or incurs, in or about or in relation proceeding that is brought, to the affairs of the Authority, except such costs, charges or expenses as are occasioned by such person's own wilful neglect or default.

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

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

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

c. Amending Constitution and By-laws

By-law 1, s. 11.3: Amendment of *By-law No. 1*: This By-law may be repealed or amended by an amending by-law enacted by a resolution of the Board and sanctioned by a Special Resolution⁵⁹, but no such repeal or amendment may be enforced or acted upon until approved by the Minister of Industry and the provisions of Parts 1 and 14 and this Section 11.3 of this By-law may be amended only with the consent of the Minister of Transport.

⁵⁹ By-law 15(4)(o): "Special resolution" means a resolution passed by at least two-thirds of the votes cast at a meeting of the members.

4. Vancouver Foundation

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

Current Appointments	Term of Office	Number of Terms Already Served	Date First Appointed	Expiry Date
Anna Fung, QC	3 year term, maximum of 2 terms	0	5/1/2011	4/30/2014

A. Contact Information

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

B. Applicable Statutes

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

C. Objects

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

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

D. Law Society's Appointment Authority

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

a. Appointment of Vancouver Foundation Members/Directors

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

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

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

- (a) the Chief Justice of the Supreme Court of British Columbia or, if applicable, the judge appointed by the Chief Justice under that section;

(b) a member of the Law Society of British Columbia who has been nominated by the Law Society of British Columbia in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;

(c) a member of the Institute of Chartered Accountants of British Columbia who has been nominated by the Institute of Chartered Accountants of British Columbia in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;

(d) a person who has been nominated by the United Way of the Lower Mainland in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;

(e) other persons that are elected from time to time by the board.

(1.3) The board may decline a nomination under subsection (1.2) (b), (c) or (d) if, in the opinion of the board, the nominee does not have the skills, knowledge or experience to benefit the foundation.

b. Revocation of Appointment

By-law 2.9: Ceasing to be a Director - A person ceases to be a Director on:

2. 9.1: the expiry of his or her term of office;

2. 9.2: his or her resignation, submitted in writing to the Chair of the Board, or if the resignation be that of the Chair, to the Vice-Chair of the Board or the President and Chief Executive Officer of the Foundation;

2.9.3: non-attendance by a Director at three consecutive meetings of the Board, provided that the Directors may, by a resolution approved by not less than 75% of the Directors then holding office, decide that the non attending Director shall not cease to be a Director;

2. 9.4: on the approval, by not less than 75% of the Directors then holding office, of a resolution removing a Director from office; or

2.9.5: death.

c. Term of Office

By-law 2.6 Term: A Director shall be elected or appointed for a term of three years. A Director's term of office shall be deemed to commence on May 1st of the year in which the Director was elected or appointed and such term shall expire three years after the deemed commencement date.

E. Appointee's Obligations, Powers and Duties to the Board

1. Internal Sources: *Vancouver Foundation Act* and By-laws

a. *By-law 2.1: Powers of the Board*

The Directors may exercise all the powers and do all the acts and things that the Foundation may exercise and do, but subject, nevertheless, to:

2.1.1: all laws affecting the Foundation;

2.1.2: these Bylaws; and

2. 1. 3 all rules and guidelines, including the Board of Directors Roles and Responsibilities, made from time to time by the Board which are not inconsistent with these Bylaws.

b. Indemnification of Directors and Officers

By-law 8.5: Each Director and each Officer of the Foundation will be indemnified by the Foundation against all costs, charges and expenses reasonably incurred in connection with any claim, action, suit or proceeding to which that person may be made a party by reason of being or having been a Director or Officer of the Foundation.

c. Amending By-laws

By-law 9.1 Resolution to Amend Bylaws: These Bylaws of the Foundation will not be amended, altered, abrogated or otherwise varied except by resolution of the Board passed by at least 75% of the Directors then holding office present at a meeting and entitled to vote thereon.

By-law 9.2 Notice to Amend Bylaws: Notice of the intention to amend these Bylaws shall be given to each Director at least seven days before such meeting.

2. External Sources: Common Law

a. Directors' or Governors' Duties of Honesty and Care

All directors owe their organizations (whether they are “not-for-profit” or “for-profit bodies”) the duties of loyalty and care, both originally developed by the courts at common law and now enshrined in the statutes governing all corporations—federal or provincial—incorporated in Canada.⁶⁰

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

⁶⁰ Reiter, *supra* note 9, 42-43. See also: Hirshorn and Stephens, *supra* note 11, 12; and Lindsay, *supra* note 19, 16.

- act honestly and openly
- maintain confidences
- act independently
- avoid conflicts of interest and the appropriation of corporate opportunities⁶¹

The duty of care requires directors “[...] to act carefully and on an informed basis and to exhibit the diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duty of care encompasses an objective standard of what a reasonably prudent person would be expected to do in comparable circumstances.”⁶²

⁶¹ Reiter, *supra* note 9, 44-45.

⁶² *Ibid*, 43.

Memo

To: The Executive Committee
From: The Appointments Subcommittee
Date: August 19, 2011
Subject: The Law Society Appointments Guidebook and Revised Appointments Policy: for Review and Adoption

We are pleased to present in draft form and recommend for your adoption the Law Society Appointments Guidebook (Tab 1) and accompanying revised Law Society Appointments Policy.

Background

For many years the Law Society has served as an authority for sourcing, screening, nominating and appointing worthy members of the profession, the judiciary and (occasionally) the public to serve on boards, councils and committees of other organizations. The Planning Committee traditionally advised the Benchers, the Treasurer and others on appointment matters, until that committee was retired at the end of 1993, when the Executive Committee took over responsibility for managing the appointments process on behalf of the Benchers.¹

In February 1994, the Executive Committee adopted the Law Society's current Appointments Policy ([Appendix C to the Benchers' Governance Policies](#)) (Tab 2).

The Appointments Subcommittee was formed in May 2008 to administer the appointments process for the Executive Committee.

In the fall of 2009 a staff group under Mr. McGee's direction undertook a review of the Law Society's appointments process and governance. John Smith of Lawson Lundell LLP provided advice. Completed in late 2010, that review identified the need for organization and communication of the responsibilities, powers and duties of the Law Society as an appointing authority, and of its appointees and nominees – in a format that would be informative and accessible to current and future Law Society appointees and nominees, and to the bodies they serve.

¹ Rule 1-49: The powers and duties of the Executive Committee are as follows: ...

(g) recommending to the appointing bodies on Law Society appointments to outside bodies;

The appended draft Law Society Appointments Guidebook (the Appointments Guidebook) is the result.

Scheme of the Appointments Guidebook

Section 1 summarizes the Law Society's appointments policy, process and protocol; Section 2 outlines the responsibilities, powers and duties of the Society and its appointees and nominees; Section 3 sets out contact information and directions for current and potential appointees and nominees to register their interest and credentials for future consideration; and the Appendices provide background on the more than fifty appointments or nominations the Law Society makes to more than twenty outside bodies.

Note that Section 1 includes the following explanation of the Law Society's protocol for making appointments and nominations to outside bodies:

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

Law Society Appointments Protocol

- Confirm the current version of the body's governing legislation and by-laws
- Review the Law Society Appointments Policy and the appointment provisions of the body's governing legislation and by-laws
- Consult with the body's board chair and senior management regarding applicable appointment parameters, which include
 - the body's requirements, needs or interests to be addressed by the appointment, including
 - ✓ skills, experience and background desired in an appointee
 - prospective appointees who have expressed interest in the appointment to the body, including
 - ✓ names, current contact information and resumes
 - ✓ the body's receptiveness to their appointment
 - appointment timing preferences and requirements, including
 - ✓ term of office, commencement date and date of appointment

- re-appointment factors, including
 - ✓ the incumbent's eligibility and readiness to continue to serve
 - ✓ the body's receptiveness to re-appointment of the incumbent

Assess the body's applicable appointment parameters

Review expressions of interest in the Law Society's appointment prospects database

Determine whether a broader call for interest or other active canvassing of the profession for candidates is warranted

- If so, determine the appropriate canvassing strategy and execute it in a professional and timely fashion

Prepare appropriate confirming correspondence, update relevant Law Society records and diarize for review

- one year from expiry of the current appointment
- beginning of calendar year of appointment expiry

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

Category 1 is subdivided into 1a (membership and directorship appointments and nominations to related bodies) and 1b (non-directorship appointments to related bodies). Category 1a appointments and nominations command the highest level of responsibility: for the Law Society in carrying out its appointment process and supporting good governance; for both the Society and its appointees or nominees in meeting the communication expectations set out in the Law Society Appointments Policy; and for the appointees or nominees in honouring their duties of loyalty and care to the bodies they have been appointed to serve. Shared qualities of Category 1a appointments include:

- the bodies' objects are related to the Law Society's mandate
- the appointees are members of the bodies' central policy-making body
 - with governance responsibilities including creation and amendment of the bodies' by-laws

- with directorship duties²

Some Category 1a bodies are governed by BC's *Society Act*³ and others by other statutory authority. The guidebook addresses the *Society Act* bodies as a group and the other four Category 1a bodies separately.⁴

Communication Expectations

The heart of the proposed Law Society Appointments Guidebook and accompanying proposed revision of the Law Society Appointments Policy lies in their statement of the Law Society's communication expectations of its appointees and nominees to other bodies.⁵ Recommended is a baseline expectation for all appointees or nominees (i.e. Category 1 and Category 2), and a higher expectation for appointees and nominees to bodies whose objects are related to the Law Society's public interest mandate (i.e. Category 1), as follows.

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

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

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

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
 - including any plans, policies or events that
 - materially change the bodies' objects or operations, or
 - could reasonably be considered to be inconsistent with the public interest in the administration of justice

² See Section 2.1.1D: Directors' Duties of Loyalty and Care.

³ The *Society Act*, R.S.B.C., 1996, c. 433.

⁴ See Section 2.1.1B: Category 1a Bodies Governed by Other Statutory Authority

⁵ Set out at page 6 of the Appointments Guidebook and restated a number of times thereafter in the context of particular appointment categories and sub-categories.

- unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

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

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

Revised Law Society Appointments Policy

In addition to the new Communication Expectations section, note the revamping of the appointments policy's Consultation section to dovetail with the guidebook's appointments protocol provisions (Section 1.3). Otherwise, the suggested changes to the appointments policy are minor and editorial in nature. Redline (Tab 3) and clean (Tab 4) versions of the draft revised Law Society Appointments Policy are attached.

Next Steps

With your approval, the Appointments Guidebook will be sent to each of the Law Society's current appointees and the bodies to which they have been appointed for their courtesy review, prior to presentation to the Benchers for their final review and approval at their September meeting.



*Lawyers
Insurance
Fund*

Memo

To **Benchers**
From **Su Forbes, QC, Director of Insurance**
Date **August 30, 2011**
Subject **Possible insurance coverage for “bad cheque” scams**

The Lawyers Insurance Fund is considering broadening the scope of coverage under the Policy to include trust shortfalls arising from the “bad cheque” or other scams. As this expansion has the potential to materially increase the risk to the insurance program, we raised the issue initially with the Executive Committee at their August 25th, 2011 meeting. The Executive Committee determined that it should go to the Benchers for a decision.

Our paper dealing with the issue is attached for your consideration.

SF/rd

Attachment



*Lawyers
Insurance
Fund*

Insurance Coverage for Trust Shortfalls Arising from “Bad Cheque” Scams

August 30, 2011

Prepared for: Benchers

**Prepared by: Susan Forbes, QC
Director of Insurance, Lawyers Insurance Fund**

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Introduction

Executive Limitation D 1(b) requires Bencher approval of any material increase in risk to the liability insurance program. We are considering broadening the scope of coverage under the Policy to include trust shortfalls arising out of the “bad cheque” scam. As the expansion has the potential to materially increase risk, we seek your decision as to whether to broaden coverage and, if so, on what terms.

In the typical “bad cheque” scam, fraudsters steal money from a lawyer’s pooled trust account by convincing the lawyer to deposit a certified cheque into trust and then deliver a trust cheque for some or all of the funds to the fraudster. After the trust cheque is cashed, the lawyer discovers that the certified cheque is a fake. This results in a trust shortage and may also create an overdraft. Neither the trust shortage nor any overdraft created is covered under the current professional liability insurance Policy.

In response to some concerns about the lack of coverage, we have considered the merits and consequences of extending the Policy’s scope to include coverage for the trust shortages that may arise in connection with these scams. Our considerations are set out below.

Background

Details of the scam

The fraudsters spin different stories to frame the need for a deposit into trust and subsequent payment out. A common version involves a client retaining a lawyer to collect a debt from a third party. The lawyer sends a demand letter, and receives a bank draft in payment of all or a portion of the debt. The lawyer deposits the draft into trust, deducts an amount for fees and issues a trust cheque to the client for the balance. It is later discovered that the draft was counterfeit and the lawyer’s pooled trust account is now short.

Regardless of the ruse used, the scam typically involves a new client, fairly simple legal services and quick payments in and out of trust. The authentic looking deposit is made by way of counterfeit or forged certified cheque, bank draft or money order. Whatever the story or instrument, however, the fraud can only succeed if the lawyer pays out of trust before discovering that the deposit is no good.

In this paper, “bad cheque scam” and “scams” refers to the scam in all of its variations, and “bad cheque” refers to counterfeit and forged certified cheques, bank drafts or money orders.

Coverage under the Policy

Lawyers caught by the scam make payments out of their pooled trust accounts on the basis of non-existent funds. Those payouts deplete the trust monies belonging to the lawyers’ clients, the beneficial owners of the funds. On discovery, lawyers are obligated under Rule 3-66(1) to immediately replenish those funds. If the payout exceeds the amount in trust, an overdraft is created that lawyers are contractually obligated to their banks to repay.

The Policy does not currently cover these losses. The basis for coverage under our professional liability insurance Policy is negligence, or falling below the standard of care in providing legal services. In these scams, there is no negligent provision of legal services giving rise to a claim for damages. Rather, the lawyer is the victim of a successful fraud, now liable in debt to clients, the bank or both.

Experience

We have received one insurance report of a trust shortage arising from the scam. In that matter, the lawyer received a certified cheque for \$225,000 in partial payment of a \$291,000 debt owed to the lawyer’s “client.” The lawyer deposited the cheque into trust. A few days later, after deducting \$3,000 for legal fees, the lawyer electronically transferred \$222,000 to a bank in China. The lawyer’s bank then advised that the cheque was fraudulent, leaving the firm’s pooled trust account short

\$97,000 and overdrawn by \$125,000. The firm replenished the shortfall, as required by Rule 3-66(1).

We received a second report of a trust shortage arising out of a \$395,000 counterfeit certified cheque payable to a client, but endorsed over to a firm. The firm deposited the cheque and paid out \$50,000 to third parties before its bank advised that the cheque was counterfeit. As the firm did not pursue the matter, we have no further particulars.

We understand trust shortfalls have been paid by two other programs in Canada. Ontario calculated that it would pay \$2.6 million on a spate of 16 trust shortages that occurred when the scam was first surfacing. Manitoba paid \$150,000 on a phony debt collection scam.

Risk management

Through awareness, care and quality control, lawyers can significantly reduce the risk of being caught in these frauds. The Law Society publishes fraud alerts to notify the profession of new twists that develop and offer risk management advice to help lawyers recognize and avoid the scam.

Although we expect that hundreds of attempts have been made, the small number of scams that have actually worked in our province shows that, for the most part, lawyers are paying attention and successfully avoiding the risk. However, not all lawyers will take the necessary care, or a fraud may be so cleverly designed that it is difficult to detect. Further, trying to avoid the fraud by implementing firm wide systems, applicable to each and every transaction, may not be workable. For instance, although the scam cannot work if funds are received by way of electronic funds transfer (“EFT”), the sheer volume of transactions many firms handle make EFT impractical. And although waiting for a cheque to clear will uncover many frauds, some matters may be too time-sensitive to wait. Commercial insurance for trust losses is available from some insurers for some firms, but as a prerequisite usually involves waiting a number of days before paying out, lawyers are still at risk.

Policy Objectives to be Served

A key objective of the liability insurance program is to provide reasonable coverage at a reasonable price. Broadening cover for bad cheque scams will protect some lawyers, but at the expense of others who may consider the protection unnecessary. The public interest is already safeguarded through Rule 3-66(1) which requires lawyers to replenish trust shortages.

Key Comparisons

Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia provided information about their coverage for trust shortfalls and overdrafts resulting from the scam. Trust shortfalls are excluded from cover in Alberta and Quebec but are covered in Manitoba, Ontario and Nova Scotia. Saskatchewan has not taken a position, but considers coverage questionable. With one exception, none of the programs provide cover for overdrafts.

Options

We have identified the following three options in relation to trust shortfalls resulting from the bad cheque scam:

1. Maintain the status quo – continue to exclude from coverage;
2. Provide coverage subject to the existing \$1 million per claim limit and \$5,000 deductible; or
3. Provide coverage subject to limits and deductibles specifically tailored to this risk. The limits would be on the amount paid per claim and, on an annual basis, per lawyer, firm and the profession as a whole. The deductible would be a percentage of the loss. Specifics are as follows:
 - (i) a \$500,000 sub-limit to limit the coverage to \$500,000 per claim;

- (ii) a \$500,000 per lawyer and firm aggregate to cap total payments for any lawyer and firm;
- (iii) a \$2 million profession-wide annual aggregate to cap total payments for all scams in any given year; and
- (iv) a percentage deductible, equivalent to 35 per cent of the amount paid, to increase the amount of the firm's contribution in direct proportion to the amount of the claim.

Both options 2 and 3 contemplate expanding cover. Under option 2, we would pay up to \$1 million for each successful scam, less \$5,000 that the firm would pay by way of deductible. Under option 3, we would pay up to \$500,000 for each successful scam, less 35 per cent that the firm would pay by way of deductible. A profession-wide annual aggregate would limit our total exposure to \$2 million annually, and a per lawyer and firm limit of \$500,000 would ensure that no single lawyer or firm benefited disproportionately from the expanded cover.

If option 2 or 3 is chosen, we recommend reducing the deductible by the amount of any overdraft the firm is obliged to pay. We also recommend that coverage be contingent upon compliance with the client identification and verification rules.

Analysis of Implications

Public interest

It is undoubtedly in the public interest that trust shortfalls are replenished, and in our experience, the public will be protected regardless of the option chosen. We understand that the Law Society received some reports of trust shortages caused by the scam, all of which were made good by the lawyers involved. This is consistent with our expectation that lawyers will pay, given their Rule 3-66(1) obligations. Expanding cover would, however, enhance protection if a firm failed to meet the Rule's requirement. On the other hand, without expanding cover, we could advance payment to protect the public and seek reimbursement from the firm.

Member relations

The impact of your decision on member relations will vary between lawyers. We know that the lack of coverage is of concern to some, but expect others may resent paying for claims that may well have been avoided with appropriate due diligence. We have explained our position on coverage for the scam to lawyers at numerous risk management presentations over the last two years. While a few are surprised, a majority appear to accept that the Policy does not respond to these sorts of losses.

Financial implications

There will be a financial impact if you decide to expand coverage. We anticipate that both claims and operational costs will increase as explained below. No insurance fee increase has been sought or approved for 2012; however, this would not be an impediment to introducing new coverage next year.

Claim costs

Increases in the cost of claims may be nominal or significant, depending on the number of successful scams and the amounts involved, and whether the scam leads to a shortfall, overdraft or both. Bad cheques unrelated to the scam may also create losses.

The scams typically involve amounts between \$200,000 and \$350,000 (one matrimonial scam involved \$2.6 million). The existence and amount of any shortfall depends on the amount of money in the lawyer's pooled trust account. A payout of \$350,000 from an account with \$800,000 in trust will create a \$350,000 shortfall. That same payout from an account with \$300,000 in trust will create a \$300,000 shortfall and a \$50,000 overdraft. If covered*, just one successful scam each year that creates a shortfall of \$300,000 will cost each insured lawyer \$42 annually. Two

* with a \$5,000 deductible

successful scams that create shortfalls of \$700,000 – or one larger leading to the same shortfall – will cost each lawyer close to \$100 annually.

If shortfalls are covered by insurance, the financial consequences of the scam can be directly influenced by the level of due diligence exercised by lawyers. This includes following the client identification and verification rules (the “Rules”). Presently lawyers are personally at risk for shortages, and as a result there may be a heightened awareness of and desire to mitigate the risk. The comfort of insurance may reduce that watchfulness, leading to an increase in the number of successful scams. The purpose of a higher deductible, sub-limit (a lower claim limit) and profession-wide aggregate (a cap on payments), as well as a requirement to comply with the Rules, is to encourage lawyers to stay vigilant, keep the number of payments in check, and share the risk of loss more evenly between the firm causing the loss and the rest of the profession, while limiting the risk to the fund overall. Creating a per lawyer and firm aggregate (a cap on payments) also prevents any one lawyer or firm from unduly benefiting from the expanded cover. Setting the deductible as a percentage rather than a fixed amount (e.g. \$50,000 or \$75,000), ensures all firms are compensated for a portion of their loss regardless of the amount of the bad cheque.

If the scam also results in an overdraft, the firm will face paying both the deductible and the amount of any overdraft. A firm with sufficient trust funds to pay the bad cheque will avoid an overdraft and pay only the deductible. A firm with insufficient trust funds will pay both. As a result, you may wish to consider some financial relief to those firms. We suggest reducing the deductible for any firm that also experiences an overdraft by the amount of any overdraft payment made.

The chart at Appendix 1 shows how the financial consequences for the insurance program and firms differ under option 2 (\$1 million per claim limit and \$5,000 deductible) and 3 (\$500,000 sub-limit and deductible of 35%), depending on the amount of the bad cheque and the amount – if any – in trust.

The expanded cover will also pick up trust shortages resulting from bad cheques unrelated to the scam. For instance, a client obliged to provide funds as part of a

legitimate retainer might cross the line, and provide a counterfeit cheque. We expect such incidences are infrequent, and unlikely to add any significant increase to the cost of claims.

Operational costs

We expect the cost of operations to also increase. If we assume the risk of bad cheque scams, we would expect to more directly manage the risk. Direct management would include responding to inquiries from lawyers about the coverage, advising lawyers seeking advice in relation to a suspected fraud, handling reports of potential scams and bolstering fraud prevention. We expect that these additional responsibilities will require more staff time.

Implementation and Evaluation

If you decide to expand coverage, the Policy can likely be revised in time for the 2012 policy year. Members will be advised of the enhanced coverage through the *Insurance Issues: Program Report*. If the expansion results in an unusually high risk experience or is otherwise of concern, we will report back to you.

Appendix 1

The following chart shows the financial consequences for the fund and the firm of a successful bad cheque scam if option 2 (existing limits and deductibles) or 3 (\$500,000 sub-limit, 35% deductible) is chosen, based on different amounts of the bad cheque and funds in trust:

SCENARIO		RESULT			OPTION (limit/deductible)	FINANCIAL CONSEQUENCES					
Amount of bad cheque	Amount in trust	Trust funds remaining	Overdraft created	Trust shortfall (amount of claim)	Option 2 \$1,000,000/\$5,000 Option 3 \$500,000/35% of claim	Firm pays				LIF pays	
						Deductible (reduced by any overdraft)	Overdraft	Excess (amount over sub-limit)	Total		
A \$150,000	1	\$800,000	\$650,000	\$0	\$150,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$145,000
						\$500,000/\$52,500 (35%)	\$52,500			\$52,500	\$97,500
	2	\$300,000	\$150,000	\$0	\$150,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$145,000
						\$500,000/\$52,500 (35%)	\$52,500			\$52,500	\$97,500
	3	\$70,000	\$0	\$80,000	\$70,000	\$1,000,000/\$5,000	\$0	\$80,000		\$80,000	\$70,000
						\$500,000/\$24,500 (35%)	\$0	\$80,000		\$80,000	\$70,000
B \$350,000	1	\$800,000	\$450,000	\$0	\$350,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$345,000
						\$500,000/\$122,500 (35%)	\$122,500			\$122,500	\$227,500
	2	\$300,000	\$0	\$50,000	\$300,000	\$1,000,000/\$5,000	\$0	\$50,000		\$50,000	\$300,000
						\$500,000/\$105,000 (35%)	\$55,000	\$50,000		\$105,000	\$245,000
	3	\$70,000	\$0	\$280,000	\$70,000	\$1,000,000/\$5,000	\$0	\$280,000		\$280,000	\$70,000
						\$500,000/\$24,500 (35%)	\$0	\$280,000		\$280,000	\$70,000
C \$550,000	1	\$800,000	\$250,000	\$0	\$550,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$545,000
						\$500,000/\$175,000 (35%)	\$175,000		\$50,000	\$225,000	\$325,000
	2	\$300,000	\$0	\$250,000	\$300,000	\$1,000,000/\$5,000	\$0	\$250,000		\$250,000	\$300,000
						\$500,000/\$105,000 (35%)	\$0	\$250,000		\$250,000	\$300,000
	3	\$70,000	\$0	\$480,000	\$70,000	\$1,000,000/\$5,000	\$0	\$480,000		\$480,000	\$70,000
						\$500,000/\$24,500 (35%)	\$0	\$480,000		\$480,000	\$70,000

Federation Governance Policy

From: Jonathan Herman [mailto:JHerman@flsc.ca]
Sent: Tuesday, August 30, 2011 10:15 AM
To: Jonathan Herman **Subject:** Federation Governance Policy

President Ron MacDonald has asked me to forward the following message.

Colleagues,

At our June Council meeting, Council members generally agreed with the recommended principles underlying Council members' roles and responsibilities. It was then agreed that draft language reflecting these recommendations be incorporated into the draft Governance Policy, which had been circulated to Council in March 2011 and again in June. I am pleased to circulate a further draft for Council's consideration in advance of our meeting in PEI on September 15.

Please review it carefully and indicate as soon as possible whether you have any questions or suggestions for improvement which may be collated in advance of the next meeting so that we may expeditiously deal with any outstanding issues at the meeting itself. It is my hope that Council will approve the Governance Policy in its entirety so that we may proceed to make any consequential amendments to the By-laws. I also note that the draft Governance Policy would be inconsistent with the certain details of the Federation's Unanimity Policy, which was adopted by the Council of the Federation in 2004. For example, as drafted, that policy purports to grant member law societies approval authority over the budget of the Federation. In my view, the unanimity policy could benefit from an update once the Governance Policy has been approved. I attach the Unanimity Policy for your consideration.

I am mindful of the perils of "drafting by committee" but nonetheless invite you to provide your input in a timely way in order to enable us to move forward. Please make your comments known by responding to me or to Jonathan no later than September 9, 2011, if possible.

Kind regards,

Ron

Jonathan G. Herman
Chief Executive Officer, Federation of Law Societies of Canada

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

GOVERNANCE POLICY

(DRAFT)

September 2011

NATURE AND SCOPE

1. Subject to the by-laws of the Federation of Law Societies of Canada (the “Federation”), this policy sets out the roles and responsibilities among the Council, the Executive Committee, the President and the Chief Executive Officer of the Federation.

DEFINITIONS

2. In this policy, the following terms shall have the meanings which follow:
- (a) “By-laws” means the General By-law of the Federation in effect from time to time;
 - (b) “CEO” means the Chief Executive Officer employed by the Federation as its most senior staff officer;
 - (c) “Council” means the Council of the Federation;
 - (d) “Executive Committee” means a committee consisting of the Executive Officers;
 - (e) “Executive Officers” means the Past-President, the President, the Vice-President and President-elect and such other Vice Presidents elected by the Council from time to time; and
 - (f) “Federation Committees” means, other than the Executive Committee, such committees or task forces as may be established by the Council or the Executive Committee from time to time.

ROLES AND RESPONSIBILITIES

Council

3. The Council is the governing body of the Federation responsible for the overall strategic direction of the Federation and from which devolves all decision-making authority for the management of the business and affairs and the property of the Federation in accordance with this policy.

4. The Council determines the strategic objectives and priorities of the Federation on an ongoing basis.

Scope of Council Member Authority

5. Except as otherwise set out in this policy, decisions of Council members are made independently and without instruction from the law societies that appointed them.

6. The following is a non-exhaustive list of the types of decisions contemplated by paragraph 5:

- (a) the approval of the Federation's strategic plan;
- (b) the determination of Federation priorities within the strategic plan;
- (c) the setting of policies not otherwise required by the By-laws to be approved by the law societies;
- (d) the approval of the Federation budget and of the recommendation to law societies as to the required levy to fund Federation activities, it being understood that no recommendation to pay a levy shall be effective in respect of a law society unless ultimately approved by all law societies;
- (e) the establishment of Federation committees;
- (f) the appointment of the CanLII Board of Directors;
- (g) the hiring or termination of the CEO;
- (h) the approval of material contracts normally required to be approved by the Council, such as leases or bank financing;
- (i) the approval of model rules, regulations or standards recommended by any Federation committee, task force or working group, it being understood that no such recommendation calling for implementation by a law society shall be effective in respect of a law society unless ultimately approved by such law society;
- (j) the approval of any draft agreement among law societies, such as agreements with respect to mobility of the legal profession, compensation fund arrangements or governance arrangements for CanLII, it being understood that no such agreement shall be effective in respect of a law society unless ultimately approved by such law society;
- (k) the decision for the Federation to commence, participate in or settle litigation, subject to any litigation policy of the Federation in effect from time to time;
- (l) the decision for the Federation to intervene in a matter before a court, tribunal or other judicial or quasi-judicial body including a board or commission of inquiry, subject to any intervention policy of the Federation in effect from time to time;

- (m) generally, any decision not specifically identified as one requiring instruction by law societies in accordance with this policy.
8. Decisions of Council members are made on the instruction of the law societies that appointed them in all cases specifically identified by law societies as requiring their approval.
9. In advance of every decision, the Executive Committee shall indicate to Council members whether a Council decision is one contemplated by the rule set out in paragraph 5 or whether it requires instruction from law societies in accordance with paragraph 8.

Communications Between the Federation, Council Members and Law Societies

10. The Federation shall communicate information to Council members and law societies in a timely and thorough manner in order to ensure that provincial and territorial issues are brought forward to the Federation or to the Council table, as the case may be, prior to Council decisions being made.
11. Council members shall become and remain adequately informed about issues requiring debate or decision in order to maximize the effectiveness of their contributions to Council's deliberations.
12. The Federation, Council members and law societies shall maintain effective lines of communication to foster consistent approaches to issues and decisions, as required.

Executive Committee

13. The Executive Committee is responsible for providing overall strategic advice and leadership to the President and the Council.
14. The Executive Committee has the following specific responsibilities:
- (a) recommending to Council annual objectives of the Federation in order to implement the strategic plan adopted by Council in accordance with the priorities set by Council;
 - (b) monitoring and oversight of the finances of the Federation;
 - (c) monitoring compliance with governance policies;
 - (d) measuring and reviewing the CEO's performance having regard to the Federation's performance in meeting the objectives set for it by Council; and

- (e) determining the CEO's compensation in accordance with the marketplace for similar positions.

15. Subject to the By-law and applicable laws, the Executive Committee is specifically delegated by Council with the authority to act on its behalf in exceptional circumstances where it is impractical for Council to meet in a timely way in order to consider matters requiring immediate attention. In such circumstances, the Executive Committee shall promptly report to the Council the facts giving rise to the urgency, the considerations underlying a decision to act in the place of Council, and the decision taken.

President

16. The President is the head of the Federation and is its public representative with sole authority to speak on behalf of the Council unless the President otherwise delegates such authority to another individual having regard to the circumstances.

17. The President provides leadership by fulfilling the following specific responsibilities:

- (a) representing the Federation to member law societies, external organizations, audiences and stakeholders;
- (b) chairing meetings of the Council in accordance with rules of procedure adopted by the Council and commonly accepted practices;
- (c) chairing meetings of the Executive Committee in accordance with rules of procedure adopted by the Executive Committee and commonly accepted practices;
- (d) reporting to the Council on behalf of the Executive Committee;
- (e) providing strategic leadership to the Federation in consultation with the Executive Committee and the CEO;
- (f) appointing chairs and members of Federation Committees in consultation with the Executive Committee and the CEO subject to ratification by the Council; and
- (g) working collaboratively with the CEO in respect of the CEO's overall management of the business and affairs of the Federation.

Chief Executive Officer

18. The CEO performs all of the functions and duties ordinarily associated with the office of chief executive officer and is responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of all Federation activities.

19. Without limiting the generality of the foregoing, the CEO has the following specific responsibilities:

- (a) implementing all policies and procedures established by the Council;
- (b) counselling and assisting the Council, Executive Committee and President in the development, adoption, implementation and advancement of the various objectives and activities of the Federation;
- (c) working collaboratively with the President in respect of the CEO's overall management of the business and affairs of the Federation;
- (d) engaging and supervising such personnel as are required, in accordance with approved budgets, in order to advance the objectives and administer the activities of the Federation;
- (e) measuring and reviewing the performance of Federation personnel and determining their compensation in accordance with the marketplace for similar positions; and
- (f) performing such other functions and duties as may be assigned to the CEO from time to time by the Council.

20. The CEO reports to the Council.

Unanimity Resolution

Approved at the Council
Meeting, 1st May 2004,
Fredericton, NB



Résolution sur l'unanimité

Adoptée à la réunion du
Conseil d'administration,
1^{er} mai 2004, à Fredericton, N.-B.

WHEREAS:

- A. The mission of the Federation was restated in 2002 (the “**Mission Statement**”), as follows:
- (i) to identify and study matters of essential concern to the legal profession in Canada and to further co-operation among the governing bodies of the legal profession in Canada with a view to achieve uniformity in such matters;
 - (ii) to operate as a forum for the exchange of views and information of common interest to the governing bodies of the legal profession in Canada and facilitate the governing bodies working together on matters of common concern;
 - (iii) to improve the understanding of the public respecting the work of the legal profession in Canada; and
 - (iv) in appropriate cases, to express the views of the governing bodies of the legal profession on national and international issues in accordance with directions of the members of the Federation;
- B. Subsection 4.3 of the By-Laws of the Federation (the “**By-Laws**”) provides that the representative of each of the governing bodies of the Federation (the “**Members**”) shall exercise the voting rights of such Member at meetings of the Members;
- C. Section 6.1 of the By-Laws provides that the management of the business and affairs and the property of the Federation shall be vested in the Council of the Federation (the “**Council**”) which, in addition to the powers and authorities conferred upon it by the By-Laws, may exercise all such powers and do

ATTENDU QUE :

- A. la mission de la Fédération a été reformulée en 2002, (l' « **énoncé de mission** »), comme suit :
- (i) déterminer et examiner les dossiers qui intéressent au premier chef la profession juridique au Canada ainsi que favoriser la collaboration entre les ordres professionnels de la profession juridique au Canada, laquelle visera à assurer l'uniformité dans ces dossiers;
 - (ii) agir comme lieu d'échange d'opinions et de renseignements qui intéressent tous les ordres professionnels de la profession juridique au Canada et faciliter le travail de collaboration entre les ordres professionnels dans les dossiers d'intérêt commun;
 - (iii) faire mieux comprendre au public le travail qu'accomplit la profession juridique au Canada; et
 - (iv) s'il y a lieu, exprimer les opinions des ordres professionnels de la profession juridique sur les dossiers nationaux et internationaux conformément aux directives émanant des membres de la Fédération des ordres professionnels de juristes du Canada;
- B. le paragraphe 4.3 des règlements administratifs de la Fédération (les « **règlements administratifs** ») prévoit que la personne représentant chacun des ordres professionnels au sein de la Fédération (les « **membres** ») exerce les droits de vote de ce membre aux assemblées des membres;
- C. le paragraphe 6.1 des règlements administratifs prévoit que la gestion des activités, des affaires internes et des biens de la Fédération est confiée au Conseil de la Fédération (le « **Conseil** ») qui, en plus des pouvoirs et attributions que lui confèrent les règlements administratifs, peut exercer tous

all acts and things as may be exercised or done by the Federation and are not by the By-Laws or the *Canada Corporations Act* (the “**Act**”) expressly directed or required to be exercised or done by the Members;

D. The By-Laws provide that the directors of the Federation (the “**Directors**”) are the members of the Council;

E. Section 5.7 of the By-Laws provides that (unless otherwise provided or required in the By-Laws or the Act), any question or resolution submitted to a meeting of the Members shall be determined or passed by a majority of votes of those Members present in person or by their proxy;

F. Subsection 5.9.1 of the By-Laws provides that a resolution in writing signed by all of the Members entitled to vote on a resolution is as valid as if it had been passed at a duly convened meeting of the Members;

G. It has been the practice and convention of the Federation to operate and make decisions on the basis of consensus or unanimity;

H. The Members wish to determine which of its decisions require unanimity, and which decisions may be approved other than on an unanimous basis;

NOW THEREFORE BE IT RESOLVED that:

1. The following matters require the unanimous approval of all of the Members:

- (a) an amendment to the By-Laws of the Federation;
- (b) an amendment to the Mission Statement;
- (c) the approval of the annual budget, or an amendment to the budget;
- (d) the setting of the annual levy;
- (e) a decision to commence, participate

les pouvoirs attribués à la Fédération et accomplir tous les actes que celle-ci peut accomplir, à l’exception de ceux qui relèvent des membres en vertu des règlements administratifs ou de la Loi sur les corporations canadiennes (la « **Loi** »);

D. les règlements administratifs prévoient que les administrateurs de la Fédération (les « **administrateurs** ») sont les membres du Conseil;

E. le paragraphe 5.7 des règlements administratifs prévoit que (sauf disposition ou indication contraire des règlements administratifs ou de la Loi) toute question ou résolution soumise à une assemblée des membres est décidée ou adoptée à la majorité des voix des membres présents en personne ou par procuration;

F. le paragraphe 5.9.1 des règlements administratifs prévoit qu’une résolution par écrit signée par tous les membres ayant droit de vote sur cette résolution est tout aussi valide que si elle avait été adoptée à une assemblée des membres régulièrement convoquée;

G. la Fédération a l’habitude de diriger ses activités et prendre ses décisions selon le principe du consensus ou de l’unanimité;

H. les membres désirent déterminer lesquelles de ces décisions requièrent l’unanimité et lesquelles peuvent être approuvées autrement qu’à l’unanimité;

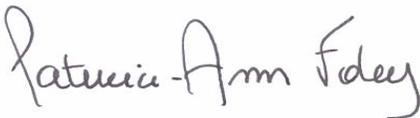
IL EST RÉSOLU QUE :

1. les questions suivantes requièrent l’approbation unanime de tous les membres :

- (a) toute modification aux règlements administratifs de la Fédération;
- (b) toute modification à l’énoncé de mission;
- (c) l’adoption du budget annuel, ou toute modification au budget;
- (d) l’établissement de la cotisation annuelle;
- (e) toute décision visant à tenter un litige, y participer, intervenir dans un litige ou

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| | in, intervene in or settle litigation; | | le régler; |
| (f) | a decision to appear before or make submissions to any judicial, regulatory, or legislative body; | (f) | toute décision visant à plaider ou présenter des arguments devant un tribunal, un organisme de réglementation ou un corps législatif; |
| (g) | a decision to make expenditures materially in excess or in deviation from the budget; | (g) | toute décision visant à effectuer une dépense qui dépasse ou qui n'est pas prévue dans le budget; |
| (h) | such other matters as the Members may agree, by special resolution. | (h) | toute autre question, telle que convenue par les membres conformément à une résolution spéciale; |
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|----|---|----|--|
| 2. | The requirement of unanimity shall be met where each Member either votes in support of the resolution, or declares that it abstains from voting provided that all of the Members that vote, vote in favour of the resolution. For further certainty, in the event that a resolution is passed where there is one or more abstaining Members, all Members, including the abstaining Member or Members, shall be bound by such vote, including any financial consequences arising from such resolution. | 2. | on aura répondu à l'exigence d'unanimité lorsque chaque membre vote en faveur de la résolution ou déclare qu'il s'abstient de voter (pourvu que tous les membres exerçant leur droit de vote, votent en faveur de la résolution); pour plus de certitude, si une résolution est adoptée et qu'il y a abstention d'un ou plusieurs membres, tous les membres, incluant le ou les membres s'étant abstenus, seront liés par ce vote, incluant toutes conséquences financières découlant de cette résolution; |
| 3. | Unless otherwise required by the Act or the By-Laws, all other matters shall be determined by the Members on the basis of a simple majority of votes cast. | 3. | sauf indication contraire, telle que prévue par la Loi ou les règlements administratifs, toute autre décision sera prise par les membres à la majorité simple des voix exprimées; |
| 4. | The Members and Council shall, where to do so is warranted by the subject matter of the resolution, when proposing a resolution for consideration, and in an effort to achieve consensus or unanimity, endeavour to state such resolution in terms that are sensitive to local regulatory and other factors. | 4. | lorsque les membres et le Conseil proposeront une résolution, dans le but d'obtenir un consensus ou l'unanimité, ces derniers s'efforceront, lorsque l'objet de la résolution le justifiera, de formuler une telle résolution en termes qui tiennent compte des facteurs de réglementation locaux et autres. |

Certified by: Patricia-Ann Foley, Secretary-Treasurer/Secrétaire-trésorière
 Certifié par:



Resolution on Rotation of the Presidency

Adopted at the Semi-Annual General Meeting held on May 3, 2003 in Quebec City



Résolution sur la succession à la présidence

Approuvée à l'assemblée générale semi annuelle tenue le 3 mai 2003, Ville de Québec

To approve a policy for the rotation of the presidency of the Federation based on a ten-year flexible rotation;

- taking effect at the Annual General Meeting, November 8th, 2003;
- including five regional representations, starting with Quebec, then West, Ontario, Atlantic and North;
- the rotation years 1 to 4 being representations from Quebec, West, Ontario, Atlantic;
- the rotation years 5 to 9 being representations from Quebec, West, Ontario, Atlantic, North and one open representation from any jurisdiction;
- Any region can waive its turn, or, with the consent of the other members, defer to another year.

Res #1104 2003-05-03 GM En-Rotation Presidency

D'approuver la politique de succession à la présidence de la Fédération fondée sur un processus de succession souple de dix ans :

- qui prendra effet à l'assemblée générale annuelle, le 8 novembre 2003;
- qui inclura cinq représentations régionales, en commençant par le Québec, puis l'Ouest, l'Ontario, l'Atlantique et le Nord;
- en vertu de laquelle les régions représentées au cours des années de succession 1 à 4 seront le Québec, l'Ouest, l'Ontario et l'Atlantique;
- en vertu de laquelle les régions représentées au cours des années de succession 5 à 9 seront le Québec, l'Ouest, l'Ontario, l'Atlantique, le Nord et une représentation pouvant être assumée par n'importe laquelle des juridictions;
- en vertu de laquelle une région peut passer son tour ou, avec le consentement des autres membres, le reporter à une autre année.

Rés. n° 1104 2003-05-03 GM Fr-Rotation Presidency

**HISTORICAL AND PROSPECTIVE APPLICATION
OF THE 2003 POLICY ON THE ROTATION OF THE PRESIDENCY
(as of August 2011)**

Rotation Year	Region (Policy)	Region (Applied)	President
2003-2004	Quebec	Quebec	Francis Gervais
2004-2005	West	West (Nov-May) West (May-Nov)	Lori Spivak Kenneth Neilsen
2005-2006	Ontario	Ontario (Nov-Jan) North (Jan-Nov)	George Hunter Tracy-Anne McPhee*
2006-2007	Atlantic	Atlantic (Nov-Mar) West (Mar-Nov)	William H. Goodridge Michael W. Milani**
2007-2008	Quebec	West	Michael W. Milani (as a result of a one year deferral by Quebec)
2008-2009	West	Quebec	Stéphane Rivard
2009-2010	Ontario	Ontario	John A. Campion
2010-2011	Atlantic	Atlantic	Ronald J. MacDonald
2011-2012	North	West (proj.)	John J. L. Hunter
2012-2013	Open	Quebec (proj.)	Gérald Tremblay

First 10 year cycle – Summary

Quebec: 3 years
West: 3 years, 8 months
Ontario: 1 year, 3 months
Atlantic: 1 year, 4 months
North: 9 months

* North moved up from Year 9

** Open representation moved up from Year 10

2013-2014	Ontario
2014-2015	Atlantic
2015-2016	West
2016-2017	Quebec

Memo

To: The Benchers
From: Bill McIntosh
Date: August 31, 2011
Subject: 2013-2014 Schedule of Benchers and Executive Committee Meetings

The attached schedule of Benchers and Executive Committee meetings for 2013-2014 was approved by the Executive Committee at its August 25 meeting.

The 2013-2014 meeting schedule generally follows the cycle that has been in place since 2010, with two changes. The September Benchers meeting moves from early September to the week of the Annual General Meeting (late September); and the preceding Executive Committee meeting moves from late August to mid September.

The following advantages flow from these changes:

- ✓ timely AGM de-briefing and follow-up by the Benchers
- ✓ timely AGM preparation by the Executive Committee
- ✓ avoiding late August and the Labour Day weekend
 - improved efficiency of meeting preparation and travel
 - improved quality of life for all concerned

The 2013-2014 Schedule of Executive Committee and Benchers Meetings has been posted to the BENCHER RESOURCES section of the Law Society website (<http://www.lawsociety.bc.ca/>), under Meetings and What's New.

2013–2014 Benchers & Executive Committee Meetings

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2013	Benchers	Executive Committee	Other Dates
January	Friday, January 25	Thursday, January 10	
February		Wednesday, February 13	
March	Friday, March 1	Thursday, March 21	Federation Meetings Mar. Good Friday, March 29
April	Friday, April 5	Thursday, April 25	Easter Monday April 1
May	Friday, May 10	Thursday, May 30	
June	Saturday, June 15	Thursday, June 27	LSBC Retreat June 13–15 LSA Retreat June 5-8 (TBC)
July	Friday, July 12		
August			
September	Friday, September 27	Thursday, September 12	Rosh Hashanah Sept 4(sundown)-6 Yom Kippur Sept 13 (sundown)-14 AGM Tuesday, September 24 (TBC)
October		Thursday, October 17	FLS Meeting Oct.
November	Friday, November 1	Thursday, November 21	Remembrance Day, Monday, Nov 11:
December	Friday, December 6	Thursday, Dec 12	

2014	Benchers	Executive Committee	Other Dates
January	Friday, January 24	Thursday, January 9	
February	Friday, February 28	Thursday, February 13	
March		Thursday, March 20	Federation Meetings Mar. ??
April	Friday, April 4	Thursday, April 24	Easter April 18-21
May	Friday, May 9	Thursday, May 29	
June	Saturday, June 14	Thursday, June 26	LSBC Retreat June 12–14 LSA Retreat June 4-6 (TBC)
July	Friday, July 11		
August			
September	Friday, September 26	Thursday, September 11	AGM Tuesday September 23 (TBC) Rosh Hashanah Sept 24(sundown)-26
October	Friday, October 31	Thursday, October 16	Federation Meetings Oct. Yom Kippur Oct 3(sundown)-4
November		Thursday, November 20	Remembrance Day, Tuesday, Nov 11
December	Friday, December 5	Thursday, Dec 11	