The Law Society of British Columbia

Agenda

Consolidated Package

Benchers

Date: Friday, January 27, 2012

Time: **7:30 a.m.** Continental breakfast

8:30 a.m. Meeting begins

Location: Bencher Room, 9th Floor, Law Society Building

New Item: Tab 4, pg. 4000

Supplemental Material: Tab 17, pg. 17000

OATH OF OFFICE:

The Honourable Lance Finch, Chief Justice of BC, will administer an oath of office (in the form set out in Rule 1-1.2) to the Law Society's President, First Vice-President, Second Vice-President and all elected and appointed Benchers for 2012.

CONSENT AGENDA:

The following matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. If any Bencher wishes to debate or have a separate vote on an item on the consent agenda, he or she may request that the item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.

1	**Minutes of December 2, 2011 meeting** • Draft minutes of the regular session • Draft minutes of the in camera session (Benchers only)	pg. 1000
2	**Approval of External Nominations/Appointments: Nomination to Vancouver Board of Appeal; Appointment to the Hamber Foundation Board of Governors** • Memorandum from the Executive Committee	pg. 2000
3	**Proposed Rule 2-68.1, Inactive credentials applications** • Memorandum from Mr. Hoskins for the Act and Rules Subcommittee	pg. 3000

4	**Approval of External Appointment to the Hamber Foundation Board of Governors** • Memorandum from the Appointments Subcommittee	pg. 4000
REGULAR AGENDA		
5	**President's Report** • Written report to be distributed electronically prior to meeting	
6	**CEO's Report** • Written report to be distributed electronically prior to meeting	
7	**Federation of Law Societies Representative Report** Mr. Hume to report	
8	**Report on Outstanding Hearing & Review Reports** • Report to be distributed at the meeting	
GUEST PRESENTATIONS		
9	**University of British Columbia, Faculty of Law Annual Review** • Presentation by Dean Mary Anne Bobinski	
10	**University of Victoria, Faculty of Law Annual Review** • Presentation by Dean Donna Greschner	
11	**Thompson Rivers University, Faculty of Law Annual Review** • Presentation by Dean Chris Axworthy	
OTHER MATTERS For discussion and decision		
12	**National Discipline Standards** • Memorandum from Ms. Armour	pg. 12000
13	**Cloud Computing Working Group** Mr. Hume to report • Memorandum from the Cloud Computing Working Group, with the Final Report	pg. 13000

14	**Nominations to 2012 Finance Committee** Memorandum from Mr. McIntosh • Nomination of two Benchers-at-large and one appointed Bencher	pg. 14000
FOR INFORMATION ONLY		
15	**Letter to Mr. McGee from Ibrahim Inayatali, Associate Vice-President, Alumni and Development, University of Victoria, with U Vic Endowment Fund Report**	pg. 15000
16	**Letter to Mr. McGee from Karen Baker-MacGrotty, and Marvin Storrow, QC, Co-Chairs of the JIBC Foundation Gala**	pg. 16000
17	**Lawyers Insurance Fund Independent Audit Report**	pg. 17000
IN CAMERA SESSION		
18	**Law Society of BC Litigation Report** Ms. Armour to report • Report on Law Society of BC Litigation Outstanding at December 31, 2011	pg. 18000
19	**Bencher Concerns**	

The Law Society of British Columbia

Minutes

Benchers

DATE: Friday, December 2, 2011

PRESENT:

Gavin Hume, QC, President
Bruce LeRose, QC, 1st Vice-President
Art Vertlieb, QC, 2nd Vice-President
Haydn Acheson
Rita Andreone
Satwinder Bains
Joost Blom, QC
Patricia Bond
Robert Brun, QC
E. David Crossin, QC
Tom Fellhauer
Leon Getz, QC
Stacy Kuiack
Peter Lloyd, FCA
Benjimen Meisner
Nancy Merrill
David Mossop, QC
Suzette Narbonne
Thelma O'Grady
Lee Ongman
Gregory Petrisor
David Renwick, QC
Claude Richmond
Alan Ross
Catherine Sas, QC
Richard Stewart, QC
Herman Van Ommen
Kenneth Walker

David Loukidelis, QC, Deputy Attorney General of BC, representing the Attorney General

ABSENT:

Kathryn Berge, QC
Carol Hickman, QC
Jan Lindsay, QC

STAFF PRESENT:

Tim McGee
Deborah Armour
Charlotte Ensminger
Su Forbes, QC
Jeffrey Hoskins, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Lesley Pritchard
Susanna Tam
Alan Treleaven
Adam Whitcombe
Rosalie Wilson

GUESTS:

Bill Maclagan, Bencher-Elect, County of Vancouver
Maria Morellato, QC, Bencher-Elect, County of Vancouver
Phil Riddell, Bencher-Elect, County of Westminster

Tony Wilson, Bencher-Elect, County of Vancouver
Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Johanne Blenkin, Executive Director, Courthouse Libraries BC
Kari Boyle, Executive Director, Mediate BC Society
Anne Chopra, Equity Ombudsperson
Ron Friesen, CEO, CLEBC
Donna Greschner, Faculty of Law Dean, UVIC
Jeremy Hainsworth, Reporter, Lawyers Weekly
Marc Kazimirski, First Vice-President, Trial Lawyers BC
Ronald G. Lamperson, Board Chair, CLEBC
Sharon Matthews, President, CBABC
Kerry Simmons, Vice-President, CBABC
Allan Parker, QC, Program Consultant, Access Pro Bono

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on October 21, 2011 were approved as circulated.

Consent Resolutions

The following resolutions were passed unanimously and by consent.

2. Approval of Amendments to Application Fee Rules

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

1. ***In Rules 2-11(2)(b) and 2-18(1)(b), by striking*** "the permit fee" ***and substituting*** "the application fee".

2. ***In Rule 2-23.5(2)(b), by striking*** *"the investigation fee"* ***and substituting*** *"the application fee"*.

3. ***In Rule 2-27(3)***

(a) by striking "Application is made" ***and substituting*** "An applicant may make an application"***; and***

(b) in paragraph (e), by striking "the fee specified***" and substituting "***the application fee specified***".***

4. In Rule 2-33(1)(b), by striking "the fee for enrolment***" and substituting "***the application fee***".***

5. In Rule 2-42, by striking "the fee for temporary articles***" and substituting "***the application fee for temporary articles***".***

6. In Rules 2-49 and 2-49.3, by striking "the investigation fees***" and substituting "***the application fee***".***

7. In Rule 2-52

(a) in subrule (1)(b), by striking "the appropriate reinstatement fee***" and substituting "***the appropriate application fee***"; and***

(b) by rescinding subrule (2.1) and substituting the following:

(2.1) On an application under subrule (2)(c), the Credentials Committee may waive payment of all or part of the application fee on any conditions that the Committee considers appropriate.

8. In Rule 2-55, definition of "*relevant period"***

(a) by striking the comma at the end of paragraph (Committee) and substituting a period; and

(b) by rescinding paragraph (d).

9. By enacting the following Rule:

Application fees

2-71.1 On application from a person who has paid an application fee under these Rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

10. In the headings of Schedules 1, 2 and 3, by striking the year "2011***" and substituting "***2012***".***

11. In Schedule 1

(a) by rescinding items A1 and A2 and substituting the following:

1. Practice fee set by members (Rule 2-70)	1729.14
2. Special Compensation Fund assessment (Rule 2-70)	5.00

(b) by rescinding items C1 to C3 and substituting the following:

1. Application fee for enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b))	250.00
2. Application fee for temporary articles (Rule 2-42(1)(c))	125.00
3. Application fee for temporary articles (legal clinic) (Rule 2-42(1)(c))	25.00

(c) by rescinding the title and item 1 of part D and substituting the following:

D. Transfer fees

1. Application fee for transfer from another Canadian province or territory – (Rule 2-49(1)(f))	1,125.00

(d) by rescinding items F1, F1.1 and F2 and substituting the following:

1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b)) 600.00	
1.1 Application fee following 3 years or more as a former member (Rule 2-52(1)(b))	500.00
2. Application fee in all other cases (Rule 2-52(1)(b))	415.00

(e) by rescinding the title and items 1 to 3 of part G and substituting the following:

G. Change of status fees

1. Application fee to become retired member (Rule 2-4(2)(b))	30.00
2. Application fee to become non-practising member (Rule 2-3(1)(b))	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-56(b))	60.00

(f) by rescinding item H1 and substituting the following:

1. Application fee (Rule 2-11(2)(b))	500.00

(g) by rescinding items J1 and J2 and substituting the following:

1.	Application fee for practitioners of foreign law (Rule 2-18(1)(b))	600.00
2.	Permit renewal fee for practitioners of foreign law (Rules 2-18(1)(b) and 2-22(2)(c))	125.00

(h) by rescinding item L2 and substituting the following:

2.	Application fee per proposed non-lawyer member of MDP (Rules 2-23.3(1) and 2-23.5(2))	1,125.00

12. In Schedule 2, by revising the prorated figures in each column in accordance with the changes in paragraph 11(a) above.

3. Approval of External Appointments: Nominations to LTSA Board of Directors; Re-appointment of LSS Director; Extension of YVR Director's Term of Office

BE IT RESOLVED to nominate Ralston Alexander,QC, William Cottick and Glen Ewan, QC to the Board of Directors of the Land Title and Survey Authority of BC (LTSA), one of those nominees to be appointed by the board as an LTSA director for a three-year term commencing April 1, 2012.

BE IT RESOLVED to re-appoint Deanna Ludowicz to the Board of Directors of the Legal Services Society for a second three-year term, effective January 1, 2012.

BE IT RESOLVED to extend to Carol Kerfoot's current term of office as a Vancouver Airport Authority Director by one year, to conclude May 14, 2013.

4. Approval of Revision to the Law Society Appointments Policy

BE IT RESOLVED to revise the Law Society Appointments Policy approved at the October 21, 2011 Benchers meeting by deleting the word "accurate" from the description of the listing of Law Society appointments and opportunities (under the heading "Communication Expectations") to be maintained on the Law Society website, as indicated in the redline draft attached as Appendix 1 to these minutes.

5. Amendments to Rules 3-18.3, 3-18.4 and Schedule 1: Implementation of Lawyer Education Advisory Committee CPD Recommendations:

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

1. ***In Rule 3-18.3, by rescinding subrules (1) and (2) and substitute the following:***

(1) The Benchers may determine by resolution the minimum number of hours of continuing education that is required of a practising lawyer in each calendar year.

(2) The Benchers may prescribe circumstances in which a class of practicing lawyer may be excused from completing all or part of the required professional development.

2. ***In Rule 3-18.4***

(a) ***by rescinding subrule (1)(c) and substitute the following:***

(c) pays the late completion fee specified in Schedule 1., ***and***

(b) ***by adding the following subrule:***

(3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:

(a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);

(b) pays the late reporting fee specified in Schedule 1.

3. ***In Schedule 1, by rescinding section K and substituting the following:***

K. Late fees

1. Trust report late filing fee (Rule 3-74(2))	200.00
2. Professional development late completion fee (Rule 3-18.4(1)(c))	500.00
3. Professional development late reporting fee (Rule 3-18.4(3)(b))	200.00

6. Oath of Office for Non-Bencher Hearing Panelists

BE IT RESOLVED to approve the following oath of office, to be sworn or affirmed by any member of a Law Society hearing panel who has not previously taken the oath, to be taken before the hearing begins and administered by the Bencher chairing the panel:

I, _____, do [swear/solemnly affirm] that I will truly and faithfully and to the best

of my skill and knowledge execute and perform the duties of a member of a hearing panel of the Law Society of British Columbia, including the duty of confidentiality of a panel member.

7. Courthouse Libraries BC: Draft Governance Plan for Approval

BE IT RESOLVED:

a. to approve the draft Governance Plan and Constitution of Courthouse Libraries BC (CLBC), as set out at page 7000 of the meeting materials and Appendix 2 to these minutes; and

b. to authorize the Law Society representative(s) attending the next special general meeting of the members of CLBC to vote in favour of adopting the proposed changes to the CLBC constitution and bylaws.

REGULAR AGENDA – for Discussion and Decision

8. 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. Attendance at International Bar Association (IBA) Annual Conference in Dubai (October 30 – November 4)

The Conference proceedings confirmed that the Law Society, Canadian law societies and the Federation are moving in the right direction in terms of priorities, regulatory policy development and technology issues. Sessions on alternative business structures and cloud computing were notable examples. There were many valuable opportunities throughout the conference to meet with representatives of other law societies, both Canadian and international, confirming the value of the Law Society's participation in IBA proceedings.

b. Law Society Indigenous Mentoring Project

Mr. Hume introduced Ms. Rosalie Wilson as the staff lawyer retained to develop the Law Society Indigenous Mentoring Project.

9. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 3 to these minutes), including the following matters:

a. 2012 – 2014 Strategic Plan

b. Governance Review – Planning Update

c. Stakeholder Relations – Update

d. 2011 International Institute of Law Association Chiefs (IILACE) Conference – Adelaide

e. Core Process Review Recommendations – "Project Leo"

f. Aboriginal Mentoring Project – Staff Lawyer Hired

g. Operational Updates

- 2011 Employee Survey
- Performance Management – Update
- Earthquake Preparedness
- "The Great Purge" – Green.Wise Recycling Initiative
- Email Cleanup Campaign
- United Way Campaign

10. Report on Outstanding Hearing and Review Reports

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

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

11. Year End Reports from the 2011 Advisory Committees

a. Report from the Access to Legal Services Advisory Committee

Mr. Vertlieb briefed the Benchers on the work of the Access to Legal Services Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11000 of the meeting materials for details. Discussion followed.

b. Report from the Equity and Diversity Advisory Committee

Mr. Brun briefed the Benchers on the work of the Equity and Diversity Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11006 of the meeting materials for details. Discussion followed.

c. Report from the Independence and Self-Governance Advisory Committee

Mr. Lucas briefed the Benchers (on behalf of Committee Chair Jan Lindsay, QC) on the work of the Independence and Self-Governance Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11010 of the meeting materials for details. Discussion followed.

Mr. Lucas noted that the Committee has also submitted a memorandum (at page 11015 of the meeting materials), recommending at page 11017 that the Benchers change the Committee's name and revise its mandate as follows:

> Ultimately the Committee settled on the "Rule of Law and Lawyer Independence Advisory Committee." That name permits the focus to be on both elements, and should assist the Law Society to more clearly establish the connection between the rule of law and the public right of lawyer independence. It drops the phrase "self-governance" from the current title, but the Committee believes that the focus on self-governance will persist, because self-governance is the most effective (some would say only) way to ensure that lawyers are independent of the State.
>
> As a consequence of the change of name, the mandate of the Committee should be altered slightly. The mandate should reflect the imperative that the Committee monitor issues affecting the development and promotion of the rule of law and in particular those issues affecting the independence and self-governance of the legal profession and justice system in British Columbia.

After discussion the Benchers agreed to defer discussion of the proposed name-change and mandate-revision to a later meeting.

d. Report from the Lawyer Education Advisory Committee

Ms. O'Grady briefed the Benchers on the work of the Lawyer Education Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11019 of the meeting materials for details. Discussion followed.

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

12. 2012 – 2014 Law Society Strategic Plan: Final Review and Approval

Mr. Hume outlined changes made by the Executive Committee and staff to the draft 2012 – 2014 Strategic Plan (12004 of the meeting materials and Appendix 4 to these minutes) since the Benchers reviewed the previous draft plan at their October 21 meeting.

The Benchers then conducted a clause-by-clause review of the current draft 2012 – 2014 Strategic Plan, agreeing on the following friendly amendments:

Initiative 2-1(b)

Support and retain Aboriginal and women lawyers:

- implement the Justicia, or similar, program, and
- develop and implement the Aboriginal Lawyer Mentoring Program.

- to be separated into two initiatives, as follows:

Initiative 2-1(b)

Support the retention of women lawyers by implementing the Justicia Project.

Initiative 2-1(c)

Support the retention of Aboriginal lawyers by developing and implementing the Indigenous Lawyer Mentoring Program.

Strategy 3-2

Educate the public about the importance of the rule of law and the role of the Law Society.

- to be revised as follows:

Educate the public about the importance of the rule of law, the role of the Law Society and the role of lawyers.

Mr. Lloyd moved (seconded by Ms. Andreone) to adopt the 2012 – 2014 Strategic Plan as amended.

The motion was carried unanimously.

The Benchers thanked and congratulated Mr. Hume for his leadership throughout the strategic planning process over the past year.

13. Feasibility Assessment: Bringing the *Justicia* Project to BC

Mr. Brun briefed the Benchers as Chair of the Equity and Diversity Advisory Committee. He outlined the history of the *Justicia* Project introduced in Ontario by the Law Society of Upper Canada, where more than 50 law firms have committed to sharing best practices, developing resources and adopting programs to support women lawyers. Each firm has pledged to achieve goals in the following core areas:

- Maternity and parental leave policies
- Flexible work arrangements
- Networking and business development
- Mentoring and leadership skills development
- Monitoring progress through tracking gender demographics

Mr. Brun noted that the Committee has developed a two-phase plan for consultation and engagement of BC law firms regarding implementation of *Justicia* in this province. He referred to the Committee's report at page 13000 of the meeting materials, particularly pages 13004-13005 for the detailed project plan, proposed budget and recommendation for implementation of phases 1 and 2 in 2012.

Mr. Brun moved (seconded by Ms. O'Grady) that the Benchers approve the Committee's proposed budget and implementation of phases 1 and 2 of the plan for consultation and engagement of BC law firms regarding launching *Justicia* in this province.

The motion was carried.

OTHER MATTERS – For Discussion and/or Decision

14. Insurance Coverage for Trust Shortfalls Arising from "Bad Cheque" Scams

Ms. Forbes briefed the Benchers on the 'bad cheque scam' scenario and its widespread incidence in BC, other provinces and around the world over the past couple of years. She explained that LIF's current Policy wording does not cover trust losses arising from such 'bad cheque scams', that the Executive Limitations require Bencher approval of any material increase in risk to the

liability insurance program, and that broadening the scope of current coverage to include such trust losses might trigger such risk. Ms. Forbes noted the variability of coverage available in a number of other provinces.

Ms. Forbes outlined factors militating for and against the coverage, including the public interest, member relations, financial implications, claim and operational costs, referring the Benchers to the paper at page 14001 of the meeting materials for detailed discussion. She noted the three options set out at page 14006, recommending Option 3 as striking the right balance between providing some protection and maintaining a real incentive for lawyers to remain vigilant:

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) (iii) a $2 million profession-wide annual aggregate to cap total payments for all scams in any given year; and

   (iv) (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.

Ms. Forbes pointed out that the proposed coverage does not extend to the firm's own indebtedness to its financial institution (overdraft losses), and that it is a matter of chance whether a particular 'bad cheque scam' loss triggers an overdraft as well as a trust shortage. As a result, she recommended that if the Benchers approve Option 3, the deductible should be reduced by the amount of any overdraft the firm is obliged to pay, and coverage should be contingent upon compliance with the client identification and verification rules.

An extended discussion ensued, during which the Benchers considered:

- whether a lower sub-limit, a longer aggregate period per firm, or a higher or lower deductible should apply

- trade-offs inherent in the proposed coverage with a deductible of 35%, including prudence and due diligence incentives versus risk of catastrophic losses to small firms and sole practitioners, resulting in insolvency and inability to replenish trust shortfalls as required by Rule 3-66(1)

- capriciousness of the timing factors underlying circumstances where 'bad cheque scams' trigger both trust shortages and overdrafts

- scale limitations on the availability and practicality of purchasing insurance coverage for this risk through a broker

- need for a robust communications ~~strategy and~~ plan to ensure adequate understanding by lawyers and the public of the purpose and limitation ~~of~~ on any expansion of coverage

The Benchers approved implementation of Option 3 coverage effective January 1, 2012, with reduction of any deductible payable by the amount of any overdraft the firm or lawyer is obliged to pay, and with provision of coverage to be contingent upon compliance with the client identification and verification rules.

15. Progress on Regulatory Department Plan

Ms. Armour briefed the Benchers on progress made in implementation of the Regulatory Department Plan they approved in March 2011. She outlined organizational, staffing and performance improvements in a number of areas, including:

- enhanced intake
- new investigative techniques
- working environment
- timeliness of disposition of complaint files

Ms. Armour reviewed 2011 KPM results to date, noting that 2010 performance has been equaled or exceeded in all areas of measurement this year.

Ms. Armour also briefed the Benchers on the Discipline Administrators' Conference (DAC), an annual meeting of discipline administrators from all Canadian law societies. She stressed the value of participation by the Law Society's key regulatory staff, both in formal sessions and informal discussions. The 2011 DAC included sessions on the following topics:

- National Discipline Standards
- Issues arising from a virtual practice
- Use of judicial comments in discipline
- Search and seizure of a virtual office
- Benchmarking standards
- Inter-jurisdictional complaints

16. Federation of Law Societies of Canada - Territorial Mobility Agreement Extension

Mr. Walker briefed the Benchers, reporting that the Federation Council has recently approved the request for indefinite renewal of the Territorial Mobility Agreement (the "TMA") and that the TMA has been referred to Canada's law societies for their ultimate approval and execution. Mr. Walker advised that the Credentials Committee has considered the request and recommends that the Benchers approve the Law Society's adoption and execution of the indefinite renewal of the TMA.

Mr. Walker moved (seconded by Mr. Meisner) that the Benchers resolve as follows:

- the Law Society of British Columbia approve and execute the indefinite renewal of the TMA, and

- the Law Society of British Columbia vote in favour of the motion before Council of the Federation to revisit consideration of the factors impeding participation by the territorial law societies in the temporary mobility provisions of the National Mobility Agreement.

The motion was carried unanimously.

Mr. Walker moved (seconded by Mr. Meisner) that the Benchers adopt the draft resolution set out at page 16026 of the meeting materials, as follows:

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

1. In Rule 1, by adding the following definitions:

"National Mobility Agreement" means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

"reciprocating governing body"

(a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and

(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

"Territorial Mobility Agreement" means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.

***2. In Rule 2-10.1, by rescinding the definitions of* "National Mobility Agreement", "reciprocating governing body"*and* "Territorial Mobility Agreement".**

The motion was carried unanimously.

17. Key Performance Measures and Bellwether Measures – 2011 Review

Ms. Andreone briefed the Benchers as chair of the Audit Committee, confirming that the Committee has completed its review of the Law Society's key performance measures (KPMs). She noted that KPMs are important for good governance of the Law Society, and particularly for ensuring that its resources are used properly and effectively.

Ms. Andreone reported that that the Audit Committee has revised the current KPMs and developed two new bellwether measures as indicators of long term trends: frequency of complaints and frequency of insurance claims. She advised that Audit Committee has added these bellwether measures as a standing item on its Agendas for 2012 and proposes to report on them in conjunction with the annual report on the Key Performance Measures. The Audit Committee also plans to discuss whether there are other bellwether measures that should be adopted at a future meeting. Ms. Andreone referred the Benchers to Appendix A of the Audit Committee's report (pages 17002-17007 of the meeting materials and Appendix 5 to these minutes) for a redline depiction of the proposed KPM amendments.

Ms. Andreone moved (seconded by Mr. Walker) that the Benchers approve:

- the amendment of the Law Society's current key performance measures, as set out in Appendix 5 to these minutes, and

- the adoption of *frequency of complaints* and *frequency of insurance reports* as bellwether measures

In the ensuing discussion there was consideration of the rationale and approval process for the various KPM target percentages. It was agreed to defer until 2012 any decision on whether the

Executive Committee, the Audit Committee or a task force should be requested to review the various KPM target percentages.

The motion was carried.

18. Reconciling Qualifications for Differing Types of Legal Services, Strategy 3-5

Ms. O'Grady briefed the Benchers as chair of the Legal Education Advisory Committee. She referred to the Committee's report at page 18000 of the meeting materials, noting that the report and its recommendations flow from Strategy 3-5 and Initiative 3-5 of the current Strategic Plan:

> **Strategy 3-5**
>
> The Law Society will consider qualification standards or requirements for differing types of legal services. Are there are some types of legal services that could be offered without the provider qualifying as a lawyer and, if so, what qualifications would be appropriate or required?
>
> **Initiative 3-5**
>
> The Lawyer Education Advisory Committee will prepare by the end of 2011 a preliminary report to give some context to and direction on the issue.

Ms. O'Grady moved (seconded by Mr. Blom) that the Benchers approve the Committee recommendations set out at page 18002 of the meeting materials, as follows:

1. That a Task Force be struck and resourced to undertake the work contemplated by Strategy 3-5 with a two-phase approach.

    a) Phase 1: A preliminary feasibility study to be presented to the Benchers that would:

    - identify priorities for types of legal services that might be offered without the provider qualifying as a lawyer, and that would most benefit the public;
    - identify priorities for types of legal services that might be offered by a lawyer with a restricted license, and that would most benefit the public;
    - identify the nature and scope of a public consultation strategy;
    - identify the kinds of resources required for a public consultation strategy;

- make recommendations for Bencher consideration on follow-up steps for phase 2, including:
  - scope of the follow-up steps,
  - potential delivery models,
  - potential cost and resource scenarios.

b) Phase 2: Based on Bencher direction at the conclusion of phase 1, the Task Force would:

- develop a detailed roadmap for completing those initiatives;
- analyse and assess one or more potential delivery models, as directed by the Benchers following Phase 1; and
- make recommendations to the Benchers.

2. That the Task Force consider and build on the work of the former Futures Committee, and consult with other committees as appropriate in order to avoid duplication of effort and effectively utilize existing resources and expertise.

In the ensuing discussion it was confirmed that the Committee expected the proposed task force:

- to develop its own time line for the Benchers' approval, in the course of conducting Phase 1's feasibility study
- to complete Phase 1's feasibility study in about six months.

The motion was carried.

19. Election of an Appointed Bencher to the 2012 Executive Committee

Mr. Lloyd announced that the appointed Benchers have elected Mr. Kuiack as their representative on the 2012 Executive Committee.

20. Federation Council Update

Mr. Hume briefed the Benchers as the Law Society's member of Federation of Law Societies of Canada Council on various Federation matters, including:

a. Federation Presidency

Law Society Life Bencher and Past-President John Hunter, QC began his one-year term as Federation President on November 15. Mr. Hunter has identified three issues on the

Federation Strategic Plan for his emphasis as President: harmonizing national regulatory processes and standards; advancing national solutions on access to legal services issues; and implementation of the Model Code of Professional Conduct.

b. Model Code Update

The 'current client conflict' issue appears to be near resolution. The Standing Committee on the Model Code has delivered its Conflicts report and recommendations to the Council. If approved at its December 13 meeting, this final element of the Model Code will then be sent to the member societies for their review and approval.

21. Complainants' Review Committee Report for 2011

Mr. Acheson briefed the Benchers as chair of the Complainants' Review Committee for 2011. He reported that the 2011 Committee set two goals at the beginning of the year: eliminate the backlog of 49 files, and establish a turn-around time of two to three months for new files. Mr. Acheson confirmed that both goals have been achieved. He thanked Law Society support staff Andrea Brownstone, Ashleigh Faskan and Ramona Treptow and the six members of the 2011 Committee for their hard work over the past year.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM / 2011/12/29

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

Appointment of judges

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

Communication Expectations

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

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

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

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

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

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

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

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

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

Memo

The Law Society of British Columbia

To Benchers

From Courthouse Libraries BC Review Task Force

Date November 23, 2011

Subject **Courthouse Libraries BC Governance Reforms**

At the October 14, 2011 Bencher meeting, David Zacks, QC, Chair of the Board of Courthouse Libraries BC (CLBC), provided an update on developments at CLBC, and requested Bencher input on proposed changes to the constitution and bylaws in advance of a CLBC Special General meeting at which CLBC members will be asked to vote on the proposed changes. Alan Ross, Chair of the CLBC Review Task Force, a joint Task Force of the Law Society, Law Foundation and Ministry of the Attorney General, endorsed the proposed changes on behalf of the Task Force.

The Bencher agenda package includes a memorandum entitled *Courthouse Libraries BC Governance Planning: for Bencher Review and Input*, and the constitution and bylaws, which were also included in the October 14 Bencher agenda package.

Pursuant to the bylaws, the Law Society is a member of CLBC, and will be asked to vote on the proposed changes to the constitution and bylaws at the CLBC Special General Meeting, to be scheduled in early 2012.

Request of the Benchers

The Benchers are asked to authorize the Law Society to support the proposed changes to the constitution and bylaws at the CLBC Special General Meeting

The Law Society of British Columbia

Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

December 2, 2011

Introduction

In my report this month I have included updates on a number of on-going initiatives as well as news about a number of new items including my report on the International Institute of Law Association Chief Executives (IILACE) conference, which I attended recently in Adelaide. My report is longer this month than usual but there is much going on!

As this is my last report to the Benchers for the year I would like to take this opportunity to wish you all the very best for a safe and enjoyable holiday season.

1. 2012 – 2014 Strategic Plan

The process to develop a new 3 year strategic plan for the Law Society began in December 2010 during the annual review of the current plan. Since that time the Benchers and each of the four Advisory Committees have engaged in a process to reassess and rearticulate our strategic goals and to develop and prioritize the strategies best suited to achieve those goals over the next 3 years.

In my view, the proposed new 2012 – 2014 Strategic Plan which is before the meeting is an excellent one because it is relevant, easy to understand, and achievable. Often strategic plans are doomed to fail because they are neither strategic nor focused. Rather they are laundry lists of things to do reflecting an unwillingness or inability to make choices among many options. That is not the case with this plan. The work which the Benchers, volunteers and staff alike have put into this plan over the past several months will go a long way to ensuring its ultimate success. Perhaps a testament to the power of "yellow stickies"?

It is also the hallmark of a good strategic plan that it not be too prescriptive but rather leaves some room to flesh out intent and to accommodate course corrections along the way. I believe those features have been properly built into the proposed new plan.

I look forward to the final discussions.

2. Governance Review – Planning Update

In anticipation of the approval of a governance review as one of the strategies set out in the proposed new Strategic Plan, I can report that an informal steering committee comprised of the Ladder, Ms Andreone and Mr. Lloyd and me, met with Liz Watson, President of Watson Advisors Inc, in September to discuss a possible approach to this project. Based on those discussions, I subsequently met with Ms Watson in early November to further flesh out key items such as scope, process, communications, and timelines.

The goal is to have Ms Watson present a draft governance review plan for

consideration by the Executive Committee and a Task Force appointed by the President before the end of this year. I expect that the first step in the plan will be Ms Watson interviewing all the Benchers (including departing Benchers) in January to obtain their input and views.

3. Stakeholder Relations - Update

As part of the strategic plan review we discussed the need to develop broader and more meaningful relationships with our stakeholders in the justice system. This discussion has resulted in a specific strategy to that affect in the proposed new 2012 – 2014 Strategic Plan.

I am pleased to report that in the past few months I have had productive discussions with the Deputy Attorney General David Loukidelis, QC and Assistant Deputy Attorney General Jay Chalke, QC about how we can better connect our respective staffs to develop deeper more sustaining working relations on matters of mutual interest. To this end, we are planning a staff working session early in the New Year to kick this off.

On another level, President Hume and I met over the summer with then Attorney General Penner and with Parliamentary Secretary John Les to brief them on the Law Society's proposed amendments to the Legal Profession Act. This fall, I attended a similar briefing with opposition Justice Critic Len Krog and Finance critic Bruce Ralston. In addition, First Vice President Bruce LeRose, QC attended a function with the Leader of the Opposition and others as a guest of our GR advisors Ascent Public Affairs where our proposed legislative amendments and other topics were discussed.

Our efforts to develop and promote stakeholder relationships across all levels including Benchers and staff will be a feature of my CEO reports to the Benchers throughout 2012.

4. 2011 International Institute of Law Association Chiefs (IILACE) Conference - Adelaide

Please see my report on the highlights of the IILACE conference I attended in Adelaide, which is attached to this report as Appendix "A". I would be happy to discuss any aspect of my report and to answer any of your questions at the meeting.

5. Core Process Review Recommendations – "Project Leo"

You will recall that one of the 3 principal recommendations of the Core Process Review Report delivered last year was the development of a new, organization wide integrated information management tool for Law Society operations. The

report concluded that how we create, manage, share and store information was at the heart of what we do. However, it also concluded that we are using a patchwork of systems, processes and protocols, which while adequate at one level, will not support our operational goals into the future.

We have now officially launched "Project Leo" to design, develop and implement the information management tools of the future for the Law Society. This is the largest project of its kind in the history of the Law Society and, as such, we have taken great care to plan and consult on all aspects of its design. For example, even the project name has been selected after a staff wide contest. "Leo" was selected out of many suggestions for two main reasons. First, the lion connotation reflects the size and significance of the project and its ultimate importance in our operational landscape, and second the lion is a part of the Law Society's official seal and we are proud of that icon and its legacy.

We have appointed a project team to lead this important work, which will unfold over the next 2 years in a number of planned phases. The project team is headed by Robyn Crisanti, Manager, Communications and Public Affairs and has members drawn from our main user and support groups. The team will be supported by a systems and project management consultant with specific experience and know how in this area.

Work on Project Leo is already well underway. The current phase involves defining a Statement of Work including scope, deliverables and time lines. We expect this planning phase to be completed by the end of this year. Capital funding was allocated for this project by the Finance Committee as part of the Law Society's overall 10 year capital plan reviewed in 2011. This item will be reviewed and updated by the Finance Committee as part of its annual review of the capital plan in the spring of 2012. The goal is to be in a position to commence a phased implementation of a new information management system in the fall of 2012.

Robyn Crisanti, will be on hand at the meeting to provide further details and to answer any questions you may have on Project Leo.

6. Aboriginal Mentoring Project – Staff Lawyer Hired

The Law Society is undertaking a mentoring project to help retain Aboriginal lawyers in BC, improve access to legal services for Aboriginal peoples, and increase diversity within the legal profession.

To lead this project we have recently hired lawyer Rosalie Wilson to develop a collaborative mentoring program to support Aboriginal lawyers. Rosalie is a member of the Syilx (Okanagan) and Secwepemc (Shuswap) Nations. The first phase of her work will be consulting with Aboriginal lawyers to get their insights and ideas. This phase is fully funded by a grant from the Law Foundation of

British Columbia, for which we are very appreciative.

If you are interested in learning more about this project or meeting Rosalie please contact Staff Lawyer Susanna Tam. Additional information is in our recent web posting.

7. Operational Updates

2011 Employee Survey

We have recently concluded our annual employee survey for 2011. Our participation rate again this year was a stellar 82%, which is almost as important to management as the results because it indicates that staff are engaged in helping to make the Law Society a better place to work. The results are currently being compiled by our survey administrators TWI Surveys Inc.

As usual, TWI will review the top level survey results with the Benchers at the next meeting in January. This year there are a number of new questions relating to autonomy, innovation and effectiveness. These are designed to help us better understand what the current and desired culture of the Law Society is from the staff perspective. We have also retained questions in a number of areas such as communication, relationship with managers and resources, so that we can continue to assess and track these over time. I look forward to discussing the results with you in the New Year.

Performance Management - Update

In keeping with our annual plan for staff review and assessment, I am pleased to report that all staff (except for a very few stragglers) have now completed a detailed 2011 year end review with their managers. The reviews do not focus solely on performance but include, in addition, discussion regarding personal development, future goals and working relationships. We also recognize that while important, annual reviews are not a substitute for continuous, timely and meaningful feedback throughout the year, which is always in need.

Earthquake Preparedness

On September 9, 2011 (during a Bencher meeting), Vancouver and the surrounding area experienced a 6.4 magnitude earthquake centered about 300 kilometres west of Vancouver. The subsequent confusion about what to do during such an event brought to light the need for earthquake preparedness training for Law Society employees, other tenants of the building and Benchers. A training and awareness program for employees and staff in anticipation of an earthquake drill was quickly rolled out.

In October 2011, training about earthquake preparedness for floor wardens (including tenants) was provided by a professional firefighter and earthquake preparedness and rescue worker from Vancouver Fire and Rescue Services. The Law Society had 100% attendance from floor wardens. Abbreviated training sessions were offered at four different times for all employees of the Law Society and tenants in the building by the same professional trainer. All employees were provided with the following materials whether they attended the training or not:

- a quick reference card on "what to do in the case of…" for their workspace,
- earthquake preparedness training manual from Vancouver Fire and Security;
- and Braidner survival kits order form (with discount for Law Society staff and Benchers).

A hard copy of the reference cards will be available at the December 2 meeting.

If you have any questions about earthquake preparedness or you would like a copy of the training manual or kit order form please contact Jeanette McPhee or me.

"The Great Purge" – Green.Wise Recycling Initiative

For two weeks, the Green.Wise Committee ran an organization-wide clean up, called "The Great Purge". The goals of the clean up were to educate staff about recycling and reusing office supplies, and to reduce ordering of unnecessary office supplies. All staff were encouraged to participate in this sustainable initiative by de-cluttering their workstations of excess office supplies, and recycling or disposing of supplies in an accountable way. Each floor had a designated area to return excess and unused supplies to, and staff had fun swapping their unwanted supplies for supplies left by others.

I thought you would be interested in knowing that the Great Purge was a huge success with the return of 160 binders, 246 pens/markers, 280 paper products, 32 plastic desk organizers, and 28 staplers/hole-punchers. Operations has confirmed that because of this the Law Society will not need to order additional supplies for 4 to 6 months! Green.Wise is now reviewing opportunities for 2012 recycling initiatives and the possibility for implementing an annual purge.

Email Cleanup Campaign

During the month of October, Law Society staff members were challenged to clean up their email boxes by:

- attending a 30-minute training session about managing emails and how to determine which emails are business records;
- deleting at least 10% of stored emails; and
- sharing email tips.

The goal of this email cleanup campaign was to reduce the burden on "Zuse" our email server and to reduce our carbon footprint – less bandwidth and less storage saves energy. The campaign was well received, resulting in an email reduction of 54 Gigabytes, or 537,418 emails.

United Way Campaign

The Law Society is a perennial strong participant in the United Way Campaign for Greater Vancouver and this year was no exception. Deb Armour led an enthusiastic team of staff volunteers through a series of events including our annual pancake breakfast (with President Hume as Honorary Flipper), a carnival fund raising event, on-line auction, and the like. We exceeded our target for giving again this year. The enthusiasm and willingness of Law Society staff to give both of their time and from their pocket for this worthy cause is impressive and appreciated.

Timothy E. McGee
Chief Executive Officer

International Institute of Law Association Chief Executives

2011 Annual Conference - Adelaide, South Australia

Conference Highlights

1. Delegates and Program

This years' conference held in Adelaide, South Australia from October 19 – 22, 2011 brought together the Chief Executives of law regulatory and representative bodies from 18 countries around the world, including Canada, England, Australia, USA, Germany, Norway, Sweden, Ireland, Africa, Hong Kong and Korea. In all there were 38 delegates to the conference who collectively regulate and/or represent over 1 million practicing lawyers around the world.

This year the general theme was "Changing Legal Landscapes". Over the course of the four days, we discussed and analyzed those areas of regulation and practice that are currently undergoing significant transformation. I have summarized the highlights from some of those sessions below.

2. How the Regulation of Lawyers is Changing

This topic no longer has the shock value it once had at IILACE conferences. The reason is that many of the delegates come from jurisdictions like England and Australia where the proverbial train of major change has long since left the station. The one exception to this was the briefing we received from the CEO of the Law Society of Ireland.

The Irish CEO, Ken Murphy, arrived at the conference a day late because he was in Dublin appearing on a nationwide television news program in Ireland debating with the Minister of Justice, the media and others regarding the government's proposed legislation to effectively strip lawyers of the power to regulate themselves. We heard that the proposed Irish government reforms would make the Clementi reforms of the regulatory regime in the UK look like a "mild tweaking" in comparison. Suffice to say that all of the aspects of Clementi which fundamentally shift oversight and ultimate authority for lawyer regulation to non-lawyer dominated bodies is being proposed in Ireland. The most startling aspect of the Irish proposals is the extent of the discretion and power to be vested specifically in the Minister of Justice. While this aspect of the reforms may not survive intact, it is likely that the Minister of Justice will play a much larger role going forward under any scenario.

We heard that the reforms in Ireland are the result of three factors converging in a regulatory perfect storm. First, there has been a change of government on the

heels of an economic meltdown. The new government has identified a populist mandate, which is to hold selected establishment groups to a new standard, whether or not they were causal in the economic demise. Second, the Law Society of Ireland has long regulated and officially represented the legal profession. Some observers have warned that the Society has been living on borrowed time by having this dual mandate. Third, the Minister of Justice wants to make an immediate impact, one way or another. Ironically, the Law Society of Ireland has a very solid track record of dealing with complaints against lawyers in a timely, thorough and fair fashion, unlike the regulators in England pre-Clementi.

The Law Society of Ireland and like-minded groups are launching a concerted campaign to oppose the reforms principally on the basis of the threat to lawyer independence and the threat that in turn poses to the public interest. It will also be argued that the rule of law is threatened when lawyer independence is at risk and that is bad for Ireland on the world stage, e.g. discouraging foreign investment in Ireland because of comparisons to undemocratic regimes. This message may well be encouraged from senior officials or heads of state in other countries to bring political pressure at home.

3. Alternative Business Structures

Here is how I described the discussion at IILACE on the topic of alternative business structures in the upcoming edition of Benchers' Bulletin:

> The emergence of "alternative business structures" as a law firm business model in England and Australia was the topic among many on the conference agenda that drew the most interest and discussion. Alternative business structures are business models through which legal services are delivered that differ from the standard sole proprietorship or partnership model.
>
> In England there are more than 400 law firms owned at least 25% by non-lawyers. Starting in 2012, 100% of an English law firm can be owned by non-lawyers. The Australian firm Slater & Gordon went public in 2007 raising capital in the public markets and assuming the disclosure and other myriad responsibilities of a reporting issuer. Today Slater & Gordon has contributed share equity exceeding $100 million.
>
> What is behind these developments?
>
> The emergence of significant non-lawyer ownership in law firms in England was attributed to a lack of capital generally for small to mid-sized firms. Of 10,000 law firms in England well over half derive 45% of their earnings from real estate transactions. Private investment by non-lawyers is a source of capital for these firms, which improves balance sheets and

provides greater financial capacity for investment in resources and infrastructure, among other things.

Slater & Gordon's significant equity play is now funding a broadly based acquisition and expansion strategy for that firm. Business results year on year are impressive, including total income up 46% to $182 million, profits up 41% and the board increased the dividend to shareholders by 10%. For all its business merits, however, this model raises many issues and challenges for legal regulation, including the possibility of conflicting ongoing duties to clients, the courts and to shareholders, and conflicts arising upon the acquisition of a firm such as interlocking litigation. Should regulators care that Mr. Gordon left the firm to join a rival but still maintains a significant share holding in his old firm?

These real life examples of how alternative business structures are manifesting themselves in foreign settings may seem far away from the reality of the legal profession in British Columbia and indeed Canada. However, they bear watching and inspection to assess both their merits and weaknesses, including how they may affect professional values.

The Law Society's Independence and Self-Governance Advisory Committee has recently published a report entitled "Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations" (which can be found at www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pd). I recommend it to you. We are at the forefront in terms of improving our understanding of developments in this area, which are gaining momentum around the world.

4. The Future of Continuing Professional Development

This topic was approached as a roundtable discussion focusing on similarities and differences in our respective approaches to CPD and highlighting evolving areas. I would say there was general alignment on most fronts but also a grab bag of differences across jurisdictions. Here is a brief summary:

Most of the major jurisdictions have instituted or are in the process of mandating a minimum level of CPD for practicing lawyers. The range of required hours canvassed was a low of 10 hours (Queensland) to a high of 50 hours (New Zealand) with the average around 15 hours. Many jurisdictions allowed the hours to be earned over a multi-year period and some allowed for carry over beyond the prescribed period.

Several CPD programs tailored the substantive requirements based upon years of experience and areas of practice. To be clear, no jurisdiction exempted any practicing lawyer based upon seniority or years of experience. However, for

example, in some programs a real estate practitioner must take real estate related CPD and a junior lawyer must take entry-level competency CPD.

There was a spirited discussion around the topic of wellness-related CPD. Most programs do not include wellness-related CPD offerings for credit, but that is changing in several jurisdictions including several US states. The rationale for including wellness CPD was "preventative maintenance". That is, a healthy and emotionally stable lawyer is less likely to run afoul of professional rules of conduct and client service expectations. There was considerable data showing that breakdowns in personal wellness among lawyers was a factor in many discipline cases. We heard that including wellness as part of a CPD program would help build the resilience that lawyers need to meet the demands of practice. It was also pointed out that there is better data to support that conclusion than there is to support the proposition that taking substantive CPD will maintain or improve practice competencies.

5. Legal Ethics, Professional Responsibility and Core Values of the Legal Profession

This year the discussion on this topic centered on the posed question "How and when can you know that a law student or lawyer is ethical ?"

The opened-ended question led to discussion on a number of fronts. For example, some speakers were of the view that ethical behavior, such as honesty, responsibility and accountability, is in our personal DNA and can be assessed starting with law school admissions, and later at call to the bar and periodically after that. We heard that in several jurisdictions medical boards require testing for ethical make-up at all stages of a physician's journey from medical school to practice.

There were many comments to the effect that more needs to be done to get both the academic learning of ethics and the clinical real experience of ethics in a "live" context embedded into law school education.

The most novel and thought provoking part of the discussion arose in connection with the concept expressed as "ethical assurance". That is, like a trust audit, what is the process to proactively be assured that practicing lawyers are ethical, rather than simply waiting for a failure to present itself. One delegate put it this way: "What is the equivalent of the road side testing device (used for ensuring compliance and deterrence of drinking and driving) for ensuring the public is being served by ethical lawyers?" If ethical behavior is a core value of the legal profession how can we not have an adequate answer to that question? The range of ideas in response to this question provided much food for further thought.

The Law Society of British Columbia

2012 – 2014 Strategic Plan

For: The Benchers
Date: December 2, 2011

Purpose of Report: Discussion
Prepared on behalf of the Executive Committee

INTRODUCTION

Section 3 of the *Legal Profession Act* states that the mandate of the Law Society is 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, and

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

To carry out its mandate effectively, the Law Society must keep in mind the interests and concerns of all parties that engage the justice system. This includes the public generally, users of the legal systems (both individual and corporate), courts, governments, and lawyers.

The Benchers have created a process to plan for and prioritize strategic policy development to properly meet the mandate of the Society and to optimize staff resources.

Through this process, the Benchers identified three principal goals and related strategies that the Law Society should pursue over the next three years. In identifying these goals, strategies and initiatives, the Benchers have been mindful not only of what the role of the Law Society is in relation to its mandate, but also of what may be achievable within that mandate.

The goals, strategies and initiatives set out in this strategic plan are in addition to the overall operations of the Law Society's core regulatory programs, such as discipline, credentials, and practice standards. These programs are fundamental to fulfilling the Law Society's mandate and will always be priorities for the Law Society.

The plan will be reviewed on an annual basis during its three year term to ensure that the strategies and initiatives remain appropriate and to address any additional strategies or initiatives that may be necessary in light of changing circumstances.

Law Society Goals

1. The Law Society will be a more innovative and effective professional regulatory body.
2. The public will have better access to legal services.
3. The public will have greater confidence in the administration of justice and the rule of law.

GOAL 1: The Law Society will be a more innovative and effective professional regulatory body.

The Law Society recognizes that it is important to encourage innovation in all of its practices and processes in order to continue to be an effective professional regulatory body. The following strategies and initiatives will ensure that the Law Society continues to improve in delivering on its regulatory responsibilities.

Strategy 1 – 1

Regulate the provision of legal services effectively and in the public interest.

Initiative 1-1(a)

Consider ways to improve regulatory tools and examine whether the Law Society should regulate law firms.

Initiative 1-1(b)

Examine the relationship between the Law Society as the regulator of lawyers and the Law Society as the insurer of lawyers.

Initiative 1–1(c)

Examine whether the Law Society should regulate just lawyers or whether it should regulate all legal service providers.

Strategy 1 - 2

Identify and develop processes to ensure continued good governance.

Initiative 1–2(a)

Examine issues of governance of the Law Society generally including:

- identifying ways to enhance Bencher diversity;
- developing a model for independent evaluation of Law Society processes;
- creating a mechanism for effective evaluation of Bencher performance and feedback.

Strategy 1–3

Ensure that programs are available to assist lawyers with regulatory and workplace changes.

Initiative 1-3(a)

Work with continued professional development providers to develop programs about the new Code of Conduct.

Initiative 1-3(b)

Improve uptake of Lawyer Wellness Programs.

Strategy 1– 4

Ensure that admission processes are appropriate and relevant.

Initiative 1–4(a)

Work on national admission standards while considering the rationale and purpose of the overall admission program.

Initiative 1–4(b)

Consider qualification standards or requirements necessary for the effective and competent provision of differing types of legal services.

GOAL 2: The public will have better access to legal services.

The Law Society recognizes that one of the most significant challenges in any civil society is ensuring that the public has adequate access to legal advice and services. The Law Society has identified a number of strategies to respond to this challenge over the next three years and will continue to gather demographic data about lawyers to inform these strategies.

Strategy 2–1

Increase the availability of legal service providers.

Initiative 2–1(a)

Consider ways to improve the affordability of legal services:

- continue work on initiatives raised by recommendations by the Delivery of Legal Services Task Force;
- identify and consider new initiatives for improved access to legal services.

Initiative 2–1(b)

Support and retain Aboriginal and women lawyers:

- implement the Justicia, or similar, program; and
- develop and implement the Aboriginal Lawyer Mentoring Program.

Strategy 2–2

Improve access to justice in rural communities.

Initiative 2–2(a)

Develop ways to address changing demographics of the legal profession and its effects, particularly in rural communities.

Initiative 2–2(b)

Develop ways to improve articling opportunities in rural communities.

Strategy 2–3

Understand the economics of the market for legal services in British Columbia.

Initiative 2–3(a)

Work collaboratively with other stakeholders in the legal community to identify questions that need to be answered and engage, with others, in focused research.

GOAL 3: The public has greater confidence in the administration of justice and the rule of law.

The rule of law, supported by an effective justice system, is essential to a civil society. This requires public confidence in both the rule of law and the administration of justice. The Law Society recognizes the importance of working with others to educate the public about the rule of law, the role of the Law Society in the justice system and the fundamental importance of the administration of justice.

Strategy 3–1

Develop broader and more meaningful relationships with stakeholders.

Initiative 3–1(a)

Identify, establish and build on relationships with the Ministry of Attorney General and other government ministries, the Courts, and non-governmental stakeholders.

Strategy 3–2

Educate the public and lawyers about the importance of the rule of law and the role of the Law Society.

Initiative 3–2(a)

Identify methods to communicate through media about the role of the Law Society, including its role in protecting the rule of law.

Memo

The Law Society of British Columbia

Appendix A

Professional Conduct and Discipline		
Goals and Objectives	**KPM**	**Comments**
• Complaints about lawyers are handled fairly and in a timely fashion • The exercise of the regulatory function by the Law Society is perceived to be fair, consistent and thorough	~~Frequency of complaints does not increase over time~~	• The frequency of complaints becomes a Bellwether Measure
	• At least 75% of Complainants express satisfaction with timeliness	
	• At least 65% of Complainants express satisfaction with fairness	
	• At least 90% of Complainants express satisfaction with courtesy	
	• At least 65% of Complainants express satisfaction with thoroughness	
	• At least 60% of Complainants would recommend someone make a complaint	
	• The Ombudsperson, the Courts and the CRC do not find our process and procedures as lacking from the point of view of fairness and due process	
Custodianships		
Goals and Objectives		
• To provide a more cost effective model that will enhance management and reduction of outside service providers, standardize and centralize custodial procedures and administrative services.	~~• The average cost of a custodianship will decrease under the new program based on comparable historic averages~~	• Remove this KPM. • Although the cost of each custodianship should be measured and tracked for internal purposes, this cost does not measure how well we are protecting the interests of clients or the public.
	• The length of time required to complete a custodianship will decrease under the new program based on comparable historic averages	

	• 90% of clients whose former lawyers are subject to a custodianship are satisfied or somewhat satisfied with the way in which the designated custodian dealt with their client matter	• New KPM to measure client satisfaction
Trust Assurance		
Goals and Objectives		
• All law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds.	• Long term reduction in the number of financial suspensions issued by Trust Assurance program.	
	• Long term reduction in the percentage of referrals to Professional Conduct department as a result of a compliance audit.	
	• Improved performance on key compliance questions from lawyer's trust report filings.	
Credentials, Articling and PLTC		
Goals and Objectives		
• Successful applicants for call and admission demonstrate entry-level competence	• At least 85% of the students attending PLTC achieve a pass on the PLTC results	
	Students responding to the PLTC course evaluation rate PLTC's value at an average of 3.5 or higher on a 5 point scale: • PLTC helped prepare them to recognize and deal with ethical and practice management issues • PLTC helped increase their knowledge of practice and procedure • PLTC helped prepare them for the practice of law • PLTC helped develop or enhance their lawyer skills	
	Principals responding to the PLTC survey rate PLTC's value at an average of 3.5 or higher on a 5 point scale: • PLTC helped prepare students to recognize and deal with ethical and practice management issues • PLTC helped increase the students' knowledge of practice and procedure • PLTC helped prepare students for the practice of law • PLTC helped develop or enhance the students' lawyer skills	

	Students surveyed on call and admission rate the value of their articles at an average of 3.5 or higher on a 5 point scale: • Articling helped prepare them to recognize and deal with ethical and practice management issues • Articling helped increase their knowledge of practice and procedure • Articling helped develop or enhance their lawyer skills • Articling helped prepare them for the practice of law	
	Principals surveyed on call and admission rate the value of articles at an average of 3.5 or higher on a 5 point scale: • Articling helped prepare the students to recognize and deal with ethical and practice management issues • Articling helped increase the students' knowledge of practice and procedure • Articling helped develop or enhance the students' lawyer skills • Articling helped prepare students for the practice of law	
	• ~~98% of principals declare their student fit to practice law at the end of the Admission Program (PLTC and Articles).~~	• Remove this KPM as "fit" does not measure the effectiveness of the Admission Program (PLTC or articling). The term "fit" describes physical, emotional and intellectual capacity, not knowledge, skill professional judgment, or character.
Practice Advice		
Goals and Objectives		
• Delivering high quality advice and information on matters of practice and ethics to members in a responsive and timely fashion	• At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for: 1. Timeliness of response 2. Quality of advice 3. Quality of resources to which you were referred 4. Overall satisfaction	

Practice Standards		
Goals and Objectives		
• Determine whether lawyers referred to Practice Standards meet accepted standards in the practice of law and, where they do not, recommend and monitor remedial measures • Assist lawyers in developing and enhancing their competence and efficiency	• At least two thirds of the lawyers who complete their referral demonstrate an improvement of at least one point on a 5 point scale in any one of the following categories: 1. Office management 2. Client relations and management 3. Knowledge of law and procedure 4. Personal/other.	
	• At least two thirds of the lawyers who complete their referral did so at an efficiency rating of 3 or higher on a 5 point scale in any one of the following categories: 1. Office management 2. Client relations and management 3. Knowledge of law and procedure 4. Personal/other	
	• At least 8590% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for the following programs: a) Small Firm Practice Course b) Bookkeeper Support Program c) Succession and Emergency Planning Program d) Practice Locums Program e) Practice Refresher Course	• For all 5 programs, the target was set as an aspiration, not based on information or evidence. By way of comparison, the measure for PLTC and articling is 85%. Our KPM experience has shown that the 85% figure is more realistic.
	• ~~The Technology Support Program is being held in abeyance by the Practice Standards Committee while it assesses the uptake and response to Clio, a free web-based practice management tool targeted at the sole practitioners and small firms, accessed through the Law Society website.~~	• Remove KPM for "Technology Support Program," because the Practice Standards Committee decided not to implement the program in lieu of CLIO.

Policy & Legal Services		
Goals and Objectives		
• To provide timely, relevant and balanced information, analysis and advice to the Benchers, Committees, Task Forces and Tribunals • To ensure policy development in the areas of independence and equity and diversity. • To advance or defend the Law Society's objectives in litigation matters • To protect the public from the unauthorized practice of law	• ~~Ratio of policy matters prepared by or with the assistance of policy staff and considered by the Benchers to policy decisions made by the Benchers in respect of those matters (Target 1:1)~~	• Remove entire Policy KPM section. • With respect to policy, there is no relevance from a public interest point of view. These are internal measures only. • Benchers will continue to be asked to provide this feedback on an annual basis
	• ~~On the annual appraisal questionnaire, Bencher responses of 4 or greater (on 1 to 5 scale) to questions concerning:~~ ~~- facilitation of planning and decision-making~~ ~~- orientation and training~~ ~~- keeping Benchers abreast of key issues~~	
	• ~~Ratio of the number of hearing reports issued to the number of times the decision of a hearing panel is reviewed to the number of times the decision of a hearing panel is reversed on review (Target 1:0:0)~~	
	• ~~On the annual appraisal questionnaire, Bencher responses are an average of 4 or greater (on 5 point scale) to questions concerning support of tribunal functions~~	
Lawyers Insurance Fund		
Goals and Objectives		
• The public is reasonably compensated for lawyer negligence and lawyer misappropriation	• Policy limits for negligence and theft, the member deductible, and the premium are reasonably comparable with the 13 other Canadian jurisdictions	

• Lawyers are reasonably protected against risk of excessive financial loss arising from malpractice. • Claims are resolved cost-effectively, balancing the interests of the claimant, the insured lawyer, and the membership as a whole.	• Suits under the Insurance Act by claimants are fewer than 0.05% of files closed	
	• Every five years, third party auditors provide a written report assessing LIF's claims management as effective	
	• Insured lawyers demonstrate a high rate of satisfaction (~~8~~90% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms	

The Law Society of British Columbia 2000

Memo

To: The Benchers

From: The Executive Committee

Date: January 13, 2012

Subject: Hamber Foundation Board of Governors and Vancouver Board of Appeal Appointments

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1. Hamber Foundation Board of Governors

a. Background

Current Appointments	Term of Office	Date First Appointed	Expiry Date
William Everett, QC	3 years, maximum of 2 terms	3/1/2009	2/28/2012
Emily Reid, QC	3 years, maximum of 2 terms	3/1/2009	2/28/2012

The Benchers appoint two members of the Hamber Foundation and its Board of Governors. Life Benchers Bill Everett, QC and Emily Reid, QC complete their respective first terms as Law Society appointees on February 28, 2012.

The Hamber Foundation would welcome the re-appointment of Emily Reid, QC to the board for a second three-year term, and Ms. Reid has confirmed her readiness to serve.

Bill Everett, QC has communicated that he would not like to be re-appointed to the board of the Hamber Foundation at this time.

b. Recommendation

We recommend that the Benchers:

- re-appoint Emily Reid, QC to the Hamber Foundation Board of Governors, for a three-year term commencing March 1, 2012.

2. City of Vancouver Building Board of Appeal

a. Background

Current Appointments	Term of Office	Date First Appointed	Expiry Date
Edna Cheung	3 years, maximum of 2 terms	2/1/2009	1/31/2012

The Benchers nominate a Law Society member with real estate expertise for Vancouver City Council to appoint to the Building Board of Appeal. Edna Cheung completes her first term at the end of the year. Ms. Cheung is eligible for re-appointment, is willing to serve another term, and her nomination would be welcomed by the Chief Building Official.

b. Recommendation

We recommend that the Benchers nominate Edna Cheung for Vancouver City Council's re-appointment to the Building Board of Appeal for a second three-year term, effective at such date as Vancouver City Council may direct.

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for the Act and Rules Subcommittee
Date: January 18, 2012
Subject: **Proposed Rule 2-68.1, Inactive credentials applications**

The Act and Rules Subcommittee recommends a new rule to provide a process by which credentials applications that have become inactive can be terminated and not carried on the Law Society books indefinitely.

As you likely know, under the current scheme, the Credentials Committee cannot reject outright an application for enrolment, call and admission, transfer or reinstatement from a qualified applicant. If the Committee has questions about the applicant's character or fitness, it must order a hearing into the application. Following a formal hearing, the panel can then grant the application, with or without conditions, or reject it altogether. When a hearing is ordered, the Credentials Committee must name a figure for a deposit of money as security for costs, and the hearing cannot proceed until the applicant has deposited the money.

In a significant number of cases, the hearing does not proceed for one reason or another. Sometimes the applicant simply loses interest or thinks that another Law Society might give him or her an easier time. There are also those that intend to take steps to advance their application, but never quite get to doing it.

In the case of Bencher reviews of hearing panel decisions, if the applicant takes no steps for an extended period, the other party can apply under Rule 5-21 to have the review dismissed as abandoned. This is the applicable rule:

Inactive reviews

5-21 (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the Executive Director a notice in writing that sets out the basis for the application.

(2) The Executive Director must promptly notify the following of an application under subrule (1):

(a) the party not making the application;

(b) the President;

(c) anyone else who, in the Executive Director's opinion, should be notified.

(3) If it is in the public interest and not unfair to the respondent or applicant, the President may dismiss the review.

(4) The President may designate another Bencher to make a determination under subrule (3).

Starting with that as a model, the Act and Rules Subcommittee has prepared a possible new rule to give a similar result in the context of a credentials hearing.

In order to determine the period of time after which it would be appropriate to terminate an inactive application, the Subcommittee consulted the Credentials Committee, which had initiated the discussion on this issue. The Credentials Committee's view was that the six-month period that applies in the case of inactive Bencher reviews was too short in the case of credentials applications. The Committee recommended that one year be adopted as the appropriate period, which is reflected in the Act and Rules Subcommittee's recommendation.

The Subcommittee considered that it was not necessary to provide for an application and adjudication process to determine if an inactive application should be dismissed. The new rule should provide for the deemed abandonment of the application, dependent only on the passage of time. Unlike the dismissal of an inactive review, this provision would not extinguish the applicant's rights, which can be restored with a further application. That would likely be appropriate in any case because the passage of time may well require further investigation and consideration by the Credentials Committee and staff.

The proposed rule allows for the President's designate to make an order that the funds deposited as security for costs be retained, in part or in whole, and the remainder, if any, to be refunded to the applicant.

The recommended new rule is attached for your consideration. Since it is an entirely new provision, I have provided only a clean version. I also attach a suggested resolution for adoption if the Benchers are so inclined.

JGH
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Attachments: draft rule
suggested resolution

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Inactive applications

2-68.1 (1) When the Credentials Committee has ordered a hearing under this division and the applicant has taken no steps to bring the application to a hearing for one year, the application is deemed abandoned.

(2) When an application is abandoned under this Rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-62 as security for costs be retained by the Society.

(3) An application under subrule (2) is made by notifying the following:

(a) the applicant;

(b) the Executive Director.

(4) On an application under subrule (3), the President may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

(5) The President may designate another Bencher to make a determination under subrule (4).

INACTIVE CREDENTIALS APPLICATION

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by adding the following Rule:

Inactive applications

2-68.1 (1) When the Credentials Committee has ordered a hearing under this division and the applicant has taken no steps to bring the application to a hearing for one year, the application is deemed abandoned.

(2) When an application is abandoned under this Rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-62 as security for costs be retained by the Society.

(3) An application under subrule (2) is made by notifying the following:

(a) the applicant;

(b) the Executive Director.

(4) On an application under subrule (3), the President may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

(5) The President may designate another Bencher to make a determination under subrule (4).

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: The Benchers

From: The Appointments Subcommittee

Date: January 24, 2012

Subject: Hamber Foundation Board of Governors – Replacement of Mr. William Everett, QC

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1. Hamber Foundation Board of Governors

a. Background

Current Appointments	Term of Office	Date First Appointed	Expiry Date
William Everett, QC	3 years, maximum of 2 terms	3/1/2009	2/28/2012

The Benchers appoint two members of the Hamber Foundation Board of Governors.

On February 28, 2012, William Everett, QC will complete his term on the Hamber Foundation Board of Governors. Mr. Everett has communicated to the Law Society that he does not wish to be re-appointed.

In an email dated January 13, 2012 (Tab A), David Yau of the Hamber Foundation asked that the Law Society consider Mark Killas for appointment to the Hamber Foundation for a three-year term commencing March 1, 2012.

In an email dated January 17, 2012 from Mr. Killas to Mr. Yau (Tab B), Mr. Killas confirmed that he would be interested in joining the Hamber Foundation's board and included his resume for the Subcommittee's consideration (Tab C).

a. Recommendation

We recommend that the Benchers:

- appoint Mark Killas to the Hamber Foundation Board of Governors, for a three-year term commencing March 1, 2012.

From: Yau, David
To: Taryn Mohajeri
Subject: Hamber Foundation - Law Society Nomination
Date: Friday, January 13, 2012 9:37:42 AM

Taryn,

I have followed up with Mr. William Everett to get his resignation in writing. I will provide you with a copy as soon as I receive it.

I was speaking with a previous Governor of our Foundation who was a Law Society Appointee. He has recommended his associate, Mr. Mark Killas, to be considered as a nominee.
Mr. Killas is aware of this and would be happy to join our Foundation.

Thanks, David

***David Yau**, CIM, FCSI*
Senior Account Manager

TD Waterhouse Private Client Services
Private Trust
18th Floor, 700 West Georgia St.
Vancouver, BC V7Y 1B6
Tel. 604-659-7448
Fax.604-659-7469

From: Yau, David
To: Taryn Mohajeri
Subject: FW: Hamber Foundation - Resume of Mark Killas
Date: Wednesday, January 18, 2012 8:15:02 AM
Attachments: Scan001.PDF

Taryn,

Info. Re. Mark Killas.

Thanks, David

David Yau, CIM, FCSI
Senior Account Manager

TD Waterhouse Private Client Services
Private Trust
18th Floor, 700 West Georgia St.
Vancouver, BC V7Y 1B6
Tel. 604-659-7448
Fax.604-659-7469
-----Original Message-----
From: Mark Killas [mailto:MKillas@pllr.com]
Sent: Tuesday, January 17, 2012 5:15 PM
To: Yau, David
Cc: John Leathley
Subject: Hamber Foundation - Resume of Mark Killas

Dear David,

Re Hamber Foundation

I am pleased to attach my brief resume, which John Leathley has asked me to send to you.

By way of brief background, I was born and raised in Vancouver and currently live in Vancouver with my wife and two children, aged 15, and 11. After graduating from high school in 1978, I went to Queen's University, where I obtained my undergraduate degree in political science. I was fortunate to be able to take several art history courses while at Queen's. I subsequently studied law abroad and at Ottawa University before my calls to the bar in Ontario in 1990 and in BC in 1992. I have been practising at Pryke Lambert Leathley Russell LLP since March, 1993. I am a partner at Pryke Lambert.

For many years I served proudly as a director of Richmond Youth Service Agency, helping children and youths in Richmond. I have also acted for many youths charged with criminal offences throughout the Lower Mainland during my time at Pryke Lambert and for a time served on the Citizens Advisory Board of the Youth Detention Centre in Burnaby.

I have keen interests in art, music, fitness and health, and education and the work of the Hamber Foundation is therefore of considerable interest to me.

Please let me know if you require anything else.

Yours truly,

Mark Killas

Pryke Lambert Leathley Russell LLP
Barristers & Solicitors
#500 – 5811 Cooney Road,
Richmond, B. C.
V6X 3M1

Telephone: 604.276.2765
Direct Line: 604.231.5104
E-Mail: mkillas@pllr.com
www.pllr.com

Mark C. Killas

Professional Experience

March 1993 to present

Pryke Lambert Leathley Russell LLP, Richmond, B.C.

- **Partner**
- **Civil litigation including general Commercial litigation**

November 1991 - March 1993

Epstein Wood Logie Wexler & Maerov, Vancouver, B.C.

- Civil litigation (1992-1993)
- Articles of Clerkship (1991-1992)

April 1990 - August 1991

Duty Counsel for York Country, Toronto, Ontario

- Salaried Duty Counsel in Provincial Court (Criminal Division) and Youth Court throughout Metropolitan Toronto

July 1988 - July 1989

Erikson & Associates, Toronto, Ontario

- Articles of Clerkship
- Emphasis on corporate / commercial and securities law in small Toronto law firm.

Education

February 1992 - April 1992

Professional Legal Training Course, Vancouver, B.C.

- **The Law Society of British Columbia.**
- **Called to B.C. Bar November 13, 1992**

September 1989 - February 1990

Bar Admission Course, Toronto, Ontario

- The Law Society of Upper Canada
- Called to Ontario Bar March 30, 1990

1986 - 1988

Law, Certificate of Qualification

- University of Ottawa

1983 - 1986

Law, LL.B

- University of Bristol

1978 - 1982

Policitical Studies, B.A. Honours

- Queen's University

Publications

- Co-author of "Injunctions", Chapter Two, Remedies Update, Continuing Legal Education Society, January 16, 1998.
- "The Legality of Canada's Claims to the Waters of its Arctic Archipelago", (1987) 19 Ottawa Law Rev. 95

Professional Memberships

- **The Law Society of British Columbia**

Community Service

Member of Vancouver Art Gallery, Vancouver, BC

Member of Contemporary Art Gallery, Vancouver, BC

Volunteer instructor @ Professional Legal Training Course (PLTC) Vancouver, B.C.

Volunteer Supervising Lawyer, Law Students' Legal Advice Program, Faculty of Law, UBC

Past Director West Point Grey Residents' Association

Past long-time Director Richmond Youth Service Agency (RYSA), Richmond, BC

Past Member Citizens Advisory Board, Youth Detention Centre (YDC) Burnaby, BC

References

- Available upon request.

Memo

The Law Society of British Columbia

To	Benchers
From	Deb Armour, Chief Legal Officer
Date	January 18, 2012
Subject	**National Discipline Standards**

In May of 2010, the Federation of Law Societies of Canada established a National Discipline Standards Project with a steering committee chaired by Allan Fineblit, CEO of the Law Society of Manitoba and comprised of a number of other CEOs and Discipline Administrators and others. I am on the steering committee.

The National Discipline Standards initiative is part of the following Federation strategic objective for 2010 – 2012:

> ***To develop and implement high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.***

The goal of the National Discipline Standards Project is the development and implementation of uniformly high standards for the processing of complaints and disciplinary matters in all law societies and the creation of a mechanism to monitor compliance with the standards.

The Steering Committee has developed 23 standards. The standards have been approved by Federation Council. Those standards are attached as an attachment to this memo.

The Federation has also approved a pilot project the purpose of which is to test drive the standards with a view to making appropriate changes to them before they are adopted. The pilot is expected to last 2 years and to commence this spring. All law societies in Canada have been asked whether they will participate in the pilot. We have committed to participating.

At the meeting on January 27, I will advise the Benchers what participation in the pilot will mean for the Law Society of British Columbia.

NATIONAL DISCIPLINE STANDARDS PROJECT

STANDARDS FOR THE PILOT PROJECT

Timeliness

1. Telephone inquiries

   Seventy-five percent of telephone inquiries are acknowledged within one business day and 100% within two business days.

2. Written complaints

   One hundred percent of written complaints are acknowledged in writing within three business days.

3. Timeline to close or refer complaint

   Ninety percent of all complaints are closed or referred for a disciplinary or remedial response within 12 months.

4. Contact with complainant and lawyer

   For every open complaint, there is contact with the complainant and member at least once every 90 days once the member has been notified to report on progress.

Hearings

5. Each citation or notice of hearing is issued and served upon the lawyer within 90 days of authorization.

6. Seventy-five percent of all hearings commence within six months of service of the citation.

7. Ninety percent of all hearings commence within 12 months of service of the citation.

   Commentary: a hearing commences when the adjudicative body first convenes to hear evidence or preliminary motions.

8. Ninety percent of all hearing decisions are rendered in within 60 days of the last date the panel hears submissions.

9. Where any of standards 3 through 8 is not being met, all parties are advised of this, and of when it is estimated the citation, notice of hearing, hearing or decision will be complete and, except where privacy or other similar reasons make it inappropriate, all parties are given the reasons why the standard is not being met.

   Commentary: Reasons should be as helpful as possible to the parties but in appropriate circumstances may be as basic as "The panel is still deliberating".

Public Participation

10. There is public participation at every stage of discipline, i.e. on all hearing panels of three or more, at least one public representative; on the charging committee, at least one public representative.

11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

    Commentary: A public representative can include a lawyer, if appointed by an outside public body or a lay bencher.

Transparency

12. Hearings are open to the public.

13. Reasons are provided for any decision to close hearings.

14. Notices of hearings are published once the citation has been served.

15. Notices of hearing dates are published at least 60 days prior to the hearing, but if the citation is served less than 60 days before a hearing commences, publication takes place as soon thereafter as practical.

16. There is an ability to share information about a lawyer who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor/client privilege, or there is an obligation on the lawyer to disclose to all law societies of which he/she is a member that there is an investigation underway.

17. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

Accessibility

18. A complaints help form is available to complainants.

19. Complainants may file their complaints electronically.

20. There is a lawyer directory available with status information, including discipline history and information on how to access more information about that history.

    Commentary: Discipline history means any finding by the ultimate decision making body, after an adjudicative process or by consent, that a lawyer has committed conduct deserving of sanction

Quality

21. The recidivism rate is 25% or less.

    Commentary: Recidivism occurs where a lawyer who has previously been found to have engaged in conduct deserving of sanction, is subsequently found to have engaged in conduct deserving of sanction. Reminders are not included in this definition.

Qualification and Training of Adjudicators

22. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.

Mandatory Training of Investigators and/or Members of Charging Bodies

23. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.

The Law Society of British Columbia

Memo

To: Benchers
From: Cloud Computing Working Group
Date: January 10, 2012
Subject: Cloud Computing Working Group Final Report

At their July 15, 2011 meeting the Benchers approved the report of the Cloud Computing Working Group for purposes of publication as a consultation document. The attached report represents an amended version of the report, which takes into account feedback received during the consultation. The Working Group seeks the Benchers adoption of the report and its recommendations.

The Working Group received feedback on the report from a number of sources. There were a handful of email submissions, some commentary posted online, and feedback received during seminar presentations by Gavin Hume, QC, as well as feedback received at the Pacific Legal Technology Conference and the IBA Conference in Dubai. The overall response to the report was extremely positive. Particular praise was directed to the due diligence guidelines, as well as the philosophical approach of promoting the ethical use of technology.

The final report includes two new sections: a preface, as well as a summary of some of the key feedback the Working Group received. The report also clarifies the Working Group's earlier recommendations, but is not a substantial reworking of the earlier conclusions.

- The Working Group revised recommendation 7 to remove the reference to law schools. The reason is that the Working Group believes PLTC is the proper venue for teaching students about the ethical use of technology.

- The Working Group clarified with the Trust Regulation group at the Law Society that an electronic copy of a hard copy original is acceptable, provided it is available in a readable format. However, there are certain requirements associated with documenting the receipt of cash under Rule 3-61.1, and lawyers must follow those requirements. On this point the Working Group flags for the Benchers' attention that at some point the Law Society should consider whether technology permits a means to authenticate the receipt of cash from a client without requiring a cash receipt book in paper form.

- The Working Group reiterates that lawyers have a professional obligation to protect solicitor and client confidentiality and privilege, and that the use of due diligence and contractual language is recommended as the best means of accomplishing this when contracting data storage and processing with third parties.

- The Working Group reiterates that it is administratively impractical for the Law Society to review and vet all potential cloud services and endorse particular vendors. The preferred approach remains proving lawyers with due diligence guidelines and a practice checklist to assist lawyers in determining what services to use.

- The Working Group reiterates the desirability of creating a checklist to supplement the due diligence guidelines, and that Dave Bilinsky and Doug Munro can work together to create the document.

DM

/Attachment

The Law Society of British Columbia

REPORT OF THE CLOUD COMPUTING WORKING GROUP

Date: January 27, 2012

Gavin Hume, QC (Chair)
Bruce LeRose, QC
Peter Lloyd, FCA
Stacy Kuiack

Purpose of Report: **Discussion and Decision**

Prepared on behalf of: **Cloud Computing Working Group**

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

TABLE OF CONTENTS

PREFACE TO REPORT

This report is the amended version of the consultation report approved by the Benchers on July 15, 2011. The report clarifies a few issues raised during the four month consultation period. Anyone wishing to review the changes between the reports can access the January 27, 2012 Benchers agenda material on the Law Society website.

WHAT ARE THE BENCHERS BEING ASKED TO CONSIDER?

The Benchers are being asked to adopt a series of recommendations that fall into three categories. One of the recommendations is to publish guidelines to assist lawyers in performing due diligence when deciding whether or not to use a third party service provider for electronic data storage and processing (including "cloud computing" [1]). The second category of recommendations relates to changes to the Law Society Rules and resources to ensure the Society's regulatory function keeps pace with certain technological changes. The third category of recommendations relates to methods to

[1] "Cloud computing" is defined in Appendix 2.

improve lawyers' understanding of their obligation to use technology in a manner consistent with lawyers' professional responsibilities.

Lawyers face certain risks when using cloud computing, and cloud computing creates certain challenges for regulatory bodies. Some of these risks are unique to cloud computing, but others are not. Among the issues that require consideration by the Benchers are:

- What due diligence and precautions must a lawyer engage in when entrusting records to a third party service provider for storage and/or processing?
- Given that cloud computing can store a lawyer's records in multiple jurisdictions, including outside Canada, what factors should lawyers consider in deciding whether or not to use the technology (e.g. Preserving client confidentiality and privilege, maintaining custody and control of trust records, complying with Law Society investigations that require record disclosure, ensuring records storage outside the jurisdiction is consistent with provincial and federal laws, such as personal information protection legislation, etc.)?
- Given that cloud computing can store a lawyer's records in multiple jurisdictions, including outside Canada, what challenges does this create for the Law Society in performing its regulatory functions, including:
    - Trust regulation and audits;
    - Professional Conduct and Discipline investigations;
    - Custodianships.
- Given the manner in which cloud computing stores data, what implications are there for evidentiary issues? Does this mode of computing affect the ability to collect metadata and/or forensic auditing data?

The Benchers are being asked to take an approach modeled on lawyer regulation, rather than attempting to regulate an emerging technology.

PURPOSE OF THE 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.

The privilege of practising law comes with professional obligations and those obligations extend to the use of technology. If a lawyer is unable to meet his or her professional obligations when using a given type of technology or service provider, the lawyer should not use the technology or service provider when acting in a professional capacity. In order to determine whether a particular technology or service provider is acceptable, a lawyer must engage in due diligence. This report suggests some factors designed to assist lawyers in performing their due diligence (see **Appendix 1**). The report also makes

recommendations regarding the Law Society's regulatory rules and processes to facilitate efficient and effective investigations in the face of emerging technologies.

Technological change tends to outpace the law. In the regulatory context this can lead to ambiguities regarding rights and obligations and can create gaps in the regulatory process, all of which can increase the public risk. This report considers lawyers using electronic, remote data storage and processing. The main focus of the report is on lawyers using what is commonly termed "cloud computing", but the report has broader application. In approaching the topic the Working Group considered cloud computing to entail electronic data processing and/or storage accessed over the a network such as the Internet. The more detailed description the Working Group favours is the NIST Definition of Cloud Computing[2] (see **Appendix 2**). There is a great deal being written about cloud computing every day. The selected bibliography is a starting point for some of this discussion, but readers should bear in mind that the field will continue to develop, and due diligence will require keeping pace with emerging standards and legislation.

Lawyers have professional obligations with respect to managing their clients' information. These obligations include the need to preserve confidential and privileged information, and also the requirement to comply with personal information protection legislation. In addition to these obligations, lawyers are subject to the regulatory authority of the Law Society. This includes the requirement to immediately make available records for copying when faced with a 4-43 order, records during a 3-79 compliance audit, practice records during a custodianship and during a practice standards inquiry. When a lawyer uses cloud computing his or her ability to comply with these obligations may be affected. This report analyses the responsibilities of lawyers, and the regulatory authority of the Law Society, in light of technology that in some instances places lawyers' records on servers that are in the possession of third party vendors and which may be located in foreign jurisdictions.

In analyzing these issues the Working Group applied certain principles, including:

- Lawyers must engage in due diligence to ensure they can meet their professional obligations while using technology for any work that may attract solicitor and client confidentiality and/or privilege;
- The due diligence lawyers must perform when considering the use of a particular technology includes due diligence with respect to the service provider of that technology as well as with respect to the technology itself;
- Any changes to the *Legal Profession Act,* the Law Society Rules, and the *Professional Conduct Handbook* must protect the public interest to ensure the

[2] Peter Mell and Tim Grance, Version 15, 10-7-09, available at: http://csrc.nist.gov/groups/SNS/cloud-computing/ (Accessed December 2, 2010). Anyone looking for a thorough, one stop overview of cloud computing may wish to read, Lee Badger, Tim Grance, Robert Patt-Corner and Jeff Joas, NIST, *Draft Cloud Computing Synopsis and Recommendations* (Special Publication 800-146: May 2011).

public is confident lawyers are discharging their professional obligations and are being effectively regulated;
- Technological change is neither good nor bad; it presents positive opportunities as well as risks;
- The Law Society regulates lawyers, not the development of technology. Where possible, any rules and policies should strive to be technology neutral and directed towards the responsibilities of lawyers;
- Cloud computing is already in use by lawyers and members of the public. It is reasonable to assume its use will only continue to grow.[3]

Cloud computing is subject to considerable hype, and many authors have commented as to its scope and meaning. The seeming ubiquity of the term, in advertizing and media, and the wide range of applications people use in daily life that rely on cloud computing, make it easy to take a laissez-faire attitude towards its adoption. While it is perfectly acceptable for a teenager to uncritically embrace "The Cloud" to create a virtual shrine to Justin Bieber, the same does not hold true for a lawyer dealing with confidential and privileged information. As Jansen and Grance caution:

> *As with any emerging information technology area, cloud computing should be approached carefully with due consideration to the sensitivity of data. Planning helps to ensure that the computing environment is as secure as possible and is in compliance with all relevant organizational policies and that data privacy is maintained.*[4]

The Working Group is of the view that this cautionary note is apposite.

The Working Group accepts that the use of cloud computing and similar technologies already is occurring, and its continued growth is likely. The Working Group believes that what is required is a clear set of practice guidelines to assist lawyers in determining whether to use certain forms of technology or service providers. While the responsibility to perform due diligence and the final determination as to the suitability of a particular technology or service will lie with lawyers to make, the Working Group believes that guidelines will assist lawyers in performing their due diligence.

In addition, the Law Society requires clear and effective rules to deal with lawyers (or law firms) who are unable (or unwilling) to comply with Law Society investigations in a timely manner by virtue of the technology and services the lawyers use. Lawyers must not be allowed to subvert the regulatory function of the Law Society by pointing to a

[3] In addition to the considerable amount of money that corporations like IBM, Microsoft, Google, etc. are putting into cloud computing technology, the issues arising from the technology are being discussed by the United States Government, the American Bar Association Commission on Ethics 20/20, privacy commissioners, etc. (see the selected bibliography attached to this report).

[4] Wayne Jansen and Timothy Grance, NIST *Guidelines on Security and Privacy in Public Cloud Computing* (Draft Special Publication 800-144: January 2011) at p. vi.

technological or jurisdictional limitation of the technology the lawyers use for data storage and processing.

The Working Group recognizes that just as cloud computing will continue to evolve, the regulation of professionals using the technology and regulation of the service providers will continue to evolve. As such, this report represents a first step into this area. Time and experience will tell whether the right balance has been struck. The Law Society needs to be open to revisiting concepts that don't work, particularly concepts that place the public at unacceptable risk of harm.

OVERVIEW OF THE ISSUES

The foundational rules that govern the relationship between lawyers and their clients, and lawyers and their regulator, were developed in a paper world. Some of the rules have changed over time in order to reflect changes in technology. For example, historically when the Law Society investigated a lawyer the lawyer had to turn over his records. With the advent of photocopiers, technology facilitated the ability to make copies of records, rather than removing the originals. Rules were modified to reflect this. Most recently the Law Society amended its Rules to facilitate the copying of computer records, while establishing a method to protect the reasonable expectation of privacy that might attach to certain records stored on a hard drive.[5] The inquiry into cloud computing arose from that work. As a matter of policy, the Benchers have also been engaged in initiatives to move the organization towards electronic models of record keeping and to embrace "Green" initiatives. The Working Group was mindful of this while engaging in its analysis.

Lawyers have professional obligations. These obligations include the duty to preserve client confidences and privilege, as well as the duty to comply with the Law Society's investigative function. The issue of how a lawyer stores and processes business records affects a lawyer's ability to discharge these duties. Modern technology allows for data to be processed and stored remotely from a lawyer's workplace. In some cases the lawyer may be storing data on servers the firm owns and operates, and in some instances that work will be contracted out to service providers.

Remote data storage and processing are not new phenomena. Lawyers have been using record storage companies for some time. Before the advent of the personal computer, mainframe computing provided a form of remote data processing. Email transits data across third party systems. Many issues will be the same when it comes to records

[5] See, the Law Society of British Columbia, *Forensic Copying of Computer Records by the Law Society* (October 2009).

stored in a warehouse and records stored on third party servers. Foremost are the issues of trust and security.[6]

The Working Group did not assume that trust and security were more or less reasonable when using a third party contractor for storage of digital records over paper records. However, lawyers must bear in mind that once records are networked, the risks of breach change and as such the risk analysis is different.[7] With respect to risk management, Jansen and Grance observe: "Establishing a level of trust about a cloud service is dependent on the degree of control an organization is able to exert on the provider to provision the security controls necessary to protect the organization's data and applications, and also the evidence provided about the effectiveness of those controls."[8]

These foregoing issues suggest, in light of the nature of the records lawyers store with third parties, that due diligence is an important part of any determination as to whether a lawyer should use particular services. In this context "due diligence" would include ensuring proper contractual safeguards are in place.

Cloud computing also creates challenges for regulatory bodies.[9] The Law Society is the regulatory body of a self-governing profession. Whether one views self-governance as a privilege or a right, self-governance in the public interest requires that the Law Society have effective means to investigate complaints against lawyers. The *Legal Profession Act* and Law Society Rules establish a range of powers for the Law Society, and place obligations on lawyers, with respect to investigations. These powers include the authority for the Law Society to copy a lawyer's records, and the obligations include the lawyer being required to immediately produce the records for copying on request.[10] Lawyers also have professional obligations to keep records secure and to maintain them for certain periods of time (often many years). Cloud computing can affect both the Law Society's investigative functions and a lawyer's ability to comply with the investigative function and meet their record keeping obligations. Similarly, cloud computing can affect the Lawyers Insurance Fund in its efforts to defend a claim against a lawyer's professional liability insurance.

When data is stored on third party servers, particularly when those servers are in foreign jurisdictions, it is difficult (and perhaps in some instances impossible) to get an immediate copy of the records. When records are paper the Law Society can photocopy

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[6] See, for example, Robert Gellman, World Privacy Forum, "Privacy in the Clouds: *Risks to Privacy and Confidentiality from Cloud Computing*", (February 23, 2009); Bruce Schneier, "Be careful when you come to put your trust in the clouds" (The Guardian: June 4, 2009).

[7] For a discussion of data breeches and the incidence of attacks on networks versus insider breeches, see, Verizon Business Risk Team, "2008 Data Breach Investigations Report".

[8] Footnote 4, at p. 18.

[9] See, Gellman at fn. 6.

[10] See, for example, Law Society Rules 4-43, 3-79.

them. When records are resident on a local storage device like a hard drive, the Law Society can make a forensic copy of them. In both these scenarios, best evidence can be preserved. When the records are stored on a remote server accessed over the Internet, the Law Society might be able to access the records (if it has certain information), but efforts to copy the record may result in the loss of metadata and relational data that can be important to an investigation. Likewise, printing the electronic records will also result in a loss of that data.[11] In addition, from a technological standpoint, it may take longer to copy a lawyer's records over the Internet than it does to make a forensic copy of the hard drive on which those records are stored. The Working Group considered how the Law Society can carry out its mandate in the face of cloud computing, and how lawyers can meet their obligations to immediately provide records to the Law Society for copying during investigations.

ANALYSIS OF THE ISSUES

Jurisdictional Issues

Jurisdictional issues are central to any analysis of cloud computing.[12] In many cases the cloud services a lawyer in British Columbia will use will have its servers located in another jurisdiction. In some instances, the servers will be in multiple jurisdictions, either because the service provider has multi-jurisdictional operations or has subcontracted services to providers that operate in other jurisdictions. This makes it very difficult to ascertain where a user's data is located.[13]

There are several problems with lawyers having their business records stored or processed outside British Columbia. Lawyers have a professional obligation to safeguard clients' information to protect confidentiality and privilege. When a lawyer entrusts client information to a cloud provider the lawyer will often be subjecting clients' information to a foreign legal system. The foreign laws may have lower thresholds of protection than Canadian law with respect to accessing information. A lawyer must understand the risks (legal, political, etc.) of having client data stored and processed in foreign jurisdictions.

Because confidentiality and privilege are rights that lie with the client, the Working Group considered whether a lawyer should not unilaterally make a decision to subject

[11] "Loss" here refers to loss as a result of the format migration as opposed to the issue of whether the data is still resident on a server.

[12] The challenges of jurisdiction are raised in most articles on cloud computing. See, for example, Gellman at fn. 6; ARMA International's hot topic, *Making the Jump to the Cloud? How to Manage Information Governance Challenges*, (2010); European Network and Information Security Agency, Cloud Computing: Benefits, risks and recommendations for Information Security (November 2009).

[13] Chantal Bernier, Assistant Privacy Commissioner of Canada, "Protecting Privacy During Investigations" (March 17, 2009).

the client's information to unreasonable risk of access. When a client retains a lawyer and provides the lawyer with personal information, it is unlikely the client has contemplated that the lawyer will be storing that information in a foreign jurisdiction. The proposed Due Diligence Checklist includes some recommended best practices for dealing with personal information.

Much has been made of the invasive powers of the USA PATRIOT Act and the risks associated with using cloud providers that have servers located in the United States or that are owned by corporations that are subject to US law. There are some that downplay the risk associated with the PATRIOT Act on the basis that the chance of personal data being accessed is not high.[14] The Working Group observes that one cannot properly analyze risk by only looking at the likelihood of an event occurring. A proper risk analysis also requires tracking the magnitude of harm should the risk materialize. Because of the importance of solicitor and client confidentiality and privilege, any lawyer who is performing a risk analysis of using third parties to process and store data needs to consider both the likelihood of the clients' information being accessed and the potential consequences of that access.

The Working Group also notes that in the American context, the PATRIOT Act is only one issue. It is estimated that there are over 10,000 agencies in the United States that are able to access information stored with third parties by way of a subpoena without notice, rather than a warrant.[15] Cloud providers may also have servers in countries other than the United States. A proper risk analysis by a lawyer requires a broader analysis than merely looking at the PATRIOT Act.

Another jurisdictional issue the Working Group considered is the implication of extra-jurisdictional data storage/processing on the ability of the Law Society to carry out its regulatory functions. As a self-governing profession, lawyers are subject to regulatory oversight by the Law Society. The Law Society is required to consider every complaint against lawyers.[16] In some instances complaints lead to investigations that require the Law Society to access and copy a lawyer's records. Lawyers are required to comply with Law Society Orders for the production and copying of records. In circumstances where a lawyer refuses to comply, or where the records are held by a third party who refuses to comply, the Law Society would have to proceed by way of s. 37 of the *Legal Profession Act* to have the records seized. In the case of cloud computing, *seizure* of the records is

[14] See, for example, The Treasury Board of Canada, "Frequently Asked Questions: USA PATRIOT ACT Comprehensive Assessment Results" at http://www.tbs-sct.gc.ca/pubs_pol/gospubs/tbm_128/usapa/faq-eng.asp#Q3 (Accessed February 7, 2011).

[15] See the separate submissions of Albert Gidari, Partner, Perkins Coie LLP and James X. Dempsey, Vice President for Public Policy, Center for Democracy & Technology, to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties (May 5, 2010), Hearing on Electronic Communications Privacy Act Reform.

[16] Law Society Rules, Rule 3-4. Rule 3-5 sets out the circumstances where complaints must be investigated, or where there is discretion.

not likely possible, so the Working Group recommends seeking an amendment to s. 37 that allows for the court to order copying records as an alternative. The purpose of such an amendment is for greater clarity. The Working Group believes that the self-governing capacity of the profession needs to be preserved and that technological evolutions do not negate the Law Society's regulatory authority any more than they extinguish legal rights and obligations. The challenge becomes finding a means by which lawyers may make use of new technology while still being able to comply with their professional responsibilities.

With respect to the challenges of complying with regulatory and legal requirements, Jansen and Grance write:

> Use of an in-house computing center allows an organization to structure its computing environment and to know in detail where data is stored and what safeguards are used to protect the data. In contrast, a characteristic of many cloud computing services is that detailed information about the location of an organization's data is unavailable or not disclosed to the service subscriber. This situation makes it difficult to ascertain whether sufficient safeguards are in place and whether legal and regulatory compliance requirements are being met. External audits and security certifications can to some extent alleviate this issue, but they are not a panacea.[17]

The Working Group recognized that the Law Society regulates lawyers, not third party providers or their technology. Absent going to court, the Law Society does not have the statutory authority to compel cloud service providers to provide access to and copies of lawyers' business records. This required the Working Group to consider how access to records, including their timely preservation and copying could be achieved through the medium of lawyer regulation.

How the technology affects lawyers' ability to discharge their professional responsibilities

There are a number of technological issues associated with cloud computing. This report does not attempt to be exhaustive in this respect. As noted, the intention of the Working Group is that any rule reforms state principles in as technology-neutral a manner as possible. The Working Group considered technology issues through two principle lenses. The first was how the technology might affect lawyers' ability to discharge their professional responsibilities. The second was how the technology might affect the Law Society's ability to carry out its regulatory function.

[17] Footnote 4 at p. 14.

There are several ways in which cloud computing affects lawyers' ability to discharge their professional responsibilities. A central issue is that Rule 3-68 of the Law Society Rules states:

> 3-68 (0.1) In this Rule, "records" means the records referred to in Rules 3-60 to 3-62.
>
> (1) A lawyer must keep his or her records for as long as the records apply to money held in trust and, in any case, for at least 10 years.
>
> (2) A lawyer must keep his or her records at his or her chief place of practice in British Columbia for as long as the records apply to money held in trust and, in any case, for at least 3 years.
>
> (3) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.
>
> (4) A lawyer who loses custody or control of his or her records for any reasons must immediately notify the Executive Director in writing of all the relevant circumstances.

A lawyer who uses cloud computing for trust accounting purposes will likely be off-side this rule by virtue of where the records are stored. The Working Group observes that many lawyers using closed systems that their firm controls will also be off-side this rule by virtue of the requirement that the records be stored at the lawyer's chief place of practice. There are many good reasons to locate a firm's servers outside the chief place of practice, however. In fact, it might constitute a best practice in some instances from a data risk management perspective (cooling systems, fire protection, cost, data backup, etc.). In considering Rule 3-68 the Working Group analyzed whether the rule was a relic of a paper paradigm and considered what the essential elements of the rule should be by asking what the rule's purpose is.

The Working Group is of the view that the two critical issues are:

- The Law Society's ability to access and copy the required records in a timely manner; and
- Lawyers' ability to discharge their obligations under 3-68(3) and (4).

If the Law Society can access remotely stored records on demand, and those records are sufficient for the purposes of the audit and investigative function of the Law Society, does it matter if the records are stored at the "chief place of practice" or elsewhere in British Columbia? Record storage outside the jurisdiction raises operational issues, but the core question is whether the "chief place of practice" requirement remains defensible.

The “chief place of practice” requirement is called into question when records are stored remotely in electronic form. The critical question is whether the records are available on demand at the time of request and in a format acceptable to the Law Society. Essentially, for electronic records, the location the record is stored is less important than the ability of the lawyer to produce the record on demand in an acceptable form. The Working Group recommends that the Act and Rules Subcommittee craft a provision for electronically stored records that reflects this reality. Electronic records should be capable of being stored outside the chief place of practice provided the lawyer can make the records available at the time of request in an acceptable format (eg. print or PDF). The “records” covered in Rule 3-68(1) should be retained for 10 years from the final accounting transaction on the file.

As a separate matter, the Working Group notes that it is possible to read Rule 3-68(2) to mean that the record must be stored from three years from when there is no longer money in trust, or alternatively for as long as money is held in trust and for at least three years. At some point the Act and Rules Subcommittee, as part of its general review of the Rules may wish to consider this issue.

The requirement that the records be stored in the chief place of practice exposes a logical problem with the rules. Rule 3-59(2) sets out the formats in which a lawyer must keep accounting records. Rule 3-59(2)(c) allows lawyers to keep accounting records in “an electronic form that can readily be transferred to printed form on demand.” The chief place of practice requirement means that a lawyer who stores accounting records on a hard drive at his or her office, can meet the requirements of Rule 3-59 by printing a copy. A lawyer whose servers are located across town may have the technological capacity to print the records pursuant to Rule 3-59(2)(c) but could be off-side Rule 3-68(2). This is not easily defensible. While there are interpretation ambiguities (Rule 3-68 only applies to Rules 3-60 to 3-62) and practical challenges with remote storage, the key issue is whether the content of a print record is acceptable.

The Working Group believes that the chief place of practice requirement should be removed for electronic accounting records, and that the emphasis should be on the electronic accounting records being made available on demand in an acceptable format. While a paper record will be sufficient in some cases, in other cases it will not. The Working Group is of the view that the Law Society should have the discretion to require the metadata (or data that establishes a forensic accounting trail) associated with electronic records (including accounting records). While the authority to copy records under Rule 3-79 and 4-43 will include the authority to copy metadata, Rule 3-59(2)(c) fails to recognize that in some circumstances the Law Society may require more information than is contained in the print record.

The Working Group also heard from the Trust Regulation Department that Rule 3-68 should include reference to Rule 3-59, as the latter includes general accounting records

that may be important to an investigation. The Working Group recommends making this change as it should be non-controversial.

Security

Rule 3-68(3) required the Working Group to consider what constitutes "reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure."

In addition to the requirement in Rule 3-68(3), lawyers have the duty to protect client confidences. The *Professional Conduct Handbook*, Chapter 5 states:

1. A lawyer shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, regardless of the nature of the source of the information or of the fact that others may share the knowledge, and shall not divulge any such information unless disclosure is expressly or impliedly authorized by the client, or is required by law or by a court.
2. A lawyer shall take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information.
3. A lawyer shall not disclose the fact of having been consulted or retained by a person unless the nature of the matter requires such disclosure.
4. A lawyer shall preserve the client's secrets even after the termination of the retainer, whether or not differences have arisen between them.

Any time a lawyer entrusts a client's records to a third party, the obligations set out above may be put at risk. The requirement to take all reasonable steps to ensure the privacy and safekeeping of clients' confidential information supports the need for due diligence and contractual safeguards.

Security of records is a critical issue for a lawyer to resolve when choosing a third party service provider, including a cloud provider. There are too many variables with respect to security for the Working Group to make a blanket statement as to whether cloud computing is sufficiently secure. Jansen and Grance set out a useful list of security pros and cons of cloud computing.[18] As part of their due diligence, lawyers need to understand the security measures associated with the storage and processing of their records. This caution is not limited to the use of cloud providers.

[18] Footnote 4 at pp. 8-12.

A cloud can be public, private, community or hybrid.[19] Each of these models affects the degree of control the user has over the environment. In addition to this, there are vast differences in the resources of various providers and users. A large firm with a dedicated IT staff may be able to create better data security by operating its systems in-house than a sole practitioner might be able to manage. The sole practitioner might experience a considerable security upgrade by having IT services managed by a specialist provider. These variables bring the issue back to the importance of due diligence on the part of the lawyer or law firm when it comes to managing its records and outsourcing services.

Because of the complex variables and case-by-case nature of security risk analysis, the Working Group did not feel it could assert that cloud computing is more safe or less safe than traditional computing. What is required is for individual lawyers and law firms to assess the security risks associated with their existing records management systems[20] as well as any new system they intend to use. As the Verizon Risk Report notes, networked data may be subject to more attacks but this does not necessarily correlate to a greater number of data breaches.[21] Insider attacks can have devastating consequences. Insider attacks can occur within a traditional firm as well as one that uses cloud computing, so lawyers should not assume that their records are necessarily more vulnerable when they are stored with a cloud provider. A consideration with respect to third party providers, however, is that lawyers do not vet the employees of the third party service providers they use. Having a better understanding of the security checks, access rights and restrictions the third party provider places on accessing the lawyers' business records is important. A data breach with a cloud provider could compromise vast amounts of client information, and lawyers need to take reasonable steps to guard against this risk. Trust is not a given when dealing with service providers.

[19] See Appendix 2.
[20] "Records management" is used here to include storage, processing, retention and access.
[21] Footnote 7. This may change as more data moved to cloud systems.

Custody or Control" of accounting records

The Working Group analyzed the requirement under Rule 3-68(4) that a lawyer who loses custody or control of his or her accounting records must immediately notify the Executive Director of the circumstances. In particular, the Working Group considered whether custody was lost when the records were stored on a third party system.

The Working Group considered whether the phrase "custody or control" should be synonymous with "possession" for the purpose of Rule 3-68(4). In some respects the interpretation challenge can be tied to the concept that the records in 3-68(4) would be considered to be paper records stored at the chief place of practice. Once one accepts that the records may be electronic, and the servers may be off-site, "custody or control" requires a different analysis.

The *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 has a "custody or control" requirement in s. 3(1). The Working Group discussed Order 02-30, which dealt with a situation where the University of Victoria had an arrangement to store records for the separate entity, the University of Victoria Foundation. The Foundation was not a public body and therefore its records did not fall under the scope of the Act. The University is a public body, so if the records could be found to be under the custody or control of the University, an access application could be made for the records pursuant to s. 3(1).

While decisions of the Privacy Commissioner are not binding on the Benchers for the purpose of interpreting Rule 3-68, they can be informative. Order 02-30 can be used to support a line of argument that the mere fact records are stored with a third party would not always mean that the lawyer has lost custody of them. It would seem to depend on what the third party is able to do with the records, what their responsibilities are regarding the documents, and how the documents are integrated into other records systems would also affect things. In the context of cloud computing this could be used to argue that the terms of service are critical to the issue of custody. It could also be used to argue that a private cloud better supports the concept of custody by the lawyer than a public cloud where the storage is commingled with other records. However, the requirement that the cloud provider secure the documents suggests responsibility for their "safekeeping, care, protection, or preservation"[22] and therefore custody might lie with the cloud provider.

The Working Group is of the view that provided a lawyer ensures through contractual safeguards that custody or control of his or her records does not pass to a third party, that 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 a

[22] See Order 02-30, paragraph 23.

compliance audit or Law Society investigation, however, the lawyer may be found to have lost custody or control of the records.

Records Retention

Lawyers have record retention obligations. Some of these obligations are driven by limitation periods, which will mean that different files have to be retained for different periods of time. Given how digital data is stored, particularly in a cloud system, the issues associated with retaining "a file" can be complex and lawyers need to turn their minds to how they can meet these requirements.

Rule 3-68 establishes a series of retention requirements for trust accounting files. A review of that rule demonstrates that a lawyer may have retention obligations of 10 years or more with respect to trust records. In addition to retention obligations for trust records, there is the issue of malpractice claims. The Law Society guidelines for file destruction,[23] set in consultation with the Lawyers Insurance Fund, help ensure that a lawyer's file still exists when a negligence claim or potential claim is made. The Working Group discussed this issue with the Lawyers Insurance Fund, as noted later in this report.

Another example of the need for proper records management flows from the *Professional Conduct Handbook*, Chapter 10, Rule 8:

> 8. Upon withdrawal, the lawyer must immediately:
> (e) take all reasonable steps to assist in the transfer of the client's file.

If the lawyer does not have a good practice management system in place, particularly when the lawyer is using third party data storage for electronic records, transferring the client file in a timely and complete manner may prove difficult.

Records management is a complex enterprise in a paper world. In the digital world there are greater complexities. In simple terms, records management in the digital world is complicated by the ease with which the records can be copied and disseminated, evolutions in hardware and software can make archived data inaccessible, and spoliation of digital data can occur.[24] A complete analysis of digital records management is beyond the scope of this report. However, lawyers are required to understand how to manage their records (regardless of the storage medium) to ensure they are meeting their records keeping obligations

[23] Law Society of British Columbia, "Closed Files: Retention and Disposition", at http://www.lawsociety.bc.ca/page.cfm?cid=2001&t=Client-Files (last accessed: June 2, 2011).
[24] A good starting point for understanding these issues is The Library of Congress, Digital Preservation: http://www.digitalpreservation.gov/.

Records management can be complicated when dealing with cloud providers. Many commentators have asked the question, what happens if the cloud provider goes bankrupt or ceases to operate?[25] Data back-up and escrow agreements might be insufficient safeguards without access to the application software necessary to decode the stored data. In addition, do the cloud providers maintain the data for the period of time a lawyer is required to retain it? What assurances can the cloud provider give that the data will be available in a comprehensible form on request by the lawyer or the Law Society?[26] How will a lawyer know that data that is supposed to have been destroyed, has been destroyed?

The Working Group is of the view that lawyers cannot assume that their business records will be properly archived and maintained by a third party service provider, whether operating a cloud service or otherwise. Lawyers have a positive obligation to ensure proper records management systems are in place. This obligation extends to ensuring that any third party record storage provider is keeping the data archived in an accessible format, available on demand. This includes having a means to audit compliance.

How the technology affects the Law Society's ability to carry out its regulatory function

Cloud computing technology can have serious implications for regulatory bodies.[27] As discussed, the jurisdictional component is part of the challenge. Regulatory bodies have limited jurisdictional reach, and when records are stored and processed outside the geographical reach of the regulatory body, and by third parties who are not subject to regulation, the regulatory authority can be challenged.

The effect of the jurisdictional limitation is such that, in order to carry out certain essential investigatory functions, an organization like the Law Society would have to seek a court order and then have that court order enforced in a foreign jurisdiction. This introduces delay, increased cost, and uncertainty into the regulatory process. These challenges can adversely affect the public perception of the legal profession's capacity to self-regulate in the public interest. The increased costs would ultimately be borne by the profession as a whole in the form of higher fees. Ironically, these higher fees could off-set some of the cost savings realized through the adoption of cloud computing.

[25] Jansen and Grance, fn. 4, Gellman fn. 6 at p. 16.
[26] For example, the Law Society might be named the custodian of the practice by the court, thereby stepping into the shoes of the lawyer or firm to operate the practice.
[27] See Gellman fn. 6 at 22, Bernier fn. 13 re forensic investigations.

In addition to jurisdictional challenges, the technology can impact the regulatory function. The Law Society has the authority to copy records, including computer records. When a lawyer is faced with an order allowing the Law Society to copy records, the lawyer must *immediately* produce the records and make them available for copying.[28] When the records are stored on cloud services, a lawyer's ability to comply with these rules can be affected as can the Law Society's ability to copy the records.

With paper records, the Law Society can easily make copies. With records stored on hard drives, the Law Society has rules that allow it to make forensic copies of the hard drive. In the latter case, the Law Society also has established a process by which personal information that is not relevant to the investigation can be protected so the Law Society is not accessing it. When the records necessary for an investigation are stored on third party servers the ability of the Law Society to copy those records is compromised.

In order to access the records, the Law Society would require the lawyer to provide the password and information necessary to locate the records. An unscrupulous lawyer would have a much easier time hiding records in the cloud than on a hard drive in his or her office. But even if the Law Society has access to the records, the ability to copy the records may be challenged. If the cloud uses proprietary software, any copy of the information will need access to that application software in order to render the copied information comprehensible.[29] Some cloud providers may provide data copies to users who are migrating data from the cloud, but this will often be in a flat file format such as an Excel spreadsheet. The consequence of this is that relational data that can be important to an investigation will be lost.[30] With a forensic copy of a hard drive the Law Society's forensic expert can testify as to the authenticity of the record at the time the copy was made. With copying data from the cloud, the forensic expert cannot make that claim because, amongst other reasons, the act of copying the logical file alters the data (as opposed to copying the physical file when making a forensic copy). This has implications for evidentiary standards.

The Working Group discussed the forensic copying issues with the Law Society's external computer consultant, the Trust Regulation staff and the Practice Management Advisor. While it would be possible to make a logical file copy by accessing the cloud, a physical copy could not be made. Metadata would be lost, as would the ability of the expert to testify that the record had not been altered. The Working Group considered that metadata is a record that the Law Society is entitled to collect. Metadata has proven to be an important part of some investigations.

[28] Law Society Rules, Rule 4-43 and 3-79.
[29] David Bilinsky and Matt Kenser, Introduction to Cloud Computing (ABA TechShow 2010).
[30] This relational data could include creation and modification dates for documents.

The Working Group discussed the possibility that the adoption of cloud computing would revert the investigatory process back to the days of paper records in some respects. This was a challenging part of the analysis. On the one hand, an argument can be made that no investigatory process is perfect and that the Law Society used to be able to investigate lawyers before there was metadata. On the other hand, technology now allows for metadata to be part of the investigation, assisting investigators in proving that a lawyer has fraudulently altered records after the fact. In some respects eliminating the use of new investigatory technology would be like asking the police to stop using radar guns to catch speeding drivers.

The Working Group believes it is essential that the third party service providers lawyers use for electronic data processing and storage are able to provide the Law Society records that include metadata. At the very least the rules should provide the Law Society the discretion to require that metadata, or authenticated forensic investigation data that meets the evidentiary standards for electronic disclosure before a superior court, be provided on demand. It is the lawyer's responsibility to ensure the services he or she uses supports Law Society investigations and audits.[31]

The Working Group recognizes that the potential exists that the Law Society will have to copy records held by third party service providers in a manner that does not, at present, constitute best evidence. This is because data stored on the cloud may be located in many locations and the Law Society will not be able to make forensic copies of the servers the data is stored on. Lawyers should not be allowed to use a technology that prevents the Law Society from obtaining forensic copies of electronic records and then claim the copied records fall short of the best evidence standard. As such, the Working Group recommends that a rule be created that would allow the Law Society to rely on the copied record as being best evidence and place the onus on the lawyer to provide the forensic copy if the lawyer wishes to present "better evidence". This rule should be limited to circumstances where the Law Society is unable to make a forensic copy of the devices on which the records are stored because the Law Society is either unable to locate or access the storage devices to make a forensic copy.

Potential impact on Rule 4-43

Following the report of the Mirror Imaging Task Force in 2008, the Law Society revised Rule 4-43 to create a process to protect personal information. The balance that was sought recognized that the Law Society has the authority to copy computer records and investigate lawyers, but the process of making a forensic copy of computer records can capture irrelevant personal information. In light of this, the Law Society created a process to allow irrelevant personal information to be identified and segregated, so it

[31] "Demand" in this case would be subject to the proper process, such as a 4-43 order. This would also allow the standard to evolve over time to keep pace with best practices.

was not accessed by the Law Society. Cloud computing creates a situation where that process might not be able to be followed.

The reason that the 4-43 process for segregating personal information might not be able to be followed with cloud computing is that it is unlikely that the Law Society will be able to make forensic copies of the servers that store a lawyer's records. The copying process will be different. This may mean that the Law Society will end up copying and accessing records that contain irrelevant personal information. The Working Group is of the view that this is a risk the lawyer bears by choosing to use cloud computing. It is not an excuse to refuse to comply with a Law Society investigation.

While it will be important for the Law Society to take reasonable efforts not to access irrelevant personal information stored with a cloud provider during the course of an investigation, the level of protection contemplated under 4-43 may be impossible to meet. As such, the Working Group recommends rule 4-43 be amended to recognize the process for protecting personal information during investigations is subject to the lawyer using a record keeping system that supports such a process. If the lawyer uses a system that prohibits the Law Society from segregating such information in a practical manner, the lawyer does so at his or her own risk that such information may be inadvertently accessed during the investigation.

Ensuring Authorized Access to Records

The concept of records being stored and processed outside of British Columbia presents conceptual challenges to some of the operational processes of the Law Society. One area of particular concern is custodianships. In circumstances where a lawyer has died or become incapable of carrying on his or her practice, the Law Society will obtain an order of the court that empowers the Law Society to step in as custodian of that lawyer's practice. This essentially puts the Law Society in the shoes of the lawyer, and the Law Society may use the lawyer's records for the purpose of carrying on the practice, and may also engage in an investigation of the records.[32]

If a lawyer uses cloud computing and a custodian is appointed, the Law Society faces the possibility of arriving at an office that has no records and no evidentiary trail as to where those records are located. This creates risk to the public.

In addition to custodianships, there can be circumstances where a lawyer refuses to comply with a Law Society investigation, such as a 4-43 order or a 3-79 compliance audit. When the records are not available for copying because they cannot be located, this creates risk to the public. In these instances the Law Society has processes to

[32] See the *Legal Profession Act*, Part 6, and the Law Society Rules, Part 6.

suspend the lawyer, but that does not solve the problem of not possessing records that may be important for protecting the public interest.

The Working Group discussed potential solutions to these risks. However, because the likelihood and consequences of these risks are difficult to predict, the Working Group preferred monitoring the development of lawyers using this technology to see whether further steps are required by the Law Society. **Appendix 3** highlights some concepts the Working Group briefly canvassed. These concepts do not form part of the recommendations in this report. Rather, they are concepts that might merit consideration in the future should the recommendations in this report prove inadequate for protecting the public interest. If the concepts set out in Appendix 3 are considered in the future, they would have to be analyzed fully to consider both the operational appropriateness and feasibility of the concepts, as well as the general appropriateness of the concepts.

Lawyers Insurance Fund Issues

Cloud computing could result in file material that is either unavailable, or available only through a court order, if stored in a foreign jurisdiction. The Working Group asked the Lawyers Insurance Fund how these problems might impact its ability to manage claims. The Lawyers Insurance Fund noted that a lack of file material, regardless of the reason, could compromise its ability to investigate and defend a claim, as well as its ability to compensate victims of lawyer theft (if the Law Society's ability to discover thefts was impaired). Cloud computing might also result in some additional costs being incurred if a court order in a foreign jurisdiction was required in order to access records. However, assuming that lawyers take reasonable steps to safeguard against lost data in terms of third party storage and processing of records, the risk will be minimal.

The Lawyers Insurance Fund also provided some general observations. They agreed with the concept that lawyers should be required to meet records retention obligations while using cloud computing or other emerging technologies. As noted, the Law Society has set guidelines for file destruction that the Lawyers Insurance Fund has helped establish, and adherence to these guidelines will help ensure that a file still exists when a negligence claim is made.

They also noted that lawyers' use of technology, including cloud computing, creates other risks such as data breaches. If a lawyer or client suffers a loss as a result, these are not losses arising out of the lawyer's negligent provision of legal services and are not covered by the professional liability insurance policy. Because of this, lawyers will want to consider how best to manage these risks. Steps might include:

- Obtaining informed client consent for the use of the services;
- Requiring the service provider to indemnify the lawyer for any claims the lawyer faces as a result of using the service; and

- Buying insurance on the commercial market to cover risks such as data breaches.

The Working Group encourages lawyers to consider the risks highlighted by the Lawyers Insurance Fund as part of the due diligence and risk management lawyers should perform when determining whether to use third party data storage and processing.

QUESTIONS RAISED DURING THE CONSULTATION

The Working Group received feedback on the consultation report from a number of sources, including email and direct feedback at conferences. The feedback was very positive. There were some issues that were raised that require clarification, however.

The Working Group was asked whether the Law Society could endorse specific cloud providers. This is an issue that was discussed on a number of occasions, and the Working Group concludes that it is not feasible, given resources and the potential volume of demands, for the Law Society to review all potential cloud services and certify they are acceptable. The Working Group believes that the better approach is to provide lawyers with guidelines and a checklist to assist lawyers in determining whether a particular service is acceptable.

The Working Group was asked why a paper copy of a cash receipt was required. The Working Group observes that the cash transaction rules set out certain safeguards for dealing with cash, in order to prevent money laundering and fraud. Even small cash transactions are important to properly record to ensure there is no dispute between the lawyer and client as to payments received. Rule 3-61.1(1) requires a lawyer to maintain a cash receipt book of duplicate receipts and make a receipt for any amount of cash received from a client that is not the lawyer's employer. The recommendations in this report are consistent with that obligation. As a general matter outside the cash requirements, the Working Group if of the view that electronic copies of signed paper documents should be acceptable. As technology evolves the Benchers may wish to consider whether other methods of acknowledging receipt of cash from a client are acceptable.

The Working Group was asked what happens when a client wants to use cloud computing. The Working Group is of the view that as confidentiality and privilege are rights that lie with the client, the client has the right to make that decision. It is prudent, however, for the lawyer to indicate to the client some of the potential risks associated with the decision. It is also desirable for the lawyer to document the discussion with the client, so there is a record of the client's decision.

The Working Group was asked whether the proposed lawyer suspension process would occur in circumstances where the data stored in the cloud was lost as a result of

unforeseen risk (eg. An earthquake). The Working Group is of the view that the Law Society needs to be governed by an assessment of whether the lawyer took reasonable steps to protect the client information and guard against risk of loss. Lawyers should not be punished for events that are not avoidable through the exercise of due diligence. However, if a lawyer's lack of due diligence increased the risk, it might be a factor to consider. The one caveat is that lawyers will have reporting obligations when they lose custody or control of certain accounting records (see Rule 3-68(4), and must ensure they comply with the Law Society rules in circumstances where they can no longer access data. A transient interruption of data services should not trigger this obligation, but if the interruption of service continues for a period of some days, at the very least the lawyer should contact the Law Society's practice advisors for guidance on reporting obligations. The lawyer should also be guided by the circumstances that are causing the transient interruption (ie. The service provider going out of business should not be considered a "transient interruption of service").

Lastly, one individual questioned whether it was fair to expect lawyers to ensure contractual language was in place with service providers to ensure the confidentiality and privilege of client information was protected. It was acknowledged that confidentiality and privilege need to be protected, but the suggestion was that it is unreasonable to expect lawyers to be able to convince top tier service providers to put language in terms of service to address this concern. It was suggested that the Law Society provide sample language of what to look for in the terms of service.

The Working Group remains of the view that lawyers must strive to protect solicitor and client confidentiality and privilege. The approach suggested in this report is for lawyers to engage in due diligence and to achieve greater certainty through contractual language. The Working Group is of the view that lawyers should be given latitude to come to terms as to what language is sufficient in order to discharge that obligation, rather than the Law Society providing the sample terms to look for. A practical problem with the Law Society providing such terms is that the lawyer would still have to discuss those terms with any prospective service provider, and the template might create an impediment to arriving at a consensus that adequately addresses the needs of all involved. Whether a lawyer is considering cloud computing, or some other form of third party service with respect to his or her records, a lawyer needs to determine whether the lawyer can discharge his or her professional obligations while using the service; if a lawyer is unable to meet his or her professional obligations, the lawyer should not use the service.

CONCLUSION

Technological change occurs at a breakneck pace. This creates challenges for law-makers and regulatory bodies, but it also presents challenges for professionals who are required to adhere to codes of conduct. When considering the topic of cloud computing, the Working Group rejected the knee-jerk reaction to prevent lawyers from

using the technology because it introduces risks and challenges. All technology and business models present risks and challenges. In addition, the Working Group is of the view that the proper role of the Law Society is to regulate lawyers, not attempt to regulate technology. What this means is that lawyers should be allowed to use emerging technologies, provided the lawyer is able to comply with his or her professional responsibilities while using the technology. Cloud computing is no different. It is for this reason that the Working Group did not attempt to set up regulatory models that are contingent on the type of cloud service that is being used.

The challenge for lawyers becomes understanding the risks associated with the technology or service they are using. This can be a daunting task, particularly if there are barriers to keeping pace with technological change. In some cases generational differences will make the adoption and understanding of new technology a challenge, in other cases the lawyer will lack the resources to stay on top of technological issues. Despite these challenges, lawyers still have professional and legal duties that they owe to their clients, disclosure requirements in litigation, and obligations owed to their regulator. These duties do not disappear in the face of new technology. Rather, it is the lawyer's responsibility to ensure their use of technology and business models comply with these obligations. Failure to do so may lead to serious legal and regulatory consequences, including revocation or suspension of the lawyer's licence to practice law.

There are some instances where a set of rules has become archaic or unworkable, and in those cases it is proper for the law-maker or regulator to consider the policy behind the rules and to modernize the rules. Some suggestions have been made in this report to accomplish that objective. In other instances the underlying obligation is of such central importance that the rules should not be weakened in order to facilitate the use of new technology. A lawyer's obligation to protect confidential and privileged information is an example of the latter. The professional obligations a lawyer has does not preclude the lawyer from using emerging technology; rather, it requires the lawyer to take steps to ensure he or she can use the technology in a manner that is consistent with his or her professional obligations.

The Working Group believes that the proper approach for dealing with lawyers using third party storage and processing of records, including cloud computing, is to provide lawyers due diligence guidelines and best practices. The purpose of the document is to assist lawyers in using records storage and processing services in a manner that is consistent with the lawyer's professional obligations. The responsibility of choosing an adequate service provider lies with the lawyer, as does the risk. Lawyers should ensure their contract of services address these issues.

In addition to creating due diligence guidelines and best practices, the Working Group also makes a series of recommendations to modernize the Law Society Rules to deal with the challenges cloud computing presents to the Law Society as regulator. These

recommendations reflect an effort to allow lawyers to use a promising technology to deliver legal services, while ensuring proper safeguards exist to protect the public. These recommendations may need to be amended in the future and it is important that the Law Society monitor how this technology affects lawyers' ability to meet their professional obligations. Experience will tell whether the public is sufficiently protected or if further steps are required.

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.[33]

(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.

[33] As noted earlier, this is consistent with Rule 3-61.1. At some point the Benchers may wish to consider whether technology permits an acceptable alternative to the cash receipt book model.

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. The Law Society should have the discretion not to suspend the lawyer when the inability to provide the records is truly outside the control of the lawyer and could not have been prevented through the exercise of due diligence.

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: 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 to determine whether to use cloud computing services.

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

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

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APPENDIX 1

DUE DILIGENCE GUIDELINES[34]

A lawyer must engage in due diligence when using a third party service provider or technology for data storage and/or processing. The purpose of the due diligence is to ensure that the lawyer is able to fulfill his or her professional responsibilities while using a particular service provider or technology. The due diligence may also assist the lawyer as a matter of business risk management. Although these guidelines are designed to assist lawyers in determining whether to use electronic data storage and processing that is accessed over a network, such as the Internet (cloud computing), lawyers may find some of these factors useful in performing due diligence with respect to data storage and processing that does not use cloud based technologies. These guidelines assume the National Institute for Standards and Technology definition of cloud computing, as amended from time to time.[35]

This checklist also contains a section for privacy considerations. It is important to note that while the Law Society views the approach contained in Part B as acceptable the Privacy Commissioner may have a different perspective. The approach in Part B adopts concepts from the Alberta *Personal Information Protection Act*. It is not prescriptive.

If a lawyer uses third party data storage and processing that locates the clients' records outside of British Columbia, the lawyer should advise the client of this fact so the client can determine whether or not to use the lawyer. It is optimal to memorialize the client's consent in a written retainer.

PART A: GENERAL DUE DILIGENCE GUIDELINES

- Lawyers must ensure that the service provider and technology they use support the lawyer's professional obligations, including compliance with the Law Society's regulatory processes. This may include using contractual language to ensure the service provider will assist the lawyer in complying with Law Society investigations.

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[34] Some of these factors are also raised by commentators on cloud computing, including from the following sources: Wayne Jansen and Timothy Grance, NIST Guidelines on Security and Privacy in Public Cloud Computing (Draft Special Publication 800-144: January 2011); the North Carolina State Bar "Proposed 2010 Formal Ethics Opinion 7, *Subscribing to a Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property*" (April 15, 2010), "Proposed 2011 Formal Ethics Opinion 6, *Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property*"; Robert J.C. Deane, *Cloud Computing – Privacy and Litigation Discovery Issues* (Borden Ladner Gervais seminar: 2011)

[35] Special Publication 800-145 (Draft) , January 2011.

- Lawyers are strongly encouraged to read the service provider's terms of service, service level agreement, privacy policy and security policy. Lawyers must ensure the contract of service adequately addresses concerns regarding protecting clients' rights and allowing the lawyer to fulfill professional obligations. Ensure the contract provides meaningful remedies. At a minimum consideration should be given to the following:

    - Lawyers must take steps to ensure the confidentiality and privilege of their clients' information is protected. Clear contractual language should be used to accomplish this objective.

    - Lawyers should try to ascertain where the data is stored/hosted. Consider the political and legal risks associated with data storage in foreign jurisdictions. The lawyer must consider whether he or she can comply with British Columbian and Federal laws, such as laws governing the collection of personal information, when using third party service providers (see Part B).

    - Who owns the data? Confidentiality and privilege are rights that lie with the client. Lawyers must ensure ownership of their clients' information does not pass to the service provider or a third party.

    - What happens if the service provider goes out of business or has their servers seized or destroyed?

    - On what terms can the service provider cut off the lawyer's access to the records?

    - Will the lawyer have continuous access to the source code and software to retrieve records in a comprehensible form? Consider whether there is a source code escrow agreement to facilitate this.

    - How easily can the lawyer migrate data to another provider, or back to desktop applications?

    - Who has access to the data and for what purposes?

    - What procedural and substantive laws govern the services? What are the implications of this?

    - Does the service provider archive data for the retention lifecycle the lawyer requires?

    - Are there mechanisms to ensure data that is to be destroyed has been destroyed?

  - What are the lawyer's remedies for the service provider's non-compliance with the terms of service, service level agreement, privacy policy or security policy?

  - Ensure the service provider supports electronic discovery and forensic investigation. A lawyer may need to comply with regulatory investigations, and litigation disclosure, in a timely manner. It is essential that the services allow the lawyer to meet these obligations.

- What is the service provider's reputation? This essentially requires the lawyer to assess the business risk of entrusting records to the service provider. Lawyers should seek out top quality service providers.

- What is the service provider's business structure? Lawyers must understand what sort of entity they are contracting with as this affects risk.

- Does the service provider sell its customer information or otherwise try and commoditize the data stored on its servers?

- Lawyers should strive to keep abreast of changes in technology that might affect the initial assessment of whether a service is acceptable. Services, and service providers, may become more or less acceptable in light of technological and business changes.

- What security measures does the service provider use to protect data, and is there a means to audit the effectiveness of these measures?

- A lawyer should compare the cloud services with existing and alternative services to best determine whether the services are appropriate.

- If using a service provider puts the lawyer off-side a legal obligation, the lawyer should not use the service. For example, there may be legislative requirements for how certain information is stored/secured.

- Lawyers should establish a record management system, and document their decisions with respect to choosing a cloud provider. Documenting due diligence decisions may provide important evidence if something goes wrong down the road.

- Consider the potential benefits of a private cloud for mission critical and sensitive data, along with information that may need to be stored within the jurisdiction.

With respect to certain trust records, the Trust Regulation Department at the Law Society of British Columbia recommends the following as *best practices*:

1. All bank reconciliations (for all trust and general bank accounts) should be printed the same date it was completed and stored in hard copy;[36]

2. A full and complete trust ledger should be printed in hard copy at the close of each client file matter and stored in hard copy;

3. A master billings file should always be maintained in hard copy;

4. Have a disaster recovery plan in case the cloud provider shuts down. Regularly back up all files and records in possession of the member. Store backup files in a fire safe, safety deposit box;

5. All Members should print off or export to electronic file (i.e. pdf) all accounting records required by Division 7 Rules on an ongoing basis and store locally;

6. If client files are stored electronically, all key documents supporting transactions and key events on the file 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 date of the final accounting transaction.

The Lawyers Insurance Fund notes that there may be data breaches and other risks in using a particularly technology, including cloud computing, that may lead to losses by lawyers and clients. These are not risks to which the professional liability insurance policy responds, so lawyers will want to consider the risks and how best to protect themselves as part of their due diligence. Steps that might be taken include:

- A lawyer should obtain informed client consent for the use of the services;
- A lawyer should require the service provider to indemnify the lawyer for any claims the lawyer faces as a result of using the service; and
- A lawyer should consider buying insurance on the commercial market to cover risks such as data breaches.

PART B: PRIVACY CONSIDERATIONS

Lawyers need to ensure that their process for collecting, retaining and using personal information complies with the applicable legislation. If the lawyer is dealing with private sector collection of personal information, it is possible that the BC *Personal Information*

[36] Reference to "hard copies" is a best practice. An electronic copy that can be provided in print or PDF form is acceptable. Note, however, the obligations regarding cash transactions in Rule 3-61.1 require a cash receipt book.

Protection Act, SBC 2003, c. 36, or the federal *Personal Information Protection and Electronic Documents Act,* SC 2000, c. 5 will apply, or both may. Jurisdiction may be overlapping, and lawyers should aim for the higher standard. It is also possible that the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 (FIPPA) will apply. For example, the lawyer may perform contract work for a public body that entrusts the lawyer with personal information the public body has collected. FIPPA, subject to certain exceptions, prohibits personal information that is collected by a public body from being stored or accessed outside Canada.[37] If a lawyer is using cloud computing, they need to understand the obligations that attach to that data before they collect it in order to ensure they are complying with privacy legislation. Understanding where the data is stored and/or accessed takes on increased importance.

Lawyers may be collecting, retaining and using personal information from a number of sources including employees and clients. If a lawyer is using data storage outside of Canada it is recommended that the lawyer advise the individual at the commencement of the relationship. In the case of prospective clients, this could occur during the conflict checking process. It is important for an individual to know before the personal information is collected that it is being stored/processed outside of Canada.

It is important to remember that there are obligations with respect to the collection, use and retention of personal information. Some of this personal information may also attract solicitor and client privilege. A lawyer has a professional obligation to protect solicitor and client privilege that overlays the legislative requirement for dealing with personal information. The checklist below may be sufficient for personal information, but may fall short of the requirements for protecting information that is governed by confidentiality and privilege. A lawyer must understand the nature of the information they are collecting, using and retaining and ensure appropriate safeguards are in place. The checklist also draws on concepts from the Alberta *Personal Information Protection Act,* SA 2003, c. P-6.5 (AB PIPA) which articulates a high standard.

Step 1:
Lawyers should review their privacy policy and determine whether it supports the use of the service contemplated (eg. cloud computing). It is possible that the privacy policy is out of date. It is also possible that the law firm will have collected a considerable amount of personal information that the firm is now contemplating storing in a manner not addressed at the time it was collected.

Step 2:
Lawyers must identify which legislation governs the information they are collecting.

[37] FIPPA, Section 30.1.

Public sector:
If the personal information is governed by FIPPA, the lawyer must ensure the information is only stored or accessed within Canada, unless one of the exceptions is met. It may be necessary to set up a separate system to address this sort of information.

Private sector:
While personal information may be stored or processed outside of British Columbia, it is essential to take steps to protect the personal information. Consider the following:

- The lawyer must enter into a data protection arrangement with the service provider that ensures equivalent levels of data protection as are required in BC/Canada;[38]

- Where data is being processed, consent is not required;

- Consent is required if the personal information is being disclosed for a secondary purpose (consider the risk here regarding confidential and privileged information);

- Because of the openness principle, notice should be given to the client that data will be processed outside Canada. At a minimum, notice should include alerting the client to the potential that a foreign state may seek to access the data for "lawful access" purposes;[39]

- The purpose of notice is to alert the client to the risk that their personal information may be accessed by a foreign government;

- The lawyer's policy and practices must indicate:[40]

    - The countries outside Canada where the collection, use and disclosure will occur;

    - The purposes for which the service provider has been authorized to collect, use or disclose the personal information.

- Before or at the time of collecting or transferring personal information to a service provider outside Canada, the lawyer must notify the individual:[41]

    - Of the way to obtain access to written information about the lawyer's policies and practices regarding service providers outside Canada; and

[38] See PIPEDA Case Summary No. 313.
[39] See s. 4.8 of Schedule A of PIPEDA.
[40] AB PIPA, s. 6(2).
[41] AB PIPA, ss. 13.1(1) and (2).

- The name or position of a person who is able to answer the individual's questions about the collection, use, disclosure or storage of personal information by the service providers outside Canada.

- While the notification does not require information about the countries outside Canada, the privacy policy should contain this information.

APPENDIX 2 - Definition of Cloud Computing.

Source: National Institute of Standards and Technology, U.S. Department of Commerce, Special Publication 800-145 (Draft), Peter Mell and Timothy Grance, *The NIST Definition of Cloud Computing (Draft),* January 2011.

> Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model promotes availability and is composed of five essential characteristics, three service models, and four deployment models.
>
> Essential Characteristics:
>
> *On-demand self-service.* A consumer can unilaterally provision computing capabilities, such as server time and network storage, as needed automatically without requiring human interaction with each service's provider.
>
> *Broad network access*. Capabilities are available over the network and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g. mobile phones, laptops, and PDAs).
>
> *Resource pooling.* The provider's computing resources are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. There is a sense of location independence in that the customer generally has no control or knowledge over the exact location of the provided resources but may be able to specify location at a higher level of abstraction (e.g. country, state, or datacenter). Examples of resources include storage, processing, memory, network bandwidth, and virtual machines.
>
> *Rapid elasticity.* Capabilities can be rapidly and elastically released to quickly scale in. To the consumer, the capabilities available for provisioning often appear to be unlimited and can be purchased in any quantity at any time.
>
> *Measured Service.* Cloud systems automatically control and optimize resource use by leveraging a metering capability [fn omitted] at some level of abstraction appropriate to the type of services (e.g., storage,

processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported, providing transparency for both the provider and consumer of the utilized service.

Service Models:

Cloud Software as a Service (SaaS). The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

Cloud Platform as a Service (PaaS). The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application of hosting environment configurations.

Cloud Infrastructure as a Service (IaaS). The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).

Deployment Models:

Private cloud. The cloud infrastructure is operated solely for an organization. It may be managed by the organization or a third party and may exist on premise or off premise.

Community cloud. The cloud infrastructure is shared by several organizations and supports a specific community that has shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be managed by the organizations or a third party and may exist on premise or off premise.

Public cloud. The cloud infrastructure is made available to the general public or a large industry group and is owned by an organization selling cloud services.

Hybrid cloud. The cloud infrastructure is a composition of two or more clouds (private, community, or public) that remain unique entities but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds).

APPENDIX 3

The material in Appendix 3 represents three concepts that the Working Group discussed, but did not resolve. The concepts arose out of a recognition that in some instances, such as a custodianship, the Law Society will require access to a lawyer's records and the use of cloud computing might create impediments to such access. At this point, however, the Working Group does not believe these concepts merit recommendation. The concepts may prove unnecessary, and in any event there are operational and policy considerations that would have to be worked through to determine whether any of the concepts is appropriate or necessary. To undertake that analysis at this point seemed disproportionate to the potential risk. Experience will determine whether these concepts, or other concepts, require consideration in the future. This appendix is included for greater disclosure of the Working Group's analytical process, and does not constitute a recommended course of action.

Potential Solution #1: Requiring lawyers to use a password manager and provide the master password

One option the Working Group discussed was to require lawyers who use cloud computing to use a password manager and to provide the Law Society the password for the password manager. How this would work is that the password manager would store all the passwords for the services the lawyer was using. The Law Society would have the password to that repository. In the example of a custodianship, the Law Society would use the password to the password manager to access the passwords for the various services the lawyer used. This would allow the Law Society to identify the services being used and review the lawyer's records and carry on the practice.

In discussing this concept, the Working Group was cognizant that such a rule would place a considerable amount of power in the Law Society's hands. With the password to the password manager, the Law Society could access all of a lawyer's records. Doing so would obviously be inappropriate save as allowed by law. As such, any consideration of such a model would require a process to ensure due process was followed. For example, it might require a custodian order or a finding by a hearing panel that the lawyer had failed to comply with a Rule 4-43 order. In addition to a due process, it would also require robust security measures on the part of the Law Society. The Society would have to establish a system that protected the passwords from being improperly accessed. The Working Group considered that any such system should also have an audit function, and be subject to an annual reporting requirement to indicate the number of times it was accessed and following which due process.

Potential Solution #2: Requiring lawyers to enter into three party contracts with the Law Society and the Service Provider

Another option the Working Group considered was requiring lawyers to enter into three-party contracts with the Law Society and any cloud provider. The contract would include a requirement for the cloud provider to provide the Law Society access to the records. This would, again, be subject to due process such as a custodian order or a hearing panel decision. The Working Group understands that a three-party contract is similar to the approach of the Chambre des Notaries du Quebéc.

The three-party contract held a certain amount of appeal to the Working Group compared to the password manager concept, particularly because the Law Society does not become a repository of critical information like passwords. However, lawyers may use many cloud providers and these relationships can spring up quite suddenly; they are not like entering a lease for office space. As such, the lawyer may be in an *ad hoc* process of entering into contracts and getting the Law Society involved. This is administratively burdensome. In addition, it is likely that the larger cloud providers (eg. Amazon, Google, IBM, etc.) would not enter into such contracts.

Potential Solution #3: **Creating a Law Society "cloud" for lawyers**

Another option that the Working Group discussed was the idea of the Law Society operating a cloud service dedicated for lawyers. The Working Group did little more than sketch out the concept, as it would require an operational analysis that is beyond the scope of the Working Group.

The idea of a dedicated cloud service for lawyers, operated by the Law Society has some merit. It would allow for the service to be located in British Columbia, thereby eliminating the jurisdictional concerns. One possibility the Working Group considered was a federal cloud for lawyers, operated cooperatively by the law societies throughout Canada. This might allow for the servers to be located in jurisdictions other than British Columbia, while still avoiding some of the concerns arising from data storage in foreign jurisdictions.

If the concept of a law society operated cloud, dedicated for lawyers, is to be considered in earnest, it would be important to create a business structure that was independent from the regulatory branch of the Law Society. The Working Group recognized that the Law Society's investigatory function requires due process to access a lawyer's records, and if the Law Society were operating a cloud service it would have to create proper safeguards to ensure Law Society staff were unable to access the records stored on the service unless proper process had first been followed (eg. A 4-43 order, a custodian order, etc.).

The idea of a Law Society run cloud service would not be a quick solution to the challenges associated with cloud computing, but if the technology proves to be such that the Law Society's ability to protect the public is compromised because it cannot carry out its investigatory functions in the face of cloud computing, the idea might require serious consideration in the future. Cloud computing does not provide a safe harbor from regulatory oversight.

The three "potential solutions" needn't be viewed as mutually exclusive options. Some combination of the three might provide workable solutions. Any future consideration of these concepts would require an analysis of the operational feasibility and appropriateness of the concepts.

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Memo

The Law Society of British Columbia

14000

To Benchers

From Bill McIntosh

Date January 4, 2012

Subject **Nominations to the 2012 Finance Committee at the January 27, 2012 Benchers Meeting**

The Benchers' Governance Policies call for the nomination of two elected Benchers (at least one of whom is not a member of the Executive Committee) and one appointed Bencher to each year's Finance Committee. By tradition those nominations are confirmed at the January Benchers meeting. If more than two elected Benchers or more than one appointed Bencher put their names forward, selection of the nominees is by secret ballot at the meeting.

Note that any Bencher, elected or appointed, may nominate himself/herself or another elected Bencher (s. 5(3) of the *Legal Profession Act*). Appointed Benchers may be nominated only by other appointed Benchers (Article F-9 (b) of the Benchers' Governance Policies).

If you wish to nominate yourself or another Bencher, email Taryn Mohajeri (tmohajeri@lsbc.org) before January 27, or be prepared to present your nomination at the January 27, 2012 Benchers meeting.

The Finance Committee normally meets three or four times during the fee and budget preparation process (mid-May to mid-June), and holds quarterly investment review meetings.

University of Victoria

Development Office
PO Box 3060 STN CSC
Victoria British Columbia V8W 3R4 Canada
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Fall 2011

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

Tim,

Dear Mr. McGee,

Thank you for supporting the University of Victoria through your contributions to the *Pamela Murray, QC, Memorial Scholarship* Endowment Fund. As the new Associate Vice-President Alumni and Development, I would like to take this opportunity to thank you for your commitment to our students and for supporting the university's academic mission.

Enclosed you will find our redesigned endowment report. We hope you find this new format easier to read while still providing the necessary accountability. You will note that the principal and expendable accounts have been combined so that the focus of the new report is on the market value of the endowment fund.

UVic's endowment, valued at approximately $300 million, is the12th largest amongst Canadian universities. The endowment returned 10.0% for the fiscal year ending March 31, 2011. The 2010 calendar year return was 9.7% which was above the median of 8.9% for Canadian university endowments reported in the Canadian Association of University Business Officers (CAUBO) survey. In February 2011, after an extensive review and based on long term investment return expectations, the University of Victoria Foundation board approved a reduction of the endowment distribution rate to 4% from the previous rate of 4.5%. The continued market uncertainty is creating a challenging environment for investors and the Foundation board is closely monitoring the endowment's performance.

As part of the UVic family, you can take pride in the part you have played to encourage academic excellence and foster a bright future for our students. On behalf of our faculty, staff and students, I extend my sincere thanks for your generosity and continued commitment to the University of Victoria.

If you have any questions on the endowment fund report, please contact Maureen Olson in the Donor Relations office at 250-721-8909 or email olsonm@uvic.ca.

Sincerely,

Inayatali

Ibrahim Inayatali
Associate Vice-President Alumni and Development

Endowment Fund Report

For the period of April 1, 2010 to March 31, 2011

University of Victoria

Pamela Murray, QC, Memorial Scholarship

Prepared for: Tim McGee, President, CEO and Executive Director - The Law Society of British Columbia

Financial Summary:

Book Value[1]	
Total principal donations as of March 31, 2011 (Including Provincial Matching)	**$18,880**

Market Value[2]	
Opening market value as of April 1, 2010	**$24,095**
Investment income earned in 2010/11	**$2,049**
Donations to principal for 2010/11	**$0**
Disbursements to beneficiaries in 2010/11	**$-1,175**
Disbursements to UVic (Provincial Matching Program) in 2010/11	**$-76**
Closing market value as of March 31, 2011	**$24,893**

Disbursement Allocation:[3]	
Carry-over from previous years[a]	**$0**
Budget for disbursement for 2011/12[b]	**$1,050**
Total potential disbursement from the endowment in 2011/12	**$1,050**

Glossary of Terms:

1. **Book Value** is the dollar value of all donations and transfers that have been deposited to the endowment principal.
2. **Market Value** is the sum of the principal and expendable accounts.
3. **Disbursement Allocation** is the total amount that may be disbursed from the endowment. It consists of the following:
    a) Potential carry-over of unspent allocations from previous years.
    b) The budgeted annual disbursement to beneficiaries is based on either i) current policy guidelines or ii) the amount specified in the endowment terms of reference.

Policies and Audited Financials:

The University of Victoria Foundation oversees over 1000 endowments valued at $300 million as of March 31, 2011.
To view policies governing management of the endowments and the audited financial statements for the University of Victoria, please visit the following website:
http://web.uvic.ca/givingtouvic/endowments.php

Questions about this report?
Please contact the Faculty Development Officer or Maureen Olson, Donor Relations Officer, at 250-721-8909 or olsonm@uvic.ca.

Investing in achievement.

University of Victoria

University of Victoria
BC Canada
2011

Awarding achievement: driving passion for community education

"I want to thank donors for their wonderful support – it creates so many opportunities."

The impact of student financial awards often reaches far beyond the students they were meant to help. Just ask Steve Lonergan. A graduate student in UVic's Department of Computer Science, Steve commits much of his time to science education programs for young and old alike - with outreach programs like Aboriginal STEM (Science, Technology, Engineering and Math for Aboriginal students), Science Venture, SPARCS (solving problems with algorhythms, robots and Computer Science), the seniors computer course "Let's Talk Science" and other programs. In recognition of his enthusiasm and expertise in making computers accessible to all, Steve received both the Engineering Students' Society Stream "B" Award for Community Involvement and the Wib & Alix Cowie Travel Fund.

Through the generosity of donors, Steve was able to pursue his enthusiasm for science education and attend conferences specializing in teaching computer science to students of all ages. It was at these conferences that he started to learn how to apply his research to teaching.

As a graduate student Steve doubles as researcher and teacher, committing his time to educational work with children and running a computer science after school club. Steve is an active member in Science Venture, a highly successful and innovative program that brings science education programming to K-12 students across Vancouver Island.

Steve sees a direct link between student awards and his important educational outreach: "I want to thank donors for their wonderful support – it creates so many opportunities. Thanks to their generosity, my science education work with children in our community has been strengthened."

"I wanted to encourage students in sociology, who are interested in demography and to make it a little easier for them to take graduate work."

Scholarships drive research and discovery

Christoph Schimmele is fascinated by demography – the statistical study of the size and characteristics of human populations. Christoph is in the final year of his doctoral program at UVic, specializing in population health.

"What excites me about population health is that it involves understanding the social distribution of disease, which is related to gender, culture and political economy. I want to understand how social structure influences our health."

Thanks to scholarships, Christoph has been able to develop these research interests and focus on learning. For Christoph, receiving the Bob and Kay Lane Scholarship represents more than financial help: "It's an enduring gift of knowledge. I want to contribute to demographic knowledge in tribute to the Lane's kindness and generosity."

Christoph is just the type of student Dr. Bob Lane was thinking of when he and Kay established the scholarship in 2006.

During his career as a physician, Dr. Lane developed an interest in preventative medicine, and his involvement in public health led him to seek a better understanding of demography. Demography can tell us how the composition, growth, and transitions of population contribute to different social environments.

"I created this scholarship to encourage students in sociology, who are interested in demography, and to make it a little easier for them to pursue graduate work."

“Donors have helped me so much, and their generous example is one I want to follow.”

Philanthropic giving; supporting bright futures

Attending university is a dream-come-true for Renée Dagenais. Thinking she would rely on loans to pay for her education, she was overjoyed when she received the Black Press Business Scholarship. With the help of this financial award, Renée was able to devote time solely to her coursework; her resulting grades were so strong that she was awarded the Black Press scholarship in her second year.

“Sometimes the difference between an A and a B can determine whether or not students are admitted to their program of choice. Financial aid inspires students and allows them to focus on their academic goals.”

Renée is a bright, enthusiastic student from Campbell River, BC and one of many students in UVic’s Bachelor of Commerce program who benefit from the Black Press Business Scholarships.

David Black, founder of the highly successful Black Press Group of community newspapers, established these scholarships for students entering UVic’s Bachelor of Commerce program at the Peter B. Gustavson School of Business. Every year, 37 business students living in communities where Black Press publishes will each receive a $5000 scholarship from the initiative.

These scholarships enable students from small communities to attend the Peter B. Gustavson School of Business – a school David Black helped to establish. The Black Press Business Scholarships encourage students to travel to Victoria for their education, and take their UVic experience and training back to enrich the social and economic wellbeing of their home communities.

For Renée, giving back is foremost in her mind. After graduation, she hopes to embark on a career in finance to help others plan and achieve their own goals and aspirations. “Donors have helped me so much, and their example of generosity is one I want to follow.”

Award Types

Bursaries

The University of Victoria awards over 3.9 million dollars in Entrance, Transfer and In-Course Bursaries. Bursaries are non-repayable awards based on financial need and reasonable academic standing. These awards are for students who are receiving the maximum student loans available for their period of study and are Canadian citizens or permanent residents of Canada.

Scholarships, Medals and Prizes

In recognition of outstanding students, UVic awards more than 3 million dollars in Entrance and In-Course Scholarships each year. Scholarships are non-repayable and are awarded to students on the basis of academic merit or excellence.

Fellowships

Fellowships are merit-based awards granted to outstanding students enrolled in graduate studies. These awards enable students to concentrate on their specialty, pursue their research and maintain a high academic standing.

New Awards April 1, 2010 - March 31, 2011

Anna Isabelle Allen Scholarships
Norah and Calvin Banks Aboriginal Leadership Award in the Sciences
Bate Family Greater Victoria Sports Hall of Fame Award
Mary Dorothy Jones Bessex Bursary
Canadian Federation of University Woman Victoria Entrance Scholarship - in Honour of Bertha Wilson
CEI Scholarship in Urban Planning
Certificate of Outstanding Academic Distinction in the Faculty of Human and Social Development
Dean's Entrance Scholarship, Faculty of Law
Dr. Eliza C.H. Chan Scholarship
Ethel Clark Entrance Bursary
Crawford Family Athletic Award
Kenneth H. Crook Memorial Scholarship in Law
Richard Serle Dundas Scholarship
Joyce and Bill Dunning Bursary
Murray & Lynda Farmer Scholarship
General Undergraduate Scholarships
Eileen L. MacGregor Gordon Scholarship
David Grierson Arts Legacy Scholarship
Ted Harrison, Wingate Art Education Bursary
Charles & Ruth Haywood Memorial Bursary in English Literature
Charles & Ruth Haywood Memorial Bursary in Music
Charles & Ruth Haywood Memorial Scholarship in English Literature
Ruth Haywood Memorial Bursary in Music
Dr. Milada Horakova Scholarship
Major W. Horan Memorial Scholarship
IEEE Pacific Rim Wu-Sheng Lu Scholarship
Janes Freedman Kyle Law Corporation Prize in Indigenous Lands, Rights and Governance
James & Phillippa Kerr Scholarship in the School of Public Health
Dr. Arne H. Lane Graduate Fellowships in Marine Sciences
The Law Foundation of British Columbia Diversity Access Grants
Lawson Lundell LLP Entrance Scholarship
Lawson Lundell LLP Prize in Administrative Law Process
Lawson Lundell LLP Prize in Securities Regulations
Lawson Lundell LLP Prize in Secured Transactions
Le Grys Memorial Scholarship in Education
LE,NONET Bursary
Masters in Community Development Scholarship
Anne McLaughlin Bursary in Leadership Studies
Kyle McMillan Award
Plint Scholarships
Headmaster Jagat S. Prihar Memorial Bursary
Darlene Scott Scholarship
Henry & Marian Thiel International Business Award
Thrifty Foods Athletic Award
Uplands Golf Club Athletic Award
Vancouver Island Trails Information Society Scholarship
Victoria Foundation Entrance Scholarship
Jenny Vincent Memorial Award
Margaret Marion Williams Bursary
Clara Evelyn Wilson Scholarship
William Wowchuk Memorial Graduate Scholarship
Larry & Shari Yore Rugby Award
Jim & June Young Memorial Scholarship
Youth Protecting Youth Bursary
Dirk Yzenbrandt Astronomy Scholarship

Contact us

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THE JIBC FOUNDATION
Supporting Canada's Leader in Public Safety Education

The JIBC Foundation Awards for Justice & Public Safety

Wednesday, November 30, 2011
Hyatt Regency Vancouver

December 9, 2011

Mr. Timothy McGee
Law Society of BC
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. McGee,

Thank you very much for joining us at the JIBC Foundation's 10th Annual Awards Gala for Justice and Public Safety. It was very gratifying to have the support of so many at this sold-out event!

It was a very special evening for the JIBC Foundation. We were most pleased to recognize our outstanding award recipients for 2011:

- The Honourable Mary Ellen Turpel-Lafond
- Thomas Berger, OC, QC, OBC
- Firefighters Without Borders Canada
- Captain Trevor Greene (Retired)
- Robert Mackay
- Allan De Genova

We were so thrilled with the broad community support of the Gala. The moving tributes to our award winners showcased how everyone, in every community, responds to issues of justice and public safety. Your presence helps foster the idea of community, collaboration and partnerships. There are so many great stories to tell for all of our Honourees - we hope you were as moved by their presentations and examples of leadership as we were.

In addition, it was a very successful night of fundraising for the important ongoing training and safety initiatives of the JIBC. Through your help, over $160,000 was raised which will be used to help students from across BC begin or complete their JIBC program and pursue their life-long dream of keeping communities safe. We couldn't have done it without you!

Thank you again! We truly appreciate your ongoing support and generosity and we look forward to seeing you at in 2012. We wish all of you a joyous holiday season and a prosperous New Year!

Sincerely,

Karen Baker-MacGrotty
Gala Co-Chair

Marvin Storrow Q.C. C.ARB.

Marvin Storrow, QC
Gala Co-Chair

Lawyers Insurance Fund

Memo

To: **Benchers**
From: **Su Forbes, QC**
Date: **January 6, 2012**
Subject: **Lawyers Insurance Fund Independent Audit Report**

In June 2011, US attorneys Carter L. Hampton and William T. Bogaert performed an independent, third party audit of Lawyers Insurance Fund claims processes and files. We have now received the audit report and have provided it to the Audit Committee as required by the Executive Limitations. I attach a copy for your information.

If you have any questions about the results, please do not hesitate to call or email me.

SF\rd

Attachment

CARTER L. HAMPTON, P.C.

Attorneys at Law

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BOARD CERTIFIED
Civil Trial Law

December 1, 2011

Via First Class U.S. Mail

Mr. Tim McGee
Chief Executive Officer
The Law Society of British Columbia
845 Cambie Street
Vancouver, British Columbia
V6B 4Z9

Via First Class U.S. Mail

Ms. Rita Andreone
Audit Committee Chair
The Law Society of British Columbia
845 Cambie Street
Vancouver, British Columbia
V6B 4Z9

Re: Review of Lawyers Insurance Fund Claims Handling

Dear Mr. McGee and Ms. Andreone:

At the request of Susan Forbes, QC of the Lawyers Insurance Fund, William Bogaert and I, credentials attached as Exhibits A and B, respectively, conducted a claims practices review and claims file audit of the Lawyers Insurance Fund during the week of June 20, 2011.

The purpose of the audit was to ascertain whether the claims handling goals of resolving claims in a cost effective manner balancing the interests of the insured lawyer, the claimant and the Law Society members are being attained and to provide a written report of our opinion and observations. To that end, we reviewed the Lawyers Insurance Fund Claims Manual, all forms, reports and documents as well as the internal oversight procedures, and additionally audited one hundred and seven (107) randomly selected claim files. The files reviewed included both open and closed matters, as well as matters in suit and not in suit. The majority of files were open claims reported in policy years 1997 through 2011.

Based upon our review, we can say with certainty that the claims handling goals are institutionalized in the claims documents, procedures and files, and are almost routinely met in the day to day handling of claims. This is not to suggest that an excellent claims handling operation cannot improve. In fact, the materials we have reviewed strongly evidence the desire of Lawyers Insurance Fund management for continuous improvement and excellence, to provide even better service to its insureds and to be even more cost effective in its claims handling and resolution. Our review has led us to make further suggestions for continued improvement. These suggestions are "tweaks" and not wholesale changes and are made with the caveat that they reflect a bias based on our experience in the US commercial legal malpractice insurance market. Specifically, in the US legal malpractice insurance market, with the forces of account competition and accountability for profits, the emphasis is on early case evaluation and resolution, based upon the recognition that as a general rule the longer a case stays open the more it costs. Additionally, there are other factors such as developmental factors and incurred but not reserved factors that are present for US

commercial carriers. These conditions are not present in your claims-made, mandatory program in British Columbia. Moreover, we observed several occasions where claims or suits against lawyers were in the process of "dying on the vine" simply through the effluxion of time.

Reporting Guidelines

We began with the single-page document styled Reporting Guidelines. The Guidelines are clear, concise and informative. They request that the insured lawyer provide his or her objective response and thoughts. This, along with the other details solicited by the Guidelines, is insightful and helpful for making the necessary assessments of exposure and setting reserves and strategy in the handling of the claim. The Reporting Guidelines are very well done.

Quality Controls Measures/Large Loss Reporting Template

Next, we reviewed the Lawyers Insurance Fund Quality Controls measures as well as the Large Loss Reporting Template. The Quality Control Measures are well thought out and provide reasonable and appropriate structure and accountability to both management and excess underwriters. The checks and balances section, though daunting in its requirements, shows that it is very effective. Each large loss file we reviewed demonstrated the operating strength of the Claims Committee requirement as well as the focus obtained from review and the large loss reporting requirements. Both procedures are excellent and clearly serve the purposes intended.

Information for Defense Counsel

Information for Defense Counsel was also reviewed. This six (6) page document is articulate and informative as well as being directive. As discussed below, we did note in our review of the claim files, the very frequent gentle and professional nudging of counsel when requirements were not being met. A reminder of the importance of the matter and that all concerned are in the service of the insured lawyer as well as under the requirement to report "up the line" would not be inappropriate as an opening preamble to the professional nudge.

Procedure for Avoiding Bad Faith Losses

The review also included the Procedure for Avoiding Bad Faith Losses. The procedures are very well done both in thought and practice. It was noted in the audit that each file showed timely investigation, assessment and response. The test for good faith claims handling: is the claim being investigated and assessed in a "fair and diligent manner" was clearly met and

evidenced. It was noted on occasion that "colorful" language in a file could be misinterpreted and as such should be avoided. Our review of the files found this directive to be almost universally followed, as the files were generally devoid of harmful and gratuitous comments upon which many bad faith claims rest. Again, an outstanding procedure effecting excellent results.

Claims Manual

Our review of the Claims Manual found it to be comprehensive, frequently updated, and exhaustive, covering all aspects of claims handling; yet, it is not restrictive as it recognizes the uniqueness of each individual claim and provides flexibility to the claims counsel in the handling of the file. This creativity and flexibility provided by the Claims Manual in responding to issues which arise during the pendency of a claim was evident throughout the files we reviewed on audit.

Peer File Review Checklist

We next looked at the Peer File Review Checklist with some non-neutral assumptions. In particular, we wondered how well could a review by colleagues function and was it in place as a substitute for management's lack of time, people or both. The checklist or template is very well done and sufficiently directive to produce the necessary results. To our pleasant surprise, the actual peer reviews we read were outstanding. They were done professionally yet critically with well thought out comments and concerns. A most positive statement on behalf of a pro-active and creative Director as well as claims counsel and their abilities and desire for program excellence.

Service Evaluation and Risk Management Form

Lastly, the Service Evaluation and Risk Management Form is, succinctly put, outstanding! Excellent questions and great courage on the part of the Lawyers Insurance Fund to actively solicit negative as well as positive feedback. A review of all comments provided in the last year demonstrated the exceptional service given to insured lawyers and the high esteem of the program in the eyes of the profession. We cannot adequately express how impressed we were with this final follow-up to a claim. This should be the service industry standard that all should follow. Well done.

File Review

Lawyers Insurance Fund at the time of the physical file audit had over 2,000 open files. Ms. Forbes was able to provide four, computer-generated, random lists of files, both open and closed, from which we were able to choose. The selection was weighted toward the larger losses. We personally chose the files for review from all the lists, principally to ensure that we reviewed

the claims handling of all the claims counsel on staff. Others were selected due to events in reserving, whether at opening or over time, and also to compare reserve movement over time. Over the four days, a total of 107 physical files, both open and closed, were reviewed together with a print out of all electronically stored notes. We were also given access to the Lawyers Insurance Fund's computerized file system which permitted us to review loss and claim reserve histories.

Our thanks again for everyone's help and cooperation and the willingness on the part of claims counsel and staff to immediately stop and discuss with us answers to our questions. Our audit template was used to address the items we were requested to review and served as our notes on each file review. We reviewed each file for the analysis of coverage, the evaluation of liability and exposure, reserving, selection and oversight of outside counsel, whether repair or defense counsel, as well as claims resolution strategy and implementation. Our individual file audit review forms have been provided to Ms. Forbes and we understand she in turn provided them to claims counsel for consideration and comment.

As a general matter we found that cases were handled in compliance with the Claims Manual and other directives from Lawyers Insurance Fund management. Throughout, the files reflect the work of professional, dedicated claims counsel, who have been appropriately given a great deal of latitude through certain policies and procedures that clearly delineate where that judgment may be exercised. The files reviewed demonstrate claims counsel's exercise of sound professional judgment. We found no file that was being handled by rote or formula. From our experience, having a single manager who is trained, experienced and thoughtful enough to be creative is a huge plus to direct professional liability claims. Having a complete staff of experienced, thoughtful and innovative claims counsel operating as a cohesive group with very low turnover, is an enormous benefit to the Lawyers Insurance Fund and the members of the Bar Society.

The two areas which provided the largest number of overall excellent reviews from us were *claim repair* and *judicial relations*. It became apparent that the report that 17% of all claims were repaired is most likely an underestimate. Those files reviewed where repair was completed or in the process of being completed indicated an extreme willingness to work with all concerned to attempt to obtain positive resolution using creative talents and experience. We can fairly say that neither of us had experienced anything similar in the US legal malpractice insurance market where the expense and uncertainty cause claim repair to be viewed as "risky" and incompatible with handling claims in the most cost effective manner possible to promote profitability. Upon reflection however, the Lawyers Insurance Fund emphasis upon claim repair is directly supportive of its objectives, for when successfully implemented, claim repair fully advances the interests of the insured, the claimant and the public.

As to the British Columbia Judiciary, the files reviewed clearly indicated an awareness of the role and value of the Courts. The Lawyers Insurance Fund's concern of "balancing the interests of the public, the member and the society" has the perfect approach or overlay when dealing with the judiciary. We found that the Courts were extremely positive in their response to the Lawyers Insurance Fund and its defense counsel yet maintain a professional detachment.

In reviewing the files, we looked first to coverage. We are pleased to report that not a single file reviewed indicated that coverage was mishandled or misconstrued. Coverage issues were addressed timely and correctly with rights appropriately reserved when necessary.

Next, we looked at the intake and the initial investigation and the characterization of the claim when first reported. Though varied as a result of claims counsel's individual style each file was timely investigated as well as appropriately characterized and initial steps towards further investigation and repair or resolution were appropriate. In one area of constructive criticism, we found little uniformity in the documentation of these steps in the files.

At this juncture, we would respectfully suggest that the claim files contain a centralized, single-page note to file that summarizes all the pertinent information including but not limited to the nature of the claim, what is known, what is yet to be determined, and how and when it is to be ascertained as well as a resolution strategy. This information was present in the paper file or an electronic note, or was ascertained from our reading of the file, but our suggestion is to allow the current claims counsel a quick memory boost as well as drawing focus on past steps and the next step. Equally as important, it allows for a quick, time-saving management review as well as a method of overcoming the great disruption that can result from losing a claims counsel or upon reassignment of the file.

With respect to reserving, on the whole this was done conservatively, especially on potential large losses, sometimes with significant amounts of several hundred thousand posted at the file's inception. Reserving philosophy and guidelines from Ms. Forbes are sound and generally adhered to by claims counsel. With a self-insured scheme such as yours, there exists no motivation to under-reserve and no indication that that was being done. On occasion, reserves were not adjusted (increased or decreased) as quickly as they could be, but this was rare.

Another area which should be addressed is that not all files contain a clear expression of the resolution strategy even when the file was being handled expeditiously and appropriately. Given our background and experience with US commercial insurers, we naturally focused on whether there is an early case assessment with a plan and schedule for the resolution of the claim and then whether the claim was handled in a manner consistent with that plan. In our review the files lacked uniformity in the manner or extent of the documentation of the resolution plan, its implementation, and its follow through. However, we did not find any file that was adrift, only those with no clear indication to the reader of the compass heading. Moreover, each and every

time we had any questions regarding a case's status and progress towards resolution, we were able to receive an immediate, concise and well thought out answer. In short, the claims counsel knew the file and knew the direction. That being said, a few files could better document that direction and you may wish to consider a single document which sets out the resolution strategy and tracks the progress of same.

A related point is the use of defense counsel. Perhaps our views in this area are again a product of our experience in the US commercial legal malpractice insurance market. Generally, the files do not reflect that defense counsel are routinely or systematically requested to provide a case analysis, resolution strategy and budget for their handling of the defense at the onset of their retainer. Our experience is such that these early reports and budgets, often the product of consultation and agreement between defense counsel and claims counsel, provide an effective road map for the handling of the claim toward an agreed upon resolution objective. They also help to keep a case on track and may serve to avoid large gaps of time with no activity on the file. It may be a product of the experience of the claims staff and their substantive knowledge of the legal malpractice law that leads to the conclusion that *formal* case evaluation of the insured's potential liability and exposure and opinions regarding the cases creates unnecessary expense. We understand from Ms. Forbes that that is indeed her view, namely that requiring such activity by defense counsel would add to the expense of claims management without commensurate return. Given our observation of the solid results achieved, we cannot disagree with this assessment.

A further word on budgets. I, Carter, having worked in both private practice and in Corporate America, immediately realized the use and usefulness of budgets in business. The use of same in the private practice, however, was solely for forecasting expenses from HR to paperclips. In the southern 48 states, law firms have responded very positively to the request for the preparation of budgets to their defense work, particularly as to discovery. Those budgets as well as the report and opinion of defense counsel became an integral part of setting reserves for claims expenses and even indemnity. There were older files reviewed that indicated reserves were changed to match expenses which may have benefited from budgeting. On the other hand, we understand from Ms. Forbes that with the uniqueness of each individual file, an overall budget requirement was not found to be useful, however, budgets for specific tasks of pieces of work are requested as appropriate. This, coupled with the experience of claims counsel may well be a sufficient answer to the challenge of managing defense costs over the life of a file. We encourage claims counsel to seek budgets often and as appropriate to better estimate costs and focus both claims and defense counsel on resolution strategy.

The second item of interest was file closing. Even with a six-year statute of limitation from discovery, some files were closed and others open past the statute of limitations. The determination left to the claims attorney might be better served by a brief management agreement.

In summary, we found a very experienced, skilled, creative and motivated staff and management performing tremendously and at a high level of effectiveness. The goal of resolving claims in a cost effective manner balancing the interests of the insured lawyer, the claimant and the Law Society members is clearly being met – or exceeded – by this collegial and passionate group. Our notes are suggestions and are not meant as a criticism or a negative.

It was an honor to meet and work with everyone. Congratulations on a job well done. Thank you again for your consideration of us.

Very truly yours,

CARTER L. HAMPTON

WILLIAM BOGAERT

CLHvr
Enclosures

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
WILLIAM T. BOGAERT
PARTNER

William T. Bogaert is a Senior Partner in the Boston office of Wilson, Elser, Moskowitz, Edelman & Dicker. For almost 25 years, he has provided both coverage advice and litigation counsel to domestic and London-based insurers. The Co-Chair of the firm's National Lawyers Liability Practice Team, Bill represents lawyers and other non-medical professionals, including real estate agents, insurance agents and brokers, and miscellaneous professionals in litigation in Massachusetts and throughout New England. As a coverage lawyer Bill provides both coverage advice and liability assessments for insurers of lawyers and other professionals. Bill has been asked to provide both risk management and claim audits for both insurers and re-insurers. As a trial lawyer, he brings 25 years of trial experience to the defense of Lawyers and other Professionals in both Federal and State Courts in Massachusetts and throughout New England.

BAR ADMISSIONS

Supreme Judicial Court of Massachusetts, 1985
United States District Court of Massachusetts, 1985
First Circuit Court of Appeals, 1998
Second Circuit Court of Appeals, 2003

PROFESSIONAL MEMBERSHIPS:

American Bar Association: Litigation Section, Tort and Insurance Practice Section; Fidelity and Surety Law Committee; Insurance Coverage Litigation Committee; ABA Committee on Lawyers' Professional Liability; Defense Research and Trial Lawyers Association (DRI); Professional Liability Underwriting Society; Massachusetts Bar Association; Former Director, Massachusetts Defense Lawyers Association; Association for Conflict Resolution

EDUCATION:

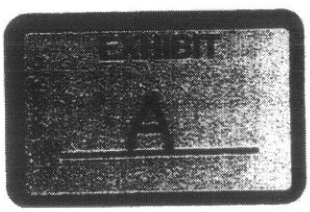
Clark University, B.A. High Honors in Government (1976)
Boston College Law School, J.D., (1985, *cum laude*)

HONORS:

Recognized as a Massachusetts and New England Super Lawyer each year from 2004 through 2010; AV rated by Martindale-Hubbel.

REPRESENTATIVE CLIENTS:

ACE Global Markets, Chicago Ins., Chubb, Interested Underwriters at Lloyd's, Lawyers Protection Plan, Inc., Liberty International Underwriters, Inc., MedMarc, OneBeacon, Zurich



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Current Experience

Current law practice devoted to National Risk Management, Malpractice and Insurance litigation as well as ADR matters. Experience working with thousands of attorneys, law firms and other professionals in 47 States, the District of Columbia, Canada and Costa Rica. .

Corporate Experience

One Beacon Professional Partners
Addison, Texas
2006 - 2008

Vice President: **Responsible for Claims, Risk Management, Marketing, Underwriting Consultant and Strategic Planning for the Lawyers Professional Liability Group in initial phases.**

Claims Highlights:

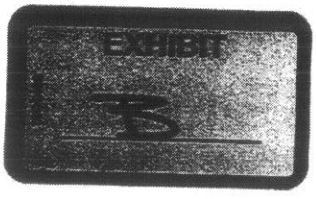
- **Architecturally designed and constructed specialty claims IT platform**
- **Established reserving philosophy and claims procedures**
- **Selected panel council**
- **Created claim reporting procedure internally**
- **Instituted claim reporting procedure with MGA's**
- **Closed over 300 claims**

Great American Insurance Company, Professional Liability Division
Richardson, Texas
1995 - 2006

Senior Vice President : **Responsible for all E&O: Underwriting, Claims, Risk Management, Customer Service, Reinsurance, Agency management and production.**

Claims Highlights:

- **Consistently maintained open claims to levels incurred at divisions beginning**
- **Authorized over $200 million in claims paid**
- **Individual claims authority of $20 million**
- **Managed outside council in 47 states and Canada**
- **Created and implemented claims procedures and system with reporting function and automatic review**
- **Responsible for over 3,700 closed claims with payment**
- **Developed National Trial Council**
- **GAIC Award of Excellence for achieving a substantial underwriting profit for policy years**
- **266% overall Divisional net premium growth from 1996 to 2005**



Judicial Experience

Elected first Court of Record Judge for the City of Bedford
Tarrant County, Texas 1993 –1995

Responsible for drug enforcement docket across multiple jurisdictions in addition to the required court duties. Retired from judicial service at the end of completed term.

Private Practice Experience

Staples, Foster and Hampton *(firm dissolved 1995)* 1980- 1995
Fort Worth, Texas

Managing Partner (1987-1995), Partner (1982-1987), Associate (1980-1982): Managed all aspects of a general civil litigation practice and firm, including the counseling of clients, jury and bench trials and mediations. Argued appeals in state and federal court. Responsible for individual caseload pending in state and federal court involving commercial, financial and public entity liability claims as well as health care, construction liability and professional malpractice litigation. Administrative oversight of all staff and associate attorneys of the firm.

Education

University of North Texas, Bachelor of Arts 1977
University of Houston, Doctorate of Jurisprudence 1979

Admissions and Certifications

Admitted to practice, State of Texas. Licensed to practice in all four Texas Federal District Courts and Fifth Circuit Court of Appeals.

Certified in Civil Trial Law, Texas Board of Legal Specialization – December 1992; Recertified in 1997, 2002 and 2007.

Memberships

American Bar Association, Texas Bar Association, Professional Liability Underwriter Society