The Law Society of British Columbia

Agenda

Benchers

Date: Friday, April 5, 2013

Time: **7:30 am** Continental breakfast
8:30 am Call to order
12:00 pm Adjourn

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

Recording: ***Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.***

Item	Topic	Time (min)	Speakers	Materials	Action
1	Consent Agenda	1	President		
	(a) Draft minutes of the regular session			pg.1100	Decision
	(b) Draft minutes of the in camera session (Benchers only)				Decision
	(c) Act and Rules Subcommittee: tariff of costs and interim suspension proceedings			pg. 1300	Decision
	(d) Rule 5-14 - stay of order			pg. 1400	Decision
	(e) Rule 9-1 - ULCs as law corporations			pg. 1500	Decision

Item	Topic	Time (min)	Speakers	Materials	Action
	(f) Rule 10-1 and others - service and notice (g) Proposed new Rule 4-20.1 – Notice to			pg. 1600 pg. 1700	Decision Decision
These consent agenda 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.					
2	Overview of Provincial Court of BC Scheduling Project	30	Honourable Associate Chief Judge Nancy Phillips		Presentation
3	Law Foundation of BC Annual Update	30	Tamara Hunter, Board Chair		Presentation
4	Report from Ethics Committee: Issues Relating to the BC Code	10	David Crossin, QC	pg. 4000	Decision
5	Strategic Plan Implementation Update	10	President & CEO		Briefing
6	Review of the Law Society's Draft 2012 Financial Statements and Year End Financial Report	30	Jan Lindsay, QC (Finance Committee Chair) / CEO & CFO	pg. 6000	Briefing and Discussion
7	President's Report	15	President		Briefing
8	CEO's Report	15	CEO	pg. 8000	Briefing

Item	Topic	Time (min)	Speakers	Materials	Action
9	Federation of Law Societies of Canada: Quebec City Conference Update	15	Mr. Vertlieb and Ms. Lindsay (in Mr. Hume's absence)		Briefing
10	Report on Outstanding Hearing & Review Reports	4	President	(*Written report to be distributed at the meeting)*	Review
11	For Information Only • *In Camera:* Minutes of the February 13, 2013 Executive Committee meeting • Search Warrants Served on Lawyers and Law Firms • Law Society Response to the White Paper on Justice Reform			pg. 11200 pg.11300	Information Information Information
12	*In camera* • Bencher concerns • Other business	30	President/CEO		Discussion/Decision

Item	Topic	Time (min)	Speakers	Materials	Action
	(f) Rule 10-1 and others - service and notice (g) Proposed new Rule 4-20.1 – Notice to			pg. 1600 pg. 1700	Decision Decision
These consent agenda 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.					
2	Overview of Provincial Court of BC Scheduling Project	30	Honourable Associate Chief Judge Nancy Phillips		Presentation
3	Law Foundation of BC Annual Update	30	Tamara Hunter, Board Chair		Presentation
4	Report from Ethics Committee: Issues Relating to the BC Code	10	David Crossin, QC	pg. 4000	Decision
5	Strategic Plan Implementation Update	10	President & CEO		Briefing
6	Review of the Law Society's Draft 2012 Financial Statements and Year End Financial Report	30	Jan Lindsay, QC (Finance Committee Chair) / CEO & CFO	pg. 6000	Briefing and Discussion
7	President's Report	15	President		Briefing
8	CEO's Report	15	CEO	pg. 8000	Briefing

Item	Topic	Time (min)	Speakers	Materials	Action
9	Federation of Law Societies of Canada: Quebec City Conference Update	15	Mr. Vertlieb and Ms. Lindsay (in Mr. Hume's absence)		Briefing
10	Report on Outstanding Hearing & Review Reports	4	President	(*Written report to be distributed at the meeting)*	Review
11	For Information Only • *In Camera:* Minutes of the February 13, 2013 Executive Committee meeting • Search Warrants Served on Lawyers and Law Firms • Law Society Response to the White Paper on Justice Reform			pg. 11200 pg.11300	Information Information Information
12	*In camera* • Bencher concerns • Other business	30	President/CEO		Discussion/Decision

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, March 01, 2013

Present:

Art Vertlieb, QC, President
Jan Lindsay, QC 1st Vice-President
Ken Walker, QC 2nd Vice-President
Rita Andreone, QC
Kathryn Berge, QC
David Crossin, QC
Lynal Doerksen
Thomas Fellhauer
Leon Getz, QC
Miriam Kresivo, QC
Bill Maclagan
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Thelma O'Grady
Lee Ongman
Vincent Orchard, QC
David Renwick, QC
Phil Riddell
Catherine Sas, QC
Herman Van Ommen, QC
Tony Wilson
Barry Zacharias
Haydn Acheson
Stacy Kuiack
Peter Lloyd, FCA
Ben Meisner
Claude Richmond

Richard Fyfe, QC, Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General

Excused: Richard Stewart, QC

Absent: Satwinder Bains
Greg Petrisor

Staff Present:

Tim McGee
Deborah Armour
Robyn Crisanti
Jeffrey Hoskins, QC
Su Forbes, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe

Guests:

Chris Axworthy, QC, Dean, Faculty of Law, Thompson Rivers University
Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC
Anne Chopra, Equity Ombudsperson
Dean Crawford, Vice-President, CBABC
Donna Greschner, Dean, Faculty of Law, University of Victoria
Jeremy Hainsworth, Reporter, Lawyers Weekly
Gavin Hume, QC, the Law Society's Representative on the Council of the Federation of Law Societies of Canada
Marc Kazimirski, President, Trial Lawyers Association of BC
Jamie Maclaren, Executive Director, Access Pro Bono
Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch
Maryann Reinhardt, BC Paralegal Association
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Rob Seto, Director of Programs, CLEBC
Rose Singh, BC Paralegal Association
Brian Wallace, QC, Life Bencher and Chair of the Bencher Election Working Group

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on January 25, 2013 were approved as circulated.

REGULAR AGENDA – for Discussion and Decision

2. Governance Committee: Interim Report and Recommendations from the Benchers Election Work Group – Next Steps

Mr. Vertlieb introduced this matter and provided background on the history and mandate of the Bencher Election Working Group (BEWG).

Ms. Lindsay briefed the Benchers as Vice-Chair of the Governance Committee. She reported that the Governance Committee considered the BEWG Interim Report in a special meeting on January 24. Ms. Lindsay summarized the report's two recommendations, noting they are set out at page 2019 of the meeting materials:

Staggered elections

43. The Law Society should conduct annual elections with the number of Benchers to be elected approximately equal to the total number of Benchers divided by the number of years in the term of office. Therefore, if the term of office remains at two years, half of the Benchers would be elected each year. If the term of office increases to three years, one-third of Benchers would be elected each year.

Term of office increased to three years

44. The term of office for all elected and appointed Benchers should be increased to three years and the term limit should be increased to allow three full terms in office. In the case of partial terms, the principle of not counting half or less of a term against the term limit should continue. That means that a Bencher or former Bencher would not be allowed to seek election or accept appointment to a term that would take the total time served as a Bencher beyond 10½ years.

Ms. Lindsay stated the Governance Committee's view that while the two recommendations meet the threshold for referral by the Benchers to the Law Society's next Annual General Meeting (AGM) as a series of resolution for discussion and decision, the subject matter is not sufficiently important or urgent to warrant the expense of a stand-alone referendum.

Mr. Vertlieb noted that the passage of any resolutions at the upcoming AGM in relation to the two BEWG recommendations would then require the Benchers to address a number of transition and implementation issues.

Ms. Linsday moved (seconded by Mr. Meisner) that the Benchers refer to the members for discussion and decision at the next Annual General Meeting resolutions calling for amendments to the Law Society Rules to provide for:

a. Staggered Bencher election dates; and

b. A three-year term for elected Benchers

In the ensuing discussion the following issues were raised:

- the membership previously rejected a proposal to increase permitted Bencher service to a maximum of 10 years
    - the proposed three terms of three years is not materially different from 10 years
- the general membership has not demonstrated appreciable sense of urgency or appetite for the issues underlying the two BEWG recommendations

- members who attend the Law Society's annual general meetings are more aware of and interested in issues like Bencher election reform than the general membership

- the current Bencher election system periodically produces large cohorts of new Benchers, triggering significant loss of knowledge and experience at the Bencher table

- the current Bencher election system has the democratic aspect of permitting the membership to express confidence (or lack thereof) in incumbent Benchers at regular intervals

- negative effects of staggered (i.e. annual) elections could include voter fatigue and perception of unduly internal focus and priorities by the Law Society and the Benchers

- the issues raised by staggering elections and extending terms of office from two to three years are less significant than the issues underlying the re-configuration of election districts

A straw poll was taken and the Chair determined that the motion lacked sufficient support to proceed.

3. Audit Committee Review of the Law Society's Key Performance Measures (2012) and Enterprise Risk Management Plan – Updated February 2013)

Mr. Lloyd briefed the Benchers as chair of the Audit Committee. He reported that in February 2013 the Committee reviewed the 2012 Key Performance Measures (KPMs) Report and the Law Society of BC Enterprise Risk Management (ERM) Plan – Updated February 2013. Both documents are now being presented to the Benchers for information (at pages 3001 and 3068 of the meeting materials, respectively).

Mr. Lloyd noted the importance of KPMs and the ERM Plan in assisting the LS to govern in the public interest.

Mr. McGee advised that the Law Society governance review conducted in 2012 revealed the importance of KPMs to the Benchers' directorship role, particularly in relation to three facets of oversight over management and operations:

- Maintaining current knowledge of key areas of the Law Society's regulatory activity and operations

- Reviewing current measurement of operational performance in those areas

- Monitoring current trends in the context of past performance and assessing the factors underlying such trends

Mr. McGee confirmed that there were a number of anomalies in the 2012 KPM results, such that not all Professional Conduct and Discipline targets were met. He noted that management's job is to investigate, analyze and propose appropriate responses to such anomalies, and that Chief Legal Officer Deborah Armour is leading that management process in this matter.

Ms. Armour briefed the Benchers, referring to her memorandum (Appendix B to the 2012 KPMs Report, at page 3065) for details. She reported that in 2012, Professional Conduct and Discipline met their KPM targets for timeliness, but not those for thoroughness, fairness and courtesy. Ms. Armour noted that 33% of all complaints were closed within 60 days, compared to 25% in 2011 and 15% in 2010: it could be inferred that the speed with which files are now closed may contribute to complainants feeling their concerns were not addressed thoroughly or fairly. She advised that while a significant proportion of reported complainant dissatisfaction generally arises from the closing of complaint files for lack of jurisdiction, that proportion was particularly high in 2012.

Ms. Armour also reported that a significant percentage of complaints closed for lack of jurisdiction relate to fee disputes. She noted that while the Law Society offers a fee mediation program, participation is voluntary and historically lawyers have shown less interest in the program than their clients. A communication package is being developed with the goal of increasing participation in the fee mediation program.

Ms. Armour advised that going forward, the Law Society will pay particular attention to all files closed for no jurisdiction to determine whether there are other ways those complainants' satisfaction can be improved. Also, 2013 KPM results will be monitored closely and compared to the current results to determine whether 2012 was an anomaly or marks the start of a trend requiring more fundamental response.

4. Report on Outstanding Hearing & Review Reports

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

5. President's Report

Mr. Vertlieb briefed the Benchers on various Law Society matters, including:

a) Laraine Kaminsky Presentation to the Benchers on January 25, 2013 (*Enhancing Diversity in BC's Legal Profession*)

Ms. Kaminsky's presentation to the Benchers following the January 25 meeting was valuable and well-attended, with about 15 Benchers and 20 other lawyers present.

b) 2012 AGM Member Resolution Follow-up: Bencher Working Group to Research Feasibility of a Reduced-Fee Class of Membership for Non-profit Lawyers (Reduced-Fee Feasibility Working Group)

The President has created a Bencher working group (the Reduced-Fee Feasibility Working Group) to consider the issues raised by the Member Resolution passed at the 2012 Annual General Meeting:

> *BE IT RESOLVED that the Law Society membership direct the Law Society to research the feasibility of creating a class of membership for non-profit lawyers with a reduced rate of practice fees, and to present to the membership within six months information about the feasibility of such a class of membership.*

The Working Group members are First Vice-President Jan Lindsay, QC (Chair), Bill Maclagan and David Mossop, QC. Staff support will be provided by Jeanette McPhee, Chief Financial Officer & Director of Trust Regulation, Lesley Small, Manager, Member Services & Credentials, and Michael Lucas, Manager, Policy & Legal Services, or another Policy & Legal Services staff lawyer.

c) Meetings with the Judiciary

Mr. Vertlieb met recently with each of the Honourable Lanch Finch, Chief Justice of BC, the Honourable Robert Bauman, Chief Justice of the BC Supreme Court, the Honourable Thomas Crabtree, Chief Judge of the BC Provincial Court, and the Honourable Mary Saunders, Justice of the BC Court of Appeal. The meetings covered various matters of mutual interest to the Courts and the Law Society, including enhancing access to legal services and enhancing the retention of women and young lawyers in BC's legal profession.

d) Reception for 2012 Queen's Counsel Recipients

On February 6 the Law Society hosted a reception for the lawyers who were honoured with the Queen's Counsel designation in 2012. The reception was well organized, well attended and much appreciated by the honourees and their families.

e) Governance Committee Update

On February 22 the Governance Committee met to address key issues identified for its follow-up in the Governance Review Task Force report approved by the Benchers in December 2012. Several more key issue meetings are being scheduled for the coming weeks.

The Governance Committee will present a detailed mid-year report at the June 15 Bencher meeting.

f) Designated Paralegal Program Update: Outreach to Paralegals and the Legal Profession

Mr. Vertlieb and Staff Lawyer Doug Munro participated in a recent information session for BC paralegals convened by the Continuing Legal Information Society of BC. More Law Society outreach to paralegals and the profession regarding the designated paralegal program and family law paralegal pilot project is planned for the coming months. Information on the program and the pilot program is available on the Law Society website.

6. CEO's Report

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

- Audit Committee Review of the Law Society's 2012 Key Performance Measures and Enterprise Risk Management
- Justice Summit Steering Committee Update
- CSAE Symposium for Chief Staff and Elected Officers
- CLE-TV Code of Conduct Course Update
- PLTC – Bencher and Life Bencher Participation

7. Lawyers Insurance Fund: 2012 Year End Report

Director of Insurance Su Forbes briefed the Benchers on the performance of the Lawyers Insurance Fund for 2012. Ms. Forbes addressed the following topics:

- Causes of claims
- Frequency of claims by areas of practice
- Severity by area of practice
- Results of reports
- Part B (defalcation) claims
- Insurance Fee Comparison
    - Annual LIF fee unchanged from 2011 at $1750
        - Eighth highest in Canada for the third largest program
- Service Evaluation and Risk Management
- Part A Service Evaluation Form Results
- Risk Management Presentations

    - 20 were done in 2012, reaching a total audience of 1,232 BC lawyers
- New on the Horizon: "My Insurance Policy: Questions and Answers"
    - Soon to be posted on the Law Society website

A question and answer session followed. Mr. Vertlieb thanked Ms. Forbes on behalf of the Benchers for her informative presentation, and for LIF's strong performance in 2012.

8. Federation of Law Societies of Canada Council Update

Gavin Hume, QC updated the Benchers as the Law Society's Federation of Law Societies of Canada Council representative on various Federation matters, including:

a. National Mobility Agreement

The Federation Council has approved in principle the National Mobility Agreement (NMA), building on various agreements providing for mobility of Quebec lawyers in other Canadian provinces.

The NMA is now before the Federation's member law societies for approval, including the Law Society, and should come before the Benchers for approval in May, following review by requisite committees. The NMA is expected to be in force later in the spring.

b. National Admission Standards

Work is continuing on implementation of the Federation's National Admission Standards, which were approved by the member societies in 2012.

c. 2013 Semi-Annual Conference in Quebec City

The Federation will hold a semi-annual conference in Quebec City on March 21 and 22, 2013. The two main themes of the conference will be "Legal Regulation in the Global Context" and "Risk Management as Seen and Implemented by a Law Society."

d. Standing Committee on the Model Code of Professional Conduct (Model Code)

Transfer provisions are out for review by the member law societies. Work is continuing on resolution of various minor anomalies in the Model Code's conflicts provisions. The Law Society has had significant input in that regard.

e. Update on Canadian National Railway (CN) v. McKercher LLP and Wallace: Supreme Court of Canada Conflicts of Interest Case

The Benchers were briefed on a recent Supreme Court of Canada hearing regarding conflict allegations made by CN against McKercher LLP, the law firm representing about 100,000 farmers in a class action against CN. The Federation and the CBA were granted leave to make submissions in support of their respective and differing conflict rules: the Federation's "bright line" rule requiring the client's consent to a lawyer taking on an unrelated matter for a party opposed in interest to that client, and the CBA's rule permitting the lawyer to take on such a matter upon concluding that there is no substantial risk that the new retainer would raise issues materially adverse to the interests of the former client.

The Court took active interest in the submissions made on behalf of the Federation and the CBA in that regard.

The Benchers considered other matters *in camera*.

WKM
2013-03-21

The Law Society of British Columbia

CEO's Report to the Benchers

March 1, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

The first two months of the year have been extremely busy ones on many fronts for all of us at the Law Society. There has been much work and progress at the Task Force and Committee levels and we have also been busy finalizing our year end financial reporting, and annual reporting under our Enterprise Risk Management Plan and our Key Performance Measures. I have set out below the items I would like to highlight for this month's meeting.

Audit Committee Review of the Law Society's 2012 Key Performance Measures and Enterprise Risk Management Plan

The Audit Committee Review of the Law Society's 2012 Key Performance Measures and Enterprise Risk Management Plan has been distributed to the Benchers as part of the meeting agenda package. The report and results were reviewed by the Audit Committee at its last meeting and Peter Lloyd, FCA, Chair of the Audit Committee, will be introducing the report to the Benchers. Management Board and I will be happy to answer any questions.

Justice Summit Steering Committee Update

The Ministry of Justice and Attorney General hosted Justice Summit has been scheduled for March 14 and 15, 2013. The Summit will begin with a BC Justice Leaders' dinner, featuring welcoming remarks by the Minister of Justice and Attorney General and a keynote address by The Honourable Mr. Justice Richard Wagner, Supreme Court of Canada. While the agenda for the working sessions on March 15 is still being finalized it will likely include discussions on a number of topics relating to the criminal justice and public safety sector including values, challenges and priorities for improvements.

Participants will be drawn from a wide variety of backgrounds, including the justice ministry, police agencies, victims' services, defense bar, municipalities, legal organizations, community service providers and members of the academic community.

CSAE Symposium for Chief Staff and Elected Officers

President Vertlieb and I will be attending the 2013 CSAE Symposium for Chief Staff and Elected Officers in Montreal, Quebec on February 24 and 25. The Symposium is the lead educational conference on best practices for ensuring a strong and productive working relationship between chief elected and chief staff officers from a wide variety of organizations. This year we will also have the opportunity to reconnect with our counterparts from Alberta, Nova Scotia and Ontario at the conference. Art and I will provide highlights of the Symposium at the March 2013 Bencher meeting.

CLE-TV Code of Conduct Course Update

I am pleased to advise that the CLE-TV BC Code of Conduct course Part II (offered jointly by the Law Society and CLEBC) was watched by an estimated 7,200 people in February 2013. CLE advises this is record attendance for any course offered by their organization. Thank you again to Gavin Hume, QC and Practice Advisors Lenore Rowntree and Barbara Buchanan for developing and leading these webcasts.

PLTC – Bencher and Life Bencher Participation

Thank you to the following Benchers and Life Bencher who took time to teach Professional Ethics at PLTC on February 14:

Art Vertlieb, QC
Leon Getz, QC
Bill MacLagan
Thelma O'Grady
Phil Riddell
Gordon Turriff QC

Timothy E. McGee
Chief Executive Officer

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: March 1, 2013
Subject: **Tariff of costs and interim suspension proceedings**

---

1. The *Legal Profession Act* amendments in 2012 changed the provisions for interim suspension of lawyers and students and for the ordering of medical examinations as part of an investigation. Previously, sections 39 and 40 governed, but section 39 was amended, section 40 was repealed and sections 26.01 and 26.02 were added to govern those proceedings.

2. The Tariff of costs for Law Society hearings and reviews (Schedule 4 to the Rules) refers only to proceedings under section 39. The discipline department has suggested that the tariff be brought into line with the new provisions.

3. This is the current item 2 in the tariff:

Item No.	**Description**	**Number of units or amount payable**
2.	Proceeding under s. 39 and Rule 4-17 and any application to rescind or vary an order under Rule 4-19, for each day of hearing	30

4. Including the new provisions and the Rules associated with each of them, including the Rules that pertain to the review or variance of the order, would make the provision very complex and difficult to read. The Subcommittee considered that referring to the sections of the *Legal Profession Act* alone would be sufficient.

5. The following are redlined and clean versions of an amended item 2 that the Subcommittee recommends that the Benchers adopt:

Item No.	Description	Number of units or amount payable
2.	Proceeding under s. 26.01, 26.02 or 39 ~~and Rule 4-17~~ and any application to rescind or vary an order under the Rules ~~4-19~~, for each day of hearing	30
2.	Proceeding under s. 26.01, 26.02 or 39 and any application to rescind or vary an order under the Rules, for each day of hearing	30

6. I attach a suggested resolution to give effect to this recommendation.

JGH
C:\Users\jeff\AppData\Roaming\OpenText\DM\Temp\LEODOCS-#36351-v1-memo_to_benchers_on_tariff_of_costs_Apr_2013.DOCX

TARIFF OF COSTS AND INTERIM SUSPENSION PROCEEDINGS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend Schedule 4 of the Law Society Rules by rescinding item 2 and substituting the following:

2.	Proceeding under s. 26.01, 26.02 or 39 and any application to rescind or vary an order under the Rules, for each day of hearing	30

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: March 3, 2013
Subject: **Stay of order on initiation of review**

---

1. The professional conduct department has identified an anomaly in the current rule under which some parties, but not all, can apply for a stay of an order that is effectively under appeal before the Benchers or, in due course, a review board.

2. Last year, the Discipline Committee initiated a review of a decision that involved an order that a respondent to a citation pay a fine and costs. The Committee thought that the case merited a suspension. The respondent was then subject to an order to pay money that could be changed or reversed on the review.

3. However, under the current Rule 5-14, only the party that initiates a review can apply to the President for a stay of an order that is the subject of the review.

4. Under the Rules, a lawyer who fails to pay a fine or costs is in breach of the rules and is susceptible to administrative suspension. In addition, Rule 2-77 requires that any money paid to the Law Society for such things as the annual practising fee or the insurance fee, be applied first to outstanding fines and costs.

5. The suggestion is that any party to a review should be able to make an application for a stay of the order under review. I attach a first draft of an amendment to Rule 5-14 to achieve that result, along with a suggested resolution. The Act and Rules Subcommittee has considered the draft amendment and recommends it to the Benchers for adoption.

JGH
E:\POLICY\JEFF\ACT&RULE\AGENDA MATERIALS\memo to ARS on stay of order Feb 2013.docx

Attachments: draft amendments

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Stay of order pending review

5-14 (1) When a review is initiated under Rule 5-13 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

(2) When the Credentials Committee initiates a review under Rule 5-13(2), an order of the hearing panel to call and admit or reinstate the applicant is stayed.

(3) ~~A person or Committee initiating~~When a review has been initiated under Rule 5-13, any party to the review may apply to the President for a stay of any order not referred to in subrule (1) or (2).

(4) On an application under subrule (3), the President may designate another Bencher to make a determination.

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Stay of order pending review

5-14 (1) When a review is initiated under Rule 5-13 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

(2) When the Credentials Committee initiates a review under Rule 5-13(2), an order of the hearing panel to call and admit or reinstate the applicant is stayed.

(3) When a review has been initiated under Rule 5-13, any party to the review may apply to the President for a stay of any order not referred to in subrule (1) or (2).

(4) On an application under subrule (3), the President may designate another Bencher to make a determination.

STAY OF ORDER

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 5-14(3) and substituting the following:

(3) When a review has been initiated under Rule 5-13, any party to the review may apply to the President for a stay of any order not referred to in subrule (1) or (2).

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: February 28, 2013
Subject: **ULCs as law corporations**

---

1. In December 2012 the Benchers approved a recommendation of the Executive Committee to allow unlimited liability companies (ULCs) to be law corporations under the *Legal Profession Act*.

2. I attach the report of the Executive Committee, the relevant extract from the minutes of the Benchers meeting, a draft amendment to Rule 9-1 that would allow ULCs to act as law corporations under the Law Society Rules and a suggested resolution to effect the change.

3. The current rule prohibits the use of a name that does not conform to the rules and the BC *Code of Professional Conduct*. It is stated in the negative, listing things that the corporate name must not do.

4. The rule does not prohibit the use of a name that does not include the phrase "law corporation" because that is mandated in the *Legal Profession Act* and therefore not necessary. Section 83 requires the Executive Director to issue a law corporation permit if satisfied that, among other things, "the name of the corporation includes the words 'law corporation'. In order to include other phrases that would allow the corporation to obtain a law corporation permit (i.e., law ULC and "law unlimited liability company"), it was necessary to list "law corporation" as a required phrase.

5. To avoid the awkwardness and inelegance of a double negative, I have recast the provision as a positive requirement that the corporation use a unique name and comply with the marketing rules in the BC Code, along with a requirement that its name include one of the required phrases.

6. The Act and Rules Subcommittee has considered this proposed amendment and recommends it to the Benchers for adoption.

JGH
E:\POLICY\JEFF\RULES\Memo to Benchers on ULC April 2013.docx

Attachments: report to Benchers
minute extract
draft rule amendment
suggested resolution

Memo

The Law Society of British Columbia

To The Benchers

From The Executive Committee

Date November 13, 2012

Subject **Request for an Alternative Law Corporation Name Format: ULCs**

Summary

The Executive Committee has considered the attached Memorandum from Mr. Cooke and refers the issue of enabling the naming and registration of a law ULC, as a functional equivalent to a law corporation, to the Benchers for decision.

Background and Discussion

Please see the attached memorandum to the Executive Committee.

Recommendation

The Executive Committee recommends that the Act & Rules Subcommittee be directed to draft a rule or rule amendment enabling the Executive Director to issue law corporation permits to companies registered as ULCs and named, in accordance with the *Business Corporations Act*, without including the word "corporation" in the corporate name. More specifically, the Executive Committee recommends that in the case of proposed law ULCs that are deemed by the Executive Director to be acceptable for registration, the words "Law ULC" be included in the corporate name in place of the words "law corporation," as the latter is contemplated in section 82(1)(b) of the *Legal Profession Act*.

LC/al

Attachments.

The Law Society of British Columbia

Memo

To: Executive Committee
From: Lance Cooke
Date: October 7, 2012
Subject: Request for an Alternative Law Corporation Name Format: ULCs

Executive Summary

The Law Society has received requests from two member lawyers, who are also U.S. citizens or U.S. "green card" holders, that they be allowed to convert their law corporations to unlimited liability corporations ("ULCs") pursuant to the *Business Corporations Act* (the "BCA") and to rename them accordingly, as required by the Registrar of Companies. Consistent with its usual practice, the Registry has required that the lawyers receive the Law Society's consent to the to the proposed name change. An example of the proposed name format would be: "Jane Smith Professional Law ULC;" as opposed to the usual format: "Jane Smith Professional Law Corporation."

The proposed form of name for the ULCs raises an issue for the Law Society because the *Legal Profession Act* (the "LPA") and the Law Society Rules ("the "Rules"), taken together, appear to require that the words "law corporation" be included in the name of any law corporation. The Law Society has not previously permitted registration of a law corporation unless the words "law corporation" were included in the corporate name. However, the requirements of the BCA and the Registrar of Companies do not permit the word "corporation" to be included in the name of a ULC in addition to the designation of the abbreviation "ULC" or the words "unlimited liability company." At the same time, either "ULC" or "unlimited liability company" must appear in the name of any ULC in order to satisfy the Registrar. It appears, quite apart from any more substantive reason as to whether law corporations ought to be allowed in the form of ULCs, the possibility of a "law ULC" is precluded from the outset by the conflicting naming requirements. Consequently, the request for consent to register law ULCs amounts to a request for a rule change that would enable the Law Society to issue such consent.

The issue for the Executive Committee is whether to direct the Act & Rules Subcommittee to prepare a rule or rule amendment for approval by the Benchers, which would authorize the Executive Director to issue law corporation permits to entities incorporated as unlimited liability

companies ("ULCs") and named in accordance with the requirements of the Registrar of Companies and the *Business Corporations Act* ("BCA").

The stated motivation behind the members' request for the ULC name format is that, as a consequence of U.S. tax law, B.C. lawyers who happen to be U.S. citizens or holders of U.S. green cards are disadvantaged by a duplication of a portion of their tax liability. Specifically, it appears that U.S. tax law does not allow a credit for the Canadian corporate tax liability applicable to law corporations. Instead, unless the corporation is a ULC, the U.S. tax regime treats the earnings of the law corporation as personal income in the hands of the lawyer. Because the Canadian corporate income tax is paid by the law corporation, and not by the lawyer personally, there is no recognition that the corporate tax paid in Canada ought to reduce the lawyer's personal U.S. tax liability. As a result, there is a potential for B.C. lawyers who happen to be U.S. citizens to face a disproportionately higher income tax liability as compared to B.C. lawyers who are not U.S. citizens or green card holders.

Background

The Law Society has received requests from two members that they be allowed to convert their law corporations, pursuant to the *Business Corporations Act* ("BCA") to *unlimited liability corporations* (also known as "ULCs"). In accordance with the BCA corporate name requirements for ULCs, and in light of the requirement that law corporations be registered with and certified by the Law Society, the requesting lawyers applied, using the Law Society's standard "Certificate Respecting Corporate Name" forms (the "Name Forms"), proposing that their ULCs be issued names in the format: "[lawyer's name or initials] Professional Law ULC".

Initially Members Services staff drew the requesting lawyers' attention to a notation on the Name Forms, which reads as follows:

> Please note that:
>
> 1. Section 82(1)(b) of the *Legal Profession Act* requires that a law corporation's name include the words "law corporation;"
>
> 2. ....

While the Law Society's practice has always been to require applicant law corporations to include the words "law corporation" in the corporate name, the relevant statutory provision actually describes the circumstances under which the Executive Director ***must*** issue a law corporation permit. It reads as follows:

> ***Law corporation permit***
>
> 82 (1) The executive director must issue a permit to a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act

or that is an extraprovincial company as defined in that Act, if the executive director is satisfied that

(a) ...,

(b) the name of the corporation includes the words "law corporation",

...

Further, section 83(1) of the Legal Profession Act (the "LPA") sets out the rule-making authority of the Benchers with respect to the names of law corporations as follows:

Law corporation rules

83 (1) The benchers may make rules as follows:

...

(d) respecting names and the approval of names including the types of names by which the following may be known, be incorporated or practise law:

(i) a law corporation;

...

(h) any other rules the benchers consider necessary or advisable for the purposes of this Part.

...

[2012-16-44]

As regards the statutory requirements on the naming of ULCs, the applicable provision is BCA section 51.21, as follows:

51.21 (1) An unlimited liability company

(a) must have the words "Unlimited Liability Company" or the abbreviation "ULC" as part of and at the end of its name, and

(b) must not have any of the words or abbreviations referred to in section 23 (1) as part of its name.

(2) For all purposes, the words "Unlimited Liability Company" are interchangeable with the abbreviation "ULC".

(3) A person must not use in British Columbia any name of which "Unlimited Liability Company", "Unlimited Liability Corporation" or "ULC" is a part unless the person is

(a) an unlimited liability company,

(b) a foreign unlimited liability corporation, or

(c) a prescribed person.

(4) An unlimited liability company recognized under this Act has as its name, on its recognition,

(a) the name shown for the company on the application filed to effect the recognition of the company if

(i) that name has been reserved for the company, and

(ii) that reservation remains in effect at the date of the recognition of the company, or

(b) in any other case, the name created by adding "B.C. Unlimited Liability Company" after the incorporation number of the company.

The restriction in section 51.21(b), precludes the inclusion of any of the words or abbreviations described in section 23(1), as follows:

23 (1) Subject to section 51.21 (1), a company must have the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." as part of and at the end of its name.

To clarify, whereas a limited company must include a selection from the section 23(1) list in its corporate name, a ULC must not have any word or abbreviation from the same list in its corporate name.

Leaving naming requirements and ULC status disclosure requirements aside, the defining substantive characteristic of ULCs is the shareholders' liability component as set out in BCA section 51.3 as follows (subsection (1) only in text; full provision attached):

Liability of shareholders of unlimited liability companies

51.3 (1) Subject to subsection (2), shareholders and former shareholders of an unlimited liability company are jointly and severally liable as follows:

(a) if the company liquidates, the shareholders and former shareholders are jointly and severally liable, from the commencement of the company's liquidation to its dissolution, to contribute to the

assets of the company for the payment of the unlimited liability company's debts and liabilities;

(b) whether or not the company liquidates, the shareholders and former shareholders are jointly and severally liable, after the company's dissolution, for payment to the company's creditors of the unlimited liability company's debts and liabilities.

Discussion and Analysis

The creation of ULCs represents an expansion or extension of potential shareholder liability compared to the relative protection from shareholder liability afforded by limited companies. Pursuant to the BCA, the abbreviation "ULC" stands for "unlimited liability company." The significance of this denotation is that the shareholders of a ULC are jointly and severally liable to satisfy any surviving debts and liabilities otherwise unpaid upon the dissolution of the ULC. In this respect, a "law ULC" should offer no less protection to potential creditors, claimants or clients of the practicing lawyer than would a standard law corporation. Apart from the fact that the proposed corporate vehicles would be incorporated as ULCs, and would be named accordingly, the requesting lawyers are not proposing that their "law ULCs" should be excused from any of the Law Society's usual requirements for law corporations. Moreover, a review of the BCA discloses suggestion that a law ULC would offer any advantage over a standard law corporation for its incorporating lawyer, except for the motivation based on U.S. tax law.

In summary, the motivation behind the members' request for the ULC name format is that, as a consequence of U.S. tax law, B.C. lawyers who happen to be U.S. citizens or holders of U.S. green cards are disadvantaged by a duplication of a portion of their tax liability. Specifically, it appears that U.S. tax law does not allow a credit for the Canadian corporate tax liability applicable to our standard law corporations. Instead, unless the law corporation is a ULC, the U.S. tax regime treats the earnings of the law corporation as personal income in the hands of the lawyer. Because Canadian corporate income tax is paid by the law corporation, and not by the lawyer personally, there is no recognition in U.S. tax law that the corporate tax paid in Canada ought to reduce the lawyer's personal U.S. tax liability. As a result, there is a potential for B.C. lawyers who happen to be U.S. citizens to face a disproportionately higher income tax liability as compared to B.C. lawyers who are not U.S. citizens or green card holders.

It may be that there would be no potential risk of disadvantage for prospective clients or creditors of law ULCs as compared with clients or creditors of law corporations. Provided that the same regulatory restrictions and requirements apply equally to both law ULCs and law corporations, it may be that, aside from the motivating tax consequences, the difference between the proposed "law ULC" and a "law corporation" would be a difference in name only. However, even a difference in name would be a departure from the Law Society's standard practice of certifying only law corporations that include the words "law corporation" in the corporate name. Perhaps

more importantly, it would be a departure from the only potentially applicable corporate naming convention specifically mentioned in the *Legal Profession Act* ("LPA").

An important aspect of the requirement that the words "law corporation" appear in a corporate name is ease of recognition. Any company with the words "law corporation" will be a law corporation. Any company wishing to use the words "law corporation" would be directed to the Law Society for consent, which the Society may withhold if the enterprise is not really a law corporation. The inclusion requirement makes some sense from the point of view of identifying all law corporations with an exclusive marker. Arguably it reduces the potential for confusion based on name alone. Generally, the public can count on law corporations to be corporate vehicles offering legal services and advice. The Law Society, on the other hand, can recognize any unauthorized use of the words "law corporation" in the name of an entity to be a signal of potential unauthorized practice.

However, the value of simple name recognition, both for the Law Society as regulatory authority and for the public as potential clients, probably does not hinge on there being only one kind of name for law corporations. In other words, the addition of a second allowable name category to enable the creation of law ULCs would be unlikely to lead to problematic confusion, provided that some care were taken in creating the new flexibility. For members of the public, whose understanding of the names may be a *prima facie* one, it seems unlikely that the designation "law corporation" is significantly more informative than "law ULC" would be.

Section 82(1) of the LPA addresses the issuance of law corporation permits. In particular, section 82(1) indicates that if certain conditions are met then the Executive Director "must issue a permit." One of the preconditions to the *required* issuance of a permit, designated in subsection 82(1)(b), involves the Executive Director being satisfied that "the name of the corporation includes the words 'law corporation'." Thus, although the LPA does not expressly prohibit the issuance of a law corporation permit where the proposed name does not include "law corporation," it does expressly contemplate that the Executive Director may be *required* to issue a permit where "law corporation" is included in the corporate name.

While the inclusion of "law corporation" in the corporate name is contemplated in section 82(1) of the LPA, section 83(1) appears to provide the necessary flexibility to accommodate alternate forms of corporate names, by declaring that the Benchers may make rules "respecting names and the approval of names including the types of names by which … [a law corporation] may be known, be incorporated or practise law." Thus, reading sections 82 and 83 together, it would seem that the Executive Director could issue a law corporation permit for a ULC under the form of name proposed and approved by the Registrar of Companies, if the Benchers were to make a rule authorizing such issuance. And it appears that the Benchers have the authority to make such a rule if they deem it appropriate to do so. Conversely, given the Benchers' authority in this area, it might be inappropriate for the Executive Director to issue a law corporation permit for a ULC in absence of an authorizing rule.

The only other provincial jurisdictions whose business corporations' legislation creates the possibility of ULCs are Alberta and Nova Scotia. ULCs are a relatively recent development on the Canadian corporate landscape. As far as the writer is aware, there is not yet any track record of law ULCs in the other jurisdictions. However, a review of their requirements for law corporations reveals that in each case there are no obvious sticking points, akin to our naming requirements, that would *automatically* preclude lawyers from adopting the law ULC format for their law corporations.

Consultations

When considering a potential change to allow the registration of law ULCs, it is important to consider any implications for the provision of professional liability insurance to the lawyers who might use ULCs. As a preliminary consultation, the general concept of law ULCs has been suggested to the Law Society's Director of Insurance. Her first impression of the concept is that the introduction of law ULCs may not pose any insuperable difficulties from the insurance perspective. Providing adequate coverage for Law ULCs may require some changes to the language of the insurance policy. There would be some time and work needed to ensure that such coverage as would be required would have the correct scope and application. However, similar work was undertaken and completed successfully with the introduction of limited liability partnerships ("LLPs"), the use of which is now widespread.

Similar consultation with the Law Society's Unauthorized Practice Counsel has addressed the issue of whether the introduction of law ULCs may hold foreseeable problematic implications for the Law Society's obligation to protect the public from the unauthorized practice of law. It is the view of Counsel that there would be no additional complications in the unauthorized practice arena consequent on a decision to allow lawyers to use law ULCs as a form of corporate vehicle.

Options

The options suggested for the Executive Committee, upon considering the discussion set out in this memorandum, are as follows:

1. Direct the Act & Rules Subcommittee to prepare a draft Rule enabling the naming of law ULCs in compliance with the naming requirements of the BCA, for presentation to the Benchers;

2. Remit the issue of law ULCs and acceptable naming back to staff, with directions for further research or analysis by staff or for the purpose of obtaining an outside legal opinion;

3. Decline the request of the member lawyers seeking to establish law ULCs.

Analysis of Options

The issue for the Executive Committee is whether to direct the Act & Rules Subcommittee to prepare a rule or rule amendment for approval by the Benchers, which would authorize the Executive Director to issue law corporation permits to entities incorporated as unlimited liability companies and named in accordance with the requirements of the Registrar of Companies and the *Business Corporations Act*.

If the Executive Committee is of the view that the suggested rule change to accommodate the creation and registration of law ULCs has sufficient merit to warrant the attention of the Benchers, then it may be appropriate to direct the Act & Rules Subcommittee to prepare a draft Rule enabling the naming of law ULCs in compliance with the naming requirements of the BCA.

If the Executive Committee has specific concerns or questions that could be addressed with further research or analysis, it may prefer to remit the present matter back to staff with instructions and revisit the question after further work-up by staff or after an outside legal opinion can be obtained.

Alternatively, if the Executive Committee is not prepared to issue directions to the Act & Rules Subcommittee and is not of the view that the issue requires additional work-up by staff, it may prefer to direct the Executive Director to refuse the alternate name format requests received from the members who raised this issue with the Law Society.

Recommendations

This Memorandum has not attempted to present a persuasive case for a particular option. As the possibility of ULCs is a recent development it was not taken into account when the LPA provisions were created, nor would it have been addressed when the corresponding rules were prepared. The option of ULCs is now a reality under the BCA. Provided that other regulatory requirements for law corporations (apart from their naming but including applicable restrictions on corporate structure and ownership) are extended to ULCs, it may be that there is no public interest reason not to allow lawyers the option of practicing through a law ULC. Although in a relatively small way, the expansion of corporate vehicle options for lawyers may be viewed as consistent with a more open legal services marketplace and as preferring acceptably accredited competition to the alternative of entrenched exclusivity.

Liability of shareholders of unlimited liability companies

51.3 (1) Subject to subsection (2), shareholders and former shareholders of an unlimited liability company are jointly and severally liable as follows:

(a) if the company liquidates, the shareholders and former shareholders are jointly and severally liable, from the commencement of the company's liquidation to its dissolution, to contribute to the assets of the company for the payment of the unlimited liability company's debts and liabilities;

(b) whether or not the company liquidates, the shareholders and former shareholders are jointly and severally liable, after the company's dissolution, for payment to the company's creditors of the unlimited liability company's debts and liabilities.

(2) A former shareholder of an unlimited liability company is not liable under subsection (1) unless it appears to the court that the shareholders of the unlimited liability company are unable to satisfy the debts and liabilities referred to in subsection (1), and, even in that case, is not liable under subsection (1)

(a) in respect of any debt or liability of the unlimited liability company that arose after the former shareholder ceased to be a shareholder of the unlimited liability company,

(b) in a liquidation of the company, if the former shareholder ceased to be a shareholder of the unlimited liability company one year or more before the commencement of liquidation, or

(c) on or after a dissolution of the company effected without liquidation, if the former shareholder ceased to be a shareholder of the unlimited liability company one year or more before the date of dissolution.

(3) The liability under subsections (1) and (2) of a shareholder or former shareholder of an unlimited liability company continues even though the unlimited liability company transforms, and, in that event,

(a) a reference in subsections (1) and (2) to

(i) "shareholder" is deemed to be a reference to a person who was a shareholder of the unlimited liability company at the time it transformed, and

(ii) "former shareholder" is deemed to be a reference to a person who ceased to be a shareholder of the unlimited liability company before it transformed, and

(b) a reference in subsection (1) (a) or (b) or (2) (b) or (c) to "the company" is deemed to be a reference to the successor corporation.

(4) In subsection (3) and this subsection:

"successor corporation", in relation to an unlimited liability company, means any corporation that results from the company, or any of its successor corporations, transforming;

"transform", in relation to an unlimited liability company or any of its successor corporations, means to

(a) alter its notice of articles to become a limited company,

(b) continue into another jurisdiction, or

(c) amalgamate with another corporation.

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, December 07, 2012

Present:		
	Bruce LeRose, QC, President	Greg Petrisor
	Art Vertlieb, QC, 1st Vice-President	David Renwick, QC
	Jan Lindsay, QC 2nd Vice-President	Phil Riddell
	Rita Andreone, QC	Catherine Sas, QC
	Kathryn Berge, QC	Richard Stewart, QC
	David Crossin, QC	Herman Van Ommen
	Thomas Fellhauer	Ken Walker
	Leon Getz, QC	Tony Wilson
	Miriam Kresivo, QC	Barry Zacharias
	Bill Maclagan	Haydn Acheson
	Nancy Merrill	Satwinder Bains
	Maria Morellato, QC	Stacy Kuiack
	David Mossop, QC	Peter Lloyd, FCA
	Thelma O'Grady	Ben Meisner
	Lee Ongman	Claude Richmond
Absent:	Vincent Orchard, QC	
Staff Present:	Tim McGee	Jeanette McPhee
	Deborah Armour	Doug Munro
	Robyn Crisanti	Alan Treleaven
	Jeffrey Hoskins, QC	Michael Lucas
	Bill McIntosh	Jack Olsen
	Ben Hadaway	Lance Cooke

17. Law Corporation Name Format: Unlimited Liability Companies ("UCLs")

Mr. LeRose briefed the Benchers, noting the Executive Committee's unanimous support for the recommendations set out in the Committee's memorandum to the Benchers at page 17000:

> The Executive Committee recommends that the Act & Rules Subcommittee be directed to draft a rule or rule amendment enabling the Executive Director to issue law corporation permits to companies registered as ULCs and named, in accordance with the

Business Corporations Act, without including the word "corporation" in the corporate name. More specifically, the Executive Committee recommends that in the case of proposed law ULCs that are deemed by the Executive Director to be acceptable for registration, the words "Law ULC" be included in the corporate name in place of the words "law corporation," as the latter is contemplated in section 82(1)(b) of the *Legal Profession Act*.

Ms. Andreone moved (seconded by Mr. Van Ommen) that the Benchers adopt the recommendations of the Executive Committee, as set out in the Committee's memorandum to the Benchers at page 17000.

The motion was carried.

WKM
2012-12-29

LAW SOCIETY RULES

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name

9-1 A law corporation must ~~not~~ use a name

(a) under which ~~another~~ no other corporation holds a valid law corporation permit under this Division,

(b) that does not so nearly ~~resembles~~ resemble the name of another corporation holding a valid law corporation permit under this Division that it is likely to confuse or mislead the public, ~~or~~

(c) ~~contrary to~~that complies with the *Code of Professional Conduct*, section 4.2 *[Marketing]*, and

(d) that includes one of the following phrases:

(i) "law corporation";

(ii) "law ULC";

(iii) "law unlimited liability company".

LAW SOCIETY RULES

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name

9-1 A law corporation must use a name

(a) under which no other corporation holds a valid law corporation permit under this Division,

(b) that does not so nearly resemble the name of another corporation holding a valid law corporation permit under this Division that it is likely to confuse or mislead the public,

(c) that complies with the *Code of Professional Conduct*, rule 4.2 *[Marketing]*, and

(d) that includes one of the following phrases:

(i) "law corporation";

(ii) "law ULC";

(iii) "law unlimited liability company".

ULCs AS LAW CORPORATIONS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 9-1 and substituting the following:

9-1 A law corporation must use a name

(a) under which no other corporation holds a valid law corporation permit under this Division,

(b) that does not so nearly resemble the name of another corporation holding a valid law corporation permit under this Division that it is likely to confuse or mislead the public,

(c) that complies with the *Code of Professional Conduct*, section 4.2 *[Marketing]*, and

(d) that includes one of the following phrases:

(i) "law corporation";

(ii) "law ULC";

(iii) "law unlimited liability company".

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: March 3, 2013
Subject: **Service of documents -- Rule 10-1 and others**

---

1. The Act and Rules Subcommittee recommends changes to the Rules to make the means of serving documents and notifying persons of Law Society proceedings more consistent and to make available more practical alternatives for ensuring that individuals are notified.

2. We have recently experienced difficulty in serving documents in accordance with Rule 10-1. That rule provides two alternatives to personal service: registered mail and email.

3. This is the Rule:

Service and notice

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally or by

(a) sending it by registered mail or electronic mail to his or her last known address, or

(b) serving it as directed by the Supreme Court.

(1.1) In subrule (1), **"last known address"** includes an address given to discipline counsel for delivery of documents relating to a citation.

(2) A document may be served on the Society or on the Benchers by

(a) leaving it at or mailing it by registered mail to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(3) A document served by registered mail is deemed to be served 7 days after it is mailed.

(4) A complainant or other person may be notified of any matter by ordinary mail to the person's last known address.

4. The Law Society Rules require service of few documents: notice of credentials hearing, notice of adjudication of a claim for unclaimed money, notice of a citation, notice of proceeding to consider summary suspension or disbarment. The rule on notice of a discipline hearing does not require service, but that is generally done to ensure that receipt of the notice can be proved if required.

5. Historically, registered mail has been used to effect service where personal service is either not available or too expensive. However, of late Canada Post has not proved as reliable as it once was. Several times in the last year, Canada Post has lost track of Law Society registered mail. Ms. Robertson has spoken to the recipient in some cases to confirm receipt of the document. In two cases, Canada Post has conducted an investigation, which takes about a month. Both times the result was an apology because the registered item had been lost.

6. Email was added to Rule 10-1 some time ago as an alternative means of serving documents. It is not used alone because of the difficulty of proving that an email message is received by the intended party, or at all. Nevertheless, it can be a useful tool to reach someone, and sometimes the recipient will respond to the message, which makes proof that it was received a lot easier.

7. The Subcommittee also recommends that the option of delivering documents by electronic facsimile (fax) also be recognized in the Rules.

8. Very much of business communications today is done by means of couriers. They are apparently more reliable than Canada Post registered mail at the moment. It is also standard to obtain proof of delivery documents from most courier services.

9. The Rules of both the Law Society of Alberta and the Law Society of Upper Canada allow for service of documents by use of a courier service.

10. This is Rule 4 of the Rules of the Law Society of Alberta as last amended in 2002:

Service of Documents

4 (1) Where a notice or other document is to be served, given or furnished pursuant to a provision of these Rules by a delivery under section 114(b) of the Act, the notice or other document may be delivered by

(a) a Bencher or an officer or employee of the Society,

(b) any person engaged for the purposes by, or acting at the request of, a committee, a Bencher or an officer or employee of the Society,

(c) registered mail,

(d) courier,

(e) by fax to the fax number provided by the intended recipient to the Law Society where;

(i) the Rules require delivery by mail, or

(ii) in any other case, where the intended recipient has, explicitly or implicitly, authorized the Law Society to use that form of communication.

(2) Unless the contrary is proved, any information sent by registered mail or by courier to the address specified in section 114(b) of the Act, or by fax to the most recent fax number provided by the intended recipient to the Law Society, shall be presumed to be delivered

(a) 7 days from the date of mailing, couriering or faxing if the document is sent to an address or number in Alberta; and

(b) 14 days from the date of mailing, couriering or faxing if the document is sent to an address or number in Canada, outside Alberta.

11. Rule 10 *[Service of Documents]* of the Law Society of Upper Canada's is four pages long, but this is the relevant part:

Manner of service: all other documents

(2) A document other than an originating process may be served,

(a) by personal service or by an alternative to personal service,

(b) by sending a copy of the document by courier to the last known address of the person or the person's representative;

(c) by faxing a copy of the document to the last known fax number of the person or the person's representative, but if the person being served is a party, service under this clause is only effective if the recipient consents to the faxing prior thereto; or

(d) by e-mailing a copy of the document to the last known e-mail address of the person or the person's representative, but service under this clause is only effective,

(i) if the person being served is a party, if the recipient consents to the e- mailing prior thereto, and

(ii) if the recipient provides by e-mail an acceptance of service and the date of the acceptance.

12. Discipline staff suggest that delivery by courier be added to the means by which service may be effected under Rule 10-1.

13. The Ontario rule provides for service of documents on a person's "representative". The Act and Rules Subcommittee preferred to refer specifically to counsel, but also wanted allow for the possibility of a personal representative.

14. Rule 4-15 *[Notice of citation]* and Rule 4-41 *[Notice]*, which deals with notice of a proceeding to consider summary suspension or disbarment, set out their own rules for service of notice. The provisions are very close to those in Rule 10-1, which the Subcommittee considers makes them redundant. The Subcommittee recommends removing the substantive provisions in favour of references to Rule 10-1.

15. Also in Rule 4-15 is a process for substitutional service to be ordered by the President or designate. Rule 10-1 only refers to obtaining instructions from the Supreme Court. For consistency, the Subcommittee recommends removing the procedure from Rule 4-15 and inserting it in Rule 10-1 in place of the Supreme Court application. It would then be applicable in all cases where service is required. There have been few is any cases where an application has been made to the Supreme Court for instructions for substitutional service. That would seldom be practical. In any case, it is doubtful that the Benchers have the authority to give the SC jurisdiction in the Rules.

16. I attach a draft of amendments and a suggested resolution to give effect to the suggestions in this memo. The Act and Rules Subcommittee recommends the changes to the Benchers for adoption.

JGH
E:\POLICY\JEFF\RULES\memo to ARS on service of documents.docx

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Notice to applicant

2-61 (2) The Executive Director must serve the notice referred to in subrule (1)

(a) in accordance with Rule 10-1, and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

PART 3 – PROTECTION OF THE PUBLIC

Division 8 – Unclaimed Trust Money

Adjudication of claims

3-84 (4) The Executive Director must serve the notice referred to in subrule (3) in accordance with Rule 10-1.

PART 4 – DISCIPLINE

Notice of citation

4-15 ~~(1)~~ The Executive Director ~~A citation~~ must ~~be~~ serve~~d~~ a citation on the respondent

(a) ~~personally, or by mailing it by registered mail to the respondent's last known address~~in accordance with Rule 10-1, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

(2) [rescinded]~~If it is impractical for any reason to serve a citation as set out in subrule (1)(a), the President may order substituted service, whether or not there is evidence that the citation will probably reach the respondent or will probably come to the respondent's attention or that the respondent is evading service.~~

(3) [rescinded]~~The President may designate another Bencher to act under subrule (2)~~.

LAW SOCIETY RULES

Notice

4-41 (1) Before the Benchers proceed under Rule 4-40, the Executive Director must notify the lawyer or former lawyer in writing that

(a) proceedings will be taken under that Rule, and

(b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.

(2) The notice referred to in subrule (1) ~~may~~ must be served ~~by mailing it by registered mail to the last known address of the lawyer or former lawyer~~in accordance with Rule 10-1.

(3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

PART 10 – GENERAL

Service and notice

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally or by

~~(a)~~ sending it ~~by~~

(a) registered mail, ordinary mail or courier to his or her last known business or residential address,

(b) electronic facsimile to his or her last known electronic facsimile number, ~~or~~

(c) electronic mail to his or her last known electronic mail address, or

(d) by any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation~~, or~~.

~~(b) serving it as directed by the Supreme Court.~~

(1.1) ~~In subrule (1), **"last known address"** includes an address given to discipline counsel for delivery of documents relating to a citation.~~[rescinded]

(1.2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

LAW SOCIETY RULES

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(1.3) The President may designate another Bencher to make a determination under subrule (1.2).

(2) A document may be served on the Society or on the Benchers by

(a) leaving it at or ~~mailing~~ sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(3) A document ~~served~~ sent by registered mail or courier is deemed to be served 7 days after it is ~~mailed~~sent.

(4) ~~A complainant or other~~Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Notice to applicant

2-61 (2) The Executive Director must serve the notice referred to in subrule (1)

(a) in accordance with Rule 10-1, and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

PART 3 – PROTECTION OF THE PUBLIC

Division 8 – Unclaimed Trust Money

Adjudication of claims

3-84 (4) The Executive Director must serve the notice referred to in subrule (3) in accordance with Rule 10-1.

PART 4 – DISCIPLINE

Notice of citation

4-15 The Executive Director must serve a citation on the respondent

(a) in accordance with Rule 10-1, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

(2) [rescinded]

(3) [rescinded].

Notice

4-41 (1) Before the Benchers proceed under Rule 4-40, the Executive Director must notify the lawyer or former lawyer in writing that

(a) proceedings will be taken under that Rule, and

LAW SOCIETY RULES

(b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.

(2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1.

(3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

PART 10 – GENERAL

Service and notice

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally or by sending it by

(a) registered mail, ordinary mail or courier to his or her last known business or residential address,

(b) electronic facsimile to his or her last known electronic facsimile number,

(c) electronic mail to his or her last known electronic mail address, or

(d) by any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

(1.1) [rescinded]

(1.2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(1.3) The President may designate another Bencher to make a determination under subrule (1.2).

(2) A document may be served on the Society or on the Benchers by

(a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(3) A document sent by registered mail or courier is deemed to be served 7 days after it is sent.

(4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

SERVICE OF DOCUMENTS

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 4-15 and substituting the following:

Notice of citation

4-15 The Executive Director must serve a citation on the respondent

(a) in accordance with Rule 10-1, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

2. By rescinding Rule 4-41(2) and substituting the following:

(2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1.

3. By rescinding Rule 10-1 and substituting the following:

Service and notice

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally or by sending it by

(a) registered mail, ordinary mail or courier to his or her last known business or residential address,

(b) electronic facsimile to his or her last known electronic facsimile number,

(c) electronic mail to his or her last known electronic mail address, or

(d) by any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

(1.2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(1.3) The President may designate another Bencher to make a determination under subrule (1.2).

(2) A document may be served on the Society or on the Benchers by

(a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(3) A document sent by registered mail or courier is deemed to be served 7 days after it is sent.

(4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: March 4, 2013
Subject: **Notice to admit—proposed Rule 4-20.1**

---

1. Attached is a memo from the discipline department suggesting a procedure for a party to a citation (either the respondent or the Law Society) to require the other party to respond to a notice to admit specified facts. As the memo explains, this procedure is intended to improve the timeliness of discipline hearings by encouraging early consideration of admissions and agreed statements of fact.

2. Also attached are similar provisions from the Rules of the Law Society of Upper Canada and the BC Supreme Court civil rules.

3. The Act and Rules Subcommittee has considered the suggestion and recommends the attached draft rule amendments based in part on the LSUC and BC civil rules. There is a suggested resolution also attached, which is intended to give effect to the proposal.

JGH
C:\Users\jeff\AppData\Roaming\OpenText\DM\Temp\LEODOCS-#36569-v1-memo_to_benchers_on_notice_to_admit_Apr_2013.DOCX

Attachments: memo
LSUC hearing rules, Rule 20 [Admissions]
Supreme Court Civil Rules, Rule 7-7 [Admissions]
draft rules
suggested resolution

The Law Society of British Columbia

Memo

To: Benchers

From: Maureen Boyd, Manager, Discipline

Date: March 5, 2013

Subject: **Proposal to adopt a Notice to Admit Procedure in Part 4 of the Law Society Rules (Discipline citation hearings)**

Introduction:

The purpose of this memo is to provide background information to the proposal to amend Part 4 of the Law Society Rules to include a notice to admit.

Policy Reasons to Adopt a Notice to Admit Procedure

The primary reason for adopting a notice to admit procedure is to expedite the citation hearing process as well as to prepare the matter for an orderly and efficient hearing.

The National Discipline Standards Pilot Project requires that:

- 75% of hearings commence within six months of service of the citation, and
- 90% of hearings commence within 12 months of service of the citation.

The Law Society currently does not meet the first standard. It is anticipated that a notice to admit procedure will assist in meeting these NDS targets by reducing the time required to prepare a matter for hearing. The Notice to Admit process is only one part of the changes that are being made or will be made to improve performance on the NDS targets.

At present, an agreed statement of fact is reached in approximately 65- 75% of cases, although in some cases where an ASF is reached, *viva voce* evidence is still heard by the panel on those particular matters where no agreement was reached. There is significant value to narrowing the matters in dispute and proceeding on the basis of written admissions of fact, which include:

- witnesses are not required to attend to give evidence (many witnesses are reluctant to attend, in part because of the loss of income for those who are self-employed – which includes most lawyers and notaries);

- as fewer witnesses are required, it is not as difficult to find available dates for a hearing (the requirement to set the hearing when all witnesses are available to attend may delay the hearing);
- the length of the hearing is shortened, which reduces the cost for both parties and minimizes the amount of time required of the volunteer adjudicators;
- the panel is not required to make as many determinations of fact in order to reach a decision;
- the respondent is less likely to seek a review or appeal of the outcome or to be successful on such a review or appeal, as he or she has admitted facts or acknowledged misconduct.

However, the ASF process can result in significant delay, because respondents or their counsel often do not provide a response to discipline counsel on the draft ASF, often for weeks or sometimes months. At present, discipline counsel have no effective way to "engage" a respondent in the process of reaching an agreed statement of facts, other than through the involvement of a chambers bencher in a pre-hearing conference. The chambers bencher also has no effective tool of any "consequence" for the failure or refusal by a respondent to make reasonable admissions of fact or authenticity of documents. The primary tools available to the chambers bencher are to set timelines for a response and to warn the respondent that the costs of the hearing will be higher. As a result, it often takes weeks to months to reach an agreed statement of facts, even with the involvement of a chambers bencher. Sometimes, witnesses are left "on hold" throughout this process, which may cause them stress or require them to hold open a block of time for a hearing that they may not need to attend.

A notice to admit procedure would require the respondent to become "engaged" to consider admissions earlier in the process by:

- requiring a detailed written response within 21 days, and
- expressly permitting a panel to consider any failure or refusal to admit a fact or document proved at the hearing when determining the amount of costs payable.

It is hoped that this process will reduce the overall length of time required to bring a matter to an orderly and efficient hearing. The Law Society of Upper Canada has a notice to admit process, which we understand has been effective in narrowing issues earlier in the process.

Further, where a respondent fails to respond to a notice to admit, he or she is deemed to have admitted those matters in the Notice to Admit. If the respondent does not attend the hearing, the panel may proceed on the basis of the deemed admissions and attached documents, which significantly shortens the time required to prove an uncontested citation. A respondent may apply to withdraw the deemed admission.

bencher. Sometimes, witnesses are left "on hold" throughout this process, which may cause them stress or require them to hold open a block of time for a hearing that they may not need to attend.

A notice to admit procedure would force the respondent to become "engaged" to consider admissions earlier in the process and, it is hoped, reduce the overall length of time required to bring a matter to an orderly and efficient hearing. We understand that the experience in Ontario has been positive, and that after a notice to admit is delivered and a response obtained, an agreed statement of facts is often reached relatively quickly.

The reduction of time to commence the hearing is an important goal in light of the National Discipline Standards Pilot Project, which sets a standard that 75% of hearings commence within six months of service of the citation, and 90% commence within one year of service. This Pilot Project commenced in early 2012 for a two year period, and has underscored that we need more effective tools to move citations to hearing.

A secondary reason for adopting this procedure is that in the few cases in which the respondent would not respond to a notice to admit (and would be unlikely to attend the hearing), it may be possible for a decision to be made based on the notice to admit and the deemed admission that results from the lack of a response.

Further Information

Please let me know if you require further information or would like to discuss this request further.

Attachments

1. Rule 20 of the Law Society of Upper Canada Rules
2. Rule 7-7 of the Supreme Court Civil Rules

RULE 20

ADMISSIONS

Interpretation

20.01 In this Rule, "authenticity" includes the fact that,

(a) a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been;

(b) a document that is said to be a copy is a true copy of the original; and

(c) where the document is a copy of a letter, telegram or telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed.

Request to admit fact or document

20.02 (1) In a proceeding, a party may, at any time but not later than thirty days before the hearing on the merits of the proceeding, request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.

Form of request to admit

(2) A request to admit shall be in Form 20A.

Service of request to admit

(3) A party making a request to admit to another party shall serve on that other party,

(a) the request to admit; and

(b) a copy of any document mentioned in the request to admit, unless a copy is already in the possession of that other party.

Response to request to admit

20.03 (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to the request to admit.

Form and content of response

(2) A response to a request to admit shall be in Form 20B and shall,

(a) admit the truth of a fact or the authenticity of a document mentioned in the

request to admit;

(b) specifically deny the truth of a fact or the authenticity of a document mentioned in the request to admit; or

(c) refuse to admit the truth of a fact or the authenticity of a document mentioned in the request to admit and set out the reason for the refusal.

Effect of request to admit

Deemed admission where no response

20.04 (1) Where a party on whom a request to admit is served fails to serve a response as required by subrule 20.03 (1), the party shall be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Deemed admission where insufficient response

(2) Subject to subrule (3), where a party on whom a request to admit is served serves a response as required by subrule 20.03 (1) but does not comply with subrule 20.03 (2) in respect of a fact or a document mentioned in the request to admit, the party shall be deemed, for the purposes of the proceeding only, to admit the truth of that fact or the authenticity of that document.

Deemed admission where non-attendance at or non-participation in hearing

(3) Where a party on whom a request to admit is served does not attend at or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party shall be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Costs on denial or refusal to admit

20.05 Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at a hearing in the proceeding, the Hearing Panel may take the denial or refusal into account in exercising its discretion respecting costs under section 49.28 of the *Law Society Act* and rule 25.01.

Withdrawal of admission

20.06 (1) On the motion of a party who admits or is deemed to admit the truth of a fact or the authenticity of a document, an order may be made withdrawing the admission.

Time for bringing motion

(2) A motion under this rule shall be made,

(a) prior to the hearing on the merits of the proceeding; or

(b) at any time, with leave of the Hearing Panel.

RULE 7-7 – ADMISSIONS

Notice to admit

(1) In an action in which a response to civil claim has been filed, a party of record may, by service of a notice to admit in Form 26, request any party of record to admit, for the purposes of the action only, the truth of a fact or the authenticity of a document specified in the notice.

Effect of notice to admit

(2) Unless the court otherwise orders, the truth of a fact or the authenticity of a document specified in a notice to admit is deemed to be admitted, for the purposes of the action only, unless, within 14 days after service of the notice to admit, the party receiving the notice to admit serves on the party serving the notice to admit a written statement that

(a) specifically denies the truth of the fact or the authenticity of the document,

(b) sets out in detail the reasons why the party cannot make the admission, or

(c) states that the refusal to admit the truth of the fact or the authenticity of the document is made on the grounds of privilege or irrelevancy or that the request is otherwise improper, and sets out in detail the reasons for the refusal.

Copy of document to be attached

(3) Unless the court otherwise orders or the demanding party and the responding party consent, a copy of a document specified in a notice to admit must be attached to the notice to admit when it is served.

Unreasonable refusal to admit

(4) If a responding party unreasonably denies or refuses to admit the truth of a fact or the authenticity of a document specified in a notice to admit, the court may order the party to pay the costs of proving the truth of the fact or the authenticity of the document and may award as a penalty additional costs, or deprive a party of costs, as the court considers appropriate.

Withdrawal of admission

(5) A party is not entitled to withdraw

(a) an admission made in response to a notice to admit,

(b) a deemed admission under subrule (2), or

(c) an admission made in a pleading, petition or response to petition

except by consent or with leave of the court.

Application for order on admissions

(6) An application for judgment or any other application may be made to the court using as evidence

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Notice to admit

4-20.1 (1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

(b) include a complete description of the fact the truth of which is to be admitted or attach a copy of the document the authenticity of which is to be admitted.

(3) A request may be made under subrule (1) by a party that has made a previous request under that subrule.

(4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-26.1 *[Preliminary questions]* or 4-27 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this Rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this Rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-9 *[Costs of hearings]*.

(9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this Rule may withdraw the admission with the consent of the other party or with leave granted on an application

(a) before the hearing has begun, under Rule 4-26.1 *[Preliminary questions]* or 4-27 *[Pre-hearing conference]*, or

(b) after the hearing has begun, to the hearing panel.

Summary hearing

4-24.1 (3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by

(a) affidavit, ~~or~~

(b) an agreed statement of facts~~.~~, or

(c) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*.

Preliminary procedures

4-30 (3) Despite subrule (1), before the hearing begins, the panel may receive and consider

(a) the citation, ~~and~~

(b) an agreed statement of facts, and

(c) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*.

PART 5 – HEARINGS AND APPEALS

Procedure

5-5 (6) The hearing panel may accept any of the following as evidence:

(b.1) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*;

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Notice to admit

4-20.1 (1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

(b) include a complete description of the fact the truth of which is to be admitted or attach a copy of the document the authenticity of which is to be admitted.

(3) A request may be made under subrule (1) by a party that has made a previous request under that subrule.

(4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-26.1 *[Preliminary questions]* or 4-27 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this Rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

LAW SOCIETY RULES

(8) If a party does not admit the truth of a fact or the authenticity of a document under this Rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-9 *[Costs of hearings]*.

(9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this Rule may withdraw the admission with the consent of the other party or with leave granted on an application

(a) before the hearing has begun, under Rule 4-26.1 *[Preliminary questions]* or 4-27 *[Pre-hearing conference]*, or

(b) after the hearing has begun, to the hearing panel.

Summary hearing

4-24.1 (3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*.

Preliminary procedures

4-30 (3) Despite subrule (1), before the hearing begins, the panel may receive and consider

(a) the citation,

(b) an agreed statement of facts, and

(c) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*.

PART 5 – HEARINGS AND APPEALS

Procedure

5-5 (6) The hearing panel may accept any of the following as evidence:

(b.1) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*;

NOTICE TO ADMIT

SUGGESTED RESOLUTION:

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

1. By adding the following Rule:

Notice to admit

4-20.1(1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

(b) include a complete description of the fact the truth of which is to be admitted or attach a copy of the document the authenticity of which is to be admitted.

(3) A request may be made under subrule (1) by a party that has made a previous request under that subrule.

(4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-26.1 *[Preliminary questions]* or 4-27 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this Rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this Rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-9 *[Costs of hearings]*.

(9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this Rule may withdraw the admission with the consent of the other party or with leave granted on an application

(a) before the hearing has begun, under Rule 4-26.1 *[Preliminary questions]* or 4-27 *[Pre-hearing conference]*, or

(b) after the hearing has begun, to the hearing panel.

2. By rescinding Rule 4-24.1(3) and substituting the following:

(3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*.

3. By rescinding Rule 4-30(3) and substituting the following:

(3) Despite subrule (1), before the hearing begins, the panel may receive and consider

(a) the citation,

(b) an agreed statement of facts, and

(c) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*.

4. By adding the following paragraph to Rule 5-5(6):

(b.1) an admission made or deemed to be made under Rule 4-20.1 *[Notice to admit]*;

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Code of Professional Conduct for British Columbia (The "BC Code"):

March 19, 2013

Purpose of Report: **Recommendation for Changes to BC Code**

Prepared by: **Ethics Committee**

Code of Professional Conduct for British Columbia: Recommendations to Benchers

TABLE OF CONTENTS PAGE

The Law Society of British Columbia

Memo

To: Benchers

From: Ethics Committee

Date: **March 19, 2013**

Subject: **Recommendation for Changes to BC Code**

Since January 1, 2013, as lawyers have begun to use the Code to resolve professional conduct issues, we have received a number of representations from lawyers about BC Code rules or about rules in the former *Professional Conduct Handbook* that have not been carried over into the BC Code. We expect the number of issues we will bring to you will diminish over time but, as with the *Professional Conduct Handbook* when it became effective in 1993, we will over the next year or two have a disproportionate number of matters where we will recommend changes in the Code to you. Those changes will be of two kinds:

1. Changes made to the Model Code of Professional Conduct by the Federation of Law Societies, and

2. Other changes where we are of the view that we should not await consideration of an issue by the Federation, but should change our own Code and consider whether to recommend to the Federation Standing Committee on the Model Code that a similar change be made to the Model Code.

This discussion paper identifies four issues where we believe changes to the Code of Professional Conduct for British Columbia ("the BC Code) are desirable, and where we should not wait for the Federation to consider whether it is appropriate to change the Model Code to incorporate them.

A. BC Code rule 3.2-7: Dishonesty of Client

BC Code rule 3.2-7 states:

> **3.2-7** When acting for a client, a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

The concern with respect to this rule is that it requires that the lawyer be acting for a client. If the lawyer's improper behaviour does not occur in the context of a lawyer-client relationship the lawyer's conduct may not be contrary to this rule. Such behaviour could involve assisting in a Ponzi scheme or some other investment scam that does not involve acting for a client. By contrast, the old rule in the *Professional Conduct Handbook*, Chapter 4, Rule 6 stated:

> A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

In *LSUC v. Dmello*, [2012]LSDD No. 69, a discipline panel considered the Law Society of Upper Canada prohibition similar to the current language of rule 3.2-7. The lawyer sought to strike out an allegation, and the Law Society sought to amend it to include a reference to commentary. It was common ground that the Law Society could not prove the rule was breached, because the conduct (failing to be on guard against becoming the tool or dupe of unscrupulous persons) did not occur in the context of a solicitor-client relationship, which was a requirement on the face of the rule. The lawyer was successful in having the allegation struck.

While it is likely that a lawyer who engages in improper behaviour that does not involve a client may be found guilty of conduct unbecoming, we think it is better that the specific rule prohibiting dishonesty, crime or fraud should apply to any conduct of a lawyer, whether that conduct takes place in the context of a lawyer-client relationship or outside of it.

We recommend the rule be amended in accordance with the attached draft.

B. Rule 6.1-4: Associating with person whose character and fitness are in question

Rule 6.1-4 provides:

> **6.1-4** Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction, has been disbarred and struck off the Rolls, suspended, undertaken not to practise or who has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

Rule 6.1-4 is similar to the former Chapter 13, Rule 5 of the *Professional Conduct Handbook*, save that it omits three additional circumstances that require lawyers to obtain approval from the Law Society before associating with a person who is subject to the conditions set out in the rule. Those conditions are that the person in question (the numbering is taken from Rule 5):

> (c.1) failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,
>
> (d) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articled student, call and admission or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or
>
> (e) was required to withdraw or was expelled from a Bar admission program.

The circumstances addressed in items (c.1) and (e) are likely to occur only rarely. However, it is not unusual for the Law Society to rely on rule (d) in requiring consent to the employment of a person described in that rule. We recommend that items rule 3.5-7 be expanded to include items (c.1), (d) and (e) as in the attached draft.

C. Rule 3.6-2: Contingent Fees and Contingent Fee Agreements

Rule 3.6-2 states:

> **3.6-2** Subject to rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

Commentary

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The lawyer and client may agree that, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer, which may require judicial approval under the governing legislation. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee, in all of the circumstances, is fair and reasonable.

[2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

The second sentence in paragraph 1 of the Commentary is incorrect. The *Legal Profession Act* prevents a lawyer from receiving a contingent fee and an award of costs. S. 67 (2) states:

> **67 (2)** A contingent fee agreement must not provide that a lawyer is entitled to receive both a fee based on a proportion of the amount recovered and any portion of an amount awarded as costs in a proceeding or paid as costs in the settlement of a proceeding or an anticipated proceeding.

We recommend the deletion of the second and third sentences of rule 3.6-2, commentary [1] in accordance with the attached draft.

D. Chapter 11, Rule 12 of the *Professional Conduct Handbook*

Rule 12 of the *Professional Conduct Handbook* formerly provided:

12. A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

This rule does not have an equivalent in the *Model Code*, and was not carried forward into the *BC Code*. In the past, lawyers have been disciplined for not adhering to the rule. Most recently, a lawyer was the subject of a conduct review for its violation.

Arguably, rule 2.1-4 of the canons requires the same conduct, but it is much less express. It states:

> **2.1-4 To other lawyers**
>
> (a) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers that cause delay and promote unseemly wrangling.
>
> (b) A lawyer should neither give nor request an undertaking that cannot be fulfilled and should fulfill every undertaking given. A lawyer should never communicate upon or attempt to negotiate or compromise a matter directly with any party who the lawyer knows is represented therein by another lawyer, except through or with the consent of that other lawyer.
>
> (c) A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests that do not prejudice the rights of the client or the interests of justice.

Rule 7.2-1 addresses the same issue of courtesy as rule 2.1-4 of the canons. It provides:

> **Courtesy and good faith**
>
> **7.2-1** A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.
>
> **Commentary**
>
> **[1]** The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.
>
> **[2]** Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.
>
> **[3]** A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and

represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

We are of the view that it would be desirable to add language similar to the former Rule 12 as commentary to rule 7. We recommend that you do so in the attached redraft of rule 7.2-1.

E. Rule 3.6-3: Statement of Account

Rule 3.6-3 of the BC Code states:

3. 6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

[1] The two main categories of charges on a statement of account are fees and disbursements. A lawyer may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a lawyer wishes to separately itemize charges such as paralegal, word processing or computer costs that are not disbursements, provided that the client has agreed, in writing, to such costs.

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

The commentary to rule 3.6-3 originated in Alberta where it has been part of their Code of Conduct for 22 years. The commentary is contained in versions of the Model Code adopted by Alberta, Saskatchewan and Nova Scotia. The Law Society of Upper Canada has yet to make a decision whether to include the commentary in its version of the Model Code, which LSUC has not yet been adopted.

Although we consulted with the profession about the proposed BC Code generally, including rule 3.6-3, we did not draw lawyers' attention specifically to the rule and commentary, nor were any representations made about it to us concerning it during the consultation process. Since the BC Code came into effect on January 1, 2013, however, we and the practice advisors have received a large number of inquires and comments from lawyers about rule 3.6-3, commentary [1]. The major points lawyers make about commentary [1] are the following:

(a) Although the Commentary properly distinguishes between true third party disbursements and other charges which could contain a profit component, the Commentary goes too far in requiring the "other charges" to necessarily be included in the fees component of a lawyer's account.

(b) The Commentary requirement that the client agree in writing to the "other charges" is onerous and unnecessary.

(c) There is no general view among clients that lawyers are hiding charges by not billing in the manner required by the Commentary.

(d) Lawyers, legal accounting software developers and bookkeepers have not had sufficient time to update, distribute and install their software and change their billing practices in order to accommodate the commentary billing requirements.

(e) The changes required by the Commentary will be further complicated by PST charges when those come into effect on April 1, 2013.

(f) The recoverability of charges in Bill of Costs taxations before the Registrar that are not payments to third parties, in particular photocopying costs and on-line legal research, has been raised.

We are of the view that a lawyer's duty of candour requires that the lawyer expressly advise the client about any unusual charges and that the commentary is consistent with that approach. However, in view of the concerns expressed by the profession, we believe that a consultation with the profession concerning rule 3.6-3, commentary [1] and a rethinking of commentary [1] by us and by you would be useful and appropriate.

Recommendations

We recommend that you:

(1) rescind commentary [1] from the BC Code in accordance with the attached draft, pending a consultation by us with the profession concerning its terms.

(2) ask us to review commentary [1] in the light of the consultation and recommend to you whether its terms should be restored in its current form, restored in a modified form or permanently eliminated.

Attachments:

- Redraft of rules 3.2-7, 3.6-2, 3.6-3, 6.1-4, and 7.2-1.

CODE OF PROFESSIONAL CONDUCT

Chapter 3 – Relationship to Clients

3.2 Quality of service

Dishonesty, fraud by client

3.2-7 A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

CODE OF PROFESSIONAL CONDUCT

Chapter 3 – Relationship to Clients

3.2 Quality of service

Dishonesty, fraud by client

3.2-7 ~~When acting for a client, a~~A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

CODE OF PROFESSIONAL CONDUCT

Contingent fees and contingent fee agreements

3.6-2 Subject to rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

Commentary

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The test is whether the fee, in all of the circumstances, is fair and reasonable.

[2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

CODE OF PROFESSIONAL CONDUCT

Contingent fees and contingent fee agreements

3.6-2 Subject to rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

Commentary

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. ~~The lawyer and client may agree that, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer, which may require judicial approval under the governing legislation. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate.~~ The test is whether the fee, in all of the circumstances, is fair and reasonable.

[2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

CODE OF PROFESSIONAL CONDUCT

Chapter 3 – Relationship to Clients

Statement of Account

3.6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

[1] rescinded

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

CODE OF PROFESSIONAL CONDUCT

Chapter 3 – Relationship to Clients

Statement of Account

3.6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

~~**[1]** The two main categories of charges on a statement of account are fees and disbursements. A lawyer may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a lawyer wishes to separately itemize charges such as paralegal, word processing or computer costs that are not disbursements, provided that the client has agreed, in writing, to such costs.~~

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

CODE OF PROFESSIONAL CONDUCT

Chapter 6 - Relationship to Students, Employees, and Others

Suspended or disbarred lawyers

6.1-4 Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,

(a) has been disbarred and struck off the Rolls,

(b) is suspended,

(c) has undertaken not to practise,

(d) has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

(e) has failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,

(f) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articled student, call and admission, or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or

(g) was required to withdraw or was expelled from a Bar admission program.

CODE OF PROFESSIONAL CONDUCT

Chapter 6 - Relationship to Students, Employees, and Others

Suspended or disbarred lawyers

6.1-4 Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,

(a) has been disbarred and struck off the Rolls,

(b) is suspended,

(c) has undertaken not to practise, ~~or who~~

(d) has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

(e) has failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,

(f) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articled student, call and admission, or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or

(g) was required to withdraw or was expelled from a Bar admission program.

CODE OF PROFESSIONAL CONDUCT

7.2 Responsibility to lawyers and others

Courtesy and good faith

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

[5] A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

CODE OF PROFESSIONAL CONDUCT

7.2 Responsibility to lawyers and others

Courtesy and good faith

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

[5] A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

CODE OF PROFESSIONAL CONDUCT FOR BC

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Code of Professional Conduct as follows:

1. By rescinding rule 3.2-7 and substituting the following

Dishonesty, fraud by client

3.2-7 A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

2. In rule 3.6-2, by rescinding paragraph [1] of the Commentary and substituting the following:

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The test is whether the fee, in all of the circumstances, is fair and reasonable.

3. In rule 3.6-3, by rescinding paragraph [1] of the Commentary.

4. By rescinding rule 6.1-4 and substituting the following:

Suspended or disbarred lawyers

6.1-4 Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,

(a) has been disbarred and struck off the Rolls,

(b) is suspended,

(c) has undertaken not to practise,

(d) has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

(e) has failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,

(f) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articled student, call and admission, or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or

(g) was required to withdraw or was expelled from a Bar admission program.

5. In rule 7.2-1, by adding the following paragraph to the Commentary:

[5] A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

REQUIRES MAJORITY OF BENCHERS VOTING

The Law Society of British Columbia

Year End Financial Report

December 31, 2012

Prepared for: Bencher Meeting – April 5, 2013

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

CFO Financial Report – For the Year Ended December 31, 2012

Attached are the **draft** financial results and highlights for the year ended December 31, 2012. The final 2012 financial statements will be finalized during the upcoming audit in March/April and approved at the May Audit Committee meeting.

General Fund

General Fund (excluding capital funding and TAF)

Overview

The 2012 General Fund operations finished the year with a positive budget variance of $415,000 (approximately 2% of the operating expense budget), due to lower staff compensation costs, external professional fees, and hearing panel costs. These savings were partially offset by unbudgeted Bencher approved expenses, and lower lease revenues due to lease vacancies. Additional details are set out below.

Revenue

Revenue was $18,949,000, a positive budget variance of $93,000 (0.5%), due to:

- Electronic filing revenues, a positive variance of $104,000 with increased land title transactions due to mandatory filing
- PLTC revenues, a positive variance of $42,000 with 410 students
- Membership revenue below budget $37,000, with practicing membership at 10,746, compared to a budget of 10,787
- Interest income below budget $87,000 due to lower than expected interest rates

Expenses

Operating expenses were $18,869,000, a positive budget variance of $848,000 (4.3%).

There were operating expense savings relating to:

- Staff compensation costs were below budget $498,000, related to additional staff vacancy and other compensation savings of $248,000, mainly due to deferring filling vacant forensic accounting positions, and $250,000 in savings related to the deferred implementation of the new recognition/rewards program to 2013
- External professional fees in regulation and forensic accounting were below budget by $342,000. With the continued implementation of the regulatory plan, and the focus to close complaint files over the past two years, fewer complaint files were sent out to external counsel over the year. In addition, as there was

only one new forensic accounting file in the year, external forensic accounting fees were below budget.
- Hearing panel costs were below budget by $105,000 due to lower travel and training costs
- Other administrative costs were below budget $131,000, with savings in travel, training and contractors

Offsetting these savings were $300,000 in additional costs relating to expenses approved by the Benchers after the 2012 budget was set, which were partially offset by the Bencher contingency budget of $75,000.

- Governance review - $124,000
- CBA REAL initiative - $75,000
- Privacy review - $48,000
- Federation of Law Societies contribution - $36,000
- Sponsorship of the CBA Canadian Legal Conference - $20,000

845 Cambie – net results

The building results were below budget by $526,000 due to lower lease revenues. The Benchers agreed to forgive $49,000 in rent for CLE, and the 835 building was vacant during the year as a major tenant moved out.

Access Pro Bono Society is leasing one-third of the 845 third floor and we have a confirmed lease in place beginning July 1st for the second floor of 835 Cambie. Our agent continues to actively market the 835 third floor.

Net Assets

The General Fund net asset balance (before capital allocation) is $6.0 million at December 31, 2012, which equates to 3 months of operating expenses.

Also included in the net assets is $2.4 million in capital funding for planned and on-going capital projects. These projects relate to the 845 building (replacing the fire alarm, the emergency generator, the 845 parking elevator and the 835 passenger elevator) and workspace improvements for Law Society operations.

TAF-related Revenue and Expenses

TAF results were below budget, with a negative budget variance of $167,000 for the year. TAF revenue was $2.16 million, $342,000 below budget due to a reduction in Trust Administration Fees (TAF). As a large part of the TAF revenue comes from the real estate unit sales, the number of TAF transactions has been impacted by the downturn in the real estate market. Operating expense savings of $174,000 partially offset the revenue shortfall.

The TAF deficit of $167,000 was applied to the TAF reserve, which is now $72,000 at December 31, 2012.

We will continue to monitor the TAF revenue and will be discussing the TAF fee level with the Finance Committee as the year progresses and the Benchers set the 2014 fees. With current levels of TAF revenue, the TAF fee will need to be increased to cover the costs of the Trust Assurance program.

Special Compensation Fund

There was little activity in the Special Compensation Fund during the year as the fund is winding down. A large recovery of $515,000 was expected and received. The remaining outstanding claims have been determined by the Special Compensation Fund committee and accrued in 2012, and will be paid out in 2013.

The Special Compensation Fund net assets are $1,226,000 at December 31, 2012. After the claims and any remaining operating expenses are paid out, the balance of the net assets of the Special Compensation Fund will be transferred to the Lawyers Insurance Fund reserve.

Lawyers Insurance Fund

LIF assessment revenue was $13,666,000, $64,000 (0.5%) ahead of budget. Operating expenses (excluding the claims provision) were $6,031,000, $559,000 (8.5%) below budget. The expense savings are a result of staff vacancies, lower professional fees and lower defalcation insurance costs.

The provision for claims liability is $51.0 million at year end, just below the 2011 provision of $52.9 million.

Although the investment markets were volatile throughout the year, the investment returns were 9.4%, well above the benchmark of 7.2%.

The LIF net assets are $49.9 million at December 31, 2012, which includes $17.5 million internally restricted for Part B claims, leaving $32.4 million in unrestricted net assets.

The Law Society of British Columbia

DRAFT

Summary of Financial Highlights - Dec 2012
($000's)

2012 General Fund Results - YTD Dec 2012 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	15,502	15,513	(11)	-0.1%
PLTC and enrolment fees	1,044	1,002	42	4.2%
Electronic filing revenue	854	750	104	13.9%
Interest income	258	345	(87)	-25.2%
Other revenue	1,291	1,246	45	3.6%
	18,949	18,856	93	0.5%
Expenses before 845 Cambie (excl. dep'n)	18,869	19,717	848	4.3%
	80	(861)	941	
845 Cambie St. - net results (excl. dep'n)	426	952	(526)	-55.3%
	506	91	415	

2012 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

Practice Fee Revenue	**Avg # of Members**
2008 Actual	10,035
2009 Actual	10,213
2010 Actual	10,368
2011 Actual	10,564
2012 Budget	10,787
2012 Actual	**10,746**

	Actual Variance
Revenue	
Membership Revenue - 41 members less than budget	(37)
PLTC - 10 students more than budget of 400	42
Electronic Filing	104
Interest Income	(87)
Miscellaneous	71
	93
Expenses	
Professional Services - external fees	342
Staff Compensation	498
Hearing Panel - travel & training	105
Governance Review consulting fees*	(124)
CBA REAL Initiative contribution*	(75)
Privacy Review consulting fees*	(48)
FLS Contribution - rate increase *	(36)
Exec Comm - CBA Canadian legal conference sponsorship contribution *	(20)
Bencher budget contingency	75
Miscellaneous administrative costs	131
	848
845 Cambie Building	
CLE Lease Forgiveness*	(49)
Lease revenue	(391)
Building Maintenance expenses	(86)
	(526)
2012 General Fund Actual Variance	415
2012 General Fund Budget	91
2012 General Fund Actual	506

* Bencher approved items after budget set

Trust Assurance Program Actual

	2012 Actual	2012 Budget	Variance	% Var
TAF Revenue	2,158	2,500	(342)	-13.7%
Trust Assurance Department	2,325	2,499	174	7.0%
Net Trust Assurance Program	(167)	1	(168)	

2012 Lawyers Insurance Fund Long Term Investments - YTD Dec 2012 *Before investment management fees*

Performance	9.4%
Benchmark Performance	7.2%

The Law Society of British Columbia
General Fund
Results for the 12 Months ended December 31, 2012
($000's)

DRAFT

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Membership fees **(1)**	17,393	17,411		
PLTC and enrolment fees	1,044	1,002		
Electronic filing revenue	854	750		
Interest income	258	345		
Other revenue	1,292	1,247		
Total Revenues	20,841	20,755	86	0.4%
Expenses				
Regulation	6,885	7,737		
Education and Practice	3,548	3,554		
Corporate Services	2,960	2,975		
Bencher Governance	1,798	1,650		
Communications and Information Services	2,020	1,949		
Policy and Legal Services	1,658	1,853		
Depreciation	298	399		
Total Expenses	19,167	20,117	950	4.7%
General Fund Results before 845 Cambie and TAP	1,674	638	1,036	
845 Cambie net results	(122)	208	(330)	
General Fund Results before TAP	**1,552**	**846**	**706**	
Trust Administration Program (TAP)				
TAF revenues	2,158	2,500	(342)	
TAP expenses	2,325	2,499	174	7%
TAP Results	**(167)**	**1**	**(168)**	
General Fund Results including TAP	**1,385**	**847**	**538**	

(1) Membership fees include capital allocation of $1.891m (YTD capital allocation budget = $1.898m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at December 31, 2012
($000's)

DRAFT

	Dec 31 2012	Dec 31 2011
Assets		
Current assets		
Cash and cash equivalents	672	279
Unclaimed trust funds	1,672	1,848
Accounts receivable and prepaid expenses	982	1,129
B.C. Courthouse Library Fund	2,487	678
Due from Lawyers Insurance Fund	19,355	19,331
	25,168	23,265
Property, plant and equipment		
Cambie Street property	11,382	11,739
Other - net	1,593	1,363
	38,143	36,367
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,575	4,041
Liability for unclaimed trust funds	1,672	1,848
Current portion of building loan payable	500	500
Deferred revenue	18,225	17,491
Deferred capital contributions	58	70
B.C. Courthouse Library Grant	2,487	678
Deposits	29	27
Due to Lawyers Insurance Fund	-	-
	25,546	24,655
Building loan payable	4,100	4,600
	29,646	29,255
Net assets		
Capital Allocation	2,407	1,874
Unrestricted Net Assets	6,090	5,238
	8,497	7,112
	38,143	36,367

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 12 Months ended December 31, 2012
($000's)

DRAFT

	Invested in P,P & E net of associated debt	Unrestricted	Unrestricted Net Assets	Trust Assurance Allocation	Capital Allocation	2012 Total	2011 Total
	$	$			$	$	$
Net assets - December 31, 2011	8,010	(2,769)	4,999	239	1,874	7,112	6,691
Net (deficiency) excess of revenue over expense for the period	(920)	581	(339)	(167)	1,891	1,385	421
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:							
LSBC Operations	622	-	622	-	(622)	-	-
845 Cambie	236	-	236	-	(236)	-	-
Net assets - December 31, 2012	8,448	(2,188)	6,018	72	2,407	8,497	7,112

The Law Society of British Columbia
Special Compensation Fund
Results for the 12 Months ended December 31, 2012
($000's)

DRAFT

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Annual assessment	11	11		
Recoveries	515	-		
Total Revenues	526	11	515	4681.8%
Expenses				
Claims and costs, net of recoveries	162	538		
Administrative and general costs	98	53		
Loan interest expense	(28)	-		
Total Expenses	232	591	(359)	-60.7%
Special Compensation Fund Results	294	(580)	874	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at December 31, 2012
($000's)

DRAFT

	Dec 31 2012	Dec 31 2011
Assets		
Current assets		
Cash and cash equivalents	1	1
Due from Lawyers Insurance Fund	1,396	950
	1,397	951
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	171	8
Deferred revenue	-	11
	171	19
Net assets		
Unrestricted net assets	1,226	932
	1,226	932
	1,397	951

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
For the 12 Months ended December 31, 2012
($000's)

DRAFT

	2012 $	2011 $
Unrestricted Net assets - December 31, 2011	932	831
Net excess of revenue over expense for the period	294	101
Net assets - December 31, 2012	1,226	932

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 12 Months ended December 31, 2012
($000's)

DRAFT

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Annual assessment	13,666	13,602		
Investment income	8,672	5,894		
Other income	90	62		
Total Revenues	22,428	19,558	2,870	14.7%
Expenses				
Insurance Expense				
Provision for settlement of claims	11,098	14,866		
Salaries and benefits	2,336	2,756		
Contribution to program and administrative costs of General Fund	1,596	1,569		
Office	789	967		
Actuaries, consultants and investment brokers' fees	390	421		
Allocated office rent	148	147		
Premium taxes	13	13		
Income taxes	6	6		
	16,376	20,745		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	753	711		
Total Expenses	17,129	21,456	4,327	20.2%
Lawyers Insurance Fund Results before 750 Cambie	5,299	(1,898)	7,197	
750 Cambie net results	320	313	7	
Lawyers Insurance Fund Results	**5,619**	**(1,585)**	**7,204**	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at December 31, 2012
($000's)

DRAFT

	Dec 31 2012	Dec 31 2011
Assets		
Cash and cash equivalents	23,225	23,719
Accounts receivable and prepaid expenses	936	1,129
Due from members	52	73
General Fund building loan	4,600	5,100
Investments	108,573	102,895
	137,386	132,916
Liabilities		
Accounts payable and accrued liabilities	1,689	1,614
Deferred revenue	6,947	6,813
Due to General Fund	19,355	19,331
Due to Special Compensation Fund	1,396	950
Provision for claims	50,958	52,876
Provision for ULAE	7,155	7,065
	87,500	88,649
Net assets		
Unrestricted net assets	32,386	26,767
Internally restricted net assets	17,500	17,500
	49,886	44,267
	137,386	132,916

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 12 Months ended December 31, 2012
($000's)

DRAFT

	Unrestricted $	Internally Restricted $	2012 Total $	2011 Total $
Net assets - December 31, 2011	26,767	17,500	44,267	33,962
Net excess of revenue over expense for the period	5,619	-	5,619	9,827
Net assets - December 31, 2012	32,386	17,500	49,886	43,789

The Law Society of British Columbia

Law Society of British Columbia 2012 Draft Financial Results

Benchers meeting, April 5, 2013

The Law Society of British Columbia

Overview

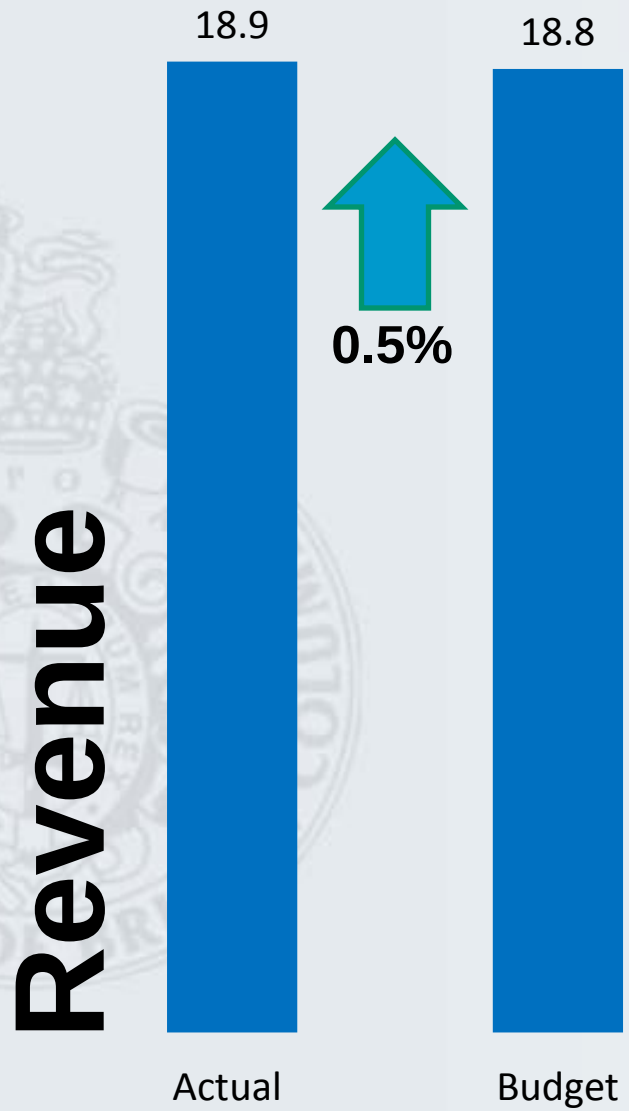
1. Draft 2012 General Fund Financial Overview
2. Draft 2012 TAF Results
3. Draft 2012 Special Compensation Results
4. Draft 2012 Lawyers Insurance Fund Results
5. 2013 to date

General Fund Operating Results

(without capital)

The Law Society of British Columbia

6016

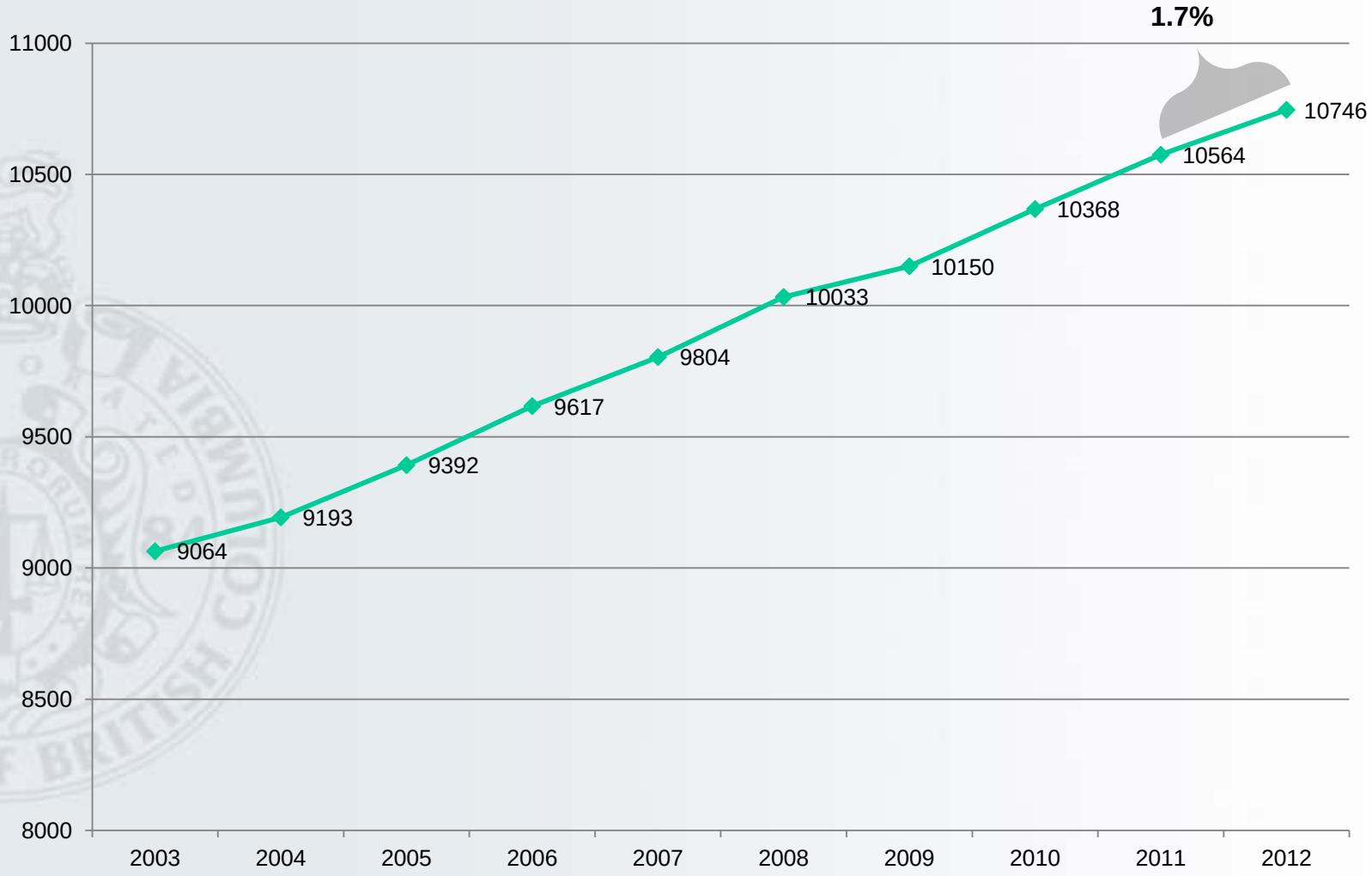


- **Membership fees below budget and PLTC fees above budget**
- **10,746 members, 41 members below budget of 10,787**
- **410 PLTC students, 10 students above budget**
- **Electronic filing revenue ahead of budget = $104,000**
- **Interest income below budget = $87,000**
- **Cambie building lease revenue below budget = $440,000**

2012 Practising Membership

The Law Society of British Columbia

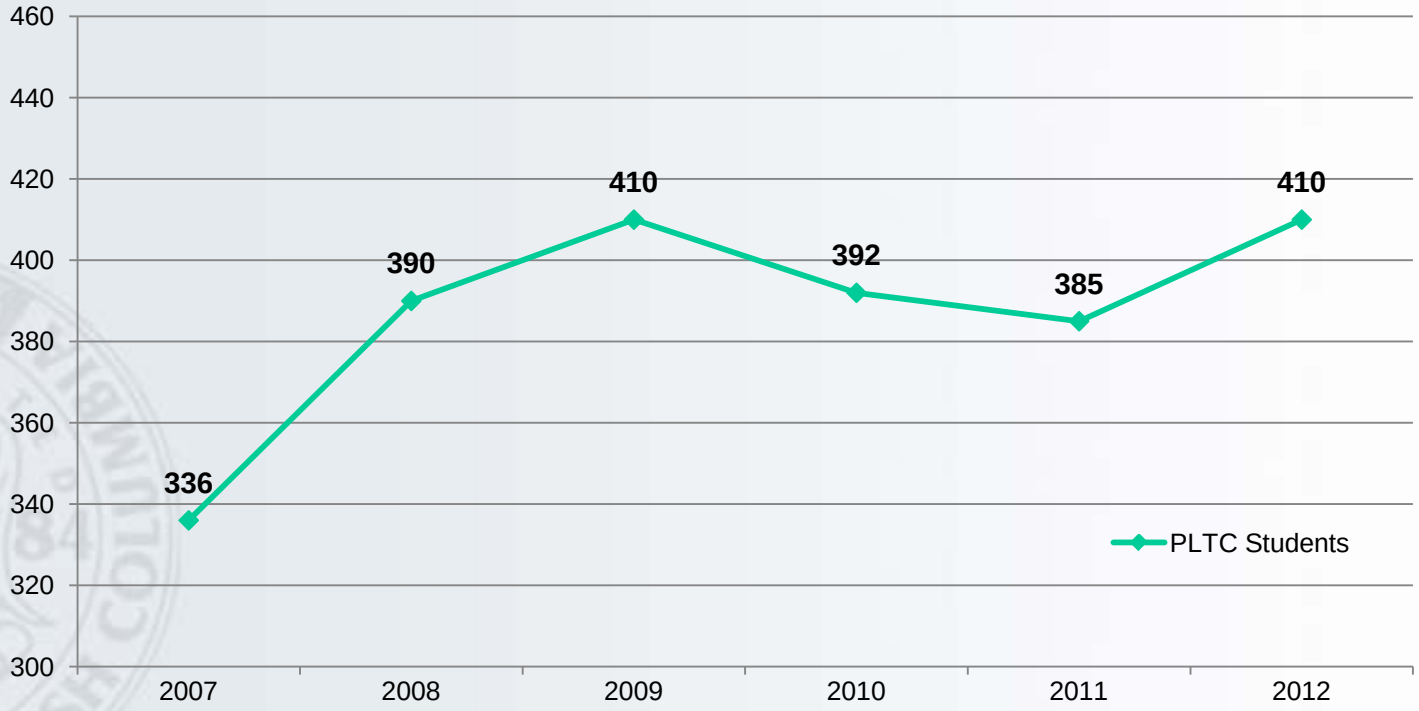
6017



PLTC Students

The Law Society of British Columbia

6018



* *Estimated*

General Fund Operating Results

(without capital)

The Law Society of British Columbia

6019

Areas of savings against budget:

- **Staff compensation = $498,000**
- **External professional fees = $342,000**
- **Hearing panel training = $105,000**
- **Administrative costs = $131,000**

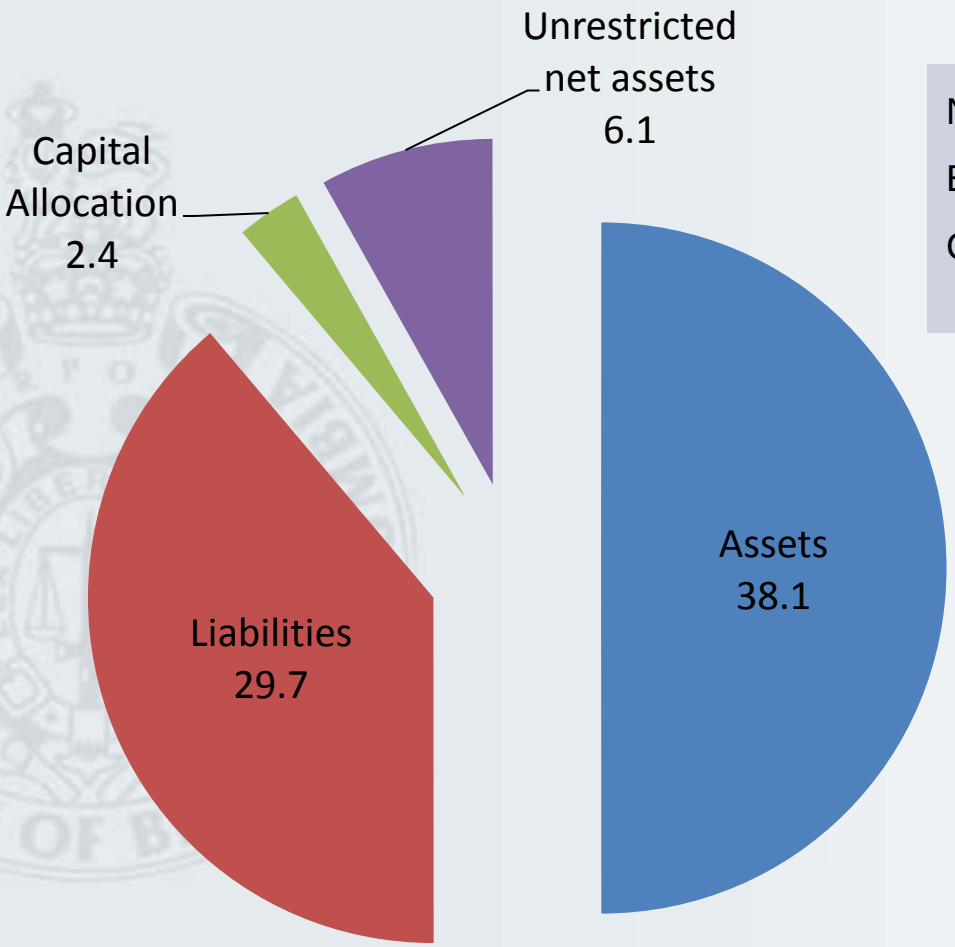
Bencher approved items:

- **Governance Review = $124,000**
- **CBA REAL initiative = $75,000**
- **Privacy review = $48,000**
- **Federation of Law Societies (additional fees) = $36,000**
- **CBA Canadian Legal Conference sponsorship = $ 20,000**

The Law Society of British Columbia

6020

General Fund Balance Sheet – December 2012



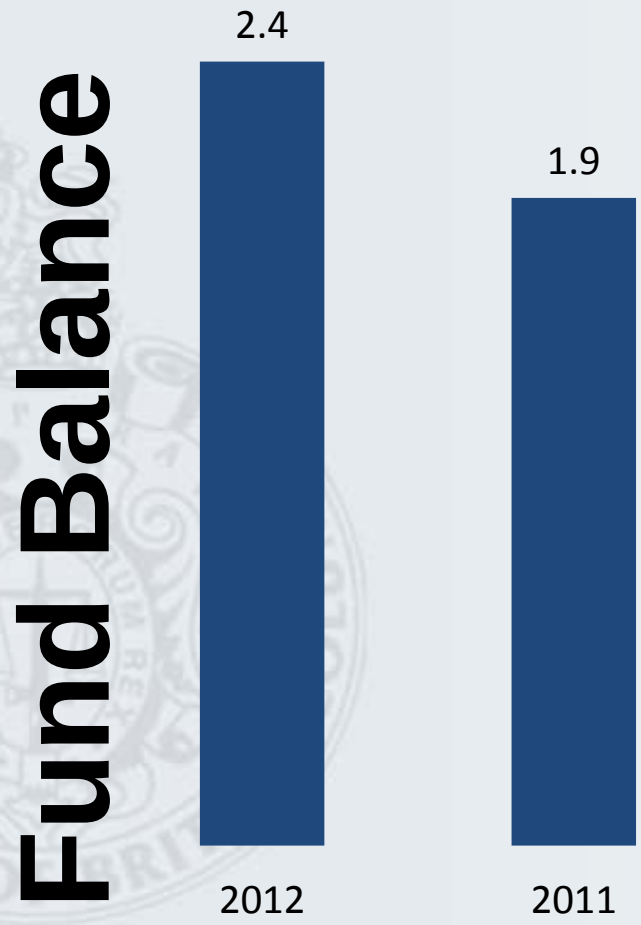
Net assets (reserve) at December 2012 = $6.1 million

Equates to 3 months operating expenses

Complies with Bencher approved Executive Limitation

The Law Society of British Columbia

General Fund Capital Allocation Reserve- 2012

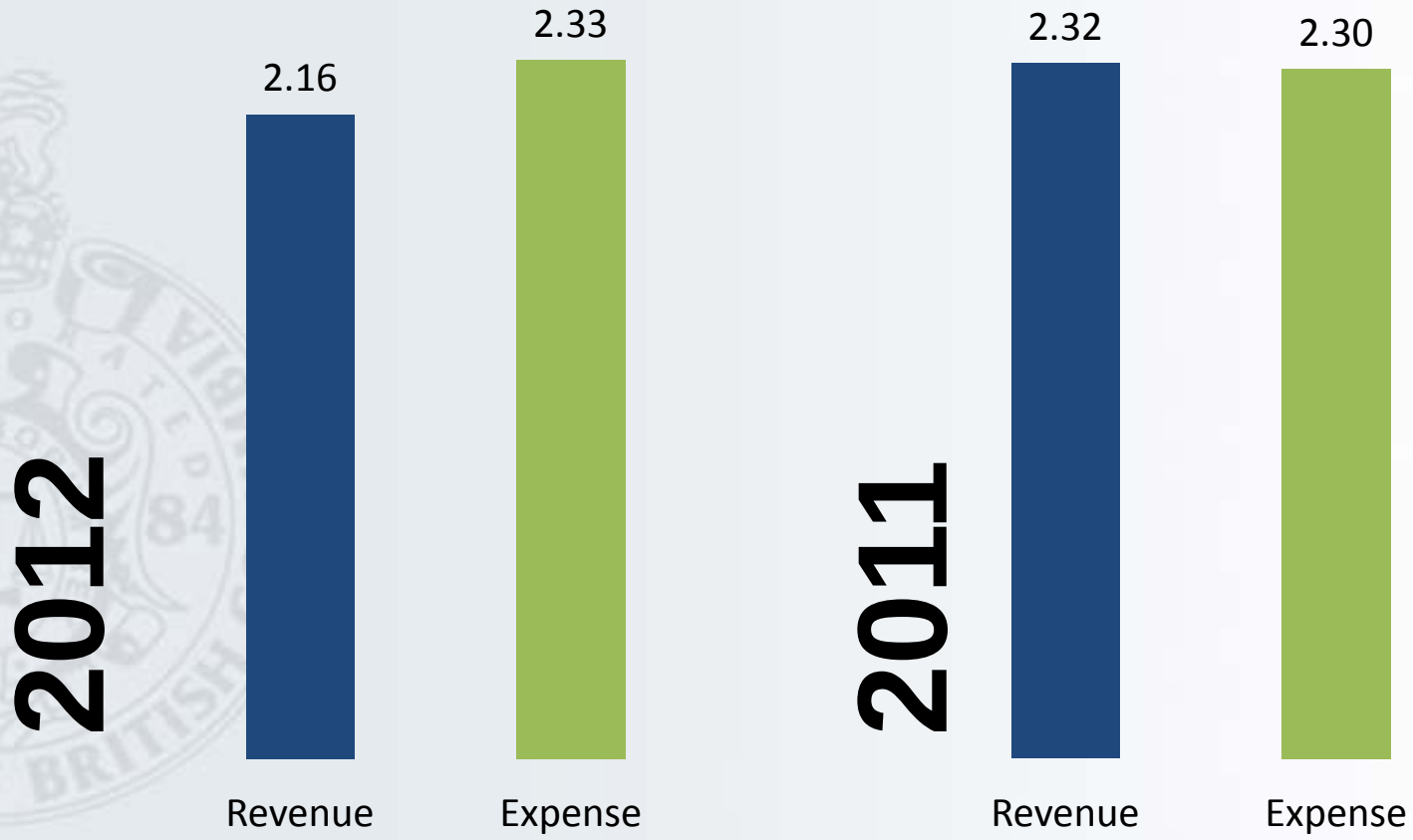


For 2013

- **Replacement of 835 Passenger and 845 Parking Elevators (construction under way)**
- **Replacement of Fire Alarm and Emergency Generator (construction under way)**
- **Updates to common building areas**
- **Workspace improvements for Law Society operations**

The Law Society of British Columbia

Trust Assurance

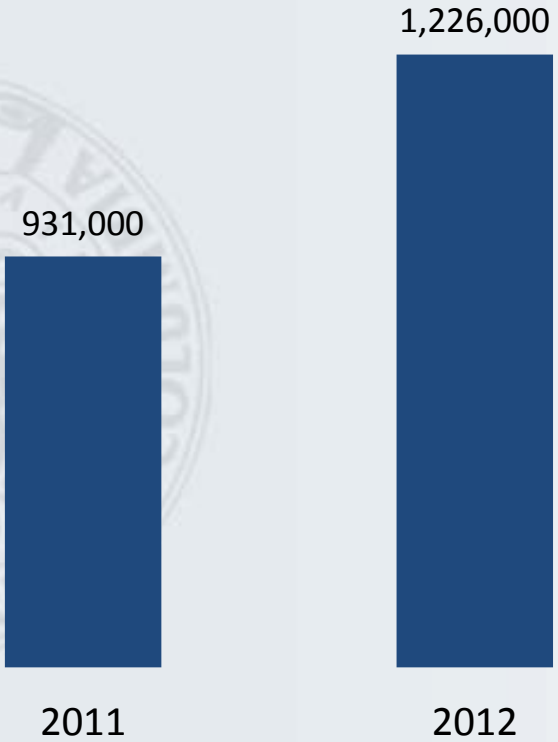


6023

The Law Society of British Columbia

Special Compensation Fund

Net Assets

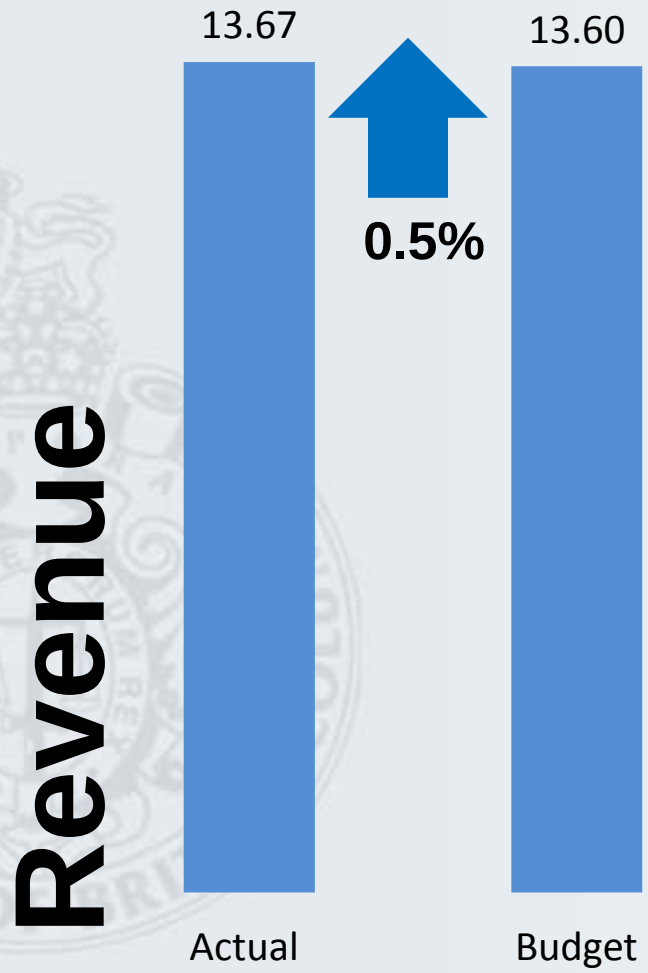


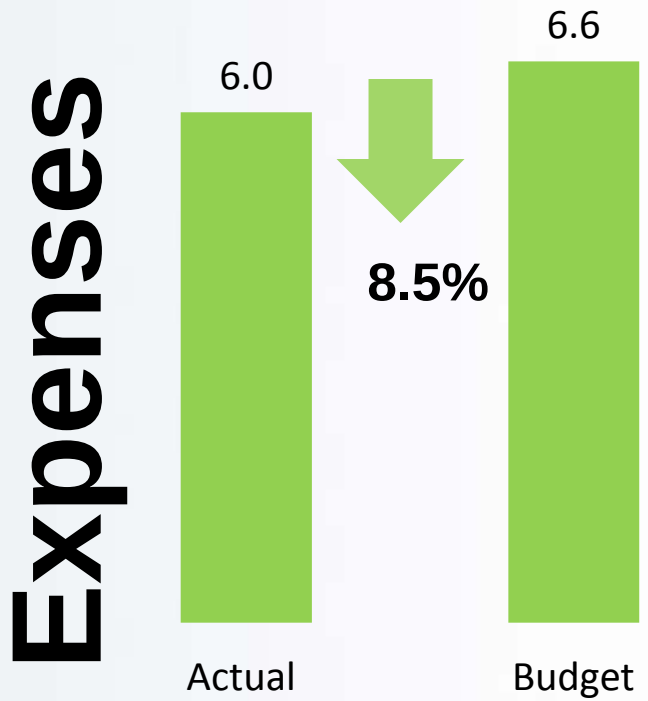
Special Fund Fee

6024

The Law Society of British Columbia

Lawyers Insurance Fund



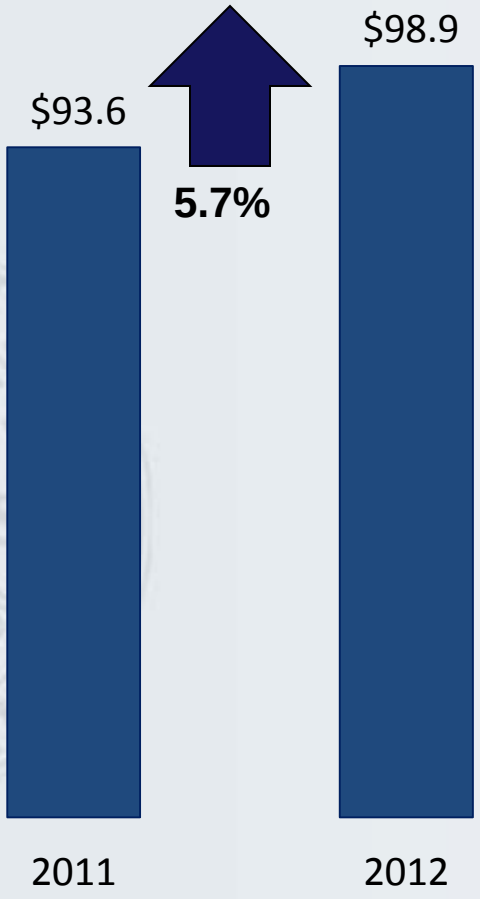


6025

Lawyers Insurance Fund

The Law Society of British Columbia

Investments



Net Assets

The Law Society of British Columbia

A preliminary look at 2013…

- 2013 membership numbers and PLTC revenues are coming close to budget
- Pressures for 2013 –
  - Additional cost items to consider
    - Contribution to REAL program in 2013 - $75,000
    - Additional probono contribution through reduced rent $48,000
  - Continue to market the third floor of the 835 building
  - TAF revenue – will require a TAF fee increase in the future to offset reduced TAF transaction levels, Finance Committee will be monitoring

The Law Society of British Columbia

In Summary

- General Fund reserve – adequate levels
- Capital fund adequate for planned projects
- 2014 TAF fee will need to be reviewed
- Special Compensation Fund – adequate reserve to pay outstanding claims
- LIF investments - good investment returns
- LIF reserve – adequate levels

The Law Society of British Columbia

CEO's Report to the Benchers

April 5, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

This month I will provide an update on progress under the 2013 Operational Priorities Plan and share highlights from the Inaugural BC Justice Summit attended by justice leaders on March 15 and 16 in Vancouver. I will also report briefly on the Federation of Law Societies of Canada Semi-Annual Conference held in Quebec City from March 20 to 22.

2013 Operational Priorities – Progress Report

In January I outlined for the Benchers the top five operational priorities for management in 2013. Throughout the year and at least quarterly I will provide updates on progress in those areas. The current update is set out below. I would be pleased to provide further details and to answer any questions at the meeting.

1. Review and Renewal of Management Structure

Since the start of the year management has been considering how our current management model can be improved upon to better meet our needs in the future. We want to provide staff with greater opportunities to demonstrate leadership skills and to participate in decision making at more senior levels. This will help bring fresh perspectives to management deliberations and assist in our goal to have more extensive succession planning across the organization. We have also focused on our increasing use of and need for project management capabilities. Recent successful projects, such as the Core Process Review, Enterprise Risk Management Plan, LEO, and RRex, show that we accomplish much when we organize into project teams based upon staff interest and skills and supported by clear mandates. Our review has assessed the benefits of institutionalizing this approach. This work is now complete and I will be reviewing the results with the Executive Committee and with the Benchers in the coming weeks.

2. Lawyer Advice and Support Project

The Lawyer Advice and Support project team is undertaking a comprehensive review and assessment of our current model for delivering member advice and support services. As I said in the most recent Benchers' Bulletin, "The goal is to determine what Law Society services are most useful to lawyers, who can best deliver them and how they are best delivered." The project team has completed

extensive consultations with every department in the Law Society that interfaces with the membership to get their information and ideas. The team is now moving to obtain the input of the membership. Starting in April we will conduct a random telephone survey of approximately 800 lawyers in the province to collect their feedback and ideas. The survey will be conducted by an external firm and as project leader Kensi Gounden says in the current Benchers' Bulletin, "The survey will give us the perspective of the lawyers who use our services – what's working, what's missing and what needs to be changed." Lawyers have also been invited to submit any comments or suggestions at any time to a designated email address. We would also like to invite any Benchers who would like to see the survey script and/or complete a survey to contact Kensi. This phase of the project team's work will be complete by midyear and the team is still on track to deliver its report and recommendations by year end.

3. Support for Legal Service Provider Task Force

The Legal Services Providers Task Force chaired by Bruce LeRose, QC has met three times this year and its next meeting is scheduled for April 8. The Task Force is making good process on its mandate. It intends to provide a status report to the Benchers in July. The Task Force has developed a road map for its work and a methodology for analyzing the issues. It is considering the advantages and disadvantages of a single regulatory model, and has reviewed materials relating to various jurisdictions, including BC, Ontario, England, Washington State and Denmark in order to get a sense of different approaches to regulation. It has considered the issue from an access to legal services perspective and is presently focused on identifying other benefits of unified regulation. At the April meeting the Task Force will hear from a senior representative from the accounting profession regarding a similar initiative to create a unified regulatory regime for the accounting professions. The Task Force has also identified the need for broader consultation on the topic and believes that the consultation stage should occur after the July report, when the Benchers can provide their guidance and ideas on that stage of the Task Force's work.

4. Regulation of Law Firms – Policy and Operational Assessment

With the passage into law of the recent amendments to the *Legal Profession Act* the Law Society now has the statutory authority to regulate law firms as well as lawyers. While the exact nature and scope of the work to be undertaken on this

topic has yet to be determined, i.e. Bencher Task Force or assignment to a standing advisory committee, it is certain that operational considerations will play an important part in assessing options and formulating recommendations. To date this year, management has been working on a report for the Executive Committee which will outline these considerations and assist in the planning of the work. I expect this topic to be considered at the next meeting of the Executive Committee in April, where next steps and recommendations for the balance of the year can be formulated.

5. Implementation of Governance Review Task Force Report

The Governance Committee met twice in January and once in February for a full day offsite retreat. The focus of the retreat session was to start to deal with the major issues and recommendations set out in the Governance Review Task Force report presented in 2012. At the retreat the Committee discussed the role descriptions for each of the Benchers, the Executive Committee, and the President, and instructed staff to follow up on certain items relating to those topics. The next meeting of the Committee is a half day session scheduled for May 3 and the agenda for that session is currently being developed. The Committee expects to have reviewed and assessed the majority of the recommendations in the Task Force report and to bring them back to the Benchers for review by year end.

Federation of Law Societies of Canada 2013 Semi-Annual Conference, Quebec City

The Federation of Law Societies of Canada held its Semi-Annual Conference and Council meeting in Quebec City from March 20 -22. The theme of the conference was “Globalization and Risk Management: Challenges for Law Societies”. In addition to the conference program there was a full day meeting of the Law Society CEOs and selected senior staff from across the country as well as a half day session of the Federation Council. The BC delegation was President Art Vertlieb, QC, Second Vice President Jan Lindsay, QC, Council Representative Gavin Hume, QC, myself and management board representatives Deborah Armour, Alan Treleaven and Adam Whitcombe. BC was also represented on the Council Executive by past Law Society of BC President and past Federation President John Hunter, QC.

Deb Armour participated on a panel discussing and comparing various approaches to managing risk within the professional conduct and discipline areas.

I was asked to give a presentation on the topic of Globalization and International Trade in Legal Services and I entitled my presentation “Major Trends and the Regulators’ Dilemma”. My thesis was that the major trends associated with the globalization of law call for a unified approach to certain aspects of regulation, which would best be addressed through a global law regulator established by agreement of local law regulators around the world. This is not a new idea but one which increasingly has merit as trends such as offshore legal process outsourcing evolve from being trends to parts of everday practice.

I am attaching to this report as Appendix A a brief summary of the various Conference programs and discussions. As always, the conference program attempts to strike a useful balance between content which is relevant and meaningful to day to day law society operations and governance, and with larger strategic and directional issues about which the delegates should be informed. I think this conference was successful in achieving that balance although many of us thought the program attempted to cover a bit too much given the timeframe. The highlight for me among the practical topics were the workshops focused on what all law societies are doing and could be doing to help lawyers comply with their professional and regulatory requirements – a summary of these items is set out in paragraph #6 of the attached report. The most compelling presentation on the strategic front was given by Mr. Michel Nadeau, the head of the Quebec Institute for Governance of Private and Public Organizations. Mr. Nadeau reviewed public survey data which strongly suggests that regulatory bodies must never underestimate the public’s high expectations that we do our jobs in a demonstrably effective and efficient manner.

The Council meeting on Friday was devoted entirely to a review of the Trinity Western University matter relating to its proposed law degree program. That topic will be reviewed in the in-camera session of the meeting.

Inaugural BC Justice Summit

The “Inaugural Justice Summit” focusing on reforms to the criminal justice system took place at Allard Hall at the UBC Law School on March 15 and 16. The event also included a “Justice Leaders Dinner” at Allard Hall on the Friday evening. I acted as MC for the dinner and as Moderator for the working sessions on Friday and Saturday. George Thompson, a former Deputy AG and former Provincial Court Judge in Ontario, acted as Facilitator. The dinner was attended by our Vice President Jan Lindsay, QC and invited staff Adam Whitcombe and Michael Lucas, as well as the Minister of Justice and Attorney General, Shirley Bond, Justice

Richard Wagner of the Supreme Court of Canada, Chief Justice of BC Lance Finch, Associate Chief Justice Austin Cullen, Chief Judge Thomas Crabtree, Associate Chief Judge Gill, Deputy Attorney General Richard Fyfe, Deputy Minister of Justice Lori Wanamaker and Associate Dean Benjamin Goold of UBC Law School. Justice Wagner delivered a well received keynote speech which echoed many of the themes relating to the need for better access to justice which the Chief Justice of Canada and other speakers have emphasized recently.

In my introductory remarks I said the following:

> This Summit takes place at a time when there has been a great deal of study and analysis of the justice system, particularly the criminal justice system, and a substantial amount of reform and proposed reform.
>
> The Summit is provided for in legislation that has been passed; indeed it received Royal Assent recently, but is not yet proclaimed. That legislation provides for the Summit – it does not prescribe what it is to do, although it does speak to some things it may do.
>
> There is a need for a forum where perspectives, experience and expertise can be shared and answers found that go beyond what any one part of the system can accomplish on its own.
>
> Indeed, it is appropriate that this Summit is being held in this exceptional place of learning, because learning from each other is a goal we all share for the Summit.
>
> While significant accountability may rest with the executive arm of government and the new legislation reinforces this, it is extremely important that it listens to, consults with and learns from those who work within the system and those whom it serves as a part of doing the work mandated by the legislation, such as developing a three year strategic plan. The Summit is not the only way to do this, but it is an essential way, so, for example, it is I think assumed that the Council will not finalize any plan without an opportunity for the Summit to provide input such as the possibility of reviewing a draft plan for the subsequent year.
>
> This is the beginning of a long term process.

The working sessions were attended by approximately 40 delegates, being senior representatives drawn from the principal participants and parties with an interest in

the criminal justice system – the Crown, police agencies, trial lawyers, Legal Services Society, health care agencies and support services, court administrators, the Law Foundation, Ministry officials and academics. In addition, Chief Justice Finch, Associate Chief Justice Cullen, Chief Judge Crabtree and Associate Chief Judge Gill were all in attendance for all of the Saturday sessions and participated actively in the discussions. The sessions were broken down into two parts. The Friday afternoon session focused on indentifying the values that should guide the criminal justice system. A thematic summary of the group discussions suggested that the threshold values were fairness, proportionality, evidenced-based decision making, and joint accountability. Many aspects of each of those values were canvassed in the group discussions. The Saturday session built on that foundation but carried on into more detailed small group discussions around what the priorities should be and how future Justice Summits could help address and facilitate desired reforms.

Overall, I would say that the sessions exceeded the expectations of most of the participants. There was a very good energy in the room and the delegates were certainly engaged in the process and in the exchange of views and ideas. In the wrap-up there was a strong consensus that providing a safe and informal forum for the exchange of ideas and information among the key participants was a very useful tool to addressing the vexing issues of the day. Geoff Cowper, QC spoke during the working lunch session and he echoed this sentiment. Having said that, it was also clear that the issues are complex and not easily addressed without considerable resolve and collaboration. The group was agreed that a second summit should be held within the year to attempt to build on this modest but promising start.

The Justice Summit Steering Committee is planning to issue a public report on the Summit in late May or early June.

New Westminster Bar Association Presidents' Dinner

On March 12, Art Vertlieb, QC and I attended the New Westminster Bar Association Presidents' Dinner, as the guests of the Association, Vice President Jan Lindsay, QC and Benchers David Renwick, QC and Phil Riddell. President Vertlieb made a presentation on the Law Society's Paralegal Pilot Project and reviewed other Law Society priorities. The event was well attended and provided a great opportunity to share this important initiative with our members.

Bencher Retreat

Planning for the June 13 to 15 Bencher Retreat at the Tin Wis Resort in Tofino is in the final stages. This year's Friday retreat workshop theme is *The Business of Law in the 21st Century: Are we at Risk of Losing (or can we Maintain) our Professional Values?* The full retreat agenda will be finalized by the May Benchers' meeting.

If you haven't had a chance to complete the Bencher Survey that was emailed to the Benchers on Tuesday, March 19, please be sure to do so as soon as possible.

Timothy E. McGee
Chief Executive Officer

APPENDIX A

Federation Québec Summary

The Federation of Law Societies of Canada Semi-Annual Conference and Council meeting took place in Québec City from March 20 to 22, 2013. Art Vertlieb, Jan Lindsay, Gavin Hume, Tim McGee, Deborah Armour, Adam Whitcombe and Alan Treleaven attended from the Law Society of BC.

Conference, March 20 and 21

March 20: Legal Regulation in the Global Context

The conference program featured presentations and discussion on the following topics.

1) What the Globalizing Legal World Means for Legal Regulators

Pierre Boucher, Economist/General Director Observatoire des services professionnels, presented a socio-economic analysis of how the globalization of legal practice impacts legal regulators, highlighting key future trend predictions for law societies drawn from the report published by the Barreau du Québec, "*Lawyers in Private Practice in 2021."*

2) Globalization and International Trade in Legal Services

Tim McGee focused on how increasing globalization of the legal marketplace means we are now seeing an increase in the mobility of clients, mobile work, and international law firms. Tim asked whether regulators should be concerned with these developments, and which globalization trends legal regulators should be monitoring or preparing for.

3) Where Technology and Legal Regulation Intersect in a Globalized World

This session explored issues and best practices relating to

a) Cloud Computing (Gavin Hume),
b) Electronic Funds Transfer (Christian Tremblay, CEO, Chambre des notaries),
c) Online Dispute Resolution (Nicolas Vermeys, Cyberjustice Laboratory, Université de Montréal).

4) New Business Models and the Regulation of Law Firms

Zeynep Onen, Director, Professional Regulation, Law Society of Upper Canada, explored the relationship between legal regulation and new business models for law firms in other jurisdictions, including the extent to which these new models conform to the Canadian regulatory landscape and improve outcome focused regulation and management of risk.

5) Regulatory Developments in the International Context

Darrel Pink, Executive Director, Nova Scotia Barristers' Society, described developments in legal regulation in other jurisdictions, including co-regulation in

Australia, independent oversight regulation in England and Wales, and challenges to self-regulation in Ireland, and then focused on how developments in the international context might impact on Canadian legal regulation.

March 21: Regulation and Risk – A Fresh Look at Law Society Regulation Through the Risk Management Lens

1) Risk Management: Lessons from the Financial Sector

Anne-Marie Beaudoin, Secretary-General, Québec Financial Markets Authority, and Philippe Labelle, Legal Services, Québec Financial Markets Authority, reported on lessons learned in regulating the financial sector, and how regulators can assess whether more should be done to better manage risks.

2) Prevention Through Practical Risk Management

Alain Forget, Occupational Psychologist, and Marie-Christine Kirouack, Legal Profession Assistance Program for the Barreau du Québec, outlined the human elements of the work/life cycle with a human-risk profile of lawyers and Québec notaries. The presenters described how the risks and their consequences might be managed through regulators being both proactive and reactive.

3) Strategies and Approaches to Risk Management

Using everyday scenarios, panelists explored strategies, tools and programs law societies have developed to manage practice-related risks at every stage of the professional's career, including the stress of starting a practice, juggling work and child care responsibilities, and burn out. Deborah Armour was a panel member, reporting on experiences and initiatives at the Law Society of BC.

4) Public Expectations on Risk Management: How Law Societies Measure Up

Michel Nadeau, Executive Director, Québec Institute for Governance of Private and Public Organizations, reported on how surveys show consumers have expectations as to how they should be protected from professional misconduct. Issues addressed included public expectations of law societies in relation to risk management, how law societies can manage and meet public expectations, the significance of law society governance structures, and how law societies measure up.

5) Professional Liability Insurance as a Risk Management Tool

Jacques L'Abbé, Director General, Professional Responsibility Fund of the Chambre des notaries, and Daniel Pinnington, Vice President, Claims Prevention and Stakeholder Relations, LawPRO, looked at professional liability insurance models from across Canada, focusing on how professional liability insurers can play a preventative role, what role public awareness plays in professional liability insurance, and how are risks reflected in setting insurance levies.

6) Workshops on Law Societies' Risk Management and Public Expectations

Attendees discussed what their own law societies are doing to better manage lawyer risk, and what law societies might do differently in the future. There was considerable diversity in law society initiatives, and Federation staff will prepare a summary report. Initiatives at other law societies include

a) Alberta: Solonet – an online forum for sole practitioners
b) Alberta: a licensing requirement for lawyers who administer trust accounts
c) Ontario: a lawyer mentoring program
d) Barreau: a project to set up a single trust account for the entire profession, to be administered by the Barreau
e) Ontario, Barreau, Chambre: a comprehensive, universal practice inspection program
f) Manitoba: a special counseling program for lawyers who are subject to client complaints about infringing the client's personal boundaries
g) Saskatchewan: practice advice law firm visits for sole practitioners who request advice or support in aspects of law firm management. The practice advisors are senior lawyers who do the work for the Law Society on an hourly rate, for between one and two days per visit.
h) Nova Scotia: Fitness to Practice Program for lawyers who have problems in practice relating to personal or medical issues. Referrals to the program are by consent, and typically begin with a medical examination. Lawyers usually consent to practice conditions and a remedial plan, and a client complaint is referred to the Complaints Resolution Committee where appropriate.

Council Meeting, March 22

Council received the following update reports.

a) Standing Committee on the Model Code of Professional Conduct (Committee Chair: Gavin Hume)
b) Standing Committee on Access to Legal Services (David Mossop is a Committee member.)
c) National Admission Standards Project Tim McGee, Lynn Burns, Lesley Small, Michael Lucas and Alan Treleaven are BC project participants.)
d) National Discipline Standards Project (Deborah Armour is the BC project member)
e) CanLII
f) Federation litigation (Federation Past-President John Hunter provided the update)
g) National Mobility Policy Committee (Jeff Hoskins and Alan Treleaven are Committee members.) – proposal for a New Québec Mobility Regime
h) National Committee on Accreditation (Alan Treleaven is a Committee member.)
i) Canadian Common Law Degree Approval Committee (Alan Treleaven is a Committee member.)

Council discussed, in camera, developments and next steps relating to the Trinity Western University law degree accreditation application.

The Law Society of British Columbia

Memo

To: The Benchers
From: Michael Lucas
Date: February 26, 2013
Subject: **Search Warrants at Law Offices**

ACTION REQUIRED:

1. None. The attached "Recommended Terms" to be attached to a search warrant of a law office, which have been developed by the Law Society together with other interested parties at the request of the Associate Chief Justice of the Supreme Court, are presented for information prior to its dissemination to the profession. Also attached is the article proposed to be published through *E-Brief* and the *Benchers Bulletin* concerning these procedures.

BACKGROUND

2. The Law Society has been working for some time toward developing protocols, guidelines, or procedures concerning the execution of search warrants at law offices. In January 2012, the Associate Chief Justice wrote to the Law Society noting:

> "While applications for search warrants of law offices do not frequently occur, it would be of considerable assistance if the Law Society could, in consultation with other interested parties, develop some guidelines and procedures concerning processes associated with the execution of such warrants including, in particular, the protection of solicitor client privilege."

3. On this basis, the Law Society continued its discussions with the representatives of the Public Prosecution Service of Canada, the Ministry of Justice (Crown Counsel), the R.C.M.P., and the British Columbia Association of Chiefs of Police.

4. As a result of those discussions, a form of procedures has been prepared, a copy of which is attached. It is contemplated that the procedures would generally be attached to or included with a search warrant of a law office to address the protection of solicitor client privilege, and indeed similar types of procedures have already been utilized on past

search warrants of law offices in British Columbia (which, fortunately, are not a common occurrence in this province). The procedures are directed at searches where the lawyer is a target of the search or so closely related to the target and there is some doubt as to his or her involvement in the matter. Referees will be identified from the list of special prosecutors.

5. The procedures addressed what happens when and after the warrant is issued, rather than what happens before the application. In the past, the Law Society has generally been contacted by either Crown Counsel, PPSC Counsel, or the police themselves in advance of the application for the warrant, and it is contemplated by those involved that this will continue, primarily in order to allow us to ensure that a Law Society representative will be available in accordance with paragraph 2 of the terms attached, but also to identify any issues that may be out of the ordinary.

6. The procedures have been reviewed by the Ethics Committee, and its suggestions for improvements were incorporated in subsequent drafts. The final draft was forwarded to the Associated Chief Justice by the President in accordance with the request contained in the Associate Chief Justice's correspondence in January, 2012 letter. By letter of January 21, 2013, the Associate Chief thanked the Law Society for the opportunity to review the draft procedures, and no reservations to it were registered.

CONCLUSION

7. These materials are brought to the attention of the Benchers for information. It is intended to post these procedures on the Law Society website, and circulate the information, through *E-Brief* and the *Benchers Bulletin* with the accompanying article, which has been reviewed by all parties involved in the discussions.

Recommended Terms for the Warrant

1. [Insert Name] is appointed as Referee. The Referee shall:

    i. Under the direction of the officer in charge of the search, search for and seize documents, including electronic documents and images of data stored on computer equipment, and computer equipment itself, that are authorized to be seized by this Warrant, in the manner authorized by this Warrant (collectively referred to as "Documents" in this Warrant),

    ii. Maintain the continuity and the confidentiality of the Documents in accordance with this Warrant, and

    iii. Examine and handle the Documents in accordance with the procedures established in this Warrant.

2. Before attending at the law office named in this Warrant, the investigating authority shall advise the Law Society of British Columbia (the "Law Society") of the existence of this Warrant and the expected time and date of the search, without disclosing the place to be searched, unless the officer in charge is the opinion there is a benefit to providing the Law Society with the precise location. This will permit the Law Society to designate a representative to be available to provide guidance in connection with the lawyer's professional obligations and to liaise, as necessary, with the officer in charge of the search, the Referee, and the lawyer whose office is to be searched. The Law Society will keep any information given to it by either the prosecuting or investigating authority confidential.

3. The officer in charge of the search shall, at the time of the execution of this Warrant, ensure that reasonable efforts are made to contact the lawyer whose law office is named in this Warrant, to advise the lawyer that a search is being done and that he or she may contact the Law Society for guidance regarding the lawyer's obligations resulting from the execution of this Warrant.

4. No acts authorized by this Warrant shall take place until the terms 2 and 3 are complied with and until the Referee has had an opportunity to attend the law office, save and except that the investigating authority, acting under the supervision of the officer in charge of the search, may enter the law office to permit the investigating authority to secure the premises to prevent the destruction or removal of any things from those premises.

The following part dealing with the Forensic Expert, if necessary, perhaps should follow right after the appointment of the Referee.

5. [Insert Name] is appointed Computer Forensic Expert. The Computer Forensic Expert shall, under the direction of the Referee and as provided by this Warrant, discharge any and all requirements relating to:

    i. Searching of all computers, computer systems or other electronic devices included in the terms of this Warrant;

    ii. Creating forensic images of the physical drives of original computers;

    iii. Searching of forensic images to identify things subject to this Warrant, including the placing of such Documents on external storage devices; and

    iv. Maintaining the continuity and the confidentiality of the Documents in accordance with this Warrant.

OR

6. The Referee may retain the services of a Computer Forensic Expert who shall, under the direction of the Referee and as provided by this Warrant, discharge any and all requirements relating to:

    i. Searching of all computers, computer systems or other electronic devices included in the terms of this Warrant;

    ii. Creating forensic images of the physical drives of original computers;

    iii. Searching of forensic images to identify things subject to this Warrant, including the placing of such documents on external storage devices; and

    iv. Maintaining the continuity and the confidentiality of the documents in accordance with this Warrant.

7. All Documents seized by the Referee pursuant to this Warrant shall be placed by the Referee in packages, sealed, initialed, and marked for identification without being examined or viewed by the investigative authority or anyone else.

8. Upon completion of the execution of this Warrant, the Referee shall deliver the seized Documents into the custody of the Court.

9. After the Documents have been delivered to the custody of the Court, and upon reasonable notice being given to the officer in charge of the search, and to the prosecuting authority, the Referee and the Computer Forensic Expert may be given access to the Documents for the purposes of:

i. Identifying individuals who must be given notice that things have been seized over which they may wish to assert privilege, and

ii. To inspect the Documents for the purposes of determining if the things seized fall within the scope of this Warrant.

10. After the Documents have been delivered to the custody of the Court, and upon reasonable notice being given to the officer in charge of the search and to the prosecution authority, counsel for the lawyer whose office has been searched shall, under supervision to be determined by the Court as necessary, be given access to the items to determine:

    i. Whether privilege attaches to any of the Documents, or

    ii. Whether any of the Documents fall outside the scope of this Warrant,

    and shall advise the officer in charge of the search or the prosecuting authority of the nature and general description of any such documents identified without allowing the documents to be viewed by counsel for the investigating or prosecuting authority. If counsel for either the investigating or prosecuting authority, as may be, agrees that Documents are privileged or fall outside the scope of this Warrant, those documents shall be segregated and may be returned to the lawyer whose office was searched.

11. With regard to the remaining Documents, reasonable efforts must be made by the Referee to contact all clients of the lawyer whose solicitor-client privilege may be affected by the execution of this Warrant. The Referee shall advise the clients of the following:

    i. That a Warrant was executed at a stated location and that things were seized that may be subject to solicitor-client privilege;

    ii. Those things are in the custody of the Court and have not been viewed by the investigating or prosecuting authority; and

    iii. The individual has the right to object to the release of the things to the investigating or prosecuting authority and a court hearing will be set down in order to determine the issue.

12. Where the Referee cannot contact a potential privilege holder, the Referee will recommend to the Court the proper process for notifying all clients whose solicitor-client privilege may be affected by this Warrant, which may include a recommendation that advertisements be placed in the relevant media, or other such alternate methods of notification as approved by the Court, if the Referee is of the view that such a step is necessary.

13. The Referee shall report to the Court the efforts made to contact all potential privilege holders, who will then be given a reasonable opportunity to assert a claim of privilege

over the seized Documents and, if that claim is contested, to have the issue decided by the Court in an expeditious manner.

14. If a claim of privilege is not made after a reasonable opportunity has been given to any potential privilege holders to assert a claim of privilege, the Court may hear an application by counsel for either the investigating or prosecuting authority, as may be, for the release of Documents seized pursuant to this Warrant that remain in the custody of the Court.

15. The prosecuting or investigating authority may make submissions to the Court on the issue of privilege, but shall not be permitted to inspect the Documents for the purposes of making the application.

16. Where the Documents are determined by the Court not to be privileged, they shall be released to the officer in charge of the search or another peace officer and may be used in the normal course of the investigation, subject to any direction by the Court.

17. Where the Documents are determined by the Court to be privileged, they shall be returned to a person designated by the Court.

18. All fees and disbursements of the Referee and the Computer Forensic Expert shall be borne by the investigating authority that obtained this Warrant. The fee schedule for referees is attached as Schedule 1.

Draft article for the *Benchers Bulletin* –

Guidelines for recommended terms for search warrants of law offices

Warrants must include processes that will preserve privilege

Fortunately, the authorization of a warrant to search a law office occurs only infrequently.

However, it is possible that a criminal investigation of a lawyer's client, a matter on which a lawyer's client has some involvement or, in rare and unfortunate cases, a matter on which a lawyer has direct involvement, will result in an application for a search warrant at a law office.

When faced with the presence of the police or investigators in one's office, it is not always easy to remember that a lawyer has professional duties that must be observed.

In particular, the obligation to protect the privilege and confidence of one's client persists even if the lawyer is the target of the search, and it is therefore important to ensure that the warrant authorizing the search of a law office includes processes that will preserve that privilege.

Some years ago, the Supreme Court of Canada struck down the provisions in the *Criminal Code* that had it purported to deal with the protection of privilege during the search of a law office.

Since then, it has become evident that providing some direction for recommended terms of a warrant to search law offices would assist the profession and the investigating authorities, particularly where the lawyer is the target of the search, or closely associated in the minds of the investigators with the target, or where the lawyer's whereabouts are unknown at the time the search is to be executed.

To this end, the Associate Chief Justice asked the Law Society, in consultation with other interested parties, to develop guidelines for the terms contained in and procedures associated with the execution of warrants to search a law office in order to protect solicitor client privilege. The resulting guidelines represent the combined efforts of the Law Society, the Public Prosecution Service of Canada, the Ministry of Justice – Criminal Justice Branch, the Vancouver Police Department, and the BC Association of Chiefs of Police. The guidelines were forwarded to the Associate Chief Justice and no reservations were registered.

The intent of the document produced is to clearly set out the steps that need to be in place in advance of the search to ensure the search can be conducted while protecting the privilege of clients. The guidelines as drafted contemplate the appointment of a "referee" (to be drawn from the list of special prosecutors) whose responsibilities are to:

i. Under the direction of the officer in charge of the search, search for and seize documents, including electronic documents and images of data stored on computer equipment, and computer equipment itself, that are authorized to be seized by the warrant, in the manner authorized by the warrant,

ii. Maintain the continuity and the confidentiality of the documents in accordance with the warrant, and

iii. Examine and handle the documents in accordance with the procedures established in the warrant.

Documents identified and seized by the referee are to be delivered to the custody of the Supreme Court. The guidelines contain procedures for the notification of clients whose privilege may be affected, including terms and procedures concerning how privilege claims can be addressed before the Court. There are also provisions in the guidelines that may be utilized where the search involves the seizure of computers and electronic records.

The guidelines can be downloaded from the Law Society website at [xxx].

The Law Society
of British Columbia

April 2, 2013

CONFIDENTIAL

Sent via mail

Honourable Shirley Bond
Minister of Justice and Attorney General
PO Box 9044, Stn Prov Govt
Victoria BC V8W 9E2

Art Vertlieb, QC
President

Dear Minister Bond:

Re: White Paper on Justice Reform Part II – A Timely, Balanced Justice System

The Law Society of British Columbia (the "Law Society") is an institution whose origin dates back to 1869, and which has been continued under the *Legal Profession Act*, SBC 1998, Chapter 9. The object and duty of the Law Society is to uphold and protect the public interest in the administration of justice by, *inter alia*, preserving and protecting the rights and freedoms of all persons.

To fulfill its mandate, the Law Society pursues a strategic plan, implements policies and brings a voice to issues affecting the justice system and the delivery of legal services. We are pleased to make a contribution to the discussion concerning our justice system.

We have reviewed the government's second White Paper entitled *A Timely, Balanced Justice System*, which was recently released by the Ministry of Justice. The Law Society supports the visions set out by the government in the second White Paper.

We share your view that serving the public interest in the administration of justice requires a timely and balanced approach to the delivery of justice and the use of resources in achieving justice. "Justice delayed is justice denied" is an often used aphorism, but is nevertheless important to keep in mind when working to instill public confidence in the justice system. We agree that a balanced or proportional approach to the processes engaged and

845 Cambie Street, Vancouver, BC, Canada V6B 4Z9
t 604.669.2533 | f 604.669.5232
BC toll-free 1.800.903.5300 | TTY 604.443.5700
lawsociety.bc.ca

resources utilized by parties seeking to resolve disputes is important in order to ensure that justice is not delayed. Participants in the justice system need to be able to have the necessary tools and appropriate processes and choices in the types of services available to them in order to be able to prevent justice being delayed. Consequently, the Law Society supports the premise underlying the second White Paper. It is consistent with our policies and we are confident we can constructively engage with the Ministry in achieving these goals.

Our strategic plan identifies goals by which the Law Society can discharge its mandate. Our aim is to try and ensure the public will have better access to legal services and the public will have greater confidence in the administration of justice and the rule of law. We have identified a number of strategies in connection with those goals that we believe will improve people's lives by making our justice system more responsive to the public interest.

In particular, we have recently implemented changes to our rules to permit "designated paralegals." Designated paralegals are non-lawyers, working under the general supervision of lawyers and therefore regulated in the public interest, who may directly provide legal services to lawyers' clients and, in limited circumstances, appear before courts. This initiative has been undertaken in an effort to increase the manner in which legal services may be provided and to recognize that some legal services may be more efficiently and affordably provided by non-lawyers. Clients will consequently have a greater choice in how they may obtain legal advice, which we hope will encourage access to advice at an early stage of proceedings.

In 2008 we became the first law society to enact rules to permit lawyers to provide limited scope ("unbundled") legal services. The reforms arose from a recognition that providing greater options to the public in how they access legal services, including for discrete tasks, is in the public interest. The philosophy behind the unbundling and designated paralegal reforms is to remove barriers to access that the traditional business models and rules of professional conduct might have created. The goal is to improve the public's access to competently-delivered and more affordable legal services.

We are also currently examining the regulatory structure of the legal profession and have created a task force that includes representatives of the Society of Notaries Public and of the BC Paralegal Association to examine whether the public interest might be best served through the joint regulation of all legal service providers. A single regulator of all legal services, acting

in the public interest, may improve the ability to identify ways to increase the range of available legal service providers, which may provide clients with greater choice at different price ranges. Moreover, we are considering the qualification standards or requirements that are necessary for effective and competent provision of differing types of legal services, as well as alternate methods by which individuals who have not obtained an undergraduate and law degree may still be able to provide limited forms of legal services.

Care must be taken when advancing any visions identified, whether by government or others. As you know, there are rights and principles engaged by the justice system that cannot be undervalued. For example, there is undoubtedly a role for alternate forms of dispute resolution. We recognize, however, that some legal issues are better resolved through courts and we believe the public interest requires that the courts remain robust, properly funded, and available to litigants. Courts are a critical part of an effective democratic society.

We consider the role of courts to be especially important where offences are involved. We also believe it important to continue to recognize the rights of citizens to challenge the evidence before an impartial decision maker who is independent of the executive branch of government; the branch that, of course, is also responsible for enforcement of the laws.

We believe that early intervention to assist citizens is essential to their ability to achieve justice in a timely and balanced way, and we encourage a collaborate effort to achieve a greater level of legal education in order that people may have a better basic understanding of their legal obligations as well as better grasp of what their rights and responsibilities are. A better understanding of legal rights and responsibilities could, in fact, reduce the number of disputes, provided people receive advice in connection with their legal obligations before problems arise. If legal problems do arise that lead to a dispute about rights and obligations in civil law, or result in charges in criminal law, we agree that access to help, including legal advice, at an early stage, is in the general public interest and may reduce the number of court appearances and lead to better-informed and earlier decisions.

Finally, we strongly support the position that increased funding to the Legal Services Society - particularly funding for family law legal aid services and criminal law duty counsel - is of considerable importance in the facilitation of access to justice. We were pleased to see these initiatives referenced in the White Paper.

In conclusion, the Law Society is grateful for the opportunity to continue to work with you to ensure an effective justice system that serves the needs of all stakeholders.

Yours truly,

Art Vertlieb, QC
President