The Law Society of British Columbia

Agenda

Benchers

Date: Friday, October 31, 2014

Time: **7:30 am** Continental breakfast

8:30 am Call to order

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.***

CONSENT AGENDA:

The 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. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda	1	President		
	• Minute of September 17, 2014 minute of email authorization			Tab 1.1	Approval
	• Minutes of September 26, 2014 meeting (regular session)			Tab 1.2	Approval
	• Minutes of September 26, 2014 meeting (*in camera* session)			Tab 1.3	Approval
	• Federation of Law Societies of Canada: Deferral of National Requirement for Joint and Dual Law Degree Programs until 2017			Tab 1.4	Approval
	• LTSA Board of Directors: Law Society Nomination			Tab 1.5	Decision
	• Proposed Amendments to Rule 3-68 (Cloud Computing and Retention and Security of Records)			Tab 1.6	Approval
	• Ethics Committee: Rule 4.2-6 – Possible Elimination of Rule			Tab 1.7	Approval

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
2	Consideration of the October 30, 2014 Referendum Result	30	President/CEO	(*To be circulated at the meeting*)	Decision
3	Governance Committee Recommendations: Amendments to General Meeting Rules Regarding Webcasting and Electronic Voting	10	Miriam Kresivo, QC	Tab 3	Decision
GUEST PRESENTATIONS					
4	Law Foundation of BC Annual Review	20	Chair Tamara Hunter		Presentation
5	Courthouse Libraries BC Biennial Review	20	Chair Alan Ross		Presentation
REPORTS					
6	2015-2017 Strategic Planning Update	15	President/CEO	Tab 6	Briefing
7	Interim Report of the Tribunal Program Review Task Force	5	Ken Walker, QC		Briefing
8	Financial Report to September 30, 2014 – Q3 Year-to-date Financial Results	10	Ken Walker, QC/ Jeanette McPhee	Tab 8	Briefing
9	President's Report	15	President	Oral report	Briefing
10	CEO's Report	15	CEO	Tab 10	Briefing
11	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC	Tab 11	Briefing

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
12	Report on Outstanding Hearing & Review Decisions	4	President	(*To be circulated at the meeting*)	Briefing
FOR INFORMATION					
13	Letter of Appreciation from Access Probono			Tab 13	Information
IN CAMERA					
14	Temporary Articled Students Acting as Commissioners: Bencher Input for the Credentials Committee	15	David Mossop, QC	Tab 14	Discussion
15	*In camera* • Bencher concerns • Other business	15	President/ CEO		Discussion/ Decision

The Law Society of British Columbia

Minute of Email Approval

Benchers

Date: Wednesday, September 17, 2014

Procedural Resolution for September 26, 2014 Bencher Meeting

On September 17, 2014 Jan Lindsay, QC sent an email to the Benchers with the subject line "Bencher Meeting - September 26 - Procedural Matter/Vote Requested" (copy attached as Appendix 1 to these minutes). Ms. Lindsay's message included the following information:

> At the July 11 Bencher meeting, we agreed on some procedural matters for the discussion of the motions at the September 26 meeting. They were:
>
> 1. All TWU-related motions presented at the September 26 Bencher meeting be moved and seconded consecutively, debated concurrently and voted on separately
> 2. The Benchers be limited to a total of two speeches during the concurrent debate of any TWU-related motions presented and seconded at the September 26 Bencher meeting, with the first speech limited to 5 minutes and the second speech limited to 3 minutes
> 3. Any Bencher's permitted speaking time may be combined into a single speech of 8 minutes, at the Bencher's request and at the call of the Chair; and
> 4. The order of voting on the TWU-related motions presented and seconded at the September 26 meeting will be determined by the Benchers at that meeting.
>
> At the Executive Committee meeting on September 11, there was some discussion about the order of voting. While recognizing that the Benchers left this to be decided at the September 26 meeting, given views that have already been expressed on this issue, the Executive Committee thought it might be best to present a proposal to the Benchers in advance of the meeting. The Executive Committee was concerned that webcasting a protracted discussion about the order of voting might not be constructive.

> The Executive Committee decided to put the following to the Benchers for a vote by return email:
>
> *BE IT RESOLVED that the order of voting on any TWU-related motions presented and seconded at the Bencher meeting to be held on September 26, 2014 shall be the order in which notice of such motions have been provided to the Benchers; Mr. Maclaren's motion shall be voted on first, followed by Mr. Wilson's motion, followed by Mr. Mossop's motion.*
>
> Provided that at least 75% of the Benchers reply in the affirmative, this has same effect as a resolution passed at a regularly convened Bencher meeting. If the resolution doesn't receive the required 75% support, then there will be a discussion on the order of voting at the meeting.

Section 6(3) of the *Legal Profession Act* provides that a motion assented to in writing by at least 75% of the Benchers has the same effect as a resolution passed at a regularly convened meeting of the Benchers.

Email Authorization

By Thursday, September 18, 2014, 25 Benchers (81%) had emailed their approval of the following resolution:

> *BE IT RESOLVED that the order of voting on any TWU-related motions presented and seconded at the Bencher meeting to be held on September 26, 2014 shall be the order in which notice of such motions have been provided to the Benchers; Mr. Maclaren's motion shall be voted on first, followed by Mr. Wilson's motion, followed by Mr. Mossop's motion.*

The resolution was adopted.

> WKM
> 2014-10-15

From: Jan Lindsay, QC
To: Benchers Only
Cc: Tim McGee, QC
Subject: Bencher Meeting - September 26 - Procedural Matter/Vote Requested
Date: Wednesday, September 17, 2014 1:56:55 PM

Dear Benchers,

At the July 11 Bencher meeting, we agreed on some procedural matters for the discussion of the motions at the September 26 meeting. They were:

1. All TWU-related motions presented at the September 26 Bencher meeting be moved and seconded consecutively, debated concurrently and voted on separately
2. The Benchers be limited to a total of two speeches during the concurrent debate of any TWU-related motions presented and seconded at the September 26 Bencher meeting, with the first speech limited to 5 minutes and the second speech limited to 3 minutes
3. Any Bencher's permitted speaking time may be combined into a single speech of 8 minutes, at the Bencher's request and at the call of the Chair; and
4. The order of voting on the TWU-related motions presented and seconded at the September 26 meeting will be determined by the Benchers at that meeting.

At the Executive Committee meeting on September 11, there was some discussion about the order of voting. While recognizing that the Benchers left this to be decided at the September 26 meeting, given views that have already been expressed on this issue, the Executive Committee thought it might be best to present a proposal to the Benchers in advance of the meeting. The Executive Committee was concerned that webcasting a protracted discussion about the order of voting might not be constructive.

The Executive Committee decided to put the following to the Benchers for a vote by return email.

BE IT RESOLVED that the order of voting on any TWU-related motions presented and seconded at the Bencher meeting to be held on September 26, 2014 shall be the order in which notice of such motions have been provided to the Benchers; Mr. Maclaren's motion shall be voted on first, followed by Mr. Wilson's motion, followed by Mr. Mossop's motion.

Provided that at least 75% of the Benchers reply in the affirmative, this has same effect as a resolution passed at a regularly convened Bencher meeting. If the resolution doesn't receive the required 75% support, then there will be a discussion on the order of voting at the meeting.

I hope you'll take a moment to respond with your vote.

Regards,

Jan

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, September 26, 2014

Present:

Jan Lindsay, QC, President
Ken Walker, QC, 1st Vice-President
David Crossin, QC, 2nd Vice-President (by telephone)
Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Pinder Cheema, QC
David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris
Martin Finch, QC
Miriam Kresivo, QC
Dean Lawton
Peter Lloyd, FCA
Jamie Maclaren
Sharon Matthews, QC (by telephone)
Ben Meisner
Nancy Merrill
Maria Morellato, QC
David Mossop, QC (by telephone)
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Herman Van Ommen, QC
Cameron Ward
Sarah Westwood
Tony Wilson

Excused: Not Applicable

Staff Present:

Tim McGee, QC
Deborah Armour
Jeffrey Hoskins, QC
Bill McIntosh
Jeanette McPhee
Adam Whitcombe

Guests:	Kevin Boonstra	Legal Counsel, Trinity Western University
	barbara findlay, QC	Member, Law Society of BC
	Gavin Hume, QC	Life Bencher
	Leonard Krog	MLA, Nanaimo and Justice Critic
	Bob Kuhn, J.D.	President, Trinity Western University
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Michael Mulligan	Member, Law Society of BC
	Alex Shorten	President, Canadian Bar Association, BC Branch
	Geoffrey Trotter	Law Society Member, Geoffrey Trotter Law Corporation
	Art Vertlieb, QC	Life Bencher

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on July 11, 2014 were approved as circulated.

The *in camera* minutes of the meeting held on July 11, 2014 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

· Amendment of Rule 5-10: Application to Vary Orders

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

By rescinding Rule 5-10 and substituting the following:

Application to vary certain orders

5-10(1) An applicant or respondent may apply in writing to the Executive Director for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-9 *[Costs of hearings]*, or

(ii) to fulfill a condition imposed under section 22 *[Credentials hearings]*, 38 *[Discipline hearings]* or 47 *[Review on the record]*,

(b) a variation of a condition referred to in paragraph (a)(ii), or

(c) a change in the start date for a suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*.

(1.1) An application under subrule (1)(c) must be made at least 7 days before the start date set for the suspension.

(1.2) The Executive Director must promptly notify the President of an application under subrule (1).

(2) The President must refer an application under subrule (1) to one of the following, as may in the President's discretion appear appropriate:

(a) the same panel that made the order;

(b) a new panel;

(c) the Discipline Committee;

(d) the Credentials Committee.

(3) The panel or Committee that hears an application under subrule (1) must

(a) dismiss it,

(b) extend to a specified date the time for payment,

(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*.

(3.1) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (2)(c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (3).

(6) An application under this Rule does not stay the order that the applicant seeks to vary.

Failure to pay costs or fulfill practice condition

5-10.1(1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-10 *[Application to vary certain orders]*:

(a) pay in full a fine or the amount owing under Rule 5-9 *[Costs of hearings]*;

(b) fulfill a practice condition as imposed under section 21 *[Admission, reinstatement and requalification]*, 22 *[Credentials hearings]*, 27 *[Practice standards]*, 32 *[Financial responsibility]*, 38 *[Discipline hearings]* or 47 *[Review on the record]*, as accepted under section 19 *[Applications for enrollment, call and admission, or reinstatement]*, or as varied under these Rules.

(2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

· 2014 Law Society of Award Recommendation to Benchers

BE IT RESOLVED that John Hunter, QC be named as the recipient of the 2014 Law Society Award.

DISCUSSION/ DECISION

2. 2015 Fees and Budgets: Finance and Audit Committee Recommendations to the Benchers

2014 Finance & Audit Committee Chair Ken Walker, QC introduced the other Committee members[1] and addressed the Benchers. Mr. Walker confirmed the Committee's 2015 fee recommendations and outlined the budget preparation and review process that was employed by senior management and the Committee in arriving at those recommendations.[2] CEO Tim McGee, QC provided further background on management's budgeting process.

Mr. Walker moved (seconded by Mr. Lloyd) that the following resolutions be adopted by the Benchers:

> BE IT RESOLVED THAT, commencing January 1, 2015, the practice fee be set at 1,992.00, pursuant to section 23(1)(a) of the *Legal Profession Act*, consisting of the following amounts:
>
> | | |
> |---|---|
> | General Fund | $1,605.46 |
> | Federation of Law Societies contribution | 30.00 |
> | Canadian Legal Information Institute contribution | 36.98 |
> | Pro Bono contribution | 30.06 |
> | Courthouse Libraries BC contribution | 195.00 |
> | Lawyers' Assistance Plan contribution | 67.00 |
> | Advocate subscription fee | 27.50 |
> | **Practice Fee** | **$1,992.00** |
>
> BE IT RESOLVED THAT:
>
> - the insurance fee for 2015 pursuant to section 30(3) of the *Legal Profession Act* be set at $1,750;
> - the part-time insurance fee for 2015 pursuant to Rule 3-22(2) be set at $875; and
> - the insurance surcharge for 2015 pursuant to Rule 3-26(2) be set at $1,000.

[1] Peter Lloyd, FCA (Vice-Chair), Thomas Fellhauer, Craig Ferris, Peter Kelly, Miriam Kresivo, QC and Bill Maclagan, QC.

[2] See page 57 of the meeting materials for the Finance and Audit Committee's presentation to the Benchers (*2015 Fees and Budget: Effective and Innovative Regulation*).

BE IT RESOLVED THAT:

- effective September 1, 2015, the training course registration fee be set at $2,500, pursuant to Rule 2-44(4)(a); and

- effective September 1, 2015, the registration fee for repeating the training course be set at $3,900, pursuant to Rule 2-44(4)(a).

Following discussion, the motion was carried unanimously.

Mr. Walker thanked CFO Jeanette McPhee for her valuable support to the Law Society and the Committee.

REPORTS

3. Legal Services Regulatory Framework Task Force Update

Art Vertlieb, QC addressed the Benchers as Chair of the Legal Services Regulatory Task Force. Mr. Vertlieb introduced the other task force members[3] and noted that the body was created early this year, following the Benchers' adoption of the recommendations of the Legal Service Providers Task Force in December 2013. Mr. Vertlieb outlined the mandate of the current task force[4] and provided highlights of its work through 2014, including consultations with the Chief Justices of the BC Court of Appeal and Supreme Court, the Chief Judge and two Associate Chief Judges of the BC Provincial Court, the Chairs of BC's administrative tribunals, and representatives of the Law Society of Upper Canada and the Washington State Bar Association. Mr. Vertlieb noted that following consultation with the legal profession and the public in the fall, the task force expects to report with recommendations to the Benchers at their December meeting. Mr. Vertlieb thanked Mr. McGee, Mr. Lucas and Mr. Munro for their valuable assistance and support to the task force throughout the year.

4. President's Report

Ms. Lindsay briefed the Benchers on various events she has attended and matters she has undertaken on behalf of the Law Society since the last meeting, including:

a. The Canadian Bar Association Mid-year Meeting in St. John's, NL.

b. Welcoming Ceremonies for First Year Law Students at UBC and University of Victoria

[3] Benchers David Crossin, QC (Vice-Chair), Satwinder Bains, Jeevyn Dhaliwal, Lee Ongman, and non-Benchers Karey Brooks, Nancy Carter, Dean Crawford, Carmen Marolla, Wayne Robertson, QC and Ken Sherk.
[4] See: http://www.lawsociety.bc.ca/page.cfm?cid=3902&t=Legal-Services-Regulatory-Framework-Task-Force.

c. Civil Review Tribunal Update

d. Judicial Access Centre (JAC) Open Houses in Vancouver and Victoria

Ms. Lindsay attended in Vancouver and Mr. McGee attended in Victoria. Ms. Lindsay noted that about 50 people per day attend the Vancouver JAC.

e. Law Firm Regulation Task Force Update

Ms. Lindsay introduced the members[5] of the Law Firm Regulation Task Force[6] and confirmed that the work of this new body is underway.

5. CEO's Report

Mr. McGee reported orally to the Benchers on the the following matters:

a. 2015-2017 Strategic Plan Development

Mr. McGee thanked the Benchers for their attendance and valuable contributions at yesterday's 'environmental scan' strategic planning session, facilitated by Nic Tsangarakis, principal of Kwela Leadership and Talent Management. The strategic issues identified at that session will be mapped against the elements of the Law Society's statutory mandate, for review by the Executive Committee, with the goal of presenting a draft outline of the Society's next three-year strategic plan for the Benchers' review and discussion at their October 31 meeting.

b. Discipline Counsel Advocacy Workshop

This important training session for Law Society Discipline Counsel also took place yesterday. Led by Deborah Armour, Chief Legal Officer, and Jaia Rai, Manager, Discipline, the workshop featured conduct of simulated hearings, with three preeminent BC counsel (Ian Donaldson, QC, Leonard Doust, QC and Glen Ridgway, QC) volunteering their time to attend – answering questions, providing feedback and generally supporting the professional development of the Law Society's Discipline Counsel.

c. Guest Lecture at the University of Victoria, Faculty of Law

Mr. McGee recently delivered a guest lecture to a Legal Ethics and Professionalism class at the University of Victoria law school. The level of engagement and interest shown by the

[5] Benchers: Herman Van Ommen, QC (Chair), Martin Finch, QC, Peter Lloyd, FCA, Sharon Matthews, QC; and non-Benchers: Jan Christiansen, Lori Mathison, Angela Westamacott, QC and Henry Wood, QC.
[6] For the task force's mandate, see: http://www.lawsociety.bc.ca/page.cfm?cid=3966&t=Law-Firm-Regulation-Task-Force.

attending students was noteworthy, and validates the decision by the Federation of Law Societies to include this course in the 'nation requirement' – i.e. a mandatory element of the Canadian law schools' curricula. Mr. McGee thanked Dean Jeremy Webber and Professors Martha O'Brien and Andrew Pirie for the invitation to attend.

6. Briefing by the Law Society's Member of the Federation Council

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Council of the Federation of Law Societies of Canada. Mr. Hume reported on the following matters:

a. Recent Conferences

In July Mr. Hume represented the Federation at two international conferences: a gathering of legal regulatory bodies, and a meeting on legal ethics.

b. Federation Council Meeting (June 2014)

Decisions were made to proceed with three significant initiatives:

- a national requirements review regarding the curricula of Canada's law schools
- a Federation governance review
- development of the Federation's next strategic plan

c. Federation Council Meeting and Conference (October 9-10, 2014, Halifax)

Council agenda matters will include:

- National Requirement Review Committee or Task Force
  - Among the issues to be considered by this new body will be the matter of a non-discrimination requirement, including but not limited to the recommendation of the Federation's special advisory committee on Trinity Western University's application for accreditation of its proposed School of Law
- Federation Governance Review Update
  - The Task Force conducting the review will provide a preliminary progress report

- Model Code Standing Committee Update
    - The Federation's Standing Committee on the *Model Code of Professional Conduct* (chaired by Mr. Hume) will propose several amendments to the Code, having engaged in extensive consultation with law societies across the country
- Strategic Planning
    - The Conference theme will be access to legal services. The program will include a presentation by the United Way on the effects of poverty on access, and site visits to several organizations in Halifax that deliver pro bono legal services to persons in need.

7. Report on the Outstanding Hearing & Review Decisions

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

DISCUSSION/ DECISION

8. Consideration of Special General Meeting Members' Resolution

Ms. Lindsay reviewed the meeting protocol[7] for presentation, discussion and voting on motions relating to implementation of the members' resolution passed at the special general meeting of the members of the Law Society held on June 10, 2014.

- **Motion 1 – Jamie Maclaren**

Mr. Maclaren moved (seconded by Ms. Bains) that the Benchers adopt the following resolution:

> BE IT RESOLVED that the Benchers implement the resolution of the members passed at the June 10, 2014 special general meeting, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purposes of the Law Society's admissions program.

[7] See the minutes of the July 11 Bencher meeting (item 4) regarding the protocol for presentation and debate of motions, and the minute of the Benchers' September 17, 2014 email approval regarding order of voting on motions.

- **Motion 2 – Tony Wilson**

Mr. Wilson moved (seconded by Ms. Kresivo) that the Benchers adopt the following resolution:

BE IT RESOLVED THAT:

1. A referendum (the "Referendum") be conducted of all members of the Law Society of British Columbia (the "Law Society") to vote on the following resolution:

   "Resolved that the Benchers implement the resolution of the members passed at the special general meeting of the Law Society held on June 10, 2014, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purpose of the Law Society's admissions program."

   Yes _____ No _____ (the "Resolution")

2. The Resolution will be binding and will be implemented by the Benchers if at least:

   (a) 1/3 of all members in good standing of the Law Society vote in the Referendum; and
   (b) 2/3 of those voting vote in favour of the Resolution.

3. The Benchers hereby determine that implementation of the Resolution does not constitute a breach of their statutory duties, regardless of the results of the Referendum.

4. The Referendum be conducted as soon as possible and that the results of the Referendum be provided to the members by no later than October 30, 2014.

- **Motion 3 – David Mossop, QC**

Mr. Mossop moved (seconded by Mr. Walker) that the Benchers adopt the following resolution:

WHEREAS:

1. The Benchers have before them for consideration at the September 26 meeting two motions in relation to the proposed law school at Trinity Western University;

2. There is currently litigation in British Columbia, Ontario and Nova Scotia that relates directly to approval of the proposed law school and the proceedings are expected to be heard before the end of this year; and

3. The Benchers have the discretion under Rule 2-27(4.1) to make a decision at any time on whether to adopt a resolution declaring that the proposed law school is not an approved faculty of law;

THEREFORE BE IT RESOLVED that consideration of the motions before the Benchers for decision at the September 26 meeting be postponed until the next regular meeting of the Benchers at least 14 days after the Benchers and the members of the bar have had an opportunity to consider the reasons of a trial decision in one of the legal actions now before the courts.

The Benchers then addressed Motions 1, 2 and 3 concurrently, speaking in the following order[8]:

- Round 1

    - Jamie Maclaren, Satwinder Bains, Tony Wilson, Miriam Kresivo, QC, David Mossop, QC, Ken Walker, QC, David Crossin, QC, Joseph Arvay, QC, Cameron Ward, Lee Ongman, Craig Ferris, Phil Riddell, Ben Meisner, Claude Richmond, Dean Lawton, Pinder Cheema, QC, Lynal Doerksen, Martin Finch, QC, Greg Petrisor, Sharon Matthews, QC, Maria Morellato, QC, Herman Van Ommen, QC, Elizabeth Rowbotham, Peter Lloyd, FCA, Nancy Merrill, Jeevyn Dhaliwal and David Corey.

[8] For the webcast of the September 26 Bencher meeting, including the Benchers' debate of these three motions, see: http://new.livestream.com/mediaco/lsbc09262014

- Round 2
    - Jamie Maclaren, Joseph Arvay, QC and Tony Wilson.

Ms. Lindsay confirmed the conclusion of discussion of the three motions before the meeting, was concluded, and called for voting in the order that the Benchers had received notice of the motions.[9]

Voting on Motion 1 (Implement SGM Resolution):

The motion was defeated (9 in favour and 21 opposed).

Voting on Motion 2 (Hold Binding Referendum):

The motion was carried (20 in favour and 10 opposed).

Motion 3 was withdrawn by Mr. Mossop and Mr. Walker; Ms. Lindsay confirmed that no vote was required.

The Benchers discussed other matters *in camera*.

WKM
2014-10-20

[9] Pursuant to the following Bencher resolution adopted as of September 17, 2014:

BE IT RESOLVED that the order of voting on any TWU-related motions presented and seconded at the Bencher meeting to be held on September 26, 2014 shall be the order in which notice of such motions have been provided to the Benchers; Mr. Maclaren's motion shall be voted on first, followed by Mr. Wilson's motion, followed by Mr. Mossop's motion.

REDACTED MATERIALS

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The Law Society of British Columbia

Memo

To: The Benchers

From: Alan Treleaven

Date: October 20, 2014

Subject: Deferral of the National Requirement for Canadian Common Law Joint and Dual Law Degree Programs to January 2017

BACKGROUND

The attached letter from the Federation President and accompanying Federation documentation explain why law societies are being individually asked to approve deferral of the application of the National Requirement to joint and dual law degree programs to January 2017.

REQUEST FOR BENCHER APPROVAL

RESOLVED that the Benchers approve deferral of the application of the National Requirement to joint and dual law degree programs to January 2017.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

September 24, 2014

Jan Lindsay, Q.C., President
Law Society of British Columbia
845 cambie Street
Vancouver, BC V6B 4Z9

Re: Deferral of National Requirement for Joint and Dual Law Degree Programs until 2017

Dear Ms. Lindsay,

As you know, in 2010 Canada's law societies approved the national requirement specifying the competencies and skills that graduates of Canadian common law programs must have attained and the academic and learning resources that common law schools must have in place (the "National Requirement"). The National Requirement is to come into effect in 2015. I wish to inform you that that the Council of the Federation of Law Societies of Canada recently approved a resolution to defer application of the National Requirement to joint and dual law degree programs until January 2017, and to refer the resolution to Canada's law societies. This decision was taken on the advice of the Federation's Canadian Common Law Program Approval Committee. The January 2015 timing for the applicability of the National Requirement to regular JD / LLB programs is unaffected.

Decisions of this sort are only effective if approved by each law society. Consequently, I attach a copy of the resolution approved by Council, together with the background memorandum that outlines the rationale for its decision.

The Federation's Director, Law School Programs, Deborah Wolfe, P.Eng., will follow up with your law society regarding the process and timing of your consideration of the attached resolution. In invite you or your staff to contact Ms. Wolfe should you have any questions regarding any of the foregoing.

I look forward to seeing you in Halifax at the Federation's Annual Conference in October.

Kind regards,

Marie-Claude Bélanger-Richard, Q.C.
President

c.c.: Laurie Pawlitza, Chair, Canadian Common Law Program Approval Committee
Deborah Wolfe, P.Eng., Director, Law School Programs
Timothy E. McGee, Q.C., Chief Executive Officer, Law Society of British Columbia

Encl.

RESOLUTION OF THE COUNCIL OF THE FEDERATION OF LAW SOCIETIES OF CANADA

ADOPTED UNANIMOUSLY SEPTEMBER 9, 2014

DEFERRAL OF APPLICATION OF THE NATIONAL REQUIREMENT TO JOINT AND DUAL DEGREE PROGRAMS

WHEREAS in 2010 the law societies approved the National Requirement specifying the competencies and skills that graduates of Canadian common law programs must have attained and the academic and learning resources that common law schools must have in place;

WHEREAS the National Requirement comes into force in 2015;

WHEREAS the Task Force on the Canadian Common Law Degree and the Common Law Degree Implementation Committee concluded that joint degree programs in which students obtain degrees in law and another discipline, and dual degree programs in which students obtain law degrees from two different schools, could meet the National Requirement;

WHEREAS the Canadian Common Law Program Approval Committee (the "Approval Committee") has determined that it needs to develop specific criteria for determining whether joint and dual degree programs meet the National Requirement and has advised that these criteria cannot be developed in sufficient time to meet the 2015 deadline;

WHEREAS the Approval Committee has indicated that once the criteria for joint and dual degree programs have been developed, law schools must be given sufficient time within which to make any necessary changes to their programs to meet the criteria;

RESOLVED that Council approve deferral of the application of the National Requirement to joint and dual degree programs until January 2017 and refer this resolution to Canada's law societies for their consideration and approval.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

MEMORANDUM

FROM: Federation Executive

TO: Council of the Federation
Law Society CEOs (for information)

DATE: September 2, 2014

SUBJECT: Deferral of Application of the National Requirement to Joint and Dual Degree Programs

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ACTION REQUIRED: **DECISION OF COUNCIL**

DRAFT MOTION

WHEREAS in 2010 the law societies approved the National Requirement specifying the competencies and skills that graduates of Canadian common law programs must have attained and the academic and learning resources that common law schools must have in place;

WHEREAS the National Requirement comes into force in 2015;

WHEREAS the Task Force on the Canadian Common Law Degree and the Common Law Degree Implementation Committee concluded that joint degree programs in which students obtain degrees in law and another discipline, and dual degree programs in which students obtain law degrees from two different schools, could meet the National Requirement;

WHEREAS the Canadian Common Law Program Approval Committee (the "Approval Committee") has determined that it needs to develop specific criteria for determining whether joint and dual degree programs meet the National Requirement and has advised that these criteria cannot be developed in sufficient time to meet the 2015 deadline;

WHEREAS the Approval Committee has indicated that once the criteria for joint and dual degree programs have been developed, law schools must be given sufficient time within which to make any necessary changes to their programs to meet the criteria;

RESOLVED that Council approve deferral of the application of the National Requirement to joint and dual degree programs until January 2017 and refer this resolution to Canada's law societies for their consideration and approval.

ISSUE

1. Effective January 2015 all Canadian common law programs, including joint and dual degree programs, must be in compliance with the National Requirement for Canadian Common Law Programs (the "National Requirement"). The Canadian Common Law Program Approval Committee (the "Approval Committee") has determined that it requires criteria to determine whether joint and dual degree programs comply with the National Requirement. To provide sufficient time to develop the criteria and allow law schools to correct any deficiencies in their joint or dual degree programs, the Federation Executive recommends that application of the National Requirement to these programs be deferred until January 2017.

BACKGROUND

2. In June 2007, responding to external pressures including the enactment of fair access to regulated professions legislation by three provinces, and requests for approval of new law school programs, the Federation undertook a study to consider what should constitute an approved law degree for purposes of entry to the bar admission programs in the Canadian common law jurisdictions.

3. The Task Force on the Canadian Common Law Degree (the "Task Force") completed its work in October 2009 and issued a report containing recommendations for the competencies that graduates of approved programs should have and the learning resources that the law schools should provide. Council approved these recommendations and referred them to the law societies for their consideration and approval. By March 2010 the National Requirement had been approved by all Canadian law societies.

4. Approval of the National Requirement was followed in May 2010 with the establishment of the Canadian Common Law Degree Implementation Committee (the Implementation Committee"). Charged with determining how compliance with the National Requirement should be measured, the Implementation Committee brought together representatives of law societies and representatives of law schools.

5. In its final report, issued in August 2011, the Implementation Committee recommended that the Federation establish a new committee, the Canadian Common Law Program Approval Committee (the "Approval Committee") to determine whether common law programs comply with the National Requirement. The Implementation Committee report included specific recommendations on both the mandate of the Approval Committee and its composition.

6. The recommendations of the Implementation Committee were approved by all law societies and the Approval Committee was established in 2012. Pursuant to the process and timing approved by the law societies, the National Requirement will come into force in 2015.

7. Consistent with the process followed for approval of the National Requirement and the recommendations of the Implementation Committee, any changes to the National Requirement, including issues of process and timing, must be approved by the law societies.

APPLICATION OF THE NATIONAL REQUIREMENT TO JOINT AND DUAL DEGREE PROGRAMS

8. As part of the process of developing the National Requirement the Task Force considered the nature of the academic program, including the required duration of the program both for the LL.B/JD and for joint and dual degree programs.[1]

9. The reports of both the Task Force and the Implementation Committee recognized that, if properly structured, joint and dual degree programs enrich the JD/LL.B experience and made it clear that the National Requirement was not intended to interfere with the capacity of law schools to offer such programs. They must however conform to the National Requirement with adjustment as contemplated by the Task Force. Neither the Task Force nor the Implementation Committee provided detailed guidance on the application of the National Requirement to joint and dual degree programs.

10. Based on the information provided to date by the law schools, the Approval Committee advises that there are approximately 56 joint degree programs and 11 dual degree programs, although there are currently no students enrolled in a number of these programs. In total, there are approximately 350 students currently enrolled in all years of the various joint and dual degree programs. In the case of joint degree programs in particular there is considerable variation between the programs in terms of the disciplines with which the JD/LL.B may be paired, the number of required law credits and allowable non-law credits, and the length of time within which the joint degree may be obtained. The similarities and differences occur both across schools and within the same school, depending upon the specific joint degree.

11. Nothing in the Task Force or Implementation Committee Reports suggests that the content and profile of joint or dual degree programs should be identical, but each must be able to explain how the program meets the National Requirement. This has turned out to be a more complex inquiry than the Implementation Committee contemplated.

12. The Approval Committee has concluded that detailed criteria must be developed for joint and dual degree programs. This is likely to involve both operational and policy aspects and will take time for the Approval Committee to gather facts and consult with the law schools about the criteria, fully apprise schools of the information they are required to provide, analyze the information and make recommendations. The Approval Committee is likely to require assistance on the policy aspects of this task, possibly from the new National Requirement Review Committee[2]. Although this work has begun, it has

[1] Joint degree programs are those in which law is combined with another discipline. Dual degree programs are law programs in which students earn two law degrees from different universities.

[2] Council approved the establishment of this committee at is June 2014 meeting. A Working Group on the National Requirement Review Committee will report to Council by the end of the summer on detailed terms of reference, composition etc. of the committee.

become clear that it cannot be completed in time for the 2015 effective date for the National Requirement.

13. The Approval Committee has considered whether it would be possible to approve the joint and dual degree programs (possibly with concerns being stated about some) in the absence of clear criteria. The committee members have concluded, however, that without more policy guidance and defined criteria they cannot be confident that the joint and dual degree programs come sufficiently close to meeting the National Requirement to support this approach.

14. As the Approval Committee has not been able to finalize and communicate to law schools specific criteria for joint and dual degree programs, it is the Approval Committee's view that it would be unfair to require schools to meet the 2015 deadline for these programs, particularly if in some cases law schools will have to make curriculum changes to comply.

15. The Approval Committee has advised that its compliance analysis of all other law school programs, covering the vast majority of students, will be completed by the 2015 deadline as contemplated in the Implementation Committee Report. Extending the deadline for joint and dual degree programs would provide time for the development of specific guidelines for these programs and for the schools to make any changes necessary to comply with the requirements. In the interim, graduates of joint and dual degree programs would continue to be accepted in law society bar admissions programs on the same basis as they are currently accepted. An extension to 2017 will ensure that application of the National Requirement to joint and dual degree programs is carefully done and the process is fair to all.

RECOMMENDATION

16. The Federation Executive has considered this issue and agrees with the Approval Committee that an extension to 2017 of the deadline for application of the National Requirement to joint and dual degree programs is warranted and appropriate.

17. The 2015 deadline for compliance with the National Requirement was approved by each law society as part of the process of adopting the recommendations of the Implementation Committee. A decision to defer application of the National Requirement to joint and dual degree programs requires the approval of all law societies. In accordance with our usual practice the first step is to seek Council's approval. The Federation Executive therefore recommends that the motion set out on page 1 of this memorandum be approved.

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: October 21, 2014
Subject: Land Title & Survey Authority of BC ("LTSA") Board of Directors (Benchers' Nomination)

LTSA Board of Directors (Benchers' Nomination)

a. Background

Section 6(1) of the *Land Title and Survey Authority Act* requires the LTSA Board of Directors to consist of 11 individuals, two of whom must be appointed from nominees provided by the Law Society.

William (Bill) Cottick's first three-year as an LTSA director (and nominee of the Law Society) will conclude on March 31, 2015:

Current LSBC Nominees	Term of Office	Date First Appointed	Expiry Date
Geoff Plant, QC	3 years	4/1/2008	3/31/2017
William Cottick	3 years	4/1/2012	3/31/2015

LSTA CEO Godfrey Archbold's letter to Tim McGee dated September 16, 2014 confirms that LTSA would welcome Mr. Cottick as the Law Society's nominee for a second term. Mr. Cottick has confirmed that he would like to continue as an LTSA director and has provided his current Curriculum Vitae, which we have reviewed and find to be very strong.[1]

b. Recommendation

We recommend that the Benchers re-nominate William (Bill) Cottick for a second three-year term on the Land Title and Survey Authority Board of Directors, commencing April 1, 2015.

[1] We note that Mr. Cottick has earned the ICD.D director designation from the Canadian Institute of Corporate Directors.

bc Land
Title & Survey

September 16, 2014

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

Dear Mr. McGee:

Re: Land Title and Survey Authority of British Columbia - Board of Directors

I am writing to request the Law Society of British Columbia's participation in the 2014-15 nomination process for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia (the "LTSA"). The Law Society of British Columbia's responsibilities in supporting this round of LTSA Board renewal are in respect of the upcoming expiry of the Director term for William (Bill) Cottick.

The LTSA is established pursuant to the *Land Title and Survey Authority Act* and its' self-generated 11 member Board of Directors is selected from nominations of the LTSA's stakeholders. For the 2014/15 renewal process, LTSA is seeking between 3 and 5 nominations from the Law Society of British Columbia with respect to a Director term that is expiring on March 31, 2015. A listing of the current Board and their nominating entities is attached.

To be selected and to serve as a Director, individuals must meet the qualifications set out in part 9 of the Act and are expected to demonstrate personal attributes and competencies outlined in Schedule A (Skills and Experience Profile) of the Bylaws of the LTSA (see attached backgrounder for additional information).

It is our understanding that Bill Cottick is interested in serving an additional term as a Director of the Authority. Bill Cottick continues to make a valuable contribution to the Board and the Board would welcome Bill as a nominee for a second 3 year term.

In support of each nomination, we would ask that a nomination form (enclosed) be completed and signed by each candidate, and be submitted together with each candidate's resume. In cases where an incumbent Director is re-nominated, it is requested that they complete the nomination form to ensure the nomination review process is fully informed of experience gained since last submission. Please provide this information to Kelly Orr, Director of Corporate Strategies.

.../2

Nominee submissions from the Law Society of British Columbia must be **received by December 31, 2014** with the resulting Board selection process to result in an appointment to take effect as of April 1, 2015. Please note that if the LTSA does not receive nominations of qualified individuals from a stakeholder entity within the specified time, the Board must proceed to make an appointment and that individual will be deemed to be appointed from the stakeholder entity.

I look forward to the scheduled meeting with you and Bill McIntosh to discuss this topic further on Monday, September 22 at 3:30 pm. Should you have any questions respecting the nomination submission process and materials, please do not hesitate to contact Kelly Orr at (250) 410-0575 or via email at Kelly.Orr@ltsa.ca.

Thank you for your assistance.

Yours truly,

Godfrey D. Archbold
President and Chief Executive Officer

Attachments (3)
- Listing of LTSA Board of Directors
- LTSA Nomination Process Backgrounder
- LTSA Nomination Form

pc:
- Mr. William Cottick, LTSA Board Director
- Ms. Leslie Hildebrandt, Vice President and Corporate Counsel, LTSA
- Mr. Bill McIntosh, Manager, Executive Support, Law Society of British Columbia
- Ms. Kelly Orr, Director, Corporate Strategies, LTSA

Background Information
LTSA's Request for Board Director Nominations

What is the Land Title and Survey Authority?

The Land Title and Survey Authority of British Columbia (the "LTSA") is a publicly accountable, statutory corporation which operates and administers British Columbia's land title and survey systems. These systems, established through a comprehensive set of legislative requirements, have been in place since the 1860's and are today reliant on modern technology.

The LTSA maintains secure land title and survey systems through the timely, efficient registration of land title interests and survey records. These services are an essential underpinning to British Columbia's private property market and the civil justice system, and to BC's civic governance, taxation and Crown land management frameworks.

The LTSA collaborates with the Province on administration of the systems, and reports on achievement of performance requirements established by the Province. As a corporate entity, the LTSA operates within mandatory financial and governance reporting requirements, regulated fee structure, and is subject to British Columbia's Freedom of Information and Protection of Privacy Act and Ombudsperson Act.

The LTSA earns its income from the services fees it charges customers (other than government, which is fee exempt). Its net earnings, achieved through prudent financial management, continue to be re-invested to achieve land title and survey public policy objectives and sustainable, cost-effective operations.

The LTSA has a reputation for accountable, reliable and trusted public administration. It is a progressive, responsive organization that enjoys excellent customer satisfaction.

For further information, please visit: www.ltsa.ca.

How is the Board of Directors structured?

The LTSA is governed by an eleven-member Board of Directors. The Board's role, composition, and the processes for Board member appointment, are all established by the Act. The Board is responsible for overseeing the strategic direction and governance of the LTSA.

The Board is composed of members selected from nominees submitted by the following stakeholder entities:

- The Province of British Columbia
- The Law Society of British Columbia
- The Association of British Columbia Land Surveyors
- The First Nations Summit
- The Society of Notaries Public of British Columbia
- The British Columbia Real Estate Association
- The British Columbia Association of Professional Registry Agents
- The Union of British Columbia Municipalities

Appointments to the Board are made by the Board of Directors of the LTSA for terms of three years, with three to four new Board appointments required on April 1st of each year. The Act provides for Directors to serve up to three consecutive terms.

Who are the current Directors of the LTSA?

A list of the current Board Directors for the LTSA and brief biographies for each are available at the LTSA website at:

http://www.ltsa.ca/cms/board-of-directors

What will be the obligations of members appointed to the Board?

Directors owe a fiduciary duty to the LTSA itself, which means that they must make decisions in the best interest of the LTSA. They are not appointed to the Board in order to be delegates to the LTSA or advocates of a particular stakeholder or constituent group and do not represent any other entity when they are acting as board members.

Every Director must uphold the objectives of the LTSA and comply with its bylaws. Members of the Board are also required to comply with LTSA's Code of Business Conduct and Ethics. Directors are required to review the LTSA's Code of Business Conduct and Ethics (the "Code") and acknowledge their support and understanding of the Code by signing annual Declaration Statements. As well, each Director will sign a form consenting to act as Director, in which the qualifications for being a Director as specified in the *Land Title and Survey Authority Act* are confirmed by the individual as being satisfied.

How often does the Board of Directors meet?

The Directors meet together at such time and place as necessary for the conduct of business, subject always to the bylaws of the LTSA. (A copy of the bylaws is available for viewing on the LTSA's website: http://www.ltsa.ca/cms/corporate-governance)

The Directors meet at least once each quarter to conduct regular business and hold other meetings as necessary. Meetings are generally held in Victoria, British Columbia, but meetings may be held at other locations throughout the province. The LTSA also holds an Annual General Meeting in British Columbia, open to the public.

What is the remuneration for Directors?

Compensation levels for Directors are reviewed annually. Currently, Directors are entitled to an annual fee of $12,000, while Directors who serve as Committee Chairs of the Board are entitled to an addition annual fee of $9,000 (for a total annual fee of $21,000). The Chair of the Board receives an annual fee of $60,000.

Directors, other than the Chair of the Board, are also entitled to a daily meeting fee of $750 for Board meetings attended ($375 for meetings held by teleconference). All Directors are reimbursed for reasonable travel-related expenses incurred on LTSA business.

The LTSA indemnifies Directors consistent with section 23 of the *Land Title and Survey Authority Act.*

How will nominees be identified?

Each year, the stakeholder entities whose nominees to the Board of Directors of the LTSA have terms expiring March 31 (fiscal year end) are asked to submit between three to five nominations of qualified individuals by December 31 to serve on the Board of Directors the LTSA commencing April 1 (fiscal year start).

Each stakeholder entity will determine their own processes for identifying their nominees to the Board.

How are Directors selected?

Directors of the LTSA must meet the basic requirements established in the *Land Title and Survey Authority Act*. Specifically this means an individual who:

- Satisfies the requirements under section 124 of the *Business Corporations Act (British Columbia)*;
- Is not an elected official or employee of any government; and
- Is not a member of the Board of Directors, an officer or an employee of any of the stakeholder entities which nominate individuals to serve as Directors of the LTSA (i.e. Law Society of British Columbia, Association of British Columbia Land Surveyors, British Columbia Real Estate Association, British Columbia Association of Professional Registry Agents, First Nations Summit, Society of Notaries Public of British Columbia, Union of British Columbia Municipalities).

The Board of Directors of the LTSA select the individuals to be appointed as Directors from the nominations submitted by the stakeholder entities. The Governance Committee, comprised of members of the Board of Directors, oversees the selection process.

The objective of the selection process is two fold. Firstly, it ensures that the Board of the LTSA meets the composition requirements as set out in the *Land Title and Survey Authority Act*. Secondly, it ensures that collectively, the Board contains the skills and experience necessary to enhance the sound performance of the LTSA, and the effective interaction and operation of the Board.

The Governance Committee conducts a review of all nominees against the approved Skills and Experience Profile (Schedule A of the bylaws of the LTSA – see attached) in order make a recommendation to the full Board for appointment. When appointing Directors, the LTSA Board must be in compliance with section 13 of the LTSA Act such that "as a group, the Directors hold all of the skills, and all of the experience, indentified in the skills and experience profile set out in the bylaws."

What information will be required to support each nomination?

Each of the nominating stakeholder entities is asked to submit a list of three to five nominees. For each nominee, a completed Nomination Form (attached) must be signed by the nominee and submitted to the LTSA, together with the nominee's current resume. The information provided on the nomination form should be as fulsome as possible.

Once nominees have been short-listed by the LTSA for appointment to the Board, a due diligence process will be conducted that will include an interview and professional reference checks. As well, short-listed candidates may be required to undergo a criminal record and credit check.

All parties involved in the selection process are obligated to respect the privacy interests of any individual who may be identified as a potential nominee. Information about potential nominees is confidential and may not be disclosed for purposes outside the nomination process.

What is the deadline for submitting nominations?

Nominations from stakeholder entities must be received by the LTSA by December 31.

When will a decision be made?

The LTSA will advise the nominating entities, as well as the successful nominees, of the appointments to the Board by no later than March 31. Nominating entities will be requested to inform their respective individual nominees whose names were submitted to the LTSA for consideration.

Additional information on the Land Title and Survey Authority of British Columbia is available at www.ltsa.ca

BOARD OF DIRECTORS

AND THEIR STAKEHOLDER NOMINATING ENTITIES

(Effective April 1, 2014)

Law Society of British Columbia

Geoff Plant, Q.C.

(Board Chair)

William (Bill) Cottick

Province of British Columbia

Janice Comeau

M. Ellen Morfitt

Association of British Columbia Land Surveyors

Gordon (Bert) Hol

O'Brian Blackall

British Columbia Real Estate Association

Eugen Klein

British Columbia Association of Professional Registry Agents

Diane Friedman

(Board Vice-Chair)

First Nations Summit

Roderick Naknakim

Society of Notaries Public of British Columbia

Brent Atkinson

Union of British Columbia Municipalities

Victoria Kuhl

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

TO BE COMPLETED BY NOMINEE

The information on this Nomination Form is collected because you wish your name to be considered for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia. The information obtained on this form will be used to assess your candidacy.

Part I - PERSONAL INFORMATION
This section MUST be completed by all nominees.

Your Name:		
Home Address:		
Delivery Address:		
Telephone: Work	Home	Cell
Email Address:	Date of Birth:	
What is your gender?	Male ☐	Female ☐
Are you a Canadian Citizen?	Yes ☐	No ☐

Part II – GOVERNMENT AND STAKEHOLDER AFFILIATIONS
To be eligible for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia, an individual must not be an elected official or employee of any government and must not be a member of the Board of Directors, an Officer or an employee of any of the organizations which nominate directors to the Authority

All nominees MUST answer Yes or No to both of the following questions. An affirmative answer to either of the questions in this section disqualifies a nominee from appointment to the Board.

1. I am an elected official or employee of a government (any type)	Yes ☐	No ☐
2. I am a member of the Board of Directors, an Officer or an employee of any of the following organizations: Law Society of BC, Association of British Columbia Land Surveyors, BC Real Estate Association, BC Association of Professional Registry Agents, First Nations Summit, Society of Notaries Public of BC, Union of BC Municipalities	Yes ☐	No ☐

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

Part III - BACKGROUND INFORMATION
This section MUST be completed by all nominees.
(If you require more room than the space provided, please use a separate piece of paper)

1. Educational Background

Name & Location of University, College or Institution	Course, Program, Major field	Credits, Diploma, Degree attained	Dates Started	Dates Completed

Special Courses	Course Content, Duration, etc.	Year Completed

2. Current Membership in Professional Organizations (List):

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

3. The following is a list of every organization (e.g. company, non-profit organization) of which I am currently a director or officer**:**

Organization	Position Held

4. Please describe why you are interested in being a Director of the LTSA and how your personal attributes and core competencies would be applied to benefit the LTSA. (Note: Schedule A of the bylaws of the LTSA suggests that all directors should possess the following personal attributes and core competencies.)

Personal Attributes
- High ethical standards and integrity
- Ability and willingness to raise controversial issues constructively
- Flexible, responsive and open to change
- Ability and willingness to listen to others
- Capability for a wide perspective on issues
- Ability to work as a team member

Core Competencies
- Strategic Thinking
- Analytical and Technical Skills
- Knowledge (governance, accountability)
- Personal Style (trustworthy, conscientious, acts and speaks with consistency and honesty)
- Social Style (values diverse opinions, experienced level of acumen/'saviness' at various levels; personal business profiles).

NOTE: More fulsome description of the personal attributes and core competencies can be found at Schedule A of the bylaws which is available at the LTSA website: http://www.ltsa.ca/cms/governance

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

Part IV - KEY ATTRIBUTES

The Board of Directors of the Land Title and Survey Authority of British Columbia, as a whole, must possess skills and experience that will contribute to good governance of the Authority. The skills and experience which the directors, collectively, should have are set out at Appendix A of the Bylaws and are listed below. An individual director is not expected to have each of the attributes, but should possess more than one. Please describe how you meet one or more of the following attributes.
This section MUST be completed by all nominees.
(If you require more room than the space provided, please use a separate piece of paper)

1. **Leadership – executive/senior level leadership of a complex commercial or regulated entity** (please describe)

2. **Business Acumen – strategic planning and oversight of strategy/control functions of a complex commercial or regulated entity** (please describe)

3. **Board Experience – participation as a member of a board of directors of a commercial, regulated and/or charitable organization** (please describe)

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

4. **Accounting and Finance – an accounting or financial advisor designation or senior level experience as a financial officer in a complex commercial or non-profit entity** (please describe)

5. **Legal – a law degree or senior-level experience in managing legal issues of a complex regulatory/constitutional, corporate/commercial nature; additionally, relevant experience in law reform** (please describe)

6. **Marketing – developing and/or leading marketing or customer service initiatives for an organization in a regulated environment or start-up business** (please describe)

7. **Labour Management – human resources for a public, private, or not-for-profit organization and knowledge of labour relations practices in British Columbia** (please describe)

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

8. **Executive Human Resources Strategies –strategic human resources policies related to senior executive recruitment, succession planning and compensation** (please describe)

9. **Regulatory –oversight of regulatory compliance within a highly regulated business environment, including direct experience with officials at various levels of government** (please describe)

10. **Land Information – applying land information products and services in a regulated entity**(please describe)

11. **Information Technology – experience working in the information technology field with a demonstrated understanding of how information technology is applied to business processes** (please describe)

12. **Land Survey – a British Columbia Land Surveyor or experience in managing legal survey issues of a complex nature** (please describe)

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

13. **Communications – strategic communications and public relations for a public, private, or not-for-profit organization** (please describe)

14. **Government Relations – senior level communications, relationship-building and/or strategic services to (or with) various levels of government with a specific emphasis on provincial government relations, including both with elected officials and senior government staff** (please describe)

15. **Real Estate Lending and Banking – knowledge and experience in the lending and banking industries** (please describe)

16. **Insurance – knowledge and experience in the insurance industry** (please describe)

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

Part V – DIRECTOR QUALIFICATIONS

To be a director of the Land Title and Survey Authority of British Columbia, a potential nominee must satisfy the requirements of section 124 of the Business Corporations Act (British Columbia). All nominees MUST answer Yes or No to the following four questions. An affirmative answer to questions (1), (2), or (3) and/or a negative answer to question (4)(b) in this section disqualifies a nominee from appointment to the Board of Directors.

1. Are you under the age of 18 years?	Yes ☐	No ☐
2. Have you been found by a court, in Canada or elsewhere, to be incapable of managing your own affairs?	Yes ☐	No ☐
3. Are you an undischarged bankrupt?	Yes ☐	No ☐

4. (a) Have you been convicted in or out of British Columbia of an offence in connection with the promotion, formation or management of a corporation or unincorporated business, or of an offence involving fraud?

Yes ☐ No ☐

(b) If Yes,
Unless the court has ordered otherwise: (please specify)

_____

Have 5 years elapsed since the last to occur of:

1. the expiration of the period set for suspension of the passing of sentence without a sentence having been passed;
2. the imposition of a fine;
3. the conclusion of the term of any imprisonment; and
4. the conclusion of the term of any probation imposed

OR

Has a pardon been granted or issued under the *Criminal Records Act (Canada)*

Yes ☐ No ☐

Part VI – INTEGRITY AND CONFLICT OF INTEREST

All nominees MUST answer Yes or No to all of the following questions. An affirmative answer to any of the questions in this section does not automatically disqualify a nominee from appointment to the Board.

1. In your current or previous employment, business or personal affairs have you, or your company in which you have a direct or indirect controlling interest, in British Columbia or elsewhere:

i. Been convicted of an offence under the Criminal Code of Canada?	Yes ☐	No ☐
ii. Been convicted of an offence under any other federal statutes or regulations?	Yes ☐	No ☐
iii. Been convicted of any offence under any provincial statutes or regulations?	Yes ☐	No ☐
iv. Been disciplined by any professional association or body?	Yes ☐	No ☐
v. Been involved in any issue or controversy that has gone or is now likely to go to litigation or public review?	Yes ☐	No ☐

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

If you have answered yes to any of questions (i) to (v) in this section, please provide details below:		
2. Generally, are you aware of any conflicts, facts or matters which, if publicly disclosed, could cause the Land Title and Survey Authority of British Columbia embarrassment or hinder the performance of your duties as a Board member?	Yes ☐	No ☐
If Yes, describe:		

Part VII – PROFESSIONAL REFERENCES:
All nominees MUST provide a minimum of three professional references.

Name:	Occupation:
Address:	Business Telephone:
Home Telephone:	Email:
Name:	Occupation:
Address:	Business Telephone:
Home Telephone:	Email:
Name:	Occupation:
Address:	Business Telephone:
Home Telephone:	Email:

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form

Part VIII - ATTESTATION AND CONSENT:

I, _____ (print name) attest to the veracity of the information provided by me in this nomination form.

I understand that the Land Title and Survey Authority of British Columbia has a requirement to verify information with respect to all potential appointments, including myself, to evaluate their suitability for appointment to its Board of Directors. I acknowledge that should I be short listed as a candidate for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia, I will be required to undergo a criminal records search and credit check.

By signing below, I give consent to the Land Title and Survey Authority of British Columbia to obtain any personal information about me, either from me directly or from others. The references that I provide may be contacted and the information provided by me in relation to my request to be considered for appointment to the Board of the Land Title and Survey Authority of British Columbia will be verified. I also consent to the disclosure of my personal information where such is necessary in order to obtain the information required to evaluate my suitability.

_____ _____

Signature **Date**

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: October 6, 2014
Subject: **Cloud computing amendments**

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1. In 2011 the Benchers recognized that there was an emerging problem with lawyers and law firms using available technology to store their records, including trust and general accounting records in the "cloud". That is, with commercial providers of electronic storage space, which may in fact be located anywhere in the world. Professional responsibility requires lawyers to protect the confidences and interests of clients generally, and the Rules specifically require current and recent accounting records to be kept on site in a law firm's premises. These rules were at least potentially compromised when space in the "cloud" was used. In addition, it was anticipated that compliance and forensic audits of records stored in the cloud would be at least complicated by this use of technology.

2. As a result, the Benchers struck a working group to consider the implications of this technological development. The Cloud Computing Working Group made its final report to the Benchers in January 2012. In that report, the working group described the purpose of the report as follows:

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

3. A copy of that report is attached.

4. The Benchers considered an interim version of the report in July 2011 and approved it for consultation with the profession. That done and the recommendations adjusted accordingly, the Benchers approved the final report, including recommendations for amendments to the

Law Society Rules, particularly the trust accounting rules. The working group's 11 recommendations appear at pages 25 to 28 of the report. I attach the minute of the Bencher discussion of the report.

5. The Act and Rules Committee has approved draft 16 of amendments to give effect to the working group's recommendations. Clean and redlined versions of the draft are attached. As the draft number suggests, there have been numerous meetings and revisions involving the trust assurance and investigations departments. The Committee considered draft amendments at three meetings and again by email. There was also a consultation with a computer forensics expert to ensure that enforcement of the rules is feasible.

6. The Committee recommends the adoption of the proposed amendments to give effect to the policy decisions of the Benchers. A suggested resolution for that purpose is attached.

Attachments: report of working group
Bencher minute January 2012
draft amendments
resolution

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REPORT OF THE CLOUD COMPUTING WORKING GROUP

Date: January 27, 2012

Gavin Hume, QC (Chair)
Bruce LeRose, QC
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Purpose of Report: **Discussion and Decision**

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

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PREFACE TO REPORT

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

WHAT ARE THE BENCHERS BEING ASKED TO CONSIDER?

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

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

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

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

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

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

PURPOSE OF THE REPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OVERVIEW OF THE ISSUES

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

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

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

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

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

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

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

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

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

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

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

[8] Footnote 4, at p. 18.

[9] See, Gellman at fn. 6.

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

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

ANALYSIS OF THE ISSUES

Jurisdictional Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[17] Footnote 4 at p. 14.

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

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

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

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

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

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

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

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

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

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

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

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

Security

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

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

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

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

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

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

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

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

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

Custody or Control" of accounting records

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

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

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

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

The Working Group is of the view that provided a lawyer ensures through contractual safeguards that custody or control of his or her records does not pass to a third party, that the lawyer can use a third party for the storage or processing of those records. If the lawyer is unable to access those records and provide them on demand during a

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

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

Records Retention

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Potential impact on Rule 4-43

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

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

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

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

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

Ensuring Authorized Access to Records

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

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

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

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

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

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

Lawyers Insurance Fund Issues

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

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

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

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

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

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

QUESTIONS RAISED DURING THE CONSULTATION

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

RECOMMENDATIONS

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

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

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

(b) If billing records are stored electronically, they must include the creation date as well as any modification dates.

(c) All accounting records must be printable on demand in a comprehensible format (or exported to acceptable electronic format (ie. PDF)) and available for at least 10 years from the final accounting transaction. If the member scans all his supporting documentation such as 3rd party documents like bank statements the full version meaning all the pages front and back even if there it is blank page.

(d) A sufficient "audit trail" must be available and printable on demand in a comprehensible format (this should be a requirement of all accounting software whether it's in the cloud or a stand-alone program such as ESILAW or PCLAW etc.).

(e) Audit trail transaction reports must be complete, showing all postings into the software with specifically assigned transactions that correspond chronologically with dates etc.

(f) Cash receipts must always be retained in hard copy.[33]

(g) Ability of system to provide creation dates, what changes were made, and how often the documents (i.e. Word, Excel and/or Adobe) were changed. Ensuring that metadata information is not lost when stored on a cloud.

(h) Ability for LSBC to have view only access & printing access to all items stored on cloud (I.e. emails, documents, accounting records) when required. This does not derogate from any rule that allows the Law Society to copy a record or have that record provided on request. The purpose is to allow for a forensic investigation that does not alter the underlying record.

8. There should be a rule that recognizes, in circumstances where the Law Society has had to copy electronic records held by a third party, the Law Society may rely on the copies as best evidence and the onus is on the lawyer to provide a forensic copy of those records if the lawyer wishes to dispute the quality of the evidence.
9. The Act and Rules Subcommittee should consider, as part of future revisions to the *Legal Profession Act,* amending s. 37 to permit orders for copying or duplication of records, as an alternative to "seizing" records.

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

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

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

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

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

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

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

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

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

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

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APPENDIX 1

DUE DILIGENCE GUIDELINES[34]

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

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

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

PART A: GENERAL DUE DILIGENCE GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. If client files are stored electronically, all key documents supporting transactions and key events on the file must be printable on demand in a comprehensible format (or exported to acceptable electronic format (ie PDF) and available for at least 10 years from the date of the final accounting transaction.

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

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

PART B: PRIVACY CONSIDERATIONS

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

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

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

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

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

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

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

[37] FIPPA, Section 30.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX 2 - Definition of Cloud Computing.

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

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

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

Service Models:

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

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

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

Deployment Models:

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

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

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

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

APPENDIX 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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The Law Society of British Columbia

Minutes

Benchers

Date: Friday, January 27, 2012

Present:

Bruce LeRose, QC, President
Art Vertlieb, QC, 1st Vice-President
Jan Lindsay, QC 2nd Vice-President
Rita Andreone, QC
Patricia Bond
David Crossin, QC
Thomas Fellhauer
Leon Getz, QC
Bill Maclagan
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Thelma O'Grady
Lee Ongman
Vincent Orchard, QC
David Loukidelis, QC, Deputy Attorney General of BC
Greg Petrisor
David Renwick, QC
Phil Riddell
Catherine Sas, QC
Richard Stewart, QC
Herman Van Ommen
Ken Walker
Tony Wilson
Barry Zacharias
Haydn Acheson
Satwinder Bains
Stacy Kuiack
Peter Lloyd, FCA
Ben Meisner
Claude Richmond

Staff Present:

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

5. Approval of Final Report and Recommendations of the Cloud Computing Working Group

Mr. Hume reported as Chair of the Cloud Computing Working Group. He reminded the Benchers that at their July 2011 meeting they had approved the report of the Cloud Computing

Working Group for purposes of publication as a consultation document. Mr. Hume confirmed that the working group's present report (at page 13002 of the meeting materials) is an amended version of its original report, taking into account feedback received during the consultation process.

Mr. Hume thanked the other members of the working group (2012 President Bruce LeRose, QC, and appointed Benchers Stacy Kuiack and Peter Lloyd, for their hard work on the project.) Mr. Hume also acknowledged with thanks the crucial support provided to the working group by Staff Lawyer Doug Munro, in coordinating the group's research and deliberations, and in leading the drafting of its report.

Mr. Hume noted that in framing its report and recommendations the Cloud Computing Working Group accepted that cloud computing is a global reality, and drew on two perspectives:

- the Law Society's regulation of professional responsibility
- lawyers' responses to the Law Society's regulatory activity.

Mr. Hume described the report's three areas of recommendations as:

- development of guidelines for lawyers to follow – attached to the report, being submitted to the Bs for approval
- proposed revisions to the Law Society Rules noted in the report
- education

Mr. Lloyd moved, seconded by Mr. Kuiack, that the Benchers adopt the Cloud Computing Working Group report and recommendations, as set out at page 13002 of the meeting materials.

The motion was carried.

Mr. Hume advised that the Cloud Computing Working Group intends to develop a simplified checklist for the use of the legal profession.

Mr. LeRose noted that the Cloud Computing Working Group will remain in place as presently constituted until its work has been completed. Mr. LeRose thanked Mr. Hume on behalf of all the Benchers for his dedication and leadership in seeing this complex and challenging matter through to its conclusion.

WKM
2012-02-20

LAW SOCIETY RULES

Definitions

1 In these Rules, unless the context indicates otherwise:

"metadata" includes the following information generated in respect of an electronic record:

(a) creation date;

(b) modification dates;

(c) printing information;

(d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

"record" includes metadata associated with an electronic record;

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Failure to produce records on complaint investigation

3-5.01 (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 *[Investigation of complaints]* or 4-43 *[Investigation of books and accounts]* to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.

(2) When there are special circumstances, the Discipline Committee may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this Rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

LAW SOCIETY RULES

(c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Division 6 – Financial Responsibility

Standards of financial responsibility

3-43.1 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

(a) ~~a lawyer against whom~~ a monetary judgment is entered against a lawyer ~~and~~ who does not satisfy the judgment within 7 days after the date of entry;

(b) a lawyer is an insolvent lawyer;

(c) a lawyer ~~who~~ does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b) *[Compliance audit of books, records and accounts]*;

(d) a lawyer ~~who~~ does not deliver a trust report as required under Rule 3-72 *[Trust report]* or 3-75(4) *[Report of accountant when required]*;

(e) a lawyer ~~who~~ does not report and pay the trust administration fee to the Society as required under Rule 2-72.2 *[Trust administration fee~~.~~]*;

(f) a lawyer does not produce electronic accounting records when required under the Act or these Rules in a form required under Rule 10-4(2) *[Records]*.

Division 7 – Trust Accounts and Other Client Property

Accounting records

3-59(0.1) In this Rule, **"supporting document"** includes

(a) validated deposit receipts,

(b) periodic bank statements,

(c) passbooks,

(d) cancelled and voided cheques,

(e) bank vouchers and similar documents,

(f) vendor invoices, and

(g) bills for fees, charges and disbursements.

LAW SOCIETY RULES

(1) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this Division.

(2) A lawyer must maintain accounting records, including supporting documents, in

(a) legibly handwritten form, in ink or other duplicated or permanent form,

(b) printed form, or

(c) an electronic form in compliance with subrule (2.1) ~~that can readily be transferred to printed form on demand~~.

(2.1) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that

(a) all records and documents are maintained in a way that will allow compliance with Rule 10-4(2) *[Records]*,

(b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and

(c) there is a clear indication, with respect to each financial transaction, of

(i) the date of the transaction,

(ii) the individual who performed the transaction, and

(iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.

(3) A lawyer must ~~-~~record transactions in accounting records in chronological order and in an easily traceable form.

(4) A lawyer must retain all supporting documents for both trust and general accounts~~,~~ ~~including but not limited to the following:~~

~~(a) validated deposit receipts;~~

~~(b) periodic bank statements;~~

~~(c) passbooks;~~

~~(d) cancelled and voided cheques;~~

~~(e) bank vouchers and similar documents and invoices~~ ~~.~~

Records of cash transactions

3-61.1 (2) Each receipt in the cash receipt book must

(a) be signed by

(i) the lawyer who receives the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and

(ii) the person from whom the cash is received, ~~and~~

(b) identify each of the following:

(i) the date on which cash is received;

(ii) the person from whom cash is received;

(iii) the amount of cash received;

(iv) the client for whom cash is received;

(v) the number of the file in respect of which cash is received~~.~~, and

(c) indicate all dates on which the receipt was created or modified.

(3) A lawyer who withdraws funds in cash from a pooled or separate trust account must make a record of the transaction signed by the person to whom the cash was paid and identifying~~:~~

(a) the date on which the cash was withdrawn,

(b) the amount of cash withdrawn,

(c) the name of the client in respect of whom the cash was withdrawn,

(d) the number of the file in respect of which the cash was withdrawn, ~~and~~

(e) the name of the person to whom the cash was paid~~.~~, and

(f) all dates on which the record was created or modified.

Billing records

3-62 (1) A lawyer must keep file copies of all bills delivered to clients or persons charged

(a) showing the amounts and the dates charges are made,

(a.1) indicating all dates on which the bill was created or modified,

(b) identifying the client or person charged, and

(c) filed in chronological, alphabetical or numerical order.

Monthly trust reconciliation

3-65 (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.

(2.1) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.

(3) A lawyer must retain for at least 10 years

(a) each monthly trust reconciliation prepared under subrule (1), and

(b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.

Retention ~~and security~~ of records

3-68 (0.1) ~~In t~~This Rule~~, **"records"** means the~~ applies to records referred to in Rules 3-~~60~~ 59 to 3-62.

(1) A lawyer must keep his or her records for as long as the records apply to money held in trust and~~, in any case,~~ for at least 10 years from the final accounting transaction.

(2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for as long as the records apply to money held in trust and, in any case, for at least 3 years.

~~(3) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.~~

~~(4) A lawyer who loses custody or control of his or her records for any reasons must immediately notify the Executive Director in writing of all the relevant circumstances.~~

PART 4 – DISCIPLINE

Investigation of books and accounts

4-43 (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

(1.1) When electronic records have been produced or copied pursuant to an order under this Rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.

(1.4) A request under subrule (1.1) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

LAW SOCIETY RULES

PART 10 – GENERAL

Records

10-4 (1) In this Rule, **"storage provider"** means any entity storing or processing records outside of a lawyer's office, whether or not for payment.

(2) When required under the Act or these Rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:

(a) printed in a comprehensible format;

(b) accessed on a read-only basis;

(c) exported to an electronic format that allows access to the records in a comprehensible format.

(3) A lawyer who is required to produce records under the Act or these Rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.

(4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer

(a) retains custody and control of the records,

(b) ensures that ownership of the records does not pass to another party,

(c) is capable of complying with a demand under the Act or these Rules to produce the records and provide access to them,

(d) ensures that the storage provider maintains the records securely without

(i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,

(ii) allowing unauthorized access to or copying or acquisition of the records, or

(iii) failing to destroy the records completely and permanently on instructions from the lawyer, and

(e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these Rules.

(5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this Rule, no lawyer is permitted to maintain records of any kind with that entity.

LAW SOCIETY RULES

Security of records

10-5 (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

(2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that

(a) he or she has lost custody or control of any of the lawyer's records for any reason,

(b) anyone has improperly accessed or copied any of the lawyer's records, or

(c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

LAW SOCIETY RULES

Definitions

1 In these Rules, unless the context indicates otherwise:

"metadata" includes the following information generated in respect of an electronic record:

(a) creation date;

(b) modification dates;

(c) printing information;

(d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

"record" includes metadata associated with an electronic record;

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Failure to produce records on complaint investigation

3-5.01 (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 *[Investigation of complaints]* or 4-43 *[Investigation of books and accounts]* to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.

(2) When there are special circumstances, the Discipline Committee may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this Rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

LAW SOCIETY RULES

(c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Division 6 – Financial Responsibility

Standards of financial responsibility

3-43.1 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

(a) a monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;

(b) a lawyer is an insolvent lawyer;

(c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b) *[Compliance audit of books, records and accounts]*;

(d) a lawyer does not deliver a trust report as required under Rule 3-72 *[Trust report]* or 3-75(4) *[Report of accountant when required]*;

(e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-72.2 *[Trust administration fee]*;

(f) a lawyer does not produce electronic accounting records when required under the Act or these Rules in a form required under Rule 10-4(2) *[Records]*.

Division 7 – Trust Accounts and Other Client Property

Accounting records

3-59(0.1) In this Rule, **"supporting document"** includes

(a) validated deposit receipts,

(b) periodic bank statements,

(c) passbooks,

(d) cancelled and voided cheques,

(e) bank vouchers and similar documents,

(f) vendor invoices, and

(g) bills for fees, charges and disbursements.

LAW SOCIETY RULES

(1) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this Division.

(2) A lawyer must maintain accounting records, including supporting documents, in

(a) legibly handwritten form, in ink or other duplicated or permanent form,

(b) printed form, or

(c) an electronic form in compliance with subrule (2.1).

(2.1) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that

(a) all records and documents are maintained in a way that will allow compliance with Rule 10-4(2) *[Records]*,

(b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and

(c) there is a clear indication, with respect to each financial transaction, of

(i) the date of the transaction,

(ii) the individual who performed the transaction, and

(iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.

(3) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.

(4) A lawyer must retain all supporting documents for both trust and general accounts.

Records of cash transactions

3-61.1 (2) Each receipt in the cash receipt book must

(a) be signed by

(i) the lawyer who receives the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and

(ii) the person from whom the cash is received,

(b) identify each of the following:

(i) the date on which cash is received;

(ii) the person from whom cash is received;

(iii) the amount of cash received;

(iv) the client for whom cash is received;

LAW SOCIETY RULES

(v) the number of the file in respect of which cash is received, and

(c) indicate all dates on which the receipt was created or modified.

(3) A lawyer who withdraws funds in cash from a pooled or separate trust account must make a record of the transaction signed by the person to whom the cash was paid and identifying

(a) the date on which the cash was withdrawn,

(b) the amount of cash withdrawn,

(c) the name of the client in respect of whom the cash was withdrawn,

(d) the number of the file in respect of which the cash was withdrawn,

(e) the name of the person to whom the cash was paid, and

(f) all dates on which the record was created or modified.

Billing records

3-62 (1) A lawyer must keep file copies of all bills delivered to clients or persons charged

(a) showing the amounts and the dates charges are made,

(a.1) indicating all dates on which the bill was created or modified,

(b) identifying the client or person charged, and

(c) filed in chronological, alphabetical or numerical order.

Monthly trust reconciliation

3-65 (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.

(2.1) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.

(3) A lawyer must retain for at least 10 years

(a) each monthly trust reconciliation prepared under subrule (1), and

(b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.

Retention of records

3-68 (0.1) This Rule applies to records referred to in Rules 3-59 to 3-62.

(1) A lawyer must keep his or her records for as long as the records apply to money held in trust and for at least 10 years from the final accounting transaction.

LAW SOCIETY RULES

(2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for as long as the records apply to money held in trust and, in any case, for at least 3 years.

PART 4 – DISCIPLINE

Investigation of books and accounts

4-43 (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

(1.1) When electronic records have been produced or copied pursuant to an order under this Rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.

(1.4) A request under subrule (1.1) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

PART 10 – GENERAL

Records

10-4 (1) In this Rule, **"storage provider"** means any entity storing or processing records outside of a lawyer's office, whether or not for payment.

(2) When required under the Act or these Rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:

(a) printed in a comprehensible format;

(b) accessed on a read-only basis;

(c) exported to an electronic format that allows access to the records in a comprehensible format.

(3) A lawyer who is required to produce records under the Act or these Rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.

LAW SOCIETY RULES

(4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer

(a) retains custody and control of the records,

(b) ensures that ownership of the records does not pass to another party,

(c) is capable of complying with a demand under the Act or these Rules to produce the records and provide access to them,

(d) ensures that the storage provider maintains the records securely without

(i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,

(ii) allowing unauthorized access to or copying or acquisition of the records, or

(iii) failing to destroy the records completely and permanently on instructions from the lawyer, and

(e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these Rules.

(5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this Rule, no lawyer is permitted to maintain records of any kind with that entity.

Security of records

10-5 (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

(2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that

(a) he or she has lost custody or control of any of the lawyer's records for any reason,

(b) anyone has improperly accessed or copied any of the lawyer's records, or

(c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

CLOUD COMPUTING

SUGGESTED RESOLUTION:

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

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

"metadata" includes the following information generated in respect of an electronic record:

(a) creation date;

(b) modification dates;

(c) printing information;

(d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

"record" includes metadata associated with an electronic record;**.**

2. By adding the following rule:

Failure to produce records on complaint investigation

3-5.01(1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 *[Investigation of complaints]* or 4-43 *[Investigation of books and accounts]* to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.

(2) When there are special circumstances, the Discipline Committee may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this Rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

3. By rescinding Rule 3-43.1 and substituting the following:

Standards of financial responsibility

3-43.1 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

(a) a monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;

(b) a lawyer is an insolvent lawyer;

(c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b) *[Compliance audit of books, records and accounts]*;

(d) a lawyer does not deliver a trust report as required under Rule 3-72 *[Trust report]* or 3-75(4) *[Report of accountant when required]*;

(e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-72.2 *[Trust administration fee]*;

(f) a lawyer does not produce electronic accounting records when required under the Act or these Rules in a form required under Rule 10-4(2) *[Records]*.

4. In Rule 3-59:

(a) by adding the following subrules:

(0.1) In this Rule, **"supporting document"** includes

(a) validated deposit receipts,

(b) periodic bank statements,

(c) passbooks,

(d) cancelled and voided cheques,

(e) bank vouchers and similar documents,

(f) vendor invoices, and

(g) bills for fees, charges and disbursements.

(2.1) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that

(a) all records and documents are maintained in a way that will allow compliance with Rule 10-4(2) *[Records]*,

(b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and

(c) there is a clear indication, with respect to each financial transaction, of

(i) the date of the transaction,

(ii) the individual who performed the transaction, and

(iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.***;***

(b) in subrule (2), by rescinding the preamble and paragraph (c) and substituting the following:

(2) A lawyer must maintain accounting records, including supporting documents, in

(c) an electronic form in compliance with subrule (2.1).***, and***

(c) by rescinding subrule (4) and substituting the following:

(4) A lawyer must retain all supporting documents for both trust and general accounts.

5. In Rule 3-61.1:

(a) in subrule (2) by:

(i) striking out "and***" at the end of paragraph (a)(ii),***

(ii) striking out the period at the end of paragraph (b)(v) and substituting ", and***", and***

(iii) adding the following paragraph:

(c) indicate all dates on which the receipt was created or modified.***, and***

(b) in subrule (3) by:

(i) striking out "and***" at the end of paragraph (d),***

(ii) striking out the period at the end of paragraph (e) and substituting ", and***", and***

(iii) adding the following paragraph:

(f) all dates on which the receipt was created or modified.

6. In Rule 3-62(1), by adding the following paragraph:

(a.1) indicating all dates on which the bill was created or modified,**.**

7. ***In Rule 3-65, by rescinding subrule (3) and substituting the following:***

(2.1) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.

(3) A lawyer must retain for at least 10 years

(a) each monthly trust reconciliation prepared under subrule (1), and

(b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.

8. ***By rescinding Rule 3-68 and substituting the following:***

Retention of records

3-68 (0.1)This Rule applies to records referred to in Rules 3-59 to 3-62.

(1) A lawyer must keep his or her records for as long as the records apply to money held in trust and for at least 10 years from the final accounting transaction.

(2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for as long as the records apply to money held in trust and, in any case, for at least 3 years.

9. ***In Rule 4-43, by adding the following subrule:***

(1.4) A request under subrule (1.1) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

10. ***By adding the following rules:***

Records

10-4 (1) In this Rule, **"storage provider"** means any entity storing or processing records outside of a lawyer's office, whether or not for payment.

(2) When required under the Act or these Rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:

(a) printed in a comprehensible format;

(b) accessed on a read-only basis;

(c) exported to an electronic format that allows access to the records in a comprehensible format.

(3) A lawyer who is required to produce records under the Act or these Rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.

(4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer

(a) retains custody and control of the records,

(b) ensures that ownership of the records does not pass to another party,

(c) is capable of complying with a demand under the Act or these Rules to produce the records and provide access to them,

(d) ensures that the storage provider maintains the records securely without

(i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,

(ii) allowing unauthorized access to or copying or acquisition of the records, or

(iii) failing to destroy the records completely and permanently on instructions from the lawyer, and

(e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these Rules.

(5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this Rule, no lawyer is permitted to maintain records of any kind with that entity.

Security of records

10-5 (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

(2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that

(a) he or she has lost custody or control of any of the lawyer's records for any reason,

(b) anyone has improperly accessed or copied any of the lawyer's records, or

(c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

BC Code rule 4.2-6: Recommendation to Rescind Rule

September 30, 2014

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

Prepared by: **Ethics Committee**

The Law Society of British Columbia

Memo

To: Benchers

From: Ethics Committee

Date: September 30, 2014

Subject: **BC Code rule 4.2-6: Recommendation to Rescind Rule**

This memorandum recommends the rescission of rule 4.2-6, as unnecessary.

BC Code rule 4.2-6 states:

4.2-6 A lawyer must not state on any letterhead or business card or in any other marketing activity the name of a judge or master as being a predecessor or former member of the lawyer's firm.

Rule 4.2-6 was formerly Chapter 14, Rule 7.2 in the *Professional Conduct Handbook*. It has no counterpart in the Federation of Law Societies Model Code. For the reasons that follow, we think it should be eliminated:

1. **The public interest does not require such a rule**

It is not unusual for many firms of varying sizes to make reference to former members of the firm that have been appointed to the Bench. Typically firms will post to their websites announcements when one of their lawyers is appointed to the bench. In some cases firms post messages on firm websites saying something like "Firm lawyers have served at all levels of BC's court system," indicating something that goes beyond short-lived announcements and is part of an ongoing marketing strategy.

In addition, some firms name board rooms after judges who have been members of the firm and some hang photos of former firm members turned judges in areas frequented by clients. Undoubtedly there are other ways in which law firms are letting clients and potential clients know about members of their firm who have been appointed judges.

Although it is our view that such examples constitute marketing activities, we do not think the public interest requires the elimination of these kinds of references. What firms want to show by these examples is that lawyers who once practiced at the firm were once regarded as being

worthy of appointment to the bench and that lawyers remaining at the firm may also be of that caliber.

In our view the undesirable marketing message that the rule would prohibit is that the firm has some special influence with the courts or government that will be of benefit to future clients. We have seen no evidence that that is the message firms are attempting to convey.

2. Rule 4.2-5 adequately regulates the issue

Rule 4.2-5 states:

4.2-5 Any marketing activity undertaken or authorized by a lawyer must not be:

(a) false,

(b) inaccurate,

(c) unverifiable,

(d) reasonably capable of misleading the recipient or intended recipient, or

(e) contrary to the best interests of the public.

Commentary

[1] For example, a marketing activity violates this rule if it:

(a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,

(b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve, or

(c) otherwise brings the administration of justice into disrepute.

We are of the view that rule 4.2-5 is adequate to regulate any undesirable features of law firm references to former members of the firm that have been appointed to the bench, should they arise. In particular, we note the Law Society has authority under rule 4.2-5 (e) to deal with any marketing activity that is contrary to the public interest and that commentary [1(c)] expressly contemplates that marketing activity violates the rule if it brings the administration of justice into disrepute. Any suggestion by a law firm that the fact a former member is now a judge gives the firm any special influence with the judiciary or government would be clearly caught by these provisions.

3. Closer alignment with the Model Code

Since it has no counterpart in the Model Code, the rescission of rule 4.2-6 would have the effect of bringing the BC Code into closer alignment with the Model Code, a result that we think is desirable if there are otherwise no strong arguments for retaining it.

Attachment:

- Draft change to rule 4.2-6

[628121/2014]

Content and format of marketing activities

4.2-5 Any marketing activity undertaken or authorized by a lawyer must not be:

(a) false,

(b) inaccurate,

(c) unverifiable,

(d) reasonably capable of misleading the recipient or intended recipient, or

(e) contrary to the best interests of the public.

Commentary

[1] For example, a marketing activity violates this rule if it:

(a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,

(b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve, or

(c) otherwise brings the administration of justice into disrepute.

~~Former firm of current judge or master~~

4.2-6 [rescinded 10/2014]~~A lawyer must not state on any letterhead or business card or in any other marketing activity the name of a judge or master as being a predecessor or former member of the lawyer's firm.~~

Notary public

4.2-7 A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:

(a) uses the term "Notary," "Notary Public" or any similar designation, or

(b) in any other way represents to the public that the lawyer is a notary public,

must also indicate in the same publication or marketing activity the lawyer's status as a lawyer.

Content and format of marketing activities

4.2-5 Any marketing activity undertaken or authorized by a lawyer must not be:

(a) false,

(b) inaccurate,

(c) unverifiable,

(d) reasonably capable of misleading the recipient or intended recipient, or

(e) contrary to the best interests of the public.

Commentary

[1] For example, a marketing activity violates this rule if it:

(a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,

(b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve, or

(c) otherwise brings the administration of justice into disrepute.

4.2-6 [rescinded 10/2014]

Notary public

4.2-7 A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:

(a) uses the term “Notary,” “Notary Public” or any similar designation, or

(b) in any other way represents to the public that the lawyer is a notary public,

must also indicate in the same publication or marketing activity the lawyer’s status as a lawyer.

The Law Society of British Columbia

Memo

To: Benchers
From: Governance Committee
Date: October 3, 2014
Subject: AGM Rules – Webcasting and Online Voting

Introduction

In our mid-year report to the Benchers in July of this year, the Committee observed that the experience with the June special general meeting of the members highlighted some of the difficulties inherent in our current Rules. The Committee noted that a number of members expressed concern about the limitations arising from the rules about voting in person and the absence of proxy voting. The Committee also questioned the requirement for mailing general meeting notices given the ubiquitous use of email and the Internet by the membership.

The Committee concluded there was a need to change the Rules to allow for greater and easier participation by members in general meetings and indicated that the Committee would work on recommendations regarding the following:

- Conducting general meetings from one physical location with additional member participation by webcast so that members participating via the webcast could communicate with the meeting;
- Voting by members electronically; and
- Providing notices of meetings, and perhaps other matters, electronically rather than by mail, as the present Rules require.

Commentary

The Legal Profession Act, section 12(1) provides that the Benchers may make Rules regarding, inter alia, "*the general meetings of the society, including the annual general meeting*" and that the Rules made under this subsection must be consistent with the provisions of the former Legal Profession Act, R.S.B.C 1996, c. 255. Consequently, the Benchers did pass Rules regarding general meetings.

Section 12(3) provides that:

> *(3) The benchers may amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting at a general meeting or in a referendum respecting the proposed rule, or the amendment or rescission of a rule*

As a result of subsection (3), any amendment to the existing Rules regarding general meetings requires member approval as provided.

In relation to the changes to general meetings that the Committee is considering, the Committee noted that in 2003, the Law Society conducted a referendum in which members were asked to vote on four questions.

The first question was whether members were in favour of the Benchers amending the Rules to allow members to attend and vote at general meetings by way of the Internet, and to ensure that the meeting would not be invalidated by reason alone of a technical failure that prevented some members from attending and voting. Eighty eight percent voted yes to this question.

Although the result of the vote on the first question was well above the required simple majority, subsequent Bencher minutes do not disclose any discussion of the result of the vote on the first question. No steps have been taken since 2003 to amend the Rules to provide for attendance and voting at general meetings by way of the Internet.

The Committee considered whether the results of the 2003 referendum should now be relied upon by the Benchers. The Committee concluded that the result still supported amending the Rules as required to permit webcasting and online voting.

While the Committee will continue to work on the other issues identified in its mid-year report, the Committee was satisfied that it could now recommend that the Benchers refer the issue of webcasting general meetings and online voting at general meetings to the Act and Rules Committee with a direction to develop the necessary amendments to provide the Benchers with the discretion to permit members to participate by webcast and vote online. For the time being, these amendments would be in addition to the current provisions for in-person attendance at a number of locations around the province.

The Committee expects to report to the Benchers regarding seeking member approval for amendments to provide for only one physical location for general meetings and electronic distribution of notices and other material in early 2015.

The Law Society of British Columbia

Memo

To: Benchers
From: Tim McGee, QC
Date: October 21, 2014
Subject: 2015 – 2017 Strategic Plan – Next Steps

Introduction

On the timeline provided at the September 25 environmental scan session of the Benchers, at the October 31 Bencher meeting, the Benchers would review and a preliminary draft of goals and strategies based on priority issues identified at the September 25 meeting and in the Law Society mandate.

The Goals

Section 3 of the *Legal Profession Act* identifies five elements of the Law Society mandate to protect the public interest in the administration of justice by:

> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and
>
> (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Arguably, everything the Law Society does should be advancing one or more of these elements of the mandate. Our core functions, such as discipline and complaints investigation, trust administration and unauthorized practice, all support and further our overall mandate. However, in addition to the core functions of the Law Society, there is the opportunity to identify and pursue other initiatives to advance one or more of these elements.

During the Benchers environmental scan session, four thematic issues were identified and discussed by the Benchers in response to the question "What big issues are facing the Law Society?" These were:

1. Availability of /Accessibility to Legal Services
2. Alternative Business Structures
3. Public opinion of the justice system
4. Admission Program Reform

It isn't difficult to match the four major issues identified by the Benchers to the elements of our mandate.

1. Enhancing the availability and accessibility of legal services falls clearly within our mandate to uphold and protect the administration of justice by preserving and protecting the rights and freedoms of all persons. If one cannot access legal advice, one cannot effectively exercise one's rights and freedoms.

2. Permitting and regulating alternative business structures for the provision of legal services falls squarely within the regulation of the practice of law. Some also argue that expanding the scope of permitted business structures for the practice of law is a way to improve access to legal services, which would be consistent with our mandate to protect the rights and freedoms of all people.

3. Public opinion of the justice system is an issue that falls easily within our mandate simply based on the preamble itself. The public interest in the administration of justice requires public confidence in the system. If the public loses faith in the administration of justice generally, the rule of law is adversely affected.

4. Admission program reform most clearly falls within our mandate to establish standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.

In addition to the major issues identified during the September 25 meeting, there are continuing efforts, as reflected in several existing Task Forces, to address several other issues.

The Strategies and Initiatives

Having identified the major issues we would like to tackle during the next three year strategic plan, we need to identify the strategies and initiatives that will be required to move forward on addressing those issues. The first step will be to settle on the strategies considered most likely to

address the major issues and the initiatives already underway or contemplated. What follows is a preliminary list based on discussion and work done to date.

Access to Legal Services

- Examination of the Law Society's position on Legal Aid (Access to Legal Services Advisory Committee)
    - Should the Law Society be a more proactive voice on inadequate funding?
    - Where should legal aid funding come from? (1) – government? If so, what are essential services and how should those be funded? and (2) are there funding sources other than government, such as public-private partnerships, and how can those be accessed?
- Justice Access Centers (JACs)– (Access to Legal Services Advisory Committee)
    - Role of JACs regarding the giving of legal advice – can you pilot a JAC with on-site lawyers providing legal advice?
    - Could one operate a JAC through an NGO? Could one "franchise" a JAC within a community? Could a pilot model be created to test viability?
    - How could technology assist in connecting community operated JACs into central JACs in the Lower Mainland of Victoria?
- Developing a framework for the credentialing and regulation of non-lawyer legal service providers to improve the affordability of legal services (Legal Services Regulatory Framework Task Force).
- Public Private Partnerships for funding of access initiatives. Can one create "for-profit" low cost legal services by tapping into philanthropic models of funding for access to legal services?
- Identifying the empirical basis for decisions we make on access to legal service initiatives. Do we have everything we need? How do we assess whether initiatives are working?
- Analyzing the Manitoba Family Justice Program and determining if it is a viable model for British Columbia.
- Examining whether Alternative Business Structures can improve access to legal services, and if so, how models can be developed to do so.

- Improving general public understanding of how the law and justice system intersects with day-to-day activities, and how to avoid engaging the justice system when making decisions.

- Examining whether a Public Defender's Office would improve low and middle income clients' access to legal services.

- Examining the role of and viability of offering legal insurance programs.

1. Alternative Business Structures (ABSs)

   - Follow up on 2011 report:

     - study the rationale for ABSs;

     - analyze developments from UK, Australia;

     - examine effects of ABSs on core values of legal profession (independence, conflicts, client confidentiality); and

     - develop principles for British Columbia.

   - Study effects on/potential improvements to access to legal services.

   - Understand what Ontario is engaged in doing.

   - Engage with the Federation of Law Societies of Canada (Federation) in a nation-wide analysis of the subject.

   - Regulation of law firms (Law Firm Regulation Task Force).

   - Examine the proposition that regulation is a barrier to innovation.

2. Public opinion of/confidence in the justice system

   - Examining and settling on the scope and meaning of s. 3(a) of the *Legal Profession Act*. (Rule of Law and Lawyer Independence Advisory Committee).

   - Justice summits - Law Society role.

   - Developing communications strategies for engaging the profession, legal service users, and the public in general on justice issues. Identifying strategies to express a public voice on the justice system, including public forums.

- Examining the case for proactive, or "outcomes-focused" regulation of legal service providers – can it improve lawyer conduct and reduce complaints? (Law Firm Regulation Task Force).

- Developing a process to comment on the benefits of the rule of law, and the consequences when it is violated (Rule of Law and Lawyer Independence Advisory Committee).

- Developing initiatives to reflect equity and diversity in the legal profession and in the justice system as a whole.

- Practice Standards initiative to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating identified low, moderate, and high risk lawyers.

- Examining the Law Society's role in education initiatives:

    - Engaging Ministry of Education on high school core curriculum to include substantive education on the justice system.

    - Improving general public understanding of how the law and justice system intersects with day-to-day activities, and how to avoid engaging the justice system when making decisions.

- Examining the Law Society's role in support for legal aid (see above under Access to Legal Services).

- Identifying ways to defend judges against unjust criticism and complaints.

- Celebrating the 800th anniversary of Magna Carta.

3. <u>Admission program reform</u>

- Evaluating the current admission program (PLTC and articles), and developing principles for what an admission program is meant to achieve.

- Examining the role of lawyers and law firms in providing articles, including quality of articles and whether all firms provide students with a salary.

- Examine alternatives to articling, including Ontario's new Legal Practice Program and Lakehead University's integrated co-op law degree program and their potential effect in BC.

- The Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.
- Implications of international agreements on trade in services, such as the Comprehensive Economic and Trade Agreement for future regulation of admissions.
- Mentorship models of education (including the current Aboriginal Mentorship Program).
- Assessment of REAL.

Next Steps

The strategies and initiatives identified above are likely more than can reasonably be accomplished in the next three years. In addition, Benchers may have a particular view that a strategy or initiative is the better means for achieving a goal than some of the other options.

In order to gather Bencher views on the relative importance or priority of the various possible strategies and initiatives, Benchers will be asked to identify their top 2 or 3 strategies and initiatives under each of the four major issues through an online survey following the October 31 Bencher meeting.

In completing the survey, Benchers should make every attempt to identify the strategies and initiatives that they think are the most important or should have the highest priority, without regard to the practicality or resources required. Once the results are in, staff will provide an analysis of the resource requirements and timeframe for the most important strategies and initiatives, as identified by the Benchers. The Executive Committee and staff will then develop a draft 2015 – 2017 Strategic Plan for consideration the Benchers at their December 5 meeting.

The Law Society of British Columbia

Financial Report

September 30, 2014

Prepared for: Finance & Audit Committee Meeting – October 30, 2014

Bencher meeting – October 31, 2014

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

Financial Report – To September 30, 2014

Attached are the financial results and highlights for the first nine months of 2014.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a negative variance to budget of $308,000 to the end of September, 2014.

Revenue

Revenue is $16,152,000, $346,000 (2.2%) ahead of budget due to an increase in PLTC students, unbudgeted recoveries, and increased interest income, offset by lower than expected practice fees.

Operating Expenses

Operating expenses to the end of September were $15,167,000, $654,000 (4.5%) over budget due primarily to costs associated with the Trinity Western University (TWU) law school application process as well as higher than expected external counsel fees. These excess costs were partially offset by compensation and staff related savings and forensic accounting fee savings.

2014 Forecast - General Fund (excluding capital and TAF)

We are forecasting a negative variance of $430,000 (2.1%) for the year.

Operating Revenue

Revenues are projected to be ahead of budget by $255,000 (1.3%). Practicing membership revenue is projected at 11,115 members, 75 below the 2014 budget, a negative variance of $105,000. PLTC revenues are projected at 470 students, a positive variance of $50,000. We are also projecting higher recoveries of $155,000 and $40,000 of additional interest income.

Lease revenues will have a positive variance of approximately $100,000 for the year, with a new lease on the third floor of 835 Cambie and the renewal of the atrium café lease.

Operating Expenses

Operating expenses are projected to have a negative variance to budget of $684,000 (3.4%). This variance excludes those expenses that were to be funded

from the reserve in 2014, as approved by the Benchers during the 2014 budgeting process.

There are three main areas of unanticipated costs:

1) The unbudgeted costs related to the TWU application process are projected at $366,000, including meeting costs, legal opinions, and referendum costs.

2) External counsel fees are projected at $575,000 over budget, with the increase due to a number of factors. There have been a higher percentage of complex files, including an increased number of 4-43 forensic files. In addition, there have been a number of files handled by the investigations and discipline departments that have been much more challenging than normal, causing a significant increase in workload for a number of staff members. Also, with the staff vacancies that occurred in 2013, and into 2014, there were a number of professional conduct files sent out to external counsel to ensure file timelines were addressed. The increase in external counsel fees is also reflective of the projected increase in number of hearing/review days in 2014. For 2014, the estimate is 80 hearing/review days, compared to an average of 44 per year over the past four years.

3) Building occupancy costs have increased, mainly related to an increase in property taxes and utilities.

We should note that some of these costs will be partially offset by savings related to staff compensation savings of $175,000 and forensic accounting fee savings of $155,000.

TAF-related Revenue and Expenses

TAF revenue for the first two quarters of the year was $1,628,000, $148,000 (9%) ahead of budget.

TAF operating expenses were $100,000 below budget due to savings in travel.

As the TAF revenue is slightly ahead of budget in the first two quarters, we project the TAF results will have a positive variance to budget by year end.

Special Compensation Fund

Once all activities have concluded, the remaining Special Compensation Fund reserve will be transferred to LIF as required by the Legal Profession Amendment Act, 2012. Currently, the reserve is $1.3 million.

Lawyers Insurance Fund

LIF operating revenues were $10.7 million for the first nine months, $245,000 (2.3%) over budget.

LIF operating expenses were $4.4 million, $573,000 below budget. This positive variance was due to lower staffing and insurance costs.

The market value of the LIF long term investments is $122.7 million, an increase of $8.1 million year to date. The year to date investment returns were 7.05%, slightly below the benchmark of 7.96%. The Finance and Audit Committee continues to monitor the investment performance on a quarterly basis.

The Law Society of British Columbia

Summary of Financial Highlights - Sep 2014
($000's)

2014 General Fund Results - YTD Sep 2014 (Excluding Capital Allocation & Depreciation)

	Actual*	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	12,540	12,639	(99)	-0.8%
PLTC and enrolment fees	876	797	79	9.9%
Electronic filing revenue	557	546	11	2.0%
Interest income	295	236	59	25.0%
Recoveries	324	155	169	109.0%
Other revenue	829	759	70	9.2%
Building revenue & recoveries	731	674	57	8.5%
	16,152	15,806	346	2.2%
Expenses (excl. dep'n)*	15,167	14,513	(654)	-4.5%
	985	**1,293**	**(308)**	

* Note: YTD actuals include partial costs related to Bencher approved items to be funded from the reserve

2014 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 Actual	10,746
2013 Actual	10,938
2014 Budget	11,190
2014 YTD Actual	11,109
2014 Projected	**11,115**

	Actual Variance
Revenue	
Membership revenue - estimated below budget by approx. 75 members	(105)
PLTC revenue, total of 470 students, versus budget of 450	50
Interest Income	40
Additonal recoveries	154
845/835 Cambie - new lease on 3rd floor 835 Cambie, plus café lease renewal	104
Other	12
	255
Expenses	
Costs related to TWU (external counsel / meetings)	(366)
Additional regulation external counsel fees	(574)
Compensation and staff related savings	175
Forensic accounting fee savings	155
Building - property taxes / utilities	(104)
Other savings	30
	(684)
2014 General Fund Actual Variance	(429)
2014 General Fund Budget	-
2014 General Fund Actual, before additional approved costs funded from reserve	(429)
Reserve funded amounts (Bencher approved):	
CBA REAL 2014 contribution	(50)
Articling student	(57)
Update Practice standards/On-line courses	(80)
Regulation and Insurance Working Group costs	(75)
Estimated Lawyer support & advice program set up costs - costs will be expended over 2014/2015	(235)
	(497)
2014 General Fund Actual, incl. items funded from reserve	(926)

Trust Assurance Program Actual

	2014 Actual	2014 Budget	Variance	% Var
TAF Revenue**	1,633	1,486	147	0.0%
Trust Assurance Department	1,799	1,899	100	5.3%
Net Trust Assurance Program	(166)	(413)	247	

** Q3 revenue not due until October 31st

2014 Lawyers Insurance Fund Long Term Investments - YTD Sep 2014 *Before investment management fees*

Performance	7.05%
Benchmark Performance	7.96%

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2014
($000's)

	2014 Actual	2014 Budget	$ Var	% Var
Revenue				
Membership fees **(1)**	14,495	14,608		
PLTC and enrolment fees	876	797		
Electronic filing revenue	557	546		
Interest income	295	236		
Other revenue	1,154	48		
Building Revenue & Recoveries	730	1,540		
Total Revenues	18,107	17,775	332	1.9%
Expenses				
Regulation	5,354	5,297		
Education and Practice	2,630	2,661		
Corporate Services	2,115	2,007		
Bencher Governance	835	560		
Communications and Information Services	1,376	1,378		
Policy and Legal Services	1,423	1,337		
Occupancy Costs	1,793	1,708		
Depreciation	264	312		
Total Expenses	15,790	15,260	530	3.5%
General Fund Results before TAP	**2,317**	**2,515**	**(198)**	
Trust Administration Program (TAP)				
TAF revenues	1,634	1,486	148	
TAP expenses	1,800	1,900	100	5%
TAP Results	**(166)**	**(414)**	**248**	
General Fund Results including TAP	**2,151**	**2,101**	**50**	

(1) Membership fees include capital allocation of $1.95m (YTD capital allocation budget = $1.97m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2014
($000's)

	Sept 30 2014	Dec 31 2013
Assets		
Current assets		
Cash and cash equivalents	169	179
Unclaimed trust funds	1,885	1,808
Accounts receivable and prepaid expenses	1,035	1,105
B.C. Courthouse Library Fund	979	505
Due from Lawyers Insurance Fund	6,356	22,211
	10,424	25,808
Property, plant and equipment		
Cambie Street property	12,499	12,721
Other - net	1,370	1,438
	24,293	39,967
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,516	4,612
Liability for unclaimed trust funds	1,885	1,808
Current portion of building loan payable	500	500
Deferred revenue	4,188	18,971
Deferred capital contributions	39	47
B.C. Courthouse Library Grant	979	505
Deposits	27	16
Due to Lawyers Insurance Fund	-	-
	9,134	26,459
Building loan payable	3,100	3,600
	12,234	30,059
Net assets		
Capital Allocation	2,387	1,482
Unrestricted Net Assets	9,672	8,426
	12,059	9,908
	24,293	39,967

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 9 Months ended September 30, 2014
($000's)

	Invested in capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2014 Total	2013 Total
	$	$			$	$	$
Net assets - December 31, 2013	10,059	(1,595)	8,464	(38)	1,482	9,908	8,543
Net (deficiency) excess of revenue over expense for the period	(708)	1,070	362	(166)	1,955	2,151	1,365
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:							-
LSBC Operations	308	-	308	-	(308)	-	-
845 Cambie	242	-	242	-	(242)	-	-
Net assets - September 30, 2014	10,401	(525)	9,876	(204)	2,387	12,059	9,908

The Law Society of British Columbia
Special Compensation Fund
Results for the 9 Months ended September 30, 2014
($000's)

	2014 Actual	2014 Budget	$ Var	% Var
Revenue				
Annual assessment	-	-		
Recoveries	19	-		
Total Revenues	19	-	19	100.0%
Expenses				
Claims and costs, net of recoveries	-	-		
Administrative and general costs	-	-		
Loan interest expense	(23)	-		
Total Expenses	(23)		(23)	-100.0%
Special Compensation Fund Results	42	-	42	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at September 30, 2014
($000's)

	Sept 30 2014	Dec 31 2013
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable	-	-
Due from Lawyers Insurance Fund	1,328	1,289
	1,329	1,290
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	-	3
Deferred revenue	-	-
	-	3
Net assets		
Unrestricted net assets	1,329	1,287
	1,329	1,287
	1,329	1,290

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2014
($000's)

	2014 $	2013 $
Unrestricted Net assets - December 31, 2013	1,287	1,226
Net excess of revenue over expense for the period	42	61
Net assets - September 30, 2014	1,329	1,287

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 9 Months ended September 30, 2014
($000's)

	2014 Actual	2014 Budget	$ Var	% Var
Revenue				
Annual assessment	10,713	10,468		
Investment income	8,136	3,040		
Other income	98	50		
Total Revenues	18,947	13,558	5,389	39.7%
Expenses				
Insurance Expense				
Provision for settlement of claims	10,265	10,265		
Salaries and benefits	1,877	2,190		
Contribution to program and administrative costs of General Fund	906	989		
Office	527	641		
Actuaries, consultants and investment brokers' fees	324	346		
Allocated office rent	158	158		
Premium taxes	11	7		
Income taxes	-	4		
	14,068	14,600		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	592	633		
Total Expenses	14,660	15,233	573	3.8%
Lawyers Insurance Fund Results	**4,287**	**(1,675)**	**5,962**	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at September 30, 2014
($000's)

	Sept 30 2014	Dec 31 2013
Assets		
Cash and cash equivalents	4,798	24,440
Accounts receivable and prepaid expenses	431	766
Due from members	1,200	144
General Fund building loan	3,600	4,100
Investments	127,852	121,304
	137,881	150,754
Liabilities		
Accounts payable and accrued liabilities	1,966	1,474
Deferred revenue	3,511	7,065
Due to General Fund	6,356	22,211
Due to Special Compensation Fund	1,328	1,290
Provision for claims	53,959	52,240
Provision for ULAE	7,045	7,045
	74,165	91,325
Net assets		
Unrestricted net assets	46,216	41,929
Internally restricted net assets	17,500	17,500
	63,716	59,429
	137,881	150,754

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 9 Months ended September 30, 2014
($000's)

	Unrestricted	Internally Restricted	2014 Total	2013 Total
	$	$	$	$
Net assets - December 31, 2013	41,929	17,500	59,429	49,821
Net excess of revenue over expense for the period	4,287	-	4,287	9,608
Net assets - September 30, 2014	46,216	17,500	63,716	59,429

The Law Society of British Columbia

CEO's Report to the Benchers

October 23, 2014

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

September and October have been very busy months for Law Society operations and for me personally. In addition to our planning for the current referendum regarding TWU, the Annual General Meeting, the special meeting of Benchers on strategic planning, the recent Federation of Law Societies of Canada conference in Halifax, and finalizing our 2015 Budget and financial plan, we are also right in the thick of our performance review process for all staff and we will soon be conducting our annual all employee survey. You may also interested to know that the past few months have the been among the busiest on record for the number of Law Society hearing days over a similar time frame and we will likely set a record in 2014 for the total number of hearing days held in a calendar year. All of this is happening as the Legal Services Regulatory Framework Task Force chaired by Art Vertlieb QC is meeting, conducting surveys, consulting with a number of key groups and preparing to issue an interim report on schedule to the Benchers in December. This list while substantial is actually just a snapshot of a few of the important activities currently underway at the Law Society. Suffice to say we are fully engaged in the business of regulating the legal profession in the public interest.

In my report this month I would like to highlight a few related and additional items for your information.

Federation of Law Society Matters

As mentioned, the Federation of Law Societies of Canada held its bi-annual national conference in Halifax earlier this month, at which LSBC was well represented. I strongly encourage you to read the report about Federation activities including a report on the Halifax Conference set out in the new Federation “E-Briefing” report which is included with your Bencher package. The E-Briefing is a new initiative to help member law societies better connect with the work of their Federation and it complements the in-person briefing which Benchers receive from Gavin Hume QC, our representative on the Federation’s governing council.

I specifically raise this with you because as your CEO I plan to do more to keep you aware and informed regarding the many emerging issues facing Canadian legal regulators, which warrant a national, coordinated response. The breadth and importance of these issues is remarkable. The challenge for all law societies in Canada is how to

effectively and in practical terms initiate regulatory reforms at the local level while ultimately recognizing the benefits on a national scale. Two clear success stories to date (among several) are the current regime of lawyer mobility across the country which started as an idea among a few western law societies including LSBC, and CANLI, which was born because a few law societies recognized that investing in purely local solutions to online case research was a losing strategy. Upcoming challenges include how to approach alternative business structures, admissions and articling reform, entity regulation and outcomes based regulation in a coordinated way. These are all topics which are currently contemplated for LSBC's new 3 year strategic plan so we will soon be addressing these challenges head on.

I have also attached to this report as Appendix "A" a brief summary of the in-kind contributions of LSBC staff in 2014 to the work of the Federation. This summary was prepared at the request of the Finance and Audit Committee to assist in its deliberations and it illustrates the breadth and depth of our staff contributions on national initiatives. I think it is important to emphasize that the benefits of this work flow not only to the Federation per se but also to many of the core regulatory functions we carry out at LSBC. In short, our relationship with the Federation is a mutually beneficial one but it is also evolving and because of this it warrants our close attention and support.

Update on Process for Developing New 2015 – 2017 Strategic Plan

Included as part of your meeting package is a separate memorandum from me setting out the next steps in the development of the Law Society's new 3 year strategic plan. These steps have been reviewed with the Executive Committee and follow on the results of the special environmental scanning session which you participated in on September 25. As you will see from the memorandum there are four core thematic areas for the new plan.

The task at hand is for you to consider the many possible strategies and initiatives clustered under each of the 4 headings and start to formulate a view regarding which are the top 2 or 3 in your view in each category. We don't expect to have a full discussion on this at the meeting on October 31 but rather we will be seeking your responses after the meeting by way of an online survey. This will feed into a compilation of the responses together with an assessment by staff of the related resource and timing requirements and the preparation of a initial draft strategic plan for consideration by the Benchers at the meeting on December 5.

International Institute of Law Association Chief Executives – Annual Conference

The International Institute of Law Association Chief Executives (IILACE) is a unique organization bringing together the CEOs of law regulatory and representative bodies from around the world. I have been a member of IILACE since I joined the Law Society in 2005 and I have now served on the Executive Committee and I am currently the Vice President of the organization. I will assume the Presidency of IILACE for a 2 year term at the next AGM during this year's conference in Cape Town from November 19 - 23. At last count the approximately 40 CEOs from around the world who attend the IILACE conference manage organizations that either regulate or represent over 1.5 million lawyers worldwide. I was the Chair of this year's program committee and I have attached a copy of the 2014 conference program as Appendix "B" for your information. I would be happy to discuss any of the topics with you in greater detail.

I consistently find the top benefit of participating in IILACE is being able to exchange views and compare notes with a relatively small group of people who have basically the same job description as me and, notwithstanding global diversity, whose organizations increasingly face a similar set of governance, operational and policy issues. I look forward to reporting back to the Benchers on this year's IILACE conference at the December meeting.

Timothy E. McGee
Chief Executive Officer

APPENDIX A

Law Society Employee In-Kind Contributions to Federation

To: Finance and Audit Committee
From: Tim McGee, QC and Alan Treleaven
Date: October 21, 2014
Subject: Law Society Employee In-Kind Contributions to Federation

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At the September committee meeting, management was requested to provide an estimate of the in-kind contributions of Law Society of B.C. staff to the work of the Federation.

The following is a rough estimate of the Law Society's in-kind contributions to the Federation in 2014, according to category of contribution.

In most instances the hourly estimates represent the dual purpose of contributing to the Federation and simultaneously to the ongoing fulfillment of the Law Society of BC's mandate. For example, staff participation on the Federation's National Discipline Standards Committee contributes to the enhancement of the Law Society of BC's discipline-related work, while furthering the national mandate of the Federation. In addition, it ensures that the Law Society of B.C. has a strong voice in determining national issues and standards at the Federation.

There are four key areas of engagement with the Federation.

1) Federation Standing Committees

   National Discipline Standards [D. Armour], Model Code [J. Olsen], National Admission Standards [A. Treleaven, T. McGee], Law Degree Approval [A. Treleaven], National Committee on Accreditation [A. Treleaven], National Mobility Policy [A. Treleaven], Access to Legal Services [T. McGee, M. Lucas, A. Whitcombe]

   Three Law Society staff [T. McGee, A. Treleaven, and D. Armour]: approximately 90 hours annually, plus two staff occasionally [M. Lucas, J. Olsen]

2) Federation Ad Hoc Task Forces and Working Groups

   Federation Governance Review [T. McGee], Character and Fitness Working Group [M. Lucas, L. Small], Communications Working Group [A. Whitcombe, T. Ashlie], Discipline Administrators [D. Armour + Regulatory managers], Mobility Staff Working Group [A. Treleaven, L. Small, J. Hoskins],

Equity and Diversity Staff Working Group [A. Hilland, A. Chopra], Working Group on the National Law Degree Requirement Review [T. McGee]

Five Law Society staff [T. McGee, A. Treleaven, D. Armour, M. Lucas, and L. Small]: approximately 100 hours annually, plus other staff occasionally [A. Whitcombe, T. Ashlie, J. Hoskins, A. Hilland, A. Chopra, Regulatory managers]

3) Federation Conference Planning and Participation

Regina (April 2014) [A. Treleaven] and Halifax (October 2014) [T. McGee] Conferences, as well as upcoming Ottawa Conference planning (March 2015) [T. McGee, A. Treleaven]

Two Law Society staff planning [T. McGee, A. Treleaven], and four to five staff typically attending: approximately 140 hours annually

4) Law Society CEO and Senior Management Consultation with the Federation

Two Law Society staff [T. McGee, A. Treleaven]: approximately 20 hours annually, plus other staff occasionally [A. Whitcombe, M. Lucas]

In summary, a rough estimate of time spent by Law Society of B.C. staff on Federation matters is approximately 350 hours annually.

APPENDIX B

IILACE Annual Conference 2014

Cape Town, South Africa

IILACE Annual Conference 2014

CAPE TOWN

November 19 - 22

Presented by

Willis

asi ADVANCED SOLUTIONS INTERNATIONAL

Invitation to the Largest Gathering of CEOs of Law Societies and Bar Associations

Jan Martin

Nic Swart

Dear colleagues,

We are delighted to present the IILACE 2014 program for our upcoming conference in Cape Town, which will take place at the beautiful Vineyard Hotel on the banks of the Liesbeek River, Newlands; a ten minute drive from the heart of Cape Town.

The Program Committee, chaired by Tim McGee has put together an exceptional program that will be of relevance to IILACE members from all parts of the world.

The social program provides an opportunity to see the picturesque waterfront in Cape Town ; to have dinner on the Bay nestled beneath the magnificent Table Mountain and to experience the delights of African cuisine.

Finally on Saturday morning our session will take place on Robben Island and will include spouses/guests travelling with delegates. As well as having our session there we will have the opportunity to tour the island and have lunch before returning to Cape Town.

As has become our ‘tradition’ there will be an ‘end-on’ to the Conference trip to the Stellenbosch wine area which will depart on Saturday afternoon and return on Sunday afternoon.

The deadline for reserving both your hotel and the trip to Stellenbosch is 10 September 2014. We urge you to make your reservations by that date.

The 2014 Conference promises to be a very exciting conference and we encourage you to register as soon as possible. If you have any questions concerning the program please do not hesitate to contact John Hoyles, Honorary Executive Member of IILACE at johnh@cba.org.

We very much look forward to welcoming you to beautiful Cape Town in November.

Travel safely and best wishes

Jan Martin,
President of IILACE

Nic Swart
CEO of the Law Society of South Africa

IILACE Annual Conference 2014

Business Program

All sessions take place at the Vineyard Hotel

Wednesday, November 19 (Pre-registration is open from 4:00 – 5:30)

5:30 – 7:00	Welcome reception at Vineyard Hotel
7:00	Meet in the lobby for bus transportation to Victoria & Albert Waterfront area
7:30 – 9:30	Touring Victoria & Albert Waterfront area Dress code: Casual
9:30	Bus transportation to Vineyard Hotel

Thursday, November 20 - Focus on Management (Registration is open from 8:30)

09:00 – 09:15 Conference Opening and Welcoming Speeches

Sponsored by The Law Society of England and Wales

- Jan Martin, President of IILACE
- Ettienne Barnard & Max Boqwana, Co-Chairs, The Law Society of South Africa
- President, Cape Law Society
- Nic Swart, CEO, The Law Society of South Africa

09:15 – 10:45 **Session #1: CEO Leadership – Building Personal Resilience and Effectiveness**

Sponsored by The Law Society of Queensland

Chair: Retha Steinmann

For CEOs it may often be “lonely at the top”. Rapid, disruptive change whether social-political, technological or managerial means that to cope, leaders need to be agile and resilient. Studies show CEOs make many decisions intuitively. Studies also show that leaders’ best thinking and decisions are grounded in emotional as well as intellectual intelligence. Authenticity, vulnerability and empathy are critical to success. This session will reveal a side of CEO leadership and success which may surprise you. But it is also designed to inspire and help you.

09:15 – 09:45 Guest Speaker – Dr. Gustav Gous, CEO GetALife

09:45 – 10:30 Panel Discussion and Q&A – Merete Smith, John Hoyles, Makanatsa Mokanese

10:30 – 10:45 Health Break

10:45 – 12:00 **Session #2: The Successful Organization – Does Your Organization Measure Up? What Every CEO Needs to Know**

Sponsored by The Law Society of Ireland

Chair: Tim McGee

It’s not all about you. CEOs are hired to build successful organizations and to help them thrive. Personal fulfillment is another matter. Achieving both is up to you. In this session, we will build on the personal model for CEO success discussed in the morning and broaden our focus to include what makes an organization resilient and effective. Strong mission, values and culture, talent development, good

IILACE Annual Conference 2014

	governance, key performance indicators, strategic focus, employee engagement, accountability – buzz words or indispensable tools for a successful organization? How does your organization measure up? Learn how to leverage these in your organization whether you are big or small, established or developing.
10:45 – 11:15	Guest Speaker: Patricia McLagan, CEO, McLagan International
11:15 – 11:45	Panel Discussion – Noela L'Estrange, Cord Brügmann, Lorna Jack
11:45 – 12:15	Breakout Sessions – What Works for You?
12:30 – 2:00	Lunch *Sponsored by The Law Society of Hong Kong* Lunch Speaker – Renate Volpe – Topic "Political Intelligence and Power Imbalance in Organizations"
2:00 – 3:30	**Session #3: Nuts and Bolts Management and Governance – Contemporary Challenges** *Chair: Tinus Grobler* This session will offer participants an opportunity to take a detailed look at issues, best practices and solutions in three core areas; human resources issues including, recruitment, performance management, compensation, and succession planning; IS/IT issues including, intranet and extranets, desk top support, information and data storage and retrieval, and communications support; and Board issues including, managing expectations and reporting to your Board, relationship with the President, negotiating compensation and work arrangements, political intelligence and the importance of being politically saavy. Following a panel discussion to introduce and highlight the key features of these three streams you are free to join one or more of the facilitated smaller groups on the topic(s) of most interest to you. You are encouraged to bring ideas and examples which you think can help your colleagues identify issues and find good solutions and strategies.
2:00 – 2:30	Panel Discussion – Paul Carlin, Heidi Chu
2:30 – 3:30	Breakout Sessions to Share Experiences / Examples Streams: • HR issues • IS/IT issues • Board issues
3:30 – 4:00	Report back on Breakout Sessions and wrap up on Day 1
4:00	End of Day 1 business program
6:30	Meet in the lobby for bus transportation to African Café – Cape Town
9:30	Bus transportation back to Vineyard Hotel from African Café *Sponsored by The Law Society of Northern Ireland*

CAPE TOWN

Friday, November 21 – Focus on Legal Education, Services and the Public

09:00 – 10:30 **Session #4: Legal Education at a Crossroads: New Models for a New Era**

Chair: Paula Littlewood

Do you remember the first time you heard this: "The first year they scare you to death, the second year they work you to death and the third year they bore you to death"? Is that just a quaint lament of graduating law students or an inconvenient truth about the state of legal education that cannot be ignored? Has the legal "academy" lost touch with the needs of the modern marketplace for lawyers? Why are the law schools in some countries abandoning a three year program and making clinical and experiential learning a priority? Are the tenents of academic freedom and the need for practical skills on a collision course? Who is calling the shots and what are the stakes for regulators and associations and for students, lawyers and the public? And what of law school admissions? Are grades and LSAT scores determinative of those best suited and most likely to be excellent lawyers? Is there anything wrong with this picture? We will hear about all these issues which form part of a rapidly emerging debate around the world and how some of our ILLACE member organizations are taking matters into their own hands. What is your view and why?

09:00 – 09:45 Panel Discussion – Don Thompson, David Hobart, Paula Caetano

09:45 – 10:15 Breakout Sessions

10:15 – 10:30 Health Break

10:30 – 12:00 **Session #5: Legal Services at a Crossroads – What is the "Practice of Law" and Who Does It?**

Sponsored by The Law Society of British Columbia

Chair: Robert Lapper

The days of a lawyer monopoly for the provision of legal services to the public is long gone in many, if not all, of the IILACE member countries. The notion of a select few with rigid credentials plying their trade under the banner of the "Practice of Law" from fixed locations with established, captive clientele is rapidly fading. In this session we will take stock of how non-lawyers, including paralegals, legal technicians, community advocates, and self help on-line providers are rapidly filling a gap left vacant by lawyers or in which lawyers are not the preferred choice of provider. What does the "Practice of Law" mean today and where is it headed? How is the lawyer "value-add" changing? Is it being redefined by lawyers or by others, whether lawyers like it or not? For many the "business" of law is now a more relevant concept than the "profession" of law and this is raising a number of issues relating to the appropriate commercial differentiation among legal service providers as well as what separates a lawyer from others in terms of professionalism, ethical conduct and his/her relationship with the courts. What roles are IILACE member organizations playing today in terms of leading, following or ignoring this changing landscape and why?

10:30 – 11:15 Panel Discussion and Q&A – Darrel Pink, Anne Ramberg

11:15 – 12:00 Presentation and Q&A of IILACE Member Survey Results re: "Practice of Law"

12:00 – 1:30 Group Photo and Lunch

Sponsored by The Federation of Law Societies of Canada

Update from Willis – Andrew Fryer

IILACE Annual Conference 2014

1:30 – 2:00	**IILACE AGM**
2:00 – 2:20	Commonwealth Lawyers Conference – Glasgow 2015 *Presented by Lorna Jack, CEO Law Society of Scotland*
2:20 – 4:20	**Session #6: What is the "Public Interest"? Why Does it Matter? A "World Cafe" Exploration and Discussion** *Sponsored by The Law Society of Upper Canada* *Chair: Paul Mollerup* *Facilitators: Michael Brett Young, Megan Lawton, Jonathan Herman, Don Deya* All of us in the room will say that our respective organizations exist to serve the "public interest" in some way. The "public interest" is not the exclusive domain of the regulators - it plays a significant part in the life of member focused associations as well. The "public interest" is cited as the basis for a wide range of actions we take and services we provide from disciplining lawyers, to requiring minimum number of hours of continuing professional development, to conducting public forums on social issues, to issuing reports on access to justice, to encouraging pro bono work to running defalcation insurance programs, to condemning human rights violations around the world. But do any of us know for sure whether and to what extent the public is interested in these efforts? If so do they think we are doing a good job? In short, why does it matter and who cares? In this World Cafe interactive session we will explore these issues and consider whether a consensus exists across the breadth of the IILACE member countries and jurisdictions on matters such as the meaning of the public interest, what it means for lawyers, organizations and the public and do we have our priorities right to serve the public interest most effectively?
2:20 – 2:50	Round #1 Topics and Discussions in Groups of 8
2:50 – 3:20	Round #2 Topics and Discussions in Groups of 8
3:20 – 3:35	Health Break
3:35 – 4:20	Reporting out by group facilitators on World Cafe findings and wrap up
4:20	End of Day 2 business program
6:00	Meet in the lobby for bus transportation to Gala Dinner at 12 Apostles Hotel
7:00	Reception and Gala Dinner at Azure Restaurant at 12 Apostles Hotel *Sponsored by Willis* Dress code: Smart casual or traditional dress
10:00	Bus transportation from Azure Restaurant back to Vineyard Hotel

Saturday, November 22 – Focus on Core Values

07:00	Continental Breakfast – Meet in the lobby for bus transportation to ferry to Robben Island
09:00 – 10:00	Ferry trip to Robben Island – Participants and Guests
10:30 – 11:00	**Session #7: "A Short Walk to Freedom" The Legacy and Lessons of Nelson Mandela** *Speaker: Dr. Gustav Gous* In this very special session which will be held on what has become sacred ground for the cause of

CAPE TOWN

	human rights and personal freedom in South Africa and around the world, we will hear from Dr. Gustav Gous, a well known authority on Nelson Mandela and his experience on Robben Island
11:00 – 12:00	**Session #8: Ethics and Professional Responsibility of Lawyers – A Contemporary Perspective and Global Scorecard** *Chair: Jan Martin* *Panel Discussion and Q&A – Joe Dunn, Raffi Van den Burg, Max Boqwana, Co-Chairperson of Law Society of South Africa, Ken Murphy* In this final session of the conference you will be encouraged to reflect on one of the recurring themes for IILACE annual conferences namely, the Core Values of the profession and whether they are being met. We will have a provocative panel discussion focusing on the ethical behaviour and professional responsibility demonstrated or lacking in legal practice today from several unique perspectives. Would you agree that the bar in this area must be set high? If so, what must we do to ensure no one fails to meet it?
12:00 – 2:00	Light lunch and guided tours of Robben Island Prison
2:00 – 4:00	Return ferry trip and transportation to Vineyard Hotel – Farewells
4:00	Optional: bus departure for special overnight trip to Stellenbosch

Sunday, November 23

2:30	Travel back from Stellenbosch
4:00	Arrive at Vineyard Hotel from Stellenbosch

Spouse Programme

Thursday, November 20

Tour of Cape Town including the Castle of Good Hope, the first building of the original Dutch settlement and tour of the waterfront.

Vincent Steenberg CC BY-SA 2.5

Friday, November 21

Trip to the top of Table Mountain (in case of high winds, alternate is a trip to Hout Bay with lunch in the heart of the harbor).

Coda.coza CC BY-SA 2.5

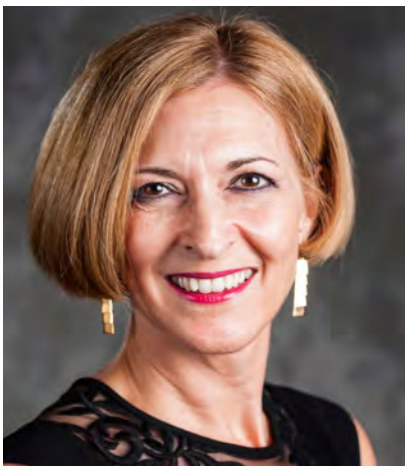
E-BRIEFING
FEDERATION OF LAW SOCIETIES OF CANADA

FALL 2014

Message from the Federation President

We are a long way from 1926. That was the year the Federation's precursor, the Conference of Representatives of the Governing Bodies of the Legal Profession in the Provinces of Canada was founded. For all of its history, the Federation has really only begun to come into its own in the last ten years or so. The pace of change has been truly breathtaking, but it should not surprise anyone – the legal profession itself is undergoing profound change so it makes sense that the way it is governed should also adapt with the times.

Canada's law societies are grappling with a new world of regulation in different ways and at different speeds depending on the jurisdiction. The Nova Scotia Barristers' Society is moving forward with new regulatory objectives and heading toward regulating entities and not just individual lawyers. The Law Society of Upper Canada is consulting with its members about Alternative Business Structures, and work on that topic is moving ahead in the Prairie provinces. The Law Society of British Columbia is working toward implementation of a plan to regulate paralegals.



Federation President
Marie-Claude Bélanger-Richard, Q.C.

So how does the Federation fit into all of this new thinking? National mobility of the legal profession finds its real public interest value when Canadians everywhere are assured that they are served by a competent and ethical legal profession no matter where a lawyer was first admitted to practice. This basic idea speaks to the need for a consistent national approach to legal regulation, so the law societies have increasingly turned to each other through the Federation to accomplish this goal.

In the last five years alone, the Federation has been the vehicle for establishing common ethical standards with a Model Code of Professional Conduct. It has set national standards for complaints handling and discipline processes. And it is working on common standards for admitting new members of the profession to the practice of law. There is an agreed standard for existing and new common law programs in Canada, and a centralized system to assess the qualifications of internationally trained lawyers wishing to join law societies in common law jurisdictions. All of this has transformed the Federation in a very short period of time to the point where it is fair to ask whether it is more than just a coordinating body of local law societies.

Even though the constitution of Canada reserves regulation of the professions to the provinces and territories, hasn't the Federation actually become a national regulator in some ways?

This is a fundamental question that the leaders of Canada's law societies agree places the Federation at a crossroads. This year, the Federation's owners, the law societies themselves, will explore these important issues and reflect on whether the structure and processes followed by the Federation are well-suited to the purpose of the organization as agreed upon by its constituent parts. Although my year as President of the Federation draws to a close in November, I am pleased to participate in this crucial phase of the Federation's history as Chair of the Governance Review Committee. The Committee and I very much look forward to listening to your perspectives as we think about the future of the Federation over the next year.

In this issue:

National Requirement Review Initiated

Plans are moving ahead for the review of the National Requirement that specifies the competencies and skills that graduates of Canadian common law programs must have for entry into law society admission programs, effective in 2015. It also details the learning resources Canadian law schools must have in place.

In October the Council of the Federation approved terms of reference for a new National Requirement Review Committee that will have as its first priority the study of whether a non-discrimination provision should be included. The new Committee will be established this fall and will report on its work plan in February 2015. Consultation will be a central feature of its work and it has been specifically mandated to engage with key stakeholders including Trinity Western University, the Canadian Bar Association and the Council of Canadian Law Deans.

In addition, the Committee will step back and look more generally at how the existing program approval process is working. There will be an opportunity to recommend improvements to the initial policy framework set out by the original Task Force on the Canadian Common Law Degree.

For reference the **National Requirement** is posted on the Federation web site under Publications and Resources.

From the NCA

In the financial year 2013/2014, the NCA received 1,294 applications for assessment, a two per cent decrease from 2012/2013. In that same financial year, 779 Certificates of Qualification ("CQ") were issued, a seven per cent increase from 2012/2013.

In 2013/2014, almost 5,700 examinations were written in four sessions - August, October, January, and May. The NCA holds examination sessions in Vancouver, Calgary, Edmonton, Toronto and New Delhi, India each session. Applicants may also request to write in other cities both in Canada and overseas. As a result, examinations in each session are typically written in 30 locations around the world.

Over the next few months, the NCA will be finalizing the revisions required to bring the assessment policies into compliance with the Federation's National Requirement.

Updating the Model Code of Professional Conduct

The Council of the Federation recently approved a package of amendments to the Federation's Model Code of Professional Conduct (the "Model Code"), amending the rules on conflicts of interest and adding new rules to facilitate access to short-term summary legal services, provide guidance on handling incriminating physical evidence, and ensure clients are advised of their right to proceed in the official language of their choice.

The Model Code has been implemented by a number of law societies and is under review in most other jurisdictions. The Model Code is constantly evolving in response to changes in the law and changes made by individual law societies as they implement it. The Federation's Standing Committee on the Model Code actively engages liaisons from each law society in its ongoing work and undertakes extensive consultation on proposed amendments with all interested parties, including the public.

On October 10, 2014 Council of the Federation approved a package of amendments and referred them to the law societies to consider incorporating into their own codes of conduct. The amendments to the Model Code include:

- New short-term summary legal services rules that will facilitate the important access to legal services work of a wide range of non-for-profit legal service providers.
- New language rights rules requiring lawyers to advise their clients of their right to proceed in the official language of their choice.
- Revisions to the conflicts of interest rules incorporating principles from a recent Supreme Court of Canada decision and revising the rules governing lawyers transferring between law firms and lawyers doing business with clients.
- A new rule on incriminating physical evidence that prohibits the concealment, destruction or alteration of incriminating physical evidence; prohibits any obstruction of the course of justice; and provides guidance for lawyers to ensure protection of the public interest.

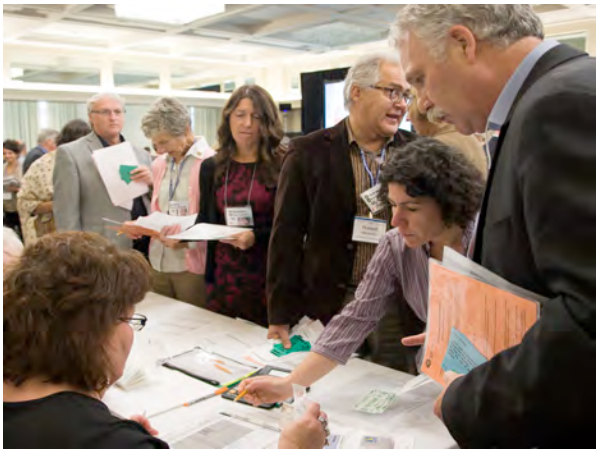
Further amendments to the Model Code are out for consultation until November 24, 2014. The recent amendments to the Model Code are posted in the **National Initiatives** section of the federation web site (www.flsc.ca).

Federation Annual Conference dealt with access to justice and legal services

The theme of the Federation's 2014 Annual Conference was access to justice and legal services. This is the first time that law societies have come together to have a discussion on this issue. The conference began with Living on the Edge, a three-hour sensitization experience developed by the United Way of Halifax, in which law society elected leaders and senior staff experienced the challenges faced by people living in poverty.

The experience was designed to help participants see and experience poverty from a new perspective, and to better understand the nexus between poverty and access to justice.

The following day participants met with one of eleven organizations in Halifax for whom access to justice and legal services are living priorities. In the afternoon, each group shared about what they learned from the meetings and what role law societies and the Federation they might play in improving access to justice and legal services. Participants ended the day by reflecting on what changes their own law society might make in light of the deliberations.



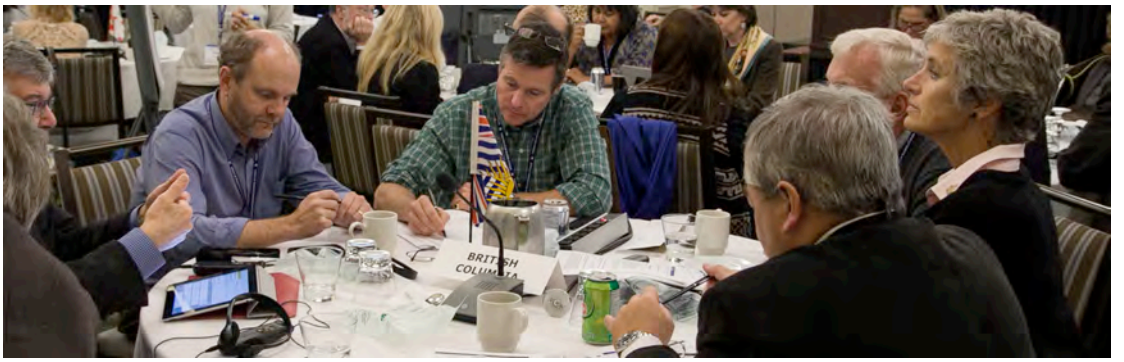
Conference participants try to arrange banking services during the sensitization session.

Several themes emerged from the conference. Law societies recognized that access to justice and access to legal services are complex issues that extend beyond the justice sector.

The conference concluded that identifying a clear role for law societies is important so that law societies are prepared to take the lead when it is appropriate to do so. Law societies can play a leadership role is collaborating and building strategic alliances with each other, the public, and other justice sector stakeholders. Multi-disciplinary, holistic approaches that draw upon diverse skill sets appeared to be most effective in addressing access issues.

Feedback from site visits with agencies in Halifax highlighted the importance of providing information to the public in a format that works for them, and the importance of viewing issues from the consumer's perspective. Law societies were challenged to develop the competence to measure and evaluate what they do in order to better understand how consumers use and access legal services. Another prominent theme was the need to share information and better coordinate resources. The Federation could assume this pivotal coordination role.

Conference participants also looked at how law societies might encourage innovation. As part of the reflection on the interplay between access and innovation, participants explored alternative business structures and billing models, limited scope retainers, scope of practice initiatives, legal training and restorative justice models. Participants agreed that access to justice and legal services are fundamental to law society work as public interest regulators and looked at new ideas for their own jurisdiction to consider.



Conference participants from LSBC discuss access initiatives in their jurisdiction

Federation granted intervenor status

The Federation regularly intervenes in selected cases to defend issues of national importance which relate to the legal profession and core democratic values.

The Federation recently made an application to the Supreme Court of Canada for leave to intervene in *Minister of National Revenue v. Duncan Thompson,.* which deals with solicitor - client privilege.

The Federation has been granted intervor status and the hearing is set for December 4, 2014.

CanLII

CanLII's President and CEO, Colin Lachance, was named one of Canadian Lawyer magazine's Top 25 Most Influential in the justice system and legal profession for 2014. Colin is named one of this year's "changemakers" and central to the article is Colin's role in creating CanLII Connects. CanLII Connects, which launched on April 4, 2014, provides free legal commentaries by lawyers and academics on Canadian court decisions.

In September, 2014, Colin Lachance was again profiled in the legal media, this time as one of the ABA Journal's Legal Rebels. CanLII, the largest free legal database in the country, remains the destination of choice for legal professionals in Canada and is a model for providers of free legal information internationally.

CanLII is a non-profit organization created and maintained by the Federation and Canada's law societies. It is funded by all members of the legal profession through their law society dues.

Developing National Admission Standards

The Federation met with ten law societies in the first half of 2014 to consider the report prepared by our consultant, ProExam, and to discuss options for assessment on the competencies in the National Competency Profile. The feedback from law societies provided direction on areas of common agreement. It also raised additional questions that require further exploration before consensus on an approach to assessment is reached. The Steering Committee will meet in person in Toronto on November 10 and 11, 2014 to further consider the policy dimensions of a common assessment scheme.

The outcome of the Steering Committee's deliberations will shape the direction in the project. Law societies will be informed of next steps soon.

Implementing National Discipline Standards

January 1, 2015 is the deadline for adoption and implementation of the National Discipline Standards by law societies. The majority of law societies have now approved the standards, except for several law societies that do not require formal adoption by their benchers. The standards are aspirational and it is understood that not all law societies will be able to meet all of the standards.

The new Standing Committee on National Discipline Standards will monitor law society implementation of and compliance with the National Discipline Standards. It is expected that the standards will be a permanent work in progress and will require ongoing refinement as we gain experience with them.

The National Discipline Standards are posted in the **National Initiatives** section of the federation web site.

National CLE Programs

The Federation's **National Criminal Law Program** and the **National Family Law Program** have offered the best in-class training in these key subject areas for lawyers and judges for decades. This summer, both programs were sold out once again. Next year the Criminal Law Program will be held in July in Edmonton, Alberta. The Family Law Program will return in 2016 and be offered in a location in Atlantic Canada.

access probono | *Increasing Access to Justice in BC*

BillM. ⇒ Bouchus FYI T.

October 9, 2014

Mr. Timothy E. McGee
Executive Director
Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Thank you for your ongoing support! Jamie

Tim

Dear Mr. McGee,

On behalf of the directors and staff at Access Pro Bono (APB), I extend a heartfelt thank you to the Law Society of British Columbia for its continued sponsorship of our Pro Bono Going Public legal advice-a-thon. The annual legal service, awareness and fundraising event would not be possible without the generous financial support of organizations like yours.

This year, over the course of four days in September, a record-breaking 122 volunteer lawyers provided free legal advice and assistance to 209 pre-booked and walk-up clients. As always, our clients were overwhelmingly appreciative of the opportunity to receive free legal advice at a time and place where they did not necessarily expect it.

Pro Bono Going Public 2014 received extensive publicity in several media outlets, including CBC Radio, CKNW Radio, the Vancouver Sun, and several local radio stations and newspapers. We feel that we were able to raise considerable awareness in each host city concerning the widespread availability of our free legal clinics and services.

Last and far from least, participating lawyers raised $56,236 in support of our direct pro bono services. Together with $18,500 in corporate sponsorships (including yours), the event raised $74,736 for the maintenance and expansion of our vital pro bono programs as we forge ahead into 2015.

Please visit our website at www.accessprobono.ca for more information on our pro bono programs, and our event website at www.advice-a-thon.ca/sponsors.php for acknowledgment of your support.

Once again, we thank you for your continued support and we look forward to the possibility of partnering with you again for Pro Bono Going Public 2015.

Sincerely,

Jamie Maclaren
Executive Director

cc: jclark@lsbc.org Justine, Clark

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