The Law Society of British Columbia

Agenda

Benchers

Date: Friday, June 12, 2015

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.***

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	President Walker presentation of the 2015 Law Society Scholarship Yun Li-Reilly	5	President		Presentation
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 (Renee Collins Goult) prior to the meeting.					
2	Consent Agenda • Minutes of May 9, 2015 meeting (regular session) • Minutes of May 9, 2015 meeting (*in camera* session) • Amendment to Rules: Articled Students and Temporary Articled Students • AGM Resolution re: Appointed Benchers	1	President	 Tab 2.1 Tab 2.2 Tab 2.3 Tab 2.4	 Approval Approval Approval Approval

The Law Society of British Columbia

Agenda

EXECUTIVE REPORTS					
3	President's Report • Selection of Benchers' Nominee for 2016 Second Vice-President	15	President	Oral report (update on key issues)	Briefing
4	CEO's Report	15	CEO	(*To be circulated electronically before the meeting*)	Briefing
5	Briefing by the Law Society's Member of the Federation Council: • Report from Council meeting on Interim Federation Governance report • Report re Meeting of National Requirement Review Committee	15	Gavin Hume, QC Herman Van Ommen, QC	Tab 5	Briefing
DISCUSSION/DECISION					
6	Amendment to BC Code Rule 3.6-3: Statement of Account	10	Herman Van Ommen, QC	Tab 6	Discussion/ Decision
7	Revised Statement of Investment Policy and Procedures	15	Peter Lloyd, FCA & Jeanette McPhee, CFO	Tab 7	Discussion/ Decision

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REPORTS					
8	Report on Outstanding Hearing & Review Decisions	4	President	(*To be circulated at the meeting*)	Review
9	2015-2017 Strategic Plan Implementation Update • Rule of Law and Lawyers Independence Advisory Committee initiative: Public Commentary on Rule of Law Issues	30	President / David Crossin, QC	Tab 9	Briefing
FOR INFORMATION					
10	Tribunals Process Questions from Retreat			Tab 10	Information
IN CAMERA					
11	Update from Notaries Working Groups • Governance Group • Qualifications Group	20	Miriam Kresivo, QC/ Maria Morellato, QC	Tab 11	Discussion
12	• Bencher concerns • Other business	20	President/CEO		

The Law Society of British Columbia

Minutes

Benchers

Date: Saturday, May 09, 2015

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

Excused: Jamie Maclaren

Staff Present:
Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins Goult
Lance Cooke
Jeffrey Hoskins, QC
Michael Lucas
Jeanette McPhee
Alan Treleaven
Adam Whitcombe

Guests:	Anne Kirker, QC	President-Elect, Law Society of Alberta
	Brenda Hildebrandt, QC	President, Law Society of Saskatchewan
	Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	James Eamon, QC	President, Law Society of Alberta
	Jon Festinger, QC	Principal, Festinger Law & Strategy & Adjunct Professor, UBC Law and TRU Law
	Jonathan Herman	CEO, Federation of Law Societies
	Karen Clearwater	President, Law Society of Manitoba
	Kristin Dangerfield	CEO, Law Society of Manitoba
	Marc L. Richard, QC	Executive Director, Law Society of New Brunswick
	Robert M. Creamer, QC	Vice-President, Law Society of New Brunswick
	Thomas G. Conway	President, Federation of Law Societies
	Thomas Schonhoffer, QC	Executive Director, Law Society of Saskatchewan

PRESIDENT'S INTRODUCTION

Mr. Walker welcomed Benchers, staff and guests to the Law Society Retreat Bencher meeting in Sun Peaks. He noted Jamie McLaren's regrets, as well as those of Past President Jan Lindsay, QC.

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on April 10, 2015 were approved as circulated.

The *in camera* minutes of the meeting held on April 10, 2015 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules, effective on proclamation of Part 5 of the Chartered Professional Accountants Act, SBC 2015, c. 1, as follows:

1. In Rule 1, by inserting the following definition:

"qualified CPA" means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;***;***

2. In Rule 3-74.1 (5), by rescinding paragraph (a) and substituting the following:

(a) engage or assign a qualified CPA to complete the trust report;***;***

3. In Rule 3-75, by rescinding subrule (1) and substituting the following:

(1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-72 or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-78 to deliver as part of the report required under the relevant Rule, an accountant's report completed and signed by a qualified CPA.***;***

4. In Rule 3-97(4), by rescinding paragraph (k) and substituting the following:

(k) professional accountant (Chartered Professional Accountant, Accredited Public Accountant, Public Accountant or Registered Public Accountant);**.**

BE IT RESOLVED to amend the Law Society Rules 2015, effective on proclamation of Part 5 of the Chartered Professional Accountants Act, SBC 2015, c. 1, as follows:

1. In Rule 1 [Definitions], by inserting the following definition:

"qualified CPA" means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;***;***

2. In Rule 3-81 (5) [Failure to file trust report], by rescinding paragraph (a) and substituting the following:

(a) engage or assign a qualified CPA to complete the trust report;***;***

3. In Rule 3-82 [Accountant's report], by rescinding subrule (1) and substituting the following:

(1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-79 *[Trust report]* or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-84 *[Former lawyers]* to deliver as part of the report required under the relevant rule, an accountant's report completed and signed by a qualified CPA.***;***

4. In Rule 3-104 (4), by rescinding paragraph (k) and substituting the following:

(k) professional accountant (Chartered Professional Accountant, Accredited Public Accountant, Public Accountant or Registered Public Accountant);**.**

BE IT RESOLVED

1. To amend the Law Society Rules 2015, effective on proclamation of Part 5 of the Chartered Professional Accountants Act, SBC 2015, c. 1, and subject to approval of the members under section 12 of the Legal Profession Act, by rescinding Rule 1-10 (2) and substituting the following:

(2) The auditor appointed under subrule (1) must be a qualified CPA.***;***

2. To recommend to the 2015 Annual General Meeting the adoption of a resolution authorizing the amendment to be effected by para. 1 of this Resolution.

BE IT RESOLVED that the Benchers ratify the Credentials Committee's recommendation to award the 2015 Law Society Scholarship to Yun Li-Reilly.

BE IT RESOLVED that the Benchers ratify the Credentials Committee's recommendation to award the 2015 Aboriginal Scholarship to Darcy Lindberg.

BE IT RESOLVED that the CanLII 2015 levy be set at $38.00 per lawyer.

DISCUSSION/ DECISION

2. 2015 First Quarter Financial Report

Chair of the Finance and Audit Committee, Peter Lloyd and Jeanette McPhee, Chief Financial Officer, briefed the Benchers on the Law Society's first quarter financial results. Although it is early in the year, the first quarter can be an indicator of impending challenges. At this time, the area of external counsel fees continues to be a pressure point, primarily due to the increasing complexity of professional conduct and discipline matters, and the number of hearing days. Management is in the process of reviewing all other budgeted areas to help offset this potential pressure. The second quarter report in July should provide a better indicator of the forecast for the year. In response to the question of how counsel work is allocated between internal and external counsel, Deb Armour, Chief Legal Officer, confirmed that as much work is done internally as possible; a matter is referred externally in the event of a conflict with a Bencher or a Bencher's firm, or due to the volume of file loads.

Investment results of 6.84% have outperformed the benchmark of 5.95%. It was noted that the current investment guidelines are being reviewed by the Committee, and a change to the asset mix will be recommended, and a Revised Statement of Investment Policy will come to the June Bencher meeting for Bencher consideration and approval.

Mr. Lloyd noted July 9 as the next Finance and Audit Committee meeting, and encouraged all Benchers to attend.

3. Tribunal Program Review Task Force

Mr. Walker briefed the Benchers on the draft recommendations of the Tribunal Program Review Task Force (the "Task Force"), seeking input at this stage, rather than decision.

In 2010 the Benchers decided to revise the Tribunal system to try to achieve more separation between the Benchers' overlapping responsibilities of regulation and adjudication, to help avoid any actual or perceived bias. To replace hearing panels composed solely of Benchers, a new panel model was created consisting of one Bencher, one experienced lawyer and one member of the public; the latter two members were drawn from pools created for the purpose ("Pool(s)").

At the time, the Benchers decided that there should be a review of the new approach after 3 years in operation. The Task Force was created to review the program and to provide recommendations for further improvement. The Task Force's draft recommendations suggest a need for increased separation to further delineate the Benchers' regulatory and adjudicative functions, to allow Benchers to focus their valuable time and efforts on regulation and policy,

and to ensure an adequate level of training and expertise for increasingly complex hearing requirements. The draft recommendations are based, in part, on consultations with other Canadian jurisdictions, some of which have completed separation and have no Benchers in their Tribunal system, such as Nova Scotia, and others that have a hybrid model of Benchers and lawyers, such and Ontario and Manitoba. In the latter, effectively most hearings proceed with non-Benchers, with successful results.

Draft recommendations include:

- reduction of lawyer and public Pool sizes to 15-18 people per Pool, thereby increasing hearings and thus experience levels for each person;
- combination of the Bencher and lawyer Pools, resulting in a single Pool of 30 to 36 members, from which 2 panel members would be drawn to sit alongside one member from the public Pool, thereby helping facilitate improved administration
- appointing the most experienced lawyer panel member Chair of the panel, rather than automatically appointing the Bencher who may be relatively new;
- mandatory training, which is being done currently;
- mandatory participation of a public member on panels, also currently being done;
- periodic replacement of 4-5 Pool members, to ensure both continuity and experience, and renewal
- creation of a part-time Independent Chair for the Tribunal system, to avoid conflicts created by the Executive Director's and President's overlapping regulatory and adjudicative functions.

Though not a specific recommendation, the Task Force also suggests a continued progression toward complete separation between the regulatory and adjudicative functions, proposing either the continued inclusion of all *current* Benchers in adjudicative panels for their terms as Bencher, but ceasing involvement of new Benchers.

Feedback from the Benchers included support for the continued inclusion of Benchers on panels, as it enhances collaboration and understanding between Benchers and the public, it helps ensure continued deference to decisions by the Courts, and it remains an integral Bencher function. Some expressed concern regarding Bencher function being limited to policy-making only.

Conversely, it was noted that the continued participation of Benchers as adjudicators limits staff's ability to share certain information with them, given the potential apprehension of bias

that may result. Separation of the adjudicative function could ensure the Benchers are more fully informed of issues that arise at the staff level. Additionally, it was observed that the increasing complexity of hearings is putting a greater demand on the time and resources of Benchers, with the result that it is becoming harder to constitute hearing panels with Benchers.

Marc Richard QC, Executive Director of the Law Society of New Brunswick, shared their experiences with a completely separate Tribunal system. Since 1997, Benchers have not been at all involved in the New Brunswick Tribunal system, but solely focused on policy. Any associated fears have been unfounded; rather, the system has worked well.

In response to questions, Mr. Walker noted that the Task Force opted not to suggest the payment of adjudicators; however, Brenda Hildebrandt QC, President of the Law Society of Saskatchewan, recommended paying adjudicators, which, in their experience, has helped ensure timely reporting, commitment and initiative.

Mr. Walker thanked the Benchers and guests for their thoughtful questions and commentary, noting that he will take all of the feedback to the Task Force for their further consideration.

GUEST PRESENTATIONS

4. Update on Federation

Tom Conway, President of the Federation of Law Societies, spoke on the changing regulatory landscape of law societies and the legal profession, and both the successes and challenges of the Federation.

Amongst the Federation's successes are the National Mobility Agreement, the constitutional protection of lawyer/client confidentiality, the Model Code of Conduct, the National Competency profile, and national Standards of Discipline. Mr. Conway stressed these successes flowed from inter-jurisdictional cooperation, both nationally and internationally.

Emerging challenges include issues around access to legal services; one such issue is the provision of legal services on internet-based platforms. Another is technological innovation that will revolutionize searching for legal information, saving time, effort and money, but that will also replace the labour of lawyers and students with software.

Recognizing its strength as a unified body of regulators, the Federation will be reviewing the upcoming Governance Review Committee report with a view to improving processes that have created past successes, and developing concrete solutions to the challenges that lie ahead.

REPORTS

5. Report on Outstanding Hearing & Review Decisions

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

6. President's Report

Mr. Walker briefed the Benchers on his attendance at recent events, including the funeral of Ben Meisner, at which the Law Society was well represented; the Thompson Rivers University ("TRU") Bursary established in Mr. Meisner's memory has been established, and Benchers can donate through the Law Society or directly through TRU.

Mr. Walker also attended and spoke at Judge Parrett's retirement dinner, and travelled to Glasgow, Scotland to attend the Commonwealth Law Conference on behalf of the Law Society.

Further, he advised that Karen Nordlinger, QC has been appointed as the Law Society's representative on the Federal Judicial Advisory Committee, which now fully constituted, can resume its work.

Finally, he thanked guests and Benchers for travelling to Kamloops for the annual Retreat, and for contributing to a successful program and meeting.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 1).

He noted the recent release of the 2014 Law Society Report on Performance, the principal vehicle for communicating the Society's Strategic Plan, objectives and goals, key performance measures and Bencher information, and encouraged all Benchers to review it.

As was noted in Mr. Conway's presentation, the Federation Governance Review Committee has completed an intensive process culminating in several options for consideration. Emerging as a fundamental point is the autonomy of individual law societies, which will be a cornerstone of any future governance structure.

RCG
2015-05-09

The Law Society of British Columbia

CEO's Report to the Benchers

May 4, 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

First Quarter Financial Results

The financial results for the first quarter ended March 31, 2015 have now been reviewed by the Finance and Audit Committee, and are attached as a separate item in your Bencher Agenda Package. As you can see, we are tracking well to budget through the first three months of this year. Finance and Audit Committee Chair Peter Lloyd, FCA, Chief Financial Officer Jeanette McPhee and I will be available to answer any questions you might have regarding these items.

TWU Hearing – Update

At a judicial management conference on April 28, a date was set for the hearing of TWU's petition against the Law Society. The hearing before Chief Justice Hinkson will take place in BC Supreme Court commencing August 24 for five days. The Law Society has also filed an Amended Response which is available on the website.

2014 Law Society Report on Performance

The Law Society's 2014 Report on Performance is now available and has been posted on our website. This report describes the achievements under the Law Society's 2012-2014 Strategic Plan, including a review of strategic initiatives related to:

- regulation of law firms;
- regulation of all legal services providers;
- retention of women lawyers;
- mentoring Aboriginal lawyers.

For the eighth year, we also reviewed key performance measures for our core regulatory functions to evaluate the overall effectiveness of Law Society programs. These performance measures form a critical part of our regulatory transparency, informing the public, government, the media and the legal community about how we are meeting our regulatory obligations.

I encourage all Benchers to take a few minutes to review the Report on Performance. As always, we welcome any of your comments or suggestions.

Working Groups re: Notaries Discussion – Update

Both the Qualifications Working Group and the Governance Working Group have met since the last Bencher meeting. There will be an update and discussion on developments from those sessions at the meeting at Sun Peaks.

FLSC Governance Review Committee

I attended a meeting of the Federation Governance Review Committee in Toronto on April 27 and 28. At that meeting the Committee discussed in detail the feedback from the Federation Governance Conference in Ottawa held in April. The committee is now preparing an Interim Report to be discussed at the next Council meeting in Ottawa on May 31 and June 1, 2015.

Conferences and Events

The month of April was a busy one for special events:

Victoria Bar Association Spring Dinner

On April 16 I attended the Victoria Bar Association spring dinner. There was an excellent turnout, particularly among younger members of the local bar. Benchers Pinder Cheema, QC and Dean Lawton were on hand as well as Life Bencher Kathryn Berge, QC.

Ben Meisner Memorial

On April 18 I attended the memorial service for Ben Meisner in Prince George, together with Benchers Walker, Crossin, Van Ommen and Ongman. Also, special thanks to Greg Petrisor for his hospitality and chauffeur services.

UBC Alumni Association Lunch for Dean Bobinski

On April 21 The Law Society purchased a table at the UBC Law Alumni Association celebration luncheon for Dean Mary Anne Bobinski to celebrate her many accomplishments prior to her upcoming retirement. I attended as part of a 10 person contingent from the LSBC in a sold out Hotel Vancouver ballroom.

CBABC Women Lawyers Forum Awards Luncheon

On April 23 along with several others from the Law Society, I attended the CBABC Women Lawyers Forum Awards luncheon honoring the BC WLF Award of Excellence recipients as well as the recipients of the Debra Van Ginkel, QC Mentoring Award.

Timothy E. McGee
Chief Executive Officer

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: May 19, 2015
Subject: Legal services by temporary articled students

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1. The Act and Rules Committee recommends amendments to the Rules governing the legal services that can be delivered by temporary articled students and articled students enrolled in the Law Society admission program. These amendments are meant to clarify the limitations on temporary students and be a "quick fix" to what appears to be an anomaly in the rules.

2. Some lawyers in Kamloops contacted Mr. Walker and identified issues about what could and could not be done by temporary articled students in connection with certain appearances on criminal matters. The Credentials Committee considered the rules and asked for changed rationalize Rule 2-32.01 (the rule that allows articled students to do certain things), and Rule 2-43 (the rule that allows temporary articled students to do certain things).

3. The Credentials Committee referred the need for amendments directly to the Act and Rules Committee because the Benchers had already made a policy decision with respect to what an articled student is entitled to do under the supervision of a lawyer. Rules were created to address that policy change. What is proposed is a revision to the rules to better reflect that initial policy decision and no new policy decision is called for at this time.

4. The proposed amendments are intended to ensure that articled students are allowed to do as much as possible, in accordance with the decisions made by the Benchers when the rules were last changed. Temporary articled students will continue to be allowed to do many things, but not as many things as are permitted for "full time" articled students. In other words, there will continue to be more limitations on what temporary articled students can do, justified by the fact that they have not completed their academic legal training

"Full-time" Articled Students

5. The starting point is that an articled student can do everything that a lawyer can do provided the principal has determined that the student is:

- competent to provide the services;
- supervised to the extent necessary in the circumstances; and
- properly prepared before acting in any proceeding or other matter.

6. Consequently, an articled student can appear at any level of court on any matter provided the student's principal or another practising lawyer is in attendance, and is directly supervising the student.

7. An articled student will also be allowed to appear on matters *without* the student's principal or other practising lawyer in attendance (provided the principal has ensured that the student is competent, supervised to the necessary extent, and properly prepared), but these appearances are limited by what is set out in rule 2-32.01(2)(a). So, an articled student will not be able to appear on his or her own:

    - before the BC Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada,
    - on any civil or criminal jury trial,
    - on any proceeding on an indictable offence.

8. Rule 2-32.01(3), however, provides an exception to the general prohibitions set out in rule 2-32.01(2). As a result, a full-time articled student will be able to appear without supervision

    - on indictable matters where the proceeding is within the absolute jurisdiction of a Provincial Court Judge; and
    - with respect to an application for adjournment, setting a date for a preliminary inquiry or trial, an application for judicial interim relief, an application to vacate a release or detention order and to make a different order, or an election or entry of a plea of not guilty on a date before the trial date.

Temporary Articled Students

9. Rule 2-43 sets out what a temporary articled student is permitted to do. The general starting point for temporary articled students is that they *are not permitted* to appear as counsel unless the student's principal or another practising lawyer is in attendance and directly supervising the student.

10. Despite that general prohibition on appearing without supervision, a temporary student is able to attend without direct supervision in the limited matters set out in Rule 2-43(1). This

includes the sorts of things that articled students have long been permitted to do on their own, prior to the recent amendments that added the new Rule 2-32.01 that expanded what full-time articled students can do.

11. The proposed revisions to Rule 2-43 clarify that a temporary articled student can appear on summary conviction offences and proceedings in Provincial Court only on indictable matters that are within the absolute jurisdiction of a Provincial Court Judge. You will note, as well, that the appearances permitted without supervision in Rule 2-43(1)(d)(iii) have been replicated in the proposed amendments to Rule 2-32.01(3). Both of these amendments should ensure that temporary articled students cannot do more than "full-time" articled students.

Conclusion

12. The proposed revision to the rules is intended to rationalize the relationship between the limits on full-time articled students and temporary articled students, and will ensure that temporary articled students cannot do more on some matters than can a full-time articled student, which is arguably the case under the current rules.

13. I attach clean and redlined versions of draft amendments together with suggested resolutions to amend both the current Law Society Rules and the Law Society Rules 2015. The Act and Rules Committee and the Credentials Committee recommend adoption.

attached: draft rules
suggested resolutions

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Admission program

Legal services by articled students

2-32.01 (1) Subject to subrule (2) or any other prohibition in law, an articled student may provide all legal services that a lawyer is permitted to provide, but the student's principal or another practising lawyer supervising the student must ensure that the student is

(a) competent to provide the services offered,

(b) supervised to the extent necessary in the circumstances, and

(c) properly prepared before acting in any proceeding or other matter.

(2) An articled student must not

(a) appear as counsel without the student's principal or another practising lawyer in attendance and directly supervising the student in the following ~~proceedings~~:

(i) an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;

(ii) a civil or criminal jury trial;

(iii) a proceeding ~~on~~ by way of indictment, ~~an indictable offence, unless the offence is within the absolute jurisdiction of a provincial court judge,~~

(b) give an undertaking unless the student's principal or another practising lawyer supervising the student has also signed the undertaking, or

(c) accept an undertaking unless the student's principal or another practising lawyer supervising the student also accepts the undertaking.

(3) Despite subrule (2)(a)(iii), an articled student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

LAW SOCIETY RULES

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date.

Court and tribunal appearances by temporary articled students

2-43 (1) Despite Rule 2-32.01~~,~~ *[Legal ~~Services~~ services by articled students]*, a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(a) ~~in the Federal Court or the Federal Court of Appeal as the Court permits,~~[rescinded]

(b) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(c) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(d) in the Provincial Court of British Columbia

(i) on any summary conviction ~~offence or~~ proceeding,

(i.1) on any matter that is within the absolute jurisdiction of a provincial court judge,

(ii) on any matter in the Family Division or the Small Claims Division, or

(iii) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, ~~for the purposes~~ only ~~of~~ on

(A) ~~speaking to~~ an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) ~~speaking to~~ an application for judicial interim release, ~~or~~

(C.1) an application to vacate a release or detention order and to make a different order, or

(D) an election or entry of a plea of Not Guilty on a date before the trial date,

(e) on an examination of a debtor,

(f) on an examination for discovery in aid of execution, or

(g) before an administrative tribunal.

(2) A person enrolled in temporary articles ~~must~~ is not permitted to do any of the following under any circumstances:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

(c) represent a party at a pre-trial conference.

(3) ~~A person enrolled in temporary articles under Rule 2-42(2)(c) *[Temporary articles]* may appear in court only on a summary conviction matter and under the direct supervision of a practising lawyer~~[rescinded].

LAW SOCIETY RULES 2015

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Admission program

Legal services by articled students

2-60 (1) Subject to subrule (2) or any other prohibition in law, an articled student may provide all legal services that a lawyer is permitted to provide, but the student's principal or another practising lawyer supervising the student must ensure that the student is

(a) competent to provide the services offered,

(b) supervised to the extent necessary in the circumstances, and

(c) properly prepared before acting in any proceeding or other matter.

(2) An articled student must not

(a) appear as counsel without the student's principal or another practising lawyer in attendance and directly supervising the student in the following ~~proceedings~~:

(i) an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;

(ii) a civil or criminal jury trial;

(iii) a proceeding ~~on an indictable offence, unless the offence is within the absolute jurisdiction of a provincial court judge~~by way of indictment,

(b) give an undertaking unless the student's principal or another practising lawyer supervising the student has also signed the undertaking, or

(c) accept an undertaking unless the student's principal or another practising lawyer supervising the student also accepts the undertaking.

(3) Despite subrule (2) (a) (iii), an articled student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date.

LAW SOCIETY RULES 2015

Court and tribunal appearances by temporary articled students

2-71 (1) Despite Rule 2-60 *[Legal services by articled students]*, a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(a) ~~in the Federal Court or the Federal Court of Appeal as the Court permits,~~

~~(b)~~ in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(~~c~~b) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(~~d~~c) in the Provincial Court of British Columbia

(i) on any summary conviction ~~offence or~~ proceeding,

(ii) on any matter that is within the absolute jurisdiction of a provincial court judge,

(iii) on any matter in the Family Division or the Small Claims Division, or

(~~iii~~iv) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, ~~for the purposes~~ only ~~of~~ on

(A) ~~speaking to~~ an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) ~~speaking to~~ an application for judicial interim release, ~~or~~

(D) an application to vacate a release or detention order and to make a different order, or

(~~D~~E) an election or entry of a plea of Not Guilty on a date before the trial date,

(~~e~~d) on an examination of a debtor,

(~~f~~e) on an examination for discovery in aid of execution, or

(~~g~~f) before an administrative tribunal.

LAW SOCIETY RULES 2015

(2) A person enrolled in temporary articles ~~must~~ is not permitted to do any of the following under any circumstances:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

(c) represent a party at a case planning conference, trial management conference or settlement conference.

~~(3) A person enrolled in temporary articles under Rule 2-70 (2) (c) *[Temporary articles]* may appear in court only on a summary conviction matter and under the direct supervision of a practising lawyer.~~

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Admission program

Legal services by articled students

2-32.01 (1) Subject to subrule (2) or any other prohibition in law, an articled student may provide all legal services that a lawyer is permitted to provide, but the student's principal or another practising lawyer supervising the student must ensure that the student is

(a) competent to provide the services offered,

(b) supervised to the extent necessary in the circumstances, and

(c) properly prepared before acting in any proceeding or other matter.

(2) An articled student must not

(a) appear as counsel without the student's principal or another practising lawyer in attendance and directly supervising the student in the following:

(i) an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;

(ii) a civil or criminal jury trial;

(iii) a proceeding by way of indictment,

(b) give an undertaking unless the student's principal or another practising lawyer supervising the student has also signed the undertaking, or

(c) accept an undertaking unless the student's principal or another practising lawyer supervising the student also accepts the undertaking.

(3) Despite subrule (2)(a)(iii), an articled student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date.

Court and tribunal appearances by temporary articled students

2-43 (1) Despite Rule 2-32.01 *[Legal services by articled students]*, a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(a) [rescinded]

(b) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(c) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(d) in the Provincial Court of British Columbia

(i) on any summary conviction proceeding,

(i.1) on any matter that is within the absolute jurisdiction of a provincial court judge,

(ii) on any matter in the Family Division or the Small Claims Division, or

(iii) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, only on

(A) an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) an application for judicial interim release,

(C.1) an application to vacate a release or detention order and to make a different order, or

(D) an election or entry of a plea of Not Guilty on a date before the trial date,

(e) on an examination of a debtor,

(f) on an examination for discovery in aid of execution, or

(g) before an administrative tribunal.

(2) A person enrolled in temporary articles is not permitted to do any of the following under any circumstances:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

(c) represent a party at a pre-trial conference.

(3) [rescinded].

LAW SOCIETY RULES 2015

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Admission program

Legal services by articled students

2-60 (1) Subject to subrule (2) or any other prohibition in law, an articled student may provide all legal services that a lawyer is permitted to provide, but the student's principal or another practising lawyer supervising the student must ensure that the student is

(a) competent to provide the services offered,

(b) supervised to the extent necessary in the circumstances, and

(c) properly prepared before acting in any proceeding or other matter.

(2) An articled student must not

(a) appear as counsel without the student's principal or another practising lawyer in attendance and directly supervising the student in the following:

(i) an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;

(ii) a civil or criminal jury trial;

(iii) a proceeding by way of indictment,

(b) give an undertaking unless the student's principal or another practising lawyer supervising the student has also signed the undertaking, or

(c) accept an undertaking unless the student's principal or another practising lawyer supervising the student also accepts the undertaking.

(3) Despite subrule (2) (a) (iii), an articled student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date.

LAW SOCIETY RULES 2015

Court and tribunal appearances by temporary articled students

2-71 (1) Despite Rule 2-60 *[Legal services by articled students]*, a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(a) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(b) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(c) in the Provincial Court of British Columbia

(i) on any summary conviction proceeding,

(ii) on any matter that is within the absolute jurisdiction of a provincial court judge,

(iii) on any matter in the Family Division or the Small Claims Division, or

(iv) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, only on

(A) an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) an application for judicial interim release,

(D) an application to vacate a release or detention order and to make a different order, or

(E) an election or entry of a plea of Not Guilty on a date before the trial date,

(d) on an examination of a debtor,

(e) on an examination for discovery in aid of execution, or

(f) before an administrative tribunal.

(2) A person enrolled in temporary articles is not permitted to do any of the following under any circumstances:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

(c) represent a party at a case planning conference, trial management conference or settlement conference.

SUGGESTED RULE AMENDMENT RESOLUTIONS— [LEGAL SERVICES BY ARTICLED STUDENTS]

RESOLUTION 1

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

1. In Rule 2-32.01

(a) in subrule (1) by striking out "Subject to any prohibition in law,***" and substituting "***Subject to subrule (2) or any other prohibition in law,***",***

(b) by rescinding subrule (2) (a) (iii) and substituting:

(iii) a proceeding by way of indictment***,, and***

(c) by adding the following subrule:

(3) Despite subrule (2)(a)(iii), an articled student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date***.;***

2. By rescinding Rule 2-43 and substituting the following:

Court and tribunal appearances by temporary articled students

2-43(1) Despite Rule 2-32.01 *[Legal services by articled students]*, a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(b) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(c) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(d) in the Provincial Court of British Columbia

(i) on any summary conviction proceeding,

(i.1) on any matter that is within the absolute jurisdiction of a provincial court judge,

(ii) on any matter in the Family Division or the Small Claims Division, or

(iii) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, only on

(A) an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) an application for judicial interim release,

(C.1) an application to vacate a release or detention order and to make a different order, or

(D) an election or entry of a plea of Not Guilty on a date before the trial date,

(e) on an examination of a debtor,

(f) on an examination for discovery in aid of execution, or

(g) before an administrative tribunal.

(2) A person enrolled in temporary articles is not permitted to do any of the following under any circumstances:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

(c) represent a party at a pre-trial conference.

RESOLUTION 2

BE IT RESOLVED to amend the Law Society Rules 2015 as follows:

1. In Rule 2-60

(a) in subrule (1) by striking out "Subject to any prohibition in law,***" and substituting "***Subject to subrule (2) or any other prohibition in law,***",***

(b) by rescinding subrule (2) (a) (iii) and substituting:

(iii) a proceeding by way of indictment***, and***

(c) by adding the following subrule:

(3) Despite subrule (2) (a) (iii), an articled student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date***;***

2. By rescinding Rule 2-71 and substituting the following:

Court and tribunal appearances by temporary articled students

2-71(1) Despite Rule 2-60 *[Legal services by articled students]*, a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(a) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(b) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(c) in the Provincial Court of British Columbia

(i) on any summary conviction proceeding,

(ii) on any matter that is within the absolute jurisdiction of a provincial court judge,

(iii) on any matter in the Family Division or the Small Claims Division, or

(iv) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, only on

(A) an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) an application for judicial interim release,

(D) an application to vacate a release or detention order and to make a different order, or

(E) an election or entry of a plea of Not Guilty on a date before the trial date,

(d) on an examination of a debtor,

(e) on an examination for discovery in aid of execution, or

(f) before an administrative tribunal.

(2) A person enrolled in temporary articles is not permitted to do any of the following under any circumstances:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

(c) represent a party at a pre-trial conference**..**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: May 19, 2015
Subject: **Resolution for Annual General Meeting, October 14, 2015**

---

1. The purpose of this memo is to recommend to the Benchers a resolution for the Annual General Meeting in relation to a matter that requires membership approval under section 12 (1) of the *Legal Profession Act*.

2. For your reference, this is that provision:

Rules requiring membership approval

12 (1) The benchers must make rules respecting the following:

(a) the offices of president, first vice-president or second vice-president;

(b) the term of office of benchers;

(c) the removal of the president, first vice-president, second vice-president or a bencher;

(d) the electoral districts for the election of benchers;

(e) the eligibility to be elected and to serve as a bencher;

(f) the filling of vacancies among elected benchers;

(g) the general meetings of the society, including the annual general meeting;

(h) the appointment, duties and powers of the auditor of the society;

(i) life benchers;

(j) [repealed]

(k) the qualifications to act as auditor of the society when an audit is required under this Act.

Appointed benchers at general meetings

3. In 2014, the Act and Rules Committee considered the role of Appointed Benchers in general meetings of the Law Society. Following that discussion, I sent a memorandum on behalf of the Committee to the Governance Committee suggesting changes to the rules to allow appointed Benchers to participate like other Benchers in general meetings. I attach a copy of that memo.

4. This was part of the Governance Committee's year-end report in December 2014:

> 7. At its November 4 meeting, the Committee considered a memorandum from Mr. Hoskins regarding the attendance of appointed Benchers at general meetings of the Law Society. The issue was our present Rules which provide that only members of the Law Society and articled students are entitled to be present and speak at general meetings. It was suggested that appointed Benchers, having the same rights and responsibilities as elected Benchers, ought to be able to attend and speak at general meetings as of right. The Committee agreed but suggested there should also be a practice whereby appointed Benchers should identify themselves as such when addressing a general meeting but did not think that this needed to be formally stated in the Rules.

5. The Benchers minutes do not reflect the adoption of the recommendation, but no objection was raised at the meeting, and Committee considers it appropriate to take the next step, which a recommendation that the Benchers propose to the next general meeting in October a resolution such as the following:

> ***BE IT RESOLVED to authorize the Benchers to amend the Law Society Rules 2015 to allow appointed Benchers to***
>
> ***a) attend general meetings as of right;***
> ***b) speak at a general meeting as of right;***
> ***c) act as a local chair at a general meeting if appointed by the Executive Director.***

6. I attach for your consideration and discussion a draft of amendments to effect the change.

Attachments: memo to Governance Committee
draft amendments

JGH

DM812674

The Law Society of British Columbia

Memo

To: Governance Committee
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: October 7, 2014
Subject: **Attendance of Appointed Benchers at Law Society general meetings**

---

1. During preparation for the special general meeting earlier this year, the rules governing general meetings of the Law Society came under more than the usual amount of scrutiny. It was noticed that the rules did not seem to take into account the existence of appointed Benchers, i.e., Benchers who are not members of the Law Society. Since the rules in question, for the most part, pre-date the appointment of non-lawyer Benchers, that may not be surprising.

2. The purpose of this memo is to consider whether the Governance Committee should recommend an amendment or two to the rules on general meetings to allow Appointed Benchers to attend and speak at general meetings as of right and to be appointed as a local chair where that is appropriate. The Act and Rules Committee considered the issue and decided it was appropriate to refer the matter to the Governance Committee for consideration.

Current rules

3. The basic rule on attendance at general meetings is Rule 1-11(1):

> (1) Members of the Society in good standing and articled students are entitled to be present and to speak at a general meeting.
>
> (2) The Executive Director must register all persons attending a general meeting as follows:
>
> (a) members of the Society in good standing, who must be given a voting card;
>
> (b) articled students, who must be given a student card;

(c) all others given permission to attend the meeting by the President, who may be given a card for identification only.

(4) At a general meeting, the President may allow a person not in possession of a voting or student card to speak.

4. Technically, this leaves appointed Benchers in the same position as any member of the public, requiring the permission of the President to attend or speak at a general meeting.

5. It might also be appropriate and convenient for an appointed Bencher to be available to the Executive Director for appointment as the local chair in a location connected to a general meeting by telephone. Rule 1-7(2) *[Telephone connections]* governs that appointment:

(2) The Executive Director may appoint a member of the Society in good standing to act as local chair of a location where the President is not present.

Possible changes

6. The Committee may want to recommend to the Benchers amendments to the rules that would allow appointed Benchers to
   - attend general meetings as of right;
   - speak at a general meeting as of right;
   - act as a local chair at a general meeting if appointed by the Executive Director.

7. In the past, there has been no question that appointed Benchers are permitted to attend and speak at general meetings. At one time, there was a regular agenda item at annual general meetings for the appointed Benchers to report to the general membership on their participation as Benchers and members of Committees.

8. Before the special general meeting in June, it was suggested that one of the appointed Benchers would be the appropriate person to chair one of the locations outside Vancouver, and the local elected Benchers agreed. However, the Bencher was not able to be appointed because of the requirement that the local chair be a "member of the Society in good standing."

9. Under section 5(3) of the *Legal Profession Act*, appointed Benchers have "all the rights and duties of an elected Bencher." These restrictions on the participation of appointed Benchers are contrary to the spirit of that provision, if not the letter.

Process for amendment

10. Section 12 of the *Legal Profession Act* restricts the ability of the Benchers to amend rules governing general meetings of the Law Society. The Benchers may only amend those rules "in accordance with an affirmative vote of 2/3 of those members voting at a general meeting or in a referendum respecting the proposed … amendment …"

11. If the Committee is inclined to recommend a change to any of the rules mentioned above, it would be in the form of a recommendation that the Benchers ask the members to approve the change(s) in a resolution at a general meeting or in a referendum.

JGH

LAW SOCIETY RULES 2015

PART 1 – ORGANIZATION

Division 1 – Law Society

Meetings

Annual general meeting

1-8 (5) At least 60 days before an annual general meeting, the Executive Director must distribute to members of the Society and Benchers by mail a notice of the date and time of the meeting.

(7) At least 21 days before an annual general meeting, the Executive Director must make available to members of the Society and Benchers,

(a) by mail, a notice containing the following information:

(i) the locations at which the meeting is to be held, and

(ii) each resolution received in accordance with subrules (6), and

(b) by electronic or other means, the audited financial statement of the Society for the previous calendar year.

Telephone connections

1-9 (2) The Executive Director may appoint a member of the Society in good standing or a Bencher to act as local chair of a location where the President is not present.

Special general meeting

1-11 (5) At least 21 days before a special general meeting, the Executive Director must mail to each member of the Society a notice of the meeting stating the business that will be considered at the meeting.

(6) The accidental omission to give notice of a special general meeting to any member of the Society or a Bencher, or the non-receipt of that notice, does not invalidate anything done at the meeting.

Procedure at general meeting

1-13 (1) Members of the Society in good standing, ~~and~~ articled students and Benchers are entitled to be present and to speak at a general meeting.

LAW SOCIETY RULES 2015

PART 1 – ORGANIZATION

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(ii) each resolution received in accordance with subrules (6), and

(b) by electronic or other means, the audited financial statement of the Society for the previous calendar year.

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(6) The accidental omission to give notice of a special general meeting to any member of the Society or a Bencher, or the non-receipt of that notice, does not invalidate anything done at the meeting.

Procedure at general meeting

1-13 (1) Members of the Society in good standing, articled students and Benchers are entitled to be present and to speak at a general meeting.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION GOVERNANCE REVIEW 2015

Interim Report of the Governance Review Committee

May 13, 2015

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INTRODUCTION

In June of 2014, the Council of the Federation established a Governance Review Committee with a mandate to undertake a broad-based review of governance and to bring forward proposals for change where warranted.

We have now completed the first two phases of our work program. Since our Committee's inception[1] we have met over a dozen times and carried out a work program consisting of:

- A series of preparatory meetings during the fall, combined with the development of a program of field visits encompassing every jurisdiction;
- Drafting of an extensive package of briefing material that was made available to all law societies through the Federation's intranet;
- Field consultations across the country;
- Publication in March of a report on the results of those consultations;
- Planning and implementation of the workshop held at the end of March in Ottawa to discuss the findings in that report; and
- Further interviews during April with a range of current and past leaders and committee members to ensure that we have touched all relevant bases.

ABOUT THIS REPORT

It was anticipated from the start of our work that further discussions related to governance reform would be held in June 2015. Up to this point, our Committee has refrained from making any recommendations. Our entire work program from September 2014 through to May 2015 was designed simply to elicit the widest possible range of views from within the Federation, and to provide us with the opportunity to listen carefully to what others had to say.

The present report opens up a major new phase in our work program, in which we start to move towards specific recommendations aimed at addressing issues revealed through our

[1] The committee members are:
(a) Marie-Claude Bélanger-Richard, Federation Past-President (Chair);
(b) Jeff Hirsch, Federation Vice President;
(c) Sheila Greene, Council member for the Law Society of Newfoundland and Labrador;
(d) Sheila MacPherson, Council member for the Law Society of the Northwest Territories;
(e) Steve Raby, Council member for the Law Society of Alberta;
(f) Johanne Brodeur, former Bâtonnière of the Barreau du Québec;
(g) Robert Lapper, CEO, Law Society of Upper Canada; and
(h) Tim McGee, CEO, Law Society of British Columbia.
The Committee is supported by Jonathan Herman, Federation CEO and by Tim Plumptre and Associates, a consulting firm specializing in governance work with particular expertise in the governance of federations.

consultations. However, as in our two earlier phases of work, in this third phase we wish to proceed carefully in steps suited to the complexity of the issues we are dealing with and to ensure that we respond to what we heard from the Federation's member law societies.

It seems clear to us that some adjustments to the governance of the Federation are warranted. However, we are not providing any firm proposals in this document. Rather, we outline the orientation of our thinking in a number of areas. Where appropriate, we also set forth options designed to prompt discussion at the next Council meeting to be held this coming June.

Overall, the good news arising from our work is that our Committee has the sense that in several areas, the beginnings of a consensus regarding the direction of reform are becoming visible. This report is divided into several sections each of which addresses an important dimension of Federation governance. Toward the beginning of each section, we outline some principles where we think that consensus may be starting to emerge. We are hoping that readers of this report will review these orientations carefully, discuss or reflect upon them, and let us know if indeed they are prepared to endorse these initial directions for change.

In addition, in some sections of the report, we outline additional areas where we believe agreement may be more difficult to achieve. In these areas, we set forth questions or options for the consideration of law society leaders and others. We look forward to hearing feedback on these matters and further exchanges of views among leaders.

Reference points for reform

The Federation is extraordinarily diverse in terms of the size, geography, resources, culture and level of sophistication of its members. So one might expect that there would be a very diverse range of opinions regarding Federation governance, and indeed this has proven to be the case. This diversity has presented our Committee with a challenge as we work towards reform proposals.

For instance, on the matter of the mode of appointment of the President of the Federation, some members are firmly of the view that the existing system of rotation by region has been satisfactory. They are of the view that a rotation is more appropriate for a federation of member organizations. They look forward to their "turn" to insert someone from their region into this leadership position.

On the other hand, other individuals believe with equal conviction that the method of selecting the President needs to be re-thought. In their view, the complex and demanding nature of the President's responsibilities has to be taken into account in the process itself. The incumbent selected for the position needs to have the experience and attributes that will enable him or her to perform the President's role with distinction. A new method of appointment is needed as a result. These members may also incline to the view that the job is now full time or close to it, and that changes to the term and compensation of the position may need to be considered.

When there are divergences of opinion of this nature with respect to a critical governance issue such as the appointment of the President, it is clear that whatever approach our Committee may recommend is likely to leave some Federation members pleased and others unhappy. One way

of dealing with this situation would be for our Committee to simply recommend whatever approach seems to be supported by the greatest number of members.

However, we do not think "majority rule" should serve as the guiding philosophy for decision-making, particularly since many law society leaders with whom we spoke during our field visits told us they knew very little about the Federation. Rather, our Committee has used two main criteria to guide its thinking. First, we have borne in mind the fiduciary responsibilities that, in law, are incumbent upon any board of directors. These call upon us to ask, not, “What approach to governance would be most popular?” but rather, “What approach would best serve the interests of the Federation as an organization, and enable it to discharge its responsibilities most effectively on behalf of member law societies?”

Second, in seeking answers to this question, we have taken account of recent research into effective governance, and have drawn upon principles and standards of sound governance that are observed by non-profits recognized as top performers in their field.

THE ROLE OF THE FEDERATION

The point of departure for any consideration of governance modalities needs to be the Federation's role. Here are areas where we believe most if not all law society leaders may be able to agree:

1. The Federation is a valuable instrument, and if it did not exist, it would have to be invented as a way of promoting conversation and collaboration among law societies on issues of common interest.

2. The ultimate responsibility for regulation of the legal profession rests with each member law society.

3. A key function of the Federation is to act as a coordinator or facilitator among members, establishing forums such as conferences, committees and other meetings where members may be brought together to discuss issues of mutual interest.

4. Members look to the Federation, as part of its facilitative function, to bring to their attention important emerging issues that may warrant the attention of the governors of the legal profession. The Federation may likewise provide recommendations for members’ consideration regarding initiatives that might be taken to deal with such issues.

5. There may be instances when it makes sense for the Federation to take on certain responsibilities on behalf of law societies, as it has in the past on issues such as mobility or approval of international credentials. When the Federation does so, it is more appropriate to describe it as an agent of the law societies rather than as “regulator” which is a term that more aptly describes the role of law societies themselves.

6. When law societies wish the Federation to assume a responsibility of this kind, including taking action on their behalf, all parties must be clear that it is doing so on the basis of a

mandate accorded by all law societies.

7. Asymmetry: There may be occasions when it is appropriate for the Federation to assume certain responsibilities on behalf of some, but not all, law societies. Action will then depend upon what kind of specific mandate is accorded by the participating law societies.

8. The Federation is the national and international spokesgroup for the law societies but only in respect of such matters for which consent has been provided by all law societies.

Question: Is there agreement with the foregoing principles? Are there any areas where modifications or improvements might be desirable?

Issues Requiring Further Reflection and Discussion

The Committee believes that a number of issues would benefit from further reflection and discussion before knowing where additional opportunities for consensus may emerge. The following questions are among them:

- If members confirm that in principle, asymmetrical initiatives may be accommodated within the Federation, should the agreement of all law societies be required to authorize the Federation to act in relation to some of its members, even though the others may not wish to participate at that time?

- How should the financial burden associated with such initiatives be shared?

- Is it possible to develop a list of initiatives that require consensus among all members for the Federation to take action, or criteria for the identification of such initiatives?

- Could another list be developed outlining areas where the Federation could move forward with the approval of only some of its members?

COUNCIL AND DECISION-MAKING

The key decision-making body for the Federation is the Council. During our visits to law societies, we received many comments about how it works, most of them indicating that changes should be made. It is apparent to us that there are many opportunities for improvement here.

As a point of departure, we would hope that there may be agreement with respect to the following principles as they relate both to Council and the general practice of decision-making at the Federation.

1. Federation decision-making procedures should be predictable and transparent.

2. The roles and relationships of key players in respect of decision-making need to be clearly articulated.

3. Federation governance structures or practices must provide for the engagement of political leaders of law societies on highly important or sensitive matters. These include the major priorities of the Federation and the levy.

4. Presidents' role in respect of important decisions should be articulated either through structural arrangements, revised processes, or a combination of both.

5. A formal place should be provided in the governance structures or processes of the Federation to allow for law society CEOs to assist in decision-making. However the accountability for decisions in respect of major issues should be reserved for elected representatives of law societies.

6. In general, the role of CEOs should be both to provide advice on strategic issues and major policies, and also to assume responsibilities with respect to implementation within their law societies of decisions taken at the political level of the Federation.

7. Particularly on important matters, the structures and processes related to the representation of each law society at the Federation need to ensure, insofar as possible, that there is seamless communication from the Federation to the leadership of each law society, and in some instances, to the Bencher or council table in each jurisdiction.

8. Reciprocally, appropriate measures must be taken to ensure that views expressed at the Federation on behalf of each law society accurately represent the opinions of law society leaders, and when necessary, of the Benchers or council in the relevant jurisdiction.

9. The quality of Federation governance is dependent on the individuals put forward by law societies to take part in decision-making. In the interests of effective governance at the Federation, law societies should ensure that individuals designated to act on their behalf have the experience and attributes to perform their governance responsibilities effectively.

Question: Is there agreement with the foregoing principles? Are there any areas where modifications or improvements might be desirable?

Issues Requiring Further Reflection and Discussion

One of the factors giving rise to difficulties at Council is that there is a lack of clarity and consistency in the way in which its members may interpret its role. On the one hand, Council members are encouraged to see themselves as emissaries from their law society, or

spokespersons for it. Under this interpretation of their role, there is little or no room for independent judgment. This view seems to be quite strongly rooted in some quarters. It is apparent when, at a Council meeting, a member may preface a comment on an issue by saying, "The view of my law society in respect of this issue is…." or when in the course of an electronic vote, support is expressed as " the law society of x votes in favour of the motion".

The alternative interpretation of Council members' role is that they have a fiduciary duty to the Federation itself. What is in the best interests of the Federation, as a national body, may not always accord with the particular interests of a member law society. In such circumstances, Council members who give precedence to their fiduciary role may not consider it necessary or even desirable to seek instruction from "home base" on how to deal with a particular issue. We suspect that this ambivalence may contribute to the reluctance of some members to engage in debate around the Council table.

To improve Federation governance, we need to adopt a broad lens. Council cannot be viewed in isolation. In our view, there are multiple factors contributing to its deficiencies. They reside not only in Council's ***structure***, but also in the prevalent ***culture*** surrounding decision-making, the *processes* involved in it and the ***lack of clarity surrounding the roles of key players***, including not only Council members but also law society leaders.

Our Committee has developed two options as to how these issues might be addressed. We believe that the adoption of one of these options, or perhaps some variation thereof, is needed. We look forward to comments and advice on them.

Option One – A Better Status Quo

This option maintains many of the features of the existing governance arrangements of the Federation, but incorporates various adjustments aimed at improving decision-making.

Council:

- Council would remain in place, more or less as currently constituted.
- Council members would continue to be nominated by their law society, but law societies would be encouraged to ensure they put forward nominees who have the experience and attributes necessary to the effective performance of their responsibilities.
- Law societies would agree on a list of competencies considered desirable in Council members and the list would serve as guidance for the law societies, but the decision regarding nominations would rest solely with each law society.
- Processes would be improved to ensure that there is excellent communication from the Council members to law society leaders, and from the law societies to the Federation, particularly in relation to matters of a strategic nature.

- Law societies would agree to appoint Council members for a term of three years, renewable once, in order to ensure consistency and the ability to effectively develop knowledge and understanding about what the Federation does and how it works.

- A comprehensive orientation program would be put in place for incoming Council members to train them about the Federation, as well as about their role and responsibilities.

- Opportunities for more meaningful debate at Council would be built-in through an improved agenda-setting process that would include an annual calendar for meetings that would forecast topics for discussion, thereby allowing for better meeting preparation.

- The role of Council as a place for strategic discussion would be emphasized and reflected in how meeting agendas are set.

- Council would meet four times a year, once or twice in concert with the Presidents of law societies in order to enhance discussions involving strategic or political issues.

- A cultural shift would be encouraged that would value debate and embrace the possibility of dissent.

- As is currently the case, the President of the Federation and other members of the Executive Committee would not have a vote at Council meetings.

- A Nominating Committee, accountable to the Council and appropriately constituted with qualified individuals, would recommend appointments to Federation committees.

- A Finance and Audit Committee, accountable to the Council and appropriately constituted with qualified individuals, would be established.

Law Society Presidents:

- At the same time as Council meetings, a "President's Forum" would be convened once or twice a year; CEOs would be present at the table. This Forum would replace the current informal "President's Roundtable" which typically occurs during Federation conferences, and would have a more structured agenda and purpose than does the current Roundtable, which takes place over a lunch.

- The Forum would provide an opportunity for Presidents to discuss the priorities of the Federation and to provide input on major issues with political sensitivity, and also to discuss the annual levy, as required. However, the Forum would play an advisory role vis-à-vis Council and would have no decision-making function.

- Presidents would be able to attend Council meetings and take part in debate but would not have voting rights.

Law Society CEOs:

- In recognition of the valuable role that law society CEOs play in supporting the work of the Federation, the practice of having occasional informal CEO meetings would be replaced by the establishment of a "CEOs' Forum".

- This Forum would be convened from time to time to discuss issues pertinent to the Federation, and would in particular, once a year, provide collective advice to law society Presidents and to Council with regard to the Federation's strategic plan and its priorities.

- As in the case of the Presidents Forum, the CEOs' Forum would play an advisory role vis-à-vis Council.

Pros and Cons of Option One

Pros:

- If effectively implemented by both law societies and the Federation, this option should effect some improvements in the functioning of Council.

- It somewhat clarifies the role of both law society Presidents and CEOs in decision-making.

- It does not involve significant change to existing Federation structures, which may make it attractive to some individuals.

Cons:

- This option does not deal with the basic lack of clarity in the role of Council members (fiduciary vs. representative functions).

- Restricting Presidents to an advisory role vis-à-vis Council may be seen as paradoxical.

- It is not clear whether this option would deal effectively with the problem of "corridor decision-making" or "rubberstamping" which were concerns raised with respect to Council as currently constituted.

- This option relies heavily on law societies to adopt new practices with respect to appointments and communication. There may be a risk that these practices will erode over time, leading to a recurrence of problems now facing the Federation with respect to its governance.

- This option may not adequately address concerns expressed with regard to the need for more transparency and clarity in Federation decision-making.

Option Two – A New General Assembly and Board of Directors

This option involves a restructuring of Federation decision-making with a view to more clearly delineating responsibilities for different types of decisions. Those that are more strategic in nature, and thus appropriately taken by representatives of law societies, are assigned to a General Assembly. Those that are more fiduciary or operational in nature, having to do with ongoing oversight of the Federation as an organization and its key initiatives, would be assigned to a new entity that we are provisionally calling the Federation Board of Directors. Under this option, Council would be discontinued in favour of these two bodies.

General Assembly of Law Societies:

- The Federation currently has an Annual General Meeting of members as required by law, but it is only a pro forma process. Under this option, the role of the General Assembly would be amplified or extended. This would be the forum for members to exercise strategic control of the Federation.

- The role of the General Assembly would be to determine the major priorities of the Federation, to approve its strategic plan, to determine how to deal with major policy issues, and to approve the annual levy of the Federation.

- Opportunities for meaningful debate at the General Assembly would be built-in through an agenda-setting process that would include an annual calendar for meetings (as in Option One) that would forecast topics for discussion, thereby allowing for effective meeting preparation.

- The General Assembly would meet twice per year.

- As a General Assembly of members, each law society would be entitled to one vote exercised by the law society President or delegate.

- The Presidents would be joined at the General Assembly table by their CEOs who would have the right to speak and take part in debate, but not the right to vote.

- Members of the Board of Directors (see below) and the Federation CEO would be present at the General Assembly with the right to speak and take part in debate, but not the right to vote.

- The Federation President would be the Chair of the General Assembly.

- Law society Benchers or council members, as well as designated law society and Federation personnel would be entitled, indeed encouraged, to observe meetings of the General Assembly without the right to take part in debate or to vote.

Federation Board of Directors:

- Under this option, Council would be replaced by a new decision-making body, which might be called the Federation Board of Directors. This Board would closely resemble the conventional board of directors of any non-profit organization.

- The new Board would be smaller than the current Council with no more than seven members, would be skills-based and not representative of the law societies.

- Three Board members would be the officers on the presidential ladder: the President, the Vice-President and President-elect and the Vice President.

- The Past-President would not be a member of the Board.

- The current Executive Committee would no longer be required since the entire Board would be small and nimble enough to effectively oversee the Federation on an ongoing basis and implement the priorities set by the General Assembly.

- The four members of the Board that are not on the Presidential ladder would be appointed on the basis of their competency and experience, not on the basis of where they came from. These board members would serve staggered three-year terms.

- A Nominating Committee, accountable to the General Assembly, would recommend any elections or replacement candidates, as required, among the merit-based appointments to the Board based on a competency matrix in a way that is comparable to how the CanLII Board Nominating Committee currently functions.

- The role of Board members would be more clearly fiduciary in nature. Its role would be to carry out ongoing oversight of the administration and operations of the Federation, implement the strategic plan and priorities set by the General Assembly, and oversee the performance of the Federation CEO.

- The Board would ensure that Federation committees are appropriately mandated and constituted on the advice of a Nominating Committee.

- Committees, once appointed, would be accountable to the Board. There may be exceptions where the reporting function of a Committee may be to the General Assembly.

- A Finance and Audit Committee, accountable to the Board of Directors and appropriately constituted with qualified individuals, would be established. This committee's terms of reference would be subject to approval by the General Assembly.

Law Society CEOs:

- A CEOs' Forum would be established with responsibilities similar to those outlined in Option One, adapted as required.

Pros and Cons of Option Two

Pros:

- This option directly addresses the issue of Presidents' ill-defined role in decision-making by providing for greater clarity as to who does what. It more clearly situates strategic decision-making in the hand of the political leaders of the Federation's members without creating a confusing role for Council members as "messengers" for their law societies.

- Likewise the Board of Directors that would replace Council would have a more clearly defined mandate, and its role would be more in line with recent legislative developments related to non-profit organizations in Canada.

- It addresses directly the issue of board competence.

- It removes the issue of role confusion that plagues current Council members.

- This Option provides more opportunity than does Option One to address issues of gender balance and diversity in Federation governance.

Cons:

- Change is often seen as leading to too much uncertainty. This option involves a restructuring of Federation governance that some may find unsettling.

- This option more clearly illustrates the challenges of leaving strategic decisions in the hands of a body (the General Assembly) whose membership is frequently changing (law society Presidents).

If Option Two is considered worthy of exploration, more work will be required to elaborate on its details, and answer any questions that might be raised with respect to its composition or functioning.

Question: Which of these options appears to be more promising? Are there modifications that might strengthen one or the other? Would there be merit in doing further work to flesh out the details of Option Two?

LEADERSHIP OF THE FEDERATION

When the Governance Review Committee was established, some individuals perceived the issue of presidential rotation as the most important governance issue facing the Federation. However in our consultations, others saw this issue as somewhat less important relative to other areas of concern. Either way, it seems clear that the leadership of the Federation has a significant impact on its effectiveness.

The President

In our Committee's view, the job of the President involves complex and demanding responsibilities that make very significant demands upon the incumbent's time. While a President may be able to keep his or her legal practice going, doing the President's job certainly requires at least a half time commitment and may well require much more. The job involves the following responsibilities:

- Developing and maintaining key relationships with law society leaders;
- Building and maintaining political connections external to the Federation;
- Acting as a spokesperson for the Federation with the media;
- Representing the Federation at international meetings and at other legal forums;
- Providing overall leadership to the Federation;
- Guiding the deliberations of the Federation's key decision-making bodies, including the development or refinement of the strategic plan, the setting of priorities, and the establishment of agendas for governance meetings in concert with the CEO;
- Chairing Council or other governance meetings;
- Liaison with Executive Committee members;
- Crisis management as necessary; and
- Objective setting and performance evaluation for the CEO.

In principle, the incumbent of this position would seem to require the following capabilities or competencies:

- Strong leadership skills and personal credibility;
- An ability to foster and build effective relationships;
- Excellent political antennae;

- An effective public speaker;
- A broad understanding of the major issues facing the legal profession in Canada; and
- If possible, reasonable fluency in both of Canada's official languages.

Question: Can we agree on this as a valid description of the responsibilities and basic competencies for the Federation President?

We suggest for consideration two options with regard to the President's role and the method of his or her appointment.

Option A – A Clearer Regional Rotation

This option is reasonably close to the current status quo.

- The process would be a slightly modified regional rotation system for the position of Vice President based on a selection from a region that would rotate over a nine year cycle, where the four southern regions (West, Ontario, Quebec and Atlantic) would rotate twice per cycle and the northern region would rotate once per cycle.
- The current provision for a "wildcard" year would be removed.
- The policy with respect to what happens if a region defers its turn would be clarified.
- The policy with respect to what happens in the case of a vacancy would be clarified.
- The selection of the candidate would be determined within each region.
- A policy would be added to deal with situations where the law societies within a region cannot reach consensus as to who their candidate should be in a given year.
- The President would continue to serve for a one year term.
- The President would likely receive an increased honorarium based on benchmarking against similar organizations.
- The role would not formally be considered a full-time position.
- An agreed list of presidential competencies and eligibility criteria (such as that outlined above) would be recommended to law societies as guidance for the relevant region.

Pros and Cons of Option A

Pros:

- The path of least resistance with which many people will feel comfortable.
- The rotation will guarantee that a region will "see itself" reflected in the Presidency from time to time over a fixed number of years.
- The selection process will be made clearer and more predictable even in situations that are not routine, such as when vacancies or other unforeseen circumstances arise.
- The merit concept, though not dominant, will be addressed by competency guidelines.

Cons:

- The status quo will not satisfy those who believe that the best qualified candidates may be overlooked because it is not the turn of the region or jurisdiction where the best candidate is thought to be located.
- The use of a competency guideline, though an improvement over the status quo, may not be seen as having enough weight since its application is left to the discretion of the jurisdictions putting forward potential candidates.

Option B – Merit Applied to Regional Rotation

This option goes further towards ensuring that the individual selected as Vice President (and ultimately President) has the appropriate mix of attributes and capabilities to be able to perform the job effectively. There may be other permutations of this option to consider as well.

- A Vice Presidential Nominating Committee is convened to make a recommendation of one or more candidates who are put forward by designated regions according to a rotation sequence agreed to by the law societies.

  Sub-Option 1 – the system is designed in a way that each region continues to have a guaranteed nominee over a period of time such that it may be possible for the overall preferred candidate to be overlooked in a given year because of the operation of the guarantee that year in favour of a different region than the one where the overall preferred candidate is located; or

  Sub-Option 2 – the system is designed in a way where there is a guarantee for a region to be considered but no guarantee for a region to be selected over a period of time since the overall preferred candidate can come from any region.

- The Nominating Committee would be composed of the Vice President and President elect of the Federation, the Past President and possibly one member at large with no political stake in the outcome.

- A candidate whose name is put forward would be evaluated on the basis of a list of competencies agreed upon by the law societies.

- The Nominating Committee recommends one or more candidates.

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- The final selection rests with all of the law societies.

- The President would continue to serve for a one-year term.

- The President would likely receive an increased honorarium based on benchmarking against similar organizations.

- The role would not formally be considered a full-time position.

Pros and Cons of Option B

Pros:

- This option will satisfy those who wish to place more emphasis on the merit principle than the regional rotation.

- It may be possible to devise a system that results in selecting the best candidate most of the time, and still preserve the regional rotation principle.

Cons:

- This option is more complicated than Option A and would make the presidential selection process less predictable.

- Depending on the pool from which potential candidates may be drawn, having regard to whether we preserve the current Council structure, the unpredictability of the process may affect who might be willing to allow their name to be considered for the position.

- Unless a culture of healthy competition for the position takes hold, individuals may prefer to opt out in order to favour another candidate deemed more “deserving” of a turn, something which could defeat the idea of the best candidate being selected.

Question: Which of these options appears to be more promising? Are there modifications that might strengthen one or the other? Would there be merit in doing further work to flesh out the details of Option B?

The Executive

Questions around effective leadership of the Federation also involve what if any improvements can be made with regard to the Executive Committee. We believe some of these answers are linked to the overall decision-making structures that are ultimately agreed upon.

In Option One (A Better Status Quo), the overall functioning of the Council would be improved by more clearly focusing its role on strategic matters and encouraging effective communication between the Council member and law societies. In this scenario, we do not envisage significant change in the role or composition of the Executive Committee. Given its relatively small size, it continues to be practical for such a body to have day-to-day oversight of the Federation with accountability to the Council. Concerns around matters relating to appointment of Committees or financial oversight would be addressed by the addition of a Nominating Committee and a Finance and Audit Committee.

Option Two (A New General Assembly and Board of Directors) would eliminate the Executive Committee concept entirely, since the smaller Board that includes all of the officers would carry out all of the functions now performed by the Executive. The current Executive consists of four individuals plus the CEO and the new Board would consist of seven. It may be marginally more cumbersome for the new Board to meet compared to the current Executive given the realities that come with involving a few more people with busy schedules across Canada's time zones. Option Two will also benefit from the addition of a Nominating Committee and a Finance and Audit Committee.

When reflecting on which options to prefer, whether in respect of decision-making generally or ongoing leadership of the Federation, it will be important to bear in mind the practical matter of ensuring solid and effective ongoing stewardship of the organization in between the meetings of deliberative bodies, whether Council or the General Assembly, whose primary focus will be on strategic issues.

MORE SPECIFIC ISSUES

In addition to the foregoing areas related to broad aspects of the Federation's governance, we identified a number of areas related to more specific improvements that we believe most members will agree should be implemented. These are set forth below.

- A more effective and accessible Federation intranet site.
- A formalized CEO performance review.
- Implementation of a Federation orientation program for individuals in leadership positions (in both Option One and Option Two).
- Refinement of role statement and development of competencies for the Federation President.

- Refinement of role statement and development of competencies for Council members (Option One) or Board members (Option Two).

- An evaluation process for the members of Council or the Board, as the case may be.

CONCLUSION

It is our hope that with further discussion, we will continue to be able to shape the contours of the governance improvements that are required. Our next conversation will take place in June in Ottawa. At that time, the Committee will still be in listening mode, and it may be that we will come close to arriving at a consensus on many, but not all, issues. Hopeful as we may be, we are also mindful that progress will depend on the level of comfort and buy-in expressed by law societies with the direction in which we are headed. We are committed to taking all perspectives into account, and respecting individual law society deliberative processes as we move forward with our reflection and analysis through the summer.

The Law Society of British Columbia

BC Code Rule 3.6-3: Statement of Account

May 11, 2015

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: May 11, 2015

Subject: **BC Code rule 3.6-3: Statement of Account**

This memorandum follows our memorandum of October 15, 2013 which you considered at the November 2013 Benchers meeting. At that meeting you recommended we make two changes to the revised commentary [1] we were proposing at that time. For the reasons that follow we have not made those changes. Instead, we recommend in commentary [1] a more general and succinct statement of lawyers' obligations regarding a Statement of Account.

I. Background

This rule formerly stated:

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

Commentary

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

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

At the May 2013 Benchers meeting, on our recommendation, you rescinded commentary [1] and requested us to consult with the profession about the rule and commentary and recommend to you whether commentary [1] should be restored, restored in a modified form, or permanently eliminated.

II. Consultation with the Profession

We received numerous submissions as a result of our invitation to the profession in 2013 to comment on commentary [1]. The major criticisms of commentary [1] were:

- The commentary requirement that the client agree in writing to the "other charges" is onerous and unnecessary.
- Lawyers, legal accounting software developers and bookkeepers have not had sufficient time to update, distribute and install software and change billing practices in order to accommodate the commentary billing requirements.
- The changes required by the commentary would be further complicated by PST charges when those come into effect on April 1, 2013.
- Some decisions of the Registrar establish that certain charges that are not payment to third parties, in particular photocopying costs and on-line legal research, are not "fees."
- Although the commentary properly distinguishes between true third-party disbursements and other charges that could contain a profit component, the commentary goes too far in requiring the "other charges" to necessarily be included in the fees component of a lawyer's account.

Other lawyers thought something like commentary [1] is long overdue and commended its terms.

III. Initial Assessment of Rescinded Commentary [1]

Rescinded commentary [1] contained three specific requirements concerning the format of a Statement of Account:

1. Lawyers may only charge as disbursements charges that have been made or are required to be made to a third party by the lawyer on the client's behalf.

2. Lawyers may charge amounts that are not disbursements in a subcategory to the fee portion of the account called "Other Charges".

3. "Other Charges" as described above must be agreed to by the client in writing.

Provided lawyers are candid about informing clients about charges, explain any unusual charges and have client agreement to the charges clients will be billed and how the charges will be described on the bill, we concluded that some aspects of these requirements were more onerous than necessary and did not give lawyers and clients sufficient flexibility to depart from the standards where they choose to do so: The requirement that a client must agree in writing before a lawyer can include "other charges" on an account is anomalous. There is no such requirement

regarding fees which is a much more important component of the account. The Model Code commentary [1] has been in effect in Alberta for more than a decade but was not generally followed.

IV. Other Law Societies

Commentary [1] is now part of the Federation of Law Societies of Canada Model Code of Professional Conduct. The Alberta, Saskatchewan, Nova Scotia, and Newfoundland law societies have included commentary [1] in their codes of conduct. The Law Society of Manitoba declined to do so and the Law Society of Upper Canada, whose Code came into effect on October 1, 2014, does not include any commentary under rule 3.6-3.

V. November 2013 Benchers Meeting and Ethics Committee 2014

At the November 2013 Benchers meeting the Ethics Committee recommended the following be adopted as commentary [1] to rule 3.6-3:

> The lawyer's duty of candour to the client requires the lawyer to disclose to a client at the outset the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges in a manner that is transparent and understandable to the client. A lawyer may not charge a client for overhead expenses generally associated with properly maintaining, staffing and equipping an office; however, the lawyer may charge expenses reasonably incurred in connection with the client's matter for services performed in-house so long as the charge reasonably reflects the lawyer's actual cost for the services rendered. Such charges must be shown on the bill as "Other Charges." A lawyer may not charge a client more than the actual disbursement cost for services provided by third parties such as court reporters, travel agents, expert witnesses, and printing businesses, except to the extent that the lawyer incurs additional costs in procuring the third party services. Lawyers and clients may agree that charges for overhead expenses, in-house services and third party services may be calculated or shown on the account on some other basis.

Two issues were raised at the November 2013 meeting:

(1) Would it be possible to substitute the sentence "A lawyer must make clear to a client the difference between third party disbursements and other charges" for the proposed sentence "Such charges must be shown on the bill as "Other Charges."?

(2) Can the proposed commentary [1] make the principle in the last sentence of the proposed commentary clearer? (lawyers and clients may agree that charges for overhead expenses, in-house services and third party services may be calculated or shown on the account on some other basis).

The Ethics Committee discussed the proposed commentary several times in 2014. The last version, considered in December 2014 was as follows:

> A lawyer's duty of candour to clients requires the lawyer to disclose to a client at the outset the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges in a manner that is transparent and understandable to the client. Unless the lawyer and the client expressly agree that charges for third party services, overhead expenses or in-house services will be calculated or shown on the bill on some other basis, the lawyer must:
>
> a) make clear to the client the difference between third party disbursements and other charges,
> b) not charge the client more than the actual disbursement cost for services provided by third parties such as court reporters, travel agents, expert witnesses, and printing businesses, except to the extent that the lawyer incurs additional costs in procuring the third party services,
> c) not charge the client for overhead expenses generally associated with properly maintaining, staffing and equipping an office, and
> d) not charge the client for services performed in-house, unless the charge reasonably reflects the lawyer's actual cost for the services rendered.

The 2014 Ethics Committee decided at its last meeting to put this issue over so that a new Committee could consider the issue.

VI. 2015 Ethic Committee Recommendation

The 2015 Committee considered whether to proceed with the latest version considered by the 2014 Committee or a more succinct version as follows:

> A lawyer's duty of candour to a client requires the lawyer to disclose to the client at the outset, in a manner that is transparent and understandable to the client, the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges.

The Ethics Committee recommends this version because:

(a) The Law Society does not regulate fees charged by lawyers: (hundreds of complaints are declined each year because of lack of jurisdiction).

(b) It is not consistent to have detailed rules regarding disbursements but none to regulate fees.

(c) The public is well served by the Registrars of the British Columbia Supreme Court who can assess lawyers accounts and there is a well-developed jurisprudence regarding fees and disbursements.

(d) If the Benchers were inclined to enter the field of regulating fees and disbursements it ought to do so in a comprehensive manner.

The changes to the *BC Code* we propose in this memo are shown in the attachments.

Attachments:

- Draft changes to rule 3.6-3, commentary [1]. [764923 & 764952]]

[807092/2015]

Statement of account

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

Commentary

[1] ~~The two main categories of charges on a statement of account are fees and disbursements. A lawyer may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a lawyer wishes to separately itemize charges such as paralegal, word processing or computer costs that are not disbursements, provided that the client has agreed, in writing, to such costs.~~ A lawyer's duty of candour to a client requires the lawyer to disclose to the client at the outset, in a manner that is transparent and understandable to the client, the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges.

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

Statement of account

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

Commentary

[1] A lawyer's duty of candour to a client requires the lawyer to disclose to the client at the outset, in a manner that is transparent and understandable to the client, the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges.

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

May 11, 2015

Re: BC Code Rule 3.6-3: Statement of Account

SUGGESTED CODE OF PROFESSIONAL CONDUCT FOR BRITISH COLUMBIA AMENDMENT RESOLUTION

BE IT RESOLVED ***to amend the Code of Professional Conduct for British Columbia by adding the following as commentary [1] to rule 3.6-3:***

> A lawyer's duty of candour to a client requires the lawyer to disclose to the client at the outset, in a manner that is transparent and understandable to the client, the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges.

The Law Society of British Columbia

Memo

To: Benchers
From: Finance and Audit Committee
Date: May 14, 2015
Subject: Revised Statement of Investment Policy and Procedures (Investment Guidelines)

Background

The Finance and Audit Committee, along with Management and independent investment advisors George & Bell, undertook a review of the Law Society Statement of Investment Policies and Procedures and the LIF long term investment portfolio. The review consisted of examining the investment structure, the current manager performance and the asset mix.

The FAC has completed the review and recommends the following:

1. In order to improve diversification of the LIF portfolio, set the benchmark asset mix in accordance with the following table:

	Current Policy	**Recommended Policy**
Canadian Equities	20.0%	17.5%
Foreign Equities	30.0%	27.5%
Bonds	45.0%	30.0%
Short-Term Securities	5.0%	5.0%
Mortgages	0.0%	10.0%
Real Estate	0.0%	10.0%
Total	**100.0% ***	**100.0%**

*It should be noted that the Law Society's investment in the 750 Cambie building that was recently sold was not included in the current asset mix policy above.

2. Retain the current investment manager structure for equities, bonds and short-term securities: 2 active balanced managers.

3. Retain the current balanced managers, Fiera and Beutel, each with a target allocation of 40% of the LIF long-term investment portfolio.

The Law Society of British Columbia

Memo

4. Hire one or two additional managers with a real estate mandate and a mortgage mandate, with a target allocation of 10% of the LIF portfolio for each mandate.

In order to accommodate these changes, the Law Society Statement of Investment Policies and Procedures (SIPP) has been revised to accommodate these changes (see attached). The attached letter from George & Bell outlines the rationale for the changes.

The FAC recommends the following Bencher resolution:

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

The FAC has been conducting a search for a real estate manager and a mortgage manager. Once the SIPP has been revised, the real estate and mortgage manager agreements will be finalized and submitted to Executive Committee for approval, and the LIF portfolio will be invested accordingly.

George&Bell CONSULTING

May 1, 2015

Jeanette McPhee
Chief Financial Officer
Law Society of British Columbia
845 Cambie Street
Vancouver, BC V7X 1L3
jmcphee@lsbc.org

Re: Review of the Statement of Investment Policies and Procedures

Dear Jeanette,

As requested, we have reviewed the Statement of Investment Policies and Procedures (SIPP) for the Law Society of British Columbia. Attached are clean and marked-up versions with our proposed changes. In this letter, we discuss the substantive changes that we proposed.

Background

The Finance and Audit Committee (the "FAC") is in the process of reviewing the asset mix and manager structure of the Insurance Fund. Through this review, the FAC has decided on the following:

- to revise the asset mix, incorporating allocations to real estate and mortgages, and
- to retain the existing balanced managers, Beutel Goodman and Fiera.

The FAC, through a subcommittee, interviewed a short list of mortgage and real estate managers on April 20, 2015. The subcommittee elected preferred proponents ACMA and GWL for mortgages and real estate, respectively.

We were asked to review the SIPP to enable the asset mix and manager structure decisions of the FAC. Further, we were asked to review the SIPP to recommend other changes to bring the SIPP up-to-date.

Enabling Language for Real Estate and Mortgages

The enabling language for the inclusion of the real estate and mortgages is located at:

- Section 4.2:
  - Real estate and mortgages were added to the list of investments.
- Section 5.1:

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    - Asset classes are now included in the overall asset mix.
    - Common benchmarks for evaluating manager performance is documented. Note that the benchmark for mortgages is short-term bonds plus a 1% premium. This benchmark does not include mortgages, but instead represents a reasonable expectation of mortgage managers: that they return a premium over similar duration bonds.
- Section 5.2:
    - Inclusion of the mortgage manager and real estate manager in the investment manager structure.
- Section 5.3a., b. and c.:
    - Benchmarks and return expectations, including timing for measurement, for the managers are articulated.
- Section 6.1e.:
    - Real estate investments are added as permissible investments. (Note that mortgages were already a permissible investment under 6.1d.)
- Section 6.3:
    - Real estate is removed as a prohibited investment.

Enabling Language for Asset Mix and Manager Structure Changes

With the ability to invest in real estate and mortgages, further changes were required to implement the asset mix and manager structure changes:

- Section 5.1:
    - Revised target asset mix is noted in the "benchmark" column.
    - Allowable ranges were adjusted to allow a similar level of manager discretion for balanced managers as is currently available. (Balanced manager target mix and discretion is now documented in section 5.2a. because not all of the assets will be invested in balanced mandates.)
- Section 5.2:
    - The manager structure, with allowable ranges for assets by manager, is set out in the table at the beginning of the section.
- Section 5.2a.:
    - The target mix and allowable discretion for the balanced managers is set out in the table in this section. Each balanced manager will be expected to manage the assets within these ranges.
    - A new defined term – Balanced Benchmark Portfolio – is introduced to define the measurement basis for evaluating the balanced fund managers.
- Sections 5.2b. and c.:
    - The limitations on the real estate manager and mortgage manager are set: investing in pooled funds of real estate and mortgages, respectively
- Section 5.4:

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    - Active asset mix management is clarified to only apply to balanced managers with respect to the balanced mandates.
- Section 5.5:
    - The Law Society will review the mix between each manager quarterly and will periodically consider whether to rebalance.
    - The Law Society may also periodically rebalance through cash flows.
    - Previously, this section referenced the need for asset class rebalancing within balanced mandates where a balanced manager did not actively manage asset classes. This description was not necessary with the current structure.

Other Substantive Changes

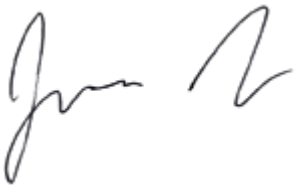
We proposed the following additional changes:

- Section 2.3:
    - Decrease the requirement for meetings with investment managers from twice per year to allow discretion of the Law Society to meet less frequently with managers. This change reflects recent practice and allows more flexibility given the increased number of managers.
- Section 3.3, 3.4 and 3.5:
    - Return assumptions were revised to be consistent with the assumptions in the asset mix review.
- Section 4.2:
    - Decreased the 10 year return target to 5.5%, the level used in the asset mix review and a more realistic target given the current level of interest rates.
- Section 7 – Investment Restrictions:
    - We subtly relaxed investment restrictions to reflect evolution of the stock and bond markets since the restrictions were introduced.
    - We note, however, that the updated restrictions will not impact how the fund is invested because the investment managers invest in pooled funds with their own policies and restrictions.
    - Instead, the updated restrictions provide an articulation of the Law Society's desired restrictions. Variances from the desired restrictions are considered by the FAC.

George&Bell
CONSULTING

We look forward to discussing our proposed revisions with you and the FAC.

Yours truly,



Jeremy Bell
Partner, George & Bell Consulting Inc.
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604-802-0959

Copy:

- Hubert Hwang, George & Bell

Appendix 1 – Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: July 18, 2005

Revised: May 8, 2009

Revised: March 5, 2010

Revised: June 30, 2015

Table of Contents

1. General

1.1 Application

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

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

1.2 Compliance

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

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

1.3 Pooled Funds

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

1.4 Effective Date

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

2. Responsibilities

2.1 Plan Administration

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

2.2 Delegation

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

2.3 Investment Managers

The investment managers ~~is~~ are responsible for:

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

2.4 Standard of Care

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

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

3. Account Management

3.1 Overview of Accounts

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

3.2 Lawyers Insurance Fund - LT Account

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

3.3 Courthouse Libraries BC ~~Courthouse Library Society~~ Account

The Courthouse Libraries BC ~~Courthouse Library Society Fund~~ Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections, the investments are invested as directed by the Courthouse Libraries BC~~:~~.

- ~~the investment objective is to earn a rate of return of 1.751.5% per year~~
- ~~the Benchmark Portfolio shall consist of 25% fixed income and 75% short term investments.~~

3.4 Unclaimed Trust Funds Account

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

- the investment objective is to earn a rate of return of ~~3.5~~3.0% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments~~.~~.

3.5 Captive Insurance Company Account

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

- the investment objective is to earn a rate of return of ~~3.5~~3.0% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments.

3.6 Lawyer Insurance Fund - ST Account

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

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

4. Fund Objectives

4.1 Investment Philosophy

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

4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period ~~2009~~ 2015 to ~~2018~~2024, the target rate of return of the investments is at least ~~6~~5.5% per year, net of investment management expenses.

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

4.3 Investment Constraints

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

5. Asset Allocation and Investment Management Mandates

5.1 ~~Funds'~~ Benchmark Portfolio and Asset Allocation Ranges

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

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	~~10%~~8%	~~20%~~17.5%	~~30%~~24%
Foreign Equities	MSCI-World Index (CAD)	~~15%~~16%	~~30%~~27.5%	~~40%~~36%
Total Equities		**~~25%~~24%**	**~~50%~~45%**	**~~65%~~56%**
Bonds	~~DEX~~FTSE TMX Canada Universe Bond Index	~~30%~~24%	~~45%~~30%	~~75%~~56%
Cash and Short Term	~~DEX~~FTSE TMX Canada 91-Day Treasury Bill Index	0%	5%	~~20%~~16%
Mortgages	FTSE TMX Canada Short Term Bond Index + 1%	~~0~~8%	10%	~~20~~12%
Real Estate	REALpac / IPD Canada Quarterly Property Index	~~0~~8%	10%	~~20~~12%

5.2 Investment Management Structure

As of ~~March 2009~~approximately July 2015, the Funds will be invested by ~~two investment managers, initially in equal shares.~~~~three~~four managers as follows:

	Asset Class Percentages (market value)		
Manager	Minimum	Benchmark	Maximum
Balanced Manager 1	37%	40%	43%
Balanced Manager 2	37%	40%	43%

Real Estate Manager	8%	10%	12%
Mortgage Manager	8%	10%	12%

a. Balanced Managers' Asset Mix

Each ~~balanced~~Balanced Manager ~~investment manager~~ shall have the following Balanced Benchmark Portfolio and shall manage its assets within the following allowable ranges for each asset class.

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	10%	22%	30%
Foreign Equities	MSCI-World Index (CAD)	20%	34.5%	45%
Total Equities		**30%**	**56.5%**	**70%**
Bonds	FTSE TMX Canada Universe Bond Index	30%	37.5%	70%
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	6%	20%

b. Real Estate Manager Asset Mix

The Real Estate Manager shall invest its assets in a Real Estate Pooled Fund.

c. Mortgage Manager Asset Mix

The Mortgage Manager shall invest its assets in a Mortgage Pooled Fund.

5.3 Investment Manager Mandates

a. Balanced Managers

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

b. Real Estate Manager

The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the REALpac / IPD Canada Quarterly Property Index for real estate.

c. Mortgage Manager

The Mortgage Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the FTSE TMX Canada Short Term Bond Index + 1%.

5.4 Active Asset Mix Management

~~In the event that an investment manager has the mandate to actively manage the asset mix of their portion of the Funds, the~~Each Balanced Manager ~~investment manager~~ shall maintain the asset mix of their portion of the Funds within the ranges set out in Section ~~5.1~~5.2a.~~.~~

5.5 Re-Balancing

The Law Society will review the Funds' allocation to each manager on a quarterly basis. Periodically, the Law Society shall consider whether to re-balance the Funds so that the manager assets are in line with the targets in Section 5.2.

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions. ~~In the event that an investment manager does not actively manage the asset mix of their portion of the Funds, the investment manager shall review the asset mix once each month. Should the percentage invested in any asset class exceed the benchmark percentage for that asset class, as set out in section 5.1, plus 4%, or fall short of the benchmark percentage for that asset class minus 4%, the investment manager shall restore the asset allocation of their portion of the Funds to the percentages set out for the benchmark in section 5.1.~~

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

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

b. Foreign Equities:

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

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

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

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

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

e. Real estate investments made either through closed or open-ended pooled funds, or through participating shares or debentures of corporations or partnerships formed to invest in commercial real estate.

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

6.2 Derivatives

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

6.3 Prohibited Transactions

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

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

6.4 Securities Lending

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

7. Investment Restrictions

7.1 Canadian Equities

a. No more than ~~8~~10% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.

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

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

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

7.2 Foreign Equities

a. No more than ~~8~~10% of the market value of the assets of a foreign equity portfolio may be invested in the equity securities of any one company.

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

c. No more than ~~55~~60% of the market value of the assets of a foreign equity portfolio may be invested in the United States.

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

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

7.3 Fixed Income, including Short-Term Securities

a. ~~Maximum holdings of a fixed income portfolio by credit rating are: 100% AAA ratings, 70% AA ratings, 40% A ratings, and~~No more than 15% of a fixed income portfolio shall be invested in bonds with a BBB rating~~s~~. Short-term and fixed income instruments rated below BBB are not permitted.

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for investment-grade asset-backed securities of which 10% will be ~~A rated or above and a maximum of 5% of BBB~~rated at least A ~~or investment grade~~, 15% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poor's or Moody's. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.

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

~~e~~d. No more than 410% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies) ~~with an A-rating or lower~~.

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

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

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

8. Other Matters

8.1 Valuation of Investments

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

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

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

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

8.2 Conflict of Interest

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

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

8.3 Proxy Voting Rights

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

9. Monitoring

9.1 Monthly Investment Reports

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

a. Portfolio holdings at the end of the month;

b. Portfolio transactions during the month;

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

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

9.2 Quarterly Investment Reports

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

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

b. The rate of return of the Benchmark Portfolio;

c. Details of all asset-backed securities held;

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

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

9.3 Quarterly Compliance Reports

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

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

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

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

9.4 Meetings with the Law Society

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

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

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

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

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

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

10. Investment Guidelines Review

10.1 Review

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

10.2 Material Changes

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

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

11. Investment Guidelines Approval

The Benchers have approved the Investment Guidelines originally at the Benchers meeting in November 2001 and updated in July 2005 and April 2009, as amended with approval of the Audit Committee in January 2002 and May 2005, and as amended with approval of the Finance Committee in May ~~April~~ 2009, March 2010 and ~~April~~June 2015.

Appendix 1 – Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: July 18, 2005

Revised: May 8, 2009

Revised: March 5, 2010

Revised: June 30, 2015

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

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

1.3 Pooled Funds

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

1.4 Effective Date

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

2. Responsibilities

2.1 Plan Administration

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

2.2 Delegation

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

2.3 Investment Managers

The investment managers are responsible for:

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

2.4 Standard of Care

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

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

3. Account Management

3.1 Overview of Accounts

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

3.2 Lawyers Insurance Fund - LT Account

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

3.3 Courthouse Libraries BC Account

The Courthouse Libraries BC Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections, the investments are invested as directed by the Courthouse Libraries BC.

3.4 Unclaimed Trust Funds Account

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

- the investment objective is to earn a rate of return of 3.0% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments.

3.5 Captive Insurance Company Account

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

- the investment objective is to earn a rate of return of 3.0% per year
- the Benchmark Portfolio shall consist of 100% fixed income investments.

3.6 Lawyer Insurance Fund - ST Account

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

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

4. Fund Objectives

4.1 Investment Philosophy

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

4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period 2015 to 2024, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

The Law Society's long-term funding requirements and relatively low requirement for asset liquidity dictate a moderate risk portfolio with a mix of fixed income, equity, real estate and mortgages. It is expected that the value of the portfolio will fluctuate as market conditions and interest rates change.

4.3 Investment Constraints

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

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

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

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	8%	17.5%	24%
Foreign Equities	MSCI-World Index (CAD)	16%	27.5%	36%
Total Equities		**24%**	**45%**	**56%**
Bonds	FTSE TMX Canada Universe Bond Index	24%	30%	56%
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	5%	16%
Mortgages	FTSE TMX Canada Short Term Bond Index + 1%	8%	10%	12%
Real Estate	REALpac / IPD Canada Quarterly Property Index	8%	10%	12%

5.2 Investment Management Structure

As of approximately July 2015, the Funds will be invested by four managers as follows:

	Asset Class Percentages (market value)		
Manager	**Minimum**	**Benchmark**	**Maximum**
Balanced Manager 1	37%	40%	43%
Balanced Manager 2	37%	40%	43%
Real Estate Manager	8%	10%	12%
Mortgage Manager	8%	10%	12%

a. Balanced Managers' Asset Mix

Each Balanced Manager shall have the following Balanced Benchmark Portfolio and shall manage its assets within the following allowable ranges for each asset class.

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	10%	22%	30%
Foreign Equities	MSCI-World Index (CAD)	20%	34.5%	45%
Total Equities		**30%**	**56.5%**	**70%**
Bonds	FTSE TMX Canada Universe Bond Index	30%	37.5%	70%
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	6%	20%

b. Real Estate Manager Asset Mix

The Real Estate Manager shall invest its assets in a Real Estate Pooled Fund.

c. Mortgage Manager Asset Mix

The Mortgage Manager shall invest its assets in a Mortgage Pooled Fund.

5.3 Investment Manager Mandates

a. Balanced Managers

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

b. Real Estate Manager

The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the REALpac / IPD Canada Quarterly Property Index for real estate.

c. Mortgage Manager

The Mortgage Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the FTSE TMX Canada Short Term Bond Index + 1%.

5.4 Active Asset Mix Management

Each Balanced Manager shall maintain the asset mix of their portion of the Funds within the ranges set out in Section 5.2a.

5.5 Re-Balancing

The Law Society will review the Funds' allocation to each manager on a quarterly basis. Periodically, the Law Society shall consider whether to re-balance the Funds so that the manager assets are in line with the targets in Section 5.2.

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions.

6. Permitted Investments

6.1 List of Permitted Investments

a. Canadian Equities:

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

b. Foreign Equities:

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

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

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

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

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

e. Real estate investments made either through closed or open-ended pooled funds, or through participating shares or debentures of corporations or partnerships formed to invest in commercial real estate.

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

6.2 Derivatives

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

6.3 Prohibited Transactions

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

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

6.4 Securities Lending

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

7. Investment Restrictions

7.1 Canadian Equities

a. No more than 10% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.

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

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

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

7.2 Foreign Equities

a. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in the equity securities of any one company.

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

c. No more than 60% of the market value of the assets of a foreign equity portfolio may be invested in the United States.

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

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

7.3 Fixed Income, including Short-Term Securities

a. No more than 15% of a fixed income portfolio shall be invested in bonds with a BBB rating. Short-term and fixed income instruments rated below BBB are not permitted.

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for investment-grade asset-backed securities of which 10% will be rated at least A, 15% for

domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poor's or Moody's. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.

d. No more than 10% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies).

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

i. The restrictions and limitations identified in the Investment Guidelines for publicly traded securities must be adhered to,

ii. Maximum 3% of the market value of any one private placement,

iii. Sufficient liquidity to ensure the sale of the private placement in a reasonable time and a reasonable price.

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

8. Other Matters

8.1 Valuation of Investments

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

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

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

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

8.2 Conflict of Interest

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

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

8.3 Proxy Voting Rights

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

9. Monitoring

9.1 Monthly Investment Reports

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

a. Portfolio holdings at the end of the month;

b. Portfolio transactions during the month;

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

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

9.2 Quarterly Investment Reports

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

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

b. The rate of return of the Benchmark Portfolio;

c. Details of all asset-backed securities held;

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

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

9.3 Quarterly Compliance Reports

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

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

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

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

9.4 Meetings with the Law Society

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

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

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

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

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

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

10. Investment Guidelines Review

10.1 Review

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

10.2 Material Changes

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

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

11. Investment Guidelines Approval

The Benchers have approved the Investment Guidelines originally at the Benchers meeting in November 2001 and updated in July 2005 and April 2009, as amended with approval of the Audit Committee in January 2002 and May 2005, and as amended with approval of the Finance Committee in May 2009, March 2010 and June 2015.

The Law Society of British Columbia

Memo

To:	The Benchers
From:	Rule of Law and Lawyer Independence Advisory Committee
Date:	February 25, 2015
Subject:	Proposal for Engaging More Publicly on Rule of Law Issues

Proposed Motion

That, as part of its mandate, the Rule of Law and Lawyer Independence Advisory Committee be authorised to identify appropriate topics on the rule of law and to post or publish a brief article for publication, as appropriate.

Introduction

1. The Rule of Law is a fundamental principle underlying Canadian democracy and, as stated in the preamble to the Charter of Rights and Freedoms, is one of the principles upon which Canada is founded. In *Roncarelli v. Duplessis* [1959] S.C.R. 121 the Supreme Court of Canada held that the rule of law was a "fundamental postulate of our constitutional structure."

2. Described in the most basic way, the rule of law means that everyone is subject to the same laws. The rule of law means that the law is supreme over officials of the government as well as private individuals, and is thereby contrary to the influence of arbitrary power.

3. The rule of law is frequently referred to in the media as a positive feature of western democracies. It is not often explained, however. It often is simply used as a phrase connoting a benefit. Societies that are troubled are often referred to as lacking the rule of law, or that they are struggling to develop it. However, what this means is not always clear.

4. The justice system exists as society's implementation of the rule of law. The proper administration of the justice system is of central importance in the Law Society's mandate. However, the Law Society is not currently taking an active role in educating the public on the benefits of the rule of law, nor is it offering comments to engage its

members on issues of importance to the rule of law. The Committee has been given a specific mandate by the Benchers. The second part of its mandate is:

> to monitor issues … that affect or might affect the independence of lawyers and the rule of law, and to develop means by which the Law Society can effectively respond to those issues.

5. The Committee considers that identifying some method by which the Law Society, as an organization or through its committees can effectively respond to rule of law issues is something that has been missing from its work.

6. Strategy 3.1 of the current Strategic Plan is for the Law Society to "increase public awareness of the importance of the rule of law and the proper administration of justice." "Public awareness" can be directed at both society at large, and also the bar itself. The Committee has been identified as one of the groups through which this strategic objective can be realized.

7. In the course of its monitoring activity, the Committee comes across news stories or events that bring attention to the rule of law, or lack thereof, and exemplify the dangers to society where it is either absent, diminished or, perhaps, threatened.

8. The Committee also monitors statements made by other legal bodies, such the International Bar Association, Commonwealth Lawyers Association, International Commission of Jurists, and others that periodically comment on transgressions of the rule of law. Other legal regulatory bodies whose mandate is similar to ours (including the Law Society of Upper Canada and the Law Society of New Zealand) will, from time to time, support or explain these statements.

9. The Committee believes that public education and commentary on the meaning and value of the rule of law is advisable. Canada has a legal system that is based on the rule of law, but what does this mean to our society? What might happen if the rule of law were weakened, as can be exemplified by reference to events in other parts of the world?

10. The Committee has therefore developed this proposal through which it could, in the course of its monitoring activities, identify events in which the rule of law is at issue and prepare and disseminate commentary that would educate readers on the values and benefits of the rule of law. In particular, the Committee has considered how this could be done in a timely way, where events are of immediate interest and before public interest in them wanes.

Proposal

11. The Committee has settled on a proposal that it wishes to present to the Benchers for consideration and approval.

12. The Committee proposes that the benchers authorize it, in the course of its monitoring activities, to selectively identify appropriate topics relating to the rule of law and to post a comment or brief article about them.

13. In short, the Committee proposes that it be designated by the Benchers to comment, occasionally and as appropriate, on rule of law issues.

14. The Committee would not be expressing the Law Society's official opinion on the topics it would address. The Committee proposes to provide its own commentary, as a group of informed benchers and committee members appointed by the President. It proposes that such commentary be posted to a location on the Law Society website when the Committee considers that a useful point could be made explaining the benefits or significance of the rule of law. It will over time identify matters on which it could write more broadly, such as for the Advocate, academic publications, or, where an appropriate opportunity presented itself, for an "op-ed" piece in news media

15. In order to engage readers, the Committee suggests that it could post its commentary on a topic in the form of an "online discussion forum" or, perhaps as a "blog." This approach would permit – indeed, encourage – commentary (including from other Benchers) on matters related to the rule of law and lawyer independence.

16. The topics of the envisioned commentaries would come from news items monitored by the Committee. In order to be relevant, the Committee believes it is important that commentary be as timely as possible.

17. To recognize that no organization-wide decisions on a response to the issues identified by the Committee will have been obtained, the Committee proposes that the commentary be specifically noted as coming from the Committee itself. It would encourage commentary from readers, thereby promoting issue engagement and discussion among those who have read the Committee's posting. The Committee recognizes that this may be more likely to engage the bar than the public at large, at least initially, but believes it is a reasonable first step toward a wider public engagement on these important issues.

Conclusion

18. The Committee seeks the approval of the Benchers for its proposal as outlined in the resolution proposed above.

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: June 3, 2015
Subject: **Tribunal Program Review Task Force**

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1. At the May Benchers meeting there were a number of questions about the functioning of the hearing registry, in particular the selection of hearing panels.

2. Mr. Walker asked Michelle Robertson, the hearing administrator, to write up the answers to questions in the form of a memo. I attach her response, which includes the form of the questions posed by Mr. Walker.

3. I also attach, for your reference, the Protocol for appointments of hearing panels and review boards, which has been used as a guideline for appointments for the past few years.

4. Mr. Walker has asked that Ms. Robertson and I be available to answer any further questions at the June Bencher meeting.

Attachments:

memo, M. Robertson
Protocol

JGH

The Law Society of British Columbia

Memo

To: Ken Walker, QC, Jeff Hoskins, QC

From: Michelle Robertson, Hearing Administrator

Date: May 27, 2015

Subject: Setting Tribunal Panels

As a result of the discussions surrounding the Tribunal Task Force's recommendations at the May Bencher meeting, Ken has asked me to deal with some questions that arose. Before I deal with Ken's questions, I think it might be useful to explain the process of setting panels for the Benchers.

The biggest challenge in setting panels for a new year is this: the incoming President will set committees for the following year in late November, early December. This can't be done until we know the results of the election in November. I can't start setting panels for the following year until I know who has been appointed to the Discipline and Credentials Committees for the following year, as those people will be conflicted from sitting on discipline or credentials hearings. The committees are generally finalized by early to mid-December and by then we are into the Christmas holiday season. I am then scrambling to try and find panels for January, February, March and forward. Because of this system, I am looking to fill panels a week or two or three weeks away and at that point, I know that calendars have already been filled. It generally takes me about five months, or around May, to finally get caught up on filling the panels for matters already scheduled.

Scheduling the hearings is also somewhat cyclical – generally, the hearings scheduled from January to about May, deal with citations that were issued in the last part of the previous year and the hearings scheduled for the last part of the year deal with citations issued in the early part of the current year. For instance, I am currently being asked by counsel to set hearings in September, October and beyond, although some matters are being scheduled earlier. The number of citations authorized by the Discipline Committee has a correlation to the number of hearings being scheduled.

When I started in this position we had a roster system – each Bencher would be assigned one or two months in the following year that they would be available to sit on panels. Although the barristers in the group would choose a month or two to be available, they were rarely available in

that given month because trials are booked six months to a year in advance. If a Bencher chose a month in which not many hearings were scheduled or the one or two scheduled would adjourn, they would complain that time had been set aside for nothing. It got to the point where the Benchers would choose a month on the roster but would not bother setting the time aside because they thought everything would adjourn anyway. I was then left in a position where I had to scramble to try and fill a panel. The roster system fell apart. We then moved to a system where I would send an email to all Benchers who were able to sit on a panel and the first people to respond were chosen. This method was more efficient but the panels were filled with the same people over and over.

Question #1: *Can I give some concrete examples of difficulties of filling the panels using three pools? Do last minute cancellations occur more in one pool than another (if so, which one and can I identify the reason for cancellation)?*

The new system is slower because for each pool I have to go down the roster, send an email to the next person on the roster and wait for a response. I generally start with the Bencher pool because that is the hardest to fill and because we currently need a Bencher chair. With the public and lawyer pools, if I haven't had a response in, say two days, I go to the next person on the list, send an email and wait for a response. I do have the option of contacting several people at once and fill the panel with the highest person on the roster who responded.

Last minute cancellations do occur but not more in one pool more than another and here are some recent examples. I had a hearing scheduled for April 16 and on April 9, the Bencher advised that they could not sit because they had a conflict with the complainant, who was named in the citation. The citation had been provided to the panel members in advance of the hearing but for whatever reason, the Bencher didn't pick up on it and I had to find someone a week before the hearing. I did manage to replace the Bencher and on the day of the hearing, the public representative called me to say he didn't think he could attend because his dog wouldn't come back in the house. That hearing could have been lost altogether but the dog finally came back and the public representative was able to attend, although the hearing did start late.

I had a Review Board scheduled on May 14 and the materials were sent out to the Board members on May 6. On May 8 one of the lawyer members of the Board called to say that, having reviewed the materials, she felt she could no longer sit on the Board. I assume it was a conflict of some sort. I was able to cover the lawyer member with less than a week before the matter was set to proceed.

I have the disciplinary action phase of a hearing set for June 10. Although all parties had agreed to that date, the lawyer member advised me on May 11 that he now had a problem with that date and could the hearing be moved to a later date in June. I don't know what the problem is but, as of the date of this memo, I am still trying to reschedule the matter.

Question #2: *Is it the Bencher pool, or the lawyer pool or both more difficult to fill?*

The Bencher pool is the most difficult to fill because it has the least number of people for me to choose from. If a citation is authorized in 2014 and heard in 2015, the members of the Discipline Committee for both 2014 and 2015 are conflicted from sitting on the Panel. That applies to a credentials hearing as well. Say a citation is authorized in late 2013, heard in 2014 and a Review is ordered and the Review is held in 2015 – members from the Discipline Committee (or Credentials Committee) are all disqualified from sitting. The appointment protocol that I follow says that I must determine the highest member on the roster who, amongst other things, "has not had previous dealings with the respondent or applicant that could give rise to a reasonable apprehension of bias." That also means that in the Bencher pool, I have to look at the Practice Standards Committee members because a lawyer going through the hearing process could also being going through the process in Practice Standards. If a Bencher has sat on a previous hearing, conduct review or conduct meeting, I will skip them in the first instance and move on to someone who has not previously dealt with the respondent or applicant. I recently had to cancel a hearing because there was an application for the Chair to recuse himself, which he did. Prior to the citation being authorized in the matter set to be heard, the Bencher, as the chair of the Discipline Committee, signed an order for a Rule 4-43 audit and the investigation of that matter is still ongoing. I had no easy way of knowing about that order so the hearing was cancelled and needs to be rescheduled.

Question #3: *Is it easier to fill one position in the panel than others? Are they the same, or do you detect a difference and if so can you tell why?*

I believe my answer to question #2 answers this question too. The public representative position is the easiest to fill.

Question #4: *When filling the positions in the panel, the Benchers believe this occurs about 60 to 90 days in advance of the hearing? Is there a reason why not six months? Trial schedules seem to fill up about six months in advance so they are having trouble accepting. Do you think some Benchers should consider blocking a week a month in advance to cover this situation (is there a part of the month that is better to do adjudicative work?) Is there another way to be more flexible or make this easier?*

I set out above the process for filling panels, and I hope that helps the Benchers to understand why I don't come to them earlier than I do. The scheduling of hearings is linked to the number of citations authorized by the Discipline Committee, and I have no way of knowing from year to year what those numbers will look like. In 2008 there were only 18 citations authorized and the following year was very quiet. Last year was extraordinarily busy despite the fact that the number of citations wasn't higher than usual. Based on all the things I have to take into consideration, it would not help to have the Benchers block off a specific amount of time so that they can be available for hearings because it may turn out they are disqualified from sitting or it may be there aren't any hearings scheduled for that block of time.

Question #5: *Sometimes unforeseen situations arise and you scramble to find a panel member. Will that be easier with a combined pool and if so why? Death, illness and some court appearances can cause the shortage. Can you advise if the court issue arises in one pool or the other?*

I haven't had many situations where a court issues arises at the last minute, but unforeseen situations do arise and I am left, sometimes very late in the day, looking to cover a panel member. My biggest challenge is having to replace the chair of a panel for the reasons set out, but I believe that if the Bencher and lawyer pool were combined in some fashion, or the members of the lawyer pool were allowed to sit as the chair of a panel, it would be easier for me to cover the position. I would have more people to choose from.

Question #6: *I know sometimes the "conflict" issue arises at the last moment. Are there steps that can be taken to avoid this? One suggestion was that perhaps Law Society counsel could give a list of witnesses, law firms or companies that seem to be involved? There may be a better way?*

When I confirm a hearing panel I provide the panel members with the names of counsel, and if counsel isn't Law Society staff, the name of the firm they work for. I provide a copy of the citation, which often provides names of complainants and others who might be involved in the matter. When Law Society staff ask me to schedule a matter they will advise of potential witnesses, but often, between the time the hearing is scheduled, and the actual date of hearing, witnesses will no longer be needed. An example would be a conditional admission with an Agreed Statement of Facts is proposed or counsel will rely on a Notice to Admit. Witnesses will not be required in those instances. Where I am able to, I can advise the panel members of the names of witnesses but will not be able to do so in every case.

Question #7: *How do other jurisdictions set the panels? How long in advance and how do they avoid the conflict issues?*

Currently, I don't have an answer to this question. Other jurisdictions were canvassed about a number of issues but this specific question wasn't canvassed. Based on the challenges I've tried to set out, I'm not sure that what the other jurisdictions do would be helpful.

The Law Society of British Columbia

PANEL AND REVIEW BOARD APPOINTMENT PROTOCOL

Under the Law Society Rules, the appointment of hearing panels and review boards is in the discretion of the President. This protocol sets out guidelines for the exercise of that discretion, based on Benchers resolutions and operational practice.

1. Each hearing panel is chaired by a Bencher who is a lawyer and includes two members of the hearing panel pool:
    - one lawyer who is not a current Bencher, and
    - one person who is not a lawyer.

2. Each review board is chaired by a Bencher who is a lawyer and includes two additional Benchers and four members of the hearing panel pool:
    - two lawyers who are not current Benchers, and
    - two people who are not lawyers.

3. When a current Appointed Bencher is appointed to a review board, he or she is considered a Bencher, and two others will be appointed from the non-lawyer roster of the hearing panel pool. No more than one current Appointed Bencher will be appointed.

4. The hearing administrator maintains three rosters:
    - a roster of current lawyer Benchers who qualify to chair hearing panels and review boards;
    - a roster of non-Bencher lawyers who are members of the hearing panel pool; and
    - a roster of non-lawyer members of the hearing panel pools, including current Appointed Benchers.

5. When a member of the hearing panel pool or a lawyer-Bencher completes the required training courses, his or her name is added to the bottom of the appropriate roster.

6. The required courses are as follows:

- for all panellists, the introductory course on administrative justice and any annual updates required by the Benchers;
- for all lawyers, the decision-writing workshop; and
- for all lawyer Benchers, the hearing skills workshop;

7. When a hearing panel or review board is to be appointed, the hearing administrator determines the highest member(s) on each roster who

- is not disqualified under Rule 5-3(1) or (2);
- is not a member of the Committee that ordered the hearing, either at the time the hearing was ordered or at the time of the hearing;
- has not had previous dealings with the respondent or applicant that could give rise to a reasonable apprehension of bias;
- is not the subject of a complaint investigation or discipline matter;
- is available on the hearing dates.

8. Before being appointed to a review board, a member of the hearing panel pool or a Bencher must have completed at least one hearing as a member of the hearing panel.

9. The President establishes hearing panels composed of the three pool members under clause 1, and review boards composed of seven pool members under clauses 2 and 3.

10. The President may appoint members of the pool out of order in a case that, in the President's opinion, requires special skill, expertise or experience.

11. When a member of the pool is appointed to a hearing panel or review board, his or her name goes to the bottom of the appropriate roster. If the hearing or review does not

proceed, or if the pool member does not begin the hearing or review, for any reason, he or she may request that his or her name be returned to the top of the roster.

12. If a pool member at the top of a roster is not available for three or more consecutive hearings panels or review boards, the President may direct the hearing administrator to place the pool member's name at the bottom of the appropriate roster.

13. The hearing administrator keeps a complete record of the appointment process for each hearing panel or review board.

14. Pool members and Benchers may enquire of the hearing administrator as to where they stand on the applicable roster.

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