



Agenda

Benchers

Date: Friday, September 30, 2016

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

8:30 am Call to order

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

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

CONSENT AGENDA:

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda <ul style="list-style-type: none"> • Minutes of July 8, 2016 meeting (regular session) • Minutes of July 8, 2016 meeting (<i>in camera</i> session) • External Appointments: Justice Education Society • Code of Conduct: Correction to Adopted “Short Term Legal Services” Rules 		President	Tab 1.1 Tab 1.2 Tab 1.3 Tab 1.4	Approval Approval Approval Approval

EXECUTIVE REPORTS

2	President’s Report		President	Oral report (update on key issues)	Briefing
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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
3	CEO's Report		CEO	Tab 3	Briefing
4	Briefing by the Law Society's Member of the Federation Council		Gavin Hume, QC		Briefing
DISCUSSION/DECISION					
5	Presentation of 2017 Budget & Fees		Miriam Kresivo, QC/ CFO	Tab 5	Decision
6	Trust Shortages: Extending Current Insurance Coverage		Director of Insurance	Tab 6	Discussion/ Decision
7	Federation Council Representative Selection		President		Decision
8	Family Law Legacy Award		Nancy Merrill, QC	Tab 8	Discussion/ Decision
REPORTS					
9	Report on Outstanding Hearing & Review Decisions		Herman Van Ommen, QC	<i>(To be circulated at the meeting)</i>	Briefing
10	TRC Advisory Committee Update		President	Tab 10	Briefing



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
FOR INFORMATION					
11	<ul style="list-style-type: none"> • LIF Independent Claims Audit Report <ul style="list-style-type: none"> ○ Memo to Insurance Subcommittee re Claims Audit • Federation of Law Societies <ul style="list-style-type: none"> ○ Newsletter September 2016 ○ Submissions on Federal Judicial Discipline Process ○ Submissions on Superior Courts Judicial Appointments ○ A Governance Framework for Intellectual Property Agents • Survey of Designated Paralegal Initiative • Letter from Derek LaCroix, QC to David Crossin, QC and Tim McGee, QC: Lawyers Assistance Program – 16th Annual Gratitude Lunch • Letters from David Crossin, QC to Standing Senate Committee on Legal and Constitutional Affairs re Delays in Criminal Proceedings 			<p>Tab 11.1</p> <p>Tab 11.2(a)</p> <p>Tab 11.2(b)</p> <p>Tab 11.2(c)</p> <p>Tab 11.2(d)</p> <p>Tab 11.3</p> <p>Tab 11.4</p> <p>Tab 11.5</p>	<p>Information</p> <p>Information</p> <p>Information</p> <p>Information</p> <p>Information</p> <p>Information</p> <p>Information</p> <p>Information</p>



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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
IN CAMERA					
12	LIF Working Group – Update		President/CEO	Tab 12	Briefing
13	Law Society Award Selection Committee Recommendations		President	Tab 13	Discussion/ Decision
14	Other business		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, July 08, 2016

Present: David Crossin, QC, President
Herman Van Ommen, QC, 1st Vice-President
Miriam Kresivo, QC, 2nd Vice-President
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Thomas Fellhauer
Craig Ferris, QC
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton
Jamie Maclaren
Sharon Matthews, QC

Steven McKoen
Christopher McPherson
Nancy Merrill, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Daniel P. Smith
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Martin Finch, QC

Lynal Doerksen

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Mark Bussanich
Renee Collins
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC

David Jordan
Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Johanne Blenkin	CEO, Courthouse Libraries BC
	Anne Chopra	Equity Ombudsperson, Law Society of BC
	Michael Welsh	Vice-President, Canadian Bar Association, BC Branch
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Aseem Dosanjh	President, Trial Lawyers Association of BC
	Ron Friesen	CEO, Continuing Legal Education Society of BC
	Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Sarah Pike	Law Society Scholarship Recipient
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Michele Ross	BC Paralegal Association
	Prof. Jeremy Webber	Dean of Law, University of Victoria

1. Presentation of Law Society Scholarship and Introductory comments

Mr. Crossin introduced Sarah Pike, the winner of the Law Society Scholarship, who will be pursuing her Masters in Law at UBC exploring the history of 19th century aboriginal communities in BC, the evolution of those communities as it relates to crown sovereignty, and how the issues of that time relate to aboriginal issues of today.

He also related the sad news of the sudden passing of Life Bencher Gary Somers QC, extending condolences to his family. Mr. Somers, an active member of the family Bar, served as a Bencher in the 1990's.

Mr. Crossin also acknowledged the recent appointment to the Bench of Madame Justice Maria Morellato. He extended to her Ladyship the congratulations and goodwill from the Benchers, noting that she will bring to the Bench the same dignity, good judgment and grace that she brought to the Bencher table.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on June 4, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on June 4, 2016 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

BE IT RESOLVED to put the following resolution to the members at the Annual General Meeting on October 14, 2016:

BE IT RESOLVED to authorize the Benchers to amend the Rules respecting general meetings to provide for voting at a general meeting either partly or fully by electronic means.

BE IT RESOLVED that the revisions to the National Discipline Standards outlined in proposed Standard 3 and 9 below be adopted by the Law Society of BC:

Proposed Standard 3

Timeline to resolve or refer complaint:

- 3(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.
- 90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.
- 3(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:
- 80% of all internal reviews or internal appeals are decided within 90 days.
- 90% of all internal reviews or internal appeals are decided within 120 days.
- 3(c) Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process:
- 80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.
- 90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.

Proposed Standard 9

Each law society will report annually to its governing body on the status of the standards.

BE IT RESOLVED that the Benchers create the “Truth and Reconciliation Advisory Committee” to be appointed by the President. The Committee will, at its first meeting, consider a draft mandate. The Committee will present its proposed mandate as agreed by the Committee at the Benchers meeting next following the first meeting of the Committee.

EXECUTIVE REPORTS

3. President's Report

Mr. Crossin briefed the Benchers on various Law Society matters to which he has attended since the last meeting.

He attended the CBA Provincial Council meeting, at which two main themes emerged from speakers and the discussion: legal aid; and issues arising from Truth and Reconciliation Commission (TRC) Report. It was clear that these access to justice issues represent common ground and a common concern throughout the country. He noted that he was approached by many members to express their gratitude to the Law Society of BC for prioritizing access to justice issues, particularly the work and profile of the Legal Aid Task Force Chaired by Nancy Merrill, QC.

He will also be meeting with Chief Justice Hinkson to discuss a collaborative approach between the Law Society and the Courts to promote limited scope retainers as an effective access to justice mechanism.

Finally, he attended the CBA Benevolent Society's annual Battle of the Bar Bands, acknowledging the many bands participating to help support lawyers and their families in times of crisis.

4. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers, beginning with a review of key performance measures which are a measure of how we are performing from the perspective of the users of our services. While the measures cross all areas of regulatory operations, he highlighted the two core areas of complaints and custodianships.

In the area of complaints and their handling, which is a core function of public interest regulation, the results are trending higher positively than ever before, particularly in areas such as whether the user would recommend someone else engage the system. In the area of custodianships, another core regulatory responsibility and a statutory obligation, there are increasing pressures given a surge in demand, but still positive responses. To ensure the smooth transitioning of files, goals moving forward include reducing outsourcing and decreasing the time to complete transitioning.

Mr. McGee also reported on other areas of operations. Trust Assurance has become an area emulated by other organizations. The ongoing goal is to ensure all trust accounts are handled scrupulously and within the Rules, and the desired outcome is to reduce the number of referrals to discipline over time. We are now seeing a downward trend regarding referrals to professional

conduct. In the area of Finance, we are on track operationally, and though we are experiencing some pressures with counsel defense work, we remain in good shape and are track to be on budget for the end of the year.

Beyond these core regulatory operations, Mr. McGee highlighted current operational activities designed to improve the ability of staff to do their work. Under review is a google-type search tool to enhance the internal document retrieval system; the goal is to balance appropriate functionality with cost and the results of this work will be reviewed as part of the 2017 budget process. Mr. McGee also reported good progress on the skills enrichment program, but noted there was still work to do to achieve the goal of 12 hours of targeted customized training for all staff.

Reporting on the current strategic plan initiatives, Mr. McGee noted the important work being done through task forces and committees. Good progress is being made in entity regulation and the TRC and vision for the work. He also noted that the Legal Aid Task Force is established and has begun its important work as well.

Reporting on the 2014 Regulatory Framework Task Force recommendations, Mr. McGee provided Benchers the recommendation to create alternate legal service providers and he noted that it will be important to make these recommendations a priority in the coming months and into 2017 if we are to meet legislative timelines.

Finally, Mr. McGee thanked staff for their hard work to restore the Bencher room for today's meeting, following the flood and extensive restoration work. He wished to publicly acknowledge the time and effort of all involved.

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

Gavin Hume, QC briefed the Benchers as the Law Society's member of the FLSC Council.

He noted that the Federation Council meets 4 times a year; this June's meeting saw a higher level of activity than in the past as a result of the new governance structure. One topic of discussion was the evaluation of Council performance, with a comparison underway of law societies across the country as possible models moving forward. Strategic planning was also discussed; materials will be prepared and distributed over the summer for initial planning at the October meeting. The meeting also included a review of the budget and approval of the fee for the fiscal year starting July 1.

The National Admissions Standards Committee recommended that they not move forward with the proposed national assessment tool, given the critical feedback received. The committee also recommended continuing its work on national competency, as well as the development of a "good character" requirement. Currently Law Societies have differing ways of assessing good

character; given increasing mobility, there is value in a consistent approach. Council accepted the recommendations.

Additionally, minor changes to the National Discipline Standards were recommended and adopted. The National Requirement Review Committee is continuing its consideration of whether the Federation should adopt a non-discrimination clause.

A report was also given by the National Committee on Accreditation whose program review is underway; Mr. Hume noted that the Committee is working toward the goal of including 36 hours of ethics training in all law school programs. A report from the Model Code Committee was also provided, and the logistics are being worked out for a newly created Public Affairs and Government Relations Committee. Also, the Federation was granted intervenor status in the matter of the Law Society of Manitoba v. Green, and, work has begun for the TRC Working Group, of which President Crossin is a member.

The topics for the Fall meeting in New Brunswick will include legal education, which will include discussion of how law societies interact with law schools.

Mr. Van Ommen noted for Benchers that Mr. Hume is the only Federation Council Representative that has not missed a meeting in his six years as our representative, and on behalf of the Benchers, thanked him for his tireless service.

DISCUSSION/DECISION

6. Proposed New Rule Addressing Juricert Use

Mr. Crossin introduced Mark Bussanich, Law Society Discipline Counsel, to brief the Benchers on issues of concern surrounding Juricert use.

For those unfamiliar with the system, Mr. Bussanich provided background on Juricert. As of 2012, the Land Title and Survey Authority (LTSA) required that all filing to the LTSA be done electronically; correspondingly, the Land Title Act requires a certification process for such filings. The Law Society is the designated certification authority, and Juricert is the wholly owned entity created to control the certification process. Lawyers may apply to Juricert for a certificate and, if granted, obtain a password which carries with it two conditions: those certified may not allow others to use their Juricert certificate and they may not share their password. Both conditions act as safeguards to prevent title fraud by limiting the number of people able to access the system.

Those conditions are codified in the *Code of Professional Conduct for British Columbia* (the *BC Code*) which prohibits sharing the password and allowing others access to the certificate for all electronic submission or registration of documents. The trust assurance provisions in Division 3

of the Rules also outline conditions for use of electronic transfer systems, however these are limited in scope to property transfer tax transactions only.

This is significant from a professional conduct perspective, as there are different thresholds for determining whether there has been a discipline violation under the Code or the Rules. When providing an opinion to the Discipline Committee on whether to issue a citation for professional misconduct (such as in the case of a breach of the *BC Code*) professional conduct investigators must analyze whether there is a reasonable likelihood that a discipline violation would be made out; the standard used is a marked departure from that expected of a reasonable lawyer in the circumstances. Conversely, the citation threshold for a “simple Rules breach” is the fact of the breach itself; the added step of finding a marked departure is not required.

As noted by Mr. McGee, the compliance audit program has been successful in generally reducing the number of referrals from Trust Assurance to Professional Conduct. However, in the area of electronic filing, the number of referrals to Professional Conduct is actually increasing as more lawyers are found to be in breach of the Juricert conditions. Mr. Bussanich clarified that the issue is not becoming more widespread, it is simply being caught with greater frequency in the course of these compliance audits.

Since the first referral in 2011, there have been ten conduct reviews and no citations. Four more were considered at the most recent Discipline Committee meeting. The practice of sharing a certificate or password appears to be commonplace. The Law Society has taken many steps to educate and alert lawyers to the issue, but with little apparent effect. As noted, if such breaches are considered by the Discipline Committee under the *BC Code*, it is necessary to go through the marked departure analysis; if the practice of sharing certificate or password has become commonplace, arguably it is not a marked departure and the citation threshold will not be met.

The recommendation is to create a broader scope Rule dictating compliance with the Juricert conditions; in the event of its breach, the citation threshold will have been met. Mr. Bussanich suggested consultation with the Real Estate Bar or the LTSA may assist in the development of the Rule, and recommended referral of the matter to Act and Rules to draft language for Bencher consideration.

In response to a question, Mr. Bussanich confirmed that, prior to Juricert, lawyers would use title agents to appear at the Land Title Office to file transfer documents in a timely way. However, he noted that Juricert has been in place as an electronic filing option for some time, enabling a gradual transition to its mandatory status in 2012. He also confirmed that Juricert is the electronic equivalent of a lawyer’s signature on the transfer documents, to which a Bencher noted that it should thus be essential that a Rule be drafted to cover the conditions of its use. Mr. Bussanich noted that the LTSA would agree, as its position is that the Law Society has the responsibility to effectively regulate the use of Juricert certificates.

In answer to another question, Mr. Bussanich clarified that it was for Benchers to consider whether to remove reference to electronic transfer conditions in the *BC Code* if a broader Rule was implemented, as the memo does not consider the effects of the potential redundancy.

Mr. Bussanich also clarified that Juricert is run by the Law Society; while its use is available to notaries, surveyors and other professionals, the Law Society regulates its use by lawyers. It was noted by a Bencher that consultation with these other groups would be advisable to ensure they establish similar professional conditions. Concern was also expressed that, with a broader Rule, we may be creating a different standard of use for lawyers than others.

It was also queried whether implementation of such a Rule would have an adverse effect on the conveyancing business of lawyers around the province. Mr. Bussanich noted that users of Juricert, lawyers and others alike, must agree to the conditions of use before receiving their certificate. The LTSA has the power to revoke a certification for non-compliance with its terms of use. The implementation of a governing Rule simply allows the Law Society to more effectively regulate non-compliance by lawyers. He noted that, in an area associated with low profit margins necessitating higher volumes, it would be logical to seek out efficiencies of practice to maximize volume. However, it must be stressed that ‘shortcuts’ associated with use of the Juricert system cannot be considered acceptable mechanisms of efficiency.

The question was posed as to why we are not withdrawing certificates from lawyers in cases of breach of conditions. In response, Adam Whitcombe, Chief Information and Planning Officer, clarified that it is the view of the LTSA that the Law Society is responsible to regulate the conduct of lawyers. While the LTSA retains the authority to advise us whether a certificate should be de-registered, they consider it our obligation to police its use.

Further, both Mr. Bussanich and Mr. Whitcombe underscored the importance of educating the profession on the proper use of Juricert, and the potential ramifications of breach of its conditions. If lawyers were made more aware of the conditions of use, and that breach of those conditions could result in a revocation of their certificate, perhaps greater compliance could be achieved.

In response to the question of whether the proposed Rule would govern other electronic filing methods beyond Juricert, Mr. Bussanich clarified that the language of current *BC Code* and Rules provisions refers broadly to electronic filing systems, rather than the proprietary term Juricert. His recommendation would be to mirror such language in the drafting of a new Rule.

The suggestion was posed that, if there appears to be widespread non-compliance with the system requirements, perhaps it would be appropriate for the LTSA to re-examine its system that prevents use by others in the regular course of business. Others noted that lawyers are likely unaware of the conditions, and greater education is needed.

It was also suggested that having a paralegal execute a transfer with a lawyer's password is fraudulent. Mr. Bussanich opined that the practice is generally more benign than that, characterizing it as more of a 'shortcut' whereby the lawyer compares the original document with the electronic version, and then the paralegal actually files it with the lawyer's password. However, he did note that more egregious conduct, such as a lawyer authorizing a transfer over the phone without reviewing the documents, has been known to occur.

It was noted by some Benchers that the area of real property represents an area of risk, particularly with the monetary amounts involved, and indeed is the area that gave rise to the single largest case of lawyer misconduct in this province. If our aim is to prevent fraud on the Land Title system, we need a clear Rule to regulate conduct in this area effectively.

Mr. Crossin underscored the importance of addressing this issue, and called for a motion to refer the matter to Act and Rules to draft a new Rule for Bencher consideration. Motion was made by Mr. Fellhauer, seconded by Ms. Merrill, and passed unanimously.

Mr. Crossin suggested that, in drafting the language, Act and Rules consult with or seek the guidance of any person, group or organization they feel may assist.

7. Financial Report – May YTD 2016

Ms. Kresivo reported to the Benchers as Chair of the Finance and Audit Committee. She briefed Benchers on the Budget-setting process which began yesterday with the Committee's first review of the key drivers for the 2017 budget. Further work and review will continue over the course of several meetings before the budget and the 2017 fee are set. Based on current proposals, potential fee increases may be necessary; staff have been asked to continue to review options to minimize any increases.

She noted that the Finance and Audit Committee recommendation for the 2017 fees will need to be considered and approved by Benchers at their September 30 meeting, and then presented to members at the Annual General Meeting on October 14. She encouraged Benchers to take an active part in the Finance and Audit Committee process in the interim to gain a better understanding of all the factors that will help determine the 2017 fee.

Regarding the 2016 forecast, Chief Financial Officer Jeanette McPhee projected being slightly ahead of budget for the General Fund due to revenue, which is \$200,000 over budget due largely to electronic filing fees. Expenses are on budget; though there are pressures in the area of defence costs, but there are savings in other areas which will likely offset any increase in these expenses.

Trust Assurance is also projected to be ahead in revenue due to real estate transactions. The Lawyers Insurance Fund is also slightly over budget on revenue and under budget on expenses. Investment returns are 1.8%, against a benchmark of 1.7%.

REPORTS

8. Mid-Year Report from the 2016 Advisory Committees

a) Access to Legal Services Advisory Committee

Mr. Van Ommen reported as Chair of the Access to Legal Services Advisory Committee, beginning by thanking the members of the Committee, and the staff who so ably support it.

He noted that the Committee has been engaged in ongoing efforts to review and promote “limited scope retainers”, also known as unbundled services. Among other efforts, it is working in collaboration with Mediate BC to assist with the Family Unbundled Legal Services Project and the development of a “toolkit” for lawyers offering such services.

The Committee meets with the Law Foundation each year and makes recommendations as to how the \$60,000 Access to Justice Fund – which forms part of the annual \$340,000 funding to promote pro bono and access to justice – should be allocated. This year, the Committee has recommended the funds be used toward the establishment of a Children’s Lawyer Office, to advocate for children in the context of contested custody or child protection situations. Work is being done to outline a service delivery model for this three year project which has been approved by the Law Foundation Board. The Law Foundation has asked the Committee for a two year commitment to help facilitate the ongoing work; while this year’s Committee cannot bind next year’s, it will be recommending the continuation of funding through 2017. The Benchers are asked to approve this recommendation.

Mr. Van Ommen noted that the Committee will also be raising with Benchers the issue of a lawyer’s professional duty to provide pro bono services. The American Bar Association has directed that, given their monopoly on legal services, lawyers do have an obligation to provide pro bono services, and has suggested a target of 50 hours per year. The Committee will provide a proposal to Benchers for discussion in the Fall.

During discussion, Ms. Hamilton raised the issue of family lawyers being unpaid for their services, with the suggestion that the Law Society could provide meaningful assistance in three ways: to better facilitate payment for “task-based” or unbundled services, an enforceable document should be recognized by the Law Society and the Courts; it should be easier for lawyers to withdraw at any stage of the process, or file to be on the record on a limited basis; and, there should be a different standard of care for task-based work, as lawyers performing such

work do not have carriage of the entire file. Supporting such changes would help encourage family lawyers to take on difficult, often “low bono” cases and help promote the “limited scope retainer”, and thus provide increased access to legal services.

Mr. Crossin noted the importance of concrete suggestions such as these in the pursuit of improving access to justice, and asked Ms. Hamilton to document her suggestions for his reference and that of Chief Justice Bauman’s Access to Justice Committee.

He also invited discussion of the Access to Legal Service Committee’s request for approval of the proposed funding of a Children’s Lawyer Office. Benchers offered support for the important initiative.

Some queried whether such funding would overlap with existing funding for the appointment of counsel to a child 12 years old or older in a child protection case. Wayne Robertson, Executive Director of the Law Foundation, confirmed that such overlap has been investigated; though the capacity currently exists, in practice children in child protection situations are unaware of their right to counsel and few are ever appointed. On a practical level, then, there would be little overlap in funding; he did suggest it may be opportune and appropriate to recommend to the Provincial Government a review of the little-used system.

It was suggested by some that an appropriate focus for the Children’s Lawyer project could be indigenous children, generally as well as those in care (which would include the effects of residential schools). On behalf of the Law Foundation, Mr. Robertson confirmed that the funding notice for the Children’s Lawyer Office has specific focus on aboriginal children and issues.

Regarding the mandating of pro bono work, concern was expressed that attaching a regulatory requirement could dampen enthusiasm for the work, and could be difficult given lawyers’ fluctuating capacity at different times and in different stages of their careers.

Others encouraged consideration of the challenges associated with ensuring access to legal services in isolated and remote communities, in the context of children’s rights as well as pro bono services.

Mr. Crossin confirmed that the plight of indigenous children in our communities has been a specific focus of discussion with the TRC Steering Committee, and anticipated their collaboration on this important project.

b) Equity and Diversity Advisory Committee

Following the appointment to the Bench of former Bencher and Equity and Diversity Committee Chair Maria Morellato, QC (as she then was), Satwinder Bains was appointed Chair and Jamie McLaren was appointed Vice-Chair. Reporting on behalf of the Committee, Ms. Bains thanked

Madam Justice Morellato for her work as Chair, and also thanked the committee, Law Society staff and Ombudsperson Ann Chopra for their continuing hard work.

Highlighting the Report provided, Ms. Bains noted the ongoing work with the Justicia Project which has received the support of large firms and is now being introduced to smaller, regional firms for their participation. Access to the work products from Justicia are now available on the Law Society website.

An ongoing goal of the Equity and Diversity Committee is working toward improvement of the status of women in the legal profession. Partnering with the Justice Education Society, the Committee is looking toward implementation of a pilot project in response to a needs assessment regarding women in the profession.

The Committee is also working on an initiative to benefit newly called lawyers and hopes to have a proposal to Benchers in the Fall. It is also in the process of reviewing the Law Society Resource Guide for Lawyers with Disabilities with a view to implementing some of the recommendations contained therein, and updating the Resource Guide.

Ms. Bains also reported that the Aboriginal Lawyers Mentorship Program has successfully matched 50 mentors since 2013 and is continuing its matching process. She also confirmed the Equity Ombudsperson Program review continues, and expects to have a report to Benchers shortly. She lauded the profession for its high rate of response to the enhanced demographic questions on the Annual Practice Declaration (APD), aimed at those who self-identify as part of an equity-seeking group. The values and needs of such groups inform the work of this Committee, which makes the APD information so valuable.

Finally, Ms. Bains referred Benchers to the Equity Ombudsperson's Annual Report, attached to the Committee's Mid-Year Report.

Mr. Crossin thanked Ms. Bains and Mr. McLaren for assuming leadership roles with the Committee this year, and emphasized the importance of the projects like Justicia as they relate to retention of women in the profession. He observed that there remains an unacceptable level of gender bias in the legal profession, particularly in the Criminal Bar, and encouraged all efforts to combat it.

c) Rule of Law and Lawyer Independence Advisory Committee (ROLLIAC)

Chair Craig Ferris, QC reported on behalf of the Committee, thanking both committee members and staff for their work and commitment. He highlighted for Benchers the central theme of the Report: the Committee's mandate to ensure the public and profession are properly informed about the importance of the rule of law and self-government.

Last July, the Benchers approved of ROLLIAC communicating publicly. Building on the feedback received on the Committee's article on surveillance last year, this year's Committee has made efforts to increase public awareness of rule of law issues, including publication of an article commenting on current issues in China, contrasting with emerging issues in the UK. The goal is to lead engagement on rule of law issues; whether they arise in the US, the UK, or Poland for example, they resonate here as well.

In addition to its published articles, Mr. Ferris reported that the Committee now has its own Twitter feed and encouraged Benchers to follow the Committee. He welcomed feedback on its tweets or publications.

Mr. Ferris also noted the upcoming retirement of Supreme Court of Canada Justice Thomas Cromwell, which has generated discussion of the Federal Government's appointment process for Supreme Court of Canada (SCC) justices. As the rule of law depends on the existence of a merit-based judiciary, this process is one of the most important functions of government. ROLLIAC's report contains a statement of principles articulated and recommended by a designated sub-committee and adopted by the Committee for the purposes of a Law Society proposal to the Minister of Justice; in the Report, Benchers are asked to adopt the principles and approve the proposal.

Additionally, Mr. Ferris noted that the Report recommends approval of a lecture series for 2017 to further engage the public and the profession on rule of law issues.

Finally, he briefed Benchers on other issues being examined by the Committee, including alternative business structures, and professional independence and client demands. He also noted the success of the recent essay contest, which will be reprised for 2017, as another means of engaging the public. Next year's contest will also be open to independent schools in the hopes of expanding its exposure.

Motion was made to adopt the principles for appointment of justices to the SCC as contained in the report of the Sub-Committee of ROLLIAC dated June 2016, and attached as an Appendix 1 to ROLLIAC's Mid-Year Report dated July 8, 2016 (moved by Mr. Campbell, seconded by Ms. Merrill); it was passed unanimously.

Motion was made to approve the Law Society's sponsorship of a lecture series on the rule of law and related topics beginning in 2017 (Mr. Campbell, Ms. Merrill); it was passed unanimously.

d) Lawyer Education Advisory Committee

Chair Tony Wilson reported on behalf of the Committee. He began by thanking both Committee members and staff for their hard work this year.

As noted in Mr. Hume's report on the Federation, the National Admissions Standards Committee has decided not to pursue its proposed national assessment tool, with the result that the Lawyer Education Committee has turned its attention to review of the Continuing Professional Development (CPD) program.

To obtain input from members on the current CPD program, the Committee sought direct feedback through a BarTalk article written by Mr. Wilson, and conducted a survey; the BarTalk article elicited two responses and the survey elicited 1262 responses. Review of the responses, including over 700 comments on possible improvements, has commenced, following which Benchers will receive a report with recommendations.

The question was asked whether the Committee contemplates the possibility of proposing the abolition of mandatory CPD hours, to which Mr. Wilson responded that the Committee is approaching the project with an open mind, and has committed to fully reviewing the results of the survey in tandem with its review of the programs in other provinces before it makes any recommendations.

In response to another question, Mr. Wilson confirmed that the Committee has had a presentation from PLTC instructors regarding the incorporation of the Truth and Reconciliation Commissions' (TRC) recommendations into the current PLTC program. Alan Treleaven, Director, Education and Practice, confirmed that staff is working in conjunction with the Steering Committee to implement changes to the PLTC program in accordance with the TRC's calls to action.

9. CBA Presentation

Michael Welsh, incoming CBA President, thanked the Law Society for its \$12,000 donation to the highly successful CBA Lawyer Wellness Program, presenting an engraved plaque in recognition.

10. Report on the Outstanding Hearing & Review Decisions

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

11. Truth and Reconciliation Commission Steering Committee Update

Mr. Crossin provided an update for Benchers on the recent meeting of the TRC Steering Committee. Following the Benchers direction to establish a permanent advisory committee, the Steering Committee discussed the make-up and mandate of the new advisory committee. Staff will provide a draft mandate statement of principles, roles and aspirations which will be circulated to the Steering Committee for its consideration.

It was decided that the Steering Committee will stay in place for the consultative process and that the advisory committee will be struck in consultation with the Steering Committee. There was consensus that the new committee will be comprised of an equal number of Benchers and non-Benchers, and will be co-chaired by the sitting President and an Indigenous representative. This year the co-chair duties will be fulfilled by Mr. Crossin and Grand Chief Ed John. There are also ongoing discussions about ensuring representation from the Indigenous bar and setting the number of members at 10.

Mr. Crossin agreed with the comment from Benchers that the Steering Committee should continue to actively engage the Benchers on a regular basis.

RTC
2016-07-08

REDACTED MATERIALS



Memo

To: Benchers
 From: Executive Committee
 Date: September 21, 2016
Subject: Justice Education Society

This memo provides background and advice on one matter for the Benchers consideration:

1. Justice Education Society: requires one new appointment by the Benchers, on advice of the Executive Committee.

1. Justice Education Society

Body	Governing Statute/Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
Justice Education Society (“JES”) Board of Directors	<i>Society Act</i> JES By-law 3.2(f)	Law Society Benchers	1 person, as a JES member (members are also directors)
Current Appointment	Term Allowance	Date First Appointed	Expiry Date
Leon Getz, QC	2 years, maximum of 3 terms	9/1/2010	8/31/2016

Background

The purposes of the Justice Education Society (JES) are to organize and carry on educational programs on the court system and legal system for the benefit of the community as a whole.

JES defines its three objectives as:

1. To provide hands-on educational programs and services to the general public, as well as to youth, Aboriginals, ethnic and immigrant communities, deaf people, those with special learning abilities, and other groups as needed.

2. To make those working within the justice system (judges, lawyers, sheriffs, and other justice system personnel) aware of the barriers that certain groups face in accessing our justice system.
3. To continually identify new ways in which the justice system can be made more accessible to all.

New Appointment

Leon Getz, QC, the current appointee, is completing his third term and is thus ineligible for re-appointment. The following candidates have expressed interest in being considered for a JES appointment:

➤ **Ardith Walkem:**

[REDACTED]

➤ **Shannon Bentley:**

[REDACTED]

➤ **Kuldip Johal:**

[REDACTED]

Recommendation

Ardith Walkem's experience and particular focus on finding ways to make space in the legal system for Indigenous laws is a good fit with two of the three objectives of JES: making those within the justice system more aware of barriers facing certain groups; and, identifying new ways in which the justice system can be made more accessible to all.

[REDACTED]

For these reasons, the Executive Committee recommends to the Benchers the appointment of Ardith Walkem to the JES for a two-year term effective September 1, 2016.



Memo

To: The Benchers
From: Lance Cooke
Date: September 6, 2016
Subject: Correction to adopted “Short-Term Summary Legal Services” rules

On June 4, 2016, the Benchers adopted new rules for the Code of Professional Conduct for BC covering “short-term summary legal services” and replacing the previously existing “limited representation” rules. The newly adopted rules were intended to be substantially the same as those in the Federation of Law Society’s Model Code of Professional Conduct, a fact that was noted in the memorandum from the Ethics Committee recommending the new rules’ adoption. Although the Benchers’ adoption of the rules was in accordance with the Committee’s recommendation, the version of the new rules included for reference in the memorandum suffered from an omission of text from the second sentence of commentary 2 to rule 3.4-11.4.

The purpose of this memorandum is to draw the Benchers’ attention to the inadvertent omission and request that the corrected version of commentary 2 to rule 3.4-11.4 be confirmed as adopted by the Benchers so that the short-term summary legal services rules may be circulated to the members without error or omission.

Recommendation: Confirm that commentary 2 to rule 3.4-11.4 is corrected and adopted as follows:

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

The following items are included for reference:

1. A copy of commentary 2 to rule 3.4-11.4 with the previously omitted text underlined;
2. A complete copy of BC Code rule 3.4-11.4 and corrected commentary; and
3. A complete copy of the corresponding Model Code rule and commentary.

1. A copy of commentary 2 to rule 3.4-11.4 with the previously omitted text underlined

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

2. A complete copy of the BC Code “Short-Term Summary Legal Services” rules and corrected commentary

Short-term Summary Legal Services

3.4-11.1 In rules 3.4-2B to 3.4-2D “Short-term summary legal services” means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

3.4-11.2 A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

3.4-11.3 Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

3.4-11.4 A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer’s firm.

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving

short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in Rules 3.4-11.1-3.4-11.4 will not be imputed to the lawyers in the lawyer's firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.

3. A complete copy of the corresponding Model Code rules and commentary

Short-term Summary Legal Services

3.4-2A In rules 3.4-2B to 3.4-2D "Short-term summary legal services" means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

3.4-2B A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

3.4-2C Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

3.4-2D A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only

if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in Rules 3.4-2A-2D will not be imputed to the lawyers in the lawyer's firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.



CEO's Report to the Benchers

September 2016

Prepared for: Benchers

Prepared by: Timothy E. McGee, QC

LIF Working Group

There have been 4 meetings of the working group to follow up on the task of looking at a variety of options for restructuring LIF as per the discussion at the last Bencher meeting in June. A number of desired objectives for a restructuring were identified and the working group has now narrowed down the options to one particular preferred model. A separate briefing note from the working group is included in the in-camera portion of your Bencher's package for the meeting and we will be reviewing proposed next steps and responding to question and comments during that part of the meeting.

2017 Budget and Fees

The Finance and Audit Committee has met 3 times over the past several weeks to review and discuss in detail with senior management all aspects of the 2017 General Fund and LIF budgets and fees proposals. As part of this process the committee has also met in person with representatives from each of the local organizations for whom the Law Society collects a fee to review their respective budgetary requirements. A presentation and recommendations from the committee are included in your Bencher package for the meeting. Miriam Kresivo QC, Chair of the Finance and Audit Committee, Jeanette McPhee our CFO and I will lead off the discussion and all members of senior management will be on hand to provide any additional information. I would also like to note that there will be an informal preview session open to any interested Benchers in Room 914 at 4:00 p.m. on Thursday, September 29, before the regular Thursday night meetings.

Next Steps re Notaries and Alternative Legal Service Providers Strategy

Redacted

Redacted

Litigation Sub-Committee – Enhanced Process and Procedure

At its last meeting the Executive Committee reviewed the current processes and procedures of the Litigation Sub-Committee with a view to identifying opportunities for improvements in communication and protocols. The Litigation Sub-Committee was formed several years ago as a sub-committee of the Executive Committee (comprised of the “Ladder” Benchers of the day) to assist in specific areas of the conduct of litigation involving the Law Society. The review was timely and resulted in the clarification and refinement of processes and communication as between management and the sub-committee, which were all adopted for implementation. A memorandum outlining the background and the details of the changes is provided in the in-camera portion of the meeting package for your information.

Equity Ombudsperson Program Review Progress Report

At the last Bencher meeting there was a concern expressed regarding the pace of progress on the review of the Law Society’s Equity Ombudsperson Program. Here is an update on progress and timing of that initiative for Benchers’ information.

Current Status

At the July 8, 2016 Equity and Diversity Advisory Committee meeting, the Committee discussed the concern about the length of time it is taking to complete the Equity Ombudsperson program review. The Committee acknowledged that making a recommendation about the future of the program (whether to maintain the

status quo or move to a different model) is a difficult decision to make, so the Committee has been very thorough in its quest for information.¹

The Committee was in agreement that the program review is of pressing concern, and will be the top priority for the September 2016 meeting. The Committee has instructed Law Society staff to recirculate an updated program review memo and other pertinent information (such as previous program reviews and the Equity Ombudsperson's contract) well in advance of the September 2016 meeting, to ensure they have adequate time to prepare.

Law Society staff is currently updating the program review memo to include additional information requested by the Committee.

The Committee also indicated that an in-depth consultation with the incumbent is necessary to round out the program review. There was consensus that care will need to be taken to ensure this consultation is constructive and facilitates the sharing of the information that is required to complete the program review. Law Society staff was instructed to develop a consultation strategy with respect to the incumbent for discussion at the September meeting.

The Committee has acknowledged that a realistic timeline to finalize the program review would not be the September 2016 meeting. They are aiming to make a decision in the fall of 2016, certainly before the end of the year.

Next Steps

Law Society staff will:

1. recirculate an updated program review memo and other pertinent information prior the September 2016 meeting;

¹ The following information was gathered and analyzed during the review: 1) relevant documents including minutes regarding the development of the Program, the Equity Ombudsperson's annual reports, reports of the past reviews of the Program, information about equity ombudsperson programs in other Canadian law societies (i.e. program descriptions, evaluation mechanisms, annual reports and program reviews), information about comparable programs in the legal community (e.g. the Lawyers Assistance Program), reports from Law Society of BC investigations into complaints of harassment and discrimination; and information about ombudsperson programs in other organizations (including reviews of sexual harassment concerns in the Canadian Armed Forces, Canadian Broadcasting Corporation, and Royal Canadian Mounted Police); 2) responses from anonymous online surveys of Program users; 3) responses from anonymous feedback forms that are distributed by the incumbent to participants of in-person presentations; 4) responses to email questions sent to Law Society of British Columbia staff, equity lawyers and ombudspersons from other Canadian law societies, and the Equity Ombudsperson (incumbent); 5) verbal consultations with Law Society of BC staff, equity lawyers and ombudspersons from other Canadian law societies, and the incumbent.

2. develop a strategy to consult with the incumbent for discussion at the September 2016 meeting; and
3. draft recommendations for consideration at the November 2016 meeting.

The Committee will:

1. consider the updated program review memo (currently being prepared by staff) at the September 2016 meeting;
2. approve a strategy to consult with the incumbent at the September 2016 meeting, and implement this strategy prior to the November 2016 meeting;
3. aim to finalize the program review and adopt recommendations at the November 2016 meeting.

Operational Updates

The fall is a busy time of year for us on several operational fronts. I have noted below a few items and would be happy to discuss further.

Annual Employee Survey

The annual employee survey is being finalized and will be launched shortly. Each year in addition to the regular questions (which permit year on year comparisons) we include a section on a topic of special interest. This year we will be asking staff to respond to questions on how we might best undertake cultural competency training (including on indigenous matters) for staff. With the responses we plan to design a program for cultural competency training for staff for roll out in 2017.

Annual Performance Reviews

We have just started the process which will see every employee discussing with their manager the achievements, challenges, areas for improvements, and lessons learned from their work in 2016. This also includes a discussion around our Law Society core values, which are being integrated into the performance management and goal setting for staff. These discussions are carried out over the next month and will also involve individual determinations for special recognition under our RREx program.

All Staff Forum

We will be holding our second all staff forum of the year on Thursday October 6, 2016. The staff forums are a regular feature in our calendar and are designed to

update staff on matters of interest and also to seek their feed-back and input on topics and issues. The upcoming forum will focus on our plans to design and implement a program for cultural competency training for all staff in the new-year. I look forward to reporting to the Benchers as that initiative takes shape.

Website Redesign

The redesign of our external website is progressing and we will soon be able to illustrate some of the proposed changes including to the new “look and feel” of the site, which has been inspired by the feedback received from Benchers, staff and third parties. The main thrust of the changes is to make navigating the site especially to the most popular content more intuitive and user friendly. We are planning to have a demonstration of some of the improvements to show the Benchers at the meeting on September 30.

Upcoming Conferences

The Federation of Law Societies bi-annual fall conference is being held in St. Andrews, New Brunswick on October 19 to 22, 2016. The theme of the conference is Legal Education and attending from LSBC in addition to the Ladder, myself and our Council representative Gavin Hume, QC are Tony Wilson, Alan Treleaven, Adam Whitcombe and Annie Rochette, our new Deputy Director of PLTC.

This is my second and final year as President of the International Institute of Law Association Chief Executives (IILACE). IILACE is unique in that it is a member organization with an executive which brings together the CEOs of law regulators and associations from around the world and provides an intimate forum for the discussion of strategic, operational and personal development topics. I will be chairing the IILACE annual conference which is being held this year in Wellington, New Zealand on October 24 to 30, 2016. As usual, I will be providing a full report to the Benchers on the content and “take-aways” from the conference at the December meeting. A copy of the program for the 2016 conference is attached for your information and I would be pleased to discuss any particular areas of interest to you.

Recognition and Thanks to Gavin Hume, QC

I would like to take this opportunity on behalf of all of the staff at the Law Society to thank Gavin Hume QC, Past President and Life Bencher for his outstanding contributions on behalf of the Law Society as our Council representative to the Federation of Law Societies of Canada. This will be Gavin’s last Bencher meeting as

our Council representative and as we will hear at the up-coming Federation conference in New Brunswick (Gavin's last Federation meeting) his dedication, skill and commitment to that organization are legendary. On a more personal level, and I can speak for a long list of colleagues from across the country, his strong working relationships and unselfish mentoring support of staff from all organizations whether LSBC, the Federation or other Law Societies has endeared him to all of us who have had the good fortune to work with him over the years. We are very grateful and wish him all the very best.

Bencher Participation at PLTC

On behalf of staff and students at PLTC I would like to acknowledge and thank the following Benchers and Life Benchers who offered their time to teach PLTC Professional Ethics in September:

Warren Wilson, QC, Life Bencher
Gordon Turriff, QC, Life Bencher
Jane Shackell, QC, Life Bencher
Art Vertlieb, QC, Life Bencher
Craig Ferris, QC, Bencher

Timothy E. McGee
Chief Executive Officer



IILACE Annual Conference

WELLINGTON, NZ | OCTOBER 26-29 | 2016

Presented by LexisNexis and Willis

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Welcome to Wellington



Tim McGee
CEO of the Law Society of
British Columbia



Christine Grice
CEO of the New Zealand
Law Society

Dear Colleagues,

We are very pleased to provide you with the IILACE 2016 program for our conference in Wellington, NZ.

IILACE is unique in that it brings together chief executives of law regulators and bar associations from around the world to exchange views on strategic and executive issues. At our last conference, we had CEO's from organizations in over 35 countries collectively regulating and/or representing over 1.5 million lawyers.

The program committee, chaired by Paula Littlewood, has put together an outstanding business program, which will take place over three days with 3 corresponding themes: "Professional Standards and Core Values", "Disruptions and Innovations" and "Management and Governance". We are certain that there will be much of interest to IILACE members from all parts of the world.

The social program begins with an opening reception on Wednesday evening at the world famous Te Papa Museum, which is also our conference headquarters. This is a short distance from the conference hotel the hip and chic Museum Art Hotel, a Wellington favourite. Thursday night's dinner will be at the Te Papa Museum amongst its incredible galleries and exhibits which bring to life the rich and fascinating history of New Zealand. Our closing Gala Dinner will be at Whitebait, an award winning restaurant in Wellington where we will have exclusive access to the venue for the evening including the opportunity to learn from and perhaps challenge the restaurant's famous Chef! It promises to be a unique and exciting evening in one of the great food and restaurant cities of the world.

Wellington is a breathtakingly beautiful city with a warm and diverse culture to match. There are a host of wonderful sites and venues for you to visit and all within easy reach of our conference hotel. The partners program features a special artisan gourmet experience. For many IILACE members this will be the first visit to one of the gems of the southern hemisphere and we know you will not be disappointed.

The location, the business program, the social events and the warm camaraderie that is the hallmark of every IILACE conference and the IILACE family await you in Wellington. We encourage you to register as soon as possible and to secure your flight and hotel arrangements without delay. Please also note that one of the most popular IILACE traditions is the optional post-conference overnight guided excursion to a local venue chosen by our hosts. This year we will be heading off to Rotorua, a key center for Maori culture in New Zealand and one of the most dramatic natural heritage sites in the world with steaming thermal springs and ancient forests – a truly unique experience. So you can relax in a steaming natural mineral hot pool after a day of sights, history and fun. Please see the program for more information and don't delay in registering for this fun trip with your IILACE friends.

We are looking forward to welcoming you to Wellington. Safe travels!

Tim McGee
President of IILACE

Christine Grice
CEO of the New Zealand Law Society



BUSINESS PROGRAM

All sessions take place at the Te Papa Museum

WEDNESDAY, OCTOBER 26

17:30-19:00 Opening Reception at the Te Papa Museum
Sponsored by the Law Society of New Zealand

THURSDAY, OCTOBER 27

Daily Theme: *Professional Standards and Core Values*

Breakfast available daily at your hotel

8:30 – 8:45

Welcome

Tim McGee, President of ILLACE
Christine Grice, CEO of the Law Society of New Zealand

8:45 – 10:00

Session #1: Legal Education - Gold Mine or Mine Field?

Sponsored by the Federation of Law Societies of Canada

Chair: Cord Brügmann, German Bar Association

Panelists: Brenda Grimes, Law Society of Newfoundland and Labrador

Edward Mapara, Law Society of Zimbabwe

Raffi van den Berg, The Dutch Bar Association

Heidi Chu, Law Society of Hong Kong

This panel will begin an exploration of the challenges and opportunities in assessment of those who want to enter the legal professions for their readiness to practice, and those in legal professions for their ability and fitness to continue to practice. It will cover a number of questions with which many of us are dealing. What skills and competencies do we/should we assess? Why? When do/should we assess them? Who should do them – universities, regulators, third parties? How reliable are these assessments? What are the challenges in assessing? In a globalized world, is there an interest in developing common assessment regimes? What are the challenges in doing that? The current experiences of many of the jurisdictions represented at the Program will inform the discussion and the responses to some of these questions.

10:00 – 10:20

Break sponsored by the Law Society of Northern Ireland

10:20 – 11:30

Session #2: Shifting Generations and Shifting Times

Sponsored by the Law Society of Ireland

Chair: Christine Grice, Law Society of New Zealand

Panelist: Professor Richie Poulton, University of Otago

Change down the generations: How does shifting generations impact on the consuming public, our staff and our lawyers and how we regulate and serve them. This presentation is based on the most extensive study done on a cohort from birth into the next generations. Designed to take us out of our cocoons and stretch our minds can we find some clues here.



PREPARING FOR THE FUTURE DEMOGRAPHICS, TRENDS & NEW REALITIES

Professor Richie Poulton, who was listed in 2014 World's Most Influential Scientific Minds, will address us on: Identifying society's most vulnerable children and how to improve their life chances.

Professor Poulton is Director of the Dunedin Multidisciplinary Health and Development Research Unit which conducts the Dunedin longitudinal study, one of the most detailed studies of human health and development ever undertaken. A multidisciplinary, longitudinal study of 1,037 babies born in Dunedin during 1972/73, the Study members have been followed up since birth, at age three, then every two years to age 15, then at ages 18, 21, 26, 32 and, in 2010-2012, 38. For each follow-up phase, the Study members are brought to the Dunedin Unit where they undergo numerous assessments and measures of their health and development.

11:30 – 12:00

Presentation by LexisNexis

12:00 – 13:00

Lunch sponsored by *The Law Society of Upper Canada (Ontario)*

13:00 – 14:15

Session #3: How Core Are Our Core Values?

Sponsored by the Law Society of British Columbia (Canada)

Chair: Paul Mollerup, The Association of Danish Law Firms

Panelists: Stephan Göchen, German Federal Bar

Jonathan Herman, Federation of Law Societies of Canada

Jennifer Howes, Young Lawyers Committee, New Zealand Law Society Wellington Branch

We talk about “Core Values” as if they are an intrinsic part of our lawyer DNA with no need to articulate them. But is that really the case? And does it apply to the next generation of lawyers, facing a world of immense complexity, where even lawyers don't have all the answers? This panel will explore the issue of “Core Values” in a changing world and explore whether our “Core Values” are immutable or indeed whether the next generation of lawyers may subscribe to a different set of values?

14:15 – 15:30

Session #4: Diversity in the Legal Profession Is an Access to Justice Issue

Sponsored by The Law Society of New South Wales

Chair: Caroline Nevin, Canadian Bar Association - British Columbia Branch

Panelists: Ken Murphy, Law Society of Ireland

Paul Carlin, Maryland State Bar

Christine Grice, New Zealand Law Society

Jan Martin, South Australian Bar Association

Megan Lawton, Risk and Governance Advisor, Darwin, Australia

This panel will springboard off discussions in Washington DC about gender diversity. A diverse legal profession serves the public and the administration of justice. As gatekeepers of the legal profession, membership organizations and regulators are embracing diversity as a key priority.



BUSINESS PROGRAM

All sessions take place at the Te Papa Museum

How are other issues of diversity impacting on the work of these organizations and why it is important? The panel will cover entry into the profession, promotion and advancement and selection for judicial appointment. How are organizations managing and supporting diversity across a number of measures including culture, ability and age? What is the role for both regulators and membership associations and how effective are these organizations in retaining and promoting a diverse profession that reflects the community it serves?

15:30 – 15:45

Break sponsored by *Fastcase*

15:45 – 16:45

Open Forum for Members to Discuss Professional Standards and Core Values

Sponsored by the Law Society of Hong Kong

Facilitators: Cord Brüggmann, Christine Grice, Paul Mollerup, Caroline Nevin

19:00

Thursday Night Dinner at the Te Papa Museum (Te Marae)

Sponsored by LexisNexis

Dress is business casual

FRIDAY, OCTOBER 28

Daily Theme: Disruptions and Innovations

8:30 – 10:00

Session #5: "IILACE Talks": Navigating Our Global Future

Sponsored by ASI

Chair: Heidi Chu, Law Society of Hong Kong

Panelists: Nerida Wallace, Law Institute of Victoria

Cord Brüggmann, German Bar Association

John Hoyles, Canadian Bar Association

Edward Sakala, Law Association of Zambia

Janet Welch, Michigan State Bar

Retha Steinmann, Law Society of Namibia

The intensification of globalization, the advancement of technology, and the evolution of legal service delivery to meet changing client demands and market conditions all contribute to the increasing uncertainty and unpredictability of the future development of the legal profession. IILACE comprises the chief executives of law associations around the world and there is no better forum than the IILACE conference to share updates on global trends in the legal industry. Recently, various jurisdictions have conducted research on the key drivers of change and how they impact the future of the legal profession. This session aims at 'inspiring through sharing'.

10:00 – 10:15

Break sponsored by *The Law Society of New Zealand*



PREPARING FOR THE FUTURE

DEMOGRAPHICS, TRENDS & NEW REALITIES

10:15 – 12:15

Session #6: Innovations in the Delivery of Legal Services to the Consumer

Sponsored by LexisNexis

*Co-Chairs: Makanatsa Makonese, SADC Lawyers' Association (South Africa) and
Paula Littlewood, Washington State Bar Association*

Panelists: Luke Geary, Salvos Legal, Managing Partner, Sydney, Australia

*Eddie Hartman, Co-Founder and Chief Product Officer, Legal Zoom, San Francisco,
California*

Ian McDougall, Executive Vice President and General Counsel at LexisNexis

New technology and new delivery models have often been accused of disrupting the legal services market as we know it. However access to justice remains a fundamental principle and goal for lawyers and governments alike. Can the use of new technology and delivery models be used in improving access to justice, in particular for the underserved through the provision of readily available and cheap legal information and services? How does new technology improve access to justice in these communities and developing countries with limited access to the technological gadgets and infrastructure that are a prerequisite for accessing the information? Is there or can there be “appropriate technology and models” for different end users to ensure real access to justice?

12:15 – 13:00

Lunch *sponsored by The Queensland Law Society*

13:00 – 13:30

Presentation by ASI

13:30 – 15:00

Session #7: Building a New Regulator – Renovate or Tear Down?

Sponsored by Fastcase

Chair: Tim McGee, President of IILACE / Law Society of British Columbia (Canada)

Panelists: Steve Crossland, Washington Supreme Court LLLT Board

Catherine Dixon, Law Society of England and Wales

Merete Smith, Norwegian Bar Association

As we have discussed for the last several years, in the future we may not be regulating and educating just lawyers, rather we will be educating for and regulating a legal services delivery market. What will the components of that regulation look like: entity regulation, new categories of licensed and regulated legal professionals, alternative business structures? This panel will provide both an update on where jurisdictions are at on this evolution as well as invite dialogue about how these trends may impact our core values and professional standards

15:00 – 15:15

Break *sponsored by Fastcase*

15:15 – 15:45

Presentation by Willis



BUSINESS PROGRAM

All sessions take place at the Te Papa Museum

15:45 – 16:45 **AGM and Discussion of IILACE Strategic Issues**

16:45 – 17:00 **Presentation for London 2017**

19:00 **Dinner** *sponsored by Willis*

Dinner will be held at Whitebait, an award-winning restaurant in Wellington, giving us exclusive access to the venue, and their Chef.

Business dress (black tie optional)

SATURDAY, OCTOBER 29

Daily Theme: Management and Governance

8:30 – 11:00 **Session #8: Resilience Under Pressure – Thriving Over Surviving**

Sponsored by the Canadian Bar Association

*Co-Chairs: Caroline Nevin, Canadian Bar Association - British Columbia Branch and
Christine Grice, Law Society of New Zealand*

Panelist: Gaynor Parkin, Victoria University Professional and Executive Development

“You can’t stop the waves but you can learn to surf,”

Jon Kabat-Zinn

Strengthening personal and leadership resilience and influence– what works?

- Feel like you have too many balls in the air?
- Is it hard to get a sense of doing anything well because you are juggling lots of priorities with limited resources?
- Do you want to improve your mental focus and ability to recover from a demanding schedule?
- How can you best lead resilience in order to support and influence others?

Scientific research and in particular psychological research has investigated the particular strategies and tools that enhance resilience. In this interactive and practical session, we will briefly review the key competencies that strengthen personal resilience and the best strategies for leading resilience in teams. The realities of current roles and environmental constraints will be acknowledged alongside the discussion of what helps to build resilience.

Gaynor Parkin is a clinical psychologist and teaches at the University of Victoria in Wellington. In 2008 she co-authored the book “I’ve Had it Up to Here: From Stress to Strength”



PREPARING FOR THE FUTURE

DEMOGRAPHICS, TRENDS & NEW REALITIES

11:00 – 11:15 **Break** sponsored by *The Canadian Bar Association*

11:15 – 12:30 **Session #9; Governance for a Culture of Success**

Sponsored by the Norwegian Bar Association

Chair: Mkanatsa Makonese, SADC Lawyers' Association (South Africa)

Panelists: Michael Brett Young, Law Council of Australia

Lorna Jack, Law Society of Scotland

Ciara Murphy, The Bar of Ireland

Michael Tidball, Law Society of New South Wales

Are bar associations and law societies destined to ineffective governance given the tension created by the revolving door of volunteers and institutional expertise and history held by the staff? Listen to colleagues discuss stories of disaster and hopeful stories of success. As we look to the health of our organizations and profession, should financial audits include institutional governance audits and examination of how these impact on organizational resources? Round-out this year's Conference by helping examine what governance into the 21st century should look like.

12:30 – 13:30 **Lunch**

13:30 **DEPARTURE FOR POST-CONFERENCE TRIP**

The Law Society
of British Columbia



2017 Fees and Budget

Presentation to:
Benchers
September 30, 2016

General Fund



2017 General Fund Considerations

1. General Fund Overview
2. Revenue
3. Operating Expenses
4. Capital Plan
5. Funding of External Organizations
6. 2017 Fee Recommendation

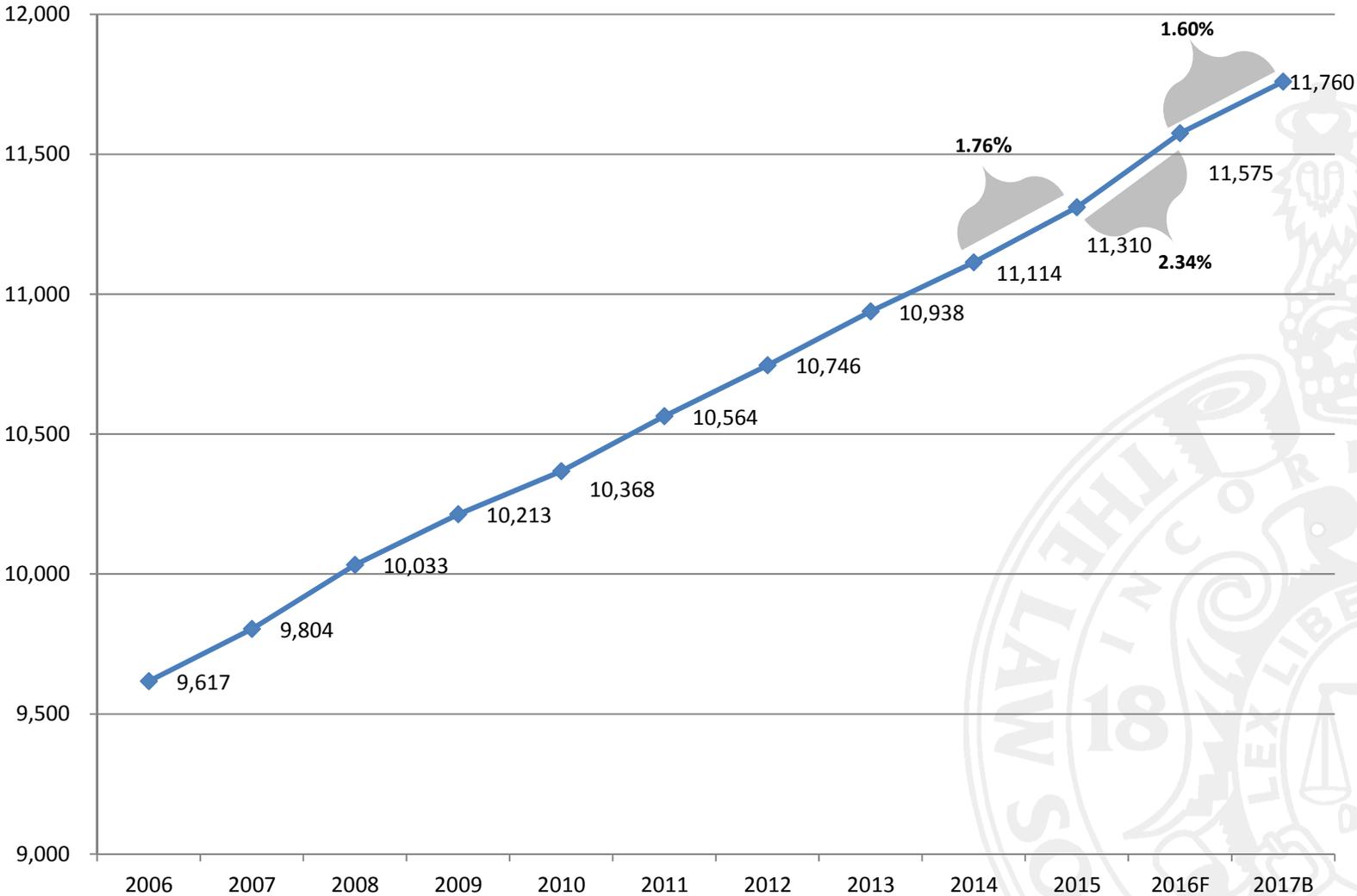


General Fund Overview

- Zero based budgeting process, bottom up, full management participation
- Deliver core regulatory programs and meet KPMs
- Continued support of Law Society Mandate and Strategic Plan and ensuring the most efficient and effective regulatory processes
 - Realignment of internal vs external counsel resources
 - Addition of resources in key regulatory areas to meet current demand
 - Enhanced funding for delivery of PLTC
 - Upgrading IT and knowledge management infrastructure
 - \$75,000 Bencher contingency for strategic initiatives during year
- Operating expense increase of 6.2%, with 60% of this increase relating to the addition of resources in key regulatory areas to meet current demand
- Increase of 8.4 FTE staff positions, with approximately 3.5 FTE's funded through a decrease of external counsel fee budgets
- Approval for use of reserve (net assets) to fund retainer of external counsel if necessary to meet potential increased demand in IME, up to \$350,000 over two years
- The 2017 general practice fee funding relating to Law Society operations is \$1,745.55, an increase of \$81.88 (4.9%) from 2016

Revenue

Practising Membership Projection

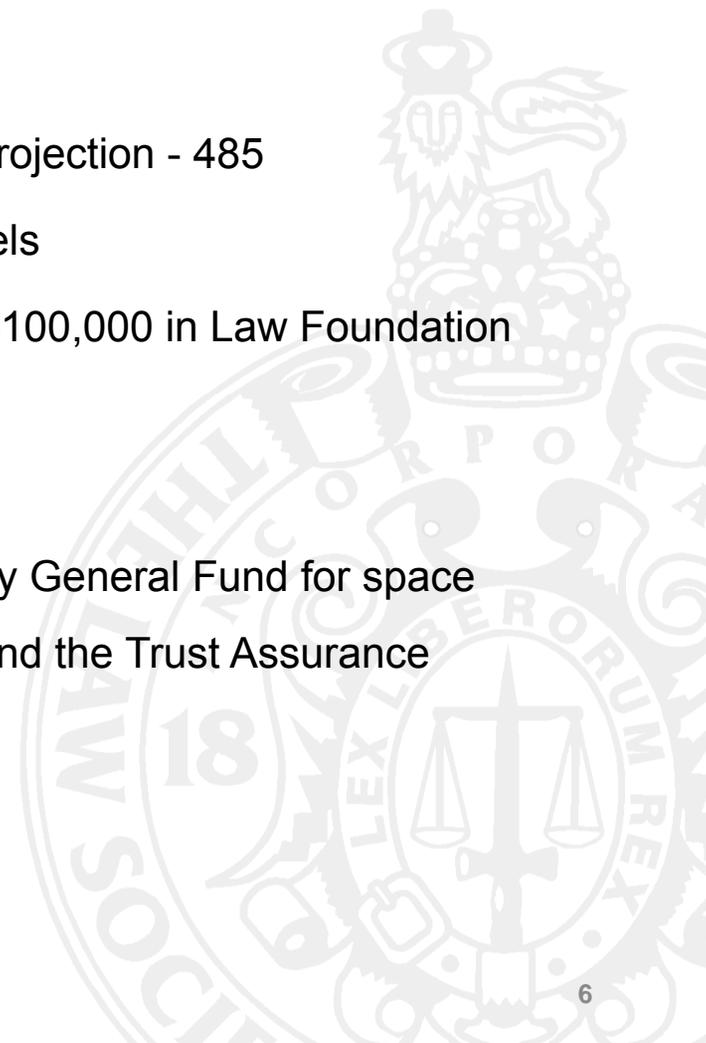


2017 full fee paying equivalent members projected at 11,760

Revenue

Other Revenue

- PLTC - 500 students - similar to 2016 budget, 2015 projection - 485
- Electronic Filing revenue - similar to 2016 budget levels
- Other non-practice fee revenue - includes assumed \$100,000 in Law Foundation funding for PLTC at TRU
- Building lease revenue - similar to 2016 budget
- Internal market rent allocation of \$415,000 charged by General Fund for space occupied at 845 Cambie - Lawyers Insurance Fund and the Trust Assurance Program



Operating Expense

Salary Costs - General Wage Increase

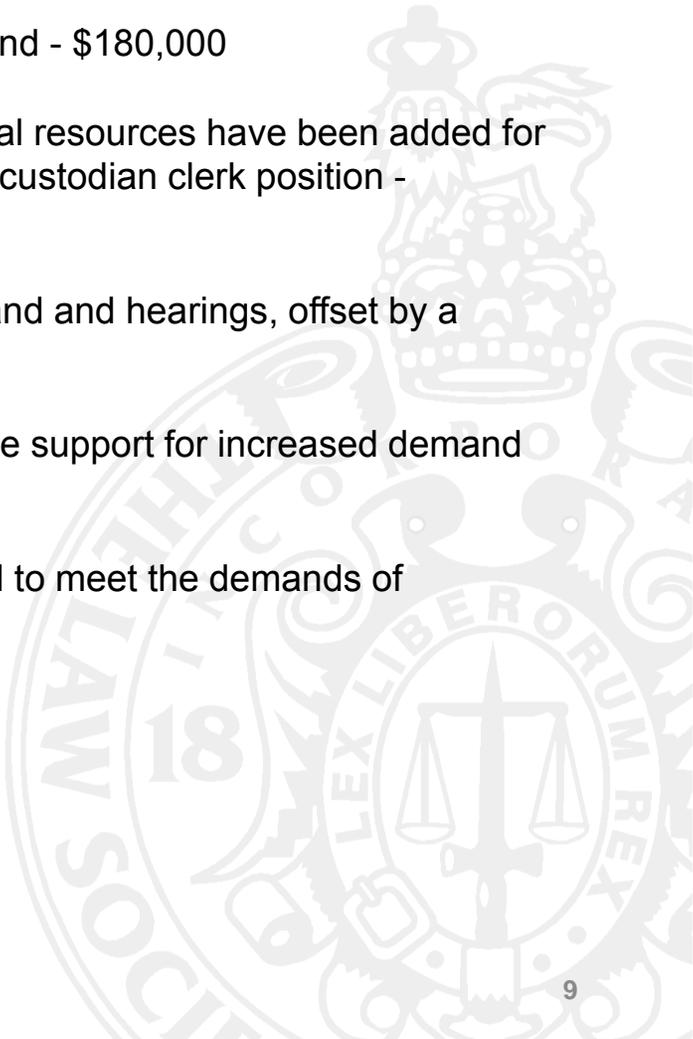
- The Executive Limitation Part 2.G requires that “the Executive Director must establish current compensation and benefits consistent with the geographic or professional market for the skills employed”
- Law Society aims to maintain staff compensation at the 50th percentile (P50) for comparable positions in this marketplace
- Increases include market based GWI staff adjustments for non-bargaining unit employees plus market based P50 external independent benchmarking adjustments, as necessary
- Staff compensation wage adjustments for PEA employees pursuant to terms of current Collective Agreement (new agreement was negotiated and signed in 2016)

Operating Expense Regulatory Counsel Costs

- Study was conducted in 2016 to review usage of internal versus external legal counsel resourcing given large increases in external legal fees
- Review included an in-depth look at current, and future, demand and capacity in the areas of Intake and Early Resolution (Intake); Investigations, Monitoring and Enforcement (Investigations); and Discipline
- It was determined that it is generally more cost effective to provide legal services through internal rather than external resources
- There has also been a significant increase in demand due to complexity which requires additional resources
- Recommend the addition of 5.0 FTE's in Investigations and 2.0 FTE's in Discipline – total cost of \$1 million, offset by a decrease in external counsel fees of \$500,000, for a net cost of \$500,000
- Half of these new positions have been funded through reducing external counsel fee budgets

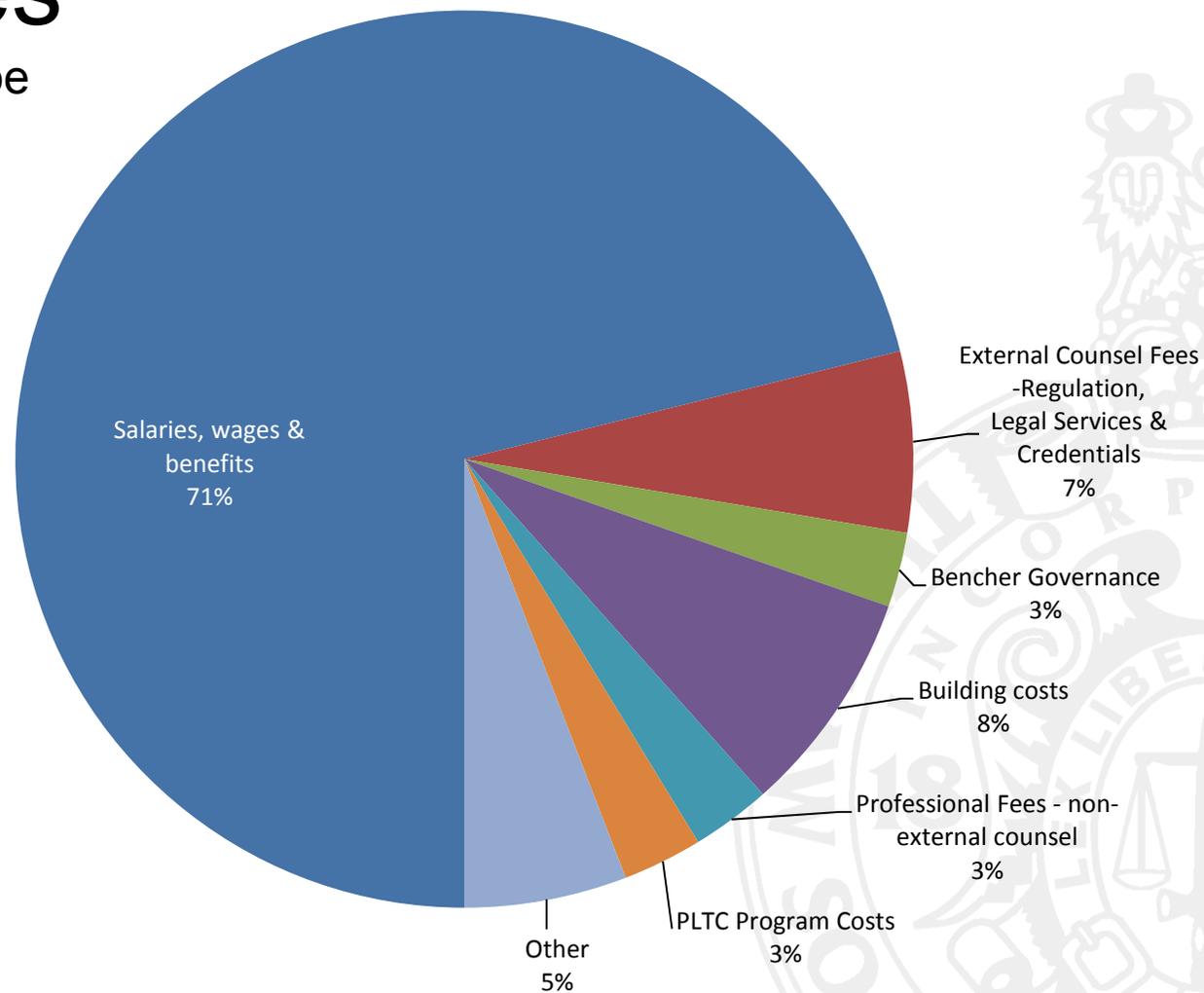
Operating Expense Other Changes

- Increase in legal defense external counsel fees due to file demand - \$180,000
- The number of Custodianships files have increased, so additional resources have been added for custodianship counsel fees, administrative costs and a 0.4 FTE custodian clerk position - \$100,000
- Addition of a Credentials Officer to deal with additional file demand and hearings, offset by a decrease in external counsel fees
- Addition of one assistant position within UAP/Tribunals to provide support for increased demand in these areas
- Additional PLTC resources for course updates and marking, and to meet the demands of increasing student numbers
- Elimination of one communications position
- Significant reduction of internal library subscriptions



2017 Operating Expenses

Composition by type



Capital Plans

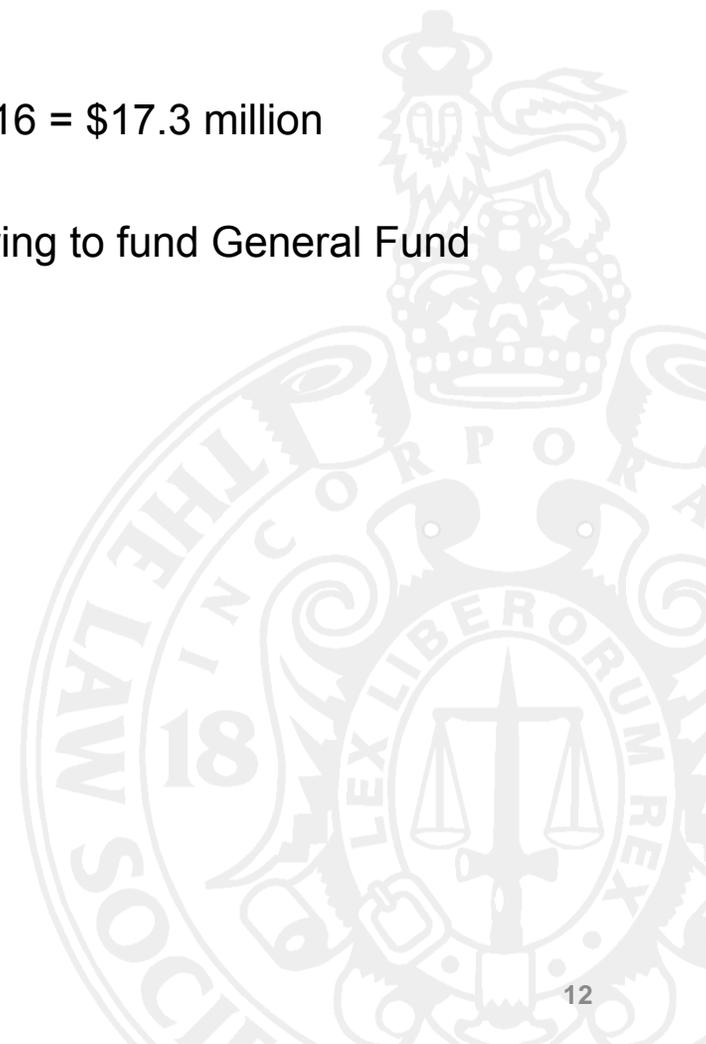
- Ten year capital plan updated
- Capital plan is funded by \$176 capital allocation, included in the Practice Fee, no change required in 2017
- Capital funding includes annual 845 Cambie building loan repayment of \$500,000 to LIF

2017 capital expenditures noted below:

Operations	}	Computer hardware, software, telephone & system upgrades	\$ 379,140
		Equipment, furniture and fixtures	\$ 195,000
		Workspace Improvements	\$ 236,000
845 Cambie St.		Building projects: (terraces/HVAC/sub-metering/lobby/post-tension	<u>\$ 632,286</u>
		Total	<u>\$1,442,426</u>

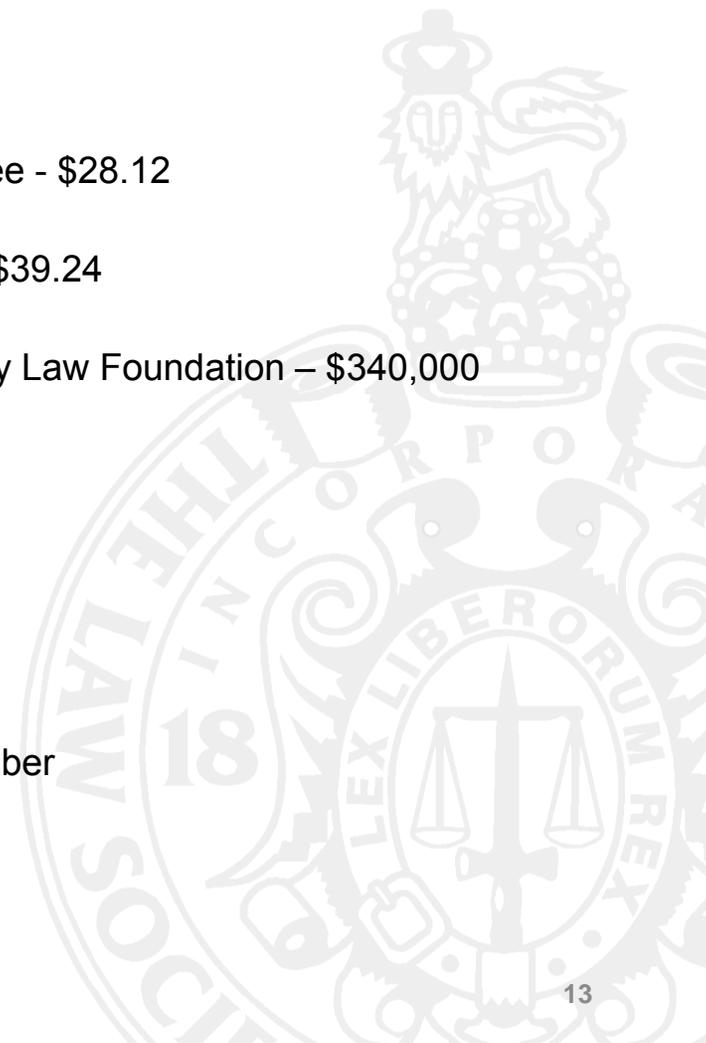
General Fund Net Assets

- Forecast unrestricted net assets at December 31, 2016 = \$17.3 million
- This level of net assets ensures no short-term borrowing to fund General Fund operations, per Executive Limitation Part 2.C.3(b)
- The total net assets consists of the following:
 - Invested in capital assets = \$11.0 million
 - Capital plan = \$2.5 million
 - Trust assurance net assets = \$4.1 million
 - Working capital = \$(0.3) million



Funding of External Programs

- Federation levy to remain the same as current 2016/2017 fee - \$28.12
- CanLII levy to remain the same as current 2016/2017 fee - \$39.24
- Pro bono/Access to legal services contribution distributed by Law Foundation – \$340,000
- CLBC at \$185, decrease of \$10
- LAP remains the same at \$67
- Advocate subscription fee remains the same at \$27.50
- REAL program – annual grant at \$50,000 or \$4.25 per member



2017 Fee Recommendation

	2017	2016	Difference	% change
Law Society Operations	\$ 1,745.55	\$ 1,663.67	\$ 81.88	4.9%
Federation of Law Societies (2016/17)	28.12	30.00	(1.88)	(0.06)
CanLII (2016/17)	39.24	40.00	(0.76)	-1.9%
Pro bono/Access to legal services*	28.91	29.57	(0.66)	-2.2%
REAL	4.25	4.35	(0.10)	N/A
CLBC	185.00	195.00	(10.00)	(0.05)
LAP	67.00	67.00	-	-
Advocate	27.50	27.50	-	-
Total Annual Practice Fee	\$ 2,125.57	\$ 2,057.09	\$ 68.48	3.3%
Insurance Assessment	1,750.00	1,750.00	-	-
Total Mandatory Fee (excluding taxes)	\$ 3,875.57	\$ 3,807.09	\$ 68.48	1.8%

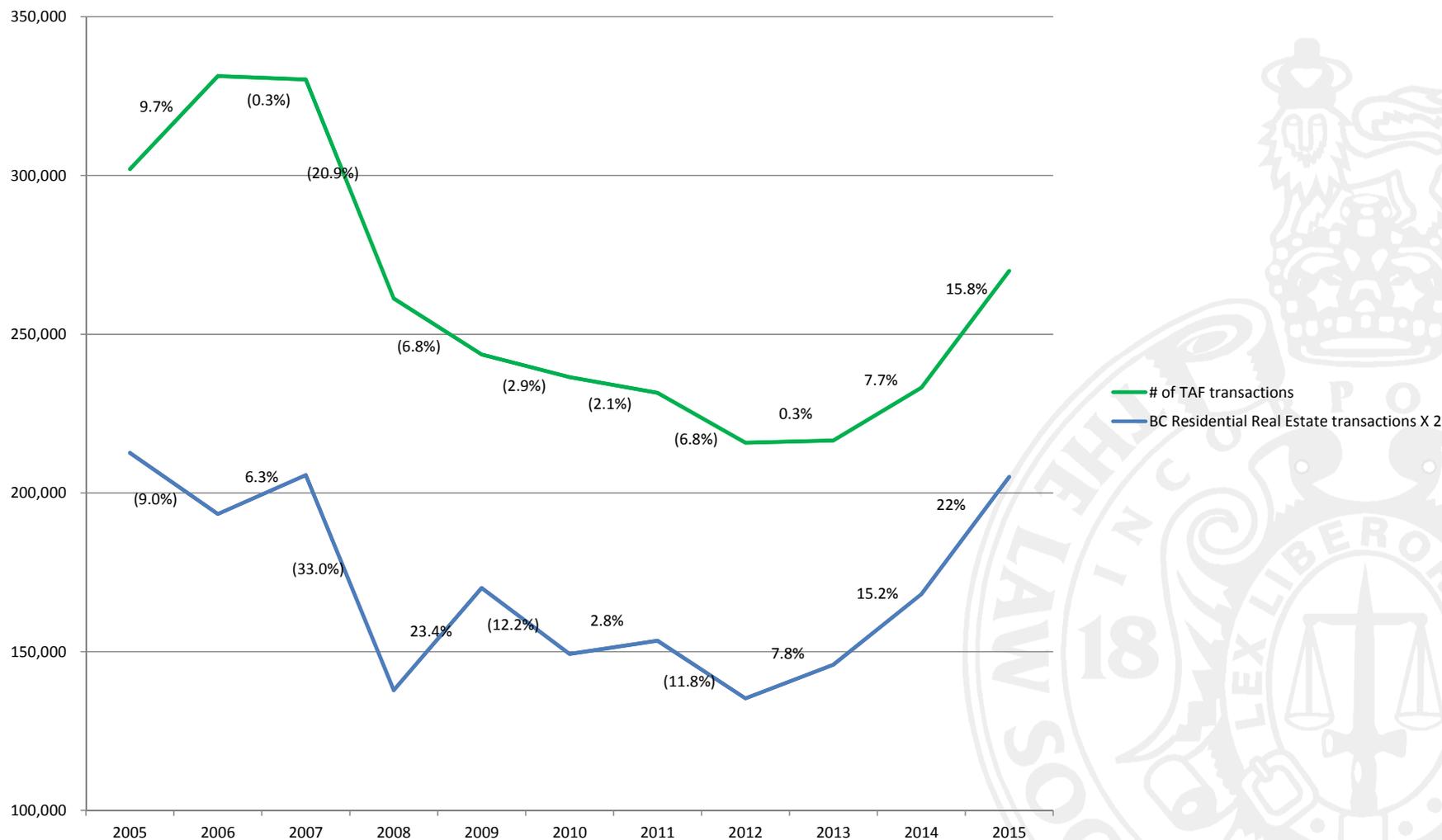
* Total contribution to pro bono and access to legal services is \$340,000, as recommended by the Access to Legal Services Advisory Committee. Per member contribution decreases due to number of members.

TAF and Trust Assurance Program

- TAF is currently set at \$15 per applicable transaction
- 2017 Trust Assurance operating expense budget is \$2.6 million, similar to the 2016 budget
- Executive Limitation regarding Trust Program net assets level recommends the Trust Program net asset level at 6 to 12 months of operating expenses, and any additional net assets beyond this level will be allocated to Part B insurance funding
- Trust Program net assets at the end of 2015 were \$2.6 million, 12 months of operating expenses
- 2016 results are projected to be ahead of budget, resulting in a projected net assets of \$4.1 million at the end of 2016, approximately 18 months of operating costs
- Real estate unit sales, the main driver of TAF, is expected to reduce 8% in 2017
- Committee will review early in 2017 to allocate excess net assets to Part B insurance program

TAF Revenue Trends

2005 to 2015 - Comparison of TAF transactions vs BC Real Estate transactions

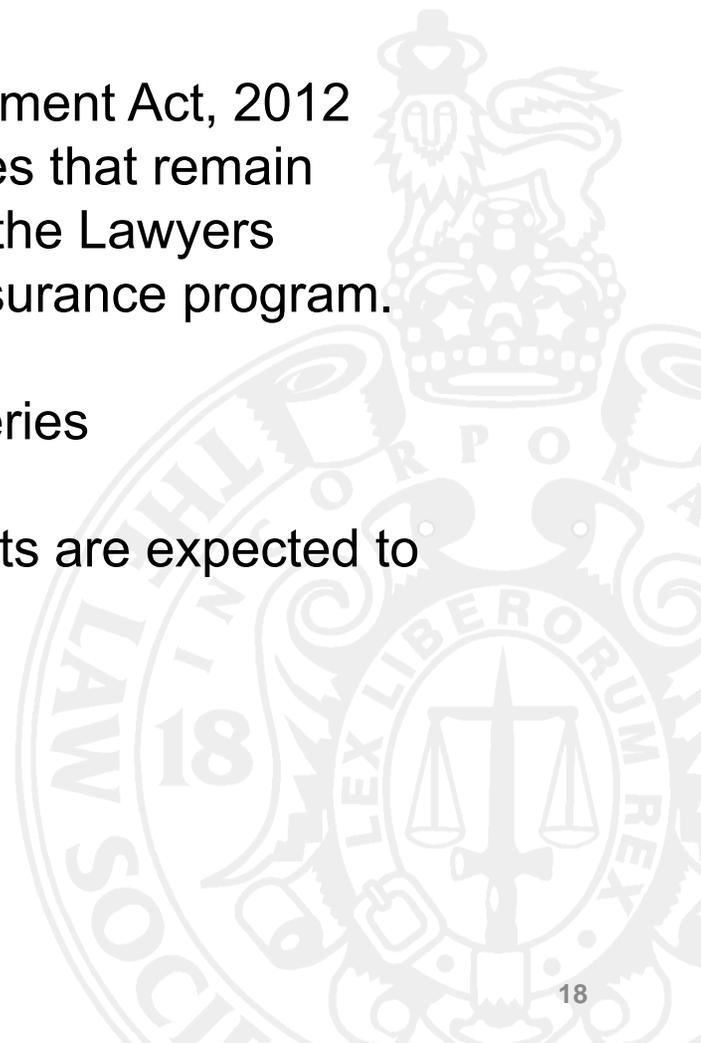


Special Compensation Fund



Special Compensation Fund

- Section 50 of the Legal Profession Amendment Act, 2012 provides for the transfer of unused reserves that remain within the Special Compensation Fund to the Lawyers Insurance Fund for the purposes of the insurance program.
- Continuing work to collect potential recoveries
- The Special Compensation Fund net assets are expected to be transferred after this work is complete



Insurance Assessment



2017 Lawyers Insurance Fund

- Number of insurance reports trending up slightly. 2016 expected to be similar to 2015 - approximately 1,100 reports for a frequency of 13%
- Annual payments also continue to trend up from an average of \$10M in 2004-2008 to \$12.8M in 2009-2014. While 2015 was unusually low at \$9.3M, projections for 2016 show a spike in payments to as high as \$16M
- New 15% tax on “foreign entities” will result in additional claims, as will expanded coverage under Part C. Relatively new *Limitation Act, Wills, Estates and Succession Act* and probate rules, and to a lesser extent, *Family Law Act*, expected to give rise to additional exposures, however, will result in incremental claims activity only
- Off-setting the increases in frequency, severity, and new risk exposures, at 6.0%, 2015 investment returns were higher than projected and higher than the benchmark of 5.3%. Assume a long term return of 5.2% - for 2017, based on actuarial projections
- LIF net assets at December 31, 2015 were \$75.9M, including internally restricted reserve of \$17.5M for Part B. Unrestricted net assets therefore were \$58.4M. Actuarial analysis indicates existing net assets adequate
- Recommend maintaining full-time insurance fee at \$1,750 for 2017

RESOLUTIONS



General Fund

Be it resolved that, commencing January 1, 2017, the practice fee be set at \$2,125.57 pursuant to section 23(1)(a) of the *Legal Profession Act*, consisting of the following amounts:

General Fund	\$1,745.55
Federation of Law Societies contribution	28.12
CanLII contribution	39.24
Pro bono/Access to legal services contribution	28.91
REAL program contribution	4.25
CLBC contribution	185.00
LAP contribution	67.00
Advocate subscription fee	<u>27.50</u>
Practice Fee	\$2,125.57

Lawyers Insurance Fund

Be it resolved that:

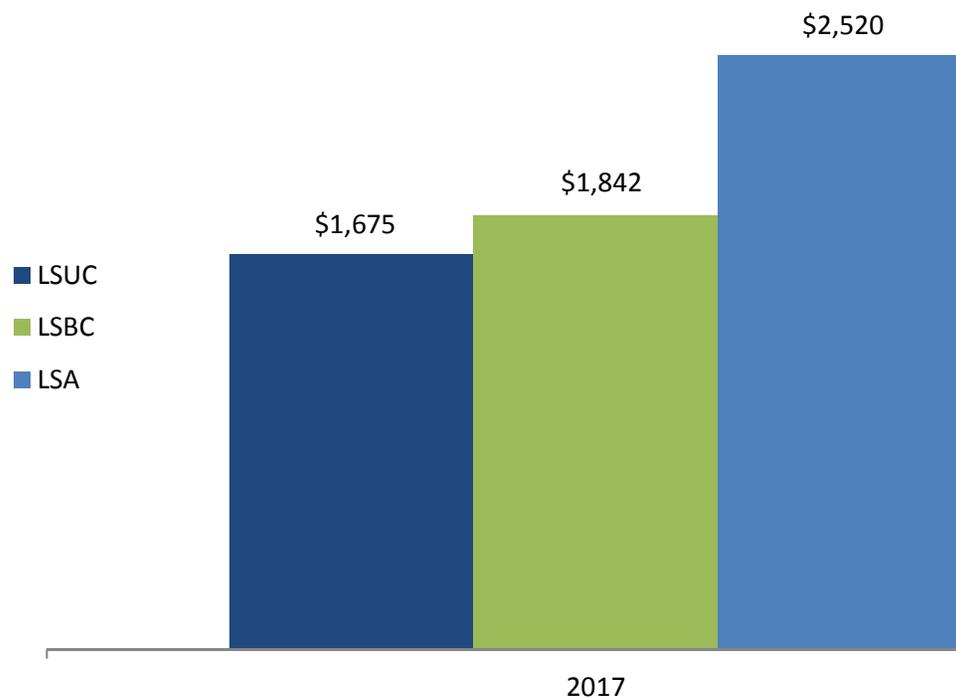
- the insurance fee for 2017 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,750;
- the part-time insurance fee for 2017 pursuant to Rule 3-40(2) be set at \$875; and
- the insurance surcharge for 2017 pursuant to Rule 3-44(2) be set at \$1,000.

APPENDICES



Appendix A

Key Practice Fee Comparisons



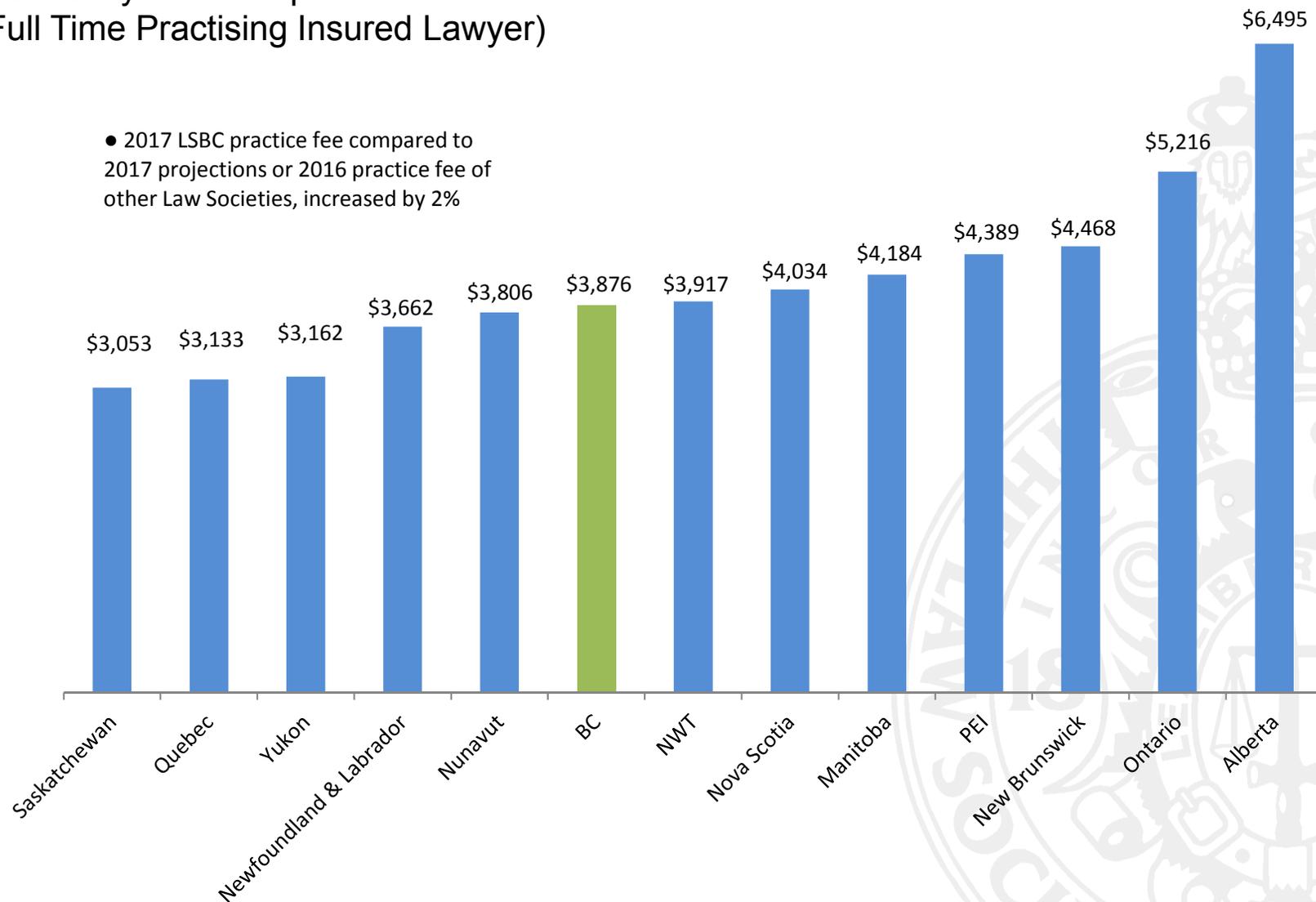
- 2017 LSBC practice fee compared to 2016 LSA practice fees, as 2017 LSA fee not set yet
- 2017 LSUC fee based on projection by LSUC

* Fees do not include library, LAP, Advocate, if applicable

Appendix B

Mandatory Fee Comparison (Full Time Practising Insured Lawyer)

- 2017 LSBC practice fee compared to 2017 projections or 2016 practice fee of other Law Societies, increased by 2%



Appendix C

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2017
GENERAL FUND SUMMARY

	2017 Budget	2016 Budget	2015 Actual	2017B vs 2016B Variance	%	2017B vs 2015A Variance	%				
GENERAL FUND REVENUES											
Membership fees	18,984,517	17,628,363	16,807,901								
PLTC and enrolment fees	1,380,000	1,380,000	1,288,265								
Electronic filing revenue	700,000	665,000	857,162								
Interest income	350,000	350,000	377,798								
Other revenue	1,175,780	1,184,495	1,265,727								
Building revenue and recoveries	1,167,652	1,168,178	1,126,499								
TOTAL GENERAL FUND REVENUES	23,757,949	22,376,036	21,723,352	1,381,913	6.2%	2,034,597	9.4%	2017 Budget	2016 Budget	FTE	
GENERAL FUND EXPENSES											
Benchers Governance	731,204	766,655	729,918					0.35	0.35	-	
Corporate Services	3,222,908	3,058,932	2,957,313					23.00	23.00	-	
Education & Practice	3,888,751	3,681,517	3,611,485					34.97	33.97	1.00	
Executive Services	2,168,375	2,161,209	2,129,847					19.60	20.60	(1.00)	
Policy and Legal Services	2,607,334	2,443,458	2,446,924					15.00	14.00	1.00	
Regulation	9,255,969	8,377,872	7,480,574					67.60	60.20	7.40	
Building costs	1,883,408	1,886,393	1,728,886					2.00	2.00	-	
TOTAL GENERAL FUND EXPENSES	23,757,949	22,376,036	21,084,947	1,381,913	6.2%	2,673,002	12.7%	162.52	154.12	8.40	
GENERAL FUND NET CONTRIBUTION	-	-	638,405	-		(638,405)		162.52	154.12	8.40	
Trust Assurance Program											
Trust Administration Fee Revenue	3,500,250	3,497,430	4,048,565								
Trust Administration Department	2,591,935	2,571,963	2,436,345								
Net Trust Assurance Program	908,315	925,467	1,612,220	(17,151)		(703,905)		17.00	17.00	-	
TOTAL NET GENERAL FUND & TAP CONTRIBUTION	908,315	925,467	2,250,625	(17,151)		(1,342,310)		179.52	171.12	8.40	
								LIF FTE's	22.60	22.60	-
								TOTAL Law Society FTE's	202.12	193.72	8.40

Appendix D

Capital Plan - 10 year

LAW SOCIETY CAPITAL SUMMARY 2017 10-Year Capital Plan											
	TOTAL	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
INFORMATION TECHNOLOGY											
Computer Hardware	1,370,250	181,640	308,490	144,690	93,640	106,790	107,000	107,000	107,000	107,000	107,000
Computer Software	1,448,800	72,000	54,000	10,000	124,800	198,000	198,000	198,000	198,000	198,000	198,000
System Upgrades	115,000	115,000	-	-	-	-	-	-	-	-	-
Phone System	105,000	10,500	10,500	10,500	10,500	10,500	10,500	10,500	10,500	10,500	10,500
Subtotal	3,039,050	379,140	372,990	165,190	228,940	315,290	315,500	315,500	315,500	315,500	315,500
OPERATIONS											
Equipment, Furniture & Fixtures	1,894,000	195,000	135,000	308,000	208,000	298,000	150,000	150,000	150,000	150,000	150,000
Subtotal	4,933,050	574,140	507,990	473,190	436,940	613,290	465,500	465,500	465,500	465,500	465,500
845 BUILDING											
Base Building/Tenant Improvements	6,583,015	632,286	729,904	690,825	890,000	540,000	740,000	540,000	740,000	540,000	540,000
LSBC Workspace Renovations	4,374,000	236,000	391,000	350,000	350,000	430,000	785,000	600,000	350,000	441,000	441,000
Subtotal	10,957,015	868,286	1,120,904	1,040,825	1,240,000	970,000	1,525,000	1,140,000	1,090,000	981,000	981,000
TOTAL CAPITAL PLAN	15,890,065	1,442,426	1,628,894	1,514,015	1,676,940	1,583,290	1,990,500	1,605,500	1,555,500	1,446,500	1,446,500

Number of members (FTEs)	11,760	11,936	12,115	12,297	12,482	12,669	12,859	13,052	13,248	13,446
Capital Fee Portion	176	176	176	176	176	144	136	136	136	136
Cumulative funded C/F	(168,336)	(41,002)	(69,090)	49,214	36,577	150,055	(116,129)	27,180	246,722	601,889
Current Year Capital Fee Collection	2,069,760	2,100,806	2,132,318	2,164,303	2,196,768	1,824,316	1,748,809	1,775,042	1,801,667	1,828,692
Total Capital Fee Available	1,901,424	2,059,804	2,063,229	2,213,517	2,233,345	1,974,371	1,632,680	1,802,222	2,048,389	2,430,581
\$500,000 building loan repayment	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(100,000)	-	-	-	-
Capital expenditures as above	(1,442,426)	(1,628,894)	(1,514,015)	(1,676,940)	(1,583,290)	(1,990,500)	(1,605,500)	(1,555,500)	(1,446,500)	(1,446,500)
Cumulative Over/(Under) funded *	(41,002)	(69,090)	49,214	36,577	150,055	(116,129)	27,180	246,722	601,889	984,081

*Capital loan of \$1 million authorized

Appendix E

THE LAW SOCIETY OF BRITISH COLUMBIA
Laywers Insurance Fund
For the year ended December 31, 2017
CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

	2017 Budget	2016 Budget	Variance	%	2017 Budget FTEs	2016 Budget FTEs	FTE Change
Revenue							
Annual Assessment	14,613,780	14,360,600					
Investment Income	6,520,648	6,640,268					
Other Income	60,000	60,000					
Total Revenue	21,194,428	21,060,868	133,560	0.6%			
Insurance Expense							
Actuaries, external audit, and investment management fees	794,425	622,970					
Allocated office rent	291,272	290,981					
Contribution to program and administrative costs of General Fund	1,340,913	1,249,859					
Legal	105,000	115,000					
Insurance	460,675	458,928					
Office	322,266	291,635					
Premium taxes	8,520	8,856					
Actuarial provision for claim payments	15,476,000	14,702,000					
Salaries, wages and benefits	3,098,898	2,984,974					
	21,897,969	20,725,203	1,172,766	5.7%			
Loss Prevention Expense							
Contribution to co-sponsored program costs of General Fund	907,699	892,900					
Total Expense	22,805,668	21,618,103	1,187,565	5.5%			
Net Contribution	(1,611,240)	(557,235)	(1,054,005)		22.6	22.6	-

The Law Society of British Columbia



The Law Society of British Columbia

2017 Fees and Budget Report

Presented to:
The Benchers
September 30, 2016

Prepared by:
Jeanette McPhee, CFO and Director of Trust Regulation
Aaron Griffith, Controller

THE LAW SOCIETY OF BRITISH COLUMBIA

2017 Fees and Budget Report

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Law Society Overview

The 2017 Law Society Budget results in an annual practice fee of \$2,125.57, and an insurance assessment of \$1,750. This is a \$68.48 (1.8%) increase over the 2016 annual mandatory fees.

The components of the 2017 mandatory fees for insured, practicing lawyers are as follows:

	2017	2016	Difference	% change
Law Society Operations	\$ 1,745.55	\$ 1,663.67	\$ 81.88	4.9%
Federation of Law Societies (2016/17)	28.12	30.00	(1.88)	(6.3)%
CanLII (2016/17)	39.24	40.00	(0.76)	(1.9)%
Pro bono/Access to legal services*	28.91	29.57	(0.66)	(2.2)%
REAL	4.25	4.35	(0.10)	(2.3)%
CLBC	185.00	195.00	(10.00)	(5.1)%
LAP	67.00	67.00	-	-
Advocate	27.50	27.50	-	-
Total Annual Practice Fee	\$ 2,125.57	\$ 2,057.09	\$ 68.48	3.3%
Insurance Assessment	1,750.00	1,750.00	-	-
Total Mandatory Fee (excluding taxes)	\$ 3,875.57	\$ 3,807.09	\$ 68.48	1.8%

* Total contribution to pro bono and access to legal services is \$340,000, as recommended by the Access to Legal Services Advisory Committee. Per member contribution decreases due to number of members.

General Practice Fee

General Fund – Law Society Operations

The Law Society's 2017 annual budget was developed based on input and consultation with Leadership Council and Management, and included an in-depth "bottom-up" review of all departmental expenses. Additionally, as part of this process an internal working group was formed to undertake a special project to analyze the allocation of internal versus external counsel work based on recent trends and projections of demand and capacity for the next three years.

The focus of this budget, in addition to delivering the core regulatory programs and

meeting the established Key Performance Measures, is to support the continuing initiatives under the Law Society's strategic plan and mandate, and in particular, supporting the delivery of timely and efficient regulation to ensure that the Law Society remains an effective professional regulatory body.

Key assumptions that have been considered in preparing the 2017 budget are:

- 1.6% growth projected in full-time equivalent practicing members, to 11,760
- 500 PLTC students
- Market based staff salary and compensation adjustments
- Increase in staffing and external counsel fee funding based on analysis and current trends
- Increase of 8.4 FTE staff positions, with approximately 3.5 FTE's funded through a decrease of external counsel fee budgets
- Reduce operating expenses where possible
- Maintain capital allocation levy at same level
- Reserve levels in line with the Executive Limitations, no short-term borrowing to fund operations during the year

Budget Risks

- **External Counsel Fees** – External counsel fees represent a significant portion of the overall budget (7%). While these costs are analyzed, managed and tracked rigorously, they can also be unpredictable in nature. These costs are typically driven by three factors, conflicts, work load and the requirement of special skills. The complexity of new cases cannot be anticipated, which can have an impact on costs and demand. In recent years, the increase in the complexity and difficulty of cases, is reflected in an increase in the number of reviews and hearing days. Accordingly, based on actual prior year trends and the recent increase in external counsel costs, some of the external counsel funding has been reallocated towards using more internal resources to meet anticipated demand for 2017 and beyond. In addition, in order to deal with the volume of demand projected, additional staff resources have been added.
- **Staff Vacancy Savings** – In order to anticipate vacancies in staff positions during the year, and reduce practice fee requirements, a staff vacancy savings budget is estimated each year based on historical trends. As the amount of staff vacancy savings depends on the total amount of staff vacancies in any given year, there may be more or less savings than budgeted. If there are lower

vacancies than estimated in the vacancy budget, operating savings will be overestimated, resulting in budget pressure.

- **Membership Numbers** – The revenue received from the practice fee and other membership fees serves to offset 80% of the budgeted costs. As such, a significant short-term reduction in members could result in a need to draw on net assets. To mitigate this risk, we closely track member numbers and monitor the demographics of our membership base to anticipate any potential reductions in our member numbers. We also apply an estimate of membership numbers based on historical membership growth.
- **Inflation** – Staff salaries comprise approximately 70% of the total expense budget, so rising inflation and related salary market levels may put pressure on compensation costs. Rising inflation may also cause an increase in other operating expenses.

2017 Operating Revenue Summary

General Fund revenues to provide for operations in 2017 are budgeted at \$23.8 million, \$1.38 million (6.2%) over the 2016 budget, due to higher membership numbers and an increase in the practice fee. The budgeted revenue is based on estimates of 11,760 full-time equivalent practicing members, 500 PLTC students, and other revenues at similar levels to 2016.

2017 Operating Expense Summary

General Fund operational expenses are budgeted at \$23.8 million, \$1.38 million (6.2%) over the 2016 budget. This year-over-year budget increase reflects market based staff salary adjustments, plus additional resources in the regulatory and education areas to deal with demand.

A summary of the significant changes to operating expenses are noted below:

Staffing

Staffing levels have been reviewed in detail and there have been structural adjustments to include the net addition of 8.4 FTE staff positions. Of the new staff positions, approximately 3.5 FTE's have been funded through a reduction in the external counsel fee budgets. These new positions are to primarily deal with demand in the regulatory and education. One position in communications has been eliminated.

Staff Compensation Costs

The Law Society is a service organization, with salaries and benefits comprising over 70% of the total costs of the operation. The Law Society staff compensation policies require that staff compensation is consistent with the market and maintains staff compensation at the 50th percentile (P50) for comparable positions, and market based wage adjustments are made each year based on bi-annual external independent benchmarking. In addition, wage adjustments for union employees are made each year according to the Professional Employees Association collective agreement. A new three-year collective agreement was negotiated in 2016.

The staff vacancy savings budget will remain at \$700,000 for 2017.

External Counsel Fees and the Reallocation of Resources

External counsel fees in the areas of Regulation, Legal Defense and Credentials make up a significant portion of the annual budgets, totaling \$1.5 million, or 7% of the 2017 operating expense budget. Since 2012, these fees have been steadily increasing for a number of reasons, and in 2016 an internal working group was created to analyze the allocation of resources internally versus externally and project the demand and capacity for the next three years. The review included an in-depth look at current and future demand and capacity in the areas of Intake and Early Resolution (Intake); Investigations, Monitoring and Enforcement (Investigations); and Discipline.

It was determined that it is generally more cost effective to perform legal work through internal rather than external resources. This is particularly true in Investigations. Further, the non-quantitative benefits of having work performed in house generally outweigh the benefits of it being done outside. Through an exhaustive analysis of the numbers and types of files that have come in over the past several years, as well as staff efficiencies and learning curves, the working group identified potential cost savings by hiring additional internal staff counsel to handle some files internally. In addition, additional internal resources were added to deal with the current and future demand projected.

The recommendations from this review include the addition of 7 new staff positions, 5 in Investigations and 2 in Discipline, at a total net cost of \$514,000. 3.5 of these staff positions have been funded through the reduction of external counsel fee budgets.

Other Operating Expense Reductions

Offsetting some of the increase in the external counsel fee budgets, total savings of \$169,000 in other operating expenses have been identified.

General Fund Net Assets

Overall, the General Fund remains financially sound, with a net assets level forecasted to be \$10.7 million at the end of 2016 (excluding the TAF net assets). The net assets are mainly comprised of capital assets, primarily the 845 Cambie Street building and the capital plan.

Capital Plan

The Law Society maintains a 10 year capital plan to ensure that capital funding is available for capital projects required to maintain the 845 Cambie building and to provide capital for operational requirements, such as computer technology, furniture and workspace improvements. In addition, the capital plan funds the annual \$500,000 debt service payment on the 845 Cambie building loan from LIF.

The annual capital allocation levy is included in the annual practice fee, and remains unchanged at \$176 per member.

In the 2017 capital plan, \$1.4 million is budgeted for capital projects (Appendix C). Projects include base building maintenance, including the replacement of deficient structural post tension and terrace waterproofing. In addition, operational capital includes replacing computer hardware, furniture, computer software licenses and office workspaces.

2017 Practice Fee

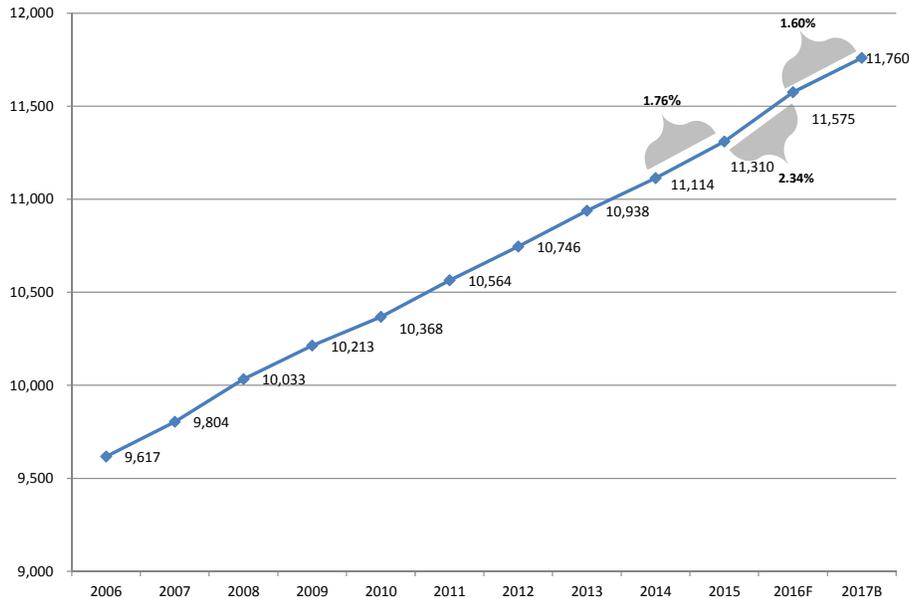
Taking all of the above into account, \$1,745.55 of the 2017 annual practice fee funds the Law Society operations, which is an increase of \$81.88 (4.9%) over 2016.

2017 Operating Revenue

Total revenues, excluding the capital allocation levy, are budgeted at \$23.8 million, an increase of \$1.38 million (6.2%) over the 2016 budget (Appendix A).

Membership revenues are budgeted at \$19.0 million, a 7.7% increase from 2016 budget due to the projected growth in the number of practising lawyers and the increase in the annual practice fee. Based on the average growth in membership over the last few years, budgeted full-time equivalent practicing membership is projected to increase to 11,760 members, 1.60% over the 2016 membership projection. Other categories of membership are assumed to remain consistent with previous years.

Practicing Membership Projection



PLTC revenues are budgeted at \$1.38 million, based on 500 students, the same as the 2016 budget.

Electronic filing revenues are budgeted at \$700,000, in line with recent trends.

Other revenues, which include credentials and incorporation fees, fines, penalties and cost recoveries, are budgeted at \$1.2 million. At this time, we have assumed that the Law Foundation will continue funding \$100,000 in 2017 to support the delivery of PLTC at Thompson Rivers University.

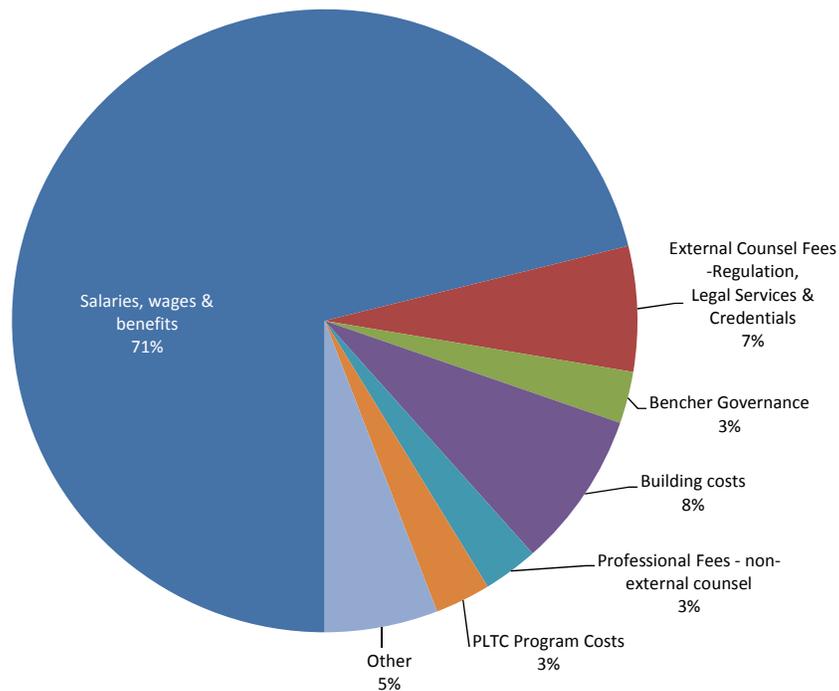
Building revenue and recoveries are budgeted at \$1.2 million in 2017. The Law Society owns the 845/835 Cambie building, occupies the majority of space, and the space that is not occupied by the Law Society is leased out to external tenants. In 2017, external lease revenues are budgeted at \$686,000, similar to 2016. Also included in lease revenues is an inter-fund market rent allocation of \$415,000 charged by the General Fund for space occupied at 845 Cambie by the Lawyers Insurance Fund and the Trust Assurance Program.

2017 Operating Expenses

The total operating expense budget has increased by \$1.38 million (6.2%) (Appendix A). A large portion of the increase is due to changes to staffing and external counsel fees relating to the Regulation, Legal Services and Credentials functions. Additionally, there are increases due to market based staff salary adjustments, PLTC program costs and various technology initiatives, offset by other savings.

The chart below provides information on the type of operating expenses within the General Fund.

Operating Expenses - Composition by type



Departmental Summaries

Bencher Governance

The Bencher Governance area includes the costs of the Bencher and committee meetings, including travel and meeting costs, which are required to govern the Law Society, as well as the costs of any new initiatives related to the Bencher Strategic Plan and Priorities.

The 2017 Bencher Governance operating expense budget has been reduced slightly from 2016, at \$731,000, \$35,000, or 4.6%, below the 2016 budget due mainly to the expected introduction of electronic voting at the annual general meeting.

Corporate Services

The departments that are included in Corporate Services are; General Administration, Office of the CEO, Finance, Human Resources, and Records Management.

General Administration includes the Office of the CEO, who leads the Law Society operations and reports directly to the Benchers. General administration also includes the Operations department which provides general administrative services, such as reception and office services, and office renovation services.

Finance provides oversight over all the financial affairs of the Law Society, including financial reporting, operating and capital budgeting, audit, payroll and benefits administration, cash and investment management, and internal controls.

Human Resources develops and maintains the human resource policies and procedures, and provides services related to recruiting, compensation, performance management, employee and labor relations, and training.

Records Management is responsible for the records management, library and archives program, including the oversight of the electronic document management system.

The 2017 Corporate Services operating expense budget is \$3.2 million, an increase of \$164,000 (5.4%) over the 2016 budget, mainly due to market based salary adjustments, biannual salary benchmarking, offset by reduced library subscriptions.

Education & Practice

The departments included in Education and Practice are; Member Services, Credentials, PLTC and Education, Practice Standards and Practice Advice.

Member Services provides services to members, including member status changes, fee billings, unclaimed trust funds, Juricert registration, and the Call Ceremonies. This department also administers the annual continuing professional development program for all lawyers.

Credentials ensures new and transferring lawyers are properly qualified to practice law in BC by preparing and assessing applicants for call and admission to the Law Society, and licensing them to practice.

PLTC & Education helps articulated students make the transition from law school to legal practice. Taught by experienced lawyers, PLTC uses case files and model transactions that replicate as closely as possible what students will experience during articles and when practicing. Successful completion of the intensive, 10-week course is one of the conditions law school graduates must meet to practice law in British Columbia.

Practice Standards addresses issues of lawyer competency with online lawyer support courses, practice management support and other resources. The program is a remedial program that assists lawyers who have difficulty in meeting core competencies and who exhibit practice concerns, which may include issues of client management, office management, personal matters, and substantive law. The Practice Standards department conducts practice reviews of lawyers whose competence is in question, and recommends and monitors remedial programs.

Practice Advice helps lawyers serve the public effectively by providing advice and assistance on ethical, practice and office management issues.

The total 2016 Education & Practice operating expense budget is \$3.89 million, an increase of \$207,000 (5.6%) from the 2016 budget. The increase is due primarily to the addition of a Credentials Officer, additional PLTC resources to address work demands related to the increase in students, as well as market based staff salary adjustments.

Executive Services

The departments that are included in Executive Services are Communications, Information Services and Executive Services.

Communications is responsible for all member, government and public relations and provides strategic communication advice to all areas of the Law Society. The department also manages and maintains the Law Society website, electronic communications and produces our regular publications such as the *Bencher Bulletin*, the *E-Brief* and the *Annual Review*. In addition, this department has taken on the responsibility to review and implement the Knowledge Management initiatives.

Information Services is responsible for all technical services relating to computer business systems and databases, networks, websites and data storage and communication technology.

Executive Services coordinates and organizes the *Bencher* and Executive meetings, coordinates external appointments, and plans and provides administrative and logistical support for the annual general meeting and *Bencher* elections.

The 2017 Executive Services operating expense budget is \$2.2 million, very similar to the 2016 budget, with only a slight net increase of \$7,000 (0.3%). There were increases relating to software maintenance for a new VOiP phone system and other Knowledge Management initiatives, including an Enterprise Search Engine, along with market based salary adjustments. These increases are offset by the elimination of a communications position.

Policy & Legal Services

Policy & Legal Services includes a number of functions including policy, legal services, external litigation and interventions, ethics, tribunal and legislation, information and privacy, and unauthorized practice.

Policy and Legal Services assists the Law Society with policy development, legal research and legislative drafting, and monitoring developments involving professional regulation, independence of the Bar and Judiciary, access to justice, and equity and diversity in the legal profession, and provides advice for ethical consideration and

supports the Ethics Committee. In addition, includes external counsel fees providing services for legal defense cases and interventions on behalf of the Law Society.

Tribunals and Legislation supports the work of Law Society hearing and review tribunals and drafts new rules and proposed amendments to the *Legal Profession Act*.

Information & Privacy handles requests made of the Law Society and maintains compliance of the Law Society data and training under the Freedom of Information and Protection of Privacy Act (FOIPPA).

Unauthorized Practice (UAP) investigates complaints of unauthorized practice of law by unregulated, uninsured non-lawyers.

The 2017 Policy and Legal Services operating expense budget is \$2.6 million, an increase of \$164,000 (6.7%) over the 2016 budget. This increase is made up primarily of market based salary adjustments, increased external counsel fees for legal defense due to demand, and the addition of 1.0 FTE Assistant position in the UAP/Tribunal area. These increases are offset by decreases in other external counsel fees in intervention and UAP.

Regulation

There are four areas that are included in Regulation; Professional Conduct, Discipline, Forensic Accounting and Custodianships.

Professional Conduct includes the Intake and Early Resolution and the Investigations, Monitoring and Enforcement groups, which investigate complaints about lawyers' conduct and recommend disciplinary action where appropriate.

Discipline manages the conduct meeting and conduct review processes, represents the Law Society at discipline hearings and provides legal advice on investigations.

Forensic Accounting provides forensic investigation services to support the regulatory process.

Custodianships provides for the arrangement of locum agreements or custodians to manage and, where appropriate, wind-up legal practices when members cannot continue to practice due to illness, death, or disciplinary actions.

The 2017 Regulation operating expense budget is \$9.3 million, an increase of \$878,000 (10.5%) over the 2016 budget. There are three main areas of change. As mentioned previously on page 6, additional staff resources have been added to deal with IME and Discipline files, for a net increase of 7 staff positions, at a net cost of \$514,000. 3.5 of the FTE's were funded by a decrease in external counsel fee budgets. Additionally, the number of Custodianships files have increased, so additional resources have been added for custodianship counsel fees, administrative costs and a .4 FTE custodian clerk position, at a cost of \$100,000. Also, market based salary adjustments are budgeted for all staff in the Regulation area.

In addition, in conjunction with the review of the projected demand for external counsel fees, there has been approval for the use of reserve (net assets) to fund the retainer of external counsel, if necessary, to meet potential increased demand in the Investigations department, up to \$350,000 over two years.

Building Costs

The Law Society owns the 845 Cambie Street building and occupies 75% of the available space. The cost of occupying and maintaining the building is partially offset by lease revenues from tenants, which are recorded in the revenue section.

The property management department provides services in relation to tenant relations, leasing, building maintenance and preservation, fire and safety, energy management, and minor and major capital project management.

The 2016 building operating expense budget is \$1.9 million, a slight decrease of \$3,000 (0.2%) over the 2016 budget with decreases in property taxes and property management fees, offsetting other increases.

Funding of External Programs

The Law Society collects a number of fees for external programs, which are included in the annual practice fee:

Federation of Law Societies – The Federation fee will remain the same as the current 2016/2017 fee of \$28.12 per member. The Federation of Law Societies of Canada provides a national voice for provincial and territorial law societies on important national and international issues.

CanLII – The CanLII fee will remain the same as the current 2016/2017 fee of \$39.24 per member. CanLII is a not-for-profit organization initiated by the Federation of Law Societies of Canada. CanLII's goal is to make primary sources of Canadian Law accessible for free on its website at www.canlii.org. All provincial and territorial law societies have committed to provide funding to CanLII.

Pro bono and access to justice funding – The Access to Legal Services Advisory Committee recommended the contribution to pro bono and access to legal services funding which is sent to the Law Foundation for distribution be set at flat amount of \$340,000 per year, which continues in 2017.

Courthouse Libraries of B.C. (CLBC) – CLBC provides lawyers and the public in BC with access to legal information, as well as training and support in finding and using legal information. Through its expanding digital collections, website content and training, the library provides practice support for lawyers across the province; and for the public through the Clicklaw website, public library legal collections, as well as individual assistance. With savings in certain areas, the Law Society's contribution will be reduced by \$10 to \$185 per member.

Lawyer's Assistance Program (LAP) – The LAP fee remains the same at \$67 per member. LAP provides confidential outreach, education, support and referrals to lawyers and other members of British Columbia's legal community.

The Advocate – The Advocate subscription fee remains the same, at \$27.50 per member. The Advocate publication is distributed bi-monthly to all BC lawyers.

REAL initiative – The Rural Education and Access to Lawyers (REAL) initiative is funded by the Law Society and the Law Foundation, with in-kind support from the

Canadian Bar Association, BC Branch. The REAL initiative is a set of programs established to address current and future projected shortages of legal services in small communities and rural areas of the province, and improve access to justice. The program supports the placement of summer law students in small communities and rural areas of BC, with a goal to encourage future lawyers to practice in these areas. The 2017 contribution will be \$50,000, or \$4.25 per member.

Trust Assurance Fee and Program

The goal of the Trust Assurance program is to ensure that law firms comply with the rules regarding proper handling of clients' trust funds and trust accounting records. This is achieved by conducting trust accounting compliance audits at law firms, reviewing annual trust reports, and providing member advice and resources. The compliance audit program ensures that all firms are audited at least once within a six year cycle.

In 2015, 460 compliance audits were conducted. Approximately, 4,000 have been conducted since the inception of the trust assurance program. The program continues to provide proactive oversight of law firm trust accounting and receives positive feedback through the member survey results.

The Trust Administration Fee (TAF) is currently set at \$15 per transaction, and will remain the same for 2017. Assuming current TAF transactions levels, 2017 TAF revenue is budgeted at \$3.5 million, similar to the 2016 budget. The Trust Assurance operating expense budget is \$2.6 million, similar to the 2016 budget. The TAF reserve is projected at \$4.1 million at the end of 2016. The recommended reserve is up to 12 months operating expenses, at \$2.6 million, with any additional reserve beyond this level to be allocated to Part B insurance funding. The Finance and Audit Committee will be monitoring the level of net assets to determine whether, and when, to transfer the additional net assets once the 2016 results are final.

Special Compensation Fund

The Special Compensation Fund was maintained pursuant to Section 31 of the Legal Profession Act, was financed by members' annual assessments, and claims were recorded net of recoveries when they had been approved for payment. Since 2004, the Lawyers Insurance Fund has been providing coverage for dishonest appropriation of funds by lawyers.

During 2012, the Legal Profession Amendment Act, 2012 repealed section 31 of the Legal Profession Act. In addition, Section 23 of the Legal Profession Act was amended

to remove the requirement that practicing lawyers pay the Special Compensation Fund assessment, which meant that, effective 2013 and onwards, there is no fee assessed for the Special Compensation Fund.

Section 50 of the Legal Profession Amendment Act, 2012 provides for the transfer of unused reserves that remain within the Special Compensation Fund to the Lawyers Insurance Fund for the purposes of the insurance program. Work is continuing on the collection of potential recoveries. The Special Compensation Fund assets are expected to be transferred once the collection of any recoveries is complete.

Lawyers Insurance Fund

The goal of the Lawyers Insurance Fund (“LIF”) is to maintain a professional liability insurance program for BC lawyers that provides reasonable limits of coverage for the protection of both lawyers and their clients and exceptional service, at a reasonable cost to lawyers. This is within an overarching objective of maintaining a financially stable program over the long term, in the interest of the public and the profession.

Overall, there are a number of factors that influence the financial stability of our insurance program.

Frequency and Severity of Claims

The first factor is the total incidence of claims and potential claims, or “reports” under Part A. The number of reports appears to be increasing from recent levels. In the 5 year period from 2004 to and including 2008, the average number of reports annually was 945. The 4 years that followed, 2009 to 2012, reflected the impact of the recession on claims and generated an annual average of 1,032 reports. In 2013, the number of reports fell to 978, and in 2014, increased to 1,014. In 2015, the number of reports again increased to 1,124. For 2016, projecting to the end of the year, we expect the number of reports to be consistent with 2015.

This increase is reflected in the report frequencies (number of reports divided by the number of insured lawyers) for the year-to-date (Jun 30) compared with the past 6 years:

2010	2011	2012	2013	2014	2015	2016
13.3%	14.0%	12.5%	12.0%	12.3%	13.4%	12.9%

The second factor is the amount paid to defend and resolve claims. The severity (the dollar value) of claim payments on a calendar year basis suggests that overall severity is gradually increasing – with the exception of a dip in payments as seen in the 2015

results. In the 5 year period from 2004 to 2008, the average annual payments were \$10M. The 6 years that followed, 2009 to 2014, generated average annual payments of \$12.8M. 2015 was unusually low at only \$9.3M. If we extrapolate 2016 payments based on the first half of the year, projected total payments would come in at \$16M, significantly higher than in previous years. Note, we took two complex matters to trial in January this year which added significantly to expenditures. As a result, the balance of 2016 is unlikely to mirror the first half.

With respect to trust protection coverage under Part B of the policy, these same factors apply but because of the small number of claims and potential claims, the year-over-year experience is more volatile. For example, 2015 closed out the year with 11 reports, lower than the annual average of 19.6 reports since the program's inception in 2004. We've received 17 reports so far in 2016, well in excess of the average. As to severity, annual claim payments on average total \$84,000. In 2015 total payments were \$125,000, consistent with 2014 at \$133,000, and we expect to pay at least \$71,500 in 2016 and possibly up to \$250,000 more.

Future Practice Risks

The third factor is the risk of increased future claims.

If our recommendation to expand coverage under Part C for trust shortages caused by social engineering scams is accepted, there will be an increased exposure to the Fund from claims.

In the real estate area, the BC government's move to levy a 15% tax on foreign purchases of Vancouver real estate that were done deals but not yet closed is expected to result in collapsing sales and claims against lawyers.

The relatively new *Limitation Act*, *Family Law Act*, and *Wills, Estates and Succession Act* and probate rules were expected to usher in additional exposures to the Fund. While the shortened limitation periods in the *Limitation Act* that took effect in June, 2015 caught some lawyers unawares, the *Family Law Act* resulted in two large potential claims that fortunately did not result in payments - one was abandoned and the other was repaired. Further significant claims are unlikely as family practitioners have become familiar with the new regime. *WESA* came into effect in March, 2014 and will likely give rise to claims against lawyers for failing to adequately satisfy themselves and document that the will reflects the testator's true intentions, free from undue influence.

Apart from the risks noted above, we do not see on the horizon significant new insured areas of exposure for lawyers.

Investment Returns

The fourth factor is the return on investments available to fund the insurance program. The 2015 return on LIF long-term investments - at 6.0% - was slightly above the benchmark return of 5.3%. The LIF net assets as at December 31, 2015 were \$75.9 million, including \$17.5 million set aside for trust protection claims under Part B. The unrestricted net asset position of the fund at year-end was therefore \$58.4 million.

Minimum Capital (Net Assets) Levels

In addition to the investment return, there is a need to maintain a certain amount of the fund for contingencies and adverse developments. Applying the Minimum Capital Test (MCT) – an industry-wide solvency benchmark for insurers – the Fund’s actuary analyzed LIF’s future risks relative to its unrestricted net assets and advised on an appropriate level of capital funding. His view was that as of year-end 2015, LIF’s MCT ratio – using the second year of a three year phase-in to new, stricter MCT requirements – was 249.2%, and the program was adequately funded based on an internal target capital ratio of 230%, at a minimum. The actuary noted that if LIF’s MCT ratio is calculated without the benefit of the phase-in, the MCT ratio would be 218%. This would be below the required capital (by approximately \$.5 million) using the new formula. According to the actuary’s projections, the fee can be maintained at \$1,750 for 2017.

Revenue

Total Lawyers Insurance Fund assessment revenues are budgeted at \$14.6 million, which is based on 7,612 full-time and 1,193 part-time insured lawyers. Investment income is \$6.5 million, based on an estimated investment return of 5.2% (Appendix D).

Expenses

Operating expenses, excluding the provision for claim payments, are \$7.3 million, an increase of \$414,000 (6.0%) over the 2016 budget (Appendix D). The increase is due to market-based salary adjustments, increased fees for investment management, consulting and actuarial services, and an increased contribution to the program and administrative costs of the general fund.

Fee Recommendation

Taking all factors into account, the annual insurance fee will be \$1,750 for 2017.

APPENDIX A

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2017
GENERAL FUND SUMMARY

	2017	2016	2015	2017B vs		2017B vs					
	Budget	Budget	Actual	2016B	%	2015A	%				
GENERAL FUND REVENUES											
Membership fees	18,984,517	17,628,363	16,807,901								
PLTC and enrolment fees	1,380,000	1,380,000	1,288,265								
Electronic filing revenue	700,000	665,000	857,162								
Interest income	350,000	350,000	377,798								
Other revenue	1,175,780	1,184,495	1,265,727								
Building revenue and recoveries	1,167,652	1,168,178	1,126,499								
TOTAL GENERAL FUND REVENUES	23,757,949	22,376,036	21,723,352	1,381,913	6.2%	2,034,597	9.4%				
GENERAL FUND EXPENSES											
Benchers Governance	731,204	766,655	729,918					2017	2016		
Corporate Services	3,222,908	3,058,932	2,957,313					Budget	Budget	FTE	
Education & Practice	3,888,751	3,681,517	3,611,485					FTEs	FTEs	Change	
Executive Services	2,168,375	2,161,209	2,129,847								
Policy and Legal Services	2,607,334	2,443,458	2,446,924								
Regulation	9,255,969	8,377,872	7,480,574								
Building costs	1,883,408	1,886,393	1,728,886								
TOTAL GENERAL FUND EXPENSES	23,757,949	22,376,036	21,084,947	1,381,913	6.2%	2,673,002	12.7%	162.52	154.12	8.40	
GENERAL FUND NET CONTRIBUTION	-	-	638,405	-		(638,405)		162.52	154.12	8.40	
Trust Assurance Program											
Trust Administration Fee Revenue	3,500,250	3,497,430	4,048,565								
Trust Administration Department	2,591,935	2,571,963	2,436,345								
Net Trust Assurance Program	908,315	925,467	1,612,220	(17,151)		(703,905)		17.00	17.00	-	
TOTAL NET GENERAL FUND & TAP CONTRIBUTION	908,315	925,467	2,250,625	(17,151)		(1,342,310)		179.52	171.12	8.40	
								LIF FTE's	22.60	22.60	-
								TOTAL Law Society FTE's	202.12	193.72	8.40

APPENDIX B

THE LAW SOCIETY OF BRITISH COLUMBIA
Operating Budget (excluding capital/depreciation)
For the Year ended December 31, 2017
GENERAL FUND SUMMARY OF REVENUE AND EXPENSES

	2017 <i>Budget</i>	2016 <i>Budget</i>	2015 <i>Actual</i>	2017 v 2016 <i>Budget Var</i>	2017 v 2015 <i>Actual Var</i>
GENERAL FUND REVENUES					
<i>Fee and Assessment Revenues</i>					
Membership Fees	\$18,984,517	\$17,628,363	\$16,807,901	\$1,356,154	\$2,176,615
PLTC Fees	1,380,000	1,380,000	1,288,265	-	91,735
Other Credentials Fees	388,875	355,875	389,040	33,000	(165)
GLA, LLP, FLC and Law Corporation Fees	95,625	152,750	95,025	(57,125)	600
Authentications and Certificates of Standing	77,000	80,500	75,210	(3,500)	1,790
Electronic Filing Revenue	700,000	665,000	857,162	35,000	(157,162)
Interest Income	350,000	350,000	377,798	-	(27,798)
Other Income	6,500	9,000	7,072	(2,500)	(572)
Law Foundation Grant Revenue	180,970	180,970	140,970	-	40,000
<i>Fines, Penalties and Recoveries</i>					
Trust Reporting Penalties	36,000	34,000	35,985	2,000	15
Professional Development Reporting Penalties	80,000	85,000	90,285	(5,000)	(10,285)
Discipline and Citation Fines and Recoveries	173,000	135,000	192,571	38,000	(19,571)
Program Cost Recoveries	80,000	80,000	103,688	-	(23,688)
Other Cost Recoveries	57,810	71,400	135,880	(13,590)	(78,070)
<i>Building Revenue and Recoveries</i>					
LIF and Trust Administration Program	415,079	415,079	405,602	-	9,477
Outside Tenants including Recoveries	686,113	686,639	650,404	(525)	35,709
Other	66,460	66,460	70,492	-	(4,032)
TOTAL GENERAL FUND REVENUES	\$23,757,949	\$22,376,036	\$21,723,352	\$1,381,913	\$2,034,597
PROGRAM AREA EXPENSES					
<i>Benchers and Governance Committees</i>					
Benchers Meetings	211,560	223,660	209,487	(12,100)	2,073
Office of the President	200,000	209,200	237,071	(9,200)	(37,071)
Benchers Retreat	88,000	85,250	88,061	2,750	(61)
Life Benchers Dinner	23,050	24,910	19,621	(1,860)	3,429
Certificate Luncheon	5,235	3,050	5,605	2,185	(370)
LS Award/Bench and Bar Dinner	1,880	2,395	593	(515)	1,287
Federation of Law Societies Meetings	122,618	117,621	110,385	4,997	35,609
General Meetings	67,850	111,900	87,009	(44,050)	52,824
QC Reception	8,270	8,320	5,450	(50)	4,224
Welcome/Farewell Dinner	18,250	18,900	15,026	(650)	11,217
Volunteer Gifts	9,300	12,030	4,046	(2,730)	(15,759)
Gold Medal Award	7,075	4,375	7,033	2,700	1,639
Executive Committee	17,920	17,992	25,059	(72)	4,593
Finance and Audit Committee	10,200	10,150	5,436	50	3,511
Equity and Diversity Advisory Committee	5,000	5,000	13,327	-	(3,716)
Access to Legal Services Advisory Committee	5,000	5,000	6,689	-	1,651
Rule of Law & Lawyer Independence Advisory Committee	5,000	5,000	8,716	-	3,294
Acts and Rules Subcommittee	3,600	5,100	3,349	(1,500)	3,600
Family Law Task Force	-	-	1,706	-	-
Governance Review Task Force	-	-	-	-	(2,542)
Legal Service Providers Task Force	-	-	-	-	(1,943)
Governance Review Committee	5,000	5,000	2,542	-	1,343
REAL - Law Foundation	-	-	45,000	-	(101)
Legal Services Regulatory Framework Task Force	-	1,000	1,505	(1,000)	(128)
Tribunal Program Review Task Force	-	-	2,556	-	-
Law Firm Regulation Task Force	2,500	2,500	1,943	-	2,500
Qualifications Working Group	-	-	3,657	-	-
Governance Working Group	-	-	101	-	(911,101)
Regulation and Insurance Working Group	-	-	128	-	181,183
Legal Aid Task Force	2,500	-	-	2,500	(727,418)
Truth and Reconciliation Steering Committee	10,000	-	-	10,000	(901,101)
Budget Contingency	75,000	75,000	-	-	256,183
Total Benchers and Governance Committees	904,808	953,353	911,101	(48,545)	(2,031,152)
Interfund Cost Recovery	(173,604)	(186,698)	(181,183)	13,094	12,102
Total Bencher Governance	\$731,204	\$766,655	\$729,918	(\$35,451)	(\$2,019,050)

APPENDIX B-2

Corporate Services					
General Office and Administration	1,573,959	1,547,588	1,384,227	26,370	189,731
Records Management	301,761	313,535	277,821	(11,774)	23,940
Finance Department	1,085,621	1,052,586	1,033,784	33,035	51,836
Human Resources	976,674	863,085	880,718	113,589	95,956
Staff Vacancies	(102,586)	(104,891)	-	2,305	(102,586)
Interfund Cost Recovery	(612,521)	(612,971)	(619,238)	450	6,717
Total Corporate Services	\$3,222,908	\$3,058,932	\$2,957,313	\$163,976	\$265,594
Education and Practice					
Credentials	549,956	433,554	517,464	116,402	32,492
Credentials - External Counsel Files	258,400	301,400	259,009	(43,000)	(609)
Member Services	783,358	758,255	736,228	25,103	47,130
Professional/Legal Training Course and Education	1,934,169	1,815,009	1,637,013	119,160	297,155
Practice Standards	630,767	628,955	586,450	1,812	44,318
Practice Advice Department	671,699	656,332	700,851	15,367	(29,152)
Assistance Program	236,000	236,000	226,668	-	9,332
Staff Vacancies	(144,111)	(134,620)	-	(9,491)	(144,111)
Interfund Cost Recovery	(123,788)	(120,536)	(127,159)	(3,252)	3,371
Interfund Program Recovery	(907,699)	(892,832)	(925,039)	(14,867)	17,340
Education and Practice	\$3,888,751	\$3,681,517	\$3,611,485	\$207,234	\$277,266
Executive Services					
Communications	749,398	887,419	839,712	(138,021)	(90,314)
Executive Support Department	388,779	315,043	356,172	73,736	32,607
MIS Management	1,509,606	1,419,439	1,331,343	90,167	178,263
Staff Vacancies	(85,936)	(87,035)	-	1,099	(85,936)
Interfund Cost Recovery	(393,472)	(373,657)	(397,380)	(19,815)	3,908
Executive Services	\$2,168,375	\$2,161,209	\$2,129,847	\$7,166	\$38,528
Policy and Legal Services					
Ethics	8,000	7,500	8,457	500	(457)
Policy and Tribunal	1,929,512	1,937,402	1,802,105	(7,890)	127,407
External Litigation and Interventions	639,500	475,000	585,602	164,500	53,898
Unauthorized Practice	367,442	357,877	299,667	9,565	67,775
Staff Vacancies	(76,039)	(78,324)	-	2,285	(76,039)
Interfund Cost Recovery	(261,081)	(255,997)	(248,907)	(5,084)	(12,174)
Policy and Legal Services	\$2,607,334	\$2,443,458	\$2,446,924	\$163,876	\$160,410
Regulation					
Professional Conduct - Intake and Investigations	5,112,894	4,219,678	3,895,101	893,216	1,217,793
Professional Conduct - External Files	93,300	452,300	337,663	(359,000)	(244,363)
Discipline Department	1,445,223	1,136,849	1,046,995	308,374	398,228
Discipline External Files	318,000	445,500	310,360	(127,500)	7,640
Forensic Accounting	1,047,569	1,005,294	501,956	42,275	545,613
Custodianship Department	1,530,311	1,413,383	1,388,499	116,928	141,812
Staff Vacancies	(291,328)	(295,131)	-	3,803	(291,328)
Regulation	\$9,255,969	\$8,377,872	\$7,480,574	\$878,097	\$1,775,395
Building Costs					
Property Taxes	570,030	582,091	480,187	(12,061)	89,843
Financing Costs	52,500	75,732	64,900	(23,232)	(12,400)
Building Operating Costs	1,260,879	1,228,570	1,183,799	32,309	111,393
Building Costs	\$1,883,408	\$1,886,393	\$1,728,886	(\$2,985)	\$188,835
TOTAL PROGRAM EXPENSES	\$23,757,949	\$22,376,036	\$21,084,947	\$1,381,913	\$686,977
GENERAL FUND CONTRIBUTION before TAP	\$0	\$0	\$638,405	\$0	\$1,347,619
Trust Administration Program					
Trust Administration Fee Revenue	3,500,250	3,497,430	4,048,565	2,820	160
Total Trust Assurance Program Expenses	2,591,935	2,571,963	2,436,345	19,971	168,249
Net Trust Assurance Program	\$908,315	\$925,467	\$1,612,220	(\$17,151)	(\$703,905)
TOTAL GENERAL FUND CONTRIBUTION	\$908,315	\$925,467	\$2,250,625	(\$17,151)	(\$1,342,311)

APPENDIX C

THE LAW SOCIETY OF BRITISH COLUMBIA
For the Year ended December 31, 2017
BUDGETED CAPITAL EXPENDITURES

Computers, printers, laptops, LCDs & server storage	192,000
Software - SQL upgrade, Confluence	72,000
Portal/eBilling	115,000
Computer HW & SW	379,000
Furniture/workstation replacement	73,000
MFP machines	85,000
New workstations	17,000
AV equipment	20,000
Equipment, F&F replacement	195,000
LSBC workspace improvements	236,000
LSBC operations	236,000
Terrace/lobby/post-tension/sub-metering/HVAC	632,000
Base Building Maintenance Projects	632,000
TOTAL 2017 BUDGETED CAPITAL EXPENDITURES	1,442,000

APPENDIX D

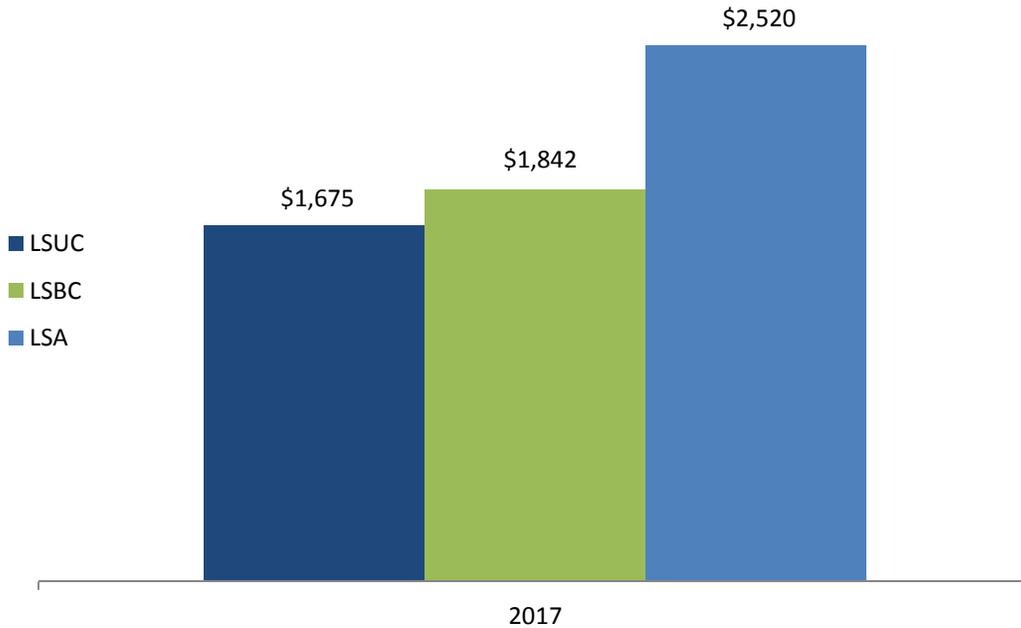
THE LAW SOCIETY OF BRITISH COLUMBIA
Laywers Insurance Fund
For the year ended December 31, 2017
CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

	2017 Budget	2016 Budget	Variance	%	2017 Budget FTEs	2016 Budget FTEs	FTE Change
Revenue							
Annual Assessment	14,613,780	14,360,600					
Investment Income	6,520,648	6,640,268					
Other Income	60,000	60,000					
Total Revenue	21,194,428	21,060,868	133,560	0.6%			
Insurance Expense							
Actuaries, external audit, and investment management fees	794,425	622,970					
Allocated office rent	291,272	290,981					
Contribution to program and administrative costs of General Fund	1,340,913	1,249,859					
Legal	105,000	115,000					
Insurance	460,675	458,928					
Office	322,266	291,635					
Premium taxes	8,520	8,856					
Actuarial provision for claim payments	15,476,000	14,702,000					
Salaries, wages and benefits	3,098,898	2,984,974					
	21,897,969	20,725,203	1,172,766	5.7%			
Loss Prevention Expense							
Contribution to co-sponsored program costs of General Fund	907,699	892,900					
Total Expense	22,805,668	21,618,103	1,187,565	5.5%			
Net Contribution	(1,611,240)	(557,235)	(1,054,005)		22.6	22.6	-

APPENDIX E

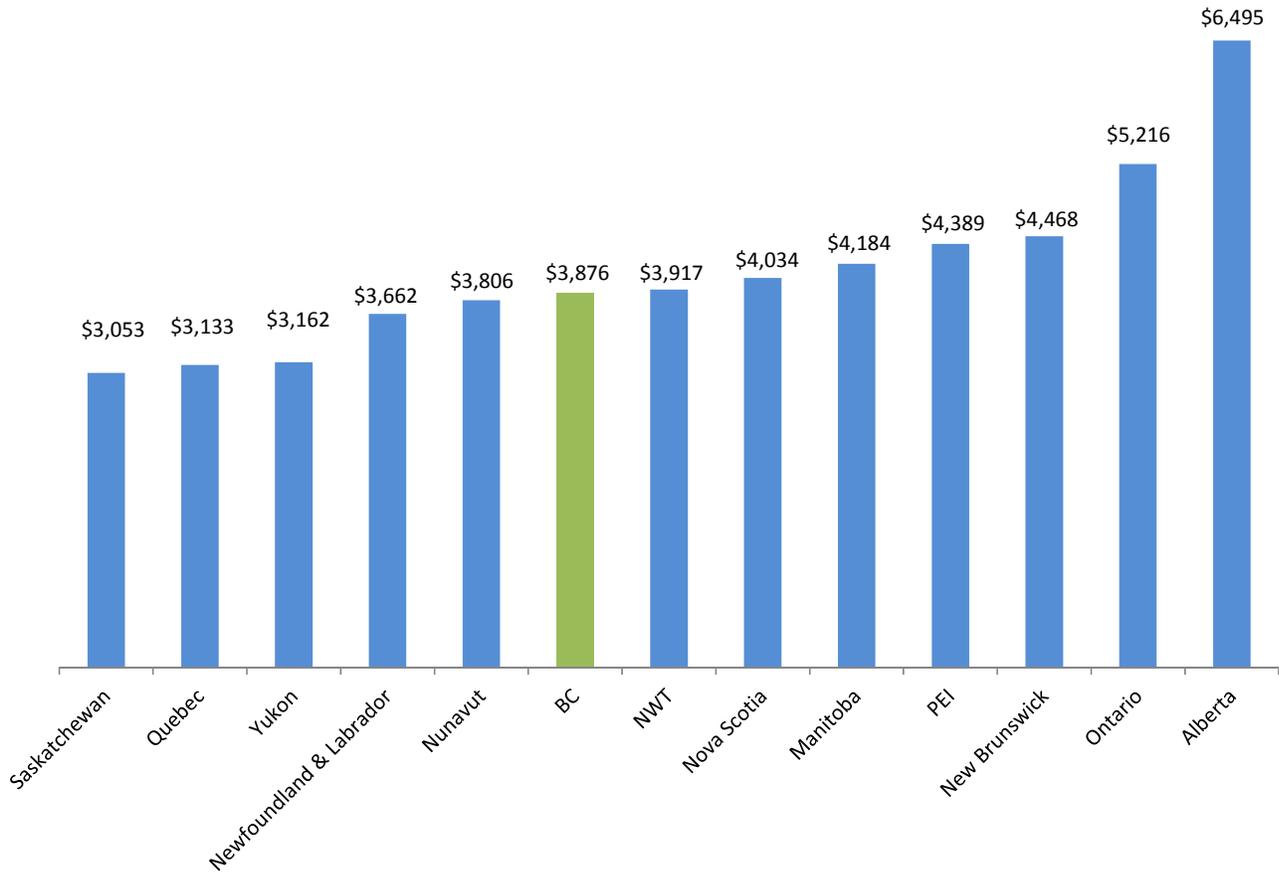
Other Law Societies' Practice Fees

The Law Society of B.C.'s 2017 practice fee, including the Federation of Law Societies contribution, the CanLII contribution, and the Pro Bono contribution; and excluding CLBC, REAL, the Lawyers Assistance Program (LAP) and the Advocate is \$1,841.82. For comparative purposes, The Law Society of Upper Canada's ("LSUC") 2017 projected practice fee is \$1,675, and the Law Society of Alberta's ("LSA") 2016 practice fee has been included at \$2,520, as 2017 has not been set.



APPENDIX F

**THE LAW SOCIETY OF BRITISH COLUMBIA
For the Year ended December 31, 2017
MANDATORY FEE COMPARISON
(Full Time Practicing Insured Lawyers)**



- 2017 LSBC practice fee compared to 2017 projections or 2016 practice fee of other Law Societies, increased by 2%



*Lawyers
Insurance
Fund*

Memo

To: Benchers
From: Finance and Audit Committee
Date: September 30, 2016
Purpose: Lawyers Insurance Fund Proposal to Expand Part C Coverage under the Policy

At its meeting on September 8, 2016, the Finance and Audit Committee approved a unanimous recommendation from its subcommittee, the Insurance Subcommittee, to support the Lawyers Insurance Fund's recommendation to expand Part C of the Professional Liability Insurance Policy.

The Lawyers Insurance Fund's policy paper is attached. We recommend that the Benchers proceed with Option 3 and resolve to:

“Expand Part C coverage for the ‘bad cheque scam’ to include other social engineering frauds that result in shortages in lawyers’ trust accounts because of a lawyer’s mistaken belief that funds held in trust are properly payable to a fraudster.”

Attachment



*Lawyers
Insurance
Fund*

Insurance Coverage for Trust Shortfalls Arising from Social Engineering Frauds

September 30, 2016

Prepared for: Benchers

Prepared by: Su Forbes, QC, Director, Lawyers Insurance Fund

Purpose: For Decision

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Introduction

Executive Limitation D 1 (b) requires Bencher approval of any material increase in risk to the liability insurance program. Benchers are asked to consider expanding Part C¹ of the Professional Liability Insurance Policy's coverage for trust shortages arising out of 'social engineering' frauds. The expansion would result in an increase in risk to the program.

In a 'social engineering' fraud, the lawyer is tricked into willingly paying funds out of trust by the intentional misrepresentation of some material fact. Part C of the Policy currently provides some coverage where the deception arises from the 'bad cheque' scam. In these scams, a fraudster convinces a lawyer to deposit what appears to be a certified cheque, bank draft, money order or similar instrument into trust and then deliver a trust cheque for some or all of the funds to the fraudster. After the trust cheque is cashed, the lawyer discovers that the authentic looking instrument is, in fact, counterfeit or forged. This results in a trust shortage and may also create an overdraft.

At the time of Part C's introduction, the bad cheque scam was the only type of social engineering fraud targeting lawyers of which we were aware. This is no longer the case. Fraudsters have created new variations on the social engineering theme, all of which result in trust shortages. For consistency in coverage, we recommend that Part C respond to trust shortages arising from these other variations as well as the bad cheque scam. Our considerations regarding the merits and consequences of broadening the scope of Part C to bring them within coverage are set out below.

Background

Details of the scam

The social engineering scams this paper addresses often involve tricking the lawyer into believing that a fraudster is an existing client or someone genuinely authorized to give instructions on the client's behalf. There are a number of variations on this theme. In one variation, a fraudster might obtain a client's email address by hacking into the client's computer system, then send a 'spoof' email that appears to come from the client – the client's true email address is used but with just one small change, such as an extra letter, so that any replies go to the fraudster. The fraudster then directs the lawyer to send the client's funds to the fraudster's account. In another variation, email instructions to pay funds to a certain person appear to come from a senior partner at the firm. The partner's real email address is used, but the message is crafted to discourage a reply. In yet

¹ Part C was introduced in 2012 as a result of a Bencher decision to provide some limited coverage for trust shortages resulting from the 'bad cheque' scam.

another, someone pretends to be a bank representative investigating a suspicious transaction, and persuades the law firm to send cash payments to an account as a test. However the fraud is perpetrated, it succeeds because the lawyer is misled into believing that the payment is in accordance with legitimate directions.

Coverage under the Policy

Lawyers caught by these frauds make payments out of trust on the mistaken belief that the payout is proper. The payout depletes the trust monies belonging to the firm's clients. When discovered, lawyers are obligated under Rule 3-74 (1) to immediately replenish the funds.

Historically, the Policy has not covered these losses. Part A coverage (e & o) specifically excludes trust shortages arising from fraudulent acts. Part A also requires negligence, or falling below the standard of care, and these scams may or may not involve the negligent provision of legal services. Rather, the lawyer is the victim of a successful fraud and is liable in debt.

Part C coverage, on the other hand, does not require negligence, but is currently limited to the bad cheque scam. Part C has a \$500,000 sub-limit and annual aggregate (an annual cap on payments) per lawyer and firm, subject to a 35% deductible, and a profession-wide annual aggregate of \$2 million. Coverage is conditional upon compliance with the client ID and verification rules.

Experience

We are aware that a spoof e-mail fraud successfully targeted one BC law firm last year. The firm redirected the sale proceeds that it was holding in trust for a real estate client on revised instructions from someone it believed was the client. The instructions were received in an email, purportedly from the client, directing the funds to be wired to a different account. The email address used by the fraudster was identical to that used by the client, except for one letter.

The Law Society was also targeted by a fraudster posing as our CEO in an email sent to our Controller, asking him to 'please cut me a cheque' for \$20,000. That spoof email also had an extra letter in the address used. We understand that law firms in Canada and the US have been targeted by fraudsters pretending to be senior partners and sending wire transfer instructions by email.

Although none of the other Canadian programs report receiving claims involving these other social engineering frauds, we understand that the notaries dealt with a spoof email scam that resulted in a \$27,000 trust shortfall.

Policy Objectives to be Served

The public interest is already safeguarded through Rule 3-74 (1) which requires lawyers to replenish trust shortages. However, the liability insurance program is also intended to provide reasonable protection to lawyers (and indirectly, to their clients) at a reasonable price, while maintaining the program's long-term financial stability. Broadening cover for other social engineering scams will protect some lawyers, but at the expense of others who may consider the protection unnecessary.

Key Comparisons

Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia provided information about their coverage for trust shortfalls resulting from these scams. Trust shortfalls are excluded from cover in Alberta but are covered in Manitoba and Ontario. Saskatchewan is not certain how it would respond, but considers coverage likely. Nova Scotia would not cover a lawyer who is able to replenish the funds. The BC Notaries would respond under an endorsement to its policy that provides limits of \$200,000 per claim and in the annual aggregate per notary, subject to a \$10,000 deductible.

Options

Although we recommend expanding coverage, we have identified the following three options in relation to trust shortfalls resulting from these other social engineering scams:

1. Maintain the status quo – continue to provide Part C coverage for the bad cheque scam only and exclude all other social engineering frauds;
2. Eliminate Part C coverage – exclude coverage for the bad cheque scam and continue to exclude all trust shortages caused by other social engineering frauds;
3. Expand Part C coverage – expand coverage for the bad cheque scam to include other social engineering frauds.

Option 1 would not alter the risk to the insurance program. Part C would continue to respond to trust shortages caused by lawyers paying out on the mistaken belief that real funds have been deposited into trust, provided the payment is based on a certified cheque or similar instrument that turns out to be fake.

Option 2 would reduce risk by eliminating entirely the coverage provided under Part C.

Option 3 would increase risk by expanding Part C's coverage for lawyers paying out on the mistaken belief that real funds have been deposited into trust. If expanded, lawyers willingly paying out on the mistaken belief – caused by a fraud – that funds held in trust are properly payable to a fraudster would now fall within Part C.

We note that trust shortages can result from other fraudulent acts. For example, a lawyer's bank might be tricked into transferring funds by a fraudster purporting to give instructions on the lawyer's behalf, or a lawyer's employee might steal trust funds. There is no coverage under the Policy for these scenarios and none is proposed. Proper trust account management, internal controls and appropriate communication with the lawyer's financial institution mitigate against these risks. Similarly, if a lawyer pays out on the strength of some other deposit, such as a regular cheque that turns out to be fake, Part C affords no coverage as this risk is entirely preventable and lawyers are or should be aware that this is prohibited.

Analysis of Implications

Public interest

It is undoubtedly in the public interest that trust shortfalls caused by these scams are replenished. We understand from the Law Society's Trust Assurance department that reports were received some time ago of trust shortages caused by the bad cheque scam, but all were made good by the lawyers involved. This is consistent with our expectation that lawyers will replenish client trust funds, given their Rule 3-74(1) obligations.

Member relations

The impact of your decision will vary amongst lawyers.

There may be some concern if Part C is eliminated. However, as we have not paid any Part C claims since its introduction in 2012, that concern may not be significant. Further, policies have now been developed by commercial insurers to protect lawyers from all of these risks. Social engineering fraud insurance may be purchased as an endorsement to a crime policy². A sole practitioner would pay approximately \$2,500 for a crime policy with a \$1 million limit, and an additional \$300 - \$400 for a \$100,000 social engineering sub-limit or \$500 - \$750 for a \$250,000 sub-limit (no annual aggregate).

² Crime, or fidelity, insurance provides coverage for employee fraud or theft as well as for other risks such as third party theft.

If Part C is kept or expanded, some members may welcome the additional coverage; however some may question why the malpractice insurer provides any coverage for these trust shortages. We publish fraud alerts to notify the profession of new frauds that develop and provide risk management advice to help lawyers recognize and avoid the scams. As lawyers can significantly reduce the risk of being caught through awareness, care, and quality control, some lawyers may resent paying for claims that could have been avoided with appropriate due diligence.

If the status quo is maintained, there may be some concern that the coverage is inconsistent. A lawyer caught by the bad cheque scam enjoys some coverage while a lawyer caught by a spoof email has none. This concern would be addressed either by removing Part C entirely (Option 2) or expanding it to include other social engineering frauds (Option 3). On the other hand, we are very public about the Policy's existing coverage, including detailed website information, and lawyers appear to accept the inconsistency.

Financial implications

There will be no additional financial impact if you decide to maintain the status quo, and a potential savings if Part C is eliminated. Although we have not yet paid any Part C claims, the risk of claims remains. For example, we helped one lawyer avoid getting caught because he contacted us on an unrelated aspect of the pending transaction, and we identified the risk and alerted him to it. In another, the lawyer was caught but the fraudster used a doctored *regular* cheque and as a result, the claim did not trigger coverage. In two others, the lawyers involved did not report potential claims under Part C. We are also expecting a report in relation to a recent incident which, if covered, will result in a Part C payment of \$325,000.

There will be a financial impact if you decide to expand coverage. We anticipate that both claims and operational costs will increase as explained below.

Claims costs

The magnitude of increases in the cost of claims will depend on the number and type of successful scams, and the amounts involved. The bad cheque scam typically involves amounts of \$200,000 to \$350,000. However, success requires a level of restraint on the part of the fraudster in relation to the amounts involved – a factor that may not exist in other social engineering scams. Moreover, we know that new scams will continue to develop. Although the risk of fraud has always existed, it is clear that technology has made the frauds easier to perpetrate.

We know that the US jurisdiction that gave the first notice of the spoof email scam in 2015 advised receiving multiple reports of fraudulent activity relating to wired funds in real estate transactions with losses in the order of \$200,000. We also know that a UK insurer reported losses to UK law firms ranging from \$120,000 to over \$3.5 million, and a Canadian commercial insurer cited examples of non-law firm losses that ranged from \$100,000 to \$1 million. The scam referenced

earlier created a \$1.2 million shortfall in a lawyer's trust account, representing funds held in trust for a single client.

Two successful scams annually would be a reasonable estimate of the probable maximum risk. If covered by Part C, two successful scams each year such as that reported in 2015 would result in total payments of \$650,000 by LIF, costing each insured lawyer \$81 annually. The maximum exposure annually is the profession-wide aggregate of \$2 million, or \$250 for each insured.

Our broker advises that commercial insurers are generally managing exposure by providing a \$250,000 sub-limit and because these frauds are trending upwards, he recommends that we do the same. While Part C would provide a 'de facto' sub-limit of \$325,000 (\$500,000 with a 35% deductible), our broker is comfortable with this higher limit given the \$2 million profession-wide annual aggregate.

As with the bad cheque scam, the financial consequences to the program would be influenced by the level of due diligence exercised by lawyers. And as with the bad cheque scam, the higher deductible, sub-limit, and profession-wide aggregate would encourage lawyers to stay vigilant, keep the number of payments in check, and share the risk of loss more evenly between the firm causing the loss and the rest of the profession while limiting the risk to the fund overall. We would caution, however, that insurance coverage might lead to increased scam activity, if fraudsters conclude that lawyers may be less diligent with the back-stop of insurance.

Operational costs

Staff workload would increase as we expect to more directly manage the risk. As with the bad cheque scam, direct management would include advising on fraud prevention, responding to inquiries from lawyers about the coverage, advising lawyers in relation to a suspected fraud, and handling reports of potential scams. These additional responsibilities will require more time, although we are not seeking additional staff resources at this time.

In summary, the options for consideration are:

1. Maintain the status quo – continue to provide Part C coverage for the bad cheque scam only and exclude all other social engineering frauds;
2. Eliminate Part C coverage – exclude coverage for the bad cheque scam and continue to exclude all trust shortages caused by other social engineering frauds;
3. Expand Part C coverage – expand Part C coverage for the bad cheque scam to include other social engineering frauds that result in shortages in lawyers' trust accounts

because of a lawyer's mistaken belief that funds held in trust are properly payable to a fraudster.

We recommend option 3 to make the overall coverage provided by the Policy more consistent and provide some protection for lawyers at low cost, without creating undue risk to the Fund.

Implementation and Evaluation

If you decide to expand or eliminate Part C coverage, we will aim to revise the Policy in time for the 2017 policy year. If eliminated, lawyers will be advised so that firms can make arrangements to purchase commercial insurance if they wish to insure the risk. If the coverage is expanded, we will advise members through the *Insurance issues: Program Report*, and continue to urge them to obtain coverage on the market for risks that the Policy does not cover. If the expansion results in an unexpectedly high claims experience or is otherwise of concern, we will report back to the Insurance Subcommittee.



Memo

To: Benchers
From: Family Law Task Force members
Date: September 14, 2016
Subject: Family Law Legacy Award

Topic for Consideration

The members of the former Family Law Task Force seek support of the Benchers to establish a legacy award in the area of family law. The scope of the award is set out below.

Background

The Family Law Task Force proposed, developed and advanced a number of Law Society initiatives and provided support to several other Law Society task forces between the years 2007 to 2015. The Task Force was first approved by the Benchers to address some specific then-outstanding policy needs in 2007. It was recognized that family law has been an area of unmet and underserved legal need. In adopting the final report of the Task Force, the Benchers recognized the policy importance of family law by directing the Access to Legal Services Committee to consider how to improve family law matters as part of its yearly deliberations.

The innovative work of the Task Force included the following:

- 2007-2008: The Task Force reviewed a government working paper that requested the Law Society consider whether to establish a code of conduct for family lawyers. The Task Force recommended the creation of best practice guidelines.
- 2008-2011: The Task Force developed a first draft of best practice guidelines, then consulted with the CBA BC Branch who took over the final work on the project. In June 2011 the CBA BC Branch adopted the best practice guidelines

for lawyers practising family law, and in July 2011 the Benchers endorsed the CBA guidelines.

- 2008-2008: The Benchers asked the Task Force to review the Family Law Draft Rules and recommend a position for the Law Society to take. The Task Force completed the work within the year.
- 2009-2012: The Law Society was asked to make recommendations as to the training lawyers should undertake when acting as family law mediators, arbitrators and parenting coordinators. The Task Force undertook this work in response to a government initiative to implement new family law legislation.
- 2012: The Task Force was asked to assist the Delivery of Legal Services Task Force by developing a family law pilot project for designated paralegals. Throughout 2012 the Task Force liaised with the courts to develop the pilot project in select Supreme Court and Provincial Court registries.
- 2013-2015: The Task Force was extended to monitor the implementation of the new training requirements for lawyers acting as family law mediators, arbitrators and parenting coordinators in order to see if any policy issues arose that needed addressing. During this time the Task Force also explored the scope of the appropriate role of designated paralegals at family law mediations and arbitrations, and made a referral to the Ethics Committee that was ultimately considered by the Benchers in December 2015.

To support the Law Society in advancing the importance of family law from an access to justice perspective, the members of the Task Force want to help establish a legacy project of the Task Force to advance the Law Society's public interest mandate in the area of family law.

The Concept

The members of the Family Law Task Force are prepared to provide **\$1,200** seed capital for the creation and maintenance of the award. Beyond this, the award would have to form part of the Law Society's budget process.

Title: T.B.D.

Purpose of Award: The Task Force members draw the Benchers attention to the fact that family law lawyers are rarely publicly recognized for new initiatives that advance principled, non-adversarial methods of resolution of family law disputes. A Law Society Award in Family Law would bring much-needed publicity to the outstanding work being done by many family law lawyers in British Columbia. Such recognition will both publicize this

good work and encourage others to creatively innovate in this under-served area of legal practice.

The Award will recognize and celebrate Law Society members who have contributed to the advancement of justice for families in any or all of the following ways:

- 1) by helping people solve their family disputes in a manner consistent with the CBA BC's "Best Practice Guidelines for Family Lawyers" (**Attached**)
- 2) by innovating in the area of family law, with particular consideration to finding creative and non-adversarial ways to help families resolve disputes,
- 3) by developing innovative models and practices for helping people achieve efficient, cost effective and lasting outcomes to their family law disputes,
- 4) by demonstrating a commitment to pro bono and/or legal aid services, and
- 5) by improving access to justice in family matters for people and groups that face systemic barriers to enjoying equal justice in society.

Eligibility: Practising lawyers who are in good standing with the Law Society are eligible for the Award.

Criteria for nomination: Lawyers who act in a manner that meets and advances the purpose of the award, outlined in the five ways above.

Nomination Process: To be determined by the President / Benchers. One suggestion might be for the selection committee to be composed of two practising or non-practising members of the BC Law Society in good standing may nominate a person for the Award. [A standard form would have to be created, or an online process. Depending on the approach, there would be some administrative / operational costs.]

Selection Process: The recipient of the Award is determined by a panel appointed by the President of the Law Society.

Award: The Award is a plaque [the design and wording would have to be determined]

Presentation: to be awarded on a biennial basis at a Law Society event, such as the Bench and Bar dinner.

Cost Estimates

The Task Force members thought the Goyer Award was a good baseline for establishing a legacy award. It is our understanding the Goyer Award costs about \$500 annually plus \$50

for engraving, subject to price changes. Based on that assumption, the seed money from the Task Force would allow for approximately two awards before the Law Society would have to budget for it. There are operational considerations, likely impacting the Communications department for disseminating information about the Award and helping coordinate it. If the Award is bundled with an existing Law Society event, costs ought to be contained (e.g. using an event that is already advertised, has a photographer, etc.).

Conclusion

The Task Force members think it is important for the Law Society to show leadership in supporting access to justice, and in particular in the area of family law. The creation of a legacy award provides an opportunity to shine light on the good work of lawyers in this important field, and champion the important values the Award seeks to encourage. The Task Force members are at the Benchers' disposal to discuss the best way to move this initiative forward.

/DM

/Attachment

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

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

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

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

**TRUTH AND RECONCILIATION ADVISORY COMMITTEE
DRAFT TERMS OF REFERENCE**

I. BACKGROUND

On June 2, 2015, the Truth and Reconciliation Commission (TRC) released its Executive Summary Report (Report),¹ including 94 recommendations (Recommendations)² to redress the legacy of residential schools and to offer guidance for reconciliation.

At the October 30, 2015 Benchers meeting, the Benchers unanimously agreed that addressing the challenges arising from the TRC Recommendations is one of the most important and critical issues facing the country and the justice system today. Therefore, they decided to take immediate action to demonstrate their commitment to respond meaningfully to the Recommendations.

The Benchers acknowledged that Recommendations 27 and 28 speak specifically to the legal profession, but recognized that the role of lawyers in reconciliation goes beyond these two Recommendations. A number of the other Recommendations are also intended to alleviate legal issues currently impacting Indigenous communities and, although not directly aimed at lawyers, their implementation largely depends on the engagement of lawyers.

The Law Society's regulatory authority over lawyers in British Columbia provides a significant opportunity to facilitate the implementation of the TRC Recommendations that relate to the Law Society's mandate to uphold and protect the public interest in the administration of justice, by:

- (a) preserving and protecting the rights and freedoms of all persons;
- (b) ensuring the independence, integrity, honour and competence of lawyers;
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
- (d) regulating the practice of law; and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.³

The Law Society intends to support the realization of TRC's Recommendations that intersect with its mandate.

The TRC's Recommendations were the focus of the Benchers' Retreat and Conference on June 3, 2016. At the Benchers meeting on June 4, 2016, the Benchers supported the idea of a

¹ http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf.

² http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf.

³ Section 3 of the *Legal Profession Act*.

**TRUTH AND RECONCILIATION ADVISORY COMMITTEE
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permanent advisory committee. A resolution was passed to create the Truth and Reconciliation Commission Advisory Committee at the July 8, 2016 Benchers meeting.

II. PREAMBLE

The Law Society of British Columbia:

1. Acknowledges the Truth and Reconciliation Commission's finding that, for over a century, the central goal of Canada's Aboriginal policy can best be described as "cultural genocide";
2. Recognizes that lawyers have played, and continue to play an active role in past and present injustices that affect Indigenous people; and
3. Understands that the matters identified in the TRC's report and recommendations are some of the most critical issues facing the legal system today;

Therefore, the Law Society of British Columbia has constituted a Truth and Reconciliation Commission Advisory Committee to guide the Law Society's immediate and meaningful response to the TRC's calls to action.

III. MANDATE

The mandate of the Truth and Reconciliation Advisory Committee is to provide guidance and advice to the Law Society of British Columbia on legal issues affecting Indigenous people in the province, including those highlighted in the Truth and Reconciliation Commission's Report and Recommendations, such as: Indigenous laws, the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, Aboriginal rights and title (including treaty rights), issues concerning jurisdictional responsibility for Indigenous people, child welfare, overrepresentation of Indigenous people in custody and the need for enhanced restorative justice programs, and the disproportionate victimization of Indigenous women and girls.

IV. GOALS

The goals of the Truth and Reconciliation Advisory Committee are to support the Law Society in its efforts to:

1. Understand access to justice issues from the perspective of Indigenous people in British Columbia;
2. Address the unique needs of Indigenous people within the legal system in BC;
3. Improve cultural competence training for lawyers in British Columbia to:
 - a. Recognize and respond to diverse legal service needs; and

**TRUTH AND RECONCILIATION ADVISORY COMMITTEE
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- b. Understand the relevance and applicability of Indigenous laws within the Canadian legal system;
4. Address the unique needs of Indigenous people within the Law Society's regulatory processes; and
5. Support Indigenous lawyers to help ensure the legal profession reflects the public it serves.

V. RESPONSIBILITIES

The Committee will:

1. Monitor legal issues affecting Indigenous communities in British Columbia;
2. Recommend ways for the Law Society to develop and maintain positive relationships with Indigenous communities;
3. Ensure that Indigenous communities are effectively engaged in the efforts of the Committee to fulfill its mandate;
4. Promote collaboration and coordination across Law Society committees and departments on Indigenous policies, programs, and initiatives;
5. At the request of the Benchers or Executive Committee on matters regarding Indigenous issues pertaining to the legal system in British Columbia:
 - Develop recommendations, policy options, and initiatives;
 - Advise the Benchers on priority planning;
 - Analyze policy implications of Law Society initiatives;
 - Identify strategic collaborative opportunities; and
 - Attend to other matters referred to the Committee.

VI. PRINCIPLES

The guiding principles for the Committee are as follows:

1. Reconciliation requires a willingness to promote structural and systemic change in the relationship between Indigenous and non-Indigenous peoples;
2. Inclusive engagement with Indigenous communities and the legal profession is required for the Committee to fulfill its mandate;

**TRUTH AND RECONCILIATION ADVISORY COMMITTEE
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3. Relationships built upon respect are essential to the Committee's operation;
4. Flexibility is necessary for the Committee to address a broad range of issues, adapt to changing circumstances, and maintain relevance; and
5. Transparent communication is necessary to build and maintain trust in the Committee's endeavors.

VII. COMPOSITION

The Committee will be comprised of an equal number of Benchers and non-Benchers.

Selection of Committee members will be in accordance with the Law Society's appointments practices, and will reflect:

- a broad range of Indigenous representatives;
- different regions of the province, including urban and rural locations;
- a variety of practice areas; and
- gender balance.

Committee members who are well respected by Indigenous communities will be selected, with the understanding that Committee members will be trusted to identify and convey the perspectives and concerns of Indigenous communities to inform the work of the Committee.

The Indigenous representatives on the Committee will be survivors or intergenerational survivors of the residential school experience.

The Committee will have two co-chairs: the President of the Law Society of British Columbia and an Indigenous representative.

VIII. MEETING PRACTICES

The Committee shall operate in a manner consistent with the Law Society's governance policies.

The Committee shall meet as required.

At least half of the members of the Committee will constitute a quorum.

The Committee will strive to reach consensus in decision-making. If consensus cannot be attained, then decisions will be made by a majority vote.

**TRUTH AND RECONCILIATION ADVISORY COMMITTEE
DRAFT TERMS OF REFERENCE**

IX. REPORTING REQUIREMENTS

The Committee will provide written reports to the Benchers two times annually by providing one mid-year report and one year-end report each year.

The Committee may provide additional updates at regularly scheduled Bencher meetings.

X. REVIEW

These Terms of Reference are subject to review from time to time as deemed appropriate by the Benchers.

**TRUTH AND RECONCILIATION ADVISORY COMMITTEE
DRAFT TERMS OF REFERENCE**

Appendix A – Truth and Reconciliation Steering Committee

The Truth and Reconciliation Steering Committee was created to guide the Law Society of British Columbia in its initial response to the Truth and Reconciliation Commission's Report and Recommendations. The Steering Committee consists of Indigenous leaders who are well known and respected by both Indigenous and non-Indigenous legal communities.

The Steering Committee was integral to planning the 2016 Benchers Retreat and Conference which provided the Benchers with a broader awareness of the issues highlighted in the Truth and Reconciliation Commission's Report. At the July 8, 2016 Benchers meeting, a formal resolution to create the permanent Truth and Reconciliation Advisory Committee was passed.

The Truth and Reconciliation Advisory Committee may consult with the Steering Committee in furtherance of its mandate: to provide guidance and advice to the Law Society of British Columbia on legal issues affecting Indigenous people in the province, including those highlighted in the Truth and Reconciliation Commission's Report and Recommendations.

**TRUTH AND RECONCILIATION ADVISORY COMMITTEE
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Appendix B – TRC Implementation Action Items:

1. Identify the TRC Recommendations that are within the purview of the Law Society;
2. Understand the concerns of Indigenous communities with respect to the TRC Recommendations that are within the purview of the Law Society;
3. Prioritize short, medium, and long term objectives towards the implementation of relevant TRC Recommendations;
4. Specify tangible steps that the Law Society can take to implement relevant TRC Recommendations; and
5. Track progress and evaluate the Law Society's implementation of relevant TRC Recommendations using rational indicators of success.



*Lawyers
Insurance
Fund*

Memo

To: **Benchers**
From: **Su Forbes, QC**
Date: **September 30, 2016**
Subject: **Lawyers Insurance Fund Independent Claims Audit Report**

Last year US attorney Carter L. Hampton with the assistance of Canadian lawyer Lester Lee performed an independent, third party audit of Lawyers Insurance Fund claims processes and files. We have received the audit report and provided it to the Insurance Subcommittee and to the Finance and Audit Committee as required by the Executive Limitations.

The Insurance Subcommittee requested that we provide the report and Mr. Patterson's memo in response to the Benchers for your information. Both documents are attached.

Attachments

HAMPTON ASSOCIATES

ATTORNEYS ▪ COUNSELORS ▪ MEDIATORS

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June 6, 2016

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Re: Claims Audit and Review of Lawyers Insurance Fund Claims Handling

Dear Ms. Kresivo, Mr. Ferris and Mr. McGee:

I was pleased to be called into the service of the Lawyers Insurance Fund last year to conduct a claims practice review and claims file audit. This was my second opportunity to be a part of the in-depth operational review that is conducted at five year intervals. I was fortunate on this occasion to have the assistance of Mr. Lester Lee, a Canadian attorney with considerable experience managing lawyers professional liability (“LPL”) claims. Our credentials are attached to this report.

The mandate we received from Ms. Su Forbes, QC, Director of Insurance, was to determine if the claims handling goal of resolution in a cost-effective manner while properly balancing the interests of the insured lawyer, the claimant, and the insured members of the Law Society as a whole, is being met by the Lawyers Insurance Fund. We were to provide a written report of our observations and opinions. With that directive, we reviewed all policy forms, the claims manual, and all claims procedural forms from intake to closure as well as all internal processes of review, oversight, and authority documents. We were given access to paper files as well as to the database of electronic files, screens and communications. We reviewed 105 computer-generated, randomly selected “Part A – Negligence” files opened in the last five years with reserves, along with 3 “Part B – Trust Protection Coverage” files. Additionally, Ms. Forbes allowed us to review internal memos, communications, staff meeting and retreat minutes, and reports. Mr. Lee and I also had an opportunity to speak with many of the claims counsel to discuss issues that we identified in claim files. After we completed our review we also had a brief, impromptu wrap-up session with Ms. Forbes and the Claims Manager, Murray Patterson.

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Our primary focus was to opine on the overall quality of the claims handling. In this context we were to consider:

1. Initial activity
2. Handling of coverage issues
3. Investigation of liability and quantum
4. Reserving practices
5. File management
6. Service to insured lawyers
7. Use of outside counsel
8. Resolution strategies and decisions
9. Claims handling procedures and management oversight

Having the perspective of a previous review I can say that the professionalism, knowledge, skill, and overall excellent work of the Lawyers Insurance Fund has continued to be maintained at the highest level. What has increased is the use and understanding of electronic correspondence, internal communications, calendaring and record storage; all to the better.

I began the review searching for conduct reflecting a “resting on your laurels” attitude, and was pleasantly surprised that Ms. Forbes and her colleagues had not allowed such behavior. They exhibit an abiding sense of mission and purpose; the group as a whole earnestly desires to do their best and to continuously improve. We applaud them for their commitment and efforts. What follows are our more detailed observations and comments.

INITIAL ACTIVITY

Claim and potential claim reports are received by fax, letter and email. Excess coverage details are researched immediately by administrative staff and noted on the report which is provided to the Claims Manager in a yellow folder reserved for new reports. This ensures that they are not overlooked or “lost”. The Manager reviews each report and sets up the initial electronic file immediately so that there is a record of the report and key data is entered accurately. He then assigns the file to the appropriate claims counsel for handling, after briefly discussing any unusual coverage or defence issues. Assignment of new claims is done based on a number of factors, with expertise in the subject matter or type of claim chief among them. This ensures efficiency and enhances credibility with the insured attorney.

Claims counsel make contact with the insureds without delay, often by phone or email and always by letter acknowledging receipt of the claim and providing standard information and inviting questions. The tone of these “file opening letters” is informative and factual but not unfriendly. Establishing a positive rapport with the insured attorney is one of the hallmarks of this program and essential to gaining the cooperation that is needed to effectively and efficiently resolve claims.

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Finally, we would mention the entry of claims data which is usually done on file opening. Accurate and complete claims data is critical for effective underwriting and risk management, and the management team at LIF is dedicated to ensuring the data is captured and reliable. They track a wide variety of data, from statistics on area of practice and size of claim, to the root cause of the loss, coverage, and even the location and level of court where the action was started. We understand that administrative staff who attends to file closings will reject any file in which all pieces of data have not been entered.

FILE MANAGEMENT / CLAIMS HANDLING PROCEDURES AND OVERSIGHT

The claims manual and the associated templates and forms are well done and updated regularly, as well as being practical and followed by claims counsel in their day to day work. Claims intake was timely, documented appropriately and communications commenced promptly with the insured. File organization was good and the claims database was very informative and helpful to a reviewer, manager or another claims handler who may have to pick up the file in the absence of the first. Reviewers did note that all information concerning a file – documents, correspondence and emails – are not in one place. While this did not seem to impair the claims handling process, management may wish to consider consolidating information or moving to a paperless operation in future.

Day in and day out claims files were handled very well. Communications were exceedingly timely and well documented. Files were calendared correctly and several were investigated then documented with a “wait and see” approach.

Claims reporting oversight seems to work very well. The Claims Committee (consisting of the Claims Manager, Director, claims counsel, and in certain cases, the Deputy Director) is convened on an *ad hoc* basis to provide direction on the following:

- claims with significant exposure beyond the primary limits and likely to involve an excess carrier;
- multiple claims (multiple insured firms and claims counsel);
- trial approvals on claims exceeding \$500,000 (indemnity); or lower, in the discretion of the Claims Manager;
- appeal approvals;
- potential “bad faith” claims;
- unusual or difficult coverage issues; and
- any other unusually problematic claim scenario

This is an appropriate level of oversight, which allows for a reasonable level of independence for claims counsel while maintaining an eye on more significant risks.

The Peer File Review process is one of the quality control innovations of Ms. Forbes that stands LIF in very good stead. In this internal audit process, claims counsel and managers do an

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in-depth review of a set number of each others' files annually, for a total of at least 100 files for the year. The template is detailed and comprehensive, with the process requiring review and written comment on, for example: the timeliness and appropriateness of coverage investigations; whether repair or mitigation strategies have been considered; whether "repair" avenues were explored; the quality and frequency of directions to defence counsel; and the tone of communications with insureds. While challenging to do, we found that indeed the staff reviewers provided fair, balanced and diplomatic appraisals and critiques of the work of their peers. Done well as we observed it was, this can only strengthen the expertise and focus the objectives of the LIF team.

The large loss reports to excess insurers with management participation work extremely well, both as to process and as to content. The reviewed files documented the interactions between management (Ms. Forbes and Mr. Patterson) and claims counsel, and clearly demonstrated the team approach to resolution by way of the open and candid questions of management to claims counsel, and to each other, as well as support and guidance. The actual large loss reports themselves are of high quality, comprehensive and address all details that would be relevant to an excess insurer.

The large loss procedure for documenting analysis and review we believe would also work well in the processing of other smaller yet factually difficult or legally complex files.

HANDING OF COVERAGE ISSUES

The Claims Manual states that in matters of coverage, is it critical to act "with impartiality, fairness and consistency". Coverage must also be addressed and rights reserved immediately, if appropriate, to maintain the insurer's rights under the policy. From the file review, coverage was addressed immediately and was unanimously determined to be correct.

Issues ranged from an analysis of whether a policy breach (such as a failure to report) had occurred resulting in prejudice to the insurer, to whether an exclusion (such as the "dishonest acts" exclusion) was triggered by the claimant's allegations.

Claims staff did not appear to look for reasons to deny and in "grey" cases, coverage was usually determined in favor of the insured attorney. If a denial was in order, claims counsel discussed the issue with the Claims Manager and in complex cases, also with the Director of Insurance. If the decision was to recommend a denial, a memo setting out the recommendation and basis for it was sent to the Coverage Committee. The voting members of this committee are: an insurance attorney from a private firm who is experienced in coverage issues; an insurance broker experienced in LPL coverage; and the Director of Insurance. The insured was given the opportunity to make a written submission to the committee. This level of oversight in coverage denials is unusual and in our view helps to manage the process of denials very well.

We suggest more second-eyes review with the Claims Manager on smaller, less complex decisions even though the 100% accuracy rate might indicate otherwise.

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SERVICE TO INSURED LAWYERS

We mentioned earlier that establishing good rapport with the insured attorney is important for effective resolution of claims and LIF excels in this respect. In particular, we noted that claims counsel were in direct and personal contact with insureds which we viewed positively. Relationships with insureds were strong, and from the tone of correspondence, appeared to be based on credibility, trust, and high regard. Recriminations were absent. Claims handlers tended to listen to and engage with insureds, but also were candid and firm about the liability prospects and need to settle the claim when appropriate. We noted that claims counsel often found themselves in the role of advising and counselling insureds who were the subject of claims.

On those files where claims counsel also acted as in-house defense counsel, their communications with self-represented claimants and opposing counsel were professional and highly competent.

Of significance is the evaluation of claims counsel by insureds after the file has concluded. Ms Forbes provided us with a full year's Service Evaluation Form results, both "kudos" and "grumbles". I can't say enough about how positively claims counsel were viewed by insureds. Many of the comments went on for many sentences, describing how grateful the insureds were for the expertise, diplomacy, intelligence, fairness and support demonstrated by claims counsel. There were very, very few complaints. We cannot adequately express how impressed we were with this final follow-up to a claim. This should be the service industry standard that all should follow. Top marks go to the entire team for an outstanding feedback process and exceptional client satisfaction.

INVESTIGATION OF LIABILITY AND QUANTUM/ RESOLUTION STRATEGIES

LIF's overall skills of analysis and strategy are benefitted by having a highly talented and experienced claims handler and manager in Murray Patterson, which results in an excellent claims handling team.

Part A or negligence files formed the bulk of our review. These files covered the whole spectrum of legal practice, including personal injury, family, real estate, criminal, intellectual property, and tax files. Analysis of liability and quantum was usually of high quality with the basic assessment considering: what is the standard of care, has there been a breach, has the claimant suffered a pecuniary loss, and – often overlooked by claimants – has causation been established. Other defenses are also considered: lack of reliance, contributory negligence, and the failure to mitigate a loss, among others.

Both reviewers noted a desire on our part for the claims handler to ask "what do I need to know" to move the matter to resolution. Another area that Mr. Lee and I viewed as a "work in progress" is the early consideration of Alternative Dispute Resolution (ADR). Many of the claims reviewed took a "wait and see" approach. While not necessarily inappropriate on the files reviewed, it prompted reflection by the reviewers. We believe that the ADR process could be

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addressed more thoroughly than was evidenced in the files. Though not applicable in every case, the benefits can lead to early settlements and closure of files.

According to Ms. Forbes, 17 – 20 % of all reported matters are successfully “repaired” with a loss avoided. As before, this could well be an underestimate as we reviewed many files where a “repair” was completed or in the process of being completed. Those files indicated an impressive willingness to work with all concerned to attempt to obtain a positive resolution using creativity and experience. I have not experienced anything similar in the US legal malpractice market where the expense and uncertainty causes claim repair to be viewed as “risky” and incompatible (wrongly so) with handling claims in a manner that promotes profitability. We concluded that LIF’s emphasis on claim repair is directly supportive of its objectives, as when successfully deployed to eliminate a claim, it is the most “cost-effective resolution” and one that fully benefits insured attorneys, their clients, and the insurance program. It also enhances the reputation of LIF as proactive and resolution-focused.

Both of us reviewed Part B or theft files – one for each of the claims counsel handling Part B files, including one large and complex on-going matter. All three files were timely, factual and well researched, and a good balance was maintained throughout. Good internal cooperation and communication as well as sound judgment was demonstrated under the very able supervision of Ms. Margrett George, Deputy Director of Insurance, and Ms. Forbes.

USE OF OUTSIDE COUNSEL

We understand that defence counsel are litigators at all levels of seniority who are experienced in defending attorney malpractice claims. There is no quota system; rather counsel are individually selected for the particular file taking into consideration:

- Counsel’s experience with the area of law in issue;
- Counsel’s level of experience in light of the potential exposure;
- The identity of claimant’s counsel;
- Counsel’s general approach and temperament in light of the proposed strategy;
- Counsel’s ability to deal effectively with the insured, given the personality of each; and
- The venue where the action is or is likely to be.

The claim files reviewed demonstrated an appropriate choice of counsel for the matter and a high level of competence and dedication to the defense of solicitor malpractice by counsel. While they may be tardy on occasion with reports, they generally give excellent service to LIF and their insured clients.

Claims counsel exhibit a hands-on approach to file management and a willingness to partner with defence counsel to steer the process to resolution. They appear to work very effectively with counsel and do not hesitate to “nudge” when reporting letters are late. Most often,

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however, to save time and cost, reporting is done by email or telephone and copied into or documented in the electronic file.

RESERVING PRACTICES

It is very clear that reserving is conservative and larger claim reserves are well thought out and well documented. Though reviewers did not find disagreement with the reserve, we did note that the explanation of why the numbers were appropriate was not consistently detailed in the files. Even with the consistency of conservative reserving, however, the reviewers are of the view that a calendaring of document files for a review of reserves should be done regularly. We noted that indeed the electronic calendaring system contains a drop-down box with 21 calendaring events from which claims counsel can select one or more for the file, and "Review Reserves" is one of them. Many of the files we reviewed were specifically calendared to review the reserves in future.

SUMMARY

In summary, our constructive comments are simply suggestions to move the dial a degree or two. Overall, a stellar performance by all concerned was observed. All should be proud of the high standards set and maintained. It is without question that the entire insurance program is operating in a cost-effective manner, balancing extremely well both the public interest and the interest of the Law Society insured membership.

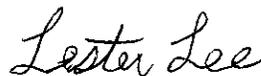
It was a pleasure to be able to speak with all of the LIF claims counsel and managers, as this is an outstanding group doing an outstanding job on what we consider the most complex files in the professional liability business. On a point of personal privilege, this made our job easy because there were so few areas where we could suggest improvement.

Thank you again for engaging us to carry out the claims audit and claims practice review for the Lawyers Insurance Fund.

Very truly yours,



CARTER L. HAMPTON



LESTER D. LEE

Attachments

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Current Experience

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

Corporate Experience

One Beacon Professional Partners

Addison, Texas

2006 - 2008

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

Claims Highlights:

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

Great American Insurance Company, Professional Liability Division

Richardson, Texas

1995 - 2006

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

Claims Highlights:

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

Judicial Experience

Elected first Court of Record Judge for the City of Bedford

Tarrant County, Texas

1993 –1995

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

Private Practice Experience

Staples, Foster and Hampton (*firm dissolved 1995*)

Fort Worth, Texas

1980- 1995

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

Education

University of North Texas, Bachelor of Arts 1977

University of Houston, Doctorate of Jurisprudence 1979

Admissions and Certifications

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

Certified in Civil Trial Law, Texas Board of Legal Specialization – December 1992; Recertified in 1997, 2002, 2007, and 2012.

Memberships

American Bar Association, Texas Bar Association, Texas Verdicts Hall of Fame, Professional Liability Underwriter Society



Lester D. Lee, B.Comm, LL.B.

Lester is the Team Leader of Dion Strategic's Claims and Program Management Practice Group.

Following several years in private practice (in both BC and Ontario) primarily as an insurance defence lawyer, Lester has spent the last 25 years in the insurance industry building expertise in claims management (including 8 years as a Claims Manager at Ontario's LawPRO, and 10 years managing two national lawyers' excess Errors and Omissions Insurance Programs and a national Outside Directorship Liability Insurance Program for lawyers), insurance program design and management (including reviews and/or audits of claims files, processes and procedures), insurance and reinsurance placement, developing loss control initiatives (writing articles, speaking and building e-learning platforms) and developing insurance technology.

Lester's hands-on approach managing a variety of programs - professional liability (lawyers, architects, engineers, real estate agents, accountants), directors and officers, general liability, property, aviation and marine claims - his expertise in coverage analysis and his network of insurance professionals (lawyers and adjusters) across Canada provide value-added consulting services to his clients.

Called to the Bar of British Columbia in 1985 and to the Bar of Ontario in 1989, Lester has a Bachelor of Laws degree from Dalhousie University and a Bachelor of Commerce degree from the University of British Columbia. He is a member of the Law Society of Upper Canada, the Law Society of British Columbia, the Canadian Bar Association and the Professional Liability Underwriting Society. Lester has been tribunalized as a Lloyd's Coverholder and has established and operated a number of Lloyd's binding authorities. He is also a trained mediator.



Lawyers
Insurance
Fund

Memo

To: Insurance Subcommittee
From: Murray R. Patterson, Claims Manager
Date: July 20, 2016
Subject: Lawyers Insurance Fund 2016 Claims Audit

This memo is in response to the suggestions made by auditors Carter Hampton and Lester Lee in their June 6, 2016 Audit Report on the operations of the Lawyers Insurance Fund. The three suggestions made and my comments in response are set out below.

1. LIF's procedure for documenting analysis and review of large loss claims may also work well in the processing of smaller yet factually difficult or legally complex claims. (Page 4 of the Audit Report.)

The auditors commented favourably on LIF's procedures for large loss claims noting that the large loss reports were of high quality and file documentation on large loss claims reflected a team approach with excellent interaction between claims counsel and management. The auditors suggest perhaps a similar procedure for smaller yet factually difficult or complex files.

In general response I can say that there is a high level of *ad hoc*, informal consultation between claims counsel and management as well as among claims counsel on all files, where appropriate, and regardless of the quantum involved.

I suspect that the auditors' suggestion arises from the high level of documentation in large loss files as compared to a generally lesser amount on small quantum files. There is a much higher level of documentation on our large loss claims as we have strict procedures requiring claims counsel to prepare comprehensive reports for management and excess carriers for whom we provide services. These reports are submitted in draft form to management who document their comments in the file and on the draft report. Reports are then finalized with an appropriate resolution strategy and course of action documented.

The threshold for preparing large loss reports is \$150,000 total incurred (reserves plus payments). This is significantly lower than the industry standard as excess carriers generally do not require reports until the total incurred has reached 50% of the underlying layer. As a result, formal reporting is already substantially lower than generally expected.

The decision to set the threshold at \$150,000 is based on what we consider an appropriate allocation of resources. The reports take a significant amount of time for both claims counsel and management. Implementing a similar formal procedure for smaller quantum files would, in my view, consume considerable resources without commensurate gain.

That said, we agree that the *ad hoc*, informal strategy discussions that are now occurring regularly between claims counsel and management as well as among claims counsel on smaller quantum files could be better documented. We have discussed this with claims counsel who have committed to document their files to better reflect these consultations.

2. Even though the auditors noted a 100% accuracy rate on coverage decisions on the files they reviewed they suggest more second-eyes review with the Claims Manager on smaller, less complex coverage decisions. (Page 4 of the Audit Report.)

This seems to be a file documentation issue rather than a substantive one. While there are relatively few claims denials, we have a strict procedure that no recommendation of a denial can go to the Coverage Committee without prior consultation with and the agreement of the Claims Manager, and Director of Insurance where appropriate. The Claims Manager reviews all draft memoranda to the Coverage Committee.

Also, all new reports are reviewed by the Claims Manager who identifies and discusses coverage issues with claims counsel. Claims counsel is then required to investigate the issue and discuss with the Claims Manager whether to proceed with a recommendation for denial. If a coverage issue arises that is not apparent from the initial report claims counsel can reserve rights unilaterally but must discuss with the Claims Manager any issue that might form the basis for a complete or partial denial of coverage.

Thus, we have a strict procedure for review by the Claims Manager of all potential denials of coverage, regardless of size of the claim or complexity of the coverage issue. These consultations with and decisions by the Claims Manager are documented. What is not as well documented is when it is decided that coverage is in order. We have discussed this with claims counsel and will ensure on a go forward basis that there is sufficient documentation to reflect consultations with the Claims Manager even where coverage is in order.

3. While a “wait and see” approach was not necessarily inappropriate on the files they reviewed the auditors believe that the ADR process could be addressed earlier. (Pages 5 and 6 of the Audit Report.)

We have long used and embraced ADR and while we have a mantra of “what can I do to resolve this claim today”, we are mindful of the auditors’ comments.

While early ADR can be the best route to follow in certain circumstances we find that many claims simply do not proceed. Involving ADR would lead to payments and cost that otherwise might not occur. Also, there is a time when claims are “ripe” for ADR and it is not always early on. Moreover, many files are also resolved at any early stage through direct negotiations by claims counsel or defence counsel which is often the most efficient form of ADR.

We agree with the auditors’ approach to be vigilant to not allow files to simply get in “litigation mode” without giving every consideration to early resolution, whether it be by ADR or otherwise. We have discussed this with claims counsel and reminded them to think from the very outset of the file about all avenues of efficient and economic resolution. In addition, as a reminder, we will consider adding an automatic “bring forward” three months from file opening on all files to consider ADR.



SUMMER 2016

Message from the President

Talking, Listening and Planning Ahead

I like to think that we at the Federation have learned a few things over the past couple of years. I know I certainly have. One of those lessons has been the value of bringing people together - mostly face to face - to talk to each other about issues of mutual interest and concern. I have been, like many of you, a participant on innumerable teleconferences. While sometimes unavoidable for logistic or economic reasons, they invariably do not permit all participants to say what they need to say when and how they want to say it. As for emails, can any of us say we haven't misinterpreted someone else's intent or, in turn, been misinterpreted?

All of this has made me a convert to the benefits of sitting down in-person with colleagues whenever possible and preferably in a location that works for them. We did this through our governance review process as much as was practically possible. This made for some painful, awkward, blunt discussions. This also made for some amazing, inspiring and hugely productive discussions.

I am persuaded it was worth it but judge for yourself. After 18 months of consultation and debate, our Council adopted new governance policies. These clarify the role of the Federation and how it makes decisions, and spells out the duties and expectations for the various people involved in its oversight and operation. The new policies also create enhanced structures for ensuring input from key individuals such as law society Presidents and CEOs, and improves the way the Federation does business in the interest of its members.

These governance policies make for a stronger Federation. The process also proved how ready we were for governance change and, even more importantly, how critical it is for the Federation to listen, and I mean really listen to our members and deliver the value they want from the Federation. The value proposition for law societies is everything.

Our governance review process has not just made me an expert traveller and Aeroplan points accumulator (what do you do with all those points when all you want

to do is sleep in your own bed???) . It has also yielded important insights, not only about the internal workings of the Federation, but about the larger questions around how autonomous provincial and territorial bodies can come together in the public interest to collaborate on national projects.

Good communication is essential to nurturing good relationships. And being present and accountable to the Federation's owners is, in my view, the most important part of my job.

So, what about planning? Well, our next important step is the work to update the Federation's strategic plan. The planning process will involve input from key law society leaders including Presidents and CEOs, as well as Council and senior staff. Law society leaders will have an opportunity to reflect on the Federation's future strategic direction before coming together in a planning workshop on October 21st in St. Andrews-by-the-Sea, New Brunswick. Law societies will need to grapple with the tough job of making choices about the matters upon which we might focus. A key to all of this will be to ensure that the strategic priorities of the Federation align with those of its member law societies. I am an eternal optimist and I am therefore confident we will get there.

Before my presidential term began, I did some planning. I hoped to get to every jurisdiction across the country before my term was up. I am almost there with less than three months to go although my plans for the next three months have become a little complicated what with the SCC appointment process and the whole going-to-Ottawa-all-the-time-committee. Alas, the best-laid plans...

Jeff Hirsch

Annual Conference to Focus on Preparing Legal Professionals of Tomorrow

The Federation will hold its 2016 Annual Conference in St. Andrews by-the-Sea, New Brunswick on October 19 and 20. The conference is being planned in partnership with the law school community and will focus on preparing the legal professionals of tomorrow.

Presenters from Canada's law societies and the legal academy will discuss a range of topics dealing with "tomorrow's lawyer" including experiential learning, understanding the respective roles and operating realities of the law societies and legal academy, and responding to the Calls to Action from the Truth and Reconciliation Commission.

The conference will open with a presentation by Paula Littlewood, Executive Director of the Washington State Bar Association. Drawing on the ground breaking work being done in the United States, Ms. Littlewood will share the latest data on skills new lawyers need to succeed, including initiative, leadership,

professionalism, grit, time management, creativity and innovation. Ms. Littlewood will also provide examples of how American law schools and legal regulators have partnered to help students meet the demands of practicing law.

One of the goals of the conference is to re-imagine the relationship between law schools, law societies, the Federation and the Canadian Council of Law Deans, and to pave the way forward for ongoing dialogue and collaboration.

Federation Brief says Proposed Governance for IP Agents Would Duplicate Regulatory Requirements

In a submission to Innovation, Science and Economic Development Canada and the Canadian Intellectual Property Office, the Federation of Law Societies of Canada says the proposed federal governance framework for Intellectual Property Agents would create unnecessary duplicate regulatory requirements for the profession.

The Federation submission was filed in response to a government consultation on a governance and regulatory regime for IP agents. The Federation also notes that duplicate regulation could raise issues involving solicitor-client privilege.

Many IP agents are lawyers who are already regulated by provincial or territorial law societies, the Federation brief says. "There is no public interest reason to subject lawyer IP agents to regulation by two distinct regulatory bodies and the additional regulatory burden, potential conflicts and likely confusion created by such duplication should be avoided."

Federation Participates in New Supreme Court Appointment Process

The Federation of Law Societies of Canada is pleased to participate in the new Supreme Court of Canada appointment process to be used to fill the vacancy created by the retirement of Justice Thomas Cromwell.

Federation President Jeff Hirsch has been appointed by the Prime Minister to represent the Federation on a new advisory committee responsible for recommending a short list of functionally bilingual, qualified candidates for appointment to the Court.

Federation at the Supreme Court of Canada

The Federation periodically intervenes at the Supreme Court of Canada on matters of national interest. The Court recently granted leave to the Federation to intervene in the matter of *Green v. Law Society of Manitoba*. The case involves a challenge to a law society's authority to require members to undertake

continuing professional development activities and to suspend members for administrative infractions without a hearing. Neil Finkelstein of the Toronto office of McCarthy Tétrault is the lead counsel for the Federation in this matter. The hearing has been tentatively set for October 7, 2016.

The Federation was also granted leave to intervene at the Supreme Court of Canada in the case of *Information and Privacy Commissioner of Alberta v. Board of Governors of the University of Calgary*. The case raises important questions about the power of third parties to compel production of information protected by solicitor-client privilege. The hearing was held on April 1, 2016. The Federation was represented by Mahmoud Jamal of Osler of Hoskin & Harcourt LLP.

Responding to the Calls to Action of the Truth and Reconciliation Commission

On the direction of the Federation Council, the Federation Executive has established a working group to develop recommendations on how to best respond to the Calls to Action in the final report of the Truth and Reconciliation Commission (TRC).

The Council recognized that engaging and consulting with representatives of Canada's Indigenous peoples will be essential in determining next steps. Council also acknowledges the importance of ensuring that the Federation's efforts complement ongoing activity by individual law societies as they also respond to the TRC's report.

The Federation's working group is chaired by Shannon Cumming, President of the Law Society of the Northwest Territories. He played a critical role in the formative years of the Northwest Territory Métis Nation, serving as legal counsel and Chief Negotiator.

Other members of the working group include:

- Sheila MacPherson, Federation Vice President and Council member representing the Law Society of the Northwest Territories;
- Bâtonnier Bernard Synnott, Council Member representing the Barreau du Québec;
- David Crossin, President of the Law Society of British Columbia;
- Dianne Corbiere, an Anishinabe from M'Chigeeng First Nation, past President of the Indigenous Bar Association, and a bencher of the Law Society of Upper Canada;
- Don MacKenzie, President of the Law Society of Prince Edward Island and Executive Director of the Mi'kmaq Confederacy of PEI; and
- Adam Letourneau, a Métis and Bencher with the Law Society of Alberta who has

represented hundreds of survivors of the Residential School system.

Call to Action 27: We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Call to Action 28: We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

2016 Consultation on Model Code Amendments

The Standing Committee on the Model Code of Professional Conduct recently completed a consultation on proposed amendments involving rules on competence, dishonesty/fraud, and incriminating physical evidence. The consultation also dealt with a new rule addressing responsibilities that arise when a lawyer leaves a law firm. A package of amendments will be circulated at the end of November and submitted to Council for approval at its March 2017 meeting.

National Discipline Standards Revised

In June 2016, the Federation Council approved revisions to the National Discipline Standards. The revised standards will be circulated to law societies soon for adoption and implementation.

The National Discipline Standards are designed to ensure uniformly high benchmarks for how law societies handle complaints and discipline processes. They address issues such as timeliness (e.g., the time it takes to resolve a complaint), public participation, transparency, accessibility, and the training of adjudicators and investigators. There are 21 standards in all.

After consulting with law society discipline staff, the Standing Committee on National Discipline Standards recommended revisions to Standard 3, which deals with the timeline to resolve or refer a complaint. Changes deal with situations when the complainant initiates an internal review or internal appeal of the complaint, and situations when a complaint has been referred back to

the investigation stage from an internal review or internal appeal process.

Standard 9, which sets out how frequently each law society must report to its governing body on the status of discipline standards 1 through 8, was revised so that reporting on all standards occurs once annually.

The updated National Discipline Standards are available on the Federation website.

The Standing Committee is working on several new discipline standards, including one that would give law societies the ability to take interim steps to protect the public before conviction, or while an investigation is ongoing. A standard requiring a process for early resolution of appropriate complaints and a standard dealing with quality measures are also under consideration.

The Standing Committee is also preparing a proposal for a voluntary Peer Support Pilot Project and resources for law societies implementing Standard 16 (sharing information with other law societies). The groundwork to develop a new national curriculum for law society adjudicators is now complete. The proposed curriculum will be shared with law societies shortly.

Law societies continue to make progress as they work towards meeting the aspirational National Discipline Standards. A review of law society feedback during an April 2016 meeting of the Standing Committee revealed that all law societies show improvements in performance since the official adoption of the standards in January 2015.

National Admission Standards Project

The Federation Council has accepted a recommendation from the National Admission Standards Project Steering Committee that all work stop on developing a national tool for assessing the competencies in the National Competency Profile. The recommendation was made after extensive consultations with law societies that followed circulation in September 2015 of the Committee's proposal for the development of a national qualifying assessment system for admission to the legal profession in Canada.

The Committee concluded that there is not a critical mass of law societies ready to move forward with this work. Consideration is being given to continuing work on other aspects of the National Admissions Standards project including the update of the National Competency Profile and development of a good character standard.

National Committee on Accreditation Update

In 2015-2016, the National Committee on Accreditation (NCA) received 1,718 applications for assessment, an 18 per cent increase over the previous year. During that

same period, 898 Certificates of Qualification were issued, compared to 892 in the previous year.

NCA candidates wrote approximately 5,000 exams during the year. The NCA holds examination sessions four times a year in at least four Canadian cities, including Vancouver, Calgary, Edmonton, and Toronto. Applicants may also request for permission to write in other cities in Canada and overseas. Examinations are typically written in 30 locations.

This fall, the Federation will carry out a comprehensive program review of the NCA.

CanLII Update

Changes planned for CanLII Connects will be implemented this fall, including the ability for users to subscribe to push notifications (i.e. email alerts based on the content of a specific query).

CanLII recently took over the “Best guide to Legal Research” web site, which has been renamed “The Canadian Legal Research and Writing Guide”. The domain (legalresearch.org) will not change. An editorial board has been created to help in the future development of the web site.

By mid-September CanLII will publish 4,000 cases from the DLRs (post 1980) that are cited in cases currently in the CanLII collection. The balance of the DLRs (pre-1980) that are currently cited in the CanLII collection will be published in a PDF format in the spring of 2017.

2016 National Criminal Law Program

The 2016 edition of Canada’s largest criminal law conference was held in July in Charlottetown, PEI. The National Criminal Law Program attracted more than 700 participants, including 150 first-time attendees.

Under the theme “Substantive Criminal Law, Advocacy, and the Administration of Justice,” highlights included breakout sessions that focused on appellate advocacy and advocacy before juries.

This year’s conference also introduced “mentoring breakfasts.” These informal gatherings gave young lawyers the chance to interact with senior faculty members, who offered valuable insight into real-life case management experience and common practice problems encountered by prosecutors and defence counsel.

The next edition of the National Criminal Law Program is scheduled for July 10-14, 2017, in Vancouver, BC.

2016 National Family Law Program

The Federation’s biennial National Family Law Program was held in July in St. John’s, Newfoundland and Labrador. The opening plenary focused on “Lessons from the Truth and Reconciliation Commission” and “The opening plenary focused on “Lessons from the

Truth and Reconciliation Commission” and “The Canadian Human Rights Tribunal for Family Law.” The Wednesday plenary dealt with adversarial ethics in a problem-solving environment. The program also included several social events for informal networking. More than 400 participants attended this year’s program.

The next National Family Law Program will be held in July 2018.

2016 International Conference of Legal Regulators

Representatives of Canada’s law societies and the Federation have participated in the International Conference of Legal Regulators (ICRL) since its inception five years ago. This year, the Office of Disciplinary Counsel in Washington, DC will host the ICLR from September 14-16, 2016 under the theme “Legal Regulation: A World of Developing Ideas”.

This year’s event focuses on the core functions performed by legal regulators and issues that may be on the horizon. Sessions will cover best practices in discipline, fiduciary responsibilities and professional values and standards in practice, the application of technology to regulatory work, and the reinstatement and supervision of lawyers on probation.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

**DEPARTMENT OF JUSTICE CONSULTATION REGARDING
POSSIBILITIES FOR FURTHER REFORM OF THE FEDERAL
JUDICIAL DISCIPLINE PROCESS**

Federation of Law Societies of Canada Submission

Ottawa, September 9, 2016

The Federation of Law Societies of Canada (“the Federation”), on behalf of its member law societies, appreciates the opportunity to contribute to the government’s June 2016 consultation, “Possibilities for Further Reform of the Federal Judicial Discipline Process (“the consultation”).

Submission Overview

Given the short time provided for the consultation, the Federation is limiting its submissions to certain fundamental principles that we believe should be maintained at all stages of the discipline process, and to the following specific issues: the involvement of lay persons; the role of independent counsel; and the payment of legal fees incurred by judges in the course of discipline proceedings.

The Federation makes the following recommendations for reforming the judicial discipline process:

1. Include lay persons in all stages of the judicial discipline process.
2. Enshrine the role of lay persons in the *Judges Act*.
3. Enshrine the role of independent legal counsel in legislation or regulations with the following key components:
 - a. Require independent legal counsel to be engaged in all inquiries, regardless of the inclusion of other counsel.
 - b. Clearly define the role and expectations of independent legal counsel.
4. Ensure that the role of any other counsel is clearly defined and distinct from that of independent counsel.
5. Outline the selection criteria and qualifications for independent counsel in Canadian Judicial Council (“CJC”) policies.
6. Maintain the government’s current practice of paying a judge’s legal fees throughout the discipline process, including judicial review unless the application for judicial review is ultimately found to be frivolous or vexatious.

The Federation of Law Societies of Canada

The Federation is the national coordinating body of Canada’s 14 law societies, which are mandated by provincial and territorial statutes to regulate the country’s 117,000 lawyers, Quebec’s 4,500 notaries and Ontario’s nearly 8,000 licensed paralegals in the public interest. Among other activities, the Federation promotes the development of national standards, encourages the harmonization of law society rules and procedures, and undertakes national initiatives as directed by its members. The Federation also speaks out on issues critical to safeguarding the public’s right to an independent legal profession, the protection of solicitor-client privilege and other issues relating to the administration of justice and the rule of law.

An important role of the Federation is to communicate the views of the governing bodies of the legal profession on national issues. It is of great importance to the legal profession that administrative processes like judicial discipline are fair in practice and perception, effectively

balance judicial independence with accountability, and operate in the best interests of the public.

General Principles

The consultation paper outlines key principles that are foundational to the judicial discipline process, including judicial independence, fairness, judicial accountability, efficiency, transparency and accessibility. The Federation agrees that these principles must be respected. Public confidence in the legal system requires that the principle of judicial independence, while a cornerstone of our legal system, be balanced against the need for the judiciary to be accountable. A fair and transparent judicial complaints and discipline process is thus essential to that public confidence.

It is clear from the consultation paper that these principles have been taken into account. In the view of the Federation, there is, however, another principle that should inform the judicial discipline process. Like the judiciary itself, the judicial discipline process must be representative of the diversity found in Canadian society. Reflecting the diverse values, perspectives and communities of Canadian society in the CJC's discipline processes would support and further its goals and would increase public confidence.

Lay persons

Section 3.5 of the consultation paper explores whether the federal judicial discipline process could benefit from greater involvement by lay persons. In the view of the Federation it would. As the paper notes, the involvement of members of the public, i.e. persons who are neither lawyers nor judges, is commonplace in provincial judicial councils and discipline processes and in the discipline processes of many self-regulated professions. Increased participation of lay persons at all stages would enhance the CJC processes, contributing to public confidence and increasing opportunities to reflect the diversity of Canadian experiences and perspectives.

The National Discipline Standards¹ developed by the Federation and adopted by every law society in Canada, require the participation of at least one public representative at every stage of the discipline process (including charging committees and hearing panels) and also require that there be review processes for complaints that are disposed of without charges that includes public participation. In our view, these requirements enhance the transparency and accountability of law society discipline processes and increase the diversity of perspectives represented throughout. Increased public participation in federal judicial discipline processes would do the same.

The Federation submits that public participation at all stages of the discipline process should be enshrined in the *Judges Act*. An amendment of this nature would further the government's goal of transparency.

¹ The standards, first adopted in 2014, address such important elements as timeliness in the investigation and hearing stages, public participation, transparency, accessibility and training. A copy of the National Discipline Standards is available on the Federation's website at www.flsc.ca.

Recommendation 1:

Include lay persons in all stages of the judicial discipline process.

Recommendation 2:

Enshrine the role of lay persons in the *Judges Act*.

Role of Independent Counsel

The Federation submits that the role of independent counsel should be reintroduced into the judicial discipline process and should be enshrined in a legislative instrument.

The 2015 amendments to the CJC bylaws represented a stark and unwelcome departure from the previous requirement for two uniquely defined counsel in an inquiry: committee counsel and presenting (or independent) counsel. As the consultation paper explains, the former was responsible for providing legal advice and assisting the inquiry committee to fulfill its mandate, while the latter was appointed by the Chair of the Conduct Committee to present all relevant evidence for and against the judge. While the Federation understands that the amendment was prompted by a conflict between independent and committee counsel in the inquiry into the conduct of Justice Douglas, the change did not resolve the issues underlying that conflict. In our view, the issues would have been more effectively addressed by either doing away with the role of committee counsel or clearly defining the respective roles of independent and committee counsel. As it is, the amendment raises significant concerns in terms of both the inquiry process and broader legal principles.

Section 3.8 of the consultation paper aptly highlights the value of maintaining independent counsel at the inquiry stage. The Federation agrees that independent counsel play a vital role in the judicial discipline process and we recommend that the CJC restore the requirement for independent counsel in every inquiry committee. The Federation submits that by doing so the government will better reflect and uphold the fundamental principles it is committed to preserving.

1) Independent Counsel will Mitigate a Perception of Bias

As the paper acknowledges, the use of independent counsel was introduced to address concerns that rigorous questioning of witnesses by members of the inquiry committee might raise a reasonable apprehension of bias. The CBA noted in its 2014 submission that the use of independent counsel also mitigated the public's perception that judges reviewing "one of their own" might not be impartial and improved the transparency of the process. Despite the obvious merits of the role, the 2015 amendments not only removed any reference to it, but effectively created less certainty around what kind of counsel will be engaged in future inquiries and whether that counsel will operate at arm's length from the CJC and its committees. The Federation maintains that removing the requirement for independent counsel undermined the CJC's goal of enhancing public confidence in the judicial discipline process.

2) *A Lack of Independent Counsel Raises Procedural Fairness Concerns*

A fundamental principle of fairness is that the more severe the penalty, the greater an individual's right to procedural protection. As the consultation paper states, the stakes in the judicial discipline process are very high as the issue under consideration by an inquiry committee is whether the judge should be removed from office. Restoring the role of independent counsel would provide a necessary safeguard to ensure that a recommendation to remove a judge from the bench is reached in an objective and fair manner. This will better guarantee fairness to the judge (both in practice and perception), while holding him/her accountable to the public for substantiated allegations of misconduct.

Currently the CJC bylaws provide that legal counsel “may be engaged”. This language is problematic in a number of ways; it permits the possibility that counsel *may not* be engaged, which brings into question who is responsible for raising and examining evidence, and how the inquiry committee will receive that evidence. In addition, it does not identify the type or number of counsel to be engaged, how their roles are defined (if more than one), or guarantee that evidence will be presented objectively or independently. The Federation recommends that independent legal counsel be required in all cases and that the inquiry committee's discretion be limited to deciding whether to engage committee counsel to assist with an inquiry.

3) *Existing Bylaw Lacks Clarity for Inquiry Committees and Counsel*

In their current form the bylaws of the CJC permit an inquiry committee to “engage legal counsel and other persons to provide advice and to assist in the conduct of the inquiry.” Not only does the bylaw make the engagement of counsel optional, it fails to provide appropriate guidance to inquiry committees on the specific role or roles to be played by counsel when they are so engaged.

The current role of counsel to “advise” and “assist” in the conduct of the inquiry is vague and does not guarantee independence from the CJC and its processes. It leaves open the possibility of the engagement of a single counsel to perform a role that combines those of independent and committee counsel, or of more than one counsel without clear definition of the roles of each. Not only might this lead to confusion and possibly conflict, there is a risk of a perception of bias. The Federation recommends that the role of independent counsel be required and enshrined in a statutory instrument. It should also be clearly delineated to avoid any confusion on the part of counsel or the committee. The Ontario Judicial Council procedures set out on page 31 of the consultation paper provide one model for such delineation.

In addition, the government would encourage consistency, transparency and efficiency in the inquiry process if it developed selection criteria or qualifications for independent counsel. The Federation understands that prior to the 2015 amendments, CJC policies and by-laws required that independent counsel have at least 10 years' experience and be recognized as a leader in the bar. We recommend either returning to this practice or creating new criteria to a) support the committee in its selection process, and b) ensure independent counsel have the requisite skillset and reputation to carry out their duties in the public interest.

The Federation does not take a position with respect to the engagement of other counsel. As the consultation paper notes, the CBA's 2014 submission questioned the necessity of retaining committee counsel given the inclusion of judges and lawyers on the inquiry committees. The CBA suggested that the role be carefully circumscribed and limited to administrative functions. To the extent committee counsel, or other counsel, is needed the Federation would agree that the role(s) should be clearly defined and limited to avoid any potential for conflict.

Recommendation 3:

Enshrine the role of independent legal counsel in legislation or regulations with the following key components:

- Require independent legal counsel to be engaged in all inquiries, regardless of the inclusion of other counsel.
- Clearly define the role and expectations of independent legal counsel.

Recommendation 4:

Ensure that the role of any other counsel is clearly defined and distinct from that of independent counsel.

Recommendation 5:

Outline the selection criteria and qualifications for independent counsel in CJC policies.

Payment of Legal Fees Incurred by Judges in the Discipline Process

While legal fees raise costs issues (described in the consultation paper as one element of the principle of “efficiency”), ultimately these costs are a relatively small part of maintaining the judicial discipline process. The Federation submits that the issue of costs must be considered in terms of their impact on the constitutionally protected principle of judicial independence.

As described at 3.13 of the consultation paper, the government’s current practice is to pay all legal fees incurred by a judge in the course of discipline proceedings, including those incurred at the investigation stage, during inquiry committee proceedings, and at the judicial review stage, if any.² As the focus of the consultation paper appears to be more on the payment of judge’s legal fees in the context of judicial review applications, the Federation assumes that the practice of paying fees during earlier discipline stages will remain unchanged. The Federation supports maintaining the current government practice at these stages.

The consultation paper outlines four options for reforming the payment of legal fees at the judicial review stage. The Federation’s submission assumes that these options refer strictly to applications commenced after a final determination from an inquiry committee, and not during those proceedings. The Federation is of the view that any reforms to the current practice of

² Consultation Paper at pages 40-41.

paying the legal fees incurred by a judge for judicial review *post-inquiry committee stage* must be carefully considered given the constitutional importance of judicial independence.

As the consultation paper notes, several courts, including the Federal Court of Appeal, have already found that “payment by the government of legal fees incurred by a judge in the course of discipline proceedings is not only beneficial for judicial independence, but is in fact mandated by it, and thus a constitutional requirement.”³

The Supreme Court of Canada has repeatedly held that the principle of judicial independence has three essential components: security of tenure, financial security and institutional independence with respect to administrative matters bearing directly on the exercise of its judicial functions.⁴ Any potential changes to the current practice of paying legal fees must be considered in terms of these principles, both in terms of potential impacts with respect to the individual independence of the judge and the institutional or collective independence of the court over which he or she presides.⁵

The Federation submits that, except in the most exceptional circumstances, the principle of judicial independence will require the government to assume all legal fees incurred by a judge in the course of discipline proceedings, including at judicial review stages. As the Consultation Paper notes, judicial review forms an “integral part of the discipline process”.⁶

*Option 1: A judge could be required to repay the costs of bringing a judicial review application where the reviewing court found the application to be frivolous or vexatious.*⁷

The Federation is unaware of any case where a judge has brought an application for judicial review that was frivolous, vexatious or an abuse of process as part of the judicial discipline process, and the consultation paper does not refer to any such cases. Although there is no evidence that this has been an issue to date, the costs associated with a frivolous or vexatious application for judicial review brought by a judge nevertheless could be one limited exception to the principle that the government must assume all legal fees incurred by a judge in the course of judicial discipline proceedings. Although the judge in judicial proceedings must have

³ Consultation Paper, Footnote 67, page 42. Footnote 67 further states that “The Quebec Superior Court and Quebec Court of Appeal have both arrived at this conclusion in respect of legal fees incurred by provincial court judges in the course of discipline proceedings: *Ruffo c. Québec (Ministère de la Justice)*, [1997] J.Q. 3658 (C.S.Q.) (Q.L.); *Fortin c. Procureur general du Québec*, [2002] J.Q. no. 6861 (C.S.Q.) (Q.L.); *Hamann c. Québec (Ministère de la justice)*, [2001] J.Q. no. 2046 (C.A.Q.) (Q.L.). In its 2006 decision in *Bourbonnais v. Canada (A.G.)*, 2006 FCA 62, the Federal Court of Appeal found in obiter that the same reasoning would apply to federally-appointed judges.”
⁴ *Valente v. The Queen* [1985] 2 SCR 673 [“*Valente*”]; *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3 at para. 115 [“*P.E.I. Judges Reference*”].

⁵ *Valente*, at p. 687; *P.E.I. Judges Reference* at para 120.

⁶ Consultation Paper, p.41.

⁷ Consultation Paper, at page 42.

“reasonable resources to defend his position”,⁸ this might not need to extend to the costs of a clearly frivolous and vexatious application, as determined by a reviewing court.

A judicial review application that has been found by a reviewing court to have been frivolous, vexatious or an abuse of process is an application that, by definition, was a completely unnecessary and unreasonable step in the proceeding. It would be incongruous to have the government incur the full legal costs incurred by a judge to bring such a proceeding, and the Federation therefore generally supports Option 1.

Option 2: Reviewing court could also be empowered to impose costs payable by the judge where the court considers it appropriate in the circumstances even if the application was not found to be frivolous or vexatious.⁹

The Federation is not convinced that in cases where removal from office is a possibility, any further changes to the current government practice would be consistent with judicial independence, particularly its security of tenure and financial security components. In these instances, the judge should be entitled to the payment of the legal fees incurred; as the consultation paper acknowledges, the case law has found that such payment is “mandated” by the principle of judicial independence.¹⁰ The Federation is therefore opposed to Option 2.

Option 3: A judge could be initially required to pay his or her own legal fees on judicial review, with the reviewing court empowered to award the judge all or part of those costs should it deem it appropriate in the circumstances.¹¹

The Federation does not support this option for the same reasons as outlined in respect of Option 2.

Option 4: The policy of paying a judge’s legal fees on judicial review could exclude judicial review applications brought once it has been determined that a complaint does not warrant removal from office.¹²

Finally, the consultation paper raises the possibility of the range of sanctions for judicial misconduct being expanded such that in some cases dismissal may not be an option, but other non-consensual sanctions may be recommended. We respectfully disagree with the statement in the consultation paper that “Where the removal from office is not a possibility, a judge’s security of tenure is not in jeopardy, and the rationale for paying a judge’s legal fees is simply not applicable”.¹³ On the contrary, the Supreme Court of Canada has cautioned that “it has long been recognized that the scope of the constitutional guarantee of judicial independence, as it

⁸ Lemelin J. in *Fortin c. Procureur general du Québec*, [2002] J.Q. no. 6861 (C.S.Q.) (Q.L.), endorsed by the Federal Court of Appeal in *Bourbonnais v. Canada (A.G.)*, 2006 FCA 62 at para. 36.

⁹ *Ibid.*

¹⁰ *Supra* note 3.

¹¹ *Ibid* at pages 42-43.

¹² *Ibid.* at page 43.

¹³ *Ibid.*

relates to the independence of individual judges, extends beyond matters that might lead to the removal of the judge.”¹⁴

Even if the removal of the judge is not at issue, depending on the non-consensual sanctions being recommended, issues related to security of tenure, financial security and institutional independence may still apply.¹⁵ The applicability of these elements of judicial independence would need to be considered before concluding that the government could amend its practice of paying for judge’s legal fees incurred at the judicial review stage of the judicial discipline process.

The Federation submits that absent a full analysis of the range of potential sanctions and potential impacts to the elements of judicial independence, the government practice of paying a judge’s legal fees should be maintained without changes.

Recommendation 6

Maintain the government’s current practice of paying a judge’s legal fees throughout the discipline process, including judicial review unless the application for judicial review is ultimately found to be frivolous or vexatious.

¹⁴ *P.E.I. Judges Reference*, *supra* note 4 at para. 115.

¹⁵ For example, a suspension may impact on the judge’s security of tenure; a suspension without pay may impact on the judge’s security of tenure and the judge’s financial security.

*Federation of Law Societies
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**DEPARTMENT OF JUSTICE CONSULTATION ON THE
PROCESS FOR SUPERIOR COURT JUDICIAL
APPOINTMENTS**

Federation of Law Societies of Canada Submission

Ottawa, September 9, 2016

The Federation of Law Societies of Canada (“the Federation”) appreciates the opportunity to provide input into the Federal government’s review of the superior court appointments process.

The Federation of Law Societies of Canada

The Federation is the national coordinating body of Canada’s 14 law societies, which are mandated by provincial and territorial statutes to regulate the country’s 117,000 lawyers, Quebec’s 4,500 notaries and Ontario’s nearly 8,000 licensed paralegals in the public interest. The Federation promotes the development of national standards, encourages the harmonization of law society rules and procedures, and undertakes national initiatives as directed by its members, among other activities. The Federation also speaks out on issues critical to safeguarding the public’s right to an independent legal profession, the protection of solicitor-client privilege and other issues relating to the administration of justice and the rule of law.

An important role of the Federation is to communicate the views of the governing bodies of the legal profession on national issues. The Federation submitted its views on the federal judicial appointments process in response to the government’s 2006 reforms. Many of the views and comments presented in that submission (“the 2007 submission”) are still relevant today. We stated at that time that the manner in which judges are appointed in Canada, and the confidence of the public in the independence and impartiality of the judges so appointed, are of vital importance to the administration of justice in Canada. The Federation maintains that viewpoint and has a continued interest in assisting the government in its deliberations to ensure that any changes to the judicial appointments process respect fundamental principles and goals that maintain the high caliber of the courts and enhance the public’s confidence in the judicial system.

Submission Overview

The Judicial Advisory Committees (“JACs”) play a vital role in the process of appointing judges to the courts that are under federal jurisdiction. The Federation submits that the appointment process would be enhanced through the adoption of the following recommendations:

1. Remove the designated law enforcement nominee position on JACs.
2. Reverse the decision to limit the voting rights of the judicial nominee.
3. Enshrine and define the role of JACs and their relationship to the Minister of Justice in legislation or regulations.
4. Clarify how JAC assessments are carried out and make that information available to the public.
5. Fill the vacancies on all JACs immediately.
6. Stagger the terms of the members on each JAC to ensure that the appointments do not all expire at the same time.
7. Include diversity in the criteria to be considered in assessing judicial candidates.
8. Advertise judicial vacancies when they occur.
9. Proactively promote applications from diverse candidates, including equality seeking groups, First Nations, Métis and Inuit, and language minorities.

10. Ensure that the membership of each JAC includes a diversity of perspectives, backgrounds and experiences.

The Need for Strong, Independent Judicial Advisory Committees

As the Office of the Commissioner for Federal Judicial Affairs Canada (“OCFJAC”) website states, JACs constitute “the heart” of the appointments process. In the Federation’s 2007 submissions we noted that the establishment of the JACs in 1988 “was a very important step in developing a clear and independent process for identifying a pool of meritorious candidates who could confidently be recommended to the government for appointment as judges”. We support the continued use of JACs to further the important goals of transparency, accountability, public confidence and diversity in the appointments process and, by extension, the judiciary.

Inherent in this statement is the understanding that no actual or perceived political influence should exist in either the appointment process or the assessments. Despite the use of the JACs, the interim report of the International Commission of Jurists Canada (“ICJC”), released in August 2016, notes that it is still perceived perception that judicial appointments are political. The ICJC attributes this perception to a lack of transparency in the appointment process. The Federation agrees that transparency in the assessment and appointment process is critical to public confidence in judicial appointments. The Federation maintains that there are changes to the process that could be made that would enhance the transparency, accountability and impartiality of the appointment process.

Recommendations for Reform

Judicial Advisory Committee Composition

In 2006, the Minister of Justice increased to eight the members of the JACs, adding a representative from the law enforcement community. In addition, the government made the judicial appointee the chair of the JAC and limited his or her voting powers to resolving instances of a tie. The Federation expressed deep concerns with these changes in our 2007 submission. These concerns remain relevant today. The Federation recommends that the decision to add an eighth member nominated by the law enforcement community be reversed and the former voting structure restored.

At the core of the Federation’s concern is the potential that the presence of a representative from the law enforcement community will erode the public’s confidence in the judicial appointment process. Including such a representative on the committee may undermine confidence in the independence of the JAC and raise doubt or skepticism about the Minister’s appointments, particularly if there is a perception that a candidate was selected because they favoured the law enforcement community’s interests. The change in voting rights amplified this concern as it increased the potential for the law enforcement community to hold a deciding vote in who is recommended for appointment and who is not.

We also recommend that the government reverse the decision to limit the voting rights of the judicial nominee. The judicial representatives bring an important perspective to the assessment process that ought not to be marginalized. As we expressed in 2007, even more importantly, the change in voting structure makes it possible for a specific community to hold a deciding vote on which candidates will be recommended, potentially leading to a perception that JACs are not truly independent bodies.

Recommendation 1

Remove the designated law enforcement nominee position on JACs.

Recommendation 2

Reverse the decision to limit the voting rights of the judicial nominee.

Role of Judicial Advisory Committees

The role and importance of the JACs cannot be overstated. The government's characterization of JACs as the "heart" of the appointment process is apt given their role in assessing the qualifications and suitability of candidates and guiding the Minister in her decision-making. However, despite being the "heart" of the appointment process, the role of the JACs is not enshrined in legislation and there is currently no legislative requirement that governs the selection of committee members, their responsibilities or their training. Although the OCFJAC provides guidelines for the assessment process, a lack of legislative or regulatory authority for the JACs may leave the process vulnerable to political manipulation, potentially undermining public confidence in the appointment process. Several provinces have tried to minimize this risk by enshrining the role of similar committees in legislation. For example, in Ontario the Judicial Appointments Advisory Committee's function is defined at ss. 43(8) of the *Courts of Justice Act*¹ as making "recommendations to the Attorney General for the appointment of provincial judges". The Attorney General's recommendations for appointment to the Lieutenant Governor in Council ("LGIC") must be based only on those candidates that have been recommended by the committee.² Similarly, in British Columbia the LGIC may only appoint judges of the court "on the recommendation of the [judicial] council."³ The function of the British Columbia judicial council is clearly outlined at s. 22 of the Act. While the issue of political vulnerability may still be present in the provincial/territorial appointment processes, enshrining the role(s) of JACs, their composition, their relationship to the Minister, and perhaps even their terms of appointment would be an important step in increasing the transparency, and therefore trust, in the process.

¹ R.S.O. 1990, c. C. 43

² *Ibid*, at s. 43(11)

³ *Provincial Court Act*, R.S.B.C. 1996, C. 379

Recommendation 3

Enshrine and define the role of JACs as well as their relationship to the Minister of Justice in legislation or regulations.

Increasing Transparency

Currently there is little guidance on how the JACs are to apply the criteria for assessing candidates that have been specified by the OCFJAC. JACs enjoy a great deal of discretion in conducting assessments and while this discretion is important to the independence of the assessment process, the Federation submits that this needs to be balanced against the need for increased transparency in the process. In our view there would be benefit in providing greater clarity into how candidates are evaluated and the considerations that go into those evaluations. The OCFJAC should develop and make public guidelines that explore the relative weight to be given to different criteria to assist JAC members in fulfilling their mandate.

Recommendation 4

Clarify how JAC assessments are carried out and make that information available to the public.

Terms of Judicial Advisory Committee Members and Current Vacancies

According to the OCFJAC website, ten of the sixteen JACs have been vacant since April 2014. Of the remaining six, three have a number of vacancies. These vacancies on the JACs raise significant concerns, particularly in light of the high number of judicial vacancies in the courts across the country. Many cite judicial shortages as a contributing factor to court delays and the ongoing access to justice crisis in Canada. Chief Justice Beverley McLachlin was recently reported in the Toronto Star as saying “the perpetual crisis of judicial vacancies in Canada is an avoidable problem that needs to be tackled and solved.”⁴

We urge the government to move immediately to fill the vacancies on the JACs. The Federation also reasserts our 2007 position that the terms of the members of individual JACs should be staggered to ensure greater operational continuity within the committees on an ongoing basis and better assist the JACs in fulfilling their mandates.

Recommendation 5

Fill the vacancies on all JACs immediately.

⁴ Opinion, “Ottawa must fill court vacancies to ensure timely justice: Editorial”, The Toronto Star, August 15, 2016, online: <https://www.thestar.com/opinion/editorials/2016/08/15/ottawa-must-fill-court-vacancies-to-ensure-timely-justice-editorial.html>

Recommendation 6

Stagger the terms of the members on each JAC to ensure that the appointments do not all expire at the same time.

Increasing Diversity

It is the Federation's position that the federal judiciary should reflect the diverse values, perspectives and communities present in Canadian society. A more diverse judiciary would not only support and further the government's goals, it would also ensure the public sees itself reflected in the administration of justice. A judiciary that is reflective of the diversity of Canadian society would bolster the public's confidence in the system and its ability to operate in the public's best interests.

The federal government has publicly committed to increasing diversity in appointments in the Supreme Court appointment process. The rationale for this approach is equally applicable to all levels of judicial appointment as highlighted by the following remarks by Chief Justice McLachlin:

In addition to the basic qualities that every individual judge and court must possess, appointments to the bench should reflect the diversity of the society they are called upon to judge. This is important to ensure that different perspectives are brought to the task of judging, and to maintain the confidence of all Canadians in the justice system.⁵

The Chief Justice also recognized that the process of achieving diversity, while laudable, is complicated. In an interview with the Toronto Star she noted that the judiciary has made considerable achievements in attaining gender diversity on the bench (35 per cent of seats are now occupied by women). However, she also acknowledged that "the difficulty we have with racial minorities, indigenous people is that we're just beginning this process of getting the judges in place on the trial benches and so on."⁶

In our view, diversity should be expressly identified as a factor to be considered by the JACs in their assessment of potential judicial candidates. The Federation also submits that to attract applications from diverse candidates, including equality-seeking groups, First Nations, Métis and Inuit, and language minorities, greater efforts need to be made in ensuring opportunities for judicial appointments are made known and available to the legal community.

⁵ Remarks of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada at the Empire Club of Canada, Toronto, Ontario, June 3, 2016, Supreme Court of Canada online: <http://www.scc-csc.ca/court-cour/judges-juges/spe-dis/bm-2016-06-03-eng.aspx>

⁶ Tonda MacCharles, "More indigenous judges needed in lower courts to develop skills for Supreme Court: Beverley McLachlin", The Toronto Star, August 10, 2016, online: <https://www.thestar.com/new/canada/2016/08/10/more-indigenous-judges-needed-in-lower-courts-to-develop-skills-for-supreme-court-beverley-mclachlin.html>.

It is our further submission that it is important to reflect the diversity of Canadian society in the JACs that are charged with assessing future judicial candidates. Not only would this ensure that members of the public see themselves represented in the judicial appointment process, it would ensure that the assessment of candidates is informed by a variety of perspectives and experiences.

a) Including Diversity in Judicial Candidate Appointment Criteria

Currently the eligibility criteria for federal judges are set out in various constitutional and legislative sources. Specifically, to be considered for a superior court appointment a candidate must be a member of the bar in any province,⁷ and must have either ten years standing at the bar, or an aggregate of ten years as a barrister exercising powers and performing duties of a judicial nature on a full-time basis in respect of a position held pursuant to a law of Canada or a province.⁸

Aside from these legislative requirements, the government processes for appointing judges, and the criteria used in the evaluation of their suitability, are found in government policy. The OCFJAC website states that the appointment process is comprised of extensive consultations in both the legal and non-legal community and that “professional competence and overall merit are the primary qualifications.”⁹ While the Federation agrees with the overall guidelines provided to JACs, we submit that they do not go far enough to guarantee diversity amongst judicial candidates. The Federation recommends that diversity be expressly included in the selection criteria.

Recommendation 7

Include diversity in the criteria to be considered in assessing judicial candidates.

b) Recruitment Practices Should Encourage Diversity

Currently, qualified lawyers and persons holding provincial or territorial judicial office who are interested in being appointed to a superior court bench may apply to the Commissioner for Federal Judicial Affairs Canada. In the submission of the Federation attracting a greater diversity of candidates requires a more proactive approach including advertising vacancies in the relevant jurisdictions in a more deliberate way, proactively promoting applications from candidates representing a diversity of backgrounds, and expressly encouraging applications

⁷ *Constitution Acts 1867 to 1982*, s. 97

⁸ *Judges Act*, s. 3

⁹ <http://www.fja-cmf.gc.ca/appointments-nominations/process-regime-eng.html>

from members of equity-seeking groups. The government may wish to look to the individual provincial models for guidance on how this change could work at the federal level.¹⁰

Recommendation 8

Advertise judicial vacancies when they occur.

Recommendation 9

Proactively promote applications from diverse candidates, including equality-seeking groups, First Nations, Métis and Inuit, and language minorities.

c) Diversity on Judicial Advisory Committees

The Federation submits that another important step in ensuring greater diversity in the judiciary would be to ensure that the JACs represent the diversity found in Canadian society. Increasing the diversity of JAC members would ensure that a diverse range of perspectives, backgrounds and experiences informs the assessment process.

Recommendation 10

Ensure that the membership of each JAC includes a diversity of perspectives, backgrounds and experiences.

Conclusion

The Federation views the JACs as an essential component of the judicial appointments process. In our submission, however, their role could be enhanced to increase the transparency of the process, recognize the importance of diversity in both the judiciary and the appointments process, and assist in preserving public confidence in the judicial appointments process. Our specific recommendations are intended to further those goals.

¹⁰For example, see Ontario's *Courts of Justice Act*, at ss. 43(9).

*Federation of Law Societies
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A Governance Framework for Intellectual Property Agents

**Submission to Innovation, Science and Economic
Development Canada and the Canadian Intellectual
Property Office**

Ottawa, August 31, 2016

INTRODUCTION

1. The Federation of Law Societies of Canada (“Federation”) is the national coordinating body of Canada’s 14 provincial and territorial law societies, which together govern Canada’s 125,000 lawyers, Quebec’s 4,500 notaries, and Ontario’s nearly 8,000 paralegals in the public interest. The Federation promotes the development of national standards, encourages the harmonization of law society rules and procedures, and undertakes national initiatives as directed by its members, among other activities. The Federation also speaks out on issues critical to safeguarding the public’s right to an independent legal profession, the protection of solicitor-client privilege and other issues relating to the administration of justice and the rule of law.

2. The Federation appreciates the opportunity to contribute to the Innovation, Science and Economic Development Canada and the Canadian Intellectual Property Office consultation (the “Consultation”) on a governance framework for intellectual property agents (“IP agents”).

SUBMISSION HIGHLIGHTS

3. In the submission of the Federation the most significant issue raised by the proposed framework is the regulatory duplication that each of the models that are contemplated would create. Many IP agents are lawyers¹ who are already regulated by provincial or territorial law societies. There is no public interest reason to subject lawyer IP agents to regulation by two distinct regulatory bodies and the additional regulatory burden, potential conflicts and likely confusion created by such duplication should be avoided. Possible options identified for resolving this issue include exempting lawyer IP agents from the proposed regulatory scheme, or extending the regulatory mandate of the law societies to include IP agents. There is a precedent for the first option and this approach is discussed below. As the limited time available for the Consultation has not afforded the opportunity for a thorough exploration of the second option it is raised as a *possible* solution only.

4. Regulation of lawyer IP agents by any entity other than a law society would also raise serious concerns about the protection of information protected by solicitor-client privilege. Effective regulation requires full access by the regulator to all relevant information, including information protected by solicitor-client privilege. Law societies are able to access this information pursuant to their statutory mandates, but they are bound to safeguard all privileged information. The proposed regulatory options do not provide adequate protection for information protected by solicitor-client privilege. Indeed, as each of the options contemplates some form of government oversight, it is not evident that appropriate protection is possible, highlighting another reason to avoid regulatory overlap.

¹ The scope of practice of notaries regulated by the Chambre des notaires du Québec is also broad enough to include advising clients on intellectual property law and notaries may become IP agents. The term “lawyer IP agent”, used for ease of reference throughout these submissions, includes any Quebec notaries who may be IP agents.

ISSUES AND RECOMMENDATIONS

Regulatory Overlap

5. All lawyers and Quebec notaries in Canada are subject to a robust regulatory regime established by provincial and territorial statutes. They must be licensed by the law society in their respective jurisdiction and are subject to comprehensive rules and regulations intended to protect the public. Despite this fact, each of the three regulatory models proposed in the Consultation contemplates the regulation of lawyer *and* non-lawyer IP agents, a model that would lead to regulatory duplication with two regimes regulating the same individual. Such regulatory duplication is neither necessary nor desirable.

6. The primary purpose of all professional regulation is to protect the public interest and while not expressly articulating this goal, the Consultation appears to recognize it. Lawyer IP agents should be included in the new regulatory regime for IP agents only if necessary to protect the public interest. It is not. Lawyers who are also IP agents are subject to the regulatory authority of the law societies, each of which is mandated by statute to regulate the legal profession in the public interest. The interests of the public are protected through comprehensive rules of professional conduct and law society regulations that include complaints and disciplinary processes to address breaches of the rules and regulations.

7. The Federation recognizes that there are instances in which an individual may be a member of two professions – law and accounting or law and medicine being two possible examples. In those cases the individual may be governed by two different regulatory bodies. Unlike the situation with lawyers and IP agents, however, the scope of practice of each of those professions is distinct. Discerning when the individual is acting as one or the other, a lawyer or a doctor, for example, is straightforward and identifying which regulator has jurisdiction in a particular case is equally straightforward. As important, a member of the public using the services of the individual is not likely to be confused about the professional capacity within which they are acting.

8. The potential for public confusion in the case of a lawyer IP agent is, by contrast, significant. Members of the public using the services of a lawyer for an IP matter are unlikely to be able to distinguish between legal work and IP work. As the IP agent regulator would have no jurisdiction over a lawyer IP agent when the individual is practicing law, governing lawyer IP agents through two separate regulators would lead to unnecessary, undesirable public confusion. It would also create the potential for conflicting rules and obligations that could put individuals in the impossible situation of having to choose between regulatory obligations, possibly violating the rules of one regulator to satisfy those of the other.

9. The Consultation documents recognize the potential for conflicts between law society rules and regulations and those that might be implemented by the IP agent regulator, suggesting that the regulators should be able to coordinate efforts to determine who has jurisdiction in a given situation. Such coordination might address some of the potential jurisdictional concerns, but protocols and agreements between the regulators are unlikely to do away with public confusion. In addition, it is not clear that full cooperation between distinct regulators would be possible. Statutory provisions preventing law societies from sharing information covered by solicitor-client privilege

could, for example, hamper cooperation in discipline cases. Particularly in the absence of a regulatory gap for lawyer IP agents, the preferable approach would be to avoid the potential conflicts and confusion. As discussed above, the public interest in the practice of lawyer IP agents is already fully protected through regulation by the law societies.

10. A regulatory framework that requires lawyer IP agents to be governed by two separate regulators would also violate the principle that regulation should not be more burdensome than necessary to accomplish its goals. The proposed regulatory duplication would increase costs for individual lawyer IP agents (and probably also for the regulatory bodies) and would require those agents to invest time and human resources in ensuring that they were aware of and in compliance with two sets of rules and regulations. In addition to being unnecessarily burdensome, the approach would be inefficient.

11. One way of avoiding this unnecessary regulatory duplication would be to exempt lawyer IP agents who are already regulated by a Canadian law society from the governance framework for IP agents.

12. There is a recent precedent for this approach. When the government introduced the regulatory regime for immigration consultants it specifically exempted practitioners already regulated by law societies. Although the scope of practice of lawyers providing immigration advice and representation is broader than that of immigration consultants, there is some direct overlap. Notwithstanding this overlap, however, lawyers providing immigration services are not required to become members of the designated regulatory body for immigration consultants. Pursuant to section 91(2) of the *Immigration and Refugee Protection Act*, only members of a Canadian law society (including the *Chambre des notaires du Québec*) or the regulatory body designated under the Act may represent a person in a proceeding or application under the Act.

13. The exemption of lawyers from the regulatory regime for immigration consultants recognized that there would be no public policy purpose in subjecting members of law societies to double regulation. The goal of public protection is met through law society regulation, as it would be were the government to take a similar approach to the regulation of IP agents.

14. The Federation recognizes that to register as an IP agent an individual must meet certain criteria, including successful completion of prescribed exams. We are not proposing that lawyer IP agents be exempt from this requirement whether the process continues to be administered by CIPPO or is taken over by the body ultimately designated as the regulator for IP agents. It is important to note that registration is only one aspect of regulation. In our submission a comprehensive and coherent system of regulation that appropriately addresses all public risks can be established by recognizing law society regulation of lawyer IP agents, subject only to the requirement that lawyer IP agents meet the prescribed registration criteria.

15. Another possible approach would involve designating some or all of the law societies as the IP agent regulator. We have not, however, been able to explore this idea with our member law societies in the limited time provided by for the Consultation. In depth dialogue with the law societies would be required to determine whether there is an appetite for taking on this regulatory responsibility.

Protection of solicitor-client privileged client information

16. The potential threat to information protected by solicitor-client privilege is another issue arising from the proposal to include lawyer IP agents in the scope of the proposed regulatory scheme.

17. The Supreme Court of Canada has repeatedly held that solicitor-client privilege is a principle of fundamental justice that must be afforded the highest possible protection. Solicitor-client privilege must be as near absolute as possible and cannot be disclosed without client consent to a third party, including law enforcement and government.² In its recent decision in *Canada (National Revenue) v. Thompson*, the Court held:

Solicitor-client privilege has evolved from being treated as a mere evidentiary rule to being considered a rule of substance and, now, a principle of fundamental justice The obligation of confidentiality that springs from the right to solicitor-client privilege is necessary for the preservation of a lawyer-client relationship that is based on trust, which in turn is indispensable to the continued existence and effective operation of Canada's legal system. It ensures that clients are represented effectively and that the legal information required for that purpose can be communicated in a full and frank manner³

18. Law societies are afforded access to solicitor-client privileged information held by lawyers to fulfill their regulatory purpose. They are, however, required, to carefully safeguard this information and may not share it with third parties (except as authorized by statute). Any regulatory scheme for IP agents must be constructed in such a way as to ensure that other than the law societies, no one not authorized by the client has access to privileged information. None of the proposed models would meet this requirement, a problem made particularly acute by the fact that all of the models contemplate some form of government oversight creating the additional risk that solicitor-client protected information might fall into the hands of the government.

19. This issue would be avoided by exempting lawyer IP agents from the proposed regulatory scheme as discussed above. Extending the regulatory authority of the law societies to include IP agents would produce a similar result. We repeat, however, that this latter option would have to be explored with the law societies and would be available only if the law societies were willing to take on this additional regulatory role.

IP Agent Privileged Communications

20. Recent amendments to the governing legislation have provided statutory protection for certain communications between IP agents and their clients ("IP agent privilege"). While the Consultation materials touch on the need to ensure that IP agents understand their professional duty to protect communications covered by IP agent privilege, they do not address access to or protection of privileged communications by the regulator. The IP agent regulator will need full access to protected IP agent

² Except in extreme circumstances of imminent risk of death or serious bodily harm and only such disclosure as is necessary to prevent the death or harm.

³ [Canada \(National Revenue\) v. Thompson, 2016 SCC 21](#), at paragraph 17.

privileged communications to fulfil its regulatory functions and its public interest mandate (but not information protected by solicitor-client privilege). In our submission it is essential, however, for the regulatory scheme to provide appropriate safeguards for such communications in the hands of the regulator.

Draft Interim Code of Conduct for IP Agents

21. The draft Interim Code of Conduct (“Code”) for IP agents demonstrates one of the potential problems with the proposed regulatory duplication: conflicting rules. While the Code has been amended since the start of the Consultation to include a provision addressing potential conflict with the law society rules of professional conduct, in the Federation’s submission this is an inadequate solution to the overall problem. If included in the regulatory regime, lawyer IP agents would still be burdened with two overlapping sets of professional conduct rules. As the public interest in the regulation of these individuals is already met through existing law society regulation, imposing this additional regulatory burden is simply unnecessary.

22. Without prejudice to our position that the proposed regulatory duplication must be avoided, we do wish to express a concern with the proposed Code. In our view the Code is insufficiently robust and fails to adequately address a number of important ethical issues. As suggested in the Consultation materials, a more robust consultation process will be required to develop a sufficiently comprehensive and defensible future code.

Support for proposed separation of regulator and professional association

23. One of the key strengths of Canada’s legal system is the clear distinction between the function of law societies and that of voluntary associations of members of the profession. The function of law societies is to regulate the legal profession in the public interest. The mandate of the Federation is also to serve the public interest. It is the function of voluntary associations of members of the profession, such as the Canadian Bar Association, to speak for and represent the interests of their members. We note that the governance framework for IP agents proposes regulatory structures that are separate from bodies that represent the interests of IP agents. We support this separation as fundamental to ensuring that the public interest prevails over the interests of IP agents in case of conflict.

Potential regulatory best practices dialogue

24. The proposed governance framework for IP agents does not seek feedback on innovations⁴ or debates on best practices in professional regulation. Law societies have a great deal of expertise in the design and management of a professional regulator. As

⁴ See e.g., Rees, Victoria, Transforming Regulation and Governance in the Public Interest, Nova Scotia Barristers’ Society, 15 October 2013, <https://nsbs.org/sites/default/files/cms/news/2013-10-30transformingregulation.pdf>. Terry, Laurel S., *Trends in Global and Canadian Lawyer Regulation* (2013), 76 Saskatchewan L. Rev. 145 (2013); Penn State Law Research Paper No. 24-2013. Available at SSRN: <http://ssrn.com/abstract=2260560>. Rickman, Neil and Anderson, James M., Innovations in the Provision of Legal Services in the United States: An Overview for Policymakers, Kauffman-RAND Institute for Entrepreneurship Public Policy, 2011, http://www.rand.org/pubs/occasional_papers/OP354.html.

an example and to provide context only, Canada's law societies are deeply engaged in expert discussions on many of the themes to be discussed at the 2016 International Conference of Legal Regulators such as adopting regulatory objectives through a transparent public process;⁵ regulating through compliance-based, proactive or preventative firm management;⁶ adopting aspirational discipline standards;⁷ using regulation to encourage disruptive innovations in service delivery;⁸ and promoting equity and diversity within a regulated profession and its workplaces.⁹ In furtherance of regulatory excellence in the public interest, we are confident that our member law societies would be pleased to engage in an expert dialogue on these topics as applicable to the regulation of IP agents.

⁵ See e.g., Terry, Laurel S., *Why Your Jurisdiction Should Consider Jumping on the Regulatory Objectives Bandwagon* (2013). 22(1) Prof. Lawyer 1 (2013). [Read the article at SSRN.](#)

⁶ See e.g., Parker, Christine and Gordon, Tahlia Ruth and Mark, Steve A., *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*. Journal of Law and Society, Vol. 37, Issue 3, pp. 466-500, September 2010. [Read article on SSRN.](#)
Fortney, Susan Saab and Gordon, Tahlia Ruth, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation* (January 22, 2013). St. Thomas Law Review, Forthcoming; Hofstra Univ. Legal Studies Research Paper No. 13-02. [Read the article at SSRN.](#)

Schneyer, Ted (2013) "The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers," *Hofstra Law Review*. Vol. 42: Iss. 1, Article 19. [Read the article at http://scholarlycommons.law.hofstra.edu/hlr/vol42/iss1/19.](http://scholarlycommons.law.hofstra.edu/hlr/vol42/iss1/19)

⁷ See e.g., Federation of Law Societies of Canada, National Discipline Standards, April 2014, <http://flsc.ca/national-initiatives/national-discipline-standards/>.

⁸ See e.g., Organisation for Economic Co-operation and Development (OECD), *Disruptive innovations in legal services*, <http://www.oecd.org/daf/competition/disruptive-innovations-in-legal-services.htm>.

Roper, Stephen, Love, Jim, Riger, Paul, and Bourke, Jane, *Innovation in legal services: A report for the Solicitors Regulation Authority and the Legal Services Board*, July 2015, Enterprise Research Centre, <http://www.sra.org.uk/sra/how-we-work/reports/innovation-report.page>.

⁹ See e.g., Hong, Kevin, *Equity And Diversity In Nova Scotia's Entity Regulation Management System*, Nova Scotia Barristers' Society, 31 July 2015, <https://nsbs.org/sites/default/files/ftp/InForumPDFs/Equity&DiversityNSEntityRegMgmtSystem.pdf>.



Memo

To: Benchers
From: Staff
Date: September 14, 2016
Subject: Survey of Designated Paralegal Initiative

Purpose of Memorandum

The Law Society indicated to the profession and the courts that it would evaluate the designated paralegal initiative. In March 2016 we surveyed lawyers who indicated on their Annual Practice Declaration that they supervised designated paralegals. The purpose of this memorandum is to report to the Benchers the results of that survey of lawyers and recommend next steps.

Background

In October 2010 the Benchers adopted the final report of the Delivery of Legal Services Framework Task Force. That report led to two changes to promote improved access to lower cost, competently delivered legal services: 1) it created a group of service providers called “designated paralegals”; and 2) it expanded the activities permitted of articulated students.

A supervising lawyer may permit a designated paralegal to give legal advice, appear before a court or tribunal as permitted by the court or tribunal, or represent a client at a family law mediation.¹ Appearances at court were limited to the family law pilot project, which ended December 31, 2014 in the Supreme Court and October 1, 2015 in the Provincial Court. The courts did not extend or expand the pilot, so designated paralegals cannot appear in court unless the courts decide to revisit the concept.

¹ BC Code, Rule 6.1-3.3.

Findings / Highlights of the Survey

The Law Society surveyed the 481 lawyers who indicated on the Annual Practice Declaration they supervise one or two designated paralegals. A total of 55 lawyers responded, for a response rate of 11.4%, which is a common response rate for this type of survey.

Some of the highlights include:

- 72.2% of respondents report that using designated paralegals has helped them deliver legal services to their clients at a lower cost.
- 74% of respondents indicated their clients viewed the services of the designated paralegal favourably.²
- 44.4% of respondents indicated they were able to take on matters they might otherwise have had to decline due the client's ability to pay fees.

These findings are supportive of the main purpose of the initiative, which was to provide potential clients the opportunity to access competently delivered, lower cost legal services. With respect to court appearances, none of the respondents indicated that they sent designated paralegals to court as part of the family law pilot. We understand from the courts that there were few of such appearances, which in part made that element of the initiative difficult to evaluate.

The survey was anonymous, so the verbatim comments are redacted. Some of the themes that emerge from the verbatim comments include:

- Many respondents do not practice in family law, and some do not make court appearances or appear before tribunals.
- 69.6% of respondents felt that there is a place for designated paralegals to make court appearances. Some examples include: unopposed applications, setting dates, small claims, some chambers matters, and simple matters a first year associate would be sent to court for.
- Only one respondent had sent a designated paralegal to appear before a tribunal. Note, however, that when the Legal Services Regulatory Framework Task Force consulted with the circle of chairs of Administrative Tribunals there was overwhelming support for appearances by designated paralegals at tribunals if it helped stem the problem of self-representation. 37.2% of respondents intend to send their designated paralegal to a tribunal in the future.

² The Law Society's 2009 IPSOS Reid survey of client's perception of lawyers' services generated a 69% favourable response for the services of their lawyer.

- 60.9% of respondents permit the designated paralegal to give legal advice directly to the client. The Delivery of Legal Services Task Force recognized that this is likely the greatest space for the initiative to move the needle on access to justice.
- Only 18 lawyers responded to the question of whether they would permit the designated paralegal to give legal advice in the future, and 66.7% indicated no. Because the survey was anonymized we have not connected this to identify which of these respondents responded to the question of whether they currently permit designated paralegals to give legal advice.

The survey asked the open ended question, *What could the Law Society do to improve the Designated Paralegal Initiative*. Themes that emerge from the responses include:

- Some respondents favoured expansion of the program, including geographic expansion.³
- Several respondents noted the need to better publicize the initiative and educate lawyers as to the possibilities.
- Some respondents noted that more training for designated paralegals would be desirable.
- Some respondents expressed concern about competing with designated paralegals, and at least one was not in favour of the effort to allow lawyers to make greater use of designated paralegals.

The Designated Paralegal initiative was the first step the Law Society took to expand the public's ability to access legal services from non-lawyers. Since the launch of the designated paralegal initiative, the Law Society further explored the potential for non-lawyers to play a role in improving access to legal services through the work of the Legal Services Regulatory Framework Task Force. In December 2014 the Benchers adopted the recommendation that the Law Society seek a legislative amendment to establish new class(es) of legal service providers to address unmet and underserved areas of legal need. Until that project is accomplished, the Designated Paralegal remains our only initiative of the sort.⁴

Next Steps / Recommendation

Much like the limited scope legal services (unbundling) reforms, it is difficult to know how much of a difference the designated paralegal initiative has made. However, a common

³ Note the only geographic limitation related to the family law pilot, which has ended. This might speak to some uncertainty amongst lawyers as to the scope of the initiative.

⁴ The Law Society is leading the way in Canada, with the exception of licensed paralegals in Ontario, and joins a number of US states that have established non-attorney legal professionals to address access to justice problems.

theme in calls for access to justice reforms in Canada and elsewhere is the need for greater use of limited scope retainers and non-lawyer legal professionals. Numerous respondents viewed the initiative favourably, but mentioned the need to better publicize its existence.

Recommendation: The Law Society should maintain the designated paralegal *status quo* until we have advanced the initiative to create and credential new categories of legal service providers, at which time the initiative may need reassessment.

There are several reasons for this recommendation:

1. If the legislative amendment is granted, the creation of new class(es) of legal service provider has the potential to transform the access to justice landscape in a way the designated paralegal initiative cannot. This is due, in part, to the limitations on the existing program (i.e. it requires lawyer supervision, is capped at two designated paralegal per supervising lawyer, does not foster greater competition, etc.);
2. If the legislative amendment is not granted, the Benchers will be in a better position to revisit the initiative with an eye to creating potential modifications to address the areas of unmet and underserved need identified in the Legal Services Regulatory Framework Task Force report;
3. Revisiting the designated paralegal program in parallel with the other access to justice initiatives creates a drain on resources, and potentially comes with additional budgeting costs;
4. Until such time as the Law Society is able to create and regulate new classes of legal service providers, the designated paralegal initiative remains our best option for improving the public's access to lower cost, competently delivered legal services under the supervision of a lawyer.

/DM

/Appendix

Appendix

Key Findings

<i>Has using Designated Paralegals helped you deliver legal services at a lower cost to your clients?</i>	
Response	Count
Yes	39 (72.2%)
No	15 (27.8%)
	Total: 54

<i>Has using Designated Paralegals helped you take on matters you otherwise might have had to turn down because of the client's ability to pay your fees?</i>	
Response	Count
Yes	24 (44.4%)
No	30 (55.6%)
	Total: 54

<i>What has been the feedback from clients whose legal needs have been served through a Designated Paralegal?</i>	
Response	Count
Very favourable	24 (44.4%)
Favourable	16 (29.6%)
Neutral	13 (24.1%)
Unfavourable	1 (1.9%)
	Total: 54

<i>Did you send your Designated Paralegal to court as part of the Family Law Pilot Project?</i>	
Response	Count
No	54 (100%)
	Total: 54

<i>Do you believe there can be an effective role for paralegals in court?</i>	
Response	Count
Yes	32 (69.6%)
No	14 (30.4%)
	Total: 46

<i>Has your Designated Paralegal appeared before an administrative tribunal?</i>	
Response	Count
Yes	1 (2.2%)
No	44 (97.8%)
	Total: 45

<i>Do you intend to permit your Designated Paralegal to appear before administrative tribunals in the future, should the right matter arise?</i>	
Response	Count
Yes	16 (37.2%)
No	27 (62.8%)
	Total: 43

<i>Have you permitted your Designated Paralegal to give legal advice directly to a client?</i>	
Response	Count
Yes	28 (60.9%)
No	18 (39.1%)
	Total: 46

<i>Do you have any plans to permit your Designated Paralegal to give legal advice to a client in the future?</i>	
Response	Count
Yes	6 (33.3%)
No	12 (66.7%)
	Total: 18

Verbatim Comments

The survey also received numerous verbatim comments. They are not duplicated here. The key themes from the verbatim comments fall into several categories.

Lawyers are generally positive about the initiative – there were very few responses that expressed concern about the initiative and these fell into two categories: 1) lawyers who were concerned about competing with designated paralegals, and 2) lawyers who had concern about using designated paralegals for complex matters that require a lawyer. For the most part, responses encouraged greater publication of the initiative to the profession, an expansion of the scope of permitted court appearances, and more training opportunities.

Family law pilot project – many of the respondents did not practice family law and consequently would not have taken advantage of the family law pilot. A few comments spoke about the desire to make use of the designated paralegal but no adequate opportunity presenting itself. Some mentioned the paralegal not being comfortable with the concept.

Roles for designated paralegals in courts or tribunals – the survey generated numerous suggestions for matters that would be appropriate for designated paralegals to attend to, including: small claims, setting dates, non-contentious applications, some chambers matters. While the majority of the verbatim responses suggested appearances that might be appropriate, a few respondents did not feel it is appropriate to send a designated paralegal to appear in court or before a tribunal due to the potential for complex issues to arise.

What can the Law Society do to improve the Designated Paralegal initiative? – There were a range of responses to this question. Respondents noted the need for the Law Society to let lawyers know about designated paralegals and what they can and cannot do. In addition to better promotion, the need for education was cited – both for supervising lawyers and designated paralegals. Promoting greater public awareness was cited. As with other questions, some respondents observed that they were not in favour of the initiative.



June 29, 2016

Messrs. David Crossin & Tim McGee
The Law Society of British Columbia
845 Cambie Street,
Vancouver, B.C. V6B 4Z5

Dear Sirs:

Re: Lawyers Assistance Program
16th Annual Gratitude Lunch – June 17, 2016

I want to thank you for your valuable support and participation in the LAP 2016 Gratitude Lunch.

Garth McAlister was thrilled that so many of his colleagues came to offer him their gratitude in recognition of his leadership in helping to create a kinder, more compassionate legal profession and the dedication he has shown in his willingness to assist other lawyers through difficult situations over the years. He was generous in his praise of Rick Sugden, and it was an excellent reminder of the great tradition we have at the Bar of lawyers helping lawyers. I also received many comments appreciating the honest and inspirational messages at the luncheon.

We intend to have the luncheon again next year, on June 16, 2017, and I hope you will be able to attend. Please mark that date in your calendar.

Once again, your support and participation is truly appreciated.

With Gratitude,


Derek LaCroix QC
LAP



September 20, 2016

Sent via email [REDACTED]

Jessica Richardson, Committee Clerk
Standing Senate Committee on Legal and Constitutional Affairs
The Senate of Canada
40 Elgin Street, Room 1057
Ottawa, ON K1A 0A4

David Crossin, QC
President

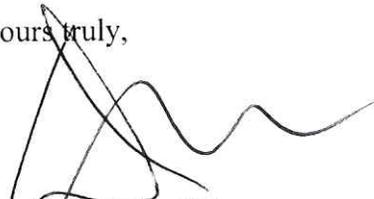
Dear Ms. Richardson:

Re: Senate Committee Hearing September 27, 2016

Thank you for your letter August 31, 2016, and your invitation to participate in the Senate Committee hearing on September 27, 2016. I very much appreciate the invitation to attend the hearing in my capacity as President of the Law Society of British Columbia. Unfortunately, the Benchers have not had an opportunity to study these issues from an overall policy perspective and consequently I would simply not be in a position to add much value to the hearing.

I am enclosing, however, an overview outlining some of the work of the Law Society of British Columbia in relation to these issues we ask that you forward to the Committee in hopes that the Committee may find these comments constructive.

Yours truly,


David Crossin, QC
President



September 20, 2016

Sent via email [REDACTED]

Jessica Richardson, Committee Clerk
Standing Senate Committee on Legal and Constitutional Affairs
The Senate of Canada
40 Elgin Street, Room 1057
Ottawa, ON K1A 0A4

David Crossin, QC
President

Dear Ms. Richardson:

Re: Delays in Criminal Proceedings

Thank you for your letter of August 31, 2016, and your invitation to participate in the Senate Committee hearing on September 27th.

The Law Society of British Columbia is the independent self-regulating body for the legal profession in British Columbia. Its statutory object and duty, as set out in s. 3 of the *Legal Profession Act*, SBC 1998, c. 9, is to uphold and protect the public interest in the administration of justice by, amongst other things, preserving and protecting the rights and freedoms of all persons.

Section 11(b) of the *Charter of Rights and Freedoms* provides that every person charged with an offence has the right to be tried within a reasonable time. Delays in criminal proceedings can cause significant prejudice and harm to accused persons, victims, and witnesses. Further, confidence in the criminal justice system is undermined where there are unjustifiable delays in bringing a case to resolution. The public interest in the administration of justice requires the timely resolution of criminal charges.

The Law Society recognizes that this is a complex issue that engages a multitude of factors, including the appointment of a sufficient numbers of judges, institutional resources, legal aid funding, timeliness of disclosure to the accused, and the proliferation of pre-trial motions.



Some of the issues identified in the Senate Committee’s preliminary report are matters that we have considered in other contexts or are matters on which we are working to develop a vision. For example, the Law Society has:

- advocated that government appoint a full complement of judges to the Court wherever there are vacancies;
- advocated that the courts be properly resourced to ensure that their administrative and technological needs are met. The need to properly resource the courts arises from constitutional imperatives and must therefore be treated in a manner different from other budgetary considerations by governments;
- supported limited scope (or “unbundled”) retainers of legal services through which clients can obtain information of discrete aspects of a legal matter at a lesser cost than a full retainer;
- supported the charge approval system that exists in British Columbia whereby charges are approved by Crown counsel rather than by investigating authorities
- advocated that accused persons have access to legal aid or other resources to obtain legal assistance, recognizing that proper legal advice can ameliorate procedural delays and help to resolve matters in a timely way. Our Legal Aid Task Force is currently developing a vision for publicly funded legal aid, and our Access to Justice Advisory Committee has made recommendations on ways to improve access to legal services and justice.

Initiatives designed to improve the efficiency of the justice system must be implemented in a manner that do not adversely affect other rights of accused persons. We have emphasized this point in submissions to our provincial government in their justice reform proposals.

The Law Society supports the inquiry your Committee has undertaken in its study of this subject. Taking steps to address delay in our justice system will help to protect the rights of all Canadians, and will help to improve the reputation of our justice system.

David Crossin, QC
President

The Law Society of British Columbia



Thank you for providing us with an opportunity to address your Committee.

Yours truly,

A handwritten signature in black ink, appearing to read "David Crossin", written over the printed name.

David Crossin, QC
President

David Crossin, QC
President

REDACTED MATERIALS

REDACTED MATERIALS