Law Society of British Columbia

Agenda

Bencher Meeting

Date:	Saturday, May 31, 2025
Time:	**9:00 am – Call to Order**
Location:	The Bencher Meeting is taking place as a hybrid meeting. If you would like to attend the meeting as a virtual attendee, please email BencherRelations@lsbc.org
Recording:	***The public portion of the meeting will be recorded.***

OATH OF OFFICE

President Brook Greenberg, KC will administer an oath of office (in the form set out in Rule 1-3) to newly elected Bencher Nicole E. Smith.

1	Administer Oath of Office

CONSENT AGENDA

Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.

2	Minutes of April 11, 2025 meeting (regular session)
3	Minutes of April 11, 2025 meeting (*in camera* session)
4	Law Society Representatives appointed pursuant to *King's Counsel Act*
5	2025 Annual General Meeting: Advance Voting
6	Ethics & Lawyer Independence Advisory Committee: Draft Amendment to *BC Code* relating to Single Party Communication Rule
7	Revised Statement of Investment Policies

REPORTS

8	President's Report	10 min	Brook Greenberg, KC
9	CEO's Report	10 min	Gigi Chen-Kuo

Law Society of British Columbia

Agenda

GUEST PRESENTATION			
10	Updates from the Federation of Law Societies of Canada and Western Law Societies	20 min	Representatives from the Federation of Law Societies of Canada and Western Law Societies
DISCUSSION/DECISION			
11	Strategic Planning Process Update	10 min	Gigi Chen-Kuo
12	Trust Review Task Force: Consultation and Related Considerations	30 min	Brook Greenberg, KC
FOR INFORMATION			
13	External Appointments: Continuing Legal Education Society of BC		
IN CAMERA			
OTHER BUSINESS			

Law Society of British Columbia

Bencher Meeting: Minutes (Draft)

To: Benchers

Purpose: Approval (Consent Agenda)

Date: Friday, April 11, 2025

Present:

Brook Greenberg, KC, President
Thomas L. Spraggs, 1st Vice-President
Michael Welsh, KC, 2nd Vice-President
Simran Bains
Paul Barnett
Aleem Bharmal, KC
Tanya Chamberlain
Nikki L. Charlton
Jennifer Chow, KC
Christina J. Cook
Cheryl S. D'Sa, KC
Tim Delaney
Brian Dybwad
Katrina Harry, KC
Ravi R. Hira, KC
Sasha Hobbs
James A. S. Legh
Benjamin D. Levine
Dr. Jan Lindsay
Jaspreet Singh Malik
Marcia McNeil
Jay Michi
Georges Rivard
Michèle Ross
Gurminder Sandhu, KC
Barbara Stanley, KC
James Struthers
Natasha Tony
Kevin B. Westell
Gaynor C. Yeung
Jonathan Yuen

Staff present:

Avalon Bourne
Kim de Bruijim
Barbara Buchanan, KC
Gigi Chen-Kuo
Michaela David
Jackie Drozdowski
Su Forbes, KC
Leanne Hargrave
Sandra Haywood-Farmer
Kerryn Holt
Jeffrey Hoskins, KC
Jane Ladesma
Michael Lucas, KC
Alison Luke
Claire Marchant
Tara McPhail
Jeanette McPhee
Cary Ann Moore
Alina Morrissey
Michael Mulhern
Doug Munro
Rashmi Nair
Mandana Namazi
Herman van Ommen, KC
Sara Pavan
Shanti Reda
Michelle Robertson
Carrie Robinson
Lesley Small
Arrie Sturdivant
Christine Tam
Maddie Taylor
Adam Whitcombe, KC
Vinnie Yen

Guests:

Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
Patricia D. Blair	First Vice-President, Canadian Bar Association, BC Branch
Ian Burns	Digital Reporter, The Lawyer's Daily
Paul Hargreaves	Chief Financial Officer, Courthouse Libraries BC
Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
Desmond MacMillan	Assistant Dean of Law, Thompson Rivers University
Mark Meredith	Board Member, Mediate BC
Ngai Pindell	Dean of Law, Peter A. Allard School of Law
Rob Seto	Director of Programs, Continuing Legal Education Society of BC
Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch

Consent Agenda

1. Minutes of February 7, 2025, meeting (regular session)

The minutes of the meeting held on February 7, 2025 were approved unanimously and by consent as circulated.

2. Minutes of February 7, 2025, meeting (*in camera* session)

The minutes of the *in camera* meeting held on February 7, 2025 were approved unanimously and by consent as circulated.

Reports

3. President's Report

President Brook Greenberg, KC confirmed that no conflicts of interest had been declared for the regular portion of the meeting

Mr. Greenberg began his report by encouraging Benchers to read a recent article written by Michael Lucas, KC, General Counsel/Senior Policy Counsel, entitled *Trump's disregard for rule of law highlights fight for independence in BC*. Mr. Greenberg spoke about the current situation in the United States with executive orders being issued barring certain lawyers and firms from federal properties and contracts, as well as calls for the impeachment of judges who do not agree with the actions of the current administration. He spoke about the importance of the rule of law and the independence of the profession and of the regulator, and that ensuring the safeguard of this independence was why the Law Society was challenging Bill 21 – the *Legal Professions Act*.

Mr. Greenberg informed Benchers that following discussions at the February Bencher meeting about the Trust Review Task Force report and recommendations, a one-month consultation period would take place in order to provide an opportunity for the public and profession to provide feedback. He indicated that the consultation period would open the following week and close on May 9.

Mr. Greenberg then reminded Benchers that the nomination period for the Law Society Award was open and would be closing on April 30, and he encouraged Benchers to submit nominations.

Nominations were also open for the position of Bencher in the County of Nanaimo, closing on May 1, and Mr. Greenberg indicated voting would take place from May 7 to 14, with the results announced on May 15.

Mr. Greenberg concluded his report with an overview of his recent and upcoming events, including attending welcome ceremonies for Judge Brian Dybwad, Justice Lindsay LeBlanc, and Justice Paul Pearson, the upcoming Mental Health Forum being held jointly with the CLEBC, and the first call ceremony of the year that took place on March 7.

4. CEO's Report

Gigi Chen-Kuo, CEO and Executive Director began her report by speaking about the new Director, Indigenous Initiatives position, which has been posted to the Law Society website. She indicated that the Law Society has also retained an executive search and international Indigenous recruitment firm to assist in finding the right candidate for this important role. Ms. Chen-Kuo also indicated that Claire Marshall had been retained as a consultant to undertake an assessment of the Law Society in a number of areas, so as to assist the Law Society in its commitment to truth and reconciliation. Ms. Chen-Kuo informed that the Director of Discipline and Director of Investigations positions had been filled.

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

Mr. Greenberg, as the Law Society of BC's representative on the Federation Council, provided a brief overview of the written report he provided for Benchers' information, which included an overview of the recent Federation meetings in Ottawa.

Update

6. 2024 Tribunal Annual Report and 2025 Planning

Herman Van Ommen, KC, LSBC Tribunal Chair, provided an overview of the 2024 LSBC Tribunal's Annual Report, highlighting the timeliness of Tribunal decisions, the time between issuance of a citation and the conclusion of a hearing, and the overall workload of the Tribunal.

7. National Discipline Standards Report: Implementation & Update

Tara McPhail, Chief Legal Officer, provided background information regarding the National Discipline Standards and then presented the findings of the 2024 report. She indicated that in 2024, the Law Society met 21 of the 23 standards, a performance similar to previous years, and as in previous years, the two standards not met were 9 and 10. Ms. McPhail indicated that the Law Society's performance in regard to these two standards has improved in comparison to 2023, and she reviewed steps taken to improve performance further.

8. Practice Advisor Presentation

Claire Marchant, Director of Policy and Practice Support, presented on the Law Society's Practice Advice Program. She provided an overview of the program, including the history of the program, and then reviewed what services the program provides, as well as the role of Practice Advisors, the areas for which they provide advice, the confidential nature of the program, with the caveat that trust shortages need to be reported, and how to contact Practice Advisors. She then presented some highlights, including updating and expanding the Law Society's Advice Decision-making Assistant (ADMA), new and upcoming resources under development, speaking engagements at conferences and law schools, aligning resource deployment with Law Society Rule and *Code of Professional Conduct for BC* amendments, assisting with the omnibus *Code of Professional Conduct for BC* amendments, and working on the *Code of Professional Conduct for BC* annotations project.

Benchers discussed time-sensitive matters and suggested that additional guidance could be provided to lawyers and published on the website regarding what should be done in emergency situations.

Discussion & Decision

9. Confidentiality Rule - Practice Advisors & Equity Advisor

Ms. Marchant spoke to this item and provided background information regarding the proposal to create a new Rule to codify confidentiality protection, along with an articulation of limits, for Practice Advisors.

Benchers discussed the proposed Rule, in particular the disclosure requirements. Ms. Marchant advised that there would be some exceptions to confidentiality in cases of trust shortages, a requirement to disclose by law or a court order, should the lawyer seeking advice provide consent, or if there was a real risk of harm in not disclosing.

Benchers also discussed the impetus for the Rule, and whether or not there was a specific problem that was being addressed with the creation of this Rule. Ms. Marchant advised that while there was not a specific case or situation that prompted bringing forward this proposed Rule, it would be helpful for clarification purposes and to provide reassurance to lawyers to codify confidentiality practices that are already in place.

The following resolution was passed unanimously:

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

1. In Rule 1, by

(a) Deleting the definition of "Equity Advisor" and replacing it with

""Equity Advisor" means any person employed by the Society to provide, or to assist such Advisor in providing, advice and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers;**"**

(b) Adding the following defintion:

""Practice Advisor" means any person employed by the Society to provide, or to assist such Advisor in providing, confidential advice to lawyers and articled students on issues of ethics, professional conduct and practice management;**"**

2. In Rule 10.2,

(a) by adding subrule (0.1) as follows:

"(0.1) For the purpose of this rule, "Advisor" means an Equity Advisor or a Practice Advisor;**"**

(b) in subrule (1), by striking out "interpreted in a way that will facilitate the Equity Advisor assisting in the resolution of disputes***" and replacing it with "***interpreted in a manner to facilitate an Equity Advisor in mediation***"**

(c) by deleting subrules (2) and (3) and replacing them with:

"(2) Communication between an Advisor acting in that capacity with any person receiving or seeking assistance from an Advisor is, subject to subsection (3), confidential and must remain confidential in order to foster an effective relationship between an Advisor and individuals who seek or receive their assistance.

(3) Advisors must hold in confidence and must not disclose all information acquired in their capacity as an Advisor, other than to another Advisor acting in the same capacity, unless:

(a) information received reveals a trust shortage that will not otherwise be reported to the Society;

(b) disclosure of the information is required by law or court order;

(c) the individual seeking assistance provides express consent, verbally or in writing, to the disclosure or release of the information provided; or

(d) an Advisor has reasonable grounds to believe from the information provided that there is an imminent risk of death or serious bodily harm to the individual seeking advice or to another person, and disclosure is necessary to prevent such death or harm.**"**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

10. Exploring Practice Fee Relief

Mr. Greenberg introduced the item and provided some background information regarding exploring practice fee relief, including an overview of past Bencher discussions regarding the matter, as well as the underlying public interest in preventing financial barriers to practising law. He indicated that the Law Society has kept the practice fee at its current level for six consecutive years; however, concerns remain regarding the viability of lawyers being able to practice in less financially lucrative areas, which is why it would be timely to consider some form of practice fee relief. Mr. Greenberg reviewed different potential models and criteria to consider for fee relief, including what had been proposed in a member resolution submitted at the 2024 annual general meeting, which contemplated fee relief based on year of call. He indicated that the Executive Committee considered this approach, but did not think it was the best option, as those new to the profession may not necessarily be those most in need of financial relief, and that an approach based on financial need would make more sense and be more in line with the fee relief provided by the Law Society during the COVID-19 pandemic.

Mr. Greenberg then reviewed the two options considered by the Executive Committee: one option contemplated undertaking licensee engagement to inform the purpose, viability, criteria, and design of a program, with a full policy work-up to come back to Benchers at a later date; and the other option contemplated launching a one-year pilot for a practice fee rebate program based on a total-income eligibility criteria, during which data would be collected to inform the purpose, viability, and design of a future program with further details of the proposed pilot program to be brought back to Benchers at a later date. He indicated that the Executive Committee had considered both options, and there had been a strong consensus to take concrete action and implement a one-year pilot program, funded through reserves, in order to gather information on the impacts of the program. He indicated that if Benchers were in agreement with proceeding with a pilot program, then a proposal with a specific outline of the proposed pilot program would be brought back for consideration and approval at the July Bencher meeting.

There was general agreement from Benchers that it would make sense to proceed with the pilot option and build upon the experiences gained from the COVID-19 pandemic fee relief program.

The following resolution was passed unanimously:

BE IT RESOLVED the Benchers approve, in principle, the establishment of a one-year pilot of a practice fee rebate program as described in this report, the details of which will come back to Benchers for consideration at the July 2025 Bencher meeting.

11. Establishing the Alternative Discipline Process as a Permanent Regulatory Program

Ms. McPhail introduced the item and provided some background information regarding the proposal to establish the alternative discipline process as a permanent regulatory program.

The following resolution was passed unanimously:

BE IT RESOLVED that the Alternative Discipline Process be established as permanent Law Society program.

12. Financial Matters

Jeanette McPhee, Chief Financial Officer & Senior Director of Trust Regulation, provided an overview of the audited financial statements and financial reports for 2024. She noted that the general fund operations resulted in a positive variance to budget, mainly due to cost savings, with revenues 1% below budget and operating expenses 5% below budget. Ms. McPhee indicated that the increase in lawyers in comparison to 2023 was only 2.4%, as opposed to the 3 to 3.5% increase over the last four to five years. Ms. McPhee reviewed expenses, which had savings in external counsel fees, lawyer development, and compensation; however, expenses related to the Bencher retreat and other external events were over-budget, as were costs related to the Tribunal, due to the new per diem amounts established for adjudicators. She then reviewed TAF-related revenue, which was lower than anticipated due to market fluctuations. Ms. McPhee then reviewed the general fund net assets, indicating that the Law Society aimed to have between three to six months of operating expenses in reserve. Ms. McPhee then reviewed the Lawyers Indemnity Fund, which was slightly behind budget, mainly due to the lower number of practising and indemnified lawyers. She also reviewed claims provision over the course of 2024, as well as net assets and the Lawyers Indemnity Fund investment portfolio.

Ms. McPhee reviewed the general fund forecast for 2025, which is forecasted to be under budget, mainly due to the lower number of practising lawyers. She indicated that there would likely be some savings related to external counsel costs.

Ms. McPhee concluded her remarks with an overview of the planned use of reserves for 2025, which would likely include single legal regulator transition costs, lawyer development initiatives, course development costs, technology, and planning for potential future deficit budgets, depending on whether the practice fee would be increased.

Benchers discussed the possibility of future deficit budgets. Ms. McPhee indicated that a larger deficit was projected for 2025, which would be managed by reserves; however, in order to avoid future deficit budgets, increasing the practice fee would need to be considered.

The following resolution was passed unanimously:

> **BE IT RESOLVED** to approve the Law Society's 2024 Financial Statements for the General Fund, and the 2024 Consolidated Financial Statements for the Lawyers Indemnity Fund.

For Information

13. News Article: *Trump's disregard for rule of law highlights fight for independence in BC*

There was no discussion on this item.

The Benchers then commenced the *in camera* portion of the meeting.

AB
2025-05-22

Law Society
of British Columbia

Law Society Representatives appointed pursuant to *King's Counsel Act*

To: Benchers

Purpose: Approval (Consent Agenda)

From: Executive Committee

Date: May 31, 2025

DM4852317

Purpose & Background

1. In accordance with the *King's Counsel Act*, on the recommendation of the Attorney General, the Lieutenant Governor in Council may appoint, from among the members of the Bar of BC, Provincial officers under the names of His Majesty's Counsel.

2. Before making a recommendation, section 2(2) of the *Act* requires the Attorney General to consult, inter alia, with two members of the Law Society appointed by the Benchers. The Benchers' past practice, on the recommendation of the Executive Committee, has been to appoint the current President and First Vice-President for that purpose.

Decision

3. The Executive Committee recommends that Benchers approve the following resolution:

> **BE IT RESOLVED the Benchers appoint President Brook Greenberg, KC and First Vice-President Thomas L. Spraggs, KC as the Law Society's representatives to be consulted pursuant to section 2(2)(c) of the *King's Counsel Act*.**

Law Society
of British Columbia

2025 Annual General Meeting: Advance Voting

To: Benchers

Purpose: Approval (Consent Agenda)

From: Staff

Date: May 31, 2025

Purpose

1. This memorandum seeks the Benchers' authorization to permit voting in advance of the Law Society's 2025 Annual General Meeting (AGM), pursuant to Rule 1-13.1(1).

Background and Discussion

2. Rule 1-13.1 (1) provides that the Benchers may authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the general meeting.

3. Since 2019, advance online voting has been available for the AGM. Advance voting gives members the opportunity to vote at a time of their choosing within the period of advance voting, and does not require them to attend on the day of the AGM in order to vote, which has greatly increased overall voter turn-out since 2019. Accordingly, staff recommend that advance voting again be permitted for the 2025 AGM.

4. Should Benchers authorize voting in advance of this year's AGM, information regarding the advance voting process will be communicated in the notice to the profession provided for in Rule 1-8 (7).

Decision

5. Accordingly, staff propose the following resolution for approval by the Benchers:

> **BE IT RESOLVED the Benchers authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the 2025 AGM, in accordance with Rule 1-13.1.**

Law Society
of British Columbia

Ethics & Lawyer Independence Advisory Committee: Draft Amendment to *BC Code* relating to Single Party Communication Rule

To: Benchers

Purpose: Approval (Consent Agenda)

From: Ethics and Lawyer Independence Advisory Committee

Date: May 31, 2025

DM4852769

Issue

1. The Benchers are asked to approve changes to the Commentary to Rule 5.1-2.3 of the *Code of Professional Conduct for British Columbia* (Single Party Communications with a Tribunal)

Background

2. Relatively recently, amendments to the Model Code and Commentaries concerning "Single Party (Ex Parte) Communications" (Rule 5.1-2.3) were approved by the Federation of Law Societies Council and changes were made to the *Code of Professional Conduct for BC*.

3. In the consultations leading up to the amendments to the Model Code on the subject, the Law Society of BC noted that in general, the issue was already addressed in this province by a practice directive from the Court (and essentially enforced by the Court), and that perhaps the amendments were less practically necessary in BC in light of the Court's engagement on the matter. Nevertheless, the Law Society did not oppose amendments in the Model Code to ensure that provisions on ex parte communications would be clear in provinces where, perhaps, the courts had taken a less active role and the issue was more of a concern.

4. However, concerns were raised in BC in the administrative law bar about whether the clarifications to the Model Code Rule would limit common practices in some areas of law – particularly in labour relations – where it is not uncommon for there to be communications with tribunal members on certain matters by one party or the other in an effort to achieve a mediated outcome, or on other matters of a more administrative or procedural nature. Concerns were also raised as to the possibility of the proposed changes limiting practices common in some tribunal practices – again, areas including practices in labour law – where the tribunals actually encouraged single party communications in their practices.

5. These concerns were raised by the Law Society with the Federation, and some suggestions for amendments to ameliorate the issue were made. Changes to the initial proposed amendments by the Model Code Committee were made to clarify that the provisions in the Code would not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. However, the Model Code Committee considered that the phrase, in Commentary 5.1-2.3 [4], "When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication" sufficient to cover local practices where tribunals encouraged communication that might otherwise be contrary to the Code provisions and that further amendments to the Model Code were not necessary. This decision was informed by consultation with members of the Model Code liaisons, a group of staff of from legal

regulators across Canada, where representatives from other jurisdictions indicated amendments to clarify this issue as proposed by BC were likely to have unintended consequences in their jurisdictions.

Discussion

6. While it is indeed possible that the phrase referred to above from commentary 5.1-2.3 [4] would address the concern, practitioners and tribunal members from the various affected areas of practice are concerned that the language might cast a chill on what has otherwise been an effective practice and procedure. Consequently, requests have been made to consider a clarification to ensure readers of the Code will clearly understand that tribunal practices that encourages such communications are understood to still be permitted.

Recommendation

7. The Ethics and Lawyer Independence Advisory Committee has considered the requests, and understands that the practices of the tribunals and lawyers in the practice areas are well-intentioned to reflect processes that have been useful in the resolution of disputes, which would be affected by a too-strict reading of the rule. The Committee also agreed that a casual reading of the rule without clarification might lead the reader to the conclusion that such practices are no longer permitted.

8. Staff recommends to the Committee the addition of a clarifying phrase following the final sentence in commentary [4] of rule 5.1-2.3, as follows:

   > Clearly understood or well-communicated processes, authorized or issued by particular tribunals, that permit or encourage single party communications will also be considered authorized by law for the purposes of this provision.

   The Committee agreed, and makes the same recommendation to the Benchers.

9. Red-lined and clean versions of the proposed amendments are attached as Appendices A and B.

Decision

10. The Committee asks the Benchers to approve the resolution attached at Appendix C.

Single-party communications with a tribunal

5.1-2.3 Except where authorized by law, and subject to Code rule 5.1-2.2 (*Ex parte* proceedings), a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.

[added 04/2023; amended 11/2024]

Commentary

[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.

[3] This Code rule does not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication. Clearly understood or well-communicated processes, authorized or issued by particular tribunals, that permit or encourage single party communications will also be considered authorized by law for the purposes of this provision.

Single-party communications with a tribunal

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[added 04/2023; amended 11/2024]

Commentary

[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.

[3] This Code rule does not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication. Clearly understood or well-communicated processes, authorized or issued by particular tribunals, that permit or encourage single party communications will also be considered authorized by law for the purposes of this provision.

TITLE: Single Party Communication

RESOLUTION:

BE IT RESOLVED to amend rule 5.1-2.3 of the* Code of Professional Conduct for British Columbia *by adding to Commentary [4] the following sentence:

> **"**Clearly understood or well-communicated processes, authorized or issued by particular tribunals, that permit or encourage single party communications will also be considered authorized by law for the purposes of this provision.**"**

Law Society
of British Columbia

Revised Statement of Investment Policies

To: Benchers

Purpose: Approval (Consent Agenda)

From: Finance and Audit Committee

Date: May 31, 2025

DM4841666

Background

1. The Finance and Audit Committee (FAC), management, and Law Society's independent investment advisors, George & Bell, undertook the triennial review of the Law Society Statement of Investment Policies and Procedures (SIPP).

2. Recommended changes include updating asset mix recommendations, divesting from the real estate fund and moving these investment funds to infrastructure and public securities, as follows:

   a) **Divest from the real estate fund**
   Persistent weak performance and modest future return prospects relative to other options resulted in the recommendation to divest from the real estate fund.

   b) **Move these investment funds into infrastructure and bonds/equities**
   Options were considered for the new asset mix, with the final recommendation to redeploying these investment funds by allocating half of the funds to the current balanced manager and half of the funds to the two current infrastructure funds. The resulting asset mix will have slightly increased liquidity (from the allocation to the balanced manager) and will have a slightly increased expected return.

   The above-noted changes, have been incorporated into the SIPP (see attached red-lined and clean versions). There were also minor wording corrections incorporated which are not highlighted.

Decision

3. The Finance and Audit Committee recommends the Benchers approve the following resolution:

   BE IT RESOLVED that Benchers adopt the attached 'Statement of Investment Policies and Procedures' which replaces Appendix 1 - Investment Guidelines of the Bencher Governance Policies.

Appendix A

Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: November 2001

Revised: July 2005

Revised: April 2009

Revised: March 2010

Revised: June 2015

Revised: December 2019

Revised: December 2022

Revised: May 2025

Table of Contents

1. General

1.1 Application

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

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

1.2 Compliance

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

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

1.3 Pooled Funds

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

1.4 Effective Date

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

2. Responsibilities

2.1 Plan Administration

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

2.2 Delegation

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

2.3 Investment Managers

The investment managers are responsible for:

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

2.4 Standard of Care

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

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

3. Account Management

3.1 Overview of Accounts

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

3.2 Lawyers Indemnity Fund - LT Account

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

3.3 Unclaimed Trust Funds Account

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

- the investment objective is to earn a rate of return of 1.0% per year for short term and 3.0% per year for fixed income
- the Benchmark Portfolio shall consist of short term or fixed income investments in any combination, totalling 100%.

3.4 Lawyers Indemnity Fund - ST Account

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

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

4. Fund Objectives

4.1 Investment Philosophy

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

4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omissions and defalcation claim funding requirements and operational costs. Over the 10-year period 2020 to 2029, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

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

4.3 Investment Constraints

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

4.4 Environmental, Social and Governance Considerations

a. Risk Consideration

The Law Society recognizes that environmental, social, and governance (ESG) issues may have an impact on the performance of investment portfolios. As a result, the Law Society will consider ESG risks alongside financial, economic, and other risks as part of the investment decision-making process. Key components of ESG activities include, but are not limited to:

- Ensuring that investment managers incorporate ESG issues into investment analysis and decision-making processes and follow the United Nations-supported Principles for Responsible Investment;
- Receiving regular reporting on ESG issues from the investment managers; and

- Exercising the Law Society's rights and influence as an investor to support improvements in ESG performance across asset classes

b. Proxy Voting Rights

Proxy voting rights on securities held are delegated to the investment manager;

- The investment managers are expected to vote in a manner consistent with applicable duties of loyalty and care and that supports implementation of current best practices in corporate governance and social responsibility; and
- The investment managers shall maintain a record of how voting rights of securities in each fund were exercised, and will provide a summary of the votes to the Law Society in its annual summary.

c. Reporting Requirements

- Investment managers will be required to report to the Law Society at least annually regarding actions taken and relevant metrics with respect to ESG matters or initiatives.

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

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

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	~~5~~6.25%	~~10~~11.25%	~~15~~16.25%
Foreign Equities	MSCI-World Index (CAD)	~~15~~17.5%	~~20~~22.5%	~~25~~27.5%
Total Equities		**~~20~~23.75%**	**~~30~~33.75%**	**~~40~~43.75%**
Bonds	FTSE Canada Universe Bond Index	~~5~~6.25%	~~10~~11.25%	~~15~~16.25%
Cash and Short Term	FTSE Canada 91-Day Treasury Bill Index	0%	0%	5%
Mortgages	FTSE Canada Short Term Bond Index + 1%	18%	20%	22%
~~Real Estate~~	~~Absolute Return (net of fees) of 6% per annum~~	~~8%~~	~~10%~~	~~12%~~
Infrastructure	Absolute Return (net of fees) of 8% per annum	~~25~~30%	~~30~~35%	~~35~~40%

5.2 Investment Management Structure

As of approximately ~~January 2020~~May 2025, the long-term structure of the Funds will be as follows:

	Asset Class Percentages (market value)		
Manager	**Minimum**	**Benchmark**	**Maximum**
Balanced Manager	~~35~~40%	~~40~~45%	~~45~~50%
~~Real Estate .Manager~~	~~8%~~	~~10%~~	~~12%~~
Mortgage Manager	18%	20%	22%
Infrastructure Manager 1	~~12.5~~15%	~~15~~17.5%	~~17.5~~20%
Infrastructure Manager 2	~~12.5~~15%	~~15~~17.5%	~~17.5~~20%

a. Balanced Manager's Asset Mix

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

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	20%	25%	30%
Foreign Equities	MSCI-World Index (CAD)	45%	50%	55%
Total Equities		**65%**	**75%**	**85%**
Bonds	FTSE Canada Universe Bond Index	15%	25%	35%
Cash and Short Term	FTSE Canada 91-Day Treasury Bill Index	0%	0%	10%

~~a. Real Estate Manager Asset Mix~~

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

b. Mortgage Manager's Asset Mix

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

c. Infrastructure Managers' Asset Mix

Each Infrastructure Manager shall invest its assets in an Infrastructure Pooled Fund.

5.3 Investment Manager Mandates

a. Balanced Manager

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

~~b. Real Estate Manager~~

~~The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 6% per annum.~~

~~c.~~b. Mortgage Manager

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

~~d.~~c. Infrastructure Managers

The Infrastructure Managers' target rate of return, on average over rolling four-year periods after the deduction of investment management fees, is an absolute return of 8% per annum.

5.4 Active Asset Mix Management

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

5.5 Re-Balancing

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

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

6. Permitted Investments

6.1 List of Permitted Investments

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

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

c. Short-term instruments, subject to limitations in Section 7.3:
- Cash;
- Demand or term deposits;
- Short-term notes;
- Treasury Bills;
- Bankers acceptances;
- Commercial paper; and
- Investment certificates issued by banks, insurance and trust companies

d. Fixed Income instruments, subject to limitations in Section 7.3:
- Bonds, debentures and other evidence of indebtedness issued or guaranteed by Canadian ~~-~~federal, provincial and municipal governments and agencies, Canadian corporations, and non-Canadian government and corporate issuers, issued in Canadian or non-Canadian currency;
- Private Placements;
- Debentures (convertible and non-convertible);
- Mortgages and mortgage-backed securities; and
- Any other securities with debt-like characteristics that are constituents of the FTSE TMX Canada Universe Bond Index.

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

~~f.~~e. Infrastructure investments made either through closed or open-ended pooled funds (including limited partnerships).

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

6.2 Derivatives

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

6.3 Prohibited Transactions

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

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

6.4 Securities Lending

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

7. Investment Restrictions

7.1 Canadian Equities

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

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

c. No more than 15% of the market value of the assets of the Canadian equity portfolio may be invested in companies with a capitalization of less than $1.5 billion.

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

7.2 Foreign Equities

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

b. No more than 30% of the market value of the assets of a foreign equity portfolio may be invested in a single country, except the United States, and no more than 15% of the market value of the assets may be invested in Emerging Markets.

c. No more than 70% of the market value of the assets of a foreign equity portfolio may be invested in the United States.

d. At any given time, a foreign equity portfolio is expected to be invested in no less than six sectors of the MSCI World Index (as defined by the Global Industry Classification Standard (GICS)). The market value of a foreign equity portfolio invested in a sector is limited to the sector weight of the MSCI World Index plus or minus 20%.

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

f. The 10 largest stocks by market capitalization may not account for more than 50% of the market value of the assets of the foreign equity portfolio.

7.3 Fixed Income, including Short-Term Securities

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

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 75% for Provincial bonds with a maximum of 40% in a single province, 20% for Municipalities and government-backed bonds, 50% for Corporate bonds, 20% for investment-grade asset-backed securities including mortgage-backed securities, and 10% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to FTSE index's methodology of credit rating categories or any equivalent credit rating.

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

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

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

8. Other Matters

8.1 Valuation of Investments

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

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

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

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

8.2 Conflict of Interest

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

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

9. Monitoring

9.1 Monthly Investment Reports

Each month, each investment manager, other than the Infrastructure Managers, shall provide an investment report containing the following information:

a. Portfolio holdings at the end of the month;
b. Portfolio transactions during the month;
c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and
d. Commentary on any material changes with the investment manager.

9.2 Quarterly Investment Reports

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

a. Rates of return for the portfolio and each asset class;
b. The rate of return of the Benchmark Portfolio;
c. Details of all asset-backed securities held;
d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and
e. A commentary on the markets including market outlook and management strategy.

9.3 Quarterly Compliance Reports

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

a. Confirmation that each pooled fund managed by the investment manager complies with the Investment Guidelines established by the investment manager, and, if not, an explanation of the areas of non-compliance and the plan by the investment manager to put the pooled fund into compliance;
b. Confirmation that each pooled fund managed by the investment manager agrees with these Investment Guidelines, and, if not, an explanation of the areas of non-compliance; and
c. Confirmation that the Funds have been managed in accordance with these Investment Guidelines.

Despite the above, it is acceptable for the infrastructure managers to provide a compliance statement annually, or upon request, that confirms the manager is in compliance with its pooled investment vehicle or similar policy or agreement, provided that the investment vehicle's investments constitute authorized investments as defined in Section 6 of these guidelines and the investment vehicle's own investment policy agreement

9.4 Meetings with the Law Society

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

a. Review the rate of return achieved by the funds;
b. Review capital market performance and expectations of future returns;
c. Discuss any areas of non-compliance with the Investment Guidelines and comment on the implications of such non-compliance;
d. Report on actions taken with respect to environmental, social and governance matters or related initiatives and key relevant metrics;
e. Provide any information concerning new developments affecting the firm and its services; and
f. Comment on the continued appropriateness of the Investment Guidelines.

10. Investment Guidelines Review

10.1 Review

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

10.2 Material Changes

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

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

Appendix B

Bencher Governance Policies

Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: November 2001

Revised: July 2005

Revised: April 2009

Revised: March 2010

Revised: June 2015

Revised: December 2019

Revised: December 2022

Revised: May 2025

Table of Contents

1. General

1.1 Application

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

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

1.2 Compliance

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

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

1.3 Pooled Funds

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

1.4 Effective Date

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

2. Responsibilities

2.1 Plan Administration

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

2.2 Delegation

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

2.3 Investment Managers

The investment managers are responsible for:

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

2.4 Standard of Care

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

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

3. Account Management

3.1 Overview of Accounts

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

3.2 Lawyers Indemnity Fund - LT Account

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

3.3 Unclaimed Trust Funds Account

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

- the investment objective is to earn a rate of return of 1.0% per year for short term and 3.0% per year for fixed income
- the Benchmark Portfolio shall consist of short term or fixed income investments in any combination, totalling 100%.

3.4 Lawyers Indemnity Fund - ST Account

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

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

4. Fund Objectives

4.1 Investment Philosophy

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

4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omissions and defalcation claim funding requirements and operational costs. Over the 10-year period 2020 to 2029, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

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

4.3 Investment Constraints

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

4.4 Environmental, Social and Governance Considerations

a. Risk Consideration

The Law Society recognizes that environmental, social, and governance (ESG) issues may have an impact on the performance of investment portfolios. As a result, the Law Society will consider ESG risks alongside financial, economic, and other risks as part of the investment decision-making process. Key components of ESG activities include, but are not limited to:

- Ensuring that investment managers incorporate ESG issues into investment analysis and decision-making processes and follow the United Nations-supported Principles for Responsible Investment;
- Receiving regular reporting on ESG issues from the investment managers; and

- Exercising the Law Society's rights and influence as an investor to support improvements in ESG performance across asset classes

b. Proxy Voting Rights

Proxy voting rights on securities held are delegated to the investment manager;

- The investment managers are expected to vote in a manner consistent with applicable duties of loyalty and care and that supports implementation of current best practices in corporate governance and social responsibility; and
- The investment managers shall maintain a record of how voting rights of securities in each fund were exercised, and will provide a summary of the votes to the Law Society in its annual summary.

c. Reporting Requirements

- Investment managers will be required to report to the Law Society at least annually regarding actions taken and relevant metrics with respect to ESG matters or initiatives.

5. Asset Allocation and Investment Management Mandates

5.1 Benchmark Portfolio and Asset Allocation Ranges

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

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	6.25%	11.25%	16.25%
Foreign Equities	MSCI-World Index (CAD)	17.5%	22.5%	27.5%
Total Equities		**23.75%**	**33.75%**	**43.75%**
Bonds	FTSE Canada Universe Bond Index	6.25%	11.25%	16.25%
Cash and Short Term	FTSE Canada 91-Day Treasury Bill Index	0%	0%	5%
Mortgages	FTSE Canada Short Term Bond Index + 1%	18%	20%	22%
Infrastructure	Absolute Return (net of fees) of 8% per annum	30%	35%	40%

5.2 Investment Management Structure

As of approximately May 2025, the long-term structure of the Funds will be as follows:

	Asset Class Percentages (market value)		
Manager	**Minimum**	**Benchmark**	**Maximum**
Balanced Manager	40%	45%	50%
Mortgage Manager	18%	20%	22%
Infrastructure Manager 1	15%	17.5%	20%
Infrastructure Manager 2	15%	17.5%	20%

a. Balanced Manager's Asset Mix

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

		Asset Class Percentages (market value)		
Asset Class	**Asset Class Benchmark Index**	**Minimum**	**Benchmark**	**Maximum**
Canadian Equities	S&P / TSX Composite Index	20%	25%	30%
Foreign Equities	MSCI-World Index (CAD)	45%	50%	55%
Total Equities		**65%**	**75%**	**85%**
Bonds	FTSE Canada Universe Bond Index	15%	25%	35%
Cash and Short Term	FTSE Canada 91-Day Treasury Bill Index	0%	0%	10%

b. Mortgage Manager's Asset Mix

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

c. Infrastructure Managers' Asset Mix

Each Infrastructure Manager shall invest its assets in an Infrastructure Pooled Fund.

5.3 Investment Manager Mandates

a. Balanced Manager

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

b. Mortgage Manager

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

c. Infrastructure Managers

The Infrastructure Managers' target rate of return, on average over rolling four-year periods after the deduction of investment management fees, is an absolute return of 8% per annum.

5.4 Active Asset Mix Management

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

5.5 Re-Balancing

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

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions.6.

Permitted Investments

6.1 List of Permitted Investments

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

b. Foreign Equities:

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

denominated in foreign currency

c. Short-term instruments, subject to limitations in Section 7.3:
   - Cash;
   - Demand or term deposits;
   - Short-term notes;
   - Treasury Bills;
   - Bankers acceptances;
   - Commercial paper; and
   - Investment certificates issued by banks, insurance and trust companies

d. Fixed Income instruments, subject to limitations in Section 7.3:
   - Bonds, debentures and other evidence of indebtedness issued or guaranteed by Canadian federal, provincial and municipal governments and agencies, Canadian corporations, and non-Canadian government and corporate issuers, issued in Canadian or non-Canadian currency;
   - Private Placements;
   - Debentures (convertible and non-convertible);
   - Mortgages and mortgage-backed securities; and
   - Any other securities with debt-like characteristics that are constituents of the FTSE TMX Canada Universe Bond Index.

e. Infrastructure investments made either through closed or open-ended pooled funds (including limited partnerships).

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

6.2 Derivatives

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

6.3 Prohibited Transactions

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

- Purchase of securities on margin;

- Loans to individuals;
- Short sales; and
- Investments in venture capital, resource properties, hedge funds and commodity funds.

6.4 Securities Lending

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

7. Investment Restrictions

7.1 Canadian Equities

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

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

c. No more than 15% of the market value of the assets of the Canadian equity portfolio may be invested in companies with a capitalization of less than $1.5 billion.

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

7.2 Foreign Equities

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

b. No more than 30% of the market value of the assets of a foreign equity portfolio may be invested in a single country, except the United States, and no more than 15% of the market value of the assets may be invested in Emerging Markets.

c. No more than 70% of the market value of the assets of a foreign equity portfolio may be invested in the United States.

d. At any given time, a foreign equity portfolio is expected to be invested in no less than six sectors of the MSCI World Index (as defined by the Global Industry Classification Standard (GICS)). The market value of a foreign equity portfolio invested in a sector is limited to the sector weight of the MSCI World Index plus or minus 20%.

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

f. The 10 largest stocks by market capitalization may not account for more than 50% of the market value of the assets of the foreign equity portfolio.

7.3 Fixed Income, including Short-Term Securities

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

b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 75% for Provincial bonds with a maximum of 40% in a single province, 20% for Municipalities and government-backed bonds, 50% for Corporate bonds, 20% for investment-grade asset-backed securities including mortgage-backed securities, and 10% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to FTSE index's methodology of credit rating categories or any equivalent credit rating.

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

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

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

8. Other Matters

8.1 Valuation of Investments

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

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

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

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

8.2 Conflict of Interest

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

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

9. Monitoring

9.1 Monthly Investment Reports

Each month, each investment manager, other than the Infrastructure Managers, shall provide an investment report containing the following information:

a. Portfolio holdings at the end of the month;
b. Portfolio transactions during the month;
c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and
d. Commentary on any material changes with the investment manager.

9.2 Quarterly Investment Reports

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

a. Rates of return for the portfolio and each asset class;
b. The rate of return of the Benchmark Portfolio;
c. Details of all asset-backed securities held;
d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and
e. A commentary on the markets including market outlook and management strategy.

9.3 Quarterly Compliance Reports

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

a. Confirmation that each pooled fund managed by the investment manager complies with the Investment Guidelines established by the investment manager, and, if not, an explanation of the areas of non-compliance and the plan by the investment manager to put the pooled fund into compliance;
b. Confirmation that each pooled fund managed by the investment manager agrees with these Investment Guidelines, and, if not, an explanation of the areas of non-compliance; and
c. Confirmation that the Funds have been managed in accordance with these Investment Guidelines.

Despite the above, it is acceptable for the infrastructure managers to provide a compliance statement annually, or upon request, that confirms the manager is in compliance with its pooled investment vehicle or similar policy or agreement, provided that the investment vehicle's investments constitute authorized investments as defined in Section 6 of these guidelines and the investment vehicle's own investment policy agreement

9.4 Meetings with the Law Society

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

a. Review the rate of return achieved by the funds;
b. Review capital market performance and expectations of future returns;
c. Discuss any areas of non-compliance with the Investment Guidelines and comment on the implications of such non-compliance;
d. Report on actions taken with respect to environmental, social and governance matters or related initiatives and key relevant metrics;
e. Provide any information concerning new developments affecting the firm and its services; and
f. Comment on the continued appropriateness of the Investment Guidelines.

10. Investment Guidelines Review

10.1 Review

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

10.2 Material Changes

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

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

11. Investment Guidelines Approval

The Benchers approved the Investment Guidelines originally at the Benchers meeting in November 2001 and have approved updated versions in July 2005, April 2009, March 2010, June 2015, December 2019, December 2022 and May 2025.

Law Society
of British Columbia

CEO Report

To: Benchers

Purpose: Report

From: Gigi Chen-Kuo

Date: May 31, 2025

1. Bencher Updates

The 2024 King's Counsel designation recipients were announced on May 6, 2025. Of the 29 lawyers chosen to receive the King's Counsel designation for 2024 for making exceptional contributions to the legal profession in British Columbia, we are delighted to see that five of the recipients are current Benchers: Nikki L. Charlton KC, Christina J. Cook KC, Georges Rivard KC, Thomas L. Spraggs KC, and Gaynor C. Yeung KC. Recipients of the 2024 KC designation will be honoured on June 17, 2025 at Government House in Victoria.

Jeevyn Dhaliwal, KC was appointed to the transitional board established by the *Legal Professions Act* to fill the vacancy created by Judge Brian Dybwad's appointment to the BC Provincial Court. Jeevyn Dhaliwal was originally elected as a Bencher in Vancouver in 2014 and served as Law Society President for 2024. The transitional board is now at full complement and will continue its work with the transitional Indigenous council on the first set of rules and code of conduct for the new single legal regulator under the *Legal Professions Act*.

Judge Brian Dybwad's appointment to the BC Provincial Court also resulted in a vacancy at the Bencher table. A Bencher By-Election was recently held in the County of Nanaimo and Nicole E. Smith was the successful candidate. We wish to extend a warm welcome to our new Bencher who will be formally sworn in to office at the May 31, 2025 Bencher meeting.

2. Consultation with the Profession

As part of the work being undertaken to improve the Law Society's approach to demographic data collection, the Law Society has invited legal professionals and law students to participate in focus groups. Information gathered will help shape more relevant, inclusive, and accurate demographic self-identification questions which will assist the Law Society in better understanding and addressing systemic inequality in the profession.

The first of four focus groups sessions was conducted on May 21, 2025 and three further sessions will occur in June. I am pleased to report that the invitation to participate in the focus groups has generated considerable interest and participation among legal professionals and law students. Feedback from the focus groups will be incorporated in the draft questionnaire that will be posted on the Law Society website in the early fall. All members of the legal profession as well as the public will have an opportunity to review and provide feedback on the draft questionnaire. We are grateful for the time that participants have devoted to this important initiative.

3. Single Legal Regulator Update

The transitional board and the transitional Indigenous council held their sixth meeting on May 14, 2025. The transitional board and the transitional Indigenous council have agreed to hire a Project Director to assist them with the implementation of the transition to the new *Legal Professions Act*. The transitional Indigenous council has retained two Indigenous advisors to assist them with their work.

The transitional board and transitional Indigenous council considered policy reports from the advisory committee regarding the general approach to be taken to drafting the first set of rules and the code of professional conduct, as well as issues related to complaints. The next meeting of the transitional board and transitional Indigenous council is scheduled for June 18.

4. Meetings and Events

Virtual Mental Health Forum

During Mental Health Week in early May, we stood with the Canadian Mental Health Association to promote Unmasking Mental Health, a campaign focused on empathy and connection. We invited legal professionals to join us on May 7, 2025 for a virtual Mental Health Forum, in partnership with the Continuing Legal Education Society of BC, to explore mental health in the legal profession and offer practical strategies presented by legal and mental health experts.

Discipline Administrators Conference

This month, we hosted the Federation's annual Discipline Administrators Conference. The conference brought together 60 professional regulation staff from all 14 Canadian law societies. The keynote speaker was Dr. Maura Grossman, a lawyer and professor of computer science at the University of Waterloo who spoke about "Fundamentals of AI, Generative AI and Deepfakes: What Disciplinary Counsel Need to Know." Other panellists addressed topics including Use of Medical Evidence at Facts or Conduct Hearings, Social Media and Regulation, and Discipline of lawyers called in multiple jurisdictions across Canada. Our Indigenous Navigator also spoke about their role and led everyone through a rendition of the Salmon Song.

Law Society of Alberta Bencher Retreat

In early June, President Brook Greenberg, KC and I will be attending the Law Society of Alberta's 2025 Bencher retreat in Jasper. We will be participating in two panel discussions related to the theme of the retreat, which is "Our Changing World: Regulating in a time of

chaos." I am grateful for the opportunity to participate in such a topical discussion and learn from our counterparts in Western Canada.

CBA Bench and Bar Dinner

The Canadian Bar Association's 35th annual Bench and Bar Dinner will be held on June 11, 2025. The 2025 Law Society Award will be presented during this event. The Law Society Award is made in recognition of a lifetime contribution to the profession and to the law. This will be a wonderful opportunity to celebrate a member of our profession.

5. Indigenous History Month

In June, we will be celebrating Indigenous History Month, as well as Indigenous Peoples Day on June 21. The Law Society recognizes and honours the beauty of Indigenous culture and the stories and achievements of First Nations, Inuit and Métis peoples. We continue to be committed to ensuring that our processes are culturally safe, removing systemic barriers and celebrating Indigenous culture. To celebrate and raise awareness, our communications team has developed an external and internal communications plan and will be sharing interesting facts about Indigenous history, resources, events and featuring information about notable Indigenous people in the legal profession throughout the month.

Gigi Chen-Kuo
Chief Executive Officer/Executive Director

Law Society
of British Columbia

Strategic Planning Process Update

To: Benchers

Purpose: Discussion and Decision

From: Gigi Chen-Kuo
Chief Executive Officer and Executive Director

Date: May 31, 2025

Purpose

1. The current Law Society of British Columbia Strategic Plan covers the period from 2021 to 2025. A new strategic plan is needed for the post-2025 timeframe.

Background

2. The Law Society is in its final year of its 2021 – 2025 Strategic Plan (the "Current Plan"). The Current Plan (attached as **Appendix A**) sets out the vision, mission and values of the Law Society, together with strategic objectives and supporting actions. The five strategic objectives are as follows:

    - Leading as an Innovative Regulator of Legal Service Providers – Continuously improve the regulation and education of lawyers, the legal profession and legal services in the public interest.

    - Working Toward Reconciliation - Implement initiatives to take meaningful action toward reconciliation with Indigenous peoples in the justice system.

    - Taking Action to Improve Access to Justice – Increase availability of affordable legal services and access to the courts, administrative tribunals, other dispute resolution providers and our regulatory processes.

    - Promoting a Profession that Reflects the Diversity of the Public it Serves – Greater diversity in the legal profession and equitable treatment of every individual who interacts with the Law Society.

    - Increasing Confidence in the Law Society, the Administration of Justice and the Rule of Law – Greater public confidence in the ability of the Law Society to regulate in the public interest and greater public awareness of the importance of the rule of law and lawyer independence.

3. The Senior Leadership Team has embarked on preliminary work to consider the next Strategic Plan (the "Next Plan") by retaining a consultant to conduct an environmental assessment. The consultant has initiated interviews with Senior Leadership Team members which will conclude at the end of May, and a consolidated summary of findings will be provided.

Discussion

4. The future of the Law Society is facing considerable uncertainty due to the introduction of the *Legal Professions Act* (Bill 21) and ensuing litigation. Within this context, there are a number of considerations and options for addressing the Law Society's strategic direction in 2026 and beyond.

    a. *Plan Content*

    In looking at past strategic plans, the Law Society's mission statement is largely grounded in the existing *Legal Profession Act*. However, there has been some variation with respect to the vision, values, goals and initiatives, although three general goals of (a) enhancing regulation, (b) upholding and protecting the rule of law and (c) improving access to legal services have been common throughout the plans. For the next plan, we could review the current plan and refresh the plan content as appropriate. Alternatively, we could take a 'blue sky' approach to building a new plan.

    A refreshed plan would include revisions to the Current Plan to reflect the current environment. Changes to the vision, values and goals may be included along with updated initiatives, in light of the work that has already been completed and the new work that is required for continued progress toward the goals.

    A completely new plan would potentially mean building the vision, values, goals and initiatives 'from the ground up'. The initiatives may or may not include those that have not yet been completed from the previous plan.

    b. *Plan Duration*

    The Current Plan is a five-year plan. Prior Law Society strategic plans have been three-year plans.

    A longer plan of five or more years is often used by organizations to create stability and consistency of organizational direction, to facilitate realization of goals and initiatives. However, long term plans are not always suitable for a changing environment and may result in goals or initiatives being changed or abandoned because they are no longer relevant.

    Two or three-year plans are often found in organizations undergoing change because they allow the organizations to pivot in response to a changing environment, while also facilitating progress toward goals and the realization of some initiatives.

Another option is to extend the timeframe for the existing plan by one or two years. This is a viable option if it is determined that the plan content remains relevant as guidance to the organization and there is more work to be done on strategic initiatives.

c. Process

The Benchers are responsible for approving the Law Society's strategic plans. In the past, various approaches have been adopted to engage the Benchers in plan development, ranging from (a) facilitated sessions involving the full Bencher table to (b) a staff-led approach with opportunities for Bencher feedback at key milestones.

The timing of Bencher elections later this year is a factor that should be taken into consideration. If a new strategic plan is not adopted by November 2025, when new Benchers take office in January 2026 they will need some time to get up to speed and provide input. This will likely push plan approval to Q2 of 2026.

Recommendation

5. In light of the considerations set out above, staff recommends the following steps be taken to develop a new three-year strategic plan:

    a. May 2025 - Senior Leadership Team completes preliminary environmental scan and SWOT analysis (strengths, weaknesses, opportunities, threats);

    b. June 2025 - Consultant conducts interviews with a subset of Benchers (e.g. members of Executive Committee) to refine environmental scan and SWOT analysis and gather input on approach to developing the next strategic plan;

    c. June/July 2025 – Executive Committee and Benchers receive a report about the environmental scan and SWOT analysis, and finalize approach to developing the next strategic plan;

    d. September 2025 – Executive Committee and Benchers review and provide input on the first draft of new strategic plan;

    e. October 2025 – The new strategic plan is presented to Executive Committee and Benchers for approval.

6. The Executive Committee considered the proposed approach to the development of the next Strategic Plan as outlined above, at its meeting of May 15, 2025, and agreed to recommend to Benchers to proceed in this direction regarding the development of the next Strategic Plan.

Decision

7. The Benchers are asked to consider the proposed approach to the development of the next Strategic Plan outlined above and to confirm if they are in agreement with proceeding in this direction, as recommended by the Executive Committee.

Appendix C

Strategic Plan 2021–2025

Law Society of British Columbia

MISSION STATEMENT

The Law Society serves the public interest by regulating the competence and integrity of legal service providers, promoting the rule of law and lawyer independence, and improving access to justice.

VISION

To be a leading regulator that promotes a culture of innovation and inclusivity when responding to challenges and opportunities in the delivery and regulation of legal services.

VALUES

Integrity
We act honestly and ethically.

Transparent
We are open in our processes and communications, and report publicly on our decisions.

Inclusive
We embrace and promote equity, diversity, inclusion and cultural respect within our leadership and staff, as well as in the legal profession, the justice sector and the public.

Objective
We seek data-driven solutions, apply evidence-based decision-making and measure our results.

Innovative
We are adaptive in our approach to regulation with the goal of achieving efficient, fair and appropriate outcomes.

Responsive
We are aware of the changing needs of the public and the profession and respond to such changes in a timely manner.

Fair
We treat the public and the legal profession with respect and are consistent in the application of our policies, procedures and practices.

Strategic Objectives

LEADING AS AN INNOVATIVE REGULATOR OF LEGAL SERVICE PROVIDERS

GOAL:

Continuously improve the regulation and education of lawyers, the legal profession and legal services in the public interest.

Policy, Rules and Governance

- Continuously improve regulatory structures to keep up-to-date with evolving money laundering risks, guided by regulatory best practices and constitutional imperatives
- Revise regulatory processes to support and promote mental and physical health
- Clarify and strengthen governance to support our mandate
- Revise the rules to permit innovations in alternate business structures and reduce the complexity of current multidisciplinary partnership rules
- Ensure policy development is data-based, evidence-driven and informed by the views of the public and the profession
- Introduce alternative pathways for entry into the legal profession
- Create new training on managing the business of practising law
- Develop resources to improve support for in-house counsel and government lawyers

WORKING TOWARD RECONCILIATION

GOAL:

Implement initiatives to take meaningful action toward reconciliation with Indigenous peoples in the justice system.

Reconciliation within the Justice System

- Support increased representation and retention of Indigenous lawyers in senior positions throughout the justice system
- Address the unique needs of Indigenous people within our regulatory processes
- Update our Rules and Code to reflect Indigenous law and experiences
- Support the advancement of the principles set out in the Declaration on the Rights of Indigenous Peoples Act and the implementation of the First Nations Justice Strategy, and support the continued implementation of the recommendations of the Truth and Reconciliation Commission
- Introduce cultural competency training to foster understanding of Indigenous perspectives
- Work with K-12 education providers, including the First Nations Schools Association, the First Nations Education Steering Committee and the Métis, to increase awareness of careers in law and the wider justice system within Indigenous communities

TAKING ACTION TO IMPROVE ACCESS TO JUSTICE

GOAL:

Increase availability of affordable legal services and access to the courts, administrative tribunals, other dispute resolution providers and our regulatory processes.

Access and Innovation

- Reduce regulatory barriers to improve delivery of legal services
- Develop and implement an innovation sandbox for provision of a wider range of legal services and providers, including licensed paralegals
- Increase the availability of legal services to people in the communities where they live
- Enhance engagement with governments, courts and other stakeholders to identify areas of improvement in the delivery of legal services
- Advocate for greater access to non-adversarial dispute resolution in family law matters
- Advocate for funding to address gaps in the delivery of legal services
- Maintain and enhance measures adopted in response to the COVID-19 pandemic that have improved access to legal services and the justice system

PROMOTING A PROFESSION THAT REFLECTS THE DIVERSITY OF THE PUBLIC IT SERVES

GOAL:
Greater diversity and inclusion in the legal profession and equitable treatment of every individual who interacts with the Law Society.

Policy Development

- Implement and communicate equity, diversity and inclusion work plan
- Ensure current and future regulation and policy development adhere to equity, diversity and inclusion principles
- Develop and deliver cultural competency training, as well as training addressing implicit and explicit biases in the profession
- Revise the language of forms and publications to ensure they conform to current principles of inclusion
- Update the demographic data of BC legal professionals to inform policy initiatives
- Partner with community organizations to educate youth from diverse and equity-seeking groups about the role of lawyers and to encourage entry into the legal profession
- Collaborate with organizations to increase the recruitment, retention and advancement of diverse lawyers

INCREASING CONFIDENCE IN THE LAW SOCIETY, THE ADMINISTRATION OF JUSTICE AND THE RULE OF LAW

GOAL:
Greater public confidence in the ability of the Law Society to regulate in the public interest and greater public awareness of the importance of the rule of law and lawyer independence

Law Society Processes

- Increase timeliness of Law Society processes, decisions and communications
- Obtain legislative changes to increase fines and recover investigation costs
- Clarify authority to obtain an order of restitution where misconduct has resulted in a loss to a party
- Increase use of victim impact statements in disciplinary processes
- Enhance the independence of the Law Society Tribunal through further administrative separation from the Law Society
- Update disclosure and privacy policies relating to Law Society processes
- Increase the Law Society's engagement with the profession and the public about initiatives, regulatory developments and other relevant information, including the basis for decisions affecting regulation
- Engage the Ministry of Education to incorporate more information about rights and obligations, the rule of law and the role of lawyers and judges into school curricula
- Improve communication and outreach explaining the role of the Law Society in the justice system, the importance of the rule of law in a civil society and the role of an independent, self-governing legal profession in preserving the rule of law

Law Society of British Columbia

Trust Review Task Force: Consultation and Related Considerations

To: Benchers

Purpose: Discussion and Decision

From: Staff on behalf of Trust Review Task Force

Date: May 31, 2025

Background

1. The Trust Review Task Force presented its Final Report at the February 7, 2025 Bencher meeting for discussion, with decision to come at a future meeting. At the February meeting, several questions were asked and issues were discussed. A suggestion was also made that there be consultation with the profession on the Report's recommendations.

2. After discussion, the Executive Committee agreed to conduct a general consultation on the Report. To that end, a consultation was conducted between April 14 and May 9, offering the public and lawyers the opportunity to provide feedback on the report's 40 recommendations. Eight responses were received.

3. This memorandum provides further information in relation to the points raised at the February 7th Bencher meeting and in relation to the points raised in the consultation.

4. The Trust Review Task Force Final Report is attached as **Appendix A** for consideration, with the proposed Bencher resolution to approve the Trust Review Task Force recommendations.

Discussion

Matters Raised at the February 7th Bencher meeting

5. The following issues were raised and addressed in the discussion at the February 7th Bencher meeting:

    - The importance that training not be limited to a single education session in relation only to anti-money laundering matters.

      The Task Force also agreed, and its report in fact makes two recommendations on training:

      a. Recommendation 5 recommends a one-time mandatory anti–money laundering training for all lawyers,

      b. Recommendation 10 recommends that all lawyers who are signatories to a trust account complete a course of prescribed education regarding the operation of a trust account periodically.

      Accordingly, staff confirms that the training will not be limited to anti-money laundering matters, and periodic training will be required for those operating a trust account.

- Guidance was recommended on the issue of whether cash received for a retainer was "commensurate with the amount required for a retainer."

  The intended course of action is to create guidelines while paying close attention to this concern.

- Clarification was also desired on the meaning of "incurred" in Recommendation 23 (that the rules be amended to make it explicit that a client can only be billed for disbursements that have been incurred).

  Staff advises that the recommendation was made to ensure that lawyers are not charging for *anticipated* disbursements before they have been undertaken. Thus "incurred" was meant to mean "when the lawyer has, consistent with the terms of a retainer, become obligated to cover a cost for a disbursement necessary to advance the matter on which the lawyer is retained."

- There was a discussion about Recommendation 38 which recommended that the policy on the application of the Trust Assurance Fee (TAF) be changed so that it will apply to all client matters where a trust account is used for any purpose. The Task Force's rationale for this recommendation is that there is confusion on the current rule which states TAF is not charged if the trust account is used only for fees or retainers. In addition, all firms who have a trust account use the services of the trust assurance program. As Recommendation 38 was also brought up in the consultation responses, this recommendation will be discussed further below.

Matters Raised in the Consultation Responses

6. The consultation responses can be reviewed in full here.

7. The principal points that have been identified in the consultation are listed below, with some further information to assist discussion:

   - Recommendation 3

     A concern was raised that the Task Force did not, through Recommendation 3, heed Cullen Recommendation 57. That recommendation was to

     > *[E]xtend the ambit of the client identification and verification rules to include the situations in which a lawyer is truly acting as a gatekeeper. The rules should be extended to include, at a minimum: the formation of corporations, trusts, and other legal entities; real estate transactions that*

may not involve the transfer of funds, such as assisting with the transfer of title; and litigation involving the enforcement of private loans

Discussion

A concern about whether a recommendation from the Cullen Commission was accepted or not warrants some explanation. While the Task Force did not recommend going as far as Cullen Recommendation 57 proposed, the Task Force did in fact agree with the gravamen of the Recommendation. Recommendation 3 in the Final Report is:

> *While the Rules should extend client verification requirements to retainers beyond those dealing with "financial transactions," the Task Force recommends they not be extended to all retainers purposed [sic] in the Cullen Report, but be limited to client matters where there are objectively suspicious circumstances or heightened risk factors. Consultation with the Federation's Standing Committee on Anti-Money Laundering and Terrorist Financing should be encouraged to work toward a common amendment across the country*

The Task Force's rationale for its recommendation is set out in the Report. Briefly, to address the concerns raised regarding money laundering, requiring full client verification in all retainers was, the Task Force thought, excessive and would create the possibility of a non-proportional burden on the delivery of legal services. The Task Force thought the concerns raised in the Cullen Report through recommendation 57 could be addressed by extending client verification requirements beyond financial transaction retainers to client matters where there are objectively suspicious circumstances or heightened risk factors. This was considered to be a commensurate response to the concern.

- <u>Recommendations 8 and 9</u>

One question was asked in a consultation response about the requirement to operate a general account.

Discussion

The rationale for this recommendation arises from concerns identified through audits that some lawyers, particularly sole practitioners, comingle their personal finances with those of the firm through which they are providing legal services. This is not a good accounting practice. Simply put, firm expenses and personal expenses should be separated, which has an added benefit of simplifying accounting

practices for tax purposes and for auditing purposes when the time comes for an audit. It was of course understood that, for a sole practitioner, the money from a general firm account and a personal account are all ultimately "owned" by the same person, provided that the personal account in question is not a joint account with the lawyer's spouse. However, until funds are paid from the firm to the lawyer, the funds in a general account may be imbued with other purposes. Moreover, if trust funds were mistakenly deposited in a non-trust account, the error is easier to identify and correct if the firm's general account is not the lawyer's personal account, particularly if the lawyer regularly reconciles the firm account.

The Task Force recognized that this does place additional obligations on a law firm, particularly on some sole practitioners, and there will be the additional cost of having another bank account.

While the precise additional costs on this concern are not possible to estimate for all cases, the Task Force does not intend, through its recommendation, that the separate general account has to be a complicated nor need it be an expensive corporate account with a financial institution. It is conceivable that a simple chequing account would suffice, and at many institutions, many service fees are waived or reduced provided a minimum balance is kept in the account.

The Task Force recommends that, in order to ensure best accounting practices, a separation of a firm's accounts from the lawyer's personal accounts is optimal.

- Recommendation 23

A concern was raised about prohibitions on billing future anticipated disbursements (in Recommendation 23). The Recommendation reads as follows:

> *Amend the Rules to make it explicit that a client can only be billed for disbursements that have been incurred and that anticipated disbursements cannot be charged.*

Discussion

The rationale for the recommendation came from learning, through the audit process, that some lawyers charge anticipated disbursements and deduct that sum before the disbursements are incurred. In addition, in some cases the audit showed that unused portions of the pre-billed disbursements are not paid back to the client. Such conduct has been the subject of disciplinary proceedings and has resulted in sanctions. To address this, the Task Force concluded that it should be clarified that

billed disbursements must have been actually incurred, and that there is no entitlement to any amount that exceeds the actual disbursements incurred.

As noted above, the Task Force intended "incurred" to mean "when the lawyer has, consistent with the terms of a retainer, become obligated to cover a cost for a disbursement necessary to advance the matter on which the lawyer is retained."

This is not intended to prevent a lawyer from requesting that a retainer cover the anticipated costs of future disbursements. It would just mean that the lawyer could not actually withdraw an amount for disbursements until they were actually "incurred."

- Recommendation 34

  A concern was raised that Recommendation 34 (allowing the Executive Director to place conditions on operation of trust accounts where the Executive Director is satisfied a lawyer not in adequate compliance with rules) should be made by a bencher or bencher committee, not the Executive Director.

  Discussion

  The rationale for the recommendation is explained at paragraphs 187 – 189 of the Report.

  While concerns have been raised in this and other contexts about decisions allowing the placement of restrictions to be made by the exercise of staff discretion, it should be noted that, as with other exercises of power, it would be expected that upon drafting the rules, a review process would be built into the process to allow for a review of the Executive Director's decision.

- A concern was raised that there are no recommendations in the Report that address what was described as a "loophole" due to lawyers not being required to verify the identity or obtain information about source of money from individuals making deposits to lawyer's trust account who are not "clients."

  Discussion

  The client identification and verification rules are directed at "clients." "Client" is somewhat more broadly defined by Rule 3-98 than the immediate person for who one acts, but it would not extend to adverse parties or strangers. If a lawyer receiving funds into trust from another has reason to suspect the circumstances or source of the deposit, suspects any dishonest, crime or fraud, or money-laundering

must, of course, exert caution to ensure that the lawyer is not engaging in any improper activity as required by *Code* rule 3.2-7 and Law Society Rule 3-109.

Addressing the broader issue is a matter that should be undertaken by the Federation Anti-money laundering Working Group on a national basis.

- Cryptocurrency

  One respondent noted that the Report did not deal at all with cryptocurrency.

  As the current trust rules require accounts to be held in a Canadian financial institution, hold trust funds in cryptocurrency currently is not an option. The mandate of the task force did not suggest that it should revisit at this time questions such as the type of currency in which trust funds could be held. Such questions involve broader considerations and may be better suited to consider on a national scale through the Federation of Law Societies.

- Recommendation 38 – TAF

  Considerations about the extension of the application of TAF to all client matters where a trust fund is used were raised both at the February Bencher meeting and by a response to the consultation.

  Discussion

  Currently, TAF (a one-time $20.00 fee) is charged to all client matters where a trust account is used, unless the only purpose for the trust account is for fees or retainers. The original intent of the exemption was referring to professional legal services fees charged by the firm, and was not referring to disbursements.

  While the Rule (Rule 2-110) seems relatively clear, it does not appear to be interpreted the same among lawyers within the profession, and attempts are commonly made to apply a very broad definition of "fees" to cover a considerable manner of other charges that are not professional fees for legal services. For example, it has been argued that, for example, filing fees, or fees for a medical report, are meant to come within the ambit of Rule 2-110. They are not professional fees, and should be categorized as a "disbursement."

  The Task Force therefore examined the purpose of TAF. TAF was created to fund a robust audit program at the Law Society, in the aftermath of the defalcation of many millions of dollars from trust by Martin Wirick. The result of Wirick's defalcation increased special fund fees on lawyers in the province by several hundred dollars per year for a number of years. It was important to both the profession, and to

public confidence in lawyers and the legal system, that the opportunity for repeat of those events was minimized. The audit program reduced[1] the requirement for law firms to retain a qualified Chartered Professional Accountant (CPA) to review their trust accounts and file an Accountant's Report, saving this annual cost for the firms.

Charging lawyers a fee for the operation of a trust account on a client matter was considered to be a reasonable way to fund the program. This meant that those who operated a trust account were paying the cost of the program that was designed to supervise and provide public confidence of the proper operation and handling of trust funds by a lawyer. Lawyers who did not operate a trust account would not have to pay a fee.

As the rule currently states, a fee is not charged to lawyers if the sole purpose for the use of the trust account is for fees for professional legal services charged to a client, or for a retainer for such fees. However, it should be noted that such accounts are still audited, and are thus still subject to the program created to protect client monies that are held in trust with lawyers.

After discussion, the Task Force reached a consensus that it made more sense to charge TAF to *all* client matters where a trust account was operated because all such trust accounts were subject to the program that was funded by TAF.

While there was discussion about how this would affect some retainers, it was noted that even on a pro bono matter where the trust account will not be used for fees, it may be still be necessary to use the trust account for other purposes (such as settlement funds). Therefore, it must be recognized that TAF is currently not exempt from all pro bono matters, because TAF will be applicable if the trust account is used for other purposes, as it will often be the case regardless of the nature or complexity of the matter on which the lawyer is retained. Even a simple retainer can require the use of a trust account for purposes other than for fees for professional legal services and retainers. Moreover, it is worth noting that if a lawyer represents a fee-paying client on a complicated matter on which high fees are charged, TAF will not apply currently if the trust account is not used for any other purpose. This on its face seems incongruous if the trust account is holding many thousands of dollars as a retainer.

Access to justice is important, but because of the existing application of TAF to all matters where a trust account was used beyond fees and retainers, even on simple matters, it is not clear that TAF is an impediment to such access given that it is

[1] Some firms are still required to file an Accountant's Report.

already being paid in these situations. If the $20.00 TAF was, in a particular matter, evidently impeding the client's ability to obtain legal services, it is always possible for the lawyer not to pass it on to the client.

As explained in the Final Report, the Task Force gave some thought to eliminating TAF in its entirety and building the cost of the program into the annual fee. However, concerns were raised in the discussion that, while the degree to which the fee would be raised by doing so was uncertain, it was expected to increase the practice fee by several hundred dollars. If part of the practice fee, this would be charged to all lawyers – including those who did not operate a trust account, as well lawyers who worked for non-profits, for government, or who practiced in house. or other similar groups. The Task Force was concerned that this would have a disproportionate effect on access to justice. The Task Force therefore did not put forward this recommendation.

Other possibilities for handling TAF exist, which were not discussed by the Task Force. A *de minimus* level of the use of the trust account, below which a TAF would not be charged, is one option raised at the February Bencher meeting. What is that level, however, in order to ensure it is just? And what happens if it is exceeded even slightly? What if significant monies flow through the trust account, even though the services are pro bono and not charged to the client?

Staff is of the view that any exemption creates confusion and also increases difficulties in enforcement, which adds to the cost of the program. A simple one-time fee for the use of a trust account on any client matter is much simpler to operationalize, to account for, to apply as a lawyer, and is also justified on the basis that it funds the program it uses.

Conclusion

8. This memorandum has been prepared to identify issues, concerns and questions raised in the presentation of the recommendations made by the Task Force.

9. The Benchers are invited to consider and discuss these matters and then consider the Bencher resolution proposed in the Task Force's Final Report.

Recommendation

10. It remains recommended that the Task Force recommendations be adopted, that the Law Society consider any reported effects on access to justice, and after doing so to revisit the recommended approaches if necessary.

Appendix A

Law Society of British Columbia

Trust Review Task Force
Final Report

To:	Benchers
Purpose:	Discussion *(February 7, 2025 Meeting)* Proposed for Decision *(May 31, 2025 Meeting)*
From:	Trust Review Task Force
Date:	February 7, 2025

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I. Introduction

1. Lawyers receive and disburse funds in trust on behalf of clients. This includes retainers for legal services to be performed and billed which must be held in trust. Funds are also held in trust as a necessary part of providing legal services to the client including on undertakings, to ensure the effective completion of a business transaction or conveyance of real or personal property. Other times, funds are received and disbursed from trust to pay for a settlement in the client's litigation.

2. Lawyers in British Columbia – and elsewhere in Canada - have long handled trust funds directly related to the legal services being provided, and for almost a century regulations have been in place through the Law Society that set out requirements for how trust funds are to be held and accounted for to protect the interests of the beneficiaries, and the broader public interest.

3. The Law Society Rules have operated effectively to ensure that trust funds are appropriately handled such that the public can have confidence in the legal professionals entrusted with their funds.

4. It is important to ensure that the rules continue to be effective taking into account the current realities of practising law, modern banking practices and technological advances. The rules should be clear and strike the appropriate balance to meet regulatory objectives without being unnecessarily burdensome or duplicative.

5. Over the last several years, concerns about money laundering have come to the forefront in British Columbia, resulting in the provincial government creating the Commission of Inquiry into Money Laundering in British Columbia (the "Cullen Commission"), which issued its Final Report in June 2022 (the "Cullen Report").

6. As the Cullen Report expressly affirmed, the Law Society has long recognized the serious risk posed by money laundering to the public, with legal professionals being potentially vulnerable to being used by criminals.[1]

7. To address these risks, the Law Society has taken considerable measures and is recognized a leader in Canada for its anti-money laundering efforts.

8. The Cullen Report took to task several sectors of the British Columbia economy with regard to the lack of effective money-laundering protections.

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[1] Cullen Report p. 1175.

9. However, the Report was complimentary with respect to the Law Society's efforts to combat money-laundering, noting that the Law Society had mitigated many of the risks through robust regulation and concluding that its review "demonstrates that British Columbia has a relatively strong anti–money laundering regime in place with respect to lawyers."[2]

10. The Commissioner also concluded as follows:

> It is clear to me that the Law Society, with the support of the Federation, has taken its role as the public interest regulator seriously.[3]

11. Indeed, the Law Society through its trust auditing and enforcement processes, has frequently and successfully enforced its money laundering prevention measures.[4] It is the Law Society's combination of effective screening and prevention measures, vigorous investigation, and successful enforcement of its rules that has resulted in it being held out as a leader in the prevention of money laundering.

12. This Task Force was created to address the recommendations arising from the Cullen Commission for rule amendments and to assess the current trust accounting rules against the objectives of those rules and any concerns expressed about the rules and their enforcement.

13. The Task Force engaged in a thorough review to consider how to make an already strong system even better. What follows is a series of recommendations. Several are made in response to the Cullen recommendations and others are made to improve the trust accounting rules, to enhance clarity, all while preserving and strengthening their public interest purpose.

14. While the current rules for trust accounting and anti-money laundering are comprehensive, the recommendations that follow are meant to build on and improve an already strong system of financial accountability.

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[2] Cullen Report p. 1175

[3] Cullen Report p. 1214

[4] See for example, *Gurney (Re)*, 2017 LSBC 15, *Larson (Re)*, 2017 LSBC 43, *Hammond (Re)*, 2020 LSBC 30, *Huculak (Re*), 2022 LSBC 26, *Osei (Re)*, 2022 LSBC 43, *Yen (Re)*, 2023 LSBC 2, *Pelletier (Re)*, 2023 LSBC 47, *Kates (Re)*, 2023 LSBC 40, *Guo (Re)*, 2023 LSBC 28, *Wang (Re)*, 2024 LSBC 42, *Burgess (Re)*, 2011 LSBC 3, *Lyons (Re)*, 2008 LSBC 9.

II. Purpose of Report

15. This report describes the Task Force's deliberations and recommendations regarding three topics.

    - Part 1 responds to recommendations 55-59 and 62 of the Cullen Report.

    - Part 2 addresses issues relating to the Law Society Rules regarding trust accounts and contains a series of recommendations designed to better protect the public, improve the logic and readability of the Rules, and make the Rules and associated processes easier to understand without compromising important public protection requirements.

    - Part 3 addresses limited issues relating to anti-money laundering ("AML") and client identification and verification ("CIV") more generally, and contains recommendations regarding how the Law Society might explore these matters as part of the national processes in which it participates.

16. The Task Force's deliberations occurred during a time of impending transformation at the Law Society. Most of the work undertaken for this Report preceded the introduction of Bill 21 – the *Legal Professions Act*, which received Royal Assent on May 16, 2024. That Act is designed to create a single legal regulator and provide for the future governance and regulation of lawyers, notaries and licensed paralegals.

17. The Task Force sought to anticipate to the extent possible these impending changes, but its analysis was constrained to the extent it cannot forecast the future of legal services regulation.

18. Consequently, the Task Force focused on the lodestar of any policy analysis by asking *what does the public interest require?* The Task Force trusts that this guiding principle will remain regardless of the final form the single legal regulator takes, and that its recommendations will prove useful now and in the future.

III. Proposed Resolution

19. The Task Force recommends the Benchers approve the following resolution:

    BE IT RESOLVED to accept Recommendations 1 – 40 inclusive as set out in the Trust Review Task Force Final Report dated February 7, 2025.

IV. Task Force Process

20. The Task Force comprised Brook J. Greenberg, KC (Chair), Richard H. Bell, Aleem S. Bharmal, KC, James K. Fraser, Graham Fulton, Joan Letendre, Benjamin D. Levine, Ryan Rosenberg and Michèle Ross[5]. It met ten times, supported by senior staff from the Trust Regulation, Professional Regulation, Practice Advice, and Policy and Planning departments, as well as by General Counsel.

21. In addition to drawing on their own knowledge and experience, Task Force members reviewed materials prepared by staff analyzing the Cullen Report, and feedback from online consultation on the trust accounting Rules.

22. The areas of focus for the Task Force included:

    (a) the obligations to maintain accounting records and properly deal with funds;

    (b) the compliance audit process and submitting of mandatory trust reports;

    (c) fiduciary property;

    (d) unclaimed trust funds; and

    (e) anti-money laundering rules including the client identification and verification (the "CIV") obligations and the cash transaction rule.

V. Objectives of Trust Accounting Rules

23. To discharge its mandate, the Task Force was first asked to consider the objective of the trust accounting rules. This was necessary in order to assess the efficacy of the current Rules, and to identify whether any of the Rules were potentially more onerous than necessary.

24. After consideration, the Task Force agreed that the objectives of the trust accounting and related Rules should include:

    (a) protecting funds entrusted to lawyers from loss;

[5] The constituency of the Task Force changed in 2024. The Task Force thanks Cheryl L. Martin and Kevin Westell for their contributions from the Task Force's inception through the end of 2023.

(b) maintaining public confidence in the integrity of the profession and in the ability of the Law Society as the regulator;

(c) mitigating the risk of legal services, including a trust account, from being used to further dishonest or illegal conduct, including money laundering and terrorist financing;

(d) setting clear, effective requirements for the handling of funds entrusted to legal professionals to ensure funds are accounted for and properly handled;

(e) promoting strong regulatory oversight such that the regulator is able to assess risks and conduct audits to identify issues and investigate conduct concerns;

(f) deterring deliberate, reckless, or grossly negligent handling of client funds and encouraging financial responsibility in respect to practice obligations; and

(g) ensuring that the regulatory requirements placed on legal professionals through the imposition of necessary accounting rules is proportionate to the risk that the rules seek to prevent.

25. These objectives are important and arise due to legal obligations placed on regulators.

26. In *Pharmascience Inc. v. Binet*, 2006 SCC 48, the Supreme Court of Canada noted that public trust in professionals is directly related to the extent regulators are able to supervise the conduct of those professionals and that a professional regulator therefore has an "onerous obligation" to ensure the protection of the public.

27. However, ensuring the proportionality of regulation is also important, not for the benefit of the legal professions, but for the benefit of the public. Proportionate regulation allows both the regulated and the regulator to focus on the areas of greatest risk. Regulation that is understood and accepted by the legal professions is more likely to be properly adhered to, rather than the subject of after-the-fact enforcement. Finally, proportionate regulation fosters greater access to legal services for the public.

28. Regulating the handling of money by lawyers is one of those onerous obligations. From the earliest days of discipline of lawyers in BC, an intentional defalcation of trust funds has generally resulted in disbarment or resignation on an undertaking not to apply for reinstatement for a set period, absent exceptional circumstances.

29. In *A Lawyer* v. *The Law Society of British Columbia,* 2021 BCSC 914, upheld 2021 BCCA 437, (leave to appeal to Supreme Court of Canada dismissed, May 2022), the Court says at paragraphs 56 and 59:

> [56] The risk that a lawyer's trust account may be used for the purposes of money laundering is part of the context within which the Law Society's duty to protect the public interest exists. Lawyers have a range of obligations with respect to the management of their trust accounts through which large amounts of money may flow. A lawyer's trust account must only be used for legitimate commercial purposes related to the provision of legal services and it is in the public interest to ensure that trust accounts are not used for other purposes such as the laundering of money.
>
> …
>
> [59] The Law Society… plays a key role in enforcing the practice standards in ensuring lawyers are properly playing their gatekeeper role in respect of the proper use of trust accounts. There is, undoubtedly, a pressing public interest in it being able to do so effectively.

30. Other decisions also set out important considerations that the Task Force needed to keep in mind through its examination.

31. Perhaps foremost amongst these considerations is that the proper handling of trust funds is an integral part of the practice of law.[6] The public must be able to entrust property, and particularly money, to members of the legal profession knowing that it will be properly accounted for. Maintaining this confidence is imperative. The Rules governing the withdrawal of money from a trust account play an important role in helping to ensure that client funds are properly handled and that the integrity of the legal profession is maintained.[7]

32. There are other important considerations, though, too. A lawyer's failure to comply with maintaining trust accounting records as required by the Law Society may interfere with the Society's ability to fulfill its mandate of regulating lawyers' conduct in the public interest because it may be unable to determine what happened to funds entrusted to the lawyer and whether the lawyer's use of the trust account was appropriate.

33. Proper record keeping through compliance with the Rules also assists legal professionals in properly handling client funds to reduce the risk of loss, errors and client dissatisfaction. For example, the Rules require a lawyer to record all funds received in trust on a client matter and to perform monthly trust reconciliations to ensure the total funds actually held in trust are in keeping with the total recorded on the client trust ledgers. Following the required procedures set out in the Rules ensures that any errors are

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[6] *Law Society of BC* v. *Tungohan*, 2017 BCCA 423

[7] See, for example, *Law Society of BC* v. *Sahota*, 2018 LSBC 20, at para. 12; *Law Society of BC* v. *Lail*, 2012 LSBC 32; and *Law Society of BC* v. *Tungohan*, 2015 LSBC 26).

identified in a timely manner and trust shortages immediately eliminated. The Rules also require the records to be current before making any withdrawal from the trust account.

34. Because the proper handling of trust funds is one of the core parts of the lawyer's fiduciary duty to the client, an unauthorized use of trust funds harms or risks harming the client, undermines the client's confidence in counsel, and has a seriously deleterious impact on the legal profession's reputation in the eyes of the public. Removing a client's trust funds is and should always be a "memorable, conscious and deliberate act that a lawyer carefully considers before carrying out."[8]

35. The Cullen Report noted that trust rules are "critically important" to the Law Society's anti-money laundering regulations as they require lawyers to keep a variety of records, reconcile their accounts monthly, make annual reports, and undergo regular audits. That report noted that the oversight through the trust Rules was "crucial given that others, particularly law enforcement, cannot compel lawyers to produce privileged information or documents. The trust accounting Rules and audit process significantly mitigate the money laundering risks associated with trust accounts."[9]

VI. Discussion and Recommendations

PART 1 – The Cullen Report

Money-Laundering and the Legal Profession

36. Money-laundering is a significant concern world-wide.

37. In British Columbia, it has gained particular notoriety, and on May 19, 2019 the provincial government, recognizing the concern, established the Cullen Commission with broad terms of reference.

38. The Commission examined the prevalence and nature of money-laundering in British Columbia through various sectors of the economy, including the legal profession. It conducted hearings, made findings of fact and made recommendations.

39. The law societies in Canada succeeded in the mid-2010s in an application for exclusion from the regime established by the federal government under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "PC(ML)TFA") on the basis that

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[8] *Law Society of British Columbia* v. *Gellert* 2013 LSBC 22, para 73.
[9] Cullen Report at pp. 22-23.

the legislation violated a principle of fundamental justice regarding the solicitor-client relationship.

40. While the exclusion of lawyers from the PC(ML)TFA regime has been the subject of criticism, particularly by international groups like the Financial Action Task Force, and these criticisms are often picked up by media,[10] such criticism fails to focus on, or understand, the robust regulation undertaken by the law societies in Canada.

41. The Cullen Report expressly addressed the gap between perception and reality as follows:

> In my view, the exclusion of lawyers from the *PCMLTFA* regime does not, contrary to dominant discourse, leave lawyers in British Columbia free of anti–money laundering regulation. The evidence before me suggests that lawyers will continue to be exempt from the *PCMLTFA*, and as I have explained, even a regime in which lawyers reported to the Law Society or another entity involves complex and challenging constitutional issues. Given this reality, it is imperative that the Law Society continue to maintain and enforce a robust anti–money laundering regime in British Columbia.
>
> Although lawyers and indeed the Law Society are constrained in the extent to which they can disclose privileged information, it is important to recognize that this impediment does not constrain the Law Society in supervising and enforcing against lawyers. In fact, the Law Society has an advantage in that it does not face the same barriers as law enforcement: its officers can see everything in a lawyer's file, including privileged materials, and can use this information to inform their investigative and disciplinary powers.[11]
>
> (Emphasis added.)

42. The Cullen Report expressed a favourable view of the Law Society's efforts to combat money laundering through the regulatory powers at its disposal.

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[10] See, for example "Canadian lawyers play key role in money laundering, says financial intelligence report" CTV News online posted June 27, 2024 at Canadian lawyers play key role in money laundering: intelligence report | CTV News; "Five Canadian lawyers who were disciplined for money laundering" CTV News online posted June 27, 2024 at 5 Canadian lawyers accused of money laundering or suspicious financial transactions

[11] Cullen Report p. 1214

43. This is reflective of the significant AML-related work the Society engages in from education and practice advice to detection of issues through the audit program and robust investigations with strong disciplinary outcomes. The current Rules for trust accounting and anti-money laundering are comprehensive and, as Commissioner Cullen noted, while the numerous risks lawyers face from money launderers "…are significant, the Law Society has mitigated many of them through robust regulation."[12]

44. Nevertheless, the Commissioner made a series of recommendations as to how the Law Society could further bolster its efforts by enhancing the Rules, which the Task Force reviewed and considered.

45. The Cullen Report recognizes the serious public harm caused by money laundering and that the legal profession is potentially vulnerable to being used by criminals in providing legal services to clients. To address these risks, the Law Society must ensure its AML-related efforts are effective and help preserve the public interest in the administration of justice. The Task Force engaged in a thorough review to consider how to make a strong system better and provide clarity.

Task Force Recommendations arising from the Cullen Report Recommendations

46. As noted above, the Cullen Report considered money-laundering concerns and responses within many sectors of the economy, including the legal profession and made several recommendations. The ones considered by the Task Force are recommendations 55-59 and 62, set out below.

Cullen Recommendation 55:

[A]mend Rule 3-59 to make it explicit that any cash received under the professional fees exception to the cash transactions rule must be commensurate with the amount required for a retainer or reasonably anticipated fees (p. 1185).

47. Rule 3-59 prohibits lawyers from accepting cash over $7,500, except in limited circumstances identified in the Rule. One of those exceptions is where the cash is accepted "in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services." This exception reflected exceptions that were proposed initially in the *PC(ML)TFA).* If the retainer for fees received in cash (if greater than $7,500 in the aggregate) turns out to be more than needed for the legal services, the lawyer is required to make any refund in cash.

[12] Cullen Report at p. 22.

48. Commissioner Cullen concluded that "the cash transactions rule is a crucial part of anti-money laundering regulation of lawyers" and is effective because it actually *prohibits* accepting cash above a prescribed amount, rather than (as is the case under the *PC(ML)TFA*, permitting cash to be accepted but requiring cash transactions over $10,000 be reported to FINTRAC). He noted "Clearly, the current exception without a cap means that lawyers could potentially be receiving large amounts of cash of unknown origin" but that because the professional fees exception rule requires that any refund to a client who has paid a cash retainer must be made *in cash*, the *money-laundering* concerns raised by the acceptance of cash by a lawyer were addressed, provided the Law Society diligently monitored lawyers' adherence to it. However, he further stated that "An explicit requirement that any cash received be commensurate with the legal fees and disbursements would help ensure that lawyers do not receive excessive amounts of cash in the first place" (p. 1186).

49. The Commissioner noted evidence from the Law Society that the receipt of large quantities of cash could--and perhaps should--raise "suspicious circumstances" or "red flags." To address this concern, he noted the Law Society position that cash received as a retainer must be commensurate with the anticipated fees necessary for the services.

50. Recommendation 55, in effect, actually addresses a practice that the Law Society already expects lawyers to comply with. Even if the return of unused funds received in cash must be made in cash, a receipt of a large sum of cash in excess of the expected legal fees and disbursements objectively raises suspicions, and the Task Force agreed it would be prudent to express that in the Rule to make it clear.

51. What is "commensurate," may, of course, be interpreted differently by different people. After discussion, the Task Force agreed that the professional fee exception to the cash transactions Rule should require that the cash accepted is in keeping with the anticipated fees and disbursements to be billed on the client matter. The amount of cash given to a lawyer must have some relatively objective connection to the retainer. However, the Task Force also recognized there is no single standard that can apply across all practices. Some lawyers' fees are higher than others. Some estimates of fees at the outset of a matter might in hindsight appear not to have been commensurate with what eventually was needed.

52. The challenge relates to crafting an obligation that contains sufficient guidance for lawyers to assess whether the cash received is viewed as being "commensurate". The Task Force determined that this should not be done in the Rule itself and instead agreed that guidelines are necessary to make the requirement meaningful. *BC Code* rule 3.6-1 provides guidance in its commentaries as to what is a fair and reasonable fee taking into account factors such as the experience and ability of the lawyer, a special skill, special

circumstances such as urgency and the difficulty of the matter, and more. The guidance also recognizes that a lawyer may need to revise an initial estimate as a matter progresses.[13]

RECOMMENDATION 1: Amend Rule 3-59 to make explicit that any cash received under the professional fee exception must be commensurate with the amount required for a retainer or for reasonably anticipated fees, and that guidelines be prepared to assist in determining what is "commensurate."

Cullen Recommendation 56:

[A]mend the client identification and verification rules to explain what is required when inquiring into a client's source of money. The rules should make clear, at a minimum: that the client identification and verification rules require the lawyer to record the information specified in the fall 2019 Benchers' Bulletin; the meaning of the term "source of money"; and that lawyers must consider whether the source of money is reasonable and proportionate to the client's profile (p. 1191).

53. The CIV Rules (Part 3, Division 11) were implemented first in 2008 and there have been some amendments since that time. They are based on the Federation of Law Societies of Canada's Model Rule on Client Identification and Verification and in many ways parallel similar requirements under the *PC(ML)TFA*.

54. Where services in respect of a "financial transaction" are provided, lawyers must not only identify their client, but must verify the client's identity (with some limited exceptions), and obtain and record information from the client about the source of the money received for the transaction. The Commissioner "applauded" the Law Society's action, commenting that while not a complete substitute to the *PC(ML)TFA* insofar as the information collected by a lawyer is not available to FINTRAC as it is for reporting entities under that Act, the Law Society's regime is a reasonable substitute given the constitutional parameters.

55. The Commissioner noted, however, that clarity be given to the phrase "source of money" to eliminate ambiguity. With this in mind, he specifically referenced Law Society

[13] Doing so would also bring into question Rule 3-58.1 because the funds that were in excess of what was reasonable would now be held in a trust account for purposes not directly related to legal services.

guidance, as expressed in the Fall 2019 Benchers' Bulletin, as to what, when assessing "source of money" the lawyer should at a minimum record:

> • information obtained from the client about the activity or action that generated the client's money (e.g., salary, bank loan, inheritance, court order, sale agreement, settlement funds);
>
> • the economic origin of the money (e.g., credit union account, bank account, Canada Post money order, credit card charge, cash);
>
> • the date the money was received; and
>
> • the source from whom the money was received (i.e., the payer: the client or name and relationship of the source to the client).[14]

56. The Commissioner recommended that the CIV Rules should be amended and that they make clear, at a minimum the following:

- that the information contained in the 2019 Benchers' Bulletin be recorded;
- the meaning of the term "source of money"; and
- that lawyers must consider whether the source of money is reasonable and proportionate to the client's profile.

The Task Force agreed with this recommendation.

57. However, the description of the obligations to assess the "source of money" as part of CIV obligations may be confusing.

58. The Task Force suggests that the various recommendations made herein provide obligations and use terminology that make clearer for the legal professions that their overriding responsibility is to understand the financial transactions in which they are participating, and to be aware of and make inquiries with respect to any and all suspicious circumstances.

59. Assuming amendments are made, it will be important to include objective criteria in both the Rule and the Law Society's practice resources relating to source of money, to ensure the legal profession understands the obligations.

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[14] See page 1190 of the Cullen Report

60. Requiring disclosure of "source of money," however, relies on the person whose money it is telling the truth as to its source. Those who are trying to hide the source are unlikely to tell the truth. It also recognized that where the client's source of money comes from a third party, such as where the client is a developer, it can be difficult for the lawyer to make the necessary verifications from people with whom the lawyer has no solicitor-client relationship. The Task Force noted that being able to rely on the due diligence of the lawyer on the other side of a transaction regarding source of money would be helpful.

61. The Law Society provides guidance about obtaining information about the source of money in resources that include the "Client ID & Verification – Frequently asked questions."

62. In the absence of suspicious circumstances or a heightened risk, it may be reasonable for a lawyer to accept a client's explanation. If there are suspicious circumstances or high risk factors present, lawyers must make further inquiries in keeping with the duties set out in *BC Code* rule 3.2-7 and its commentaries. This may include obtaining documents to support the client's explanation.

RECOMMENDATION 2: The CIV Rules should be amended to clarify what a lawyer must do when obtaining and recording information about "source of money," with clear reference to the requirements set out in the Fall 2019 Benchers' Bulletin.

Cullen Recommendation 57:

[E]xtend the ambit of the client identification and verification rules to include the situations in which a lawyer is truly acting as a gatekeeper. The rules should be extended to include, at a minimum: the formation of corporations, trusts, and other legal entities; real estate transactions that may not involve the transfer of funds, such as assisting with the transfer of title; and litigation involving the enforcement of private loans (p. 1192).

63. With limited exceptions, the "verification" requirements of the CIV Rules must be complied with where there is a financial transaction.

64. In addition to verifying the client's identity, the verification requirements include obtaining source of money information and monitoring the professional relationship. Commissioner Cullen recommended that the application of CIV Rules extend beyond where, simply, a "financial transaction" is involved. If a client wants to create, for example, a corporation, a trust, or other legal entity, Commissioner Cullen expressed the view that lawyers should undertake verification requirements despite there being no financial transaction, and be required to make inquiries to understand how the entity

created will be used. This is in recognition that criminals may use vehicles like corporation and trusts to obscure their beneficial ownership and to assist in moving funds undetected.

65. Often a financial transaction is involved when creating a corporation (e.g. the receipt, payment or transfer of shares) or a trust (e.g. when the settlor sets up the trust and contributes assets to it which may include gifts such as a gold coin or other property). Accepting this recommendation to expand the scope of the CIV Rules where there is no financial transaction will add client verification requirements to more retainers, which the Task Force observes would be expected to increase the cost of the delivery of the services, affecting the public's access to legal services.

66. The Task Force was not prepared to go that far.

67. The requirement to verify a client's identity and monitor the professional relationship where there is no financial transaction could, on the other hand, be limited to client matters where there are objectively suspicious circumstances, which would be in keeping with the duty to make reasonable enquiries under BC Code rule 3.2-7.

68. For example, if there are suspicious circumstances identified in taking instructions from a client to set up a new corporation, then verifying the client's identity would be one of the reasonable inquiries required to objectively determine that the transaction is not in furtherance of dishonesty or illegal conduct. This risk-based approach to additional verification requirements was viewed by the Task Force as a preferable approach.

69. This approach, again, fits with the Task Force's view of the key obligation of legal professionals to understand the financial transactions in which they are participating, and to be aware of and make inquiries with respect to any and all suspicious circumstances.

70. If a modified version of Recommendation 57 were accepted, the Task Force recommends the Law Society consult through the Federation's Standing Committee on Anti-Money Laundering and Terrorist Financing to address the manner in which the recommendation is adopted.

71. Moreover, any rule needs to be drafted clearly to ensure that lawyers understand when the verification requirements will apply.

RECOMMENDATION 3: While the Rules should extend client verification requirements to retainers beyond those dealing with "financial transactions," the Task Force recommends they not be extended to all retainers purposed in the Cullen Report, but be limited to client matters where there are objectively suspicious circumstances or

heightened risk factors. Consultation with the Federation's Standing Committee on Anti-Money Laundering and Terrorist Financing should be encouraged to work toward a common amendment across the country.

Cullen Recommendation 58:

[A]mend the Law Society Rules to require lawyers to verify a client's identity when holding fiduciary property on the client's behalf (p. 1193).

72. "Fiduciary property" (defined in Law Society Rule 1) is a term created by the Law Society in 2015 as a way to distinguish funds or valuables held on the one hand by a lawyer in trust for a client relating to a legal matter, and, on the other, funds or valuables held by the lawyer for a party outside a solicitor-client relationship, but in circumstances where the lawyer had been appointed fiduciary owing to a past solicitor-client relationship. In other words, the lawyer was a trusted party by a client, who wanted the lawyer to administer a trust or an estate, outside of acting as a lawyer. When fulfilling this type of role, the lawyer is no longer acting for a "client" and is not providing legal services.

73. Fiduciary property is a term that arises elsewhere in this report. In fact, the Task Force makes recommendations in Part 2, below to change the term to "fiduciary funds" and to narrow its definition so that it is limited to funds held by the lawyer in a fiduciary capacity as an executor, administrator, or attorney under a power of attorney where the appointment is directly derived from a solicitor-client relationship.

74. For the purposes of Recommendation 58, the issue is that because the lawyer's appointment as a fiduciary arose from a previous solicitor-client relationship, there is a connection between the appointment and the lawyer's practice of law, even when the appointment does not involve providing legal services. Identification of the client with whom the solicitor-client relationship on which the fiduciary relationship is based may have already occurred, and verification of that client may also have occurred if the previous relationship involved a financial transaction. The Commissioner concluded that there would be little downside if the Rules were amended to require the CIV Rules to apply to the handling of fiduciary property as well.

75. The Task Force agreed that the recommendation is reasonable. The Cullen Report assesses matters through the lens of reducing the risk of money-laundering or other criminal activity. The Task Force agreed that it important to adopt a recommendation designed to decrease the likelihood of involvement by a lawyer, acting either as a lawyer or only in a fiduciary role, from being involved in criminal activity.

76. While this may place additional obligations on a lawyer acting as fiduciary arising out of a solicitor-client relationship, the Task Force concluded that it was justifiable to do so given that the fiduciary role derives from a previous solicitor-client relationship. Part B Indemnity protection could also then apply to the funds.

RECOMMENDATION 4: The Rules should be amended to extend the application of the CIV Rules to when a lawyer holds funds as fiduciary property (in accordance with recommendations made by the Task Force in Part 2, below).

Cullen Recommendation 59:

[A]mend Rule 3-58.1 of the Law Society Rules to clarify, at a minimum, what is meant by "directly related to legal services" and to consider how to further limit the use of trust accounts so that they are used only when necessary (p. 1195).

77. The Federation's Model Trust Accounting Rule was approved in 2018. It incorporated into the Rules the long-standing obligation to ensure a trust account is only used to receive and disburse funds directly related to the legal services being provided by the lawyer. On completion of the legal services to which the funds relate, reasonable steps to obtain appropriate instructions and pay out funds held in trust must be taken. These requirements are especially important given that solicitor-client privilege may *prima facie* attach to a trust account, and the deposit of funds unrelated to legal services being performed for the client may effectively hide those funds from others.

78. The trust account is thus vulnerable to be misused by criminals to hold and move the proceeds of crime undetected by authorities. Rule 3-58.1 was added by the Law Society in July 2019, although as noted the proper use of a trust account is a long-standing obligation that pre-dates Rule 3-58.1.

79. Commissioner Cullen concluded that the amendment that prohibits funds being deposited to and withdrawn from a trust account unless the funds are directly related to legal services was a good step, but he was not persuaded that it was sufficient as worded.

80. The intent of Rule 3-58.1 was to ensure that the funds being deposited to and withdrawn from the trust account are directly related to the provision of legal services. But this requires understanding what "directly related to legal services" means.

The meaning of "directly related to legal services"

81. The Task Force noted that the phrase "*directly related to legal services*" is not precise, and depends to a large degree on both how "directly related" and "legal services" are defined.

82. While the "practice of law" is defined in the *Legal Profession Act*, "legal services" is not. In a recent decision, the Review Board adopted the definition of "legal services" set out in the Federation of Law Societies February 2019 Guidance to the Legal Profession, which defined the term as "the application of legal principle and legal judgement to the circumstances or objectives of a person or entity."[15]

83. The requirement that the funds in question must be "directly related" to the provision of legal services has also not been defined in the Rules. However, in most cases it will be clear whether or not the funds are directly related to the retainer. Commissioner Cullen concluded that the phrase "directly related" to the provision of legal services is not sufficient, and while he was not prepared to recommend any particular wording, his recommendation encourages the use of a trust account only when it is "necessary," which itself may be subject to interpretation.

84. Instead of amending or revising the phrase "directly related," the Task Force thought it preferable for the Law Society, as the regulator enforcing and interpreting the Rules, to provide guidance through the Rules or, (perhaps more likely), through supplementary resources to assist lawyers in determining whether funds are directly related to the legal services being provided.

Cullen Recommendation 62:

[T]hat the Law Society implement mandatory AML training for lawyers who are most at risk of facing money laundering threats. The education should be required, at a minimum, for lawyers engaged in the following activities: the formation of corporations, trusts, and other legal entities; transactional work, including real estate transactions; some transactions that do not involve the transfer of funds (such as transfer of title); and litigation involving private lending (p. 1205).

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[15] *Law Society of British Columbia* v. *Wang* 2024 LSBC 42, at para. 50:

> [50] The Federation of Law Societies in its February 19, 2019 Guidance to the Legal Profession (proposing what became Rule 3-58.1 in British Columbia) noted that the term "legal services" was not defined but said it generally means "the application of legal principle and legal judgement to the circumstances or objectives of a person or entity." We adopt this definition.

85. The Commissioner noted that the Federation has produced a number of educational materials and that the "Law Society has been prolific in this regard". He recognized that the Law Society "added an anti-money laundering component to its Professional Legal Training Course in 2004" and that "It has also produced a number of guidance documents, ranging from material on the website to *Benchers' Bulletins* to discipline advisories to specific anti-money laundering programs. Members can also phone a Bencher or practice advisors with questions about an ethical issue."

86. However, he was concerned that lawyers who are most at risk of facing money laundering threats, including those lawyers providing services in the areas noted in his recommendations, are not required to take mandatory education.

87. Because the Benchers' Policies for creating new rules requires consideration of alternative options for achieving the policy objective, the Task Force also considered the role of education for lawyers related to AML, with specific reference to Recommendation 62 in the Cullen Report.

88. Recommendation 62 is that the Law Society implement mandatory anti-money laundering training for lawyers most at risk of money laundering threats. The Task Force agrees in principle with the concept of mandatory education, but disagrees with the limiting criteria suggested by Commissioner Cullen.

89. Mandatory universal training reduces the risk of a lawyer who is dabbling in a "high risk" area when that lawyer's general practice is considered low risk. Whether a lawyer practises in a low-risk or high-risk area of law, and whether the lawyer maintains professional liability indemnity coverage through the Lawyers Indemnity Fund or is exempt from coverage, the creation of universal education requirements unifies the profession as a bulwark against money laundering.

90. The Task Force thus concluded that all lawyers should be required to take AML training once, regardless of whether they operate a trust account.

91. The Law Society should offer and strongly encourage lawyers to take advantage of continuing opportunities for lawyers who have taken the course to access and review updated content as it becomes available.

92. If the Law Society establishes mandatory education, the Task Force urges that such education should be provided by the regulator at no direct charge to those it regulates[16].

93. As the education of legal professions is outside the Task Force's mandate, it makes no recommendations on the content of the education material or the window of time in which the training needs to be completed, including subcategories related to lawyers new to practice or setting up a sole practice or small firm. The Task Force does, however, recommend that the Law Society continuously encourage lawyers to remain current on AML training even following the completion of the course.

RECOMMENDATION 5: The Law Society should implement a one-time mandatory anti–money laundering training for all lawyers, maintained and updated by the Law Society, and to ensure such training identifies areas of greatest risk, including:

- the formation of corporations, trusts, and other legal entities;
- transactional work, including real estate transactions;
- some transactions that do not involve the transfer of funds (such as transfer of title); and
- litigation involving private lending.

PART 2 – Accounting Rules

Introductory Comments and Underlying Principles

94. To address the second part of its mandate, the Task Force conducted a thorough and extensive review of Part 3, Division 7 of the Law Society Rules.

95. At the commencement of its work, the Task Force adopted some guiding principles that inform the recommendations that follow.

> *The principles for the accounting Rules for legal professionals are:*
>
> *(a) to give the public confidence that a legal professional can account for the money relating to the lawyer's practice, and particularly that the public can be assured that their funds will be handled properly;*

[16] The Federation of Law Societies of Canada has a free online course available to all Canadian law societies for the legal professionals that they regulate. There are modules that include a testing component. The Law Society of BC has a free three hour -hour Anti-Money Laundering Measures – 2024 update course, with quizzes

(b) to ensure that legal professionals will appropriately discharge their fiduciary obligations regarding funds entrusted to them;

(c) to require legal professionals to keep, and provide access to the regulator, documents necessary to produce a clear audit trail to allow the regulator to determine whether funds have been handled in keeping with the legal professionals' obligations, and to further support the Law Society's efforts to prevent money laundering; and

(d) is proportionate to the risks sought to be addressed.

96. It was recognized that the Rules that exist now have developed over time and would benefit from review and modernisation to ensure that their requirements are clear and structured in order to increase compliance. The Task Force worked to develop recommendations to this end, while trying to ensure that the requirements did not become overly prescriptive but would still allow the regulator a proper audit trail where needed.

97. The Task Force also agreed that when it came to drafting the new rules, either because of the recommendations from this report or for the purposes of a new regulator (or both), the Rules should be re-ordered. To that end, the Task Force recommended that the Rules regarding accounting should follow the progression of (a) the opening of accounts, (b) the deposit of funds into accounts, (c) the withdrawal of funds from accounts, and (d) obligations required upon closing accounts.

> **RECOMMENDATION 6:** The Rules regarding accounting should be re-organized and follow the progression of (a) the opening of accounts, (b) the deposit of funds into accounts, (c) the withdrawal of funds from accounts, and (d) obligations required upon closing accounts.

"Outcomes-focused" rules

98. Outcomes-focused rules are popular with some regulatory bodies, particularly in England and Australia. Their advantage is to let those being regulated determine how to achieve outcomes, rather than having the regulator prescribe the method to do so.

99. The Task Force considered a purely "outcomes-focused" basis for the accounting Rules, but declined to recommend this approach. Instead, the Task Force agreed that the Rules should have some prescriptive elements to provide guidance to lawyers and to ensure a proper audit trail exists, while leaving some flexibility and discretionary authority with the Executive Director to avoid creating an overly burdensome administrative infrastructure.

100. While in theory it is possible to reduce the accounting Rules to a requirement that "lawyers must record and be able to account for all funds entrusted to them," the Task Force agreed that this "outcomes-focused" basis of regulation may not meet with the "onerous obligations" the courts have applied to the law societies in regulating in the public interest.[17] Moreover, it may leave many – perhaps most – lawyers in some doubt about what proper recording and accounting would entail.

101. On matters of such importance, the Task Force agreed there was a considerable value in a degree of prescriptiveness to how to maintain proper accounting records.

Uniformity of rules across all legal professions

102. The Task Force also concluded that the Rules should be uniform across all areas of practice, and in a future single legal regulator environment, require all legal professionals to adhere to the same standards.[18]

103. The Rules, policies and educational materials should explain clearly the obligations that legal professionals and firms have regarding client property, including record keeping, reporting and managing that property. Legal professionals need to understand the obligations of the firm, their own obligations, and where these obligations overlap and where they differ.

104. Moreover, to be an effective regulator acting in the public interest, the Law Society requires access to complete and accurate records in a timely manner along with the ability to implement effective regulatory responses where legal professionals and firms are not complying with the Rules.

105. In analyzing issues with the current Rules, the Task Force identified a number of recommendations.

106. Some recommendations are more operational than policy-based, and therefore lie with the Executive Director to address. Some matters are in the nature of house-keeping, and others reflect substantive policy decisions. It is the latter category that is the focus of this report.

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[17] See Section 5 (Objectives of Trust Accounting Rules) above.

[18] For clarity and consistency of language, the Task Force refers to "lawyers", while recognizing under a single regulator another term might be required.

Types of Accounts and Associated Requirements

107. The starting point for the Task Force was to consider account requirements. The Task Force concluded there are two types of accounts that a firm may operate. They are (i) a General Account, and (ii) a Trust Account.

108. Neither the Act nor the Rules define these accounts.

109. For certainty, the Task Force recommends that the Rules provide a definition for each type of account.

> **RECOMMENDATION 7:** Amend the Rules to include definitions for "general account," and "trust account."

110. Defining a trust or a general account may on its face seem unnecessary. Doing so, however, will allow the Rules to be amended to make the related requirements associated with each account clearer. Funds received as fees or retainers or for otherwise directly related, however that term is ultimately used, to the practice of law would go into a firm trust account.

General Account

111. The Task Force concluded that all firms should have a General Account. This account would be reserved for general accounting of business and other expenses for the firm, and only for the firm.

112. During its review, the Task Force learned that some lawyers either use their personal accounts to conduct and account for their law firm transactions, or they commingle their personal transactions in the firm general account.

113. The Task Force recommends prohibiting such practices. Lawyers must not mix their personal finances with their firm's business and operational transactions. Personal finances should, simply put, always be kept separate from firm finances. Lawyers who do not adhere to this direction complicate their own accounting and complicate the Law Society's audit and investigation functions. This often creates additional costs and complications to separate the transactions for firm and personal purposes.

> **RECOMMENDATION 8:** Each lawyer or law firm that provides legal services for a fee is required to operate a general account separate from any personal accounts of the lawyers practising at or through the firm.

114. Rule 3-65 discusses withdrawing funds from trust in payment of the lawyer's fees. However, on occasion some lawyers have deposited these funds into their personal bank accounts and not to their General Account. Consequently, the Task Force makes recommendations regarding Rule 3-65 (1.1) to make it clear lawyers must deposit the funds addressed in the Rule into the firm general account.

> **RECOMMENDATION 9:** Rule 3-65 (1.1) should be amended to require the funds addressed in that Rule to be deposited to the firm General Account.

Trust Account

115. Firms that handle trust funds must open one or more trust accounts.

116. Given the critical importance of lawyers and firms maintaining proper accounts and dealing with client property appropriately, the Task Force recognizes the need to ensure any lawyer who is operating a trust account receives training in the Rules relating to trust accounting.

117. Considerable practice resources are available to the profession on trust accounting obligations, including various free online courses. However, there is no requirement that a lawyer complete any of these courses prior to operating a trust account.

118. The public interest is better supported by ensuring lawyers understand their obligations when establishing or first operating a trust account, and develop appropriate practices for completing reconciliations, record-keeping and reporting, rather than applying piecemeal, reactive responses to their obligations. Part of this requires recalibrating the perception that proper accounting is a mere adjunct to the practice of law. Rather, it is an essential part of practice.

119. The initial time invested by the responsible lawyer in understanding and implementing proper systems serves the public by reducing the risk of improper handling of clients' funds and will also reduce the overall regulatory costs through the implementation of compliant processes from inception.

120. If the Law Society establishes mandatory education on trust accounting, the Task Force urges that such education should be provided by the regulator at no direct charge to those it regulates

RECOMMENDATION 10: Require all lawyers who are signatories to a trust account to complete a course of prescribed education regarding the operation of a trust account.

Fiduciary Property

121. Fiduciary property is defined in Rule 1. Funds that are fiduciary property are not "trust funds". They are held by a lawyer outside of the solicitor-client relationship.

122. Currently, Rule 3-55 (6) permits fiduciary property to be placed in a pooled or separate trust account. Rule 3-55 (6) is an exception to Rule 3-58.1, which otherwise prevents funds not directly related to legal services from being held in a trust account.

123. The Task Force recognizes that the scope of fiduciary property permitted to be deposited into a trust account must be appropriately defined to mitigate against the risk of the trust account being used improperly to conceal or move funds for a client that are not truly fiduciary funds.

124. The Task Force also acknowledges the advantages of having an exception that permits funds held by the lawyer in a fiduciary capacity to be held in a trust account in certain circumstances.

125. The Task Force determined that the scope of what constitutes "fiduciary funds" should be narrowly defined only to capture funds held by a lawyer when the lawyer is acting as an executor or administrator of an estate pursuant to a court order, or as an attorney appointed under a power of attorney, with the requirement that the appointment is directly derived from a previous solicitor-client relationship.

126. There is little public interest and high risk in permitting a client or former client to appoint their lawyer as trusted advisor to hold funds in the lawyer's trust account when the appointment is not pursuant to one of the limited fiduciary roles noted.

127. The Task Force appreciates that there can be serious risks of misappropriation where lawyers act as an administrator or executor of a deceased's estate. Given such risks, the Task Force also understands there is considerable advantage in the public interest to permitting a lawyer to hold the fiduciary funds in a trust account, with the associated stringent requirements in place for the handling of funds in trust and with visibility of the transactions during a compliance audit.

128. The Task Force recognizes that such funds are not "directly related to legal services" because the lawyer is acting *qua* executor, administrator or attorney, and not *qua* lawyer. Lawyers must, however, be clear on their obligations and responsibilities in these

circumstances. The fiduciary funds are not privileged, and accounting records related to the handling of the funds may need to be made available to third parties such as beneficiaries.

129. The Task Force realises that this recommendation may be critiqued. Some may consider it to be against the tide of separating a lawyer's law practice from their other business activities, and some may suggest it creates a risk that funds will be laundered through a lawyer's trust account. However, by limiting the exception to funds where the lawyer acts as an executor or administrator appointed pursuant to a court order, or an attorney under a power of attorney, the Task Force agreed that these risks were low, and were offset by the benefits of ensuring such funds were properly accounted for by a lawyer acting in these other roles.

130. Consequently, the Task Force recommends changing the definition of "fiduciary property" to "fiduciary funds" and redefining it to limit its application to funds held by a lawyer as an executor or administrator of an estate pursuant to a court order, or as an attorney appointed under a power of attorney, provided the appointment is directly derived from a previous solicitor-client relationship.

131. All other fiduciary capacities in which funds are held by a lawyer acting where there is no direct provision of legal services will no longer be caught under the definition and, in the result, the definition of "fiduciary property" will be removed. These funds will not be allowed to be deposited to a "trust account".

RECOMMENDATION 11:

The definition of "fiduciary property" in the Rules will be replaced with "fiduciary funds" and narrowed to include only funds held by a lawyer as an executor or administrator of an estate pursuant to a court order, or as an attorney appointed under a power of attorney, provided the appointment in any such capacity is directly derived from a previous solicitor-client relationship.

A lawyer acting in a fiduciary role in any circumstances other than those noted above, regardless of how the appointment arose, must account for and deal with those funds in the same manner as any other fiduciary. Those funds will not be allowed to be deposited to a "trust account".

Operating a Trust Account

132. The Task Force considered the Rules relating to the operation of a Trust Account with regard to deposits and withdrawals and associated matters. It makes the following comments and recommendations.

Deposits to Trust Accounts

133. All firms dealing with trust funds must have a firm Trust Account; pooled and separate interest bearing, as necessary.

134. The Task Force noted, though, that the current Rules do not distinguish between trust funds related to the practice of law in British Columbia and another jurisdiction.

135. Firms that are practising in multiple jurisdictions and co-mingling trust funds of BC client matters in a pooled trust account held in the name of their firm in another jurisdiction are at risk of:

    a. not paying interest earned on the funds held in trust to the Law Foundation of BC;

    b. not paying the trust administration fee;

    c. not complying with the accounting Rules generally (Part 3, Division 7 Rules); and

    d. experiencing difficulties in providing complete records to the Law Society during a compliance audit.

136. Currently, Rule 3-61 requires a separate trust account to be an interest-bearing trust account or a savings, deposit, investment or similar form of account *in a savings institution* in British Columbia. A pooled trust account, on the other hand, must only be held in a designated savings institution, defined in Rule 3-56 as being a savings institution required only to *have an office* in British Columbia. The Task Force agreed that while the designated savings institution must be in British Columbia and must have an office in the province, what was most important was that the *account itself* is in British Columbia.

RECOMMENDATION 12: The Rules should require pooled trust accounts for matters relating to BC legal services to be held *in an account* in British Columbia.

BC client matters are not to be commingled in another jurisdiction's pooled trust account.

137. The Task Force also examined Rule 3-58 concerning the deposit of trust funds. It agreed with the requirement in Rule 3-58 (1) that trust funds must be deposited into a trust account "as soon as practicable," but encourages the Law Society to provide guidelines to help lawyers understand what "practicable" means in the context of the obligations set out in the Rule.

138. However, the Task Force identified a concern with Rule 3-58 (3). While the Rule contemplates that all trust funds are to be deposited into trust in an account in a designated savings institution, the client can advise otherwise. Designated savings institutions carry with them the protections of insurance by the Canada Deposit Insurance Corporation or the Credit Union Deposit Insurance Corporation of British Columbia. The Task Force concluded that the permission to accept client instructions to deposit trust funds outside of a designated financial institution did not adequately protect the public interest. Funds entrusted to lawyers should remain as safe as possible.

> **RECOMMENDATION 13:** Amend the Rules to make clear that a client cannot instruct a lawyer to place trust funds into anything other than "an interest-bearing trust account or a savings, deposit, investment or similar form of account" in a designated savings institution with offices in British Columbia.

139. The Task Force examined the need for Rule 3-58 (4) that provides where funds in a trust account belong partly to a client and partly to a lawyer or firm, the latter funds must be withdrawn from the trust account as soon as practicable. The Task Force considered that the Rule may not be necessary because lawyers are not permitted to maintain their own funds in trust (with exception to $300), so the requirement intended in the Rule may already be presumed. However, the Task Force expressed no recommendation that the Rule should be removed. Instead, it assumes that the drafters of new rules will consider the issue when new rules are prepared.

140. Some discussion also took place regarding Rule 3-62, which permits a lawyer to endorse over a cheque payable to the lawyer in trust to a client or third party, provided the lawyer keeps a written record of the transaction and retains a copy of the cheque. The Task Force concluded that the practice of endorsing a cheque that should be deposited to a trust account over to a third party was inconsistent with the intent of Rule 3-58, which requires a lawyer who receives trust funds to deposit them to trust. The Task Force recommends no longer permitting the practice of endorsing trust cheques. While the practice may have been a time saving process, the increased use of electronic banking renders it unnecessary. Further, depositing the funds to trust and then paying them over to the third party establishes a clearer accounting trail than does endorsing a cheque over.

RECOMMENDATION 14: Remove Rule 3-62 to end the practice of permitting a lawyer to endorse over to a third party or to a client a cheque made payable to the lawyer in trust. If a client makes a cheque for fees payable to a lawyer rather than to the lawyer's firm, the lawyer will be permitted to endorse that cheque over to the firm only.

Withdrawals from Trust Accounts

141. The Task Force discussed a range of matters related to withdrawal of funds from trust, including issues relating to signing trust cheques and lawyers' maintaining control over the signature process, matters pertaining to electronic transfers from trust, and administrative issues.

142. Lawyers are responsible for their trust accounts and the funds held in trust, and have an obligation to protect the public interest and guard against fraud or improper use of those funds.

143. Nevertheless, there have been instances where lawyers have allowed someone else to affix their signature to a trust cheque or where a lawyer has left signed blank trust cheques with their staff. Administrative expediency and convenience are not justifications to relax the strict standards expected of lawyers, and such conduct has resulted in disciplinary outcomes.

144. Considering this, the Task Force recommends amending the Rules to explicitly prohibit lawyers from permitting another individual to affix their signature to a trust cheque and from signing blank trust cheques. The Task Force observes that the ability for the lawyer to affix the signature remotely via technology (if permitted) or to use the electronic fund transfer process provides sufficient administrative flexibility.

RECOMMENDATION 15: Every trust cheque must be signed by a practising lawyer, after the payee, date and amount are entered onto the trust cheque. Lawyers must not sign a blank trust cheque.

145. The Task Force discussed the procedure set out in Rule 3-64 (5) for a practising lawyer to authorize the withdrawal of trust funds from a pooled or separate trust account by cheque. Lawyers utilize various types of controls to ensure that no one other than the lawyer affixes their signature. The Task Force recognized that less rigorous controls increase the risk of unauthorized withdrawals from trust and recommended that Rule 3-64 (5) strengthened. For example, the use of rubber stamps and electronic signatures for cheques increases the risk of unauthorized withdrawals from trust.

RECOMMENDATION 16: Amend Rule 3-64 (5) to reinforce that only a practising lawyer authorized to sign a trust cheque can affix their own signature to the cheque, regardless of the method used to affix the signature.

146. In order to improve lawyers' compliance with their obligations, the Task Force discussed the use of a standardized form for electronic transfers in Rule 3-64.1. It determined that some aspects of the existing Rule could be incorporated in the form and therefore not need to be replicated in the body of the Rule.

RECOMMENDATION 17: Amend Rule 3-64.1 to provide that lawyers using electronic transfers from trust must do so using a requisition form prescribed by the Executive Director and requirements contained in the form should not be replicated in the Rule.

147. During its analysis, the Task Force discussed amending Rule 3-64.1 to update the processes for electronic fund transfers.

148. Currently, Rule 3-64.1 (2) (a) requires a dual password approach that requires two different people to enter one of the passwords. Rule 3-64.1 (3), however, provides for an exception for sole practitioners to use a dual password method where the lawyer enters both passwords. The Task Force recommends expanding this permission to all firms.

RECOMMENDATION 18: With proper protections to ensure that commercial banking platforms are utilized and personal online banking systems are not utilized, electronic transfers from trust must be performed by a lawyer using dual authentication passwords, not necessarily a dual person authentication.

149. Rule 3-66 discusses withdrawals from separate trust accounts. Subrules (2) and (3) appear to be adequately covered elsewhere in the Rules and can be removed.

RECOMMENDATION 19: No changes need be made to the substance of Rule 3-66 (1), although the Rule itself should be moved to be included in Rule 3-64 regarding withdrawal from trust. Subrules (2) and (3) can be deleted.

Shortages

150. The Task Force discussed the importance of lawyers identifying and eliminating trust shortages, and notifying the Law Society of shortages greater than $2,500 or where they were unable to deliver the funds when due. Some lawyers have expressed confusion as to what constitutes a trust shortage and, therefore, the Task Force prefers defining "Trust Shortage" making it clear that a shortage arises when there is a shortfall in the funds held in trust on each client matter.

151. The Task Force concluded that "Trust Shortage" should be defined in a manner that includes clear examples of where shortages occur, in order to improve lawyer understanding and compliance with the reporting requirement. Moreover, the Task Force encourages the Law Society to develop further guidance around the handling of trust shortages.

152. Furthermore, it should be made clear that a "Trust Shortage" is defined to include funds held in trust for each client matter, and not globally for the pooled account as a whole.

> **RECOMMENDATION 20:** Add a definition of "Trust Shortage" to the Rules to improve lawyer understanding and compliance with the reporting requirement.

153. During its discussion, the Task Force recognized that in circumstances where a bank has frozen a lawyer's accounts, the lawyer will be unable to "deliver up" funds, potentially putting clients at risk. Therefore, lawyers should alert the Law Society when an account freeze occurs. The circumstances giving rise to the freezing of a trust account may also identify a concern that requires regulatory attention.

154. Furthermore, the Task Force agreed that any account operated by a lawyer or firm frozen by a financial institution is a concern and should be reported to the Law Society, and that the Law Society, upon receipt of such information, should take steps to follow up that report with the lawyer or firm.

> **RECOMMENDATION 21:** A lawyer must immediately notify the Law Society when any account is frozen by a financial institution.

Fee Billing

155. The Task Force recognized that the trust Rules include some matters that are better located in provisions relating to lawyers' bills.

156. Consequently, the Task Force recommends making some house-keeping amendments to move various Rules and sub-rules to more logical locations within the Rules, without altering the substantive purpose of those Rules. Specifically, Rule 3-71 that discusses billing records, Rule 3-65 (3) that discusses the delivery of a bill and Rule 3-78 that includes the lawyer's right to claim funds.

> **RECOMMENDATION 22:** Amend Rule 3-65 to move provisions in the subrules that pertain to billing requirements to Part 8 of the Rules, thereby retaining in the Rule only matters relating expressly to trust accounts.
>
> Move the statutory solicitors' lien in Rule 3-78 to Part 8 and adjust the language to indicate that the requirements in Division 7 do not alter the right to a lien (statutory or common law).
>
> Move Rule 3-71 (1) to Part 8 of the Rules, and revise Rule 3-71 (2) considering the recommendation to remove the Rule to which it refers.

157. The Task Force's mandate does not involve examining lawyers' fees and bills, and the particulars of that topic (such as dealing with fixed fee agreements) are better determined by staff.

158. That said, the Task Force learned that some lawyers charge anticipated disbursements and deduct that sum before the disbursements are incurred. In addition, in some cases unused portions of the pre-billed disbursements are not paid to the client. Such conduct has been the subject of disciplinary proceedings and has resulted in sanctions. The Task Force recommends clarifying that billed disbursements must have been actually incurred, and that there is no entitlement to any amount that exceeds the actual disbursements incurred.

> **RECOMMENDATION 23:** Amend the Rules to make it explicit that a client can only be billed for disbursements that have been incurred and that anticipated disbursements cannot be charged.

159. In connection with fee billing, the Task Force also discussed Rule 3-72 with reference to the requirement to record the transfer of funds into the general account for fees billed on the same day.

160. The Task Force discussed, and ultimately concluded, that subrule (1) should remain unchanged, but that subrules (2) and (3), which address important objectives, require clarification.

161. "Same day recording" as required in subrule (2) (a) may not be necessary in the public interest, so long as the entry is made "promptly" as required in subsection (1). But in relation to matters in subrule (2), the "in any event within 30 days" requirement may be too long. The requirement to "immediately" deliver a bill, set out in subrule (3) is an important objective, but given its importance some clearer parameters around the meaning of "immediately" may be advisable.

RECOMMENDATION 24: While Rule 3-72 (1) should remain unchanged, subrules (2) and (3) should be considered further against their objectives to provide better guidance around the timing of the recording of transactions.

Reconciliations

General Accounts

162. The Task Force discussed whether there should be a regulatory requirement for a firm to reconcile their general account periodically. The Task Force suggests that such reconciliations be required monthly.

163. Mindful of not creating unnecessary extra burdens, the Task Force nevertheless concluded that a rule requiring the reconciliation of a general account should be included.

164. All accounts operated by lawyers should be reconciled. It is easy to make a mistake by placing funds that should be in trust (for example, a retainer) in a general account instead of a trust account. Regular reconciliations provide a tool lawyers require to immediately detect and correct such errors. Undetected errors may linger, resulting in trust shortages not being eliminated in a timely manner.

165. The Task Force noted that the Law Society of Alberta requires a monthly reconciliation of a general account and details what the reconciliation must include. The Task Force recommends following Alberta's example.

RECOMMENDATION 25: The law firm general account must be reconciled.

Trust Accounts

166. The Task Force discussed the importance of reconciling trust accounts in a timely manner. In the absence of a reconciliation being done, it is unknown if transactions have been accurately recorded and if the accounting records are reliable.

167. The trust reconciliation is a three-part process that requires reconciling the balances of the trust assets (bank account) and trust liabilities (client trust liability listing) with the trust book of entry (trust bank journal).

168. The Task Force explored enhancing the trust reconciliation requirements to ensure that stale-dated cheques and unclaimed trust money are identified, and that the reconciliations set out a list of outstanding cheques, including information of when the cheques were issued, the payee's name and the client matter number. The Task Force considers it important to have language that sets out what a trust reconciliation entails in a clear and concise manner.

169. The Task Force concluded that a lawyer should be required to correct any errors and unreconciled items, and eliminate shortages and outstanding deposits, within the reconciliation process. In addition, the responsible lawyer should review, date and sign the reconciliation, confirming the trust account balances.

170. As part of its analysis, the Task Force considered removing Rule 3-73 (2) (d), which provides that the reconciliation must be supported by a listing of balances of all other trust funds received. As all funds accepted in trust must be included in the monthly trust reconciliation, subrule (2) (d) is not really necessary. In addition, the Task Force considered removing subrule (4), which sets out record retention obligations, as the record retention obligations are set out in Rule 3-75.

RECOMMENDATION 26: The requirements for a trust reconciliation should be clarified and the supporting documents amended to include listing of specified matters such as stale-dated cheques and unclaimed or inactive balances. Subrule (2) (d) can also be removed.

Lawyers must be required to correct errors immediately and eliminate shortages and outstanding deposits. The errors, shortages and outstanding deposits should not be permitted to be carried forward to the next month's reconciliation.

Lawyers must sign off on the reconciliation of their accounts.

Reporting Requirements and Compliance with Maintaining Records

Renaming the Trust Report

171. Lawyers are required to file an annual trust report except those who are non-practising, retired, or practising but exempt from professional liability indemnification.[19]

172. The annual trust report must be submitted whether or not the lawyer is operating a trust account. Some lawyers who do not maintain a trust account mistakenly believe they are exempt from the requirement to submit an annual trust report. The Task Force recommends addressing the misunderstanding through a name change for the "trust report"

> **RECOMMENDATION 27:** Rename the current "trust report" so that it is clear that an annual report relating to the accounts of law firms must be filed even if the firm is not operating a trust account.

173. In a similar vein, the Task Force discussed the confusion that may arise when, in addition to the requirement to file the trust report, a firm is also required to file an accountant's report, which forms part of the trust report.

174. The Task Force discussed the need to have a Chartered Professional Accountant ("CPA") complete the accountant's report, and to ensure that they are independent in the sense that the CPA is not performing any other bookkeeping services for the law firm including recording the accounting transactions and preparing the trust reconciliations. This requires modifying the existing definition of "qualified CPA" for purpose of Rule 3-82.

> **RECOMMENDATION 28:** The "accountant's report" should be renamed to be called a "CPA Report," and the Rule creating it be moved to follow, or be part of, Rule 3-79 in order to clarify that the CPA Report is *part of* what is currently called the "trust report." A "qualified CPA" should be defined to reference the qualifications needed to prepare a "CPA Report," including being independent.

[19] The exemption applies if the lawyer has not received or withdrawn funds from trust and has otherwise complied with the rules.

Compliance with Trust Report

175. Staff advised that some lawyers have interpreted Rule 3-79 (6) (dealing with retired or non-practising lawyer filing requirements) such that, if by the end of the reporting period they have changed their practising status to non-practising or retired, they are not required to file an annual trust report.

176. The Task Force does not consider such an interpretation to be consistent with the intention of the Rule and thus recommend amending Rule 3-79 (6) to make it clear the trust report must be submitted *if at any time during the reporting period* the lawyer held a practising status and was not exempt from the requirement to maintain professional liability indemnity coverage.

> **RECOMMENDATION 29:** Amend Rule 3-79 (6) to clarify that an annual trust report is required to be filed for a firm if the firm had any lawyers who held a practising status and were not exempt from professional liability indemnity coverage for any part of the reporting period. Law firms will be required to include in their annual trust report a list of all lawyers practising at the firm during the reporting period, including those who change their status to an exempt status at any time during reporting period.

177. Rule 3-83 requires lawyers to provide explanations of the exceptions and qualifications identified in the trust report. In order to improve lawyer's understanding, the Task Force recommends moving the Rule as a subrule of Rule 3-79 with a description of circumstances of "non-compliance with the accounting Rules".

> **RECOMMENDATION 30:** Rule 3-83 should be a subrule of Rule 3-79 *[Trust report]* and be amended so that "non-compliance with the accounting Rules" or similar phrase be utilized instead of "exceptions and qualifications," and require an explanation from the lawyer as to how they will remedy the non-compliance.

178. CPAs have occasionally reported in trust reports that the firm had not maintained sufficient accounting records. In the result, the CPA had little information to report other than that the records had not been maintained. In these situations, the trust report is deemed not to be filed to the satisfaction of the Executive Director on the basis that the CPA was unable to review the records of the law firm.

179. The Task Force recommends in such circumstances that the firm be required to bring their records current and provide those records to the CPA to submit an amended report within a time frame set by the Executive Director.

RECOMMENDATION 31: Where the trust report is not complete to the satisfaction of the Executive Director, lawyers must file an amended report within a timeframe set by the Executive Director.

Responsibility for Reporting and Compliance

180. The Task Force explored a number of issues related to reporting requirements and matters of non-compliance.

181. A starting point was to consider who should be responsible for filing the trust report and providing the books, records, and accounts for the compliance audit.

182. Currently, the Rules discuss lawyers' books, records and accounts and filing obligations. But, in reality, one or more lawyers file the annual trust report on behalf of a firm and it is the firm that is subject to a compliance audit. If the firm fails to deliver the trust report or fails to produce the books and records required for a compliance audit, then all of the lawyers in the firm are in breach of the Rules, and potentially subject to suspension and/or a late fee assessment for the late filing of a trust report.

183. The Task Force discussed whether the Rules should place trust report obligations and compliance with audits on the owners of the firm (equity partners, directors of the law corporation) on the premise that they have control over compliance in a way that associates do not.

184. This discussion included a recognition that in some firms, some partners may be in no better position than an associate to know whether the firm has complied with trust reporting and audit requirements. For example, accounting requirements may be delegated in a firm to certain individuals, such as accounting staff, with oversight of one or more lawyers.

185. The Task Force considered the merit of a system where firms could appoint a particular partner/owner who is responsible for filing and compliance. Such a system would require safeguards, including a mechanism to alert the partners/owners that the identified responsible person was in non-compliance, so the remaining partners/owners could take steps to rectify non-compliance.

186. The Task Force was of the view that if non-compliance continued once partners/owners had notice, then it would be appropriate for all partners/owners to bear responsibility for failing to correct the matter. However, in the first instance, the appointed partner/owner should bear the responsibility to ensure the timely filing of the annual trust report and the provision of required records for a compliance audit.

RECOMMENDATION 32: A "law firm" (as defined in the Act) may identify a specific partner/owner of the firm to file its annual trust report and to produce the firm's books and records if required for a compliance audit. A sole practitioner is deemed to be the owner lawyer for their law firm. Where the specified lawyer(s) fails to comply, the owners of the firm may also be responsible for these requirements if they have not been completed after being notified by the Law Society of the non-compliance.

The Rules will continue to require any lawyer at a firm at the relevant time to answer questions or produce records during a compliance audit or in response to questions about a trust report. The Rules will also continue to hold a lawyer personally responsible for their own conduct in respect to compliance with the Part 3, Division 7 of the Rules.

Non-compliance with Maintaining Accounting Records

187. Audits have disclosed that, on occasion, the books, records and accounts of a firm are inaccurate, unreliable and incomplete, thereby preventing the Law Society from being able to reasonably conduct the procedures required during a compliance audit. This requires a follow-up audit after the firm has been given an opportunity to take steps to rectify the deficiencies.

188. These are not situations of minor, easily correctable deficiencies and, in the absence of auditable records, the public may be at risk.

189. The Task Force discussed ways to encourage better record keeping and compliance (in addition to education), and recommend creating a rule that gives the Executive Director discretion to require the firm to pay a portion of the cost for subsequent audits that are required until the records and accounts are in a condition where the audit can be completed. The Task Force discussed identifying a flat rate for such further audits, but ultimately preferred that the Rule express a range, and that it be applied in the discretion of the Executive Director.

RECOMMENDATION 33: Revise the Rules to provide that if the records produced at a compliance audit are inaccurate, unreliable or incomplete, and a follow-up audit is required, the Executive Director may require the firm to pay a fee intended to represent part of the costs of the additional audit, expressed as a range in the Rule. As per the recommendation above, this responsibility is intended to apply to the owners of the firm.

190. The Task Force considered whether to create rules to permit the Executive Director to place conditions on the operation of accounts in circumstances where the Executive

Director is satisfied that a lawyer or firm has not complied with the duties and responsibilities set out in Part 3, Division 7 of the Rules.

191. At present, restrictions on the operation of a trust account arise primarily from hearing panel orders, consent agreements, or voluntary undertakings given during an investigation.

192. It is often during a compliance audit that significant deficiencies are discovered. The public would be better protected if, in appropriate cases, measures could be put in place to protect trust funds prior to the audit concerns being referred to the Investigations Department, as there may be a meaningful delay between the discovery of the deficiencies and the referral being made.

193. The Executive Director does not currently have the ability to impose any conditions on the operation of a trust account. The Task Force concluded such discretion is appropriate with measures in place to ensure administrative fairness.

RECOMMENDATION 34: Rules should be added to permit the Executive Director to place conditions on the operation of trust accounts where the Executive Director is satisfied that a lawyer or law firm has not adequately complied with the duties and responsibilities set out in Part 3, Division 7 of the Rules.

Late Filing Fee for Trust Report

194. The Task Force also discussed recommending an increase to the late filing fee from its current amount of $200 for the first month, and $400 per month thereafter. This amount was set approximately 20 years ago. Prior to that the fee was set at $100 a day, but lawyers often would not pay it and then would apply to the Discipline Committee for a waiver. Notaries set their fee at $50 a day and do not waive the fee, although the incidence of non-compliance is reportedly low.

195. The Task Force recommends that the fee be increased substantially to recognize the importance of the report and encourage better compliance. It makes no recommendation on the appropriate amount. That issue can be considered further by staff advising the Finance and Audit Committee for future recommendation.

RECOMMENDATION 35: Fees and assessments for late filing of a trust report assessed should be increased.

Retention of Records and Miscellaneous Matters

196. The Task Force considered a range of Rules that can be categorized as "miscellaneous matters," including retention of records.

197. Some of these Rules, such as records retention, can create challenges for lawyers winding up their practices as there are specific Rules outside the provisions for trust accounting that deal with lawyers' recordkeeping obligations. The Task Force discussed how best to structure the Rules for ease of comprehension, as well as more substantive aspects of various Rules.

198. The Task Force considered Rule 3-75 with reference to the "chief place of practice" aspect and the "on demand" element of the Rule. Rule 3-75 (3) requires a lawyer to keep records, other than electronic records, at the chief place of practice for at least 3 years from the final accounting transaction or disposition of valuables. When the Law Society developed its policy for cloud computing, the exemption for electronic records was carved out because it was recognized that a remotely stored electronic record can be made available on demand.

199. During the current review, staff noted that the onsite storage obligation can work a hardship on some lawyers who are pressed for space, and also noted that it is increasingly acknowledged that most records will have a digital equivalent even if a paper copy is on site (i.e. most paper records were printed from a digital source). Consequently, the Task Force agreed to remove the chief place of practice requirement and preserve the production on demand element.

200. This led to a discussion of which Rule is the best one to contain the "on demand" requirement. An argument exists that the on-demand requirement relates more to the process for production of records and has less to do with retention requirements. The Task Force agreed that the better focus of the Rule was the obligation to maintain the records, and not the locus of the records on demand element, which is more properly addressed in other Rules.

> **RECOMMENDATION 36:** Rule 3-75 should focus on the requirement to retain the records, and not include "chief place of practice" or reference to "on demand". This policy change may logically permit Rule 3-76 to be removed or modified.

Withdrawing from Practice

201. The Task Force had a lengthy discussion of the circumstances that result from lawyers transferring firms, moving to non-practising status, or withdrawing from practice.

202. When a lawyer ceases to practise law, the lawyer is obliged to report to the Law Society and to ensure that their files are looked after, that important documents (e.g. wills and wills indexes) are accounted for and, crucially, that trust funds are appropriately disbursed and trust accounts closed. This protects the public by ensuring both the clients and the Law Society can access these records and valuables. However, the Task Force notes that the language of Rule 3-87, which currently sets out the requirements associated with leaving a practice to move to another setting, or to leaving the practice of law altogether, needs to be revised in order to be clearer and, ideally, more capable of compliance and enforcement.

203. Of the various scenarios, a few stood out as requiring additional consideration. In circumstances where a lawyer leaves a sole practice to practise in a firm it is possible the trust funds and valuables move to the new firm, but they may not. Lawyers might also leave private practice for government or in-house work in which case such a transfer will not occur. In situations where no practising lawyer or firm retains active control of the funds and valuables, the lawyer must report what is happening with the files and funds, and this will trigger the end of the reporting period for purposes of filing a trust report.

204. In circumstances where a lawyer ceases practice, the lawyer must report to the Executive Director any fiduciary property the lawyer is handling. And in circumstances where the lawyer intends to leave practice and there is no practising lawyer or firm taking over control of the trust accounts, property and records, the lawyer needs to report how they intend to dispose of accounts, property and records and complete all the necessary reporting requirements.

205. The net effect of this is that lawyers should not be able to move to retired or non-practising status until they have responded as to the disposition of their files, closed trust accounts and dealt with other records as required. Effectively, it will be the Law Society that sets the date of termination of practice, based on compliance with obligations, rather than the lawyer. This may require some lawyers who do not plan in advance for wind up to move to part-time status while finalizing these obligations, as trust accounts must be associated with a practising lawyer.

RECOMMENDATION 37: The Rules setting out requirements when moving from one practice setting to another, or when leaving the practice of law altogether, need to be revised to update current processes and include new requirements recommended in this Report. When drafting the new Rules, consideration must be given to ensuring the requirements are clearly stated and are readily capable of enforcement

Recognizing that "non-practising" membership status has been created to allow lawyers to take time away from practice in the expectation that they will return at a later date, the

Rules should exempt lawyers from the reporting requirements on withdrawing from practice where the lawyer can satisfy the Executive Director that arrangements have been made for another lawyer to manage the lawyer's trust account, files and reporting obligations in the lawyer's absence.

Trust Administration Fee

206. The Task Force also engaged in a discussion about the Trust Administration Fee ("TAF"). The TAF funds the audit program, which includes, amongst other functions, the process by which firms are subject a compliance audit of their books, records and accounts, and TAF also funds Part B indemnification coverage.

207. In recognition that not all firms handle trust money, the Benchers decision was to fund on the basis of a charge or fee on the trust transaction, rather than by increasing the practice fee for all lawyers whether or not they handled trust funds.

208. However, the TAF does not apply uniformly to all client matters. Rule 2-110 (1) states that "A lawyer must pay the Society the trust administration fee specified in Schedule 1 for each client matter undertaken by the lawyer in connection with which the lawyer receives any money in trust, not including fees and retainers."

209. The Task Force understands that there is some confusion on which client matters the trust administration fee applies to, and particularly that there can be different interpretations as to what fees and retainers include.

210. Moreover, the effect of the exemption of fees and retainers means that there are many firms that are subject to compliance audits that do not pay a fee to support this regulatory process. Instead, the cost is carried by firms (or, possibly, their clients) that operate trust accounts where they receive client funds for matters other than fees or retainers.

211. The Task Force settled on recommending, in the interests of both broader fairness and for clarity, that TAF apply to each client matter with a trust transaction undertaken by a lawyer without exemptions.

212. On a separate matter, the Task Force discussed whether the funding that the TAF provides should instead be funded through a flat fee on each lawyer through an increase to the practice fee. While there was some support for this suggestion, the Task Force, in the end, reached a consensus that the necessary increase could be significant, and especially for public interest legal service providers who do not have to use a trust account often, or even at all.

213. The Task Force noted the importance of the Finance and Audit Committee in continuing to oversee the financial responsibility of the Law Society, including TAF.

214. The Task Force recognized that determining the revenue model was not within its mandate and was better addressed by the Finance and Audit Committee.

> **RECOMMENDATION 38:** Recommend a policy change so that TAF will apply to all client matters with a trust transaction, without exemptions.

PART 3 – CIV Rules – EFT Exemption

Model Rules

215. The Task Force's terms of reference included assessing CIV requirements as well as the general trust accounting Rules.

216. The Task Force recognizes, however, that the Federation of Law Societies has long been tasked with the creation of model rules relating to CIV aimed at creating relatively consistent national standards across the country. The Federation's work in this regard is on-going.

217. The Task Force expects the Federation will assess and revise the Model Rules, and would at first instance be prepared to leave recommended revisions in the Federation's hands. The objective of consistent national standards in respect to CIV obligations is a worthy one.

218. However, the Task Force also discussed the need for better clarity concerning the CIV Rules. If the Federation does not, in a timely way, to revise the Model Rules for clarity on a national basis, the Task Force urges the Law Society to do so on its own.

219. In the meantime, the Task Force commented that the complexity of the CIV rules could be ameliorated by Law Society guidance and resources.

220. In particular, the Task Force considered that the application of CIV Rules might be amenable to an "expert tool" – an electronic decision-tree application – that could be utilized by lawyers to better ensure that they are following the right processes and asking the right questions. The Task Force recommends that such a process be explored and developed by the Law Society to assist lawyers in adhering to their obligations under the Rules.

RECOMMENDATION 39: The Law Society explore the creation of an expert tool for use by the profession to assist in compliance with the CIV Rules.

Electronic Fund Transfers

221. The Task Force discussed the electronic fund transfer ("EFT") exemption in Law Society Rule 3-101 (c). The Task Force discussed the origin of the exemption, reviewed a memo from staff regarding the risks associated with foreign EFTs, including money laundering risks, and considered the broad duty to make inquiries set out in BC Code rule 3.2-7 and its commentaries.

222. Consistent with the Task Force's concern that describing matters as "Client Identification and Verification" may mischaracterize the full scope of money laundering prevention obligations, and may create confusion within the legal professions, the Task Force recommends revising the Electronic Fund Transfer provision to address these issues.

223. The Task Force reviewed the EFT exemption in Ontario which applies where the funds are "paid, received or transferred by electronic funds transfer" with an EFT being a defined term, but which is also paired with express guidance that relief of client verification obligations does not relieve legal professionals of the requirements to make reasonable inquiries, particularly about unusual or suspicious aspects of a transaction.

224. The Task Force notes that the existing EFT provision has been in place for over a decade, has the positive purpose of eliminating duplication in client identification processes, and encourages transactions that utilize regulated and FINTRAC monitored payment tools.

225. The Task Force considered it advisable to revise the EFT provision to achieve these policy goals, while also better emphasizing the duty on legal professionals to understand and inquire about the transactions on which they are advising.

226. The Task Force also considered it advisable to revise the EFT provision to ensure that despite being relieved of the obligation to verify a client to the extent a financial institution has done so, legal professionals remain required to obtain and record from the client information regarding source of funds.

227. Ultimately, the Task Force preferred utilizing wording to align with Ontario's EFT provision, and to include additional guidance to remind legal professionals expressly that the provision does not absolve them from their other professional responsibilities, including the duty to make inquiries set out in BC Code rule 3.2-7 and its commentaries.

228. The Task Force concluded that this approach to the EFT provision was properly proportional in relieving legal professionals of duplicative client verification obligations, and allowing them to focus further resources and attention on their obligations to understand and inquire about the *bona fides* of a transaction, including the source of funds.

> **RECOMMENDATION 40:** The EFT provision should be amended so that it is similar to the Ontario provision, expressly preserves the obligation to make and record inquiries as to source of funds, and provides further guidance to reinforce the ongoing application of other professional obligations, including the duty to make inquiries in the face of suspicious circumstances.

VII. Recommendations

229. A list of the recommendations of the Task Force follows:

1. Amend Rule 3-59 to make explicit that any cash received under the professional fee exception must be commensurate with the amount required for a retainer or for reasonably anticipated fees, and that guidelines be prepared to assist in determining what is "commensurate."

2. The CIV Rules should be amended to clarify what a lawyer must do when obtaining and recording information about "source of money," with clear reference to the requirements set out in the Fall 2019 Benchers' Bulletin.

3. While the Rules should extend client verification requirements to retainers beyond those dealing with "financial transactions," the Task Force recommends they not be extended to all retainers purposed in the Cullen Report, but be limited to client matters where there are objectively suspicious circumstances or heightened risk factors. Consultation with the Federation's Standing Committee on Anti-Money Laundering and Terrorist Financing should be encouraged to work toward a common amendment across the country.

4. The Rules should be amended to extend the application of the CIV Rules to when a lawyer holds funds as fiduciary property (in accordance with recommendations made by the Task Force in Part 2, below).

5. The Law Society should implement a one-time mandatory anti–money laundering training for all lawyers, maintained and updated by the Law Society, and to ensure such training identifies areas of greatest risk, including:

- the formation of corporations, trusts, and other legal entities;
- transactional work, including real estate transactions;
- some transactions that do not involve the transfer of funds (such as transfer of title); and
- litigation involving private lending.

6. The Rules regarding accounting should be re-organized and follow the progression of (a) the opening of accounts, (b) the deposit of funds into accounts, (c) the withdrawal of funds from accounts, and (d) obligations required upon closing accounts.

7. Amend the Rules to include definitions for "general account," and "trust account."

8. Each lawyer or law firm that provides legal services for a fee is required to operate a general account separate from any personal accounts of the lawyers practising at or through the firm.

9. Rule 3-65 (1.1) should be amended to require the funds addressed in that Rule to be deposited to the firm General Account.

10. Require all lawyers who are signatories to a trust account to complete a course of prescribed education regarding the operation of a trust account.

11. The definition of "fiduciary property" in the Rules will be replaced with "fiduciary funds" and narrowed to include only funds held by a lawyer as an executor or administrator of an estate pursuant to a court order, or as an attorney appointed under a power of attorney, provided the appointment in any such capacity is directly derived from a previous solicitor-client relationship.

    A lawyer acting in a fiduciary role in any circumstances other than those noted above, regardless of how the appointment arose, must account for and deal with those funds in the same manner as any other fiduciary. Those funds will not be allowed to be deposited to a "trust account".

12. The Rules should require pooled trust accounts for matters relating to BC legal services to be held *in an account* in British Columbia.

    BC client matters are not to be commingled in another jurisdiction's pooled trust account.

13. Amend the Rules to make clear that a client cannot instruct a lawyer to place trust funds into anything other than "an interest-bearing trust account or a savings, deposit, investment or similar form of account" in a designated savings institution with offices in British Columbia.

14. Remove Rule 3-62 to end the practice of permitting a lawyer to endorse over to a third party or to a client a cheque made payable to the lawyer in trust. If a client makes a cheque for fees payable to a lawyer rather than to the lawyer's firm, the lawyer will be permitted to endorse that cheque over to the firm only.

15. Every trust cheque must be signed by a practising lawyer, after the payee, date and amount are entered onto the trust cheque. Lawyers must not sign a blank trust cheque.

16. Amend Rule 3-64 (5) to reinforce that only a practising lawyer authorized to sign a trust cheque can affix their own signature to the cheque, regardless of the method used to affix the signature.

17. Amend Rule 3-64.1 to provide that lawyers using electronic transfers from trust must do so using a requisition form prescribed by the Executive Director and requirements contained in the form should not be replicated in the Rule.

18. With proper protections to ensure that commercial banking platforms are utilized and personal online banking systems are not utilized, electronic transfers from trust must be performed by a lawyer using dual authentication passwords, not necessarily a dual person authentication.

19. No changes need be made to the substance of Rule 3-66 (1), although the Rule itself should be moved to be included in Rule 3-64 regarding withdrawal from trust. Subrules (2) and (3) can be deleted.

20. Add a definition of "Trust Shortage" to the Rules to improve lawyer understanding and compliance with the reporting requirement.

21. A lawyer must immediately notify the Law Society when any account is frozen by a financial institution.

22. Amend Rule 3-65 to move provisions in the subrules that pertain to billing requirements to Part 8 of the Rules, thereby retaining in the Rule only matters relating expressly to trust accounts.

Move the statutory solicitors' lien in Rule 3-78 to Part 8 and adjust the language to indicate that the requirements in Division 7 do not alter the right to a lien (statutory or common law).

Move Rule 3-71 (1) to Part 8 of the Rules, and revise Rule 3-71 (2) considering the recommendation to remove the Rule to which it refers.

23. Amend the Rules to make it explicit that a client can only be billed for disbursements that have been incurred and that anticipated disbursements cannot be charged.

24. While Rule 3-72 (1) should remain unchanged, subrules (2) and (3) should be considered further against their objectives to provide better guidance around the timing of the recording of transactions.

25. The law firm general account must be reconciled.

26. The requirements for a trust reconciliation should be clarified and the supporting documents amended to include listing of specified matters such as stale-dated cheques and unclaimed or inactive balances. Subrule (2) (d) can also be removed.

    Lawyers must be required to correct errors immediately and eliminate shortages and outstanding deposits. The errors, shortages and outstanding deposits should not be permitted to be carried forward to the next month's reconciliation.

    Lawyers must sign off on the reconciliation of their accounts.

27. Rename the current "trust report" so that it is clear that an annual report relating to the accounts of law firms must be filed even if the firm is not operating a trust account.

28. The "accountant's report" should be renamed to be called a "CPA Report," and the Rule creating it be moved to follow, or be part of, Rule 3-79 in order to clarify that the CPA Report is *part of* what is currently called the "trust report." A "qualified CPA" should be defined to reference the qualifications needed to prepare a "CPA Report," including being independent.

29. Amend Rule 3-79 (6) to clarify that an annual trust report is required to be filed for a firm if the firm had any lawyers who held a practising status and were not exempt from professional liability indemnity coverage for any part of the reporting period. Law firms will be required to include in their annual trust report a list of all lawyers practising at the firm during the reporting period, including those who change their status to an exempt status at any time during reporting period.

30. Rule 3-83 should be a subrule of Rule 3-79 *[Trust report]* and be amended so that "non-compliance with the accounting Rules" or similar phrase be utilized instead of "exceptions and qualifications," and require an explanation from the lawyer as to how they will remedy the non-compliance.

31. Where the trust report is not complete to the satisfaction of the Executive Director, lawyers must file an amended report within a timeframe set by the Executive Director.

32. A "law firm" (as defined in the Act) may identify a specific partner/owner of the firm to file its annual trust report and to produce the firm's books and records if required for a compliance audit. A sole practitioner is deemed to be the owner lawyer for their law firm. Where the specified lawyer(s) fails to comply, the owners of the firm may also be responsible for these requirements if they have not been completed after being notified by the Law Society of the non-compliance.

    The Rules will continue to require any lawyer at a firm at the relevant time to answer questions or produce records during a compliance audit or in response to questions about a trust report. The Rules will also continue to hold a lawyer personally responsible for their own conduct in respect to compliance with the Part 3, Division 7 of the Rules.

33. Revise the Rules to provide that if the records produced at a compliance audit are inaccurate, unreliable or incomplete, and a follow-up audit is required, the Executive Director may require the firm to pay a fee intended to represent part of the costs of the additional audit, expressed as a range in the Rule. As per the recommendation above, this responsibility is intended to apply to the owners of the firm.

34. Rules should be added to permit the Executive Director to place conditions on the operation of trust accounts where the Executive Director is satisfied that a lawyer or law firm has not adequately complied with the duties and responsibilities set out in Part 3, Division 7 of the Rules.

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36. Rule 3-75 should focus on the requirement to retain the records, and not include "chief place of practice" or reference to "on demand". This policy change may logically permit Rule 3-76 to be removed or modified.

37. The Rules setting out requirements when moving from one practice setting to another, or when leaving the practice of law altogether, need to be revised to update

current processes and include new requirements recommended in this Report. When drafting the new Rules, consideration must be given to ensuring the requirements are clearly stated and are readily capable of enforcement

Recognizing that "non-practising" membership status has been created to allow lawyers to take time away from practice in the expectation that they will return at a later date, the Rules should exempt lawyers from the reporting requirements on withdrawing from practice where the lawyer can satisfy the Executive Director that arrangements have been made for another lawyer to manage the lawyer's trust account, files and reporting obligations in the lawyer's absence.

38. Recommend a policy change so that TAF will apply to all client matters with a trust transaction, without exemptions.

39. The Law Society explore the creation of an expert tool for use by the profession to assist in compliance with the CIV Rules.

40. The EFT provision should be amended so that it is similar to the Ontario provision, expressly preserves the obligation to make and record inquiries as to source of funds, and provides further guidance to reinforce the ongoing application of other professional obligations, including the duty to make inquiries in the face of suspicious circumstances.

VIII. Subsequent Steps

230. The recommendations of the Task Force as accepted or amended by the Benchers should be referred to staff in order that the Trust Rules can be revised accordingly.

231. The Task Force has prepared its recommendations in a manner it considers can apply to a broader range of legal professionals than just lawyers.

232. As stated earlier in this report, the Task Force has proceeded on the principle that the accounting Rules should be similar across all legal professions in order that the public interest objectives, including in ensuring the proper handling of funds entrusted to legal professionals, are met. With this in mind, the Task Force expects that Rules prepared for lawyers arising from its recommendations will be capable of being expanded more broadly to notaries, regulated paralegals and any new legal professions that may come into being.

Law Society
of British Columbia

May 16, 2025

Sent via email

Linda W. Russell
Chief Executive Officer
The Continuing Legal Education Society of BC
500-1155 W Pender St
Vancouver, BC V6E 2P4

Brook Greenberg, KC
President

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Dear Linda W. Russell:

Re: Appointments to the Board of Directors of the Continuing Legal Education Society of BC

I am pleased to confirm that I have appointed Katelyn Crabtree (Westminster County) to the Continuing Legal Education Society of BC's Board of Directors for a three-year term, effective September 1, 2025. I have also reappointed Megan Volk (Victoria County) for a second three-year term, commencing September 1, 2025.

We are confident that they will continue to make strong contributions to the Continuing Legal Education Society of BC's Board of Directors.

With respect to the new appointment for County of Kootenay, I confirm I will defer that appointment until a suitable candidate is identified.

Brook Greenberg, KC
President, Law Society of BC

c. Laurel M. Courtenay
Chair, Continuing Legal Education Society of BC's Board of Directors

Gigi Chen-Kuo
Executive Director/Chief Executive Officer, Law Society of BC

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