

# The Law Society of British Columbia



## **2009 – 2011 Strategic Plan**

For: The Benchers

Date: January 22, 2010

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**Purpose of Report: Decision**

**Prepared on behalf of the Executive Committee**



## **INTRODUCTION**

The principal aim of the Law Society is a public well-served by a competent, honourable and independent legal profession. The Law Society's mandate described in s. 3 of the *Legal Profession Act* is to uphold and protect the public interest in the administration of justice.

In order to develop strategies to discharge the Law Society's mission and mandate, the Benchers have created a process to plan for and prioritize strategic policy development. This process was created to enhance the ability of the Benchers to focus on policy development that would best ensure proper fulfillment of the mandate of the Society, and to optimize staff resources in the development of those policies and strategies.

Through this process, the Benchers have identified three principal goals, and a number of policy initiatives that will achieve those goals. In identifying these goals and strategies, the Benchers have been mindful not only of what the role of the Law Society is in relation to its mandate, but also of what may be achievable within that mandate.

This Strategic Plan is aimed at achieving concrete results that will improve the public interest in the administration of justice. The process has tried to avoid simply identifying issues on which the only action would be to make general comments on matters within the mandate of the Society.

The strategic policy setting process is also to be distinguished from the operation of the Law Society's core regulatory programs, such as discipline, credentials, and practice standards. These programs are fundamental to fulfilling the Law Society's mandate and will always be priorities for the Law Society. The Benchers have established a set of Key Performance Measures against which the performance of the core regulatory programs will continue to be measured on an annual basis.

## **PRINCIPAL GOALS**

The three principal goals of this Strategic Plan are:

- 1. Enhancing access to legal services.**
- 2. Enhancing public confidence in the legal profession through appropriate and effective regulation of legal professionals.**
- 3. Effective education, both of legal professionals and those wishing to become legal professionals, and of the public.**

These goals are set out below, together with a description of the strategies to pursue the goals and the initiatives being undertaken to implement each one. Collectively, these goals, strategies and initiatives constitute the Law Society's Strategic Plan for 2009 – 2011.

## **STRATEGIC PLAN FOR 2009 – 2011**

### **GOAL 1: Enhancing access to legal services**

Protecting the public interest in the administration of justice requires the Law Society to work toward improving the public's access to legal services. Providing assurance about the competence and conduct of lawyers, who are able to advise clients independently of other interests, is a hollow goal if people cannot afford to retain such lawyers. Developing strategies to improve the public's ability to obtain affordable legal advice is a priority item. The following items were identified as desired outcomes through which the goal of enhancing access to legal services may be achieved.

#### **Strategy 1-1**

Increase the public's access to legal services by developing a new regulatory paradigm that may broaden the range of persons permitted to provide certain legal services.

#### **Initiative 1-1**

The Delivery of Legal Services Task Force has been created to identify the existing knowledge base and gaps in information that would be required for the Benchers to discuss the substantive policy issues around the scope of practice, develop a plan for acquiring the information that is missing, through (for example) consultations, surveys or other studies. The Task Force reported on the information identification issues to the Benchers in 2009.

After engaging in additional consultation as may be required, the Task Force will work in 2010 toward making recommendations about whether and how the delivery of competent legal services might be improved in a number of ways. This might be done through increasing public awareness of available legal resources and information or providing greater certainty and reliability regarding the cost of legal services. It might also involve increasing the availability of effective and affordable legal services in areas of greatest public need, including determining under what circumstances people other than lawyers might be allowed to provide legal services in circumstances that are not currently permitted.

#### **Strategy 1-2**

Find ways to reduce the impact of financial barriers to accessing justice.

## **Initiative 1-2**

The justice system and lawyers' services are cost-based services. A variety of factors contribute to a high cost for these services, making them relatively inaccessible to many British Columbians. Evidence suggests, however, that a high proportion of low and middle income British Columbians will face a serious legal problem in the next three year period. Determining ways to reduce the impact of financial barriers to accessing legal advice will provide a significant benefit, and ought to increase public confidence in the legal system.

The Access to Legal Services Advisory Committee is currently analysing issues relating to costs in the legal system. The deliberations of that Committee and their research and findings will be passed on to the Delivery of Legal Services Task Force for consideration when addressing the substantive mandate of that Task Force.

## **Strategy 1-3**

Improve the retention rate of lawyers in the legal profession including, in particular, Aboriginal lawyers.

A high attrition rate combined with a growing population and the continued complexity of legislation, regulation, and common law demonstrates a need to ensure that legally trained professionals will continue to be available to provide legal advice. Moreover, business models that do not encourage segments of the lawyer population, including women lawyers and Aboriginal lawyers, to remain in practice not only discourage some lawyers from practising law, but cause law firms to lose legal talent, reducing their own effectiveness and further diminishing access to justice. Public confidence in the justice system is enhanced by ensuring that the profession does what it can to retain a diversity of lawyers. The Benchers identified the following two initiatives to accomplish the desired outcome.

### **Initiative 1-3a**

Preparing a business case for the retention of female lawyers in private practice.

Following up on a recommendation of the Women in the Legal Profession Task Force, a task force has been created to prepare a business case for the retention of women in private practice. That work is underway, including the preparation of a business case, and a report will be delivered to the Benchers by June 30, 2009.

This Initiative was completed in 2009. The recommendations contained in the Task Force's final report will be followed up through staff and/or the Equity and Diversity Advisory Committee.

**Initiative 1-3b**

Developing a plan to deal with the aging of the legal profession and the potential regulatory and access to legal services issues that might result.

Aging in the profession is already an issue in many rural communities in the province, and barring unforeseen events, is expected to continue or worsen. It is of less concern at present in larger centres, but this may be expected to change in coming years.

The Equity and Diversity Advisory Committee will review and work to define issues arising in connection with the aging of the legal profession, including the identification of what information on the subject currently exists as well as what information may need to be obtained through external consultation and research, and will make recommendations in 2010 concerning how the issue may be advanced as a strategic priority in the future.

**Initiative 1-3c**

Prepare a business case for enhancing diversity in the legal profession and retaining Aboriginal lawyers in particular.

The Equity and Diversity Advisory Committee will review recent research regarding retention of lawyers from diverse communities, and Aboriginal lawyers in particular, and develop a business case for diversity and the retention of Aboriginal lawyers in British Columbia.

**Strategy 1-4**

Developing in collaboration with interested parties a research project, through a suitable agency, of an economic analysis of the justice system in British Columbia in order to better understand in empirical terms the economic benefit of funding justice and the systems that support the rule of law.

## **STRATEGIC PLAN FOR 2009 – 2011**

### **GOAL 2: Enhancing public confidence in the legal profession through appropriate and effective regulation of legal professionals.**

Public confidence in the ability of the Law Society to effectively regulate the competence and conduct of lawyers is critical in order for the Society to fulfill its mandate. It is also of critical importance in order to maintain the public's right to retain independent lawyers. The Benchers identified several desirable outcomes through which the goal of enhancing public confidence may be achieved.

#### **Strategy 2-1**

Effectively regulate those lawyers who have received or who receive a significant number of complaints, but which complaints, individually, are not sufficiently serious to result in formal disciplinary action or referral to the Practice Standards Committee.

#### **Initiative 2-1**

Through the Discipline Committee, a staff group has been created to examine a series of projects to reduce the number of complaints that complaints-prone lawyers receive. It is currently anticipated that options will be presented to the Benchers for consideration in early 2009, and if approved, necessary rule changes would be prepared implementation would take place soon after.

#### **Strategy 2-2**

Assess possible roles of an oversight or review board for Law Society core functions.

#### **Initiative 2-2**

Regulatory oversight or review boards exist in British Columbia in connection with the health professions, and have been created in some foreign jurisdictions in connection with the legal profession. Whether such boards improve public confidence is under debate. Is there a method to enhance the public confidence in the Law Society's decision making processes that does not run contrary to the fundamental constitutional principle of, and public right to, lawyer independence?



This issue formed the substantive policy program at the Benchers' June 2009 retreat. The Executive Committee discussed this topic at its September 2009 meeting and determined that the Law Society would best focus on regulatory oversight models that incorporated voluntary external review or review incorporating the Ombudsman's processes. The Committee instructed staff to develop this topic further for presentation to the Benchers at a later date, expected in the spring of 2010.

### **Strategy 2-3**

Enhance public confidence in hearing panels by examining the separation of adjudicative and investigative functions of the Law Society.

#### **Initiative 2-3**

Effective self-regulation requires the Law Society to fulfill its mandate first and foremost in the public interest, and requires public confidence. Recognizing that other lawyer regulatory bodies in Canada and elsewhere address this issue differently than in British Columbia, options for the creation or appointment of hearing panels can be developed for the Benchers to allow for a consideration of whether there are ways to enhance confidence in the processes and decisions of hearing panels.

The Benchers have created a Task Force to develop models by which the separation of the adjudicative and investigative functions of the Law Society could be accomplished and to make recommendations about which model to adopt.

### **Strategy 2-4**

Effective data gathering to inform equity and diversity issues.

#### **Initiative 2-4**

The Law Society must understand and address systemic barriers faced by members of the public needing legal services and members of the profession on the basis of gender, ethnicity, race, disability and sexual orientation in order to demonstrate leadership in building a more representative profession. However, it is unwise to develop initiatives in the absence of relevant data. Through the Equity and Diversity Advisory Committee, the Law Society will develop strategies for gathering appropriate demographic data on the profession and assess such data to inform the development of initiatives to promote equity and diversity.

## **Strategy 2–5**

Develop and propose legislative amendments to improve lawyer regulation.

### **Initiative 2–5**

Effective regulation and public confidence depend a great deal on having adequate tools to fulfill the Law Society’s mandate. The *Legal Profession Act* has not been substantively amended for a decade. Given the particular legislative cycle, 2009 is a year in which the Law Society should consider if any amendments to legislation are needed to improve the Law Society’s ability to meet its objects and duties. Together with advice from government relations consultants, the Act and Rules Subcommittee will consider whether any particular amendments are warranted at this time to achieve this outcome.

## **Strategy 2–6**

Prepare a considered response to the Competition Bureau’s “Study on Self-Regulated Professions.”

In late 2007, the Competition Bureau published its “Study on Self-Regulated Professions”, which identified several issues of concern, from the Bureau’s point of view, with the regulation of the legal profession. The Federation of Law Societies commissioned an article authored by Professors Iacobucci and Trebilcock that critiqued the Bureau’s study, and this has been forwarded to the Bureau. Substantive responses to specific items identified remains a desirable outcome, as described in the following initiatives.

### **Initiative 2–6a**

Reconsidering rules relating to multi-disciplinary partnerships.

Issues relating to multi-disciplinary partnerships have been extensively debated by the Benchers, and therefore a great deal of research and consideration has already been applied to this topic. The Ethics Committee is currently considering the issue and will be presenting its conclusions to the Benchers, likely in the spring of 2009.

This Initiative has been completed and rules have been passed, to be effective July 1, 2010.

### **Initiative 2–6b**

Enhancing lawyer mobility.

Through the Federation of Law Societies, all law societies in Canada have agreed to a National Mobility Agreement which facilitates the

mobility of lawyers within Canada. Recently, one of the last items to be considered – mobility between members of the Barreau du Québec and members of common-law law societies – has been addressed. Rule changes will need to be approved to implement the agreement reached on this issue. The Act and Rules Subcommittee will consider appropriate rules and present them to the Benchers for approval, which is expected happen in early 2010.

### **Initiative 2-6c**

Modernising provisions relating to advertising.

Consideration of possible changes to provisions relating to lawyers' advertising is under consideration by the Ethics Committee. Also, through the Federation of Law Societies, draft model rules on advertising are being prepared. The Ethics Committee will make recommendations to the Benchers in connection with these matters in 2009.

This Initiative was completed in 2009, and new rules and amendments to the Professional Conduct Handbook have been approved.

### **Initiative 2-6d**

Reconsidering policies regarding referral fees.

The Competition Bureau recommendations concerning referral fees were related to multi-disciplinary partnerships, which have now been addressed by the benchers. A general reconsideration of policies regarding referral fees is currently an item for consideration by the Ethics Committee, who may make recommendations to the Benchers at a later date depending on the outcome of that consideration.

### **Strategy 2-7**

Re-examine the rules and internal processes of the Law Society relating to complaints, investigations and dispositions of professional conduct and competence matters in order to identify methods to improve the timely, thorough, fair and appropriate disposition of complaints and hearings.

### **Initiative 2-7**

The timely and effective handling of complaints concerning the professional conduct or competence of lawyers resulting in appropriate disposition and sanction (as necessary) is an integral responsibility of the Law Society.

The Law Society will, through a task force designed for this purpose, re-examine Law Society rules and processes for handling complaints and discipline hearings to determine if there are methods by which to improve the timely, thorough, fair and appropriate disposition of professional conduct concerns, including the consistency of decisions and sanctions.

A staff group will also examine operational processes in connection with complaints and hearings to determine if improved operational procedures, staffing resources or the use of technology exist by which improvements to the timely, thorough, fair and appropriate dispositions of complaints and hearings can be made.

## **STRATEGIC PLAN FOR 2009 – 2011**

### **GOAL 3: Effective public and lawyer education.**

This goal may be divided into two parts. One is to ensure that lawyers who provide legal services are competent to do so. The public interest in the administration of justice is significantly diminished if lawyers are not competent, and the Law Society must make efforts either to ensure that lawyers obtain and retain pertinent information to improve, or at least maintain, competence. The other is to ensure that the public understands how the legal system in Canada works, and how concepts that may be less well understood or even taken for granted integrate within the legal system to provide for important public rights.

Past priority initiatives such as the Continuing Professional Development (CPD) initiative, were developed to address the first part of the education goal. Initiatives such as the public forums and the high school education unit on judicial and lawyer independence were developed to address the “public education” part of the goal. The policy development of each of those initiatives is now complete, and they will remain as operational items for the Law Society.

The Benchers have identified the development of the following items as desired outcomes through which the education goal may be accomplished. Each item will be considered by the Lawyer Education Advisory Committee who will, as appropriate, develop initiatives, or options for initiatives, to be considered by the Benchers.

#### **Strategy 3–1**

Design and implement a plan to support the mentoring of lawyers.

##### **Initiative 3–1**

Mentoring is a time-honoured method through which lawyers can be educated by other lawyers who possess certain relevant skills or experience. When the CPD Program was approved for implementation, “mentoring,” was not included as an approved CPD activity. A promise was made to consider developing criteria for a program that would address the requirements of the CPD program. A mentoring program is expected to be presented to the Benchers for consideration in the spring of 2009.

This Initiative was completed in 2009.

#### **Strategy 3–2**

Develop and implement initiatives to more effectively educate lawyers on the topic of professionalism.

### **Initiative 3-2**

Professionalism lies at the heart of lawyering, yet from an education perspective it is not a topic that receives much dedicated attention. Development of initiatives that would focus on the issues of principle and values that inform or underlie specific rules of professional conduct would fill a sizable void in the education options available to lawyers, and would assist lawyers in meeting the requirements of the CPD program. An examination of programs available in other jurisdictions, together with the development of options for such programs in British Columbia, for consideration by the Benchers will be a worthwhile initiative to achieve the goal of effective education.

### **Strategy 3-3**

Develop and implement initiatives to improve advocacy skills for lawyers.

#### **Initiative 3-3**

Advocacy is a particular lawyering skill. While it is a skill most commonly associated with barristers, effective advocacy skills are equally relevant to solicitors. Advocacy is however a subject on which there are few dedicated courses available. To achieve the goal of effective lawyer education, the Lawyer Education Advisory Committee will examine initiatives relating to the teaching of advocacy skills and present options to the Benchers for consideration.

### **Strategy 3-4**

Educate the public regarding the legal system on a variety of levels.

#### **Initiative 3-4a**

The Law Society is developing an instructional video for use in high schools. This will be completed and rolled-out in 2009.

This Initiative was completed in 2009.

#### **Initiative 3-4b**

The 2009 President of the Law Society – Gordon Turriff, QC – will be undertaking a speaking tour across the province during 2009 to commemorate the 125<sup>th</sup> anniversary of the Law Society. He will address a variety of topics relating to the legal profession and its regulation.

This Initiative was completed in 2009.