

The Law Society of British Columbia



2009 – 2011 Strategic Plan

PROGRESS UPDATE

For: The Benchers

Date: January 28, 2011

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. Finding ways to reduce the impacts of financial barriers to accessing legal services is of considerable importance and underlies the purpose of this goal. 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.

Status – December 2010

The Benchers approved the Task Force's Final report in October 2010. The Task Force has been continued to monitor and advance the following aspects

of the report: 1) the issue of expanded roles for articulated students has been referred to the Credentials Committee; 2) the issue of Expanded roles for Paralegals needs to be fleshed out, particularly to determine alongside the Ethics Committee what changes need to be made to the Professional Conduct Handbook; 3) with respect to expanded advocacy roles, the Task Force is in communication with the BC Supreme Court regarding a working group on that topic.

Strategy 1-2

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

Initiative 1-2a

The Law Society will approach the Attorney General to discuss potential supplemental funding for legal aid and the justice system through amendments to the *Class Proceedings Act*, the *Civil Forfeiture Act* and the *Unclaimed Property Act*.

A letter has been sent to the Attorney General in this regard.

Initiative 1-2b

Alternate Business Structures (“ABSs”), by which legal services are offered through business structures differing from the standard partnership or sole-proprietorship model, have been identified in other jurisdictions as a way of reducing the cost of legal services, thereby increasing the affordability of access to legal services. However, concerns have also been identified that ABSs may adversely affect the core values of the legal profession, including the duty of loyalty to a client.

The Law Society will examine the literature on ABSs and develop a preliminary position concerning the subject.

Strategy 1-3

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

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(i)

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

Following up on a recommendation of the Retention of Women in Law Task Force, a task force has been created to prepare a business case for the retention of women in private practice.

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.

Status – December 2010

The business case was adopted by the Benchers in July 2009. Staff continues to follow up with former Task Force recommendations aimed at improving the retention of women in the profession. Some of these recommendations have been implemented or substantially implemented (Recommendations 1 and 2) while others require further consideration (Recommendations 3 and 5). The Advisory Committee has recommended that a feasibility assessment be conducted regarding the possible development of a "Think Tank" for British Columbia (Recommendation 4).

Initiative 1-3a(ii)

The Retention of Women in Law Task Force recommended that the Law Society consider developing a think tank in BC, modeled after the *Justicia* project developed in Ontario, to address methods of improving the retention of women in private practice.

The Law Society will therefore conduct a feasibility assessment of a *Justicia BC* project to determine the level of interest of firms in working together with the Law Society to develop resources to retain and advance women lawyers in private practice.

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.

While aging of the legal profession continues to be an issue of concern, the Benchers have recognized that it will not be possible to fully analyze the issue and to develop strategies to address it by the end of 2011, and will therefore defer the matter to the next Strategic Plan.

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.

Status – December 2010

The Advisory Committee is currently reviewing demographic data which indicates that Aboriginal lawyers are significantly underrepresented in the profession. This data will serve as the foundation of the business case for enhancing diversity and retaining Aboriginal lawyers. This initiative will be carried forward into 2011.

Initiative 1-3d

Develop and deliver initiatives to support Aboriginal lawyers and students.

The initiatives will address specific barriers to lawyer retention as identified by research, and will include initiatives to address the lack of access to mentors, networks and role models. The Law Society will also consider what additional resources are needed in order to advance the strategic objective of enhancing the retention of Aboriginal lawyers.

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.

Status – December 2010

The Sauder School of Business at the University of British Columbia has been approached in connection with this initiative and has expressed an interest in it. The Access to Legal Services Advisory Committee has identified professors who are interested in a cost benefit analysis of the justice system. The discussion has revealed that the topic is too complex as originally envisioned, however, and the Committee is in dialogue to try and determine how the project might be more narrowly defined while not losing the intended benefit. The Committee will report back to the Benchers once it has identified a more feasible scope to determine if the Benchers are still interested in pursuing the project.

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.

Status – December 2010

The staff group has identified and is currently working on several projects aimed at reducing the number of complaints that complaint-prone lawyers receive.

The Benchers considered “ungovernability” and referred to the Act and Rules Subcommittee consideration and development of rules and possible Professional Conduct Handbook amendments. Rule 4-35(5) has been passed and changes to the Handbook were completed in November, 2010.

The staff group has underway the early intervention project in conjunction with the Discipline Committee. A Report on that project was made to the Benchers at the July 9, 2010 meeting. The complaint rates of the lawyers in the groups will be compared periodically with the complaint rates of a historically comparable group to determine whether the interventions had any impact on the target groups.

The staff group is also working on developing criteria for referral of lawyers to the Discipline Committee on the basis of their complaints history and referring lawyers who are Practice Standards graduates to the Discipline Committee if the lawyer repeats conduct of concern. The staff group has identified several other projects for consideration when resources allow and several other projects that do not look promising although sufficient consideration has not yet been given to rule them out definitively.

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.

Status – December 2010

The Benchers considered this subject at the 2009 retreat in Whistler. Guests at the retreat presented the nature of oversight as it exists in some other jurisdictions, and the Benchers heard from the Ombudsman's office in British Columbia about the Ombudsman's oversight function of regulatory bodies in this province. 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 should be developed further. Staff presented a further report to the Executive Committee in May 2010, and were instructed to include a policy analysis of a third model similar to the organizational audit or peer review process the accounting profession utilizes to ensure best practices. A Report to the Benchers examining the models was presented to the Executive Committee in November 2010, from which recommendations were made and presented to the Benchers in March 2011. Staff will develop a concept paper in 2011.

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.

Status – December 2010

The recommendations made by the Task Force Examining the Separation of Adjudicative and Investigative Functions of the Benchers were adopted at the July Benchers meeting. Rule changes and further policy decisions concerning the process of appointments have been approved, and a call for tribunal members should be issued in the near future.

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.

Status – December 2010

The Equity and Diversity Advisory Committee is currently working with a statistics analyst who is examining 2006 Census data to develop an accurate demographic picture of the profession in BC, particularly regarding the participation of Aboriginal lawyers. This initiative will be carried forward into 2011 and will serve as the foundation for the business case for enhancing diversity and retaining Aboriginal lawyers in the profession.

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.

Status – December 2010.

The Benchers approved amendments to the Act as recommended by the Act and Rules Subcommittee. A request for amendments has been made to the Attorney General's Ministry

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.

Status – December 2010

The Ethics Committee has completed its analysis. The issue was considered by the Benchers in July 2009 at which time the Benchers resolved in principle to permit multi-disciplinary partnerships on the Ontario model subject to the preparation of draft Rules to ensure that important values of the legal profession are not compromised, as well as liability insurance issues. Rules to implement the decision came into effect on 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.

Status – December 2010

The Barreau du Québec has implemented provisions permitting the mobility of common law lawyers to practise the law of their home province and federal law as members of the Barreau du Québec in Québec, and through the Federation of Law Societies, the rest of the provinces are finalizing reciprocal arrangements with Québec and the preparation of model rules through which to implement that arrangement. The Benchers passed rules to implement this arrangement on April 23, 2010 and they came in to effect July 1, 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.

Status – December 2010

The Ethics Committee presented its recommendations on this subject to the Benchers, and the Benchers approved changes to provisions relating to advertising in the Professional Conduct Handbook in May 2009.

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.

Status – December 2010

The Ethics Committee has had this matter on its agenda for consideration, and has debated and made recommendations on fee sharing in the context of multi-disciplinary partnerships. Other policy considerations relating to referral fees are on the Committee's agenda, but no substantive reconsideration of the policies has occurred. Further examination is anticipated later in 2010 or 2011.

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.

Status – December 2010

The Discipline Guidelines Task Force presented its interim report to the Benchers on July 9, 2010 in connection with its review and recommendations concerning holding in abeyance the investigation of a complaint.

In September the Benchers adopted the abeyance policy first presented in the Discipline Guidelines Task Force's interim report to the Benchers on July 9, 2010. In November the Benchers adopted the Task Force's recommendations regarding the publication of Conduct Review summaries. The Task Force is continuing to work on a set of Guidelines to assist the Discipline Committee with its task of evaluating professional conduct matters and directing appropriate disciplinary responses.

STRATEGIC PLAN FOR 2009 – 2011

GOAL 3: Effective public and lawyer education.
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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.

Status – December 2010

The Lawyer Education Advisory Committee developed and presented a mentoring program to the Benchers, which the Benchers adopted at their May 2009 meeting. Rules necessary to implement the program were approved by

the Benchers in November 2009. The program was implemented commencing January 1, 2010.

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.

Status - December 2010

The Report of the Professionalism Working Group was presented to the Benchers in December 2010 and the recommendations were approved. The Lawyer Education Advisory Committee will follow up to ensure the implementation of the recommendations as required.

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.

Status - December 2010.

The report of the Advocacy Working Group was presented to the Benchers with recommendations in December 2010, six of which were accepted. The Lawyer Education Advisory Committee will follow up to ensure the implementation of the recommendations as required. One recommendation

was referred back to the working group for further consideration, and the Lawyer Education Advisory Committee will address that issue in 2011.

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.

Status – December 2010

The instructional video has been completed (and was shown to the Benchers in April 2009), as has the Teachers' Guide that accompanies the instructional video. The complete program has been delivered to high schools around the province.

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 125th 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.

Status – December 2010

Mr. Turriff has now completed his tour.

Initiative 3-4c

The Law Society will approach the law schools within the Province to enquire about establishing a program in which a presentation takes place early in the school year at which a Bencher and Law Society staff lawyer informs students about access to justice issues and opportunities in order to promote engagement by future lawyers in criminal, family and poverty law, as well as about the possibilities of working in smaller communities.