



# AGENDA

**MEETING:** Benchers  
**DATE:** Friday, October 21, 2011  
**TIME:** 7:30 a.m. Continental breakfast  
 8:30 a.m. Meeting begins  
**PLACE:** Bencher Room

## CONSENT AGENDA:

The following matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. If any Bencher wishes to debate or have a separate vote on an item on the consent agenda, he or she may request that the item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.

1	<b>Minutes of September 9, 2011 meeting</b> <ul style="list-style-type: none"><li>Draft minutes of the regular session</li><li>Draft minutes of the <i>in camera</i> session (Benchers only)</li></ul>	Tab 1 p. 1000
2	<b>Act &amp; Rules Subcommittee: Conduct Review Subcommittee Report and Proposed Amendments to Rule 4-9</b> <ul style="list-style-type: none"><li>Memorandum from Mr. Hoskins for the Act &amp; Rules Subcommittee</li></ul>	Tab 2 p. 2000
3	<b>Act &amp; Rules Subcommittee: Powers of the President and Proposed Rule 1-3(8)</b> <ul style="list-style-type: none"><li>Memorandum from Mr. Hoskins for the Act &amp; Rules Subcommittee</li></ul>	Tab 3 p. 3000
4	<b>Proposed Policy for Bencher Access to Law Society Regulatory Committees' Meeting Materials and Minutes</b> <ul style="list-style-type: none"><li>Memorandum from Mr. Hoskins for the Executive Committee</li></ul>	Tab 4 p. 4000
5	<b>External Appointments: Approval of Revised Law Society Appointments Policy</b> <ul style="list-style-type: none"><li>Memorandum from the Appointments Subcommittee</li></ul>	Tab 5 p. 5000

## REGULAR AGENDA

6	<b>President's Report</b> <ul style="list-style-type: none"><li>Written report to be distributed electronically prior to the meeting</li></ul>	
7	<b>CEO's Report</b> Ms. McPhee to report on third quarter financial results <ul style="list-style-type: none"><li>CFO's Financial Report (Q3 2011)</li></ul>	Tab 7 p. 7000

8	<b>Report on Outstanding Hearing &amp; Review Reports</b>	
	<ul style="list-style-type: none"> <li>Report to be distributed at the meeting</li> </ul>	
<b>GUEST PRESENTATIONS</b>		
9	<b>Presentation by David Loukidelis, QC, Deputy Attorney General of BC: Justice Access Centres and the Ministry of Attorney General's Plans for Additional Locations</b>	
10	<b>Presentation by Margaret Sasges, Chair of the Law Foundation Board of Governors: Annual Law Foundation Update to the Benchers</b>	
<b>STRATEGIC PLANNING (FOR DISCUSSION)</b>		
11	<b>Alternative Business Structures in the Legal Profession (2009-2011 Strategic Plan Initiative 1-2b)</b> Ms. Lindsay to report <ul style="list-style-type: none"> <li>Report from the Independence and Self-Governance Advisory Committee</li> </ul>	Tab 11 p. 11000
12	<b>Reviewing Draft 2012-2014 Strategic Plan: Benchers Discussion</b> Mr. Hume to report <ul style="list-style-type: none"> <li>Memorandum from the Executive Committee and Draft 2012-2014 Strategic Plan</li> </ul>	Tab 12 p. 12000
<b>OTHER MATTERS (FOR DISCUSSION AND/OR DECISION)</b>		
13	<b>Courthouse Libraries BC Governance Planning: for Benchers Review and Input</b> David Zacks, QC to present as CLBC Board Chair Mr. Ross to report as Chair of the CLBC Task Force <ul style="list-style-type: none"> <li>Memorandum from the Courthouse Libraries BC Board of Directors</li> </ul>	Tab 13 p. 13000
14	<b>For Benchers Approval: Proposed 2012-2013 Federation Levy Increase</b> Mr. Hume to report <ul style="list-style-type: none"> <li>Memorandum from Ms. McPhee</li> <li>Memorandum from Federation Executive to Council of the Federation and Law Society CEOs (for information)</li> </ul>	Tab 14 p. 14000
15	<b>Federation of Law Societies of Canada (FLSC) – Common Law Degree Implementation Report</b> Mr. Walker to report for the Credentials Committee <ul style="list-style-type: none"> <li>Letter from Thomas G. Conway, Chair Common Law Degree Implementation Committee to Ronald J MacDonald, QC, President of the FLSC</li> <li>FLSC Common Law Degree Implementation Committee - Final Report</li> </ul>	Tab 15 p. 15000

FOR INFORMATION ONLY		
16	<b>Federation Update</b> Mr. Hume to report	
17	<b>2011 CBA Annual Conference (Halifax) Report</b> Ms. Berge to report	
18	<b>Federation of Law Societies of Canada: Council Meeting and Annual Conference</b> <ul style="list-style-type: none"><li>• Report from Ronald J. MacDonald, QC, President Federation of Law Societies of Canada (<i>in camera</i>)</li></ul>	Tab 18 p. 18000
IN CAMERA SESSION		
19	<b>Bencher Concerns</b>	

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

**MEETING:** Benchers

**DATE:** Friday, September 9, 2011

**PRESENT:**

Gavin Hume, QC, President	Jan Lindsay, QC
Bruce LeRose, QC, 1 <sup>st</sup> Vice-President	Peter Lloyd, FCA
Art Vertlieb, QC, 2 <sup>nd</sup> Vice-President	Benjimen Meisner
Haydn Acheson	Nancy Merrill
Rita Andreone	David Mossop, QC
Satwinder Bains	Suzette Narbonne
Kathryn Berge, QC	Thelma O'Grady
Joost Blom, QC	Lee Ongman
Patricia Bond	Gregory Petrisor
Robert Brun, QC	David Renwick, QC
E. David Crossin, QC	Claude Richmond
Tom Fellhauer	Alan Ross
Leon Getz, QC	Catherine Sas, QC
Carol Hickman, QC	Herman Van Ommen
Stacy Kuiack	Kenneth Walker

**ABSENT:** Richard Stewart, QC

**STAFF PRESENT:**

Tim McGee	Michael Lucas
Deborah Armour	Bill McIntosh
Robyn Crisanti	Jeanette McPhee
Lance Cooke	Doug Munro
Charlotte Ensminger	Susanna Tam
Su Forbes, QC	Alan Treleaven
Jeffrey Hoskins, QC	Adam Whitcombe

**GUESTS:**

Dom Bautista, Executive Director, Law Courts Center  
 Mark Benton, QC, Executive Director, Legal Services Society  
 Johanne Blenkin, Executive Director, Courthouse Libraries BC  
 Mary Anne Bobinski, Faculty of Law Dean, UBC  
 Ron Friesen, CEO, CLEBC  
 Donna Greschner, Faculty of Law Dean, UVIC  
 Jeremy Hainsworth, Reporter, Lawyers Weekly  
 Azool Jaffer-Jeraj, President, Trial Lawyers Association of BC  
 Allan Parker, QC, Program Consultant, Access Pro Bono  
 Sharon Matthews, President, CBABC  
 Caroline Nevin, Executive Director, CBABC  
 Kerry Simmons, Vice-President, CBABC  
 Wayne Robertson, QC, Executive Director, Law Foundation of BC

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on July 15, 2011 were approved as circulated.

## **REGULAR AGENDA – for Discussion and Decision**

### **2. President’s Report**

Mr. Hume referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President since his last report, and commented briefly on a number of matters. Mr. Hume noted that he was curtailing his oral report in light of the length of the agenda, and because a number of issues otherwise warranting his comment would be discussed in the strategic planning portion of the meeting.

### **3. CEO’s Report**

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

- a. Financial Report – First Half of Year Operating Results**
- b. Strategic Plan 2012 – 2014 – Update**
- c. Communications Updates**
  - i. Public Education Program**
  - ii. Communicating New Student Rules**
  - iii. BencherNet Replaced by Lawyer Login Page**
- d. 2011 Employee Survey**
- e. Recruiting for New Hearing Panel Pools – Update**
- f. Electronic Document and Record Management Project – Update**
- g. Government Relations / Legislative Ask – Update**
- h. LSBC Annual General Meeting – September 20, 2011**
- i. Advocate Article**
- j. 9th Floor Facelift**

#### 4. Report on Outstanding Hearing and Review Reports

The Benchers received and reviewed a report on outstanding hearing decisions.

### 2009-2011 STRATEGIC PLAN IMPLEMENTATION (*FOR DISCUSSION AND/OR DECISION*)

#### 5. Lawyer Education Advisory Committee: Review of Continuing Professional Development Program

Ms. O’Grady briefed the Benchers and referred them to the report at page 5000 of the meeting materials (Appendix 2 to these minutes) for the Committee’s fifteen recommendations (pages 5014-5021). She noted that implementation of the recommendations would not trigger increased budgetary expenses for the Law Society, including required staffing resources. Ms. O’Grady acknowledged and thanked Mr. Treleaven and Ms. Ensminger for their valuable support in preparing the Committee’s report.

Ms. O’Grady moved (seconded by Mr. Blom) that the report of the Lawyer Education Advisory Committee, including the fifteen recommendations set out on pages 5014-5021 of the meeting materials, be adopted.

The following issues were addressed in the ensuing discussion:

- need and planning for communications initiatives to promote the mentorship program
- focus on the public (as opposed to client) aspect as the key to CPD entitlement for presentations
- focus on the education model as the key to CPD policy-making
- reasonableness of maintaining the current 12 hour annual CPD requirement

The motion was carried.

Ms. Berge referred to the list of topics that would not satisfy the practice management definition for CPD accreditation (Appendix A, Section II (h), page 5023 of the meeting materials):

...

(h) business case for:

(i) retention of women, and

(ii) retention of visible minority lawyers and staff; ...

Ms. Berge suggested that Ms. Tam be requested to broaden the language of Appendix A, Section II (h) to include other diversity issues.

The Benchers agreed.

## **2012-2014 STRATEGIC PLAN DEVELOPMENT (*FOR DISCUSSION AND/OR DECISION*)**

### **6. Setting Goals for 2012-2014 Strategic Plan**

Mr. Hume outlined the purpose and interactive structure of this strategic planning session. He stressed the importance of full and open discussion of priorities by the Benchers, noting that consideration of resource implications should be left to the October meeting.

Mr. McGee emphasized the value of hearing Benchers' individual preferences and supporting reasons today, noting that the difficult decisions to be made at the October and December meetings will be strengthened accordingly.

A full discussion followed, structured around the four policy goals and various potential strategic initiatives outlined in the Executive Committee's memorandum at page 6003 of the meeting materials. Those four goals were identified by the Benchers at their July meeting as follows:

1. Be an innovative and effective professional regulatory body;
2. Promote and improve access to legal services;
3. Establish appropriate standards for admission to and practice in the legal profession and ensure that programs exist to aid applicants and legal professionals to meet those standards; and
4. Enhance public confidence in the administration of justice and the rule of law.

At the conclusion of the discussion Mr. Lucas confirmed that a number of 'write-in initiatives' will be added to those identified in the Executive Committee's memorandum, for the purposes of the polling the Benchers' individual preferences at the end of the meeting. Mr. Hume noted that Benchers may allocate their 'sticky note ballots' as they like among the indicated overarching goals and related potential initiatives, with the results to be tabulated for consideration and development of recommendations by the Executive Committee at its next meeting.

## **OTHER MATTERS (*FOR DISCUSSION AND/OR DECISION*)**

### **7. Approval of Addendum to the Quebec Mobility Agreement: extending mobility rights to members of the *Chambres des notaires du Québec***

This matter was discussed *in camera*.

### **8. Rural Education & Access for Lawyers (REAL) Initiative: 2012-2013 Funding**

Mr. Hume briefed the Benchers, referring them to the meeting materials for the Executive Committee's memorandum (page 8000) and the memorandum of CBABC Vice-President Kerry Simmons (page 8004). He noted the Executive Committee's assessment of the demonstrated value of the REAL Initiative after three years of operation, and of the importance of completing the initiative's five-year plan.

Mr. LeRose moved (seconded by Mr. Meisner) the adoption of the Executive Committee's recommendation and qualifying conditions as set out at page 8003 of the meeting materials:

... that the Benchers approve co-funding [by the Law Society] with the CBABC of the REAL initiative for 2012 and 2013, with a contribution of \$75,000 per year subject to satisfactory due

diligence regarding the criteria for the inclusion of communities and the part-time Regional Career Officer and the following conditions:

- the Law Society will only provide funding for 2012 and 2013 to the conclusion of the original five-year program
- the Law Society reaches agreement with the CBABC about the criteria for inclusion of the communities entitled to benefit from the initiative
- the Law Society's contribution is recognized in communications and public relations about the program during the two years
- conclusion of a satisfactory co-funding agreement with the CBABC consistent with the terms of the original proposal and grant from the Law Foundation

Mr. LeRose noted his satisfaction regarding the REAL initiative's community inclusion criteria and the value added by its part-time Regional Career Officer. He pointed out the initiative's potential positive impact on access to legal services in BC's rural communities. Mr. LeRose noted that completion of the initiative's five-year lifespan should provide enough data to support development of a strong permanent program. He stressed that the Executive Committee's recommendation does not contemplate provision of Law Society funding beyond the bridge financing needed for completion of the initiative's remaining two years.

Mr. Fellhauer confirmed his strong support for the motion as the Bencher member of the REAL Oversight Committee. He pointed out that the program was designed for five years, and that a steep learning curve climbed by the initiative's organizers and Oversight Committee in year one and year two. Mr. Fellhauer also noted the importance of strong community relationships in the building of support for the REAL initiative, noting that establishing relationships takes time and persistence.

The following additional issues were addressed in the ensuing discussion:

- the importance of due diligence to make sure that rural communities that really need help are the ones to get it
- the importance of mentorship and practice advice as elements of the initiative's support for young lawyers
- the active role expected of the Oversight Committee over the final two years of the initiative's lifespan
- the importance of measuring communities' retention of the young lawyers who have participated in the initiative

The motion was carried.

Sharon Matthews, President of the BC Branch of the Canadian Bar Association, thanked the Benchers for the Law Society's commitment and support.

## **9. External Appointments: Law Society Appointments Guidebook and Revised Appointments Policy**

Mr. Hume briefed the Benchers on the background to the development of a guidebook for the Law Society's appointments and nominations to boards, councils and committees of more than twenty five



outside bodies. He advised that the Executive Committee has responsibility for managing Law Society appointments, and has adopted the Law Society Appointments Guidebook, included in the meeting materials at 9008 for the Benchers review. Mr. Hume advised that the guidebook is intended to serve as a ‘one-stop reference’ on the Law Society’s appointments process and protocol, noting that it includes contact information and profiles for the outside bodies to which the Society makes appointments and nominations, and outlines the Society’s expectations for consultation and communication with its appointees and nominees.

Mr. Hume referred the Benchers to page 9001 of the meeting materials for draft revisions to the Law Society Appointments Policy, included in the meeting materials at page 9001 for the Benchers’ approval. He noted that the current policy has not been updated since its adoption by the Executive Committee in 1994, and that the key proposed revisions match the Consultation and Communication Expectations provisions of the guidebook.

Mr. McGee noted that drafting intention for those provisions was to provide clarity and a practical focus regarding the Law Society’s expectations.

In the ensuing discussion the Benchers expressed general approval of the proposed revisions to the appointments policy, with the following suggestions for refinement:

- bolster the Equity section’s explanation of the Law Society’s commitment to promote and ensure appropriate diversity in its internal and external appointments
- add provisions to the Communication Expectations section confirming the Law Society’s commitment
  - to maintain a complete listing of current appointments and upcoming appointment opportunities on the Law Society website
  - to provide appropriate orientation to appointees whose responsibilities include representation of the Law Society

It was agreed to table approval of the proposed appointments policy revisions to the next meeting, by which time the noted refinements should be made.

## **10. Insurance Coverage for Trust Shortfalls Arising from “Bad Cheque” Scams**

This matter was deferred to the next meeting.

## **11. Federation Governance Policy**

Mr. Hume briefed the Benchers as the Law Society’s member of the Federation of Law Societies of Canada Council, referring them to page 11001 of the meeting materials for the Federation’s draft Governance Policy. He advised that the proposed policy is intended to expedite Federation decision-making, and to clarify the scope of authority of the Federation Council, individual Council members, the Executive Committee, the President and the Chief Executive Officer. Mr. Hume noted that the proposed policy both supports and calls for more effective and timely communication by Council members with their respective law societies.

Mr. LeRose moved (seconded by Mr. Vertlieb) that the Benchers approve the draft Federation Governance Policy as set out at page 11001 of the meeting materials (Appendix 3 to these minutes).

In the ensuing discussion the following issues were raised:

- various forms of Council decision-making
- the nature of matters for which Council members must seek express direction from their respective law societies
- the importance of timely and effective communication between the Federation and its member law societies
  - for the Federation, member societies and law schools
- the Federation's reliance on its member law societies for implementation of its policies and decisions

The motion was carried.

## 12. Federation of Law Societies of Canada Update

Mr. Hume reported to the Benchers as the Law Society's member of the Federation of Law Societies of Canada Council. His report covered the following Federation matters:

- national bar admission standards as the main topic of the upcoming semi-annual conference
- progress on the national competency standards project
- Model Code Standing Committee update on progress toward finalizing the Code's Current Client Conflicts provisions
- Updating the Policy on Rotation of the Federation Presidency
- CanLII Board of Directors update

## *IN CAMERA SESSION*

The Benchers discussed other matters *in camera*.

WKM  
2011-10-07



## ***Chief Executive Officer's Monthly Report***

A Report to the Benchers by

Timothy E. McGee

September 9, 2011

## **Introduction**

My report this month attaches highlights of the financial results for the six months ended June 30, 2011 and provides updates on a number of projects and initiatives.

### **1. Financial Report – First Half of Year Operating Results**

Highlights of the financial results to June 30, 2011 are attached to this report as Appendix 1. Jeanette McPhee, our CFO, and I will be available to answer any questions you may have on the results at Friday's meeting.

### **2. Strategic Plan 2012 – 2014 - Update**

This month's meeting is an important one on the path to developing a new three year Strategic Plan. Please take a little extra time to review the materials you will be provided in the Benchers' package regarding the planning process. Gavin and I will have more to say on what we hope to accomplish at the meeting.

### **3. Communications Updates**

#### ***Public Education Program***

Since the Public Education Program was presented to the Benchers in March 2011, the Communications team has developed a more detailed tactical plan and begun implementation of a number of those tactics, including obtaining broad media coverage around Law Week and developing the access to justice webpage. We expect that the majority of the work will be completed this fall, including a public inquiry strategy, a public relations awareness campaign and additional educational materials on various Law Society policy initiatives. Robyn Crisanti, Manager, Communications and Public Affairs, will be at the meeting, should you have any questions about the Program.

#### ***Communicating New Student Rules***

Our Communications department is implementing a comprehensive communications plan to advise lawyers and students of the new student rules, including:

- Article in Benchers' Bulletin (mid-September)
- E-Brief mention (mid-September)
- Letter and flyer sent to all students and principals
- New website copy for Articling section

- Home page of website (Highlights section) (mid September)
- Mention in Advocate article regarding PLTC survey (November)
- Notice to law school publications (late September)

Please let Robyn Crisanti know if you have any questions about the above.

### ***Benchernet Replaced by Lawyer Login Page***

Benchernet has now been retired in favour of a more robust Lawyer Login page, which provides access to all Benchernet and committee materials as appropriate, based on user profile. If there is any information that Benchers would like to see added to the new Benchernet Resources section, please feel free to share your ideas.

#### **4. 2011 Employee Survey**

We will soon be conducting our annual employee survey. The purpose of the survey is to ensure that we engage all staff in providing their feedback on how we can improve job satisfaction and our effectiveness as an organization. We will be reviewing the survey results with the Benchers early in the new year.

#### **5. Recruiting for New Hearing Panel Pools – Update**

As you know, at the beginning of the Summer, we advertised for lawyers and non-lawyers willing to volunteer to sit on hearing panels with Benchers. The response was more than we expected: 130 non-Benchernet lawyers and nearly 600 non-lawyers. The working group has met three times and set the criteria for selecting the best pool of panel members, starting with the guidelines established by the Benchers. We then outsourced the process of applying the criteria to the applications received to a professional executive search team. This not only made operational sense but also ensured that the selection process would be seen to be objective.

We have received reports on the two hearing panel pools, with recommended selections based on the criteria. We are now in the process of doing our due diligence to ensure that all of the selections are appropriate. That includes consulting the Benchers, which the President will speak to you about in the course of the meeting.

#### **6. Electronic Document and Record Management Project – Update**

In my May 2011 report, I introduced the Enterprise Content Management Working Group (now the Electronic Document and Records Management System “EDRMS” Project Team). The EDRMS project team’s mandate is to define our user needs in detail, consult on what would constitute the best

solution, and create the necessary business case for consideration. This work will be completed in three phases:

- Phase 1- Detailed needs analysis
- Phase 2 – Solution identification
- Phase 3 – Implementation of solution(s)

The EDRMS team has received the Phase 1 report from consultants KPMG, which is an analysis of the Law Society's needs, current systems and processes for electronic information and case management, and which makes general recommendations for moving forward. Once Management Board and the Executive Committee have completed their review of the report (end of September), a project manager will be assigned to lead Phase 2 – Solution Identification. During this phase, we will be working with consultants to identify specific software solutions for our information and case management requirements.

EDRMS co-chairs Jeanette McPhee and Adam Whitcombe will be at the meeting to answer questions about this project.

## **7. Government Relations / Legislative Ask – Update**

The Ministry of the Attorney General is now actively working on the requests for amendments that the Benchers approved in the middle of 2010. Policy lawyers with the Ministry have been in touch with us several times to clarify and discuss our various proposals for more effective regulation in the public interest. We expect that a request for legislation will go to Cabinet for approval in the Fall. After that, it will go to Legislative Counsel for drafting of the specific amendments to be included in the legislative program when space can be found for it, hopefully in the Spring of 2012.

## **8. LSBC Annual General Meeting – September 20, 2011**

This is a reminder that the Law Society's 2011 Annual General Meeting will be held at the Fairmont Hotel Vancouver in Vancouver and in 10 different satellite locations around the province on Tuesday, September 20, 2010. Registration begins at 11:30 a.m. with call to order at 12:30 p.m.

There is one member resolution this year, proposing that the Law Society allow payment of membership fees by monthly installment or by credit card. A message from the Benchers has been included in the AGM Second Notice, which advises that implementation of this resolution would result in increased practice fees, due to increased administrative requirements and loss of investment income on full member dues as well as additional expense due to merchant fees payable to the

credit card companies. The message also sets out the Benchers' concerns that monthly payments will make tracking and reporting of member status in an accurate and timely manner difficult.

If you have any questions about arrangements for the AGM, please do not hesitate to contact Bill McIntosh.

**9. Advocate Article**

I am attaching a copy of the Law Society's response, which was posted on the Law Society's website, to the recent Advocate article regarding the Western Law Societies Conveyancing Protocol, attached to this report as Appendix 2. I would be happy to discuss this in further detail at the meeting.

**10. 9<sup>th</sup> Floor Facelift**

I am pleased to report that we are 95% complete on our plans to upgrade the 9<sup>th</sup> floor facilities. I think you will agree with me that the renovations are a big improvement to our workspace on that floor. I would like to congratulate and thank Bernice Chong, Manager of Operations, and her team for all their hard work in bringing this project in on time and budget.

Timothy E. McGee  
Chief Executive Officer

# The Law Society of British Columbia



## **Report of the Lawyer Education Advisory Committee: Continuing Professional Development Review and Recommendations**

**For: The Benchers**

**Date: September 9, 2011**

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Thelma O'Grady, Chair  
Joost Blom, QC, Vice-Chair  
Tom Fellhauer  
Ben Meisner  
Nancy Merrill  
Catherine Sas, QC  
Patricia Schmit, QC  
Jim Vilvang, QC  
Johanne Blenkin  
Linda Robertson

**Purpose of Report:** Discussion and Decision

**Prepared on behalf of:** Lawyer Education Advisory Committee

**Staff:** Alan Treleaven  
Director, Education and Practice (604) 605-5354  
  
Charlotte Ensminger  
Staff Lawyer, Policy and Legal Services (604) 697-5843



## **I. BACKGROUND**

1. On November 16, 2007, the Benchers approved the former Lawyer Education Committee's recommendations for a mandatory continuing professional development ("CPD") program, to begin on January 1, 2009. Approval of CPD was premised, above all, on assuring the public and the profession that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the province.
2. Although CPD requirements for lawyers exist in many other jurisdictions, including England, Wales, Scotland, Ireland, 45 American states and 4 Australian jurisdictions, the Benchers decision marked the first time that a Canadian law society had introduced a comprehensive CPD requirement.
3. Today, seven provinces and one territory have or are about to introduce comprehensive CPD requirements.

## **II. PURPOSE OF THIS REPORT**

4. This is the third year of the CPD program. The Committee conducted a comprehensive review of the program in 2011, and is reporting the results to the Benchers, together with recommendations for some specific modifications, in time to ensure that changes are in place beginning January 1, 2012.

## **III. CONSULTATION**

5. The Committee surveyed BC lawyers in the spring of 2011 to assess the CPD program. Of the 1,419 lawyers who participated in the survey, 78% agreed that continuing education should be mandatory for lawyers, with more than half agreeing that the annual requirement is likely to strengthen the quality of legal services that BC lawyers provide to their clients. The results show that the overall assessment of the program has been very positive.
6. The Committee has also received input from lawyers and law-related organizations. That input has been mainly positive. Where concerns have been raised, they are mostly in connection with questions relating to approved subject-matter, cost and geographic barriers.
7. Some lawyers and law-related organizations suggest harmonizing the BC requirements with other provinces and territories, to reflect the increasing inter-jurisdictional mobility of lawyers. The Committee is recommending that such an initiative be the subject of the next CPD program review, which would include examining a role for other law societies and the Federation of Law Societies.

## **IV. COMMITTEE RECOMMENDATIONS AND COMMENTARY**

8. The Committee has been guided in its analysis of a considerable number of options by wanting to ensure that the CPD program is as straight-forward and stream-lined as reasonably possible for lawyers, legal education providers, and the Law Society.

9. The Committee has developed the following detailed recommendations, to take effect January 1, 2012. Commentary is included as background or to explain the reasons for any proposed changes.

**10. Recommendation 1 - The 12 Hour Requirement**

- (a) Continue the annual 12 hour requirement.
- (b) Amend current Rule 3-18.3(1) so that the Benchers no longer need to approve on an annual basis the minimum number of CPD hours a practising lawyer is required to meet.

*Comment: Rule 3-18.3(1) currently reads as follows: "Before the commencement of each calendar year, the Benchers must determine the minimum number of hours of continuing education that is required of a practising lawyer in the following calendar year." The Committee has concluded that requiring annual Benchers approval serves no practical purpose.*

**11. Recommendation 2 – The Two Hour Requirement for Professional Ethics, Practice Management, Client Care and Relations**

- (a) Continue the requirement that at least two of the annual 12 hours required must pertain to any combination of professional responsibility and ethics, practice management and client care and relations.
- (b) Professional responsibility and ethics, practice management, and client care and relations content that is embedded in the overall credit available for a course continues to comply with the two hour requirement.

*Comment: CPD providers continue to be encouraged to also offer non-embedded or "stand-alone" content and courses that meet the two hour requirement.*

**12. Recommendation 3 - Overall Subject Matter Requirement**

Eliminate the "audience test" requirement, so that the overall subject matter requirement would read as follows:

The subject matter of all accredited learning modes, including courses, must deal primarily with one or more of

- (a) substantive law,
- (b) procedural law,
- (c) professional ethics,
- (d) practice management (including client care and relations),

- (e) lawyering skills.

*Comments:*

*This revised subject matter requirement focuses on subject matter content, and eliminates the current “audience test” component, which reads “... material primarily designed and focused for an audience that includes, as a principal component, lawyers, paralegals, articling students and/or law school students, but not if the subject matter is targeted primarily at clients, the public, other professions, or other students.” The revised subject matter requirement eliminates, for example, denial of credit for attending an Institute of Chartered Accountants’ tax course designed and focused at accountants.*

*See appendix A for the guiding descriptions, adopted by the Committee, of the following subject matter:*

- *professional ethics,*
- *practice management (including client care and relations),*
- *lawyering skills.*

*Credit continues to be available for subject matter related to the law of other countries, provinces and territories, and is not limited to BC or Canadian law.*

### **13. Recommendation 4 - Subject Matter Exclusions**

Continue to exclude credit for the following:

- (a) lawyer wellness topics,
- (b) topics relating to law firm marketing or profit maximization,
- (c) any activity designed for or targeted primarily at clients.

*Comments:*

*The Committee’s rationale for continuing exclusions (a) and (b) is that accredited CPD should primarily enhance a lawyer’s legal knowledge and related legal skills.*

*The Committee discussed in detail whether content relating primarily to lawyer wellness or resiliency, for which CPD credit is not currently available, should be accredited for any or all of*

- *courses and other educational programs,*
- *study groups,*
- *teaching,*
- *writing,*
- *mentoring.*

*The Committee noted that although lawyer wellness is not currently an accredited subject matter, wellness content is not a complete barrier to accreditation. For example, a mentoring relationship that includes at least 6 hours of accredited subject matter, such as*

*a combination of family law and ethics, would be accredited for 6 hours, even though the balance of the time beyond the minimum 6 hours might focus on wellness.*

*The Committee concluded that engaging in wellness and resiliency activities can be of significant value to lawyers, and therefore serve the public interest, but decided that because wellness activity is not fundamentally professional education, it should continue to be ineligible for CPD credit.*

*The Committee observed, however, that there would be value in the Law Society developing initiatives that encourage lawyers to engage in activities promoting health and resiliency as they relate to law practice, and endorsed the idea of recommending such initiatives.*

*The Committee rationale for continuing exclusion (c), activity designed for or targeted primarily at clients, is that the CPD requirement is intended primarily to encourage lawyers to maintain and enhance their professional competence, not to encourage them to choose CPD activities on the basis that they will sustain and perhaps expand the firm's client base.*

#### **14. Recommendation 5 - Credit for Courses**

(a) Continue to accredit courses based on the following criteria:

- (i) actual time in attendance,
- (ii) online real time courses, streaming video, webcast and / or teleconference courses, if there is an opportunity for lawyers to ask and receive answers to questions,
- (iii) local or county bar association educational programs, and CBA section meetings: credit for actual time, but excluding time not directed to educational activity,
- (iv) reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.

(b) Extend accreditation to reviewing a previously recorded course if a lawyer and articling student review it together, including by telephone or other real time communications technology.

*Comments:*

*Credit for reviewing a recorded course with an articling student extends the two lawyer requirement. The Committee decided against extending credit to a lawyer who reviews a recorded program with a paralegal, on the basis that there is no paralegal accreditation or licensing in BC.*

*Lawyers continue to receive credit for repeating the same courses, including online courses year over year, but not for repeating a course within the same reporting year.*

#### **15. Recommendation 6 - Self Study Restriction**

- (a) Continue to exclude self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception in recommendation 7 for approved interactive online programs;
- (b) Continue to recommend a minimum 50 hours of self-study annually, but not require lawyers to report their self-study, as it is not eligible for credit.

*Comments: The Committee continues to see considerable value in lawyers meeting together to engage in continuing professional development. While this requirement can present an obstacle because of geography or scheduling demands, the wide range of ways to engage in continuing professional development, including through electronic means, study groups, mentoring, local bar events, teaching and writing, considerably alleviates such a concern.*

#### **16. Recommendation 7 - Credit for an Interactive Online Self Study Program**

Continue credit for interactive online self-study education for up to a Law Society pre-assigned limit per online program, as well as for completing on one's own an audio, video or web program if the program includes each of the following characteristics:

- (a) a quiz component, where questions are to be answered, and where either the correct answer is provided after the question is answered, or an answer guide is provided after the lawyer completes the quiz;
- (b) the quiz is at the end of or interspersed throughout the program;
- (c) the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

*Comment: For the quiz component, the lawyer is not required to submit the quiz responses for review.*

#### **17. Recommendation 8 - Study Group Credit**

- (a) Continue credit for study group attendance at a meeting
  - (i) if at least two lawyers or a lawyer and articling student are together for educational purposes at the same time (including by telephone or other real time communications technology),

- (ii) of an editorial advisory board for legal publications, but not as a part of regular employment, or
- (iii) of a law reform body or group, but not as a part of regular employment,

if a lawyer chairs or has overall administrative responsibility for the meeting.

*Comment: An educational purpose includes reviewing a recorded program.*

(b) Continue to exclude credit for:

- (i) participation on committees, boards and tribunals,
- (ii) any time that is not related to educational activity,
- (iii) activity that is file specific,
- (iv) time spent reading materials, handouts or PowerPoint, whether before or after the study group session.

*Comment: The Committee's rationale for continuing to exclude (b)(i), participation on committees, boards and tribunals, is that although there may be some professional development value in volunteering on some boards and committees, the primary focus of accrediting CPD activity should be focused on enhancing legal knowledge and legal skills.*

## 18. Recommendation 9 - Mentoring Credit

(a) Continue the following provisions relating to mentoring:

- (i) a lawyer who has engaged in the practice of law in Canada, either full or part-time, for 7 of the 10 years immediately preceding the current calendar year, and who is not the subject of an order of the Credentials Committee under Rule 3-18.31(4) (c), is eligible to be a mentor;

*Comment: This mirrors the requirement for approval as an articling principal.*

- (ii) mentoring credit is available for mentoring another lawyer or an articling student, but not for an articling principal mentoring one's own articling student;
- (iii) mentoring credit is not available for mentoring a paralegal;

- (iv) mentoring goals must comply with the subject matter requirements applicable for any other CPD credit;
- (v) mentoring must not be file specific or simply answer questions about specific files;
- (vi) a mentor is entitled to 6 hours of credit per mentee, plus another 6 hours (for a total of 12 hours) if mentoring two mentees separately. If two or more mentees are mentored in a group, the mentor is entitled to 6 hours, and each mentee is entitled to 6 hours;
- (vii) credit is for time actually spent together in the mentoring sessions, and can be face to face or by telephone, including real time videoconferencing.

*Comment: (ii) and (v) continue to exclude CPD credit for mentoring law school students, including students in law school clinical programs. The Committee's rationale for this exclusion is that such mentoring, while providing an important service, does not achieve the goal that accredited CPD should meaningfully enhance the mentor's legal knowledge and related skills.*

(b) Implement the following changes to mentoring:

- (i) mentoring by email or similar electronic means qualifies for credit;
- (ii) no minimum time for each mentoring session. This waives the current 30 minute minimum;
- (iii) if less than 6 hours is spent in the year, continue the restriction that no time can be claimed for the mentoring relationship, but with a new exception for when the mentoring relationship ends prematurely under unexpected circumstances.

*Comment: These changes are intended to reduce constraints on mentoring, thereby encouraging growth in the mentoring program.*

## 19. Recommendation 10 - Teaching Credit

- (a) Continue to provide up to three hours of credit for each hour taught if the teaching is for
  - (i) an audience that includes as a principal component, lawyers, paralegals, articling students and / or law school students,
  - (ii) a continuing professional education or licensing program for another profession, or

(iii) a post-secondary educational program,

but not if the teaching is targeted primarily at clients or is file specific.

- (b) Implement the following change if teaching is directed to an audience not listed in (a) (i), (ii), and (iii) above, such as the general public:

one hour of credit for each hour taught, but not if targeted primarily at clients or is file specific.

*Comments:*

*Extending credit to teaching the general public is based on the rationale that there is professional development value in teaching to any audience and, in the case of the public, to doing so in a way that requires the skill to communicate to people who typically lack legal training. There would continue to be no credit if the teaching is targeted primarily at clients or is file specific.*

*The Committee's rationale for continuing to exclude credit for teaching designed for or targeted primarily at clients is that the CPD requirement is intended to encourage lawyers to maintain and enhance their professional competence, not to encourage them to choose CPD activities on the basis that they will sustain and perhaps expand the firm's client base.*

- (c) Continue the following provisions:

- (i) credit for volunteer or part-time teaching only, not as part of full-time or regular employment;
- (ii) if the lawyer only chairs a program, the time spent chairing the program is all that may be reported, not three hours for each hour of chairing;
- (iii) no cap on the number of hours for teaching;
- (iv) credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year;
- (v) credit for the same course from year to year, whether or not there are changes to the course;
- (vi) a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;
- (vii) no credit for setting or marking examinations, term papers or other assignments;



- (viii) no credit for preparation time if the lawyer does not actually teach the course. Examples include
  - assisting someone else in preparation without actually teaching,
  - acting as a teaching assistant without actually teaching,
  - preparing to teach, but the course is then cancelled.

## 20. Recommendation 11 - Writing Credit

- (a) Continue writing credit, as follows:

- (i) for writing law books or articles intended for publication or to be included in course materials,
- (ii) a maximum of 6 hours for each writing project, based on the actual time to produce the final product,
- (iii) no cap on the overall credit hours available for writing,
- (iv) in addition to credit for teaching and preparation for teaching,
- (v) not for preparation of PowerPoint,

*Comment: Time spent preparing PowerPoint is to be accounted for in teaching preparation time.*

- (vi) not for writing for law firm websites,
- (vii) not for blogging or wikis,

*Comment: At this time there are no generally accepted standards for posting to blogs or wikis, although postings typically range from informal chat to thoughtfully articulated expression in the nature of typical print publication. The Committee does not see it as feasible at this time to prescribe quality standards. The Committee resolved to reconsider this restriction as a part of the next CPD review.*

- (viii) for volunteer or part-time writing only, not as a part of full-time or regular employment.
- (b) Extend credit to writing for any audience, except when targeted primarily at clients, thereby eliminating the current restriction that the writing must be for
    - (i) an audience that includes as a principal component, lawyers, paralegals, articling students and/or law school students,
    - (ii) a continuing education or licensing program for another profession, or
    - (iii) a post-secondary educational program.

*Comment: The Committee concluded that this change would be consistent with its recommendation to accredit teaching to the general public, which is based on the rationale that there is professional development value in teaching to any audience and, in the case of the public, to doing so in a way that requires the skill to communicate to people who lack legal training.*

## **21. Recommendation 12 - Pro Bono Exclusion**

Continue to exclude CPD credit for providing pro bono legal services.

*Comments:*

*The Committee concluded that engaging in pro bono, while highly laudable, is the practice of law, and not primarily continuing professional development. In so deciding, the Committee considered submissions arguing that providing legal services to lower income or impoverished clients has professional development and ethical responsibility value.*

*No other Canadian jurisdiction provides CPD credit for pro bono activity. Approximately 12 of the 45 American states with MCLE requirements provide some credit for pro bono.*

## **22. Recommendation 13 - Compliance and Reporting Requirements**

(a) Continue to base the CPD requirement on the calendar year, with a reporting date of December 31.

(b) Continue to exclude credit carry forward or averaging to a subsequent CPD reporting year.

*Comments:*

*The Committee considered the following additional options for a CPD reporting cycle:*

- *a multi-year reporting requirement,*
- *credit carry over or averaging from year to year,*
- *a three year reporting requirement, with a minimum number of hours required in each of the 3 years,*
- *a 15 hour CPD requirement with permitted carry over.*

*The Committee discussed a concern that carry forward could be seen by the public as watering down the annual requirement, and that some lawyers would reduce what might otherwise be their annual 12 hour CPD consumption in ensuing years.*

*The Committee resolved to reconsider the restriction as a part of the next CPD review.*

(c) Continue the following requirements:

- (i) a lawyer who fails to complete and report the requirements by December 31 is required to pay a late fee, and receives an automatic 3

month extension to complete the CPD requirement, without being suspended;

- (ii) the lawyer receives a 60 day prior written notice of the possible suspension;
- (iii) if the requirement is not met by April 1, the lawyer is administratively suspended until all required CPD requirements are completed;
- (iv) the Practice Standards Committee has the discretion to prevent or delay a suspension in special circumstances on application by the lawyer to do so;
- (v) a lawyer who is completing the prior year's CPD requirement by April 1 of a current year is subject to the provisions governing the prior year's CPD.

*Comments:*

*Lawyers report their CPD hours by logging in to the Law Society website, and clicking on the CPD link, where they can review their individual credits and the time remaining to comply with the annual CPD requirement. After completing an accredited learning activity, lawyers add the credits to their record.*

*Lawyers are notified by email before the end of the year of the approaching deadline, and they are reminded of the consequences of non-compliance.*

(d) Implement the following revised late fee structure:

- (i) lawyers who complete their CPD hours by December 31 but fail to report completion by the December 31 deadline will be levied a \$200 late fee plus applicable taxes;
- (ii) lawyers who fail to complete the required CPD hours by December 31, and are therefore required to complete and report the required CPD hours by April 1 of the following year, will be levied a late fee of \$500 plus applicable taxes.

*Comment: The \$500 late fee levy would be new, reflecting the differing gravity of failure to report and failure to complete the required CPD hours by the deadline. In 2012, "Schedule 1 – 2012 Law Society Fees and Assessments," would include this change.*

*There are two other instances in which lawyers are currently charged late fees: at annual fee billing and on filing of trust reports.*

- *Lawyers are charged a late fee if they do not pay the annual fee by November 30 of the year preceding the year for which it is payable. (Practising lawyers are charged \$100 and non-practising lawyers are*

*charged \$25. There is no late fee on a retired membership.) If the annual fee and late fee are not received by December 31, the lawyer's membership is ceased and the lawyer must apply to be reinstated. The reinstatement application fee is \$415.*

- *A lawyer who fails to deliver a trust report by the date required is charged a late fee of \$200. If the trust report is not delivered within 30 days after it is due, the lawyer is subject to an additional assessment of \$400 per month or part of a month until the report is delivered. A lawyer who does not deliver the trust report within 60 days of its due date is suspended until the report is completed.*

### **23. Recommendation 14 - Exemptions and Extensions**

Continue to require all lawyers with a practicing certificate, whether full or part-time, to fulfill the CPD requirement, subject to the following exceptions:

- (a) lawyers with a practicing certificate who submit a declaration that they are not practising law are exempt, such as lawyers who are
  - (i) inactive,
  - (ii) on medical or maternity leave,
  - (iii) taking a sabbatical;
- (b) lawyers who resume practice within the reporting year after having been exempt and, subject to (c ), below, new lawyers by way of transfer, must complete one credit hour for each full or partial calendar month in the practice of law;
- (c) newly called lawyers who complete the bar admission program of a Canadian law society during the reporting year are exempt;
- (d) no exemption or reduction for
  - (i) being too busy (such as a long trial),
  - (ii) the practice of law being in another jurisdiction,
  - (iii) part-time practice.

*Comments:*

*There has been little demand for a CPD reduction or exemption from BC lawyers who are also members in other jurisdictions, because educational activities in other jurisdictions generally meet the requirements for accreditation on BC. The Committee decided not to recommend at this time an exemption for lawyers who are also members in other jurisdictions, primarily practise law in another jurisdiction, and comply with a similar CPD requirement in that other jurisdiction. The Committee resolved to reconsider this restriction as a*

*part of the next CPD review, in consultation with other law societies and the Federation of Law Societies of Canada.*

*The Committee considered the issue of reduction for lawyers in part-time practice, including the discussion at the 2010 Law Society Annual General Meeting, and concluded that because part-time practitioners must perform at the same level of competence as full-time practitioners, there is no convincing rationale for reducing the requirement for part-time practitioners.*

#### **24. Recommendation 15 - Accreditation Model**

Continue the current accreditation model, whereby

- (a) all applications by providers and lawyers are submitted electronically, and approval decisions are made by Law Society staff;
- (b) all credits are approved in either of two ways:
  - (i) pre-approve the provider (an individual course or other educational activity offered by a pre-approved provider does not require further approval); or
  - (ii) approve (before or after the event) individual courses and other educational activities on the application of either the provider or an individual lawyer;
- (c) an individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
- (d) providers are pre-approved and remain pre-approved if they maintain integrity and quality.

#### *Comments:*

*BC, Saskatchewan, New Brunswick and Quebec have adopted an accreditation model. Manitoba, Nova Scotia and Northwest Territories have decided on a non-accreditation model. Ontario has a partial non-accreditation model combined with a paper-based spot audit.*

*All but one of the U.S. jurisdictions with mandatory CLE have an accreditation model, as do England, Wales, Scotland, Ireland, and the Australian jurisdictions with CPD requirements.*

*The Committee resolved to review the continuation of the accreditation model as a part of the next CPD review, when the Law Society has more experience with the current model and is able to compare its experience with other Canadian*

*jurisdictions that are introducing a non-accreditation and spot audit approach. If the Law Society were to move to a non-accreditation model, lawyers would, for example,*

- *list the educational activities they complete without an accreditation step, but be guided by subject-matter criteria published by the Law Society, and*
- *possibly be subject to a random spot audit. For example, a paper-based CPD spot audit is a feature of the Ontario program, which is in its first year of operation.*

## **V. BUDGET IMPACT**

25. The Committee proposals, if adopted and implemented, would not increase Law Society budgetary expenses, including required staffing resources.

## **VI. WHAT THE BENCHERS ARE BEING ASKED TO DO**

26. The Committee requests that the Benchers approve the following recommendations.

### **27. Recommendation 1 – The 12 Hour Requirement**

- (a) Continue the annual 12 hour requirement.
- (b) Amend current Rule 3-18.3(1) so that the Benchers no longer need to approve on an annual basis the minimum number of CPD hours a practising lawyer is required to meet.

### **28. Recommendation 2 – The Two Hour Requirement for Professional Ethics, Practice Management, Client Care and Relations**

- (a) Continue the requirement that at least two of the annual 12 hours required must pertain to any combination of professional responsibility and ethics, practice management and client care and relations.
- (b) Professional responsibility and ethics, practice management, and client care and relations content that is embedded in the overall credit available for a course continues to comply with the two hour requirement.

### **29. Recommendation 3 – Overall Subject Matter Requirement**

Eliminate the “audience test” requirement, so that the overall subject matter requirement would read as follows:

The subject matter of all accredited learning modes, including courses, must deal primarily with one or more of

- (a) substantive law,
- (b) procedural law,

- (c) professional ethics,
- (d) practice management (including client care and relations),
- (e) lawyering skills.

### **30. Recommendation 4 – Subject Matter Exclusions**

Continue to exclude credit for the following:

- (a) lawyer wellness topics,
- (b) topics relating to law firm marketing or profit maximization,
- (c) any activity designed for or targeted primarily at clients.

### **31. Recommendation 5 – Credit for Courses**

- (a) Continue to accredit courses based on the following criteria:
  - (i) actual time in attendance,
  - (ii) online real time courses, streaming video, webcast and / or teleconference courses, if there is an opportunity for lawyers to ask and receive answers to questions,
  - (iii) local or county bar association educational programs, and CBA section meetings: credit for actual time, but excluding time not directed to educational activity,
  - (iv) reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.
- (b) Extend accreditation to reviewing a previously recorded course, if a lawyer and articling student review it together, including by telephone or other real time communications technology.

### **32. Recommendation 6 – Self Study Restriction**

- (a) Continue to exclude self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception in recommendation 7 for approved interactive online programs.
- (b) Continue to recommend a minimum 50 hours of self-study annually, but not require lawyers to report their self-study, as it is not eligible for credit.

### 33. Recommendation 7 – Credit for an Interactive Online Self Study Program

Continue credit for interactive online self-study education for up to a Law Society pre-assigned limit per online program, as well as for completing on one's own an audio, video or web program if the program includes each of the following characteristics:

- (a) a quiz component, where questions are to be answered, and where either the correct answer is provided after the question is answered, or an answer guide is provided after the lawyer completes the quiz;
- (b) the quiz is at the end of or interspersed throughout the program;
- (c) the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

### 34. Recommendation 8 – Study Group Credit

- (a) Continue credit for study group attendance at a meeting
  - (i) if at least two lawyers or a lawyer and articling student are together for educational purposes at the same time (including by telephone or other real time communications technology),
  - (ii) of an editorial advisory board for legal publications, but not as a part of regular employment, or
  - (iii) of a law reform body or group, but not as a part of regular employment,
 if a lawyer chairs or has overall administrative responsibility for the meeting.

### 35. Recommendation 9 – Mentoring Credit

- (a) Continue the following provisions relating to mentoring:
  - (i) a lawyer who has engaged in the practice of law in Canada, either full or part-time, for 7 of the 10 years immediately preceding the current calendar year, and who is not the subject of an order of the Credentials Committee under Rule 3-18.31(4) (c), is eligible to be a mentor;
  - (ii) mentoring credit is available for mentoring another lawyer or an articling student, but not for an articling principal mentoring one's own articling student;



- (iii) mentoring credit is not available for mentoring a paralegal;
  - (iv) mentoring goals must comply with the subject matter requirements applicable for any other CPD credit;
  - (v) mentoring must not be file specific or simply answer questions about specific files;
  - (vi) a mentor is entitled to 6 hours of credit per mentee, plus another 6 hours (for a total of 12 hours) if mentoring two mentees separately. If two or more mentees are mentored in a group, the mentor is entitled to 6 hours, and each mentee is entitled to 6 hours;
  - (vii) credit is for time actually spent together in the mentoring sessions, and can be face to face or by telephone, including real time videoconferencing.
- (b) Implement the following changes to mentoring:
- (i) mentoring by email or similar electronic means qualifies for credit;
  - (ii) no minimum time for each mentoring session. This waives the current 30 minute minimum;
  - (iii) if less than 6 hours is spent in the year, continue the restriction that no time can be claimed for the mentoring relationship, but with a new exception for when the mentoring relationship ends prematurely under unexpected circumstances.

### 36. Recommendation 10 – Teaching Credit

- (a) Continue to provide up to three hours of credit for each hour taught if the teaching is for
- (i) an audience that includes as a principal component, lawyers, paralegals, articling students and / or law school students,
  - (ii) a continuing professional education or licensing program for another profession, or
  - (iii) a post-secondary educational program,
- but not if the teaching is targeted primarily at clients or is file specific.
- (b) Implement the following change if teaching is directed to an audience not listed in (a) (i), (ii), and (iii) above, such as the general public:

one hour of credit for each hour taught, but not if targeted primarily at clients or is file specific.

- (c) Continue the following provisions:
- (i) credit for volunteer or part-time teaching only, not as part of full-time or regular employment;
  - (ii) if the lawyer only chairs a program, the time spent chairing the program is all that may be reported, not three hours for each hour of chairing;
  - (iii) no cap on the number of hours for teaching;
  - (iv) credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year;
  - (v) credit for the same course from year to year, whether or not there are changes to the course;
  - (vi) a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;
  - (vii) no credit for setting or marking examinations, term papers or other assignments;
  - (viii) no credit for preparation time if the lawyer does not actually teach the course. Examples include
    - assisting someone else in preparation without actually teaching,
    - acting as a teaching assistant without actually teaching,
    - preparing to teach, but the course is then cancelled.

### **37. Recommendation 11 – Writing Credit**

- (a) Continue writing credit, as follows:
- (i) for writing law books or articles intended for publication or to be included in course materials,
  - (ii) a maximum of 6 hours for each writing project, based on the actual time to produce the final product,
  - (iii) no cap on the overall credit hours available for writing,

- (iv) in addition to credit for teaching and preparation for teaching,
  - (v) not for preparation of PowerPoint,
  - (vi) not for writing for law firm websites,
  - (vii) not for blogging or wikis,
  - (viii) for volunteer or part-time writing only, not as a part of full-time or regular employment.
- (b) Extend credit to writing for any audience, except when targeted primarily at clients, thereby eliminating the current restriction that the writing must be for
- (i) an audience that includes as a principal component, lawyers, paralegals, articling students and/or law school students,
  - (ii) a continuing education or licensing program for another profession, or
  - (iii) a post-secondary educational program.

### **38. Recommendation 12 – Pro Bono Exclusion**

Continue to exclude CPD credit for providing pro bono legal services.

### **39. Recommendation 13 – Compliance and Reporting Requirements**

- (a) Continue to base the CPD requirement on the calendar year, with a reporting date of December 31.
- (b) Continue to exclude credit carry forward or averaging to a subsequent CPD reporting year.
- (c) Continue the following requirements:
  - (i) a lawyer who fails to complete and report the requirements by December 31 is required to pay a late fee, and receives an automatic 3 month extension to complete the CPD requirement, without being suspended;
  - (ii) the lawyer receives a 60 day prior written notice of the possible suspension;
  - (iii) if the requirement is not met by April 1, the lawyer is administratively suspended until all required CPD requirements are completed;

- (iv) the Practice Standards Committee has the discretion to prevent or delay a suspension in special circumstances on application by the lawyer to do so;
  - (v) a lawyer who is completing the prior year's CPD requirement by April 1 of a current year is subject to the provisions governing the prior year's CPD.
- (d) Implement the following revised late fee structure:
- (i) lawyers who complete their CPD hours by December 31 but fail to report completion by the December 31 deadline will be levied a \$200 late fee plus applicable taxes;
  - (ii) lawyers who fail to complete the required CPD hours by December 31, and are therefore required to complete and report the required CPD hours by April 1 of the following year, will be levied a late fee of \$500 plus applicable taxes.

#### **40. Recommendation 14 – Exemptions and Extensions**

Continue to require all lawyers with a practicing certificate, whether full or part-time, to fulfill the CPD requirement, subject to the following exceptions:

- (a) lawyers with a practicing certificate who submit a declaration that they are not practising law are exempt, such as lawyers who are
  - (i) inactive,
  - (ii) on medical or maternity leave,
  - (iii) taking a sabbatical;
- (b) lawyers who resume practice within the reporting year after having been exempt and, subject to (c ), below, new lawyers by way of transfer, must complete one credit hour for each full or partial calendar month in the practice of law;
- (c) newly called lawyers who complete the bar admission program of a Canadian law society during the reporting year are exempt;
- (d) no exemption or reduction for
  - (i) being too busy (such as a long trial),
  - (ii) the practice of law being in another jurisdiction,
  - (iii) part-time practice.

**41. Recommendation 15 – Accreditation Model**

Continue the current accreditation model, whereby

- (a) all applications by providers and lawyers are submitted electronically, and approval decisions are made by Law Society staff;
- (b) all credits are approved in either of two ways:
  - (i) pre-approve the provider (an individual course or other educational activity offered by a pre-approved provider does not require further approval); or
  - (ii) approve (before or after the event) individual courses and other educational activities on the application of either the provider or an individual lawyer;
- (c) an individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
- (d) providers are pre-approved and remain pre-approved if they maintain integrity and quality.

## APPENDIX A

### PROFESSIONAL ETHICS, PRACTICE MANAGEMENT, LAWYERING SKILLS

The Committee has adopted the following guiding descriptions of the following items listed in the revised subject matter test:

- professional ethics,
- practice management (including client care and relations),
- lawyering skills.

#### I. PROFESSIONAL ETHICS

Content focusing on the professional and ethical practice of law, including conducting one's practice in a manner consistent with the *Legal Profession Act* and Rules, the *Professional Conduct Handbook*, and generally accepted principles of professional conduct.

#### II. PRACTICE MANAGEMENT

Content focusing on administration of a lawyer's workload and office, and on client-based administration, including how to start up and operate a law practice in a manner that applies sound and efficient law practice management methodology.

The Committee adopted the following list of topics that would satisfy the practice management requirement for CPD accreditation, working from and revising a list developed by the former Committee on December 10, 2009:

- (a) client care and relations, including managing difficult clients;
- (b) trust accounting requirements, including:
  - (i) trust reporting;
  - (ii) financial reporting for a law practice;
  - (iii) interest income on trust accounts;
  - (iv) working with a bookkeeper;
- (c) HST and income tax remittances, including employee income tax remittances;
- (d) technology in law practice including:
  - (i) law office systems;
  - (ii) e-filing;
  - (iii) legal document preparation and management, including precedents;
- (e) retainer agreements and billing practices relating to Law Society requirements, including:
  - (i) unbundling of legal services;
  - (ii) permissible alternative billing arrangements;
- (f) avoiding fee disputes;
- (g) file systems, including retention and disposal;
- (h) succession planning;

- (i) emergency planning, including law practice continuity for catastrophic events and coverage during absences;
- (j) managing law firm staff, including:
  - (i) *Professional Conduct Handbook* requirements;
  - (ii) delegation of tasks/supervision;
- (k) identifying conflicts, including:
  - (i) conflict checks and related systems;
  - (ii) client screening;
- (l) diary and time management systems, including:
  - (i) limitation systems;
  - (ii) reminder systems;
  - (iii) follow-up systems;
- (m) avoiding “being a dupe”/avoiding fraud;
- (n) complying with Law Society Rules.

The Committee identified a list of topics that would not satisfy the practice management definition for CPD accreditation, working from and revising a list developed by the former Committee on December 10, 2009:

- (a) law firm marketing;
- (b) maximizing profit;
- (c) commoditization of legal services;
- (d) surviving a recession;
- (e) basic technology and office systems (unless in the specific context of practising law, as listed above);
- (f) attracting and retaining law firm talent;
- (g) alternate work arrangements in a law firm;
- (h) business case for:
  - (i) retention of women, and
  - (ii) retention of visible minority lawyers and staff;
- (i) handling interpersonal differences within the law firm;
- (j) cultural sensitivity in working with law firm staff;
- (k) training to be a mentor.

### **III. LAWYERING SKILLS**

The Committee decided that to be eligible for CPD credit, lawyering skills include:

- (a) effective communication, both oral and written;
- (b) interviewing and advising;
- (c) problem solving, including related critical thinking and decision making;
- (d) advocacy;
- (e) arbitration;
- (f) mediation;
- (g) negotiation;
- (h) drafting legal documents;
- (i) legal writing, including related plain writing;

- (j) legal research;
- (k) legal project management;
- (l) how to work with practice technology, including:
  - (i) e-discovery;
  - (ii) in the courtroom;
  - (iii) client record management;
  - (iv) converting electronically stored information into evidence;
  - (v) social networking technology to facilitate client communication (but excluding marketing and client development);

but not

- (a) general business leadership;
- (b) chairing / conducting meetings;
- (c) serving on a Board of Directors;
- (d) general project management;
- (e) skills and knowledge primarily within the practice scope of other professions and disciplines.



## Federation Governance Policy

**From:** Jonathan Herman [mailto:JHerman@flsc.ca]

**Sent:** Tuesday, August 30, 2011 10:15 AM

**To:** Jonathan Herman **Subject:** Federation Governance Policy

President Ron MacDonald has asked me to forward the following message.

\*\*\*\*\*

Colleagues,

At our June Council meeting, Council members generally agreed with the recommended principles underlying Council members' roles and responsibilities. It was then agreed that draft language reflecting these recommendations be incorporated into the draft Governance Policy, which had been circulated to Council in March 2011 and again in June. I am pleased to circulate a further draft for Council's consideration in advance of our meeting in PEI on September 15.

Please review it carefully and indicate as soon as possible whether you have any questions or suggestions for improvement which may be collated in advance of the next meeting so that we may expeditiously deal with any outstanding issues at the meeting itself. It is my hope that Council will approve the Governance Policy in its entirety so that we may proceed to make any consequential amendments to the By-laws. I also note that the draft Governance Policy would be inconsistent with the certain details of the Federation's Unanimity Policy, which was adopted by the Council of the Federation in 2004. For example, as drafted, that policy purports to grant member law societies approval authority over the budget of the Federation. In my view, the unanimity policy could benefit from an update once the Governance Policy has been approved. I attach the Unanimity Policy for your consideration.

I am mindful of the perils of "drafting by committee" but nonetheless invite you to provide your input in a timely way in order to enable us to move forward. Please make your comments known by responding to me or to Jonathan no later than September 9, 2011, if possible.

Kind regards,

Ron

Jonathan G. Herman

Chief Executive Officer, Federation of Law Societies of Canada

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# GOVERNANCE POLICY

(DRAFT)

September 2011

## **NATURE AND SCOPE**

1. Subject to the by-laws of the Federation of Law Societies of Canada (the “Federation”), this policy sets out the roles and responsibilities among the Council, the Executive Committee, the President and the Chief Executive Officer of the Federation.

## **DEFINITIONS**

2. In this policy, the following terms shall have the meanings which follow:
- (a) “By-laws” means the General By-law of the Federation in effect from time to time;
  - (b) “CEO” means the Chief Executive Officer employed by the Federation as its most senior staff officer;
  - (c) “Council” means the Council of the Federation;
  - (d) “Executive Committee” means a committee consisting of the Executive Officers;
  - (e) “Executive Officers” means the Past-President, the President, the Vice-President and President-elect and such other Vice Presidents elected by the Council from time to time; and
  - (f) “Federation Committees” means, other than the Executive Committee, such committees or task forces as may be established by the Council or the Executive Committee from time to time.

## **ROLES AND RESPONSIBILITIES**

### ***Council***

3. The Council is the governing body of the Federation responsible for the overall strategic direction of the Federation and from which devolves all decision-making authority for the management of the business and affairs and the property of the Federation in accordance with this policy.

4. The Council determines the strategic objectives and priorities of the Federation on an ongoing basis.

### ***Scope of Council Member Authority***

5. Except as otherwise set out in this policy, decisions of Council members are made independently and without instruction from the law societies that appointed them.

6. The following is a non-exhaustive list of the types of decisions contemplated by paragraph 5:

- (a) the approval of the Federation's strategic plan;
- (b) the determination of Federation priorities within the strategic plan;
- (c) the setting of policies not otherwise required by the By-laws to be approved by the law societies;
- (d) the approval of the Federation budget and of the recommendation to law societies as to the required levy to fund Federation activities, it being understood that no recommendation to pay a levy shall be effective in respect of a law society unless ultimately approved by all law societies;
- (e) the establishment of Federation committees;
- (f) the appointment of the CanLII Board of Directors;
- (g) the hiring or termination of the CEO;
- (h) the approval of material contracts normally required to be approved by the Council, such as leases or bank financing;
- (i) the approval of model rules, regulations or standards recommended by any Federation committee, task force or working group, it being understood that no such recommendation calling for implementation by a law society shall be effective in respect of a law society unless ultimately approved by such law society;
- (j) the approval of any draft agreement among law societies, such as agreements with respect to mobility of the legal profession, compensation fund arrangements or governance arrangements for CanLII, it being understood that no such agreement shall be effective in respect of a law society unless ultimately approved by such law society;
- (k) the decision for the Federation to commence, participate in or settle litigation, subject to any litigation policy of the Federation in effect from time to time;
- (l) the decision for the Federation to intervene in a matter before a court, tribunal or other judicial or quasi-judicial body including a board or commission of inquiry, subject to any intervention policy of the Federation in effect from time to time;

- (m) generally, any decision not specifically identified as one requiring instruction by law societies in accordance with this policy.
8. Decisions of Council members are made on the instruction of the law societies that appointed them in all cases specifically identified by law societies as requiring their approval.
  9. In advance of every decision, the Executive Committee shall indicate to Council members whether a Council decision is one contemplated by the rule set out in paragraph 5 or whether it requires instruction from law societies in accordance with paragraph 8.

### ***Communications Between the Federation, Council Members and Law Societies***

10. The Federation shall communicate information to Council members and law societies in a timely and thorough manner in order to ensure that provincial and territorial issues are brought forward to the Federation or to the Council table, as the case may be, prior to Council decisions being made.
11. Council members shall become and remain adequately informed about issues requiring debate or decision in order to maximize the effectiveness of their contributions to Council's deliberations.
12. The Federation, Council members and law societies shall maintain effective lines of communication to foster consistent approaches to issues and decisions, as required.

### ***Executive Committee***

13. The Executive Committee is responsible for providing overall strategic advice and leadership to the President and the Council.
14. The Executive Committee has the following specific responsibilities:
  - (a) recommending to Council annual objectives of the Federation in order to implement the strategic plan adopted by Council in accordance with the priorities set by Council;
  - (b) monitoring and oversight of the finances of the Federation;
  - (c) monitoring compliance with governance policies;
  - (d) measuring and reviewing the CEO's performance having regard to the Federation's performance in meeting the objectives set for it by Council; and

- (e) determining the CEO's compensation in accordance with the marketplace for similar positions.

15. Subject to the By-law and applicable laws, the Executive Committee is specifically delegated by Council with the authority to act on its behalf in exceptional circumstances where it is impractical for Council to meet in a timely way in order to consider matters requiring immediate attention. In such circumstances, the Executive Committee shall promptly report to the Council the facts giving rise to the urgency, the considerations underlying a decision to act in the place of Council, and the decision taken.

### ***President***

16. The President is the head of the Federation and is its public representative with sole authority to speak on behalf of the Council unless the President otherwise delegates such authority to another individual having regard to the circumstances.

17. The President provides leadership by fulfilling the following specific responsibilities:

- (a) representing the Federation to member law societies, external organizations, audiences and stakeholders;
- (b) chairing meetings of the Council in accordance with rules of procedure adopted by the Council and commonly accepted practices;
- (c) chairing meetings of the Executive Committee in accordance with rules of procedure adopted by the Executive Committee and commonly accepted practices;
- (d) reporting to the Council on behalf of the Executive Committee;
- (e) providing strategic leadership to the Federation in consultation with the Executive Committee and the CEO;
- (f) appointing chairs and members of Federation Committees in consultation with the Executive Committee and the CEO subject to ratification by the Council; and
- (g) working collaboratively with the CEO in respect of the CEO's overall management of the business and affairs of the Federation.

### ***Chief Executive Officer***

18. The CEO performs all of the functions and duties ordinarily associated with the office of chief executive officer and is responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of all Federation activities.

19. Without limiting the generality of the foregoing, the CEO has the following specific responsibilities:

- (a) implementing all policies and procedures established by the Council;
- (b) counselling and assisting the Council, Executive Committee and President in the development, adoption, implementation and advancement of the various objectives and activities of the Federation;
- (c) working collaboratively with the President in respect of the CEO's overall management of the business and affairs of the Federation;
- (d) engaging and supervising such personnel as are required, in accordance with approved budgets, in order to advance the objectives and administer the activities of the Federation;
- (e) measuring and reviewing the performance of Federation personnel and determining their compensation in accordance with the marketplace for similar positions; and
- (f) performing such other functions and duties as may be assigned to the CEO from time to time by the Council.

20. The CEO reports to the Council.

# Unanimity Resolution

Approved at the Council Meeting, 1<sup>st</sup> May 2004, Fredericton, NB



# Résolution sur l'unanimité

Adoptée à la réunion du Conseil d'administration, 1<sup>er</sup> mai 2004, à Fredericton, N.-B.

## WHEREAS:

- A. The mission of the Federation was restated in 2002 (the “**Mission Statement**”), as follows:
- (i) to identify and study matters of essential concern to the legal profession in Canada and to further co-operation among the governing bodies of the legal profession in Canada with a view to achieve uniformity in such matters;
  - (ii) to operate as a forum for the exchange of views and information of common interest to the governing bodies of the legal profession in Canada and facilitate the governing bodies working together on matters of common concern;
  - (iii) to improve the understanding of the public respecting the work of the legal profession in Canada; and
  - (iv) in appropriate cases, to express the views of the governing bodies of the legal profession on national and international issues in accordance with directions of the members of the Federation;
- B. Subsection 4.3 of the By-Laws of the Federation (the “**By-Laws**”) provides that the representative of each of the governing bodies of the Federation (the “**Members**”) shall exercise the voting rights of such Member at meetings of the Members;
- C. Section 6.1 of the By-Laws provides that the management of the business and affairs and the property of the Federation shall be vested in the Council of the Federation (the “**Council**”) which, in addition to the powers and authorities conferred upon it by the By-Laws, may exercise all such powers and do

## ATTENDU QUE :

- A. la mission de la Fédération a été reformulée en 2002, (l’ « **énoncé de mission** »), comme suit :
- (i) déterminer et examiner les dossiers qui intéressent au premier chef la profession juridique au Canada ainsi que favoriser la collaboration entre les ordres professionnels de la profession juridique au Canada, laquelle visera à assurer l’uniformité dans ces dossiers;
  - (ii) agir comme lieu d’échange d’opinions et de renseignements qui intéressent tous les ordres professionnels de la profession juridique au Canada et faciliter le travail de collaboration entre les ordres professionnels dans les dossiers d’intérêt commun;
  - (iii) faire mieux comprendre au public le travail qu’accomplit la profession juridique au Canada; et
  - (iv) s’il y a lieu, exprimer les opinions des ordres professionnels de la profession juridique sur les dossiers nationaux et internationaux conformément aux directives émanant des membres de la Fédération des ordres professionnels de juristes du Canada;
- B. le paragraphe 4.3 des règlements administratifs de la Fédération (les « **règlements administratifs** ») prévoit que la personne représentant chacun des ordres professionnels au sein de la Fédération (les « **membres** ») exerce les droits de vote de ce membre aux assemblées des membres;
- C. le paragraphe 6.1 des règlements administratifs prévoit que la gestion des activités, des affaires internes et des biens de la Fédération est confiée au Conseil de la Fédération (le « **Conseil** ») qui, en plus des pouvoirs et attributions que lui confèrent les règlements administratifs, peut exercer tous



all acts and things as may be exercised or done by the Federation and are not by the By-Laws or the *Canada Corporations Act* (the “**Act**”) expressly directed or required to be exercised or done by the Members;

D. The By-Laws provide that the directors of the Federation (the “**Directors**”) are the members of the Council;

E. Section 5.7 of the By-Laws provides that (unless otherwise provided or required in the By-Laws or the Act), any question or resolution submitted to a meeting of the Members shall be determined or passed by a majority of votes of those Members present in person or by their proxy;

F. Subsection 5.9.1 of the By-Laws provides that a resolution in writing signed by all of the Members entitled to vote on a resolution is as valid as if it had been passed at a duly convened meeting of the Members;

G. It has been the practice and convention of the Federation to operate and make decisions on the basis of consensus or unanimity;

H. The Members wish to determine which of its decisions require unanimity, and which decisions may be approved other than on an unanimous basis;

NOW THEREFORE BE IT RESOLVED that:

1. The following matters require the unanimous approval of all of the Members:

- (a) an amendment to the By-Laws of the Federation;
- (b) an amendment to the Mission Statement;
- (c) the approval of the annual budget, or an amendment to the budget;
- (d) the setting of the annual levy;
- (e) a decision to commence, participate

les pouvoirs attribués à la Fédération et accomplir tous les actes que celle-ci peut accomplir, à l’exception de ceux qui relèvent des membres en vertu des règlements administratifs ou de la Loi sur les corporations canadiennes (la « **Loi** »);

D. les règlements administratifs prévoient que les administrateurs de la Fédération (les « **administrateurs** ») sont les membres du Conseil;

E. le paragraphe 5.7 des règlements administratifs prévoit que (sauf disposition ou indication contraire des règlements administratifs ou de la Loi) toute question ou résolution soumise à une assemblée des membres est décidée ou adoptée à la majorité des voix des membres présents en personne ou par procuration;

F. le paragraphe 5.9.1 des règlements administratifs prévoit qu’une résolution par écrit signée par tous les membres ayant droit de vote sur cette résolution est tout aussi valide que si elle avait été adoptée à une assemblée des membres régulièrement convoquée;

G. la Fédération a l’habitude de diriger ses activités et prendre ses décisions selon le principe du consensus ou de l’unanimité;

H. les membres désirent déterminer lesquelles de ces décisions requièrent l’unanimité et lesquelles peuvent être approuvées autrement qu’à l’unanimité;

IL EST RÉSOLU QUE :


1. les questions suivantes requièrent l’approbation unanime de tous les membres :

- (a) toute modification aux règlements administratifs de la Fédération;
- (b) toute modification à l’énoncé de mission;
- (c) l’adoption du budget annuel, ou toute modification au budget;
- (d) l’établissement de la cotisation annuelle;
- (e) toute décision visant à intenter un litige, y participer, intervenir dans un litige ou

- |     |   |     |   |
|-----|---|-----|---|
|     | in, intervene in or settle litigation;  |     | le régler;  |
| (f) | a decision to appear before or make submissions to any judicial, regulatory, or legislative body; | (f) | toute décision visant à plaider ou présenter des arguments devant un tribunal, un organisme de réglementation ou un corps législatif; |
| (g) | a decision to make expenditures materially in excess or in deviation from the budget;             | (g) | toute décision visant à effectuer une dépense qui dépasse ou qui n'est pas prévue dans le budget;                                     |
| (h) | such other matters as the Members may agree, by special resolution.                               | (h) | toute autre question, telle que convenue par les membres conformément à une résolution spéciale;                                      |
- 
- |    |   |    |  |
|----|---|----|--|
| 2. | The requirement of unanimity shall be met where each Member either votes in support of the resolution, or declares that it abstains from voting provided that all of the Members that vote, vote in favour of the resolution. For further certainty, in the event that a resolution is passed where there is one or more abstaining Members, all Members, including the abstaining Member or Members, shall be bound by such vote, including any financial consequences arising from such resolution. | 2. | on aura répondu à l'exigence d'unanimité lorsque chaque membre vote en faveur de la résolution ou déclare qu'il s'abstient de voter (pourvu que tous les membres exerçant leur droit de vote, votent en faveur de la résolution); pour plus de certitude, si une résolution est adoptée et qu'il y a abstention d'un ou plusieurs membres, tous les membres, incluant le ou les membres s'étant abstenus, seront liés par ce vote, incluant toutes conséquences financières découlant de cette résolution; |
| 3. | Unless otherwise required by the Act or the By-Laws, all other matters shall be determined by the Members on the basis of a simple majority of votes cast.  | 3. | sauf indication contraire, telle que prévue par la Loi ou les règlements administratifs, toute autre décision sera prise par les membres à la majorité simple des voix exprimées;  |
| 4. | The Members and Council shall, where to do so is warranted by the subject matter of the resolution, when proposing a resolution for consideration, and in an effort to achieve consensus or unanimity, endeavour to state such resolution in terms that are sensitive to local regulatory and other factors.  | 4. | lorsque les membres et le Conseil proposeront une résolution, dans le but d'obtenir un consensus ou l'unanimité, ces derniers s'efforceront, lorsque l'objet de la résolution le justifiera, de formuler une telle résolution en termes qui tiennent compte des facteurs de réglementation locaux et autres.   |

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Certified by: Patricia-Ann Foley, Secretary-Treasurer/Secrétaire-trésorière  
 Certifié par:



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee  
Date: October 11, 2011  
Subject: **Rule 4-9, Conduct Review report**

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This memorandum suggests an amendment to the Rule governing the report of a Conduct Review Subcommittee to the Discipline Committee to clarify the nature of the report and the informal nature of the Conduct Review process.

Under the current rule, a Conduct Review Subcommittee is required to report to the Discipline Committee on the outcome of the Conduct Review meeting with a lawyer who is the subject of a complaint investigation. This is the relevant part of the current rule:

## **Conduct Review Subcommittee report**

### **4-9 (1) The Conduct Review Subcommittee must**

- (a) prepare a written report of its findings of fact, conclusions and any recommendations, ...

The phrase “findings of fact” suggests a formal proceeding in which evidence is admitted and heard and a trier of fact assesses credibility and weighs the evidence to come to a formal finding of fact. As you know, that is not at all what is intended should happen at a Conduct Review meeting. The trouble with that suggestion, other than its inaccuracy, is that it implies that the Law Society owes a greater degree of due process to the subject of the Conduct Review than is the case or is consistent with the informal and remedial nature of the process. There are, in fact, no disciplinary consequences of a Conduct Review in itself. There are times when a citation is issued after a Conduct Review, often on the recommendation of the Subcommittee, but in that case full protection of natural justice is provided in the form of a full hearing.

To remedy this problem, the Act and Rules Subcommittee recommends an amendment to the Rule to replace “findings of fact” with “factual background”. That way, the Conduct Review Subcommittee can provide its understanding of the situation in which the complaint arose without the suggestion that it has made “findings”.

A draft amendment and suggested resolution are attached.

JGH

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Attachments:        draft rule  
                      resolution

# LAW SOCIETY RULES

## PART 4 – DISCIPLINE

### Conduct Review Subcommittee report

**4-9** (1) The Conduct Review Subcommittee must

- (a) prepare a written report of ~~its findings of fact,~~ the factual background, the Subcommittee's conclusions and any recommendations, and
- (b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.

# **LAW SOCIETY RULES**

## **PART 4 – DISCIPLINE**

### **Conduct Review Subcommittee report**

**4-9** (1) The Conduct Review Subcommittee must

- (a) prepare a written report of the factual background, the Subcommittee's conclusions and any recommendations, and
- (b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.

**CONDUCT REVIEW REPORT**

**SUGGESTED RESOLUTION:**

***BE IT RESOLVED** to amend Rule 4-9(1) by rescinding paragraph (a) and substitute the following:*

- (a) prepare a written report of the factual background, the Subcommittee's conclusions and any recommendations, and

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee  
Date: October 11, 2011  
Subject: **Rule 1-3(8), powers of the President**

---

The Act and Rules Subcommittee recommends changes to Rule 1-3(8) in order to ensure that the business of the Law Society runs efficiently and to implement some policy recommendations made by the Executive Committee.

## Background

Under the current Rule 1-3(8), some of the powers of the President under the Law Society Rules may be exercised by one of the Vice-Presidents or the Executive Director, apparently at any time. Other powers, although they may be critical to the operation of the Law Society, are apparently not exercisable by anyone other than the President.

This is the current Rule:

### **President, First Vice-President and Second Vice-President**

**1-3** (8) The powers of the President under Rules 2-64, 2-69, 4-2, 4-19, 4-28, 5-2 or 5-10 may be exercised by a Vice-President or the Executive Director.

The Rules referred to in that Rule are:

- 2-64 Appointment of panel (credentials)
- 2-69 Variation or removal of conditions or limitations imposed in a credentials hearing
- 4-2 Discipline Committee, appointment and removal of members of the Committee
- 4-19 Review of interim suspension, practice conditions or medical examination order, appointment of a new panel for the review



- 4-28 Appointment of panel (discipline)
- 5-2 Hearing panels, consent to continue as chair after ceasing to be a Benchers; re-assignment of a matter; or termination of reappointment
- 5-10 Time to pay a fine or costs, or to fulfil a practice condition, referral of application to panel or committee

Many other important functions of the President are not included in the list of delegations, which could potentially impair the operation of the Law Society.

The provision does not state that the power is to be exercised only in restricted situations, such as the absence of the President. It is phrased as if the other officers are alternates in all circumstances. Also, there is no provision for delegation of the President's powers on occasions where the President and both Vice-Presidents are out of the jurisdiction at the same time.

The Subcommittee also considered the issue of delegation of powers to the Executive Director and thought that this aspect in particular should be considered by the Executive Committee before rule amendments were drafted and considered. The Subcommittee felt that considerations about delegation of powers to a staff person, albeit the chief executive officer, are different than they are for elected officers.

## Recommendations of the Executive Committee

The Executive Committee considered the issues referred by the Subcommittee and decided to recommend to the Benchers the following:

### 1. **Extend the ability of others to substitute for the President to all the powers of the President under the Law Society Rules**

There are a substantial number of functions of the President in the current rules that are not backed up by the ability of any other officer to perform when the President is not available. This is currently an occasional nuisance, but potentially it could be a serious operational problem.

Most of these "powers" involve assigning another Benchers to decide an issue brought forward by an applicant for enrolment or call and admission, the respondent to a citation or Law Society counsel. In most cases, this is a *pro forma* appointment of the "Chambers Benchers" to a specific matter.

It is an oddity in the current Rule that the power of the President to appoint members of the Discipline Committee, but none of the other Committees including those specifically referred to in the Rules, is exercisable by substitutes. The Executive Committee was of the view that there is value in consistency. Since it could be necessary for the operation of the Law Society that someone be able to substitute for the President in the appointment process and there is little risk

that the power would be abused, the Committee thought that it should be possible for a substitute to appoint to Law Society Committees.

**2. Limit the ability of others to substitute for the President to times when the President is absent.**

The Executive Committee thought it appropriate to qualify the occasions when a substitute can exercise the powers of the President. That eliminates the possibility of conflict and gives the staff some certainty to know who should be approached when approval is required for some action under the Rules. It also makes the Law Society procedures more transparent and eliminates the appearance that the process may be subject to abuse.

**3. Continue the Vice-Presidents as possible substitutes for the President.**

This is the ordinary function of Vice-Presidents. There was some discussion about whether there should be some distinction between First and Second Vice-President or if the President should be required to designate which Vice-President is to act in his or her absence. Generally, a Law Society Vice-President acts when requested based largely on availability. It is not necessary to have a prior designation by the President, which could be administratively inconvenient.

**4. Add members of the Executive Committee designated by the President as possible substitutes for the President.**

Since there are occasions when all members of the Presidential Ladder are away from Vancouver at the same time, it would ensure the smooth operation of the Law Society if the President could designate a member of the Executive Committee to act in the place of the President.

In this instance, the need for certainty among a number of possible substitutes probably does require that the President designate a substitute from among the non-Ladder members of the Executive Committee.

**5. Eliminate the Executive Director as a possible substitute for the President.**

It could appear unfair or potentially unfair to an outsider that the appointment of a particular Benchers to make a significant decision concerning an application or a citation is made by the staff person ultimately responsible for the credentials and discipline processes. An official elected by the profession as a whole or by all of the Benchers, including those who are not members of the legal profession, may have greater credibility in that regard.

The Executive Director rarely if ever exercises a power assigned to the President under the Rules. It would not then appear to be an operational necessity for the Executive Director to be a named substitute for the President. There is some logical consistency in limiting the possible substitutes those elected to the Ladder by all the members or, when designated by the President, those elected by all the Benchers to the Executive Committee.

## Draft amendment and suggested resolution

I attach a draft amendment and suggested resolution intended to give effect to the recommendations.

JGH

P:\Memo to Benchers on powers of the president.docx

Attachments:        draft amendment  
                         suggested resolution

# LAW SOCIETY RULES

## PART 1 – ORGANIZATION

### Division 1 – Law Society

#### Benchers

#### President, First Vice-President and Second Vice-President

- 1-3 (8) In the absence of the President, The the powers of the President ~~under Rules 2-64, 2-69, 4-2, 4-19, 4-28, 5-2 or 5-10~~ may be exercised by a Vice-President or ~~the Executive Director~~ another member of the Executive Committee designated by the President.

#### President, First Vice-President and Second Vice-President

- 1-3 (8) In the absence of the President, the powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President.

#### SUGGESTED RESOLUTION:

*BE IT RESOLVED to amend Rule 1-3 by rescinding subrule (8) and substituting the following:*

- (8) In the absence of the President, the powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President.

#### REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Executive Committee  
Date: October 12, 2011  
Subject: **Benchers access to minutes of regulatory committees**

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This memorandum asks the Benchers to consider whether the access protocol to Law Society Committee agenda materials and minutes should be changed so that Benchers have access to the materials and minutes of the regulatory committee of which they are current members, and not to those of the regulatory committees of which they are not current members.

The Law Society is required to fulfill its mandate to protect the public interest in the administration of justice in the most effective and appropriate manner while maintaining fair treatment of all concerned. It is also in the interests of everyone to avoid unnecessary grounds for challenge of regulatory decisions wherever possible.

In the past, the Benchers have had access to the minutes of all Law Society committees as part of their overall responsibility to monitor and supervise the activities of the Law Society. However, given the Benchers' role as adjudicators in formal hearings to decide questions of fundamental importance to individual members and applicants, the duty of fairness and due process to those individuals requires that Benchers forgo access to some regulatory records when they are not participating in the responsible Committee. That also would further the separation of adjudicatory and prosecutorial decision-making that has been mandated by the Benchers.

Administrative tribunals, such as a Law Society discipline or credentials hearing panels, have a duty to decide the question before the tribunal based exclusively on the evidence and submissions in the individual case before them. Evidence that is not relevant or otherwise not admissible must not be taken into account in the decision-making process. So, for example, previous dealings with the Discipline Committee or evidence that is considered by the Committee but not forming part of a formal allegation in the citation, must not be considered by a hearing panel when finding facts and making the determination on the citation.

Not only must the panel not consider extraneous matters, but it is important that there be no appearance that the panel may have done so. A situation in which Benchers have access to all Committee minutes risks a claim by a Respondent lawyer, applicant for admission or someone

else that a Benchers who is a member of a hearing panel could have read and retained information considered outside the hearing room that would be prejudicial if considered in the course of a hearing. That could lead to a challenge that, successful or not, would be disruptive to the regulatory process and potentially embarrassing to the Law Society as a whole.

The Benchers have a legitimate interest in the proceedings of Law Society committees. There is no reason why Benchers who want to monitor the activities of the Advisory Committees and the governance Committees, such as Executive Committee and Finance Committee, should not have access to all of those Committees' materials and minutes, subject only to their obligation to treat as confidential sensitive and personal information contained in them.

However, in the case of the regulatory Committees (Discipline, Credentials and Practice Standards), there is material that, if available to members of subsequent hearing panels, could be seen as prejudicial and improper for the panel member to know. The most effective way of preventing a challenge to a situation arising from that situation is to limit Benchers to access to materials and minutes of regulatory Committees of which they are a current participant.

If the Benchers agree, I suggest that you adopt a resolution such as this:

BE IT RESOLVED to implement an access protocol that would allow individual Benchers access to minutes and agenda materials of all Law Society committees except regulatory committees of which the Benchers is not a current member.

JGH

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# Memo

To: Benchers  
From: Appointments Subcommittee  
Date: October 12, 2011  
Subject: **Revisions to Law Society Appointments Policy  
Follow-up to September 9, 2011 Benchers Meeting**

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## 1. Background

Proposed revisions to the Law Society Appointments Policy were presented to the Benchers (for approval) at the September 9 meeting, together with the Law Society Appointments Guidebook (for review).

Three issues were flagged by the Benchers for further refinement in the appointments policy and corresponding guidebook provisions, as set out in the following extract from the draft minutes of the September 9, 2011 Benchers meeting:

- bolster the Equity section's explanation of the Law Society's commitment to promote and ensure appropriate diversity in its internal and external appointments
- add provisions to the Communication Expectations section confirming the Law Society's commitment
  - to maintain a complete listing of current appointments and upcoming appointment opportunities on the Law Society website
  - to provide appropriate orientation to appointees whose responsibilities include representation and communication of the Law Society's interests

It was agreed to table approval of the proposed appointments policy revisions to the next meeting, by which time the noted refinements should be made.

## 2. Revised Appointments Policy and Guidebook Language

The noted refinements have been made to the policy and guidebook language you reviewed on September 9, as set out in Tab A.

We acknowledge with thanks the assistance of the Equity and Diversity Advisory Committee, staff lawyer Susanna Tam, Ms. Berge and Mr. Fellhauer with those drafting improvements. We are also grateful to Mr. Fellhauer for his assistance with the following improvements to Section 2.1.1 of the guidebook (at page 15):

... Category 1a appointments entail the following qualities, responsibilities and duties:

- the body's objects are related to the Law Society's mandate
- the appointee or nominee is a member of the body's central policy-making body
  - with governance responsibilities including creation and amendment of the body's by-laws
  - with directorship responsibilities, including the fiduciary duties
    - to exercise independent judgment in supporting and promoting the body's best interests
    - to respect and protect the absolute priority of the body's best interests over their personal interests or other parties' interests (see Section 2.1.1D)

No other changes have been made to the appointments policy and guidebook provisions reviewed at the September 9, 2011 Benchers meeting.

## 3. Recommendation

We recommend that the Benchers adopt the Law Society Appointments Policy as set out in Tab B, effective October 21, 2011.



## LAW SOCIETY OF BC APPOINTMENTS POLICY

### Objective

The objective of the Law Society in making appointments or nominations to boards, councils or committees of outside bodies is to ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability to undertake the responsibilities of the position are appointed. The Law Society recognizes that each of its appointees has a duty to serve the best interests of the body to which he or she is appointed, keeping in mind the protection of the public interest in the administration of justice.

### Term of office

A Law Society appointment to any position will normally be for a term not exceeding three years, and a total period not exceeding six years, provided that other considerations relating to the particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment.

### Benchers or non-Benchers

A Bencher should be appointed to an outside body only if that body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases there should be a presumption against appointing Benchers to outside bodies. An example of a circumstance that might rebut that presumption is a Law Society appointment to a newly created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body's procedures are well established.

### Consultation

#### Canadian Bar Association:

- It is generally desirable that a consensus be reached in cases where a body's governing legislation, by-laws or governance policy call for a Law Society appointment in consultation with the Canadian Bar Association.
- A consensus should be attempted in all cases, recognizing that there may be rare instances where the Law Society will appoint someone not approved or acceptable to the Canadian Bar Association.

#### Outside Body:

- It is generally desirable that, before making an appointment or nomination to an outside body, the Law Society consult the body's chair and senior management regarding applicable appointment parameters
  - appointment parameters include
    - the body's requirements, needs or interests to be addressed by the appointment, including

- ✓ skills, experience and background desired in an appointee
- prospective appointees who have expressed interest in the appointment to the body, including
  - ✓ names, current contact information and resumes
  - ✓ the body's receptiveness to their appointment
- appointment timing preferences and requirements, including
  - ✓ term of office, commencement date and date of appointment
- re-appointment factors, including
  - ✓ the incumbent's eligibility and readiness to continue to serve
  - ✓ the body's receptiveness to re-appointment of the incumbent

## Geographic considerations

The Law Society should consider geographical representation when making appointments to organizations which have a province-wide scope.

## Equity

The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

~~should promote and strive to reflect gender equity and cultural diversity in its internal and external appointments.~~

## Appointment of judges

Where the legislation or by-laws of the body permit, judges are eligible to be appointed to positions by the Law Society.

## Communication Expectations

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice

- unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
  - including any plans, policies or events that
    - materially change the bodies' objects or operations, or
    - could reasonably be considered to be inconsistent with the public interest in the administration of justice
  - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies
  - to protecting and promoting the public interest in the administration of justice
  - to supporting good governance practice by the Law Society and those bodies
  - to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain an accurate listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities
- contact information for inquiries
- directions for submitting expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.

DRAFT

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# The Law Society *of British Columbia*



## **Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations**

**For: The Benchers**

**Date: October 21, 2011**

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**Purpose of Report: Information, Discussion and Approval of Recommendations**

**Prepared by: The Independence and Self-Governance Advisory Committee**

**Michael Lucas  
Policy and Legal Services Department  
604-443-5777**



## **Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations**

### **I. Executive Summary**

Alternative Business Structures or ABSs refer to any form of business model through which legal services are delivered that is different from the standard sole proprietorship or partnership model. They include models of outside ownership and delivery of legal services by third-party providers. Such models are already available to some extent in Australia. They have recently been permitted in England, subject to regulatory structures coming into place which are expected soon.

Proponents of ABSs argue that they will lay the foundation for the creation of business models that will increase access to legal services. They will be more consumer-oriented and market-driven to meet consumer needs. Opponents caution against the adverse effect they say ABSs will have on the core values of the legal profession, including lawyer independence, client confidentiality, and the duties owed by lawyers to a client – particularly the duty to avoid conflicts of interest.

The Independence and Self-Governance Committee, at the request of the Benchers, has examined the debate surrounding ABSs and in this Report outlines its views on

- the effect ABSs may have on the legal profession in British Columbia,
- whether ABSs will really benefit the delivery of and access to legal services, and
- whether ABSs will negatively affect self-regulation and the public right to independent lawyers.

The Committee concludes that, while it is skeptical that ABSs will improve access to and delivery of legal services, the possible benefits are valuable and that, in order to discharge its mandate, the Law Society would need to consider them. Ultimately, the *form* of the structure through which legal services are offered is less important than it is to ensure that the services that are offered are properly regulated. The Committee concludes that the alleged harm presented by ABSs could be addressed through appropriate regulations, and sets out what matters would need to be addressed through regulation should ABSs be permitted.

It is important, however, to be able to demonstrate that ABSs will improve access to and delivery of legal services in order that the users of such services will benefit. The Committee is concerned about the lack of empirical evidence given by proponents of ABSs, and believes that if the only demonstrable effect of ABSs was to enrich the legal profession or those who invested in it, the image of the profession and the Law Society would be tarnished. Consequently, some considerable caution needs to be exercised to

ensure that there is a public value in ABSs (such as improving access to legal services) and that valuable public protections that currently exist (such as client confidentiality, an absence of conflicts of interest, and the public right to an independent lawyer) are not lost.

With this in mind, the Committee has concluded that some outside ownership involvement in law firms could be considered, provided it is properly regulated and that lawyers remain in control of the provision of the legal services offered. On the other hand, the Committee is not convinced that the public sale, through securities markets for example, of shares in a law firm is warranted, as it is not convinced that there are benefits to users of legal services that outweigh identified risks.

Therefore, the Committee recommends that the Law Society give serious consideration to ABSs. However, before more work is done, the Committee recommends waiting to see if the case for improving access to legal services through ABSs can be more clearly demonstrated. The Law Society should await the outcome of the debate currently underway through the American Bar Association, should follow what happens in England and Wales once ABSs come into being, and should continue to monitor the situation in Australia. In many ways, England could provide some direct evidence about whether access to legal services can be improved through ABSs as well as giving an indication about whether they can be effectively regulated.

If there is an appetite to consider permitting properly regulated ABSs in British Columbia, the Committee recommends a wider consultation within the legal profession (including users of legal services) and the business community.

## **II. Introduction and Purpose of Report**

*Business development strategies have to adapt to legal principles rather than the other way around.*

*R v. Neil*, [2002] 2 S.C.R. 631 per Binnie J.

Through its history as a profession, law has been practised mostly by sole practitioners or through a partnership model. Indeed, even now, lawyers in private practice in British Columbia generally practise law this way. Statistics in British Columbia show 75% of all law firms in the Province are sole practitioners and another 19% of firms comprise two to five lawyers. It has only been relatively recently that large partnerships have become a more common model of business structure for lawyers, but even so, in British Columbia firms of more than 16 lawyers comprise just slightly over 1% of the total number of law firms, although 30% of the lawyers who provide legal services to the public practice in such firms. National firms are an even more recent model, but these are still based on the partnership model.

Lawyers in British Columbia are not, however, limited to providing legal services either by themselves or through the partnership model with other lawyers. Offering legal services through a “law corporation” has been available since the late 1980s, and recently

lawyers have been able to provide legal services through a “multi-disciplinary partnership” where other professionals can become partners with lawyers. In each instance, the Benchers engaged in a considerable amount of policy debate about the form of the business structure that would be allowed, and how it would be regulated to protect the public interest. In each case, decisions were made by which lawyers were required to remain in control of the entity, and the entity was either only able to provide legal services (law corporations) or provide services ancillary to the provision of legal services (multi-disciplinary partnerships).

“Alternative Business Structures” (commonly referred to as “ABS”) is a term that has been used to denote the developments in other jurisdictions toward permitting the delivery of legal services through business entities that may quite starkly contrast with the current delivery model in British Columbia. ABSs contemplate the “outside ownership” (that is, ownership by people who are not lawyers) of businesses that offer legal services. Two of the most commonly discussed examples of ABSs are:

- Incorporated law practices in which shares are offered publicly and where the shares issued may trade on a public securities exchange;
- Third party providers of legal services, often dubbed “Tesco-law” after the name of a chain of supermarkets in England. Through this model, a non-lawyer business could hire lawyers to provide legal services to the public.

Proponents of ABSs argue that they will lay the foundation for the creation of business models that will increase access to legal services. They will be more consumer-oriented and market-driven to meet consumer needs. Opponents caution against the adverse effect they say ABSs will have on the core values of the legal profession, including lawyer independence, client confidentiality, and the duties owed by lawyers to a client – particularly the duty to avoid conflicts of interest. These issues will be dealt with more fully further on in this Report.

As part of its monitoring function, the Independence and Self-Governance Committee has been paying close attention to the development of and the debate surrounding ABSs, as it had identified concerns that ABSs could adversely affect lawyer independence or self-governance.

The Committee has noted:

- Australian jurisdictions permit “Incorporated Legal Practices” (“ILP”) which may provide legal and other services and in which lawyers and other service providers may practice together. External investment in these ILPs is allowed, and the ILP may be listed on the Australian Stock Exchange;
- In England, ABSs are now permitted under the *Legal Services Act 2007* and it is expected such structures will begin to exist early in 2012 (after an initial start date of October 2011 was moved back);

- European Bars appear to have reservations about ABSs;
- In the United States, the American Bar Association's "Ethics 20/20" initiative has recently conducted a consultation on this subject, which was the subject of debate at the Association's 2011 meeting in Toronto, at which members gave some direction on the subject. A further proposal is being drafted.

Comments about ABSs in the legal media from major Commonwealth jurisdictions has varied. Some refer to the move to permit ABSs in Australia and England as the "de-regulation of the legal profession" and liken it to the "big bang" in the de-regulation of the financial services industry beginning in the mid-1980s. Proponents advocate that ABSs will mark a watershed event in the way legal services are delivered, allowing consumers to shop for legal services in a way they never have before. However, fears over the consequences of the financial services industry's big bang (on which many commentators blame much of the 2008 recession) give critics an opportunity to call for caution. Others call the move to permit ABSs a "big whimper" and expect it will not have much effect on the profession at all.

Whichever is true, the Committee recognizes that the legal profession in British Columbia and Canada, as well as other potentially interested parties (including, perhaps the Competition Bureau), are or will be following the debate concerning and development of ABSs. The Committee therefore recommended that, as part of the Law Society's Strategic Plan, it would be prudent for the Law Society to begin an examination of the benefits and detriments of ABSs in order to begin to develop a position concerning whether they should be permitted in British Columbia, and if so, how that might be accomplished. In this sense, the Committee recommends the start of a policy debate, much the same way as was the case when law corporations and MDPs were considered by the Benchers.

The Benchers adopted the Committee's recommendation as part of the Law Society's Strategic Plan, and this Report is prepared to begin the process.

### **III. Alternative Business Structures**

What are ABSs and why are they at issue?

ABS is a generic reference to any form of business model through which legal services are delivered that is different from the standard sole proprietorship or partnership model. Law corporations or MDPs in British Columbia are therefore really ABSs, although law corporations in this province are quite tightly regulated with the result that the model of delivery usually resembles either a sole proprietorship or partnership. It remains to be seen how "alternate" a business structure an MDP is, as to date there has been only one application made to the Law Society to form an MDP.

There are other ways to structure a business model through which legal services could be provided beyond the partnership and sole proprietorship model. Historically, however, such structures have generally not been possible due to prohibitions against fee-splitting with non-lawyers, which are meant to avoid the risk that a lawyer's independence might be compromised by a non-lawyer's interest in the fee.<sup>1</sup> Fee splitting prohibitions also ensure that third party non-lawyers do not have a financial interest in directing the lawyer's conduct of a file or retainer.

Over the past decade in particular, likely in part as a result of various factors such as globalization, the expansion of the size of some international firms, mergers within the legal profession, financial needs for law firm expansion, and investments in information systems and technology, some legal service providers have needed to access greater quantities of capital. For example, Clifford Chance raised \$150 million (US) in 2002 through the private debt market in order to finance its move to new offices and related infrastructure needs.<sup>2</sup>

Australian states began reforms in the 1990s. New South Wales permitted a limited form of MDP in 1994 that permitted partners in a law firm who were not members of the legal profession, but required legal practitioners to retain at least 51% of the net partnership income in order to ensure that the MDP maintained proper ethical practices.<sup>3</sup> Later, competition authority pressure seeking to enhance consumer interests lead to the creation of MDPs and Incorporated Legal Practices ("ILPs"). MDPs permit Australian lawyers and non-lawyers to provide legal services and other services. ILPs also allow Australian lawyers to provide legal services with other service providers who may or may not be lawyers. Moreover, ILPs themselves are not required to have a legal practice certificate and may have external investors. They may also be listed on the Australian Stock Exchange.<sup>4</sup>

In April 2007, Slater & Gordon (a firm based in Melbourne) issued a Prospectus for the sale of 35 million shares at A\$1 per share, becoming the first firm to do so. The offer was fully subscribed. The "Use of Funds" as stated in the Prospectus was:

- A\$17.3 million represented by the sell down of shares by Vendor shareholders; to be paid to the Vendor shareholders and
- A\$17.7 million represented by an issue of new shares to be applied in the short term to meet the costs of the offer (A\$2.3 million) and to reduce the amount drawn down by the Company under its debt facilities, and thereafter to draw down debt to fund the Company's growth strategy, including the investigation of the

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<sup>1</sup> Law Society of Upper Canada, Report to Convocation by the Professional Regulation Committee, January 27, 2005, para 74

<sup>2</sup> *Ibid*, para 57

<sup>3</sup> Issues Paper Concerning Alternate Business Structures, prepared by ABA Commission on Ethics 20/20 Working Group on Alternate Business Structure, April 5, 2011, page 8.

<sup>4</sup> For a general description of MDPs and ILPs in Australia, see pages 8-10 of the ABA Issues Paper Concerning Alternate Business Structures.

potential acquisition of law firms, advertising, project litigation and additional working capital.

But moreover, developments in England have really brought a focus to the debate on ABSs. These arise from the focus on “consumer interests” in the legal market place, and the lack of alternatives that consumers have when “purchasing” legal services. The English government released a report in 2003 titled “Competition and regulation in the legal services market” that supported ABSs provided they were appropriately regulated to protect both public interests and the core values of the legal professions<sup>5</sup>.

Interestingly, the report on the review of the Regulatory Framework for Legal Services in England and Wales (the “Clementi Report”), released in December 2004, discussed the benefits consumers might realize from ABSs, but it was focused on partnerships between legal professionals (“LDPs”) and on MDPs. It made no recommendations, nor did it really address, ABSs beyond the LDP or MDP models. Despite this, the English government in its White Paper that preceded the *Legal Services Act 2007* (UK) indicated that it was prepared to move beyond the recommendations in the Clementi Report to provide for the creation of a much broader range of ABS. The *Legal Services Act* created a framework allowing for “full ABSs” – including models of outside ownership of the entity providing the legal services, subject to regulation.

In the Explanatory Notes to part 5 of the *Legal Services Act 2007* (the Part that deals with ABSs), the following background is noted:

180. Historically, there have been a number of statutory restrictions on the type of business structures through which legal services may be provided. Some existing regulators have also prohibited lawyers from entering into partnership with non-lawyers. Certain regulators have also placed restrictions on the ways in which non-lawyers can participate in the management of firms. In other cases, regulators do not have the powers they need to regulate a more diverse range of business structures.

181. In March 2001, the [Office of Fair Trading (OFT)] identified a number of rules of the legal profession that were potentially unduly restrictive, and that might have negative implications for consumers. The OFT recommended that rules governing the legal professions should be fully subject to competition law and that unjustified restrictions on competition should be removed.

182. Following the 2004 Clementi Review, in 2005 the Government published a White Paper, *The Future of Legal Services: Putting Consumers First*. It proposed ABS, which would allow different types of lawyers and non-lawyers to work together in an ABS firm

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<sup>5</sup> “The Government supports in principle enabling legal services to be provided through alternative business structures. Such new structures would provide an opportunity for increased investment and therefore enhanced development and innovation, for improved efficiency and lower costs....” Competition and regulation in the legal services market, CP(R2) 07/02 DCA, July 2003

or company, and/or the possibility of non-lawyer ownership and investment. It identified potential benefits for both consumers and legal services providers.<sup>6</sup> (footnotes omitted)

### III. The Benefits of and Concerns About ABSs

The Committee has reviewed a number of articles, reports, press releases of various organizations, “backgrounders” to legislation, and media commentary about ABSs in an effort to try to outline succinctly what benefits may be realized through ABSs as well as what legitimate concerns ABSs may create. Its considerations follow.

As a general comment, however, the Committee cautions that there is little, if any, empirical evidence that any of the stated benefits can actually be realized through ABS structures, or for that matter that ABSs would create undue harm to the provision of legal services or professionalism within the legal profession. When the *Legal Services Act 2007* was debated in the House of Lords, an amendment was passed to require the Lord Chancellor to commission an independent report on ABSs before they were allowed. The report was also to have analysed threats to the independence of lawyers. This recommendation was not, however, passed by the House of Commons when the Bill was eventually voted on and thus a useful opportunity for an independent discussion and analysis of ABSs was lost.

#### (a) Benefits of ABSs

Proponents of ABSs say that they will benefit the interests of consumers of legal services by providing for increased competition between forms of legal service providers through the opening-up of business models that will permit non-lawyer participation. This, it has been argued, will permit innovations that will improve the efficient and cost-effective provision of legal services. Access to public capital will improve a law practice’s ability to enhance its technological services to improve the delivery of legal services. A liberalized market will improve access to justice and protect and promote consumer interests while promoting competition. An independent, strong diverse and effective legal profession will be encouraged in the result.<sup>7</sup>

Further, proponents suggest that being able to offer legal services through third-party providers will benefit consumers by making legal services easier, and less intimidating, to access. For example in a 2010 Consultation Paper, the Legal Services Board (England and Wales) states<sup>8</sup>:

ABSs...remove many of the barriers in relation to non-lawyers owning organisations providing legal services and provide new opportunities for

<sup>6</sup> *Legal Services Act 2007* Explanatory Notes.

<http://www.legislation.gov.uk/ukpga/2007/29/notes/division/7/5/1>

<sup>7</sup> See *Wider Access, Better Value, Strong Protection*: Discussion Paper on developing a Regulatory regime for Alternative Business Structures. Legal Services Board, 2009. Para 4.1

<sup>8</sup> *Alternative Business Structures: Approaches to Licensing*, Consultation Paper on Draft Guidance to Licensing Authorities on the Content of Licensing Rules, 2010 at para 3.

innovation, wider access to justice and the reshaping of legal services in the consumer interest.

The Ministry of Justice (England and Wales) created a “Legal Services Reform Fact Sheet”. It describes the “main benefits of ABSs”, which include:

- ABSs will increase access to finance: at present, providers can face constraints on the amount of equity they can raise;
- New providers in the marketplace should lead to innovation and price reductions, which should result in more people being able to access legal services.

The Explanatory Notes to the *Legal Profession Act 2007* stated potential benefits of ABSs as follows:

Potential benefits for consumers:

- more choice: consumers will have greater flexibility in deciding from where to obtain legal and some non-legal services;
- reduced prices: consumers should be able to purchase some legal services more cheaply. This should arise where ABS firms realise savings through economies of scale and reduce transaction costs where different types of legal professionals are part of the same firm;
- better access to justice: ABS firms might find it easier to provide services in rural areas or to less mobile consumers;
- improved consumer service: consumers may benefit from a better service where ABS firms are able to access external finance and specialist non-legal expertise;
- greater convenience: ABS firms can provide one-stop-shopping for related services, for example car insurance and legal services for accident claims; and
- increased consumer confidence: higher consumer protection levels and an increase in the quality of legal services could flow from ABS firms which have a good reputation in providing non-legal services. These firms will have a strong incentive to keep that reputation when providing legal services.

Potential benefits for legal service providers:

- increased access to finance: at present, providers can face constraints on the amount of equity, mainly debt equity, they can raise. Allowing alternative business structures will facilitate



expansion by firms (including into international markets) and investment in large-scale capital projects that increase efficiency;

- better spread of risk: a firm could spread its risk more effectively among shareholders. This will lower the required rate of return on any investment, facilitate investment and could deliver lower prices;
- increased flexibility: non-legal firms such as insurance companies, banks and estate agents will have the freedom to realise synergies with legal firms by forming ABS firms and offering integrated legal and associated services;
- easier to hire and retain high-quality non-legal staff: ABS firms will be able to reward non-legal staff in the same way as lawyers; and
- more choice for new legal professionals: ABS firms could contribute to greater diversity by offering those who are currently under-represented more opportunities to enter and remain within the profession.<sup>9</sup> (footnotes omitted)

Others have suggested that incorporation and listing of law firms present an opportunity to *improve* ethical practices in law firms by allowing for the development of new models for ethical practice in the business of law, and to develop better models for regulating law firms' practice. This would include ensuring that incorporated firms put in place management systems that are appropriate and ensure that professional obligations are met.<sup>10 11</sup>

#### **(b) Concerns about ABSs**

Concerns about ABSs generally focus on three issues:

- Core values of the legal profession
- Conflicts of Duty
- Quality of Service

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2007/29/notes/division/7/5/1>

<sup>10</sup> Parker, Christine: *Peering Over the Ethical Precipice: Incorporation, Listing and the Ethical Responsibilities of Law Firms* Melbourne Law School Legal Studies Research Paper no. 339, University of Melbourne April, 2008;

<sup>11</sup> Parker, Christine: *Law Firms Incorporated: How Incorporation Could and Should Make Firms More Ethically Responsible* University of Queensland Law Journal, Vol. 23, No. 2, pp. 347-380, 2004

# 1. Effects on Core Values of the Legal Profession

Opponents of ABSs have raised a number of concerns about the effect of new business structures. These are based primarily on the effect that ABSs may have on the core values of the legal profession. It was these concerns that brought the issue to the attention of the Committee in the first place, which prompted the Committee to recommend that an early consideration be given to the issue, rather than an after-the-event-occurs “catching up.”

The Council of the Bars and Law Societies of Europe (“CCBE”) has expressed concern about ABSs. It has questioned whether any safeguards other than an outright ban are enough.<sup>12</sup> It has also been quite outspoken on the dangers that ABSs pose to the core values of the legal profession. In fact, in its response to the Legal Services Board’s 2009 consultation paper on ABSs, the CCBE said that it would advise, if the question were asked, “not to go ahead with the ABS project.”<sup>13</sup>

The CCBE notes that common “core values” of the legal profession protect the client’s interests while at the same time guarantee the proper administration of justice. These core values include lawyer independence, client confidentiality, and the avoidance of any conflict of interest. The CCBE states that while lawyers have a need to make a profit on the provision of their services, lawyers (like other professionals) are presumed to operate their law firm

not with a purely economic objective, but also from a professional perspective. Their private interest concerned with making a profit is thus tempered by their training, by their professional experience, and by the responsibility which they owe, given the fact that any breach of the legal rules of professional conduct undermines not only the value of their investment but also their own professional existence.

It seems to us evident that non-lawyers who invest their money in ABSs [presumably as investors or as non-lawyer owners] can neither be expected to be in that situation, nor can they be expected to refrain from the legitimate demand to influence the firm’s policies and to seek the economically appropriate return on investment.<sup>14</sup>

In its conclusion, the CCBE said:

We see the lawyer’s duties to maintain independence, avoid conflicts of interest, and to respect client confidentiality endangered if non-lawyers are allowed a significant degree of control over the affairs of the firm. ...

Non-lawyers, who do not practice as regulated professionals themselves, constitute risks to clients and to the due administration of justice. The public’s perception of their participation as investors... could compromise the integrity of the business structure as a whole...

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<sup>12</sup> Council of Bars and Law Societies of Europe: CCBE Position on Non-Lawyer Owned Firms, June 2005

<sup>13</sup> Council of Bars and Law Societies of Europe: CCBE Response to the Solicitors Regulation Authority’s Consultation on New Forms of Practice and Regulation for Alternative Business Structures, September 4, 2009

<sup>14</sup> *ibid*

Lawyers in most jurisdictions are obliged to accept instructions that, from a purely economic point of view, are not profitable e.g. legal aid. The client needs to be confident that its case, even under these circumstances, is given the necessary attention. Where mere economic aspects seem to prevail, doubts will arise whether the defence of the client's rights is taken more seriously than other interests, even where the regulation stipulates that the company's duty to the court will prevail over all other duties, and the duties to its clients will prevail over the duty to shareholders.<sup>15</sup>

When examining issues concerning publicly-traded law firms in 2004, the Law Society of Upper Canada quoted from the Final Report of the Working Group on Multi-Discipline Partnerships, September 25, 1998 concerning the need for lawyer's independence:

Independence requires for its efficacy untrammelled freedom on the part of the lawyer to interact with, for and on behalf of the client. Questions necessarily arise as to whether any such environment could be maintained where the lawyer is but a small part of a larger commercial enterprise, full service in nature, in which inter-professional dependencies are vital to its well-being. Is the lawyer's practical freedom to react in the best interests of the client not likely to be compromised in these circumstances, more so where the enterprise is controlled by non-lawyers?<sup>16</sup>

Some concern has also been raised about the potential for dual or even conflicting regulation in the case of publicly listed firms. While law societies would be expected to administer and enforce professional duties (including financial accounting) and ensure competence in connection with the provision of legal services, securities commissions have strict regulatory and enforcement regimes over public companies. For example, would securities commissions need to access confidential client information to enforce their regulatory and public interest protection requirements?

## 2. Conflicts of Duties

"Conflicts of Duties" has been raised frequently as a concern with ABSs, particularly in the publicly-traded-shares model of ABS. A lawyer's primary duty is to the court, with a very close secondary duty to the client. The duty of a director of a company, however, is to act "honestly in good faith in the best interest of the company." Shareholders of the company are entitled to rely on the directors to do so, and have rights of action where they do not. It is not difficult to envisage circumstances where lawyers of a publicly-listed company could find their obligations to the court or their client to conflict with corporate obligations and shareholder interests. The Committee notes that this conflict may already exist with in-house counsel who are also directors, but that conflict may still be capable of resolution in extreme circumstances through the resignation of counsel. Could that be done in a publicly-traded firm in the same way?

Slater & Gordon's Prospectus notes that lawyers have a primary duty to the courts and a secondary duty to their clients, which duties are paramount given the nature of the business of the Company. It continues: "[t]here could be circumstances in which the

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<sup>15</sup> *Ibid*

<sup>16</sup> See footnote 1. Quote appears in para 77.

lawyers of Slater & Gordon are required to act in accordance with these duties and against the interests of shareholders or the short-term profitability of the company.”<sup>17</sup>

The conflict of duties is therefore a concern of enough severity to warrant specific disclosure as a “risk” to investment under a prospectus. The Slater & Gordon Prospectus deals with the issue by advising of the risk to alert investors. The Committee has wondered, however, (without seeking to legally determine) whether a company can purport to disengage a statutory and common law duty owed by directors to the company, under which all directors must act, by giving primacy to a professional ethical obligation arising out of the nature of business conducted by the company.

### 3. Quality of Service

The debate about ABSs has also raised concerns about the quality of service and advice that may be offered through them.<sup>18</sup> How the law applies to the particular needs of a client can vary considerably depending on the circumstances presented by the client. A move toward commoditization, which has been suggested as likely on some models of ABSs – particularly the “Tesco-law” model - would apply a more basic “one-size-fits-all approach” that may not in fact meet the need of the consumer. While the cost to obtain the advice may well be cheaper, the actual advice received may not meet the client’s needs. Moreover, the business imperative to address the cost of delivery could, some have suggested, reduce the time the lawyer is prepared or able to give to the client to explain the advice offered.

## IV. **Discussion**

### 1. What is the effect of ABSs on the legal profession

There are clearly a number of possible benefits that could be realized through the adoption of ABS structures. Any innovations that improve access to legal services or present opportunities to increase the ethical or professional responsibilities of the deliverers of legal services cannot be ignored and need to be considered seriously.

However, there are also a number of concerns that need to be taken into account when determining whether ABSs should be permitted. Concerns about quality of services and effects on the core values of and protections offered by the legal profession are not to be lightly dismissed.

The Committee has had an opportunity to discuss and consider the benefits and concerns that ABSs raise. As with any “new direction,” understanding the ramifications of such models is fraught with difficulties. Moreover, while the legal profession is generally quite conservative and may be less inclined to jump into a new venture, the business community is a much different beast, more inclined to accept risk if a reasonable business model and plan can be devised. Consequently, if ABSs are permitted in Canada at some

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<sup>17</sup> Slater & Gordon Limited, Prospectus, April 13, 2007 at page 84.

<sup>18</sup> ABS drive is “threat” to quality of advice. *Gazette* [2007] 5 July

future date, the Committee is convinced that some business entity (including, possibly, law firms) will create a model that would utilize some form of ABS. Ensuring that the Law Society knew where it stood with respect to such models, together with having a clearer understanding of the effects they may have, would therefore be highly advisable in order, with confidence, to ensure that it is able to protect the public interest in the administration of justice properly with regard to regulations addressing the issue.

No independent analysis of the public interest risks and benefits appears to have taken place in England. The English government seems to have been prepared to take a leap of faith into ABSs and to bring the profession along with it. Consumer groups in the United Kingdom advocated for the creation of ABSs, and the Law Society of England and Wales has supported the introduction of ABSs for almost a decade.

The Law Society of Scotland, on the other hand, engaged in a consultation from which it made a recommendation endorsing ABSs in principle. Ultimately, however, a very acrimonious debate grew within the profession about ABSs and the Law Society's role. The debate was ultimately resolved – at least for present purposes – when a compromise was reached requiring majority ownership of an ABS to be retained by legal professionals. However, the Scottish example shows the dangers of the regulator being, perhaps, somewhat underprepared on the issue and not understanding the perspectives of all interested parties.

As noted by the Legal Services Board in England<sup>19</sup> the safeguards that the LSB considers are “inherent in ABS are viewed skeptically by several other national bars in Europe who may choose to prohibit ABS in some respects because of the perceived loss of independence of lawyers who work within such ABS.” Germany and Austria have expressed concerns that the opening up of law firms to capital would be contrary to basic principles of the profession in other European member states,<sup>20</sup> and as stated above, the CCBE has expressed concerns. Questions were raised as to whether firms that accepted external capital would be allowed to trade in European countries. The Committee understands that the ABS approach in England continues to be viewed with caution in Europe on the belief that core values of the profession may be compromised to an unacceptable degree.

## 2. Will ABSs really be a benefit to the delivery of and access to legal services?

The Committee considered a number of points in the discussion of benefits and concerns about ABSs. It has noted that advocates for ABSs claim that an improvement to the access to legal services will be realised through ABSs, but believes that the claims that are made are largely, if not completely, untested, such as the presumption that ABSs will improve consumer confidence in the delivery of legal services by having well-known non-legal brands entering the legal market and having a strong incentive to maintain their reputation when providing legal services.<sup>21</sup> It notes that the potential benefits of ABSs

<sup>19</sup> Footnote 8 at para. 329

<sup>20</sup> “City firms face global Clementi Backlash” *Gazette* [2005] 26 May.

<sup>21</sup> See for example, “New Bedfellows,” *Gazette* [2005] 24 November

listed by the Explanatory Notes to the *Legal Services Act 2007* are stated in conditional language, with many “coulds,” “mays” and “mights.”

Some empirical evidence that ABSs would improve the delivery of and access to legal services would have been much appreciated. On the basis of what it has reviewed, the Committee is somewhat skeptical that the introduction of ABSs will lead to a marked improvement in the delivery of or access to legal services.

a. Access to Capital Markets

Firstly, concerning access to finance and the capital markets through the sale of shares to the public and the listing of shares on securities exchanges, the Committee notes that the most likely candidates to utilize this model would be large firms. They would be perceived to have the most value, and it would be expected that they would generate the most interest by investors. However, access to capital is not currently a difficult problem for large firms. It is true that such access is generally reliant on debt equity or partnership contributions or both, but the Committee does not understand that large firms, at least in Canada, have suffered by not being able to access capital when needed. The Committee notes that similar comments are noted in a recent Report prepared for the Legal Services Board in England and Wales, which states:

...large firms believed that they could easily fund their business plans through retained profits or through borrowing directly from banks if they had a particular need. There was considerable reluctance among firms to seek external funding that would involve partners ceding control of the firm to external investors. Furthermore, interviewees generally saw little advantage of seeking external investment for which a proportion of the future profit stream would have to be paid, preferring instead to maintain full ownership of that profit stream.<sup>22</sup>

The ability to finance through a public equity offering would simply be to create a new method of accessing capital. The Committee is not entirely convinced that the ability to access capital in this manner would improve access to or the delivery of legal services any more than current avenues available to access capital. It is worth noting that a one-half of the proceeds raised by Slater & Gordon represented the sell down of shares by Vendor shareholders to be paid to the Vendor shareholders.

The Committee does recognize that access to capital through the markets might allow partners to convert debt into capital equity. It is unclear to the Committee, however, how this would benefit consumers, unless it could be established that there was a more direct link between investment of capital into a law firm and delivery of legal services. If that could be established, and if it was more likely that law firms would access capital through the markets than through debt financing, the Committee would be less skeptical. The fact that so few firms have accessed the capital markets in Australia suggests otherwise. The Committee believes it is equally likely that partners would not be interested in sharing profits with outside investors unless it was not possible to raise capital in any other way,

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<sup>22</sup> *Benchmarking the Supply of Legal Services by City Law Firms* A Report prepared by Charles River Associates for the Legal Services Board, August 2011, page 24.

and to date this has not appeared to be the case. This model might be of interest to partners nearing retirement, as there is a possibility that publicly traded shares in a law firm would be worth more than the value of a privately held partnership interest<sup>23</sup>, but the Committee does not believe that increasing the value of a lawyer's retirement fund is proof of an ability to improve the access to legal services.

On the other hand, the Committee recognizes that some commentators and proponents of ABSs adamantly assert that access to capital, particularly if invested in firm infrastructure, allows for the development of innovative ways to improve a business's delivery of its services. A New York lawyer, quoted in an article in the Canadian Bar Association's *National Magazine*, noted that "all ways of growing law firms are increasingly capital-intensive. I think it's a failure of imagination that law firms couldn't do more if they had real access to capital."<sup>24</sup> The Committee does not want to discount the ability of creative minds to develop innovative ways to improve the delivery of legal services in an effort to reduce their costs. However, as stated above, there are already ways to access capital, so these innovations may not necessarily be dependent upon access to the capital markets.

#### b. Third Party Delivery of Legal Services

The Committee gave a good deal of thought to the ABS model by which legal services might be provided through non-lawyer businesses hiring lawyers to provide legal services to customers.

The Committee is less skeptical that this model might improve access to legal services, although again, it would be more comforted if there was some empirical evidence to support any assertions to this end. However, the Committee recognizes that attendance at a law firm – whatever its size – can be a daunting prospect for many people. If the ability to approach lawyers through a business with which a consumer was more familiar would lead individuals in need of legal advice to seek it more frequently and in a more timely manner, the Committee could see that there would be a benefit to the overall access to legal services. Advertising and "brand recognition" might assist consumers/clients to compare prices and understand how to shop around to obtain the services they seek. It will be interesting to see whether access to legal services improves through the recent agreement in England between the "Quality Solicitors" group and WHSmith Books, as it may be a precursor to the development of a true ABS model. However, the Committee wondered if the better use of the advertising rules in British Columbia, which now allow comparative advertising by lawyers, would also improve the client's interests and access to services. In other words, perhaps the solution lies in a better use of the tools that already exist rather than the development of a new model.

While recognizing this model might generate some benefits, the Committee is still cautious. The corporate structure of the business through which the legal services are offered may limit the types of services or clients that the lawyer is allowed to offer or

<sup>23</sup> See *Who owns the firm?* CBA National Magazine, Sept, 2008, page 19

<sup>24</sup> *Ibid*, pg 21

represent. The prospects for the offering of *pro bono* legal services might be remote, for example, unless such services were mandated by the Law Society. However, these sorts of concerns also exist in some law firms, so it is possible that an ABS model to this end would be no worse.

From its review of the literature on this subject, the Committee is also concerned that this model might be more likely to deliver legal services capable of being commoditized, such as real estate transactions, wills, and incorporations, as they might be viewed as being the most cost-effective services to offer. However, there is currently less of a general problem in the delivery of or access to these sorts of legal services. The Committee is much less confident that businesses with a market-wide reputation to maintain would be interested in providing legal services in areas where access is perceived to be more difficult (such as family law, for example), because the opposing party may also be a customer of the business. Acting against an individual in an acrimonious legal matter would not be expected to be a good business model to retain the continued business of that party.

### 3. Will ABSs negatively affect lawyer independence or self-regulation?

There is a danger that lawyer independence and self-regulation could be affected by ABSs, because the more that lawyers engage in business activities with other professionals or with non-lawyer investors, the more that the line between business and the practice of law will blur. If core values of the legal profession are not addressed or adhered to through regulations governing ABSs (should ABSs be permitted), the Committee believes that independence and self-regulation will be affected. A deterioration of lawyer independence, in particular, could have serious consequences on an important public right and safeguard of the rule of law.

The danger of this line blurring exists, however, even without the development of ABSs, and must be addressed by the profession. As has been pointed out by one commentator on this subject:

[t]he incorporation and listing of law firms accentuate and bring into focus certain ethical issues, but it is not incorporation and listing as such that are the main thing we should worry about. Law is already a business as well as a profession and has been so for a very long time. The ethical issues that come with incorporation and listing are already with us at least among the largest firms and those that aspire to them.<sup>25</sup>

This danger is recognized by the Supreme Court of Canada in the quote from *R. v. Neil* in the introduction to this paper. In Canada, legal principles must taking precedence over business development strategies.

That being said however, the Committee is not convinced that the form through which legal services are provided would necessarily affect the ability of lawyers to act independently or to regulate themselves, provided that core values of the legal profession

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<sup>25</sup> See Parker, footnote 11 above at page 29.



are protected and regulated appropriately and that the public interest is always given primacy in regulation or the development of business models. Proper education about the role of a lawyer in society, combined with the effective regulation of legal services, is necessary to ensure that the line between professionalism and business does not get obliterated. The Committee notes with interest that a similar caution was given and a similar conclusion was reached in 1990 by the Planning Committee's Multi-Disciplinary Practice Subcommittee.<sup>26</sup>

## V. Current Considerations by the American Bar Association Concerning ABSs

As mentioned above, the American Bar Association distributed in April, 2011 an "Issues Paper Concerning Alternative Business Structures."<sup>27</sup> The paper examines ABSs, outlines the history of the consideration of ABSs by the American Bar Association, explains developments in other jurisdictions, and sets out some possible approaches for consideration. ABSs have not been permitted by ABA rules and, more importantly, are not permitted in any U.S. jurisdiction except the District of Columbia (which allows some non-lawyer ownership in law firms).

The topic was debated by the ABA's Commission on Legal Ethics 20/20 in August 2011 at the American Bar Association Conference in Toronto. There was, by all reports, a lively debate on the topic. Ultimately, the Commission voted to circulate a proposed rule change that would allow law firms to include non-lawyers in *minority* ownership roles. In addition, the proposal includes a recommendation that any non-lawyer owner must demonstrate good character and be otherwise fit to hold a stake in an entity that provides legal services.<sup>28</sup>

A draft revised proposal to amend Model Rule of Professional Conduct 5.4 (the Model Rule that governs lawyers' professional independence) is to be prepared and circulated in September 2011 for comment, and the final proposal is to be submitted for consideration by the House of Delegates at the ABA Annual Meeting in August 2012.

On the basis of this outcome, the development of ABSs in the United States may well be destined for a markedly different outcome than has been the case in England and Wales and Australia. How the ultimate decision by the ABA may affect the development of ABSs in other jurisdictions, or how the tension between directions might resolve itself internationally, is an open question, but one that may have a considerable effect on whether ABSs have much relevance in Canada. The debate by the ABA is therefore very much worth following, and making a final decision on ABSs should perhaps await a final resolution of that debate.

<sup>26</sup> *Multi-Disciplinary Practice* A Report prepared for the Planning Committee of the Law Society of British Columbia by the Multi-Disciplinary Practice Subcommittee, October 4, 1990.

<sup>27</sup> See footnote 3, above.

<sup>28</sup> For a report on the meeting, see <http://www.bna.com/ethics-2020-commission-n12884903114/>

## **VI. Balancing the Perceived Benefits Against the Alleged Harm**

As explained in this Report, the perceived benefits of ABSs are in improvements to the access to and delivery of legal services. While untested, these benefits, if capable of being realized, are valuable. They are benefits that, in order to discharge its public interest mandate, the Law Society would need to consider. The alleged harm that ABSs may cause is their perceived effects on the core values of the legal profession and on the quality of advice that consumers may receive.

The Committee believes that it would be possible to address the alleged harm through appropriate regulations, if the perceived benefits are considered worthwhile. The English model contemplates – indeed, requires – regulation, and the delay to date in the implementation of ABSs in England has been in order to get a regulatory model in place. Certainly, the Committee considers that the unregulated provision of ABSs would likely be disastrous. The unregulated – or too lightly regulated – expansion of the financial services industry is widely blamed for the 2008 recession. If ABSs are permitted, even jurisdictions that seem destined to embrace them have concluded that some form of regulation would be necessary. The delay beyond the initially announced date for full implementation of ABSs in England and Wales suggests that identifying all the regulatory parameters and requirements is not simple.

One issue concerning regulation that would need to be addressed at the outset is who would regulate the ABS? In England, with many different regulators of the legal profession, there has been a degree of jockeying between regulators in deciding whether to seek approval from the Legal Services Board to regulate ABSs. The Committee wonders if competition between regulatory bodies in this regard might at some point lead to differing regulatory mechanisms – some seeking perhaps to be more “light touch” than others in order to entice ABSs to seek regulation through a particular regulator – which may affect regulatory standards. Given the structure of the legal profession in Canada, this may be less of an issue, but if ownership of a law firm is opened to individuals other than lawyers, would other regulators (perhaps the Society of Notaries Public, for example), seek to regulate the entity?

This Report does not intend to draft a regulatory regime for ABSs. However, the following matters appear to factor in places where regulation is being considered (such as England), and merit being noted:

### **1. General requirements**<sup>29</sup>

- Regulations that would require the protection of the core values of the legal profession and the quality of service expected of competent legal professionals;
- “Fitness to own” requirements, akin to those required of non-lawyer partners in a MDP;

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<sup>29</sup> The requirements listed draw on suggestions from the 2004 Clementi Report and the Report of the Law Society of Scotland *Delivering Legal Services: Policy Paper on Alternative Business Structures*

- Indemnification by outside owners in respect of loss of clients' money caused by an ABS;
- Requirements for a designated lawyer to be Head of Legal Practice within an ABS;
- Clear regulations concerning conflicts of interest, such as rules prohibiting an ABS representing a client where an outside owner has an adverse interest in the legal outcome;
- A prohibition on outside owners being able to interfere in individual client cases or have access to client files or other information about individual cases;
- A consideration whether regulatory requirements should be imposed against the *lawyers* providing legal services, or against the ABS itself. In other words, should the regulation be of the ABS directly, or indirectly through the lawyers practising in them?

## 2. Level of Outside Ownership

How much outside ownership should be permitted? The English model seems to contemplate unlimited ownership of an ABS by non-lawyers. On the other hand, the model that seems to have been approved in Scotland (after a very acrimonious debate) would require the majority of the ownership of the ABS to be held by legal professionals. It seems the direction currently considered by the American Bar Association is similar to that in Scotland.

The *form* of participation of outside ownership could be considered, as well. For example the *Legal Profession Act* permits only lawyers to own voting shares in a law corporation. Non-lawyer members of the law corporation (limited by statute to a limited group of related persons) may only own non-voting shares. Consideration could be given to whether "outside" investors in an ABS should be limited to non-voting membership. Such a limitation would, of course, be expected to reduce the potential value of the shares.

## 3. Disclosure Requirements

If a public offering of shares in a ABS is permitted, some consideration should be given to what sort of disclosure requirements might be required in the Prospectus. The Slater & Gordon prospectus does address risk and specifically identifies the duty to the court and clients as superseding a duty to shareholders.

## VII. Recommendations

After a considerable amount of discussion, the Committee has concluded that the *form* of structure through which legal services are offered is less important than it is to ensure that the services that are offered can be properly regulated. Consequently, the Committee believes that the Law Society should not take a position against ABSs solely on the basis that they may involve outside interests of ownership of business entities that deliver legal services.

Rather, the Law Society should consider ways to encourage innovations in providing legal services, provided that:

1. core values of the legal profession are protected, and
2. access to legal services can be improved through the new forms created.

If ABSs were permitted, and their only demonstrable effect was to enrich the legal profession or those who invested in it, the image of the profession and the Law Society would be tarnished. Consequently, some considerable caution needs to be exercised to ensure that there is a public value in ABSs (such as improving access to legal services) and that valuable public protections (such as client confidentiality, an absence of conflicts of interest, and the public right to an independent lawyer) that currently exist are not lost.

The Committee believes that some outside ownership involvement in law firms, provided it is properly regulated and lawyers remain in control of the provision of legal services offered by the ABS (subject to reasonable limits placed on the outside ownership, provided these are not contrary to core values of the profession), could conceivably benefit the consumers of legal services and still protect the public interest. It is possible, although speculative, that access to such services would be easier and less “intimidating” for the client, and that the services may be able to be offered at a lower price. The Committee is not fully convinced that the types of legal services that such an ABS would want to offer, however, would necessarily be services that the public is currently having difficulty accessing, but that remains to be seen.

On the other hand, the Committee is not convinced that the public sale, through securities markets, of shares in a law firm is warranted, as it is not convinced that the benefits to users of legal services outweigh the risks identified above.

However, even though it expresses cautious support for ABSs, the Committee believes that the benefits that have been stated by ABS proponents (including the English government) are at best very speculative and are based more on surmise than actual evidence.

Therefore, the Committee recommends that the Law Society give serious consideration to ABSs. However, before more work is done, the Committee recommends waiting to see if the case for improving access to legal services through ABSs can be more clearly

demonstrated. The Law Society should await the outcome of the debate currently underway through the American Bar Association, should follow what happens in England and Wales once ABSs come into being, and should continue to monitor the situation in Australia. In many ways, England could provide some direct evidence about whether access to legal services can be improved through ABSs as well as giving an indication about whether they can be effectively regulated.

The Committee therefore recommends against developing *specific* proposals for ABSs at this time.

If there is an appetite in the future to consider permitting properly regulated ABSs in British Columbia, the Committee believes that such regulatory models must:

- protect and promote the public interest above the interest of lawyers
- support the rule of law and independence of the legal profession
- ensure protection of the core values of the legal profession.

Should the issue be considered in the future, the Committee recommends a wider consultation within the legal profession (including users of legal services) and business community in British Columbia. A series of options could be developed at that time for the purposes of such a consultation, including:

- No ABSs beyond law corporations and MDPs
- Limited forms of ABSs, such as non-lawyer owned corporations providing legal services to third parties
  - Unlimited outside ownership models
  - Outside ownership limited to 49%
- Unlimited forms of ABSs.

## **VIII. Conclusion**

There are many calls for significant changes in the way that legal services are offered. The current model does not seem to be working in a way that allows people who need to access legal advice to obtain it in an affordable way. There will be considerable pressure to adopt new models for the delivery of legal services, and the Law Society as the regulator of lawyers and the body charged with the responsibility of protecting the public interest in the administration of justice in British Columbia must be prepared to give them serious consideration. However, core values of the legal profession and important rights that clients who need legal advice are entitled to expect must not be lost in a rush to adopt new ideas simply because business and competition models argue in their favour. Many

of the protections that the legal profession offers clients have been obtained at significant cost over the centuries and to abandon them lightly would be undesirable for all concerned. However, where benefits to the consumer can be attained with proper regulation to ensure that professional values are not lost, the Law Society must develop proper regulation to allow for changes to the profession through which improved access to legal services can be attained.

MDL/al

2011-09-20 Report Independence Alternative Business Structures (6)



# Memo

To: Benchers  
From: Executive Committee  
Date: October 13, 2011  
Subject: 2012 - 2014 Draft Strategic Plan

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Benchers will recall that since July of this year, we have been discussing and developing our next three year strategic plan. The Benchers have heard from the Advisory Committees, made individual suggestions and considered issues and initiatives on the current strategic plan. The Benchers have also provided valuable insight into their priorities for the strategic plan with the “sticky” exercise at the conclusion of the last Benchers meeting.

At the Executive Committee meeting on September 29<sup>th</sup>, the Committee reviewed the results of the “sticky” priorities exercise and also considered information from staff about the feasibility of all of the initiatives identified through the strategic planning process. A copy of this information is attached.

Based on this information, the Committee mapped each initiative into one of four quadrants based on the relative importance as identified by the Benchers and the relative feasibility as assessed by the staff. An example of the quadrant map is attached.

In considering each initiative, the Committee also brought its own understanding of the context which we expect to encounter over the next three years to the assessment of where the initiative ought to sit in relation to the other initiatives. For example, while developing a model of independent oversight was a lower priority for the Benchers, the Committee recognized that the Federation is looking to the Law Society to provide a model for consideration by all law societies.

The draft 2012 – 2014 Strategic Plan is the result of all the thinking, discussion and consideration that has gone into the process of identifying the strategic direction for the Law Society over the next three years. It will be noted that the goals have been reduced from four to three. After hearing and considering the discussion at the September Benchers meeting, it makes sense to consolidate the third goal<sup>1</sup> with the first goal<sup>2</sup>.

The Executive Committee believes that the attached draft 2012 – 2014 Strategic Plan reflects a fair consensus about the importance and feasibility of the initiatives while signaling to others the

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<sup>1</sup> Establish appropriate standards for admission to and practice in the legal profession and ensure that programs exist to aid applicants and legal professionals to meet those standards

<sup>2</sup> Be an innovative and effective professional regulatory body

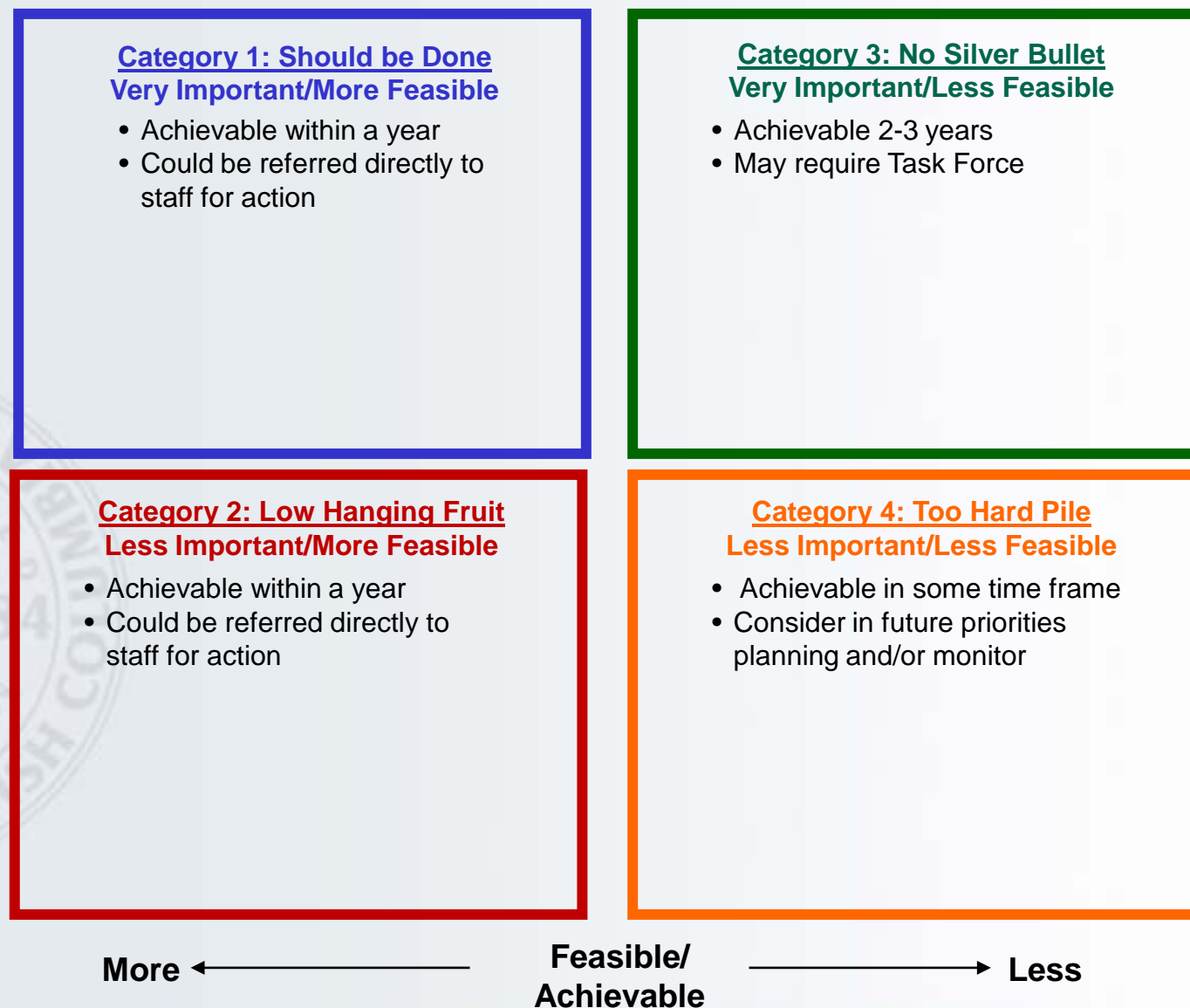
issues and concerns the Law Society hopes to address during the term of the plan. The draft is presented for discussion and comment by the Benchers with the expectation that the Committee will take any feedback into account in presenting a final strategic plan for approval at the December Bencher meeting.



Initiative	Votes	Importance	Cost	Staff	Duration	Likelihood of Success
1. Examine issues of governance generally and specifically consider evaluation of Benchers and performance feedback	23	High	High	Low	Multi-Year	High
2. Identify ways to improve affordability of legal services	17	High	Medium	High	Multi-Year	Medium
3. Develop programs to address changing demographics of the legal profession and its effects, particularly in rural communities	16	High	High	High	Multi-Year	Medium
4. Examine whether the Law Society should regulate lawyers or legal service providers	15	High	High	High	Multi-Year	High
5. Consider ways to improve regulatory tools	14	High	Low	High	Multi-year	High
6. Examine the relationship between the Law Society as regulator of versus the Law Society as insurer of lawyers	12	High	Medium	High	Multi-Year	High
7. Continued work on initiatives raised by recommendations by the Delivery of Legal Services Task Force	11	High	Low	Medium	1 year or less	Medium
8. Implement the Justicia program (assuming a decision is made in the fall of 2011 that it is feasible to do so)	11	High	Medium	High	Multi-Year	High
9. Conduct focused research into the economics of the legal profession to obtain good data to inform future decisions	10	High	Low	Low	Multi-Year	Medium
10. Consider ways to improve uptake of lawyer wellness programs	10	High	Low	Low	1 year or less	High
11. Identify ways to enhance Bencher diversity	9	Medium	Low	Low	Multi-Year	Medium
12. Examine the rationale and purpose of the Admission program	9	Medium	Medium	High	Multi-Year	High
13. Revise APD to gather demographic information to inform regulatory and policy initiatives	8	Medium	Low	Low	1 year or less	High
14. Build on relationship with Ministry of Attorney General and other government ministries	8	Medium	Medium	Low	Multi-Year	Medium
15. Identify non-governmental stakeholders and establish relationships to better understand public perspective and collaborate on mutual interests	8	Medium	Medium	High	Multi-Year	Medium
16. Examine whether the Law Society should regulate law firms	7	Medium	Medium	Medium	Multi-Year	High
17. Work with government to better align shared objectives	7	Medium	Medium	Medium	Multi-Year	Medium
18. Aboriginal mentoring program (currently under development with funding from Law Foundation)	7	Medium	High	Medium	Multi-Year	Medium
19. Develop education programs about the new Code of Conduct	7	Medium	Low	Low	1 year or less	High
20. Identify methods of communicating the importance of rule of law and role of Law Society through media	7	Medium	Low	Low	Multi-Year	Low
21. Develop programs to improve articling opportunities in rural communities	6	Medium	High	High	Multi-Year	Medium
22. Consider qualification standards or requirements for differing types of legal services	4	Medium	Medium	High	Multi-Year	Medium
23. Develop a full time staff position dedicated to aboriginal issues within the Law Society	4	Medium	High	Medium	1 year or less	High
24. Collaboration with Ministry of Education to include rule of law and role of Law Society in high school curriculum	4	Medium	Medium	Medium	Multi-Year	Low
25. Work on national admissions standards	3	Low	Low	Low	Multi-Year	High
26. Identify and examine issues particular to in-house counsel	2	Low	Low	Medium	Multi-Year	Medium
27. Identify the feasibility of commissioning academic writing (Study to analyze the benefits of the public right to independent lawyer.)	2	Low	Medium	Low	1 year or less	Medium
28. Develop model of independent oversight	1	Low	Medium	Medium	Multi-Year	Medium
29. Facilitate lawyer participation in Law Society initiatives to enhance access	1	Low	Low	Medium	Multi-Year	Medium
30. Assess feasibility of developing practice skills through law school education	1	Low	Low	Medium	1 year or less	High
31. Develop statutory or regulatory improvements for admissions and discipline (includes the outstanding legislative "ask")	0	Low	Low	High	Multi-year	Medium
32. Review effectiveness of CPD requirements	0	Low	High	Medium	1 year or less	Low
33. Review relationship with the Continuing Legal Education Society	0	Low	Low	Low	Multi-year	Medium
34. Develop a process for providing constructive comments on the effects of legislation on the public interest in the administration of justice	0	Low	Low	Low	1 year or less	Low



# Framework for Strategic Priorities



The Law Society  
of British Columbia



## 2012 – 2014 Strategic Plan

For: The Benchers

Date: October 21, 2011

Purpose of Report: *Discussion*

Prepared on behalf of the Executive Committee

## INTRODUCTION

Section 3 of the *Legal Profession Act* provides that the mandate of the Law Society is to uphold and protect the public interest in the administration of justice by

- (i) preserving and protecting the rights and freedoms of all persons,
- (ii) ensuring the independence, integrity and honour of its members, and
- (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and

In order to develop strategies to discharge the Law Society's 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 to pursue, and a number of strategies and initiatives to advance those goals over the next three years. In identifying these goals, strategies and initiatives, 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.

The goals, strategies and initiatives set out in the strategic plan are in addition to the overall operations 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. However, in order to ensure that both the attention of the Benchers and policy resources of the Law Society are focused on goals that advance the mandate of the Law Society and enjoy a consensus among the Benchers, the Benchers have adopted a strategic plan processes which has resulted in this strategic plan. The plan will be reviewed on an annual basis during its three year term to ensure that the strategies and initiatives remain appropriate and to address any additional strategies or initiatives that may be necessary in light of changing circumstances.

## LAW SOCIETY GOALS

1. The Law Society is a more innovative and effective professional regulatory body.
2. The public has better access to legal services.
3. The public has greater confidence in the administration of justice and the rule of law.

## GOAL 1: The Law Society is a more innovative and effective professional regulatory body.

The Law Society recognizes that it is important to encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body. The following strategies and initiatives will ensure that the Law Society continues to improve in delivering on its regulatory responsibilities.

### Strategy 1 – 1

Regulate the provision of legal services effectively and in the public interest.

#### **Initiative 1–1(a)**

Examine whether the Law Society should regulate just lawyers or all legal service providers.

#### **Initiative 1-1(b)**

Consider ways to improve regulatory tools and specifically look at whether the Law Society should regulate law firms.

#### **Initiative 1-1(c)**

Examine the relationship between Law Society as regulator of versus Law Society as insurer of lawyers.

### Strategy 1 - 2

Identify and develop processes to ensure continued good governance.

#### **Initiative 1–2(a)**

Examine issues of governance, including:

- Bencher diversity;

- independent oversight of the Law Society;
- effective evaluation of bench performance and feedback.

### Strategy 1–3

Ensure that programs are available to assist lawyers with regulatory and workplace changes.

#### **Initiative 1-3(a)**

Improve uptake of Lawyer Wellness Programs.

#### **Initiative 1-3(b)**

Work with CPD Providers to develop programs about new Code of Conduct.

### Strategy 1– 4

Ensure that admission processes are appropriate and relevant.

#### **Initiative 1–4(a)**

Work on National Admission Standards while considering the rationale and purpose of the overall Admission Program.

#### **Initiative 1–4(b)**

Consider qualification standards or requirements for differing types of legal services (presumes Initiative 3-5 of Current plan results in such a recommendation coming forward).

## GOAL 2: The public has better access to legal services.

The Law Society recognizes that one of the most significant challenges in any civil society is ensuring that the public has adequate access to legal advice and services. The Law Society has identified a number of strategies to respond to this challenge over the next three years.

### Strategy 2-1

Increase the availability of legal service providers.

#### **Initiative 2-1(a)**

Consider ways to improve affordability of legal services:

- continued work on initiatives raised by recommendations by the Delivery of Legal Services Task Force;
- identify and consider new initiatives for improved access to legal services (such as the Manitoba model).

#### **Initiative 2-1(b)**

Support and retain Aboriginal and women lawyers:

- implement the Justicia, or similar, program; and
- Aboriginal Mentoring Program (currently under development with funding from the Law Foundation).

### Strategy 2-2

Improve Access to Justice in rural communities.

#### **Initiative 2-2(a)**

Develop ways to address changing demographics of the legal profession and its effects, particularly in rural communities.



**Initiative 2–2(b)**

Develop ways to improve articling opportunities in rural communities.

**Strategy 2–3**

Understand the economics of the market for legal services in British Columbia.

**Initiative 2–3(a)**

Work collaboratively with other stakeholders in the legal community to identify questions that need to be answered and engage, with others, in focused research.

GOAL 3: The public has greater confidence in the administration of justice and the rule of law.

The rule of law, buttressed by an effective administration of justice, is an essential underpinning of a civil society. This underpinning requires public confidence in both the rule of law and the administration of justice to be effective. The Law Society recognizes the importance working with others to educate the public about the rule of law, the role of the Law Society in the justice system and the fundamental importance of the administration of justice.

### Strategy 3-1

Develop broader and more meaningful relationships with stakeholders.

#### **Initiative 3-1(a)**

Identify, establish and build on relationships with the Ministry of Attorney General and other government ministries, the Courts, and non-governmental stakeholders.

### Strategy 3-2

Educate the public and lawyers about the importance of the rule of law and the role of the Law Society.

#### **Initiative 3-2(a)**

Identify methods of communicating about the rule of law and the role of the Law Society through media.

# Memo

To: The Benchers  
From: CLBC Board of Directors  
Date: October 12, 2011  
Subject: Courthouse Libraries BC Governance Planning: for Bencher Review and Input

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## **Request of the Benchers**

The Courthouse Libraries BC (CLBC) Board requests Bencher input on the proposed changes to the constitution and by-laws, in advance of a special CLBC members' meeting at which CLBC members will be asked to vote on the proposed changes.

## **Background**

The CLBC Board identified a governance review as a priority in 2010 given changes in best practices in the not-for-profit sector. In early 2011 the Law Society and the Law Foundation established the CLBC Review Task Force, chaired by Alan Ross, to review library operations, future directions and funding models. As part of that review, the Task Force liaised with the CLBC Board on the issue of board governance.

Library services are changing dramatically as information technology reshapes our social structures. To anticipate, plan for and meet these changes within the context of enhancing access to justice, CLBC needs to become more sophisticated and systematic about arranging oversight and guidance.

## **Proposal for a Revised Governance Structure**

In keeping with the size and complexity of CLBC and the need to be flexible and able to cooperate with other organizations in the justice sector, the CLBC Board recommends the following changes as set out in the attached Constitution and By-Laws.

- Reduce the number of Directors from 12 to 7.
- Reduce the number of Society members from 10 to 3: the Law Society, the Chief Justice of BC and the Ministry of the Attorney General.
- Establish a Nominating Committee to appoint Directors to the Board.
- Develop a list of criteria of board skills/competencies.

One of the challenges of stakeholder boards is the potential for conflict between stakeholders' fiduciary duties to the board and to their constituents. A move to a smaller non-stakeholder board based on knowledge of the subject matter of the parent organization enhances the organization's ability to remain relevant to those who use the services and to remain sustainable in times of economic uncertainty and scarce resources. This model does not preclude stakeholder organizations, such as the CBA, Trial Lawyers, and public libraries among others, from

suggesting candidates for the Board of Directors to the Nominating Committee, thereby ensuring the opportunity for stakeholder engagement in the operation of CLBC.

The current justice system and related organizations are all struggling to meet their objectives with shrinking resources in a rapidly changing environment. To succeed they need nimble, proportional, accountable and skilled Directors operating in different governance models than historically.

### **Best Practices in Governance for Non-Profit Boards**

A working definition of governance is “the processes, structures and organizational traditions that determine how power is exercised, how stakeholders have their say, how decisions are taken and how decision-makers are held to account.” The work of nonprofits usually continues in spite of flawed, outdated, or ignored governance structures. However, governing boards can enhance organizational performance by understanding and undertaking the governance role in a manner suitable for their particular organization.

For example, CanLII recently moved from a stakeholder model to a nonprofit society with one member – the Federation of Law Societies, and a competency based Board of Directors chosen by an independent Nominating Committee. The number of Directors was reduced to seven, chosen according to a skills based set of metrics. The Legal Services Society has been operating with a skills based model for several years now.

### **Governance History**

The CLBC Board of Directors retained Arthur Andersen consulting in 1999 to assist in developing a strategy to meet the challenges of decreased grant funding, the impact of technology on the delivery of legal information, and the increasing need to market library services to the legal profession. This report was encouraged by the two primary funders of CLBC, namely the Law Foundation and the Law Society who were concerned about escalating costs.

In addition to recommendations on service delivery, the report recommended a review of the governance model, which resulted in changes to the Board of Directors and the mandate of CLBC.

### **Constitutional Amendments 2000**

The purpose of CLBC was amended to add service to the public to that of the judiciary and the legal profession. The number of Directors was increased by adding a second CBA appointee, an appointee from the Continuing Legal Education Society, and someone from the BC Buildings Corporation (as it then was). The latter was a crown corporation responsible for facilities management of government buildings.

### **Constitutional Amendments 2005**

Further changes were made in 2005 to limit the terms of Directors, establish standing committees and replace BC Buildings Corporation with the BC Library Association.

### **Governance Review in 2010**

In light of the ongoing challenge of migrating from print to a digital platform, the growth of CanLII as a stable information platform, and the increasing demands of the public for legal information, the Board established a Governance Committee to examine the existing model. The Governance Committee reviewed best practices for non-profit boards and made recommendations that the Board reviewed and incorporated into this report.

# THE [LAW LIBRARY] SOCIETY

## CONSTITUTION

(SOCIETY ACT, R.S.B.C. 1996, C. 433 AND AMENDMENTS THERETO)

1. The name of the Society is “The [Law Library] Society”.
2. The purposes of the Society are:
  - (a) to provide legal information services and collections for the benefit of members of the public, members of the Law Society of British Columbia, and members of the Judiciary of the Province of British Columbia;
  - (b) to assist public libraries to develop and improve public library staff knowledge of and skills in using legal information resources, and to assist in improving collections of legal information for the public;
  - (c) to develop and operate educational resources and programs designed to improve the capability of users to access, manage and research legal information;
  - (d) to engage in and promote the development of legal information resources; and
  - (e) to acquire, hold, mortgage, dispose of and otherwise deal with real and personal property for the purposes of the Society.
3. The Society shall be carried on without purpose of gain for its members, and any profits or other accretions to the Society shall be used for promoting its objects.
4. In the event of winding up or dissolution of the Society, funds and assets of the Society remaining after the satisfaction of its debts and liabilities, shall be given or transferred to such organization or organizations concerned with the some or all of the objects as this Society, as may be determined by the members of the Society at the time of winding-up or dissolution, and if effect cannot be given to the aforesaid provisions, then such funds shall be given or transferred to some other organization; provided that such organization referred to in this paragraph shall be a charitable organization, a charitable corporation, or a charitable trust recognized by the Department of National Revenue of Canada as being qualified as such under the provisions of the *Income Tax Act* of Canada from time to time in effect.
5. Clauses 3 and 4 are unalterable in accordance with Section 22 of the *Society Act*.

# THE LAW LIBRARY SOCIETY

## BYLAWS

### ARTICLE 1 MEMBERSHIP

1.1 Members. The members of the Society shall be the following persons:

1.1.1 The Law Society of British Columbia;

1.1.2 The person who is from time to time Chief Justice of British Columbia, or the Chief Justice's nominee from time to time;

1.1.3 The person who is from time to time Attorney General of the Province of British Columbia, or the Attorney General's nominee from time to time; or

1.1.4 Such other persons who from time to time apply to the Directors for membership in the Society and who are approved by the Directors and the members described in paragraphs 1.1.1 through 1.1.3 for membership.

1.2 Standing and Expulsion of Members. The standing of members of the Society and the circumstances under which they can be expelled from the Society shall be determined as follows:

1.2.1 All persons who are members of the Society by virtue of Sections 1.1.1 to 1.1.3 of these Bylaws shall be deemed to be always in good standing and none of these persons shall be expelled from the Society for any reason.

1.2.2 A person who is a member of the Society by virtue of Section 1.1.4 of these Bylaws:

(a) ceases to be a member of the Society:

- (i) by delivering his or her resignation in writing to the secretary of the Society;
- (ii) if the person is an individual, on his or her death;
- (iii) if the person is a corporation on its dissolution or winding-up;
- (iv) if such person institutes or has instituted against it any proceeding seeking: (A) to adjudicate it bankrupt or insolvent, (B) liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors including any plan of compromise or arrangement or other corporate proceeding involving or affecting its creditors, or (C) the appointment of a receiver, receiver manager, trustee, custodian or other similar official for it or for any substantial part of its properties and assets; or

- (v) on having not been a member in good standing for twelve consecutive months;
- (b) may be expelled by a special resolution of the members passed at a general meeting; and
- (c) ceases to be in good standing if such person fails to pay any fees or any debt due and owing to the Society.

## ARTICLE 2 DIRECTORS

2.1 Directors. The Board of Directors shall consist of seven directors appointed at the Society's Annual General Meeting.

2.2 Appointment. The members shall appoint the Board of Directors after taking into account the recommendations received from a nominating committee consisting of the Directors then in office or such of them as the Board shall determine or such other persons as the Board may from time to time decide (the "**Nominating Committee**"). It is understood that the Nominating Committee shall base its recommendations as to the Board on a competency matrix established by the Board from time to time.

2.3 Term of Office. Each Director shall hold office for a term of two years from the date of his or her appointment, save and except that three of the first seven Directors appointed immediately after these Bylaws come into effect shall, for their first term only, hold office for a period of one year. The determination as to who these three Directors shall be shall be made by the members after consultation with the Nominating Committee. A person may be appointed to sit on the Board for up to three consecutive terms provided, however, that in exceptional circumstances (as determined by the members, following the recommendation of the Nominating Committee) a person may be appointed to sit on the Board for one or more additional terms thereafter.

2.4 Vacancy. The office of a Director shall be automatically vacated:

2.4.1 if she or he resigns her or his office by delivering a written resignation to the President or the Secretary of the Society;

2.4.2 if she or he is found by a court of competent jurisdiction to be of unsound mind;

2.4.3 if she or he becomes bankrupt or is unable to pay her or his debts as they become due;

2.4.4 if she or he is a lawyer or notary and she or he is found guilty of professional misconduct or conduct unbecoming;

2.4.5 if, at a meeting of the members, a resolution is passed that she or he be removed from the office of Director; or

2.4.6 on death;

If any vacancy shall occur for any reason contained in this section, the Board of Directors may nominate a replacement Director. If a vacancy occurs as a result of any of the foregoing reasons and is not filled, the Directors remaining in office may exercise all of the powers of the Board of Directors provided that there are at least four Directors appointed or remaining in office as the case may be.

2.5 Resignation. A retiring Director whose written resignation pursuant to subsection 2.4.1 stipulates that it is not to take effect until a certain date or meeting of the Board of Directors shall remain in office until such date or the date of the dissolution or adjournment of the meeting at which her or his resignation is to be effective, as applicable.

2.6 Remuneration. The Directors shall serve without remuneration and no Director shall directly or indirectly receive any profit from her or his position as a Director, provided that a Director may be paid reasonable expenses incurred by her or him in the performance of her or his duties. Nothing contained herein shall be construed to preclude any Director from serving the Society as an Officer or in any other capacity and receiving compensation therefore.

## 2.7 Directors Meetings

2.7.1 Directors' meetings may be held at such times and at such places as the Board of Directors from time to time may determine.

2.7.2 The Directors shall determine their own procedure and a quorum of the Board of Directors shall be 50% of the Directors.

2.7.3 A Director may, if all the other Directors present consent, participate in a meeting of Directors or of a Committee of Directors by means of such telephone or other communications facilities as to permit full participation. All persons participating in such a meeting by such means shall be deemed to be present at that meeting.

2.7.4 A resolution in writing signed by all the Directors personally shall be valid and effectual as if it had been passed at a meeting of Directors duly called and constituted.

## ARTICLE 3 POWERS OF BOARD OF DIRECTORS

3.1 Management. The management and administration of the affairs of the Society shall be vested in the Board of Directors. In addition to the powers and authority given by these Bylaws or otherwise expressly conferred upon them, the Board of Directors may exercise all such powers of the Society and do all such acts on its behalf as are not by the *Society Act* or the Constitution of the Society or any of these Bylaws required to be exercised or done by the Society at a general or special meeting, and the Directors shall have full power to make such rules and regulations as they deem necessary, provided that such rules and regulations are not inconsistent with the Constitution of the Society and these Bylaws.

3.2 Reporting. The Board of Directors shall report to the members on the business of the Society on a semi-annual basis, or at such other intervals as may be determined by the members



from time to time. Such reports shall detail the activities of Society during the reporting period in question and such other matters as the members may from time to time request.

3.3 Employees. Subject to the provisions of these Bylaws, the Board of Directors may appoint such agents and hire such employees as it shall deem necessary from time to time and such persons shall have such authority and shall perform such duties as determined by the Board of Directors. In addition, the Board of Directors may, subject to the terms of this Bylaw, delegate by resolution to an officer or officers the right to hire and pay salaries to employees of the Society.

3.4 Remuneration. Subject to the provisions of these Bylaws, the Board of Directors may fix a reasonable remuneration for all of the officers, agents, employees and committee members.

3.5 Borrowing. Subject to the provisions of the Act and these Bylaws, the Board of Directors may from time to time:

3.5.1 borrow money upon the credit of the Society;

3.5.2 limit or increase the amount to be borrowed;

3.5.3 issue debentures or other securities of the Society;

3.5.4 pledge or sell such debentures or other securities of the Society;

3.5.5 pledge or sell such debentures or other securities for such sums and at such prices as may be deemed expedient; and

3.5.6 secure any such debentures, or other securities, or any other present or future borrowing or liability of the Society, by mortgage, hypothec, charge or pledge of all or any part of any presently owned or subsequently acquired real and personal, property of the Society, and the undertaking and the rights of the Society.

The Board of Directors may delegate such powers to the officers or Directors to such extent and in such manner as the Board of Directors may, by resolution, determine. Nothing herein limits or restricts the borrowing of money by the Society on bills or promissory notes made, drawn, accepted or endorsed by or on behalf of the Society.

3.6 Banking

3.6.1 All cheques, bills of exchange or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Society, shall be signed by such officer or officers, agent or agents, of the Society in such manner as shall from time to time be determined by resolution of the Board of Directors and any one of such officers or agents may alone endorse notes and drafts for collection on account of the Society through its bankers, and endorse notes and cheques for deposit with the Society's bankers for the credit of the Society or the name may be endorsed "for collection" or "for deposit" with the bankers of the Society by using the Society's rubber stamp for that purpose. Any one of such officers or agents so appointed may arrange, settle, balance and certify all books and accounts between the Society and the Society's

bankers and may receive all paid cheques and vouchers and sign all the bank's forms or settlement of balances or release and verification slips.

3.6.2 The securities of the Society shall be deposited for safekeeping with one or more bankers, trust companies or other financial institutions to be selected by the Board of Directors. Any and all securities so deposited may be withdrawn, from time to time, only upon the written order of the Society signed by such officer or officers, agent or agents of the Society and in such manner as shall from time to time be determined by resolution of the Board of Directors and such authority may be general or confined to specific instances.

3.7 Liability. Except as provided in Section 24(8) of the *Society Act*, no member or Director of the Society shall in his individual capability be liable for any debts or liabilities of the Society.

3.8 Property of Society. The Directors shall administer the funds and property of the Society and shall have the sole authority to invest, call in as occasion requires and reinvest such monies as may be in the account of the Society from time to time and to make such investments in such securities as they think fit, notwithstanding that such securities may not be securities in which trustees are by the laws of the Province of British Columbia permitted to invest trust funds.

#### ARTICLE 4 OFFICERS

4.1 Officers. The officers of the Society shall be a President, a Vice President, a Secretary, a Treasurer and a Chief Executive Officer. The officers shall be chosen in a manner determined by the Board of Directors from among the members of the Board of Directors except in the case of the Chief Executive Officer who need not be a member of the Board of Directors. Subject to paragraph 4.2, the Board of Directors shall determine the duties and tenure of the officers.

4.2 Duties of Officers. The Officers of the Society shall have the following duties and such further duties as may be assigned to them by the Board of Directors.

4.2.1 The President shall preside over all meetings of the Board of Directors.

4.2.2 The Secretary shall record the minutes of all meetings of the Board of Directors.

4.2.3 The Treasurer shall be responsible for the keeping of the Society's financial accounts.

4.2.4 The Chief Executive Officer shall be the chief executive officer of the Society and shall perform all such duties as are customary for a chief executive officer of a corporation similar in operation to the Society. She or he shall have the general and active management of the affairs of the Society, and shall see that all orders and resolutions of the Board of Directors are carried into effect and shall perform such other duties as may be determined by the Board of Directors from time to time. Her or his duties as Chief Executive Officer shall include, but not be limited to, financial planning and budgeting; policy development; marketing; recruiting, supervising and evaluating contractors; communication with the members and the Board of Directors; developing relations with information providers; and Board support.

## ARTICLE 5 COMMITTEES

5.1 Committees and subcommittees may be created by the Board of Directors from time to time for such continuing or special tasks as circumstances warrant and as the Board of Directors deem necessary or desirable. Any person willing and in the opinion of the Board of Directors suitable to act on any such committee or subcommittee may be appointed by the Board of Directors to such committee or subcommittee. Every such committee or subcommittee shall be subject to the control of the Board of Directors and shall conform with any regulations that may from time to time be imposed upon it by the Board of Directors. The Board of Directors may at any time dissolve any such committee or subcommittee or terminate any appointments thereto.

## ARTICLE 6 MEETINGS OF THE SOCIETY

6.1 General Meetings. Meetings of the members of the Society shall be held at such time and at such place as the Board of Directors shall decide in accordance with the *Society Act*.

6.2 Notice of General and Special Meetings. Every meeting other than an annual general meeting, is a special general meeting. The Board of Directors may, whenever they think fit, convene a special general meeting.

### 6.3 The Manner in Which Notice is to be Given

6.3.1 Notice of an annual or special general meeting shall specify the place, the day and the hour of such meeting and, in the case of special business, the general nature of the business. Such notice shall be given to every member 14 days before such annual or special general meeting. The accidental omission to give notice of a meeting to, or the non-receipt of a notice by, any of the members entitled to receive notice does not invalidate proceedings at that meeting.

6.3.2 An annual general meeting shall be held at least once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting.

6.3.3 A member shall be entitled to appoint a proxyholder to attend, act and vote for her or him at one general meeting and any adjournment thereof. A proxy shall be in writing, shall be deposited at the address of the Society prior to the meeting at which the person named in the proxy proposes to vote and shall be in the following form or in any other form that the Board of Directors shall approve:

### British Columbia Courthouse Library Society

The undersigned hereby appoints \_\_\_\_\_  
of \_\_\_\_\_ or failing him/her \_\_\_\_\_  
of \_\_\_\_\_ as proxyholder for the  
undersigned to attend at and vote for and on behalf of the  
undersigned at the general meeting of the Society to be held on the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and at any  
adjournment of that meeting.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature of Member

Any person of full age may act as proxyholder whether or not she or he is entitled on her or his own behalf to be present and to vote at the meeting at which he acts as proxyholder. A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death, bankruptcy or insanity of the member or revocation of the proxy or of the authority under which the proxy was executed, provided that prior to the holding of the meeting no notice in writing of the death, bankruptcy, insanity or revocation as aforesaid shall have been received at the address of the Society.

6.3.4 At an annual or special general meeting of the members, each member who is present in person or by proxy shall be entitled to one vote. No member shall be entitled to more than one vote.

6.3.5 The rules of procedure at an annual, general or special meeting shall be determined by the Board of Directors, or if any member objects, *Roberts' Rules of Order* shall be used.

#### 6.4 Quorum for Meetings

A quorum for the transaction of business at any annual or special general meeting of the Society shall be 2/3 of the members so long as no member has been approved pursuant to Bylaw 1.1.4 in which case a quorum shall be at least 3/4 of the members, but in no case shall a quorum consist of less than two members present in person or by proxy at a meeting.

6.5 Resolutions. Any resolution (other than a special resolution) or motion shall be deemed passed if a majority of the members present, in person or by proxy, vote in favour of such resolution or motion.

### ARTICLE 7 AUDITS OF THE ACCOUNTS OF THE SOCIETY

7.1 Audits. The accounts of the Society shall be audited by a Chartered Accountant once in every year before the annual general meeting.

7.2 Financial Statements. The Chartered Accountant appointed by the Board of Directors to audit the accounts of the Society shall also prepare financial statements showing the income and expenditures, assets and liabilities of the Society during the preceding fiscal year and such financial statements shall be signed by the Chartered Accountant.

7.3 Fiscal Year. The fiscal year of the Society shall be the calendar year.

ARTICLE 8  
MAINTENANCE OF MINUTES AND OTHER BOOKS AND RECORDS

The Board of Directors shall cause the minutes of members' meetings and minutes of Directors' meetings and all other necessary books and records of the Society required by the Bylaws of the Society or by any applicable statute or law to be regularly and properly kept. Such minutes, books and records shall be held in the custody of the Chief Executive Officer of the Society or as otherwise directed by the Board of Directors.

ARTICLE 9  
INSPECTION OF RECORDS OF THE SOCIETY

The books and records of the Society shall be open to inspection by members at all reasonable times at the head office of the Society.

ARTICLE 10  
THE SEAL

In the event the Society adopts a seal, it shall be affixed to documents or instruments requiring same in the presence of such person or persons as the Board of Directors may authorize from time to time by resolution or in the absence of such resolution, in the presence of all Directors.

Original signed by

# Memo

To: Benchers  
From: Jeanette McPhee  
Date: October 12, 2011  
Subject: Federation of Law Societies of Canada – 2012-2013 Membership Levy Increase

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The Federation of Law Societies of Canada has notified Canadian law societies regarding the Federation General Operating budget for 2012-2013. The proposed 2012-2013 Federation budget includes a Draft Motion to increase the 2012-2013 annual Federation membership levy, effective July 1, 2012, as follows:

*“RESOLVED THAT: the implementation of the 2012-2013 Federation Budget shall be subject to approval by the Federation's member law societies of an increase of the membership levy from \$20.00 to \$25.00 per FTE for the 2012-2013 financial year of the Federation;”*

## **Background on the Federation of Law Societies of Canada 2012-2013 Budget**

The following are excerpts from the memorandum provided by the Federation.

### **2012-2013 FEDERATION BUDGET**

*“The core mission of the Federation is to coordinate, on a national scale, the activities of Canada’s 14 provincial and territorial law societies and to be the voice of all of the law societies in respect of national and international issues of concern to them as regulators of the legal profession in the public interest.”*

*“The core activities of the Federation are financed by a levy assessed to each member law society. The levy is calculated on the basis of the total revenue of a law society derived from membership fees collected from members of the legal profession inscribed on the rolls of such law society. That total membership revenue is divided by the maximum standard membership fee charged to a full time practicing member of the profession, and the resulting number (referred to as "full time equivalent" or "FTE" members) is multiplied by the applicable Federation levy per FTE.*

*For the last two budget cycles (2009-2010 and 2010-2011), as well for the year in progress (2011-2012), the levy was established at \$20.00 per FTE.”*

***Proposal to Increase the Levy for General Operations***

*“The 2012 Federation Budget makes provision for the following additional expenditures during the 2012-2013 financial year, assuming an increase of the levy from \$20.00 per FTE to \$25.00 per FTE:*

- (a) the hiring of a Director of Regulatory Affairs;*
- (b) the hiring of an additional support staff position;*
- (c) an enhanced budget for communications support including graphic design services and electronic content management (website and intranet support); and*
- (d) an enhanced budget for covering meeting expenses, research and support for additional national standards projects and initiatives.*

*The increase of the levy by \$5.00 per FTE, would raise an additional \$442,000.00 (assuming a 0.8% increase of FTEs for 2012-2013 to 88,349), an amount sufficient to cover the additional projected costs of meeting the Federation's priorities for 2012-2013 and allowing for a contingency of approximately \$34,000.00.”*

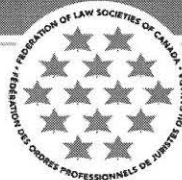
**Impact on 2012 and 2013 Financial Results**

When the Law Society 2012 General Practice Fee was set, the proposed increase in the levy was not known, so the Law Society of BC 2012 General Practice Fee includes the Federation membership levy at the current rate of \$20 per FTE. A levy increase to \$25 per FTE, effective July 1, 2012, would result in an unbudgeted Law Society of BC expense of \$28,000 in 2012 which would be funded out of reserve. In addition, the 2013 General Practice Fee would need to be increased by \$5 per FTE.

The following Benchers resolution is proposed:

**“Be it resolved that, the Federation of Law Societies of Canada levy be set at \$25 per FTE, effective July 1, 2012”.**

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

## **MEMORANDUM**

**FROM:** Federation Executive

**TO:** Council of the Federation  
Law society CEOs (for information)

**DATE:** September 6, 2011

**SUBJECT:** Federation General Operating and NCA Budgets for 2012-2013

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**ACTION REQUIRED:** **DECISION OF COUNCIL**

**DRAFT MOTION:**

**WHEREAS** the Council wishes to adopt a balanced budget for the 2012-2013 financial year of the Federation; and

**WHEREAS** the implementation of the budget which the Council wishes to adopt for 2012-2013 depends upon an increase of the membership levy applicable to member law societies for that financial year;

**RESOLVED THAT:** the budget for the Federation's general operations for 2012-2013 set forth in Appendix "A" hereto (the "2012-2013 Federation Budget") be hereby approved;

**RESOLVED THAT:** the implementation of the 2012-2013 Federation Budget shall be subject to approval by the Federation's member law societies of an increase of the membership levy from \$20.00 to \$25.00 per FTE for the 2012-2013 financial year of the Federation;

**AND RESOLVED THAT:** the budget for the operations of the National Committee on Accreditation for 2012-2013 set forth in Appendix "B" hereto be hereby approved subject to such reasonable adjustments to assessment, exam, administrative and cancellation fees as the Federation Executive deems advisable.



**ISSUE**

1. The Council is asked to approve the draft budget set forth in Appendix "A" hereto for the general operations of the Federation for the financial year ending June 30, 2013 (the "2012-2013 Federation Budget") and the draft budget set forth in Appendix "B" hereto for the operations of the NCA for the financial year ending June 30, 2013 (the "2012-2013 NCA Budget").

**2012-2013 FEDERATION BUDGET*****Introduction***

2. The core mission of the Federation is to coordinate, on a national scale, the activities of Canada's 14 provincial and territorial law societies and to be the voice of all of the law societies in respect of national and international issues of concern to them as regulators of the legal profession in the public interest.

3. In addition to its core mission, the Federation provides administrative support to two continuing legal education programs: the National Criminal Law Program and the National Family Law Program. The continuing legal education programs are self-funding and outside the scope of this budget note.

4. The core activities of the Federation are financed by a levy assessed to each member law society. The levy is calculated on the basis of the total revenue of a law society derived from membership fees collected from members of the legal profession inscribed on the rolls of such law society. That total membership revenue is divided by the maximum standard membership fee charged to a full time practicing member of the profession, and the resulting number (referred to as "full time equivalent" or "FTE" members) is multiplied by the applicable Federation levy per FTE.

5. For the last two budget cycles (2009-2010 and 2010-2011), as well for the year in progress (2011-2012), the levy was established at \$20.00 per FTE.

6. The Canadian Legal Information Institute ("CanLII"), a non-profit Corporation whose sole member has been the Federation since July 2010, operates Canada's leading statute and case-law online search engine, and is financed by Canada's law societies through a separate membership levy totaling approximately \$2,700,000 paid through the Federation (\$34.06 per FTE paid by law societies in common law jurisdictions, \$22.74 per FTE paid by the Barreau du Québec and \$16.77 per FTE paid by the Chambre des notaires du Québec). In 2010, half of such levy was paid directly to CanLII by the law societies while CanLII's structure was being reorganized.

***Current Resource Assessment***

7. The following is a summary of the Federation's overall resource situation:

- (a) The current general operations (all activities other than CanLII, the National Committee on Accreditation and the National Criminal Law and Family Law Programs) (the "General Operations") cost approximately \$1,750,000 or \$20.00 per FTE per year;



- (b) The General Operations are carried out by a core head office staff as follows:
  - (i) substantive content: CEO, Director of Policy and Public Affairs, Policy Counsel and the Managing Director of the NCA;
  - (ii) communications products and media relations: Director of Communications; and
  - (iii) finance and administration: Director of Finance, Executive Assistant and full-time bookkeeper;
- (c) the work of several committees and task forces is supplemented by 5-10 senior law society staff members as a sideline to their primary law society functions and to varying degrees based on availability;
- (d) the Federation's financial resources and current head office staff resources for General Operations are currently used to capacity and have been committed at the same levels for the 2011-2012 financial year beginning July 1, 2011 in accordance with Council's approved budget for that year;
- (e) the NCA operates on a cost recovery basis with a comfortable surplus based entirely on revenues generated by NCA applicants totaling \$2,271,000 for 2010-2011, and it does so with a full-time head office staff of five (5); and
- (f) the Federation's head office lease continues for a further 8 years and the premises are being used to capacity with possible minor adjustments in how the space is configured.

***Priorities, Expectations and Growth in Demand for National Initiatives***

8. During its meetings in 2011, Council considered the Federation's Strategic Plan for 2010-2012 and indicated where the Federation should focus its priorities as follows:

- (a) national standards ought to be at the highest level of priority and efforts should be intensified to complete the standards projects which are underway;
- (b) addressing impediments to the public's access to legal services ought to be a high priority given the potential vulnerability of self-governance that could result from a perception that the issue is being ignored or insufficiently addressed; and
- (c) efforts for the Federation to communicate a national message to law society governors need to be intensified in order to seek buy-in and drive consensus to adopt national standards and support other common initiatives.



9. To date, there has been no suggestion that any of the current work of the Federation be scaled back or that the available resources be otherwise redeployed in any significant way. On the contrary, the ideas for how the Federation should deliver on its priorities entail a greater demand for national services for its member law societies, the legal profession and ultimately, the public.

10. The following are examples of some of the projects that are either being contemplated or will be in development in the near to medium term for Council's consideration:

- (a) the establishment of a national committee to monitor compliance with the approved national law degree requirements by Canadian law schools, as well as to assess new law degree programs;
- (b) the coordinated development and implementation of policies and tools to assess compliance with national competency and good character standards once such standards have been agreed upon;
- (c) the fostering of initiatives to bridge the Federation's leadership in developing a Model Code of Professional Conduct with its requirement for the teaching of ethics in law schools, such as participation and sponsorship in conferences advancing the study and teaching of legal ethics;
- (d) the creation and maintenance of a new national database of lawyers for use by law societies for national mobility purposes, as well as by the public at large;
- (e) the creation and maintenance of a national database of continuing professional development requirements and offerings for the legal profession;
- (f) the establishment of national standards, guidelines and tools for law society discipline administrators and those who play an adjudicative function; and
- (g) the creation and maintenance of a national compendium of sentencing decisions for adjudicators.

11. The foregoing list barely scratches the surface of ways Canada's law societies can pool their energies through the Federation to eliminate duplication, harmonize their approaches to how they fulfill their mandates, and generally, raise public confidence in their work and in Canada's system of governance of the legal profession.

### ***Imagining the Next Version of the Federation***

12. We have identified the following as the core centres of activity that require adequate and sustainable resourcing in a way which may entail restructuring how the Federation carries out its operations in the future:



- (a) ***national regulatory affairs management*** which includes management of the following sub-categories of initiatives:
- (i) national mobility policy and coordination of how it is implemented;
  - (ii) model code of professional conduct (adjusting its content over time and assisting with harmonized implementation);
  - (iii) admission standards comprised of at least the following categories of activity:
    - implementation of new national competency and good character standards;
    - monitoring law school compliance with national requirements;
    - assessment of applications for new law degree programs; and
    - assessment of internationally-obtained legal credentials (NCA);
  - (iv) discipline standards comprised of at least the following components of activity:
    - setting performance benchmarks for complaints handling and assisting / monitoring law society compliance with such benchmarks;
    - development of national standards and tools for law society investigators and adjudicators;
  - (v) national approaches to law society regulation generally, including initiatives which may relate to the following:
    - anti-money laundering rules;
    - continuing professional development;
    - compensation funds; and
    - audit functions, etc...;
- (b) ***policy and issues management*** which includes at least the following components:
- (i) federal government relations;
  - (ii) third party stakeholder relations;
  - (iii) litigation and court intervention strategies;

- (iv) access to legal services initiatives; and
- (v) monitoring international developments in regulation of the legal profession; and
- (c) ***communications and information management*** which includes at least the following components;
  - (i) media relations and monitoring;
  - (ii) publications and communications products for internal and external consumption;
  - (iii) facilitation of greater opportunities for law society interaction and national-level conversations about their work (staff counterpart meetings, conference development . . .);
  - (iv) information technology services including:
    - general website support;
    - NCA website support including e-commerce and user applications;
    - intranet support; and
    - database services and integration (eg: national lawyer lookup, CPD database, statistics management).

13. The ability of the Federation to deliver on all of these priorities is dependent on adequate and stable sources of funding; however, it is recognized that developing capacity to expand the scope of activity which can be reasonably accommodated by the Federation is an incremental process dependent on the resource capacity and support of Canada's law societies.

#### ***Proposal to Increase the Levy for General Operations***

14. Accordingly, the 2012 Federation Budget makes provision for the following additional expenditures during the 2012-2013 financial year, assuming an increase of the levy from \$20.00 per FTE to \$25.00 per FTE:

- (a) the hiring of a Director of Regulatory Affairs;
- (b) the hiring of an additional support staff position;
- (c) an enhanced budget for communications support including graphic design services and electronic content management (website and intranet support); and
- (d) an enhanced budget for covering meeting expenses, research and support for additional national standards projects and initiatives.

15. The increase of the levy by \$5.00 per FTE, would raise an additional \$442,000.00 (assuming a 0.8% increase of FTEs for 2012-2013 to 88,349), an amount sufficient to cover the additional projected costs of meeting the Federation's priorities for 2012-2013 and allowing for a contingency of approximately \$34,000.00.

16. Depending on the member law society in question, the actual dollar impact of such an increase on law society annual budgets would range from approximately \$1165.00 to \$169,170.00. A table indicating the projected levy for 2012-2013 broken down by law society and invoicing schedule is annexed to this memorandum as Appendix "C".

### ***Special Litigation Levy***

17. In early 2009, Canada's law societies paid an additional special levy of \$4.00 per FTE to fund the trial phase of the litigation between the Federation and the federal government over the constitutionality of the government's client identification and verification regulations.

18. By June 2011, the trial phase of the litigation was complete and the full amount of the special levy was consumed. In the event additional funds are required to pursue the litigation at the appellate level, a request will be presented to Canada's law societies at an appropriate time.

### ***Considerations for the Year in Progress***

19. The following considerations should be kept in mind:

- (a) funding for the year in progress was determined in 2010 and the Federation is operating on the basis of a balanced budget approved by Council at the same time;
- (b) in the event that funding for the increased levy is approved by Canada's law societies to enable the Federation to move forward with Council's priorities, revenues would only be received in the latter half of 2012 with a view to implementing new spending after July 1, 2012.

20. In the event that the 2012 Federation budget is approved and the levy increase is agreed to by the law societies, implementation of some of the planned spending (such as the recruitment of a Director of Regulatory Affairs) could only commence **prior** to July 2012 if Council agrees to modify the budget for the year in progress to allow for a potential operating deficit.

21. The cumulative surplus in the Federation's general fund from which a deficit could be funded stands at \$778,000.00 as at June 30, 2011.

22. It is estimated that if a Director of Regulatory Affairs and additional support staff are recruited in early 2012, and additional resources are made available for website and intranet support over the next few months, total costs of such unbudgeted items could total approximately \$150,000.00 and would need to be added to the bottom line of the 2011-2012 budget.



### ***Question for Discussion***

23. I propose that Council reflect upon and be prepared to discuss the following question at the Council meeting:

**Provided the increase of the levy is approved for 2012-2013, do you agree that the Federation should proceed with planned increased spending during the 2011-2012 financial year, even if such spending causes the Federation to operate with a deficit during the current year and draw upon the cumulative surplus?**

### **2012-2013 NCA BUDGET**

24. The Federation has now completed two full years of complete control of all aspects of the NCA's operations.

25. As fixed costs to operate the NCA remain relatively stable, increases in demand for assessments and exams result in higher margins of net revenue per assessment or exam, as the case may be. The NCA is intended to operate on a cost recovery basis with adequate provision for reserves. The greater the number of assessments and exams written, the higher the surpluses will be. The cumulative surplus in the NCA fund now stands at \$1,674,000.00.

26. In 2009-2010, the number of assessments and exams increased by 43 % and 44% respectively. In 2010-2011, assessments increased by 3% and examinations increased by 24%.

27. For 2012-2013, we are projecting greater stability in the demand for NCA services and have therefore projected increases of 3% for both assessments and examinations.

28. In 2010-2011, assessment and examination fees were reduced. We continue to monitor trends in order to assess whether fees should be further reduced.

29. In a further effort to reduce revenues, we propose to significantly reduce exam cancellation fees beginning in 2011. We have observed that applicants tend to over-register for exams, such that up to 20% are ultimately cancelled. Raising cancellation fees as a deterrent to cancelling exams has not had the desired effect and has resulted in raising revenues which exceed the direct and indirect administrative costs associated with the cancellations. The reduction of fees is not expected to alter behavior, but will be adequate to cover administrative overhead.

30. On the expense side, the 2012-2013 NCA budget make provisions largely consistent with previous years.

31. No provision has yet been made to allocate costs related to making NCA policies consistent with the new national requirement for the Canadian common law degree. For example, the NCA does not currently assess language or skills competencies. Once an implementation plan has been developed, we will look at costs and whether the NCA's cumulative surplus should be drawn down to pay for them.

**RECOMMENDATION**

32. The Executive recommends that the motion set forth on page 1 of this Memorandum be adopted.





Appendix / Annexe "A"

REVENUES AND EXPENSES / REVENUS ET DÉPENSES DRAFT BUDGET / PRÉVISIONS 2012-2013 GENERAL FUND / FONDS D'ADMINISTRATION GÉNÉRALE			
	Budget 2012-2013	Budget 2011-2012	Actuals 2010-2011
	Proposed / Proposé	Adopted/Adopté	Audited / Vérifié
REVENUE / REVENUS	\$ 5,038,010	\$ 4,508,200	\$ 3,226,469
* Membership Levy / Cotisation des membres	2,208,725	1,739,540	1,717,540
Other Revenue / Autres revenus			
CanLII - Levy / Cotisation	2,776,740	2,722,294	1,307,892
CanLII - Administration Fees / Frais de gestion	22,000	22,000	22,000
CanLII - Rent / Loyer	20,045	13,901	4,902
Interest on Investments / Intérêts des placements	10,500	10,465	9,561
Special Litigation Fund / Dépenses du siège social			164,574

\* Levy Calculation / Calcul de la cotisation :  
 2012-2013: \$25.00 x 88,349 FTE/METP (Projection / Prévion)  
 2011-2012: \$20.00 x 87,632 FTE/METP (Actual / Réel)  
 2010-2011: \$20.00 x 85,877 FTE/METP (Actual / Réel)

Appendix / Annexe "A"

REVENUES AND EXPENSES / REVENUS ET DÉPENSES DRAFT BUDGET / PRÉVISIONS 2012-2013 GENERAL FUND / FONDS D'ADMINISTRATION GÉNÉRALE			
	Budget 2012-2013	Budget 2011-2012	Actuals 2010-2011
	Proposed / Proposé	Adopted/Adopté	Audited / Vérifié
<b>EXPENDITURES / DÉPENSES</b>	<b>5,003,600</b>	<b>4,475,390</b>	<b>3,257,052</b>
<b>Governance / Gouvernance</b>	<b>106,317</b>	<b>102,751</b>	<b>105,825</b>
Council Meetings / Réunions du Conseil	49,217	45,951	49,094
President's Honorarium / Honoraires du président	50,000	50,000	50,000
Liability Insurance for Council / Assurance responsabilité des administrateurs	5,400	5,500	5,287
Executive Committee teleconferences / Téléconférences du Comité exécutif	700	600	575
Law Society CEO teleconferences / Téléconférences des DG des ordres professionnels	1,000	700	869
<b>Federation Network Activities / Activités de réseautage de la Fédération</b>	<b>416,275</b>	<b>379,375</b>	<b>370,442</b>
FLSC Conferences / Conférences de la Fédération	301,283	281,369	275,062
Law Society Events / Événements des ordres professionnels de juristes	31,326	21,772	24,517
External Relations / Relations extérieures	83,666	76,234	70,863
<b>National Standards Committees and Practices / Comités et projets sur les normes nationales</b>	<b>172,500</b>	<b>80,000</b>	<b>92,878</b>
<b>Policy Committees and Support / Comités des politiques et soutien</b>	<b>35,000</b>	<b>49,250</b>	<b>48,796</b>
<b>Law Society Counterpart Meetings and Support / Réunions des homologues des ordres professionnels de juristes et soutien</b>	<b>17,000</b>		
<b>Litigation Committee and Interventions / Comité sur les litiges et interventions</b>	<b>15,000</b>	<b>15,000</b>	<b>2,538</b>
<b>Special Litigation / Dépenses du siège social</b>			<b>231,228</b>

Appendix / Annexe "A"

REVENUES AND EXPENSES / REVENUS ET DÉPENSES DRAFT BUDGET / PRÉVISIONS 2012-2013 GENERAL FUND / FONDS D'ADMINISTRATION GÉNÉRALE			
	Budget 2012-2013	Budget 2011-2012	Actuals 2010-2011
	Proposed / Proposé	Adopted/Adopté	Audited / Vérifié
Head Office Expenses / Dépenses du siège social	4,241,509	3,849,014	2,405,345
Head Office Staff Salaries / Salaires du personnel au siège social	979,868	697,691	654,057
Rent / Loyer	185,812	188,041	211,398
Amortization / Amortissement	52,234	62,938	66,208
Interest on loan / Intérêts sur le prêts	-	11,700	6,813
Communications and / et promotion	119,075	58,300	47,010
Office expenses (supplies, insurance, printing, publications, gifts and donations, bank and payroll charges, postage and courier, photocopies, and furnishings) / Frais de bureau (fournitures, assurance, impression, publications, cadeaux et dons, frais bancaires et de paie, poste et messagerie, reprographie et ameublement)	44,580	42,000	39,420
President & Senior Staff expenses / Dépenses du président et des cadres supérieurs	25,000	21,500	21,567
Information technology (hardware, software and licences, technical support, website domains and maintenance, internet, intranets) / Technologie informatique (matériel, logiciels et licences, soutien technique, hébergement et entretien du site Web, Internet, intranets)	26,000	11,050	20,594
Telecommunications / Télécommunications	23,200	16,500	16,943
Audit Fees & professional fees / Frais de vérification et honoraires professionnels	5,000	9,500	9,925
Miscellaneous Translation Services / Services divers de traduction	4,000	7,500	3,518
CanLII - Levy payment / Paiement de cotisation	2,776,740	2,722,294	1,307,892
Contingency / Fonds de prévoyance	34,410	32,810	(30,585)
Surplus (Deficit) / Surplus (Déficit)			

REVENUES AND EXPENSES / REVENUS ET DÉPENSES			
DRAFT BUDGET / PRÉVISIONS 2012-2013			
NATIONAL COMMITTEE ON ACCREDITATION / COMITÉ NATIONAL SUR LES ÉQUIVALENCES DES DIPLÔMES DE DROIT			
	Budget 2012-2013	Budget 2011-2012	Actual / Réel 2010-2011
	Proposed / Proposé	Adopted / Adopté	Audited/Vérifié
	\$	\$	\$
REVENUES / REVENUS	2,086,286	2,222,061	2,271,128
Examination Fees* / Frais d'examens: (\$353.98 2012-2013) (\$353.98 2011-2012) (\$464.60-2010)	1,531,317	1,486,716	1,566,032
Transfer of Dormant Examination Fees / Transfert des frais d'inactivité liés aux examens			85,000
Assessment Fees** / Frais d'évaluation - (\$398.23 2012-2013) (\$398.23 2011-2012) (\$464.60-2010)	471,903	597,345	441,503
Appeals / Appels	10,066	5,000	9,204
Exam Cancellation Fees / Frais d'annulation pour les examens	40,000	100,000	138,865
Investment Income / Revenus de placements	33,000	33,000	30,524

\*Number of Exams / Nombre d'examens:

4,326 2012-2013 (proj.) / 4,200 2011-2012 (revised proj.) / 3,913 2010-2011

\*\*Number of Assessments / Nombre de évaluations:

1,185 2012-2013 (proj.) / 1,150 2011-2012 (revised proj.) / 1,096 2010-2011

REVENUES AND EXPENSES / REVENUS ET DÉPENSES			
DRAFT BUDGET / PRÉVISIONS 2012-2013			
NATIONAL COMMITTEE ON ACCREDITATION / COMITÉ NATIONAL SUR LES ÉQUIVALENCES DES DIPLÔMES DE DROIT			
	Budget 2012-2013 Proposed / Proposé	Budget 2011-2012 Adopted / Adopté	Actual / Réel 2010-2011 Audited/Vérifié
	\$	\$	\$
<b>EXPENDITURES / DÉPENSES</b>			
<b>OFFICE EXPENSES / SOMMES DES FRAIS DE BUREAU</b>	<b>301,646</b>	<b>231,140</b>	<b>199,847</b>
Rent / Loyer	114,541	79,000	67,551
Amortization / Amortissement	45,205	40,640	15,885
Managing Director's travel / Frais de déplacements pour le Directeur de l'exploitation	18,000	16,000	14,959
Office Supplies / Frais de bureau	16,000	18,000	12,386
Translation / Traduction	5,000	5,000	1,914
I.T. Support / Soutien informatique	10,000	20,000	7,479
Printing / Impression	5,000	6,000	2,969
Telecommunication / télécommunication	9,400	7,000	5,675
Postage & Courier / Frais postaux et messagerie non applicables aux examens	8,000	10,000	5,341
Subscription & Membership Fees / Frais d'abonnement et droits d'adhésion	1,500	2,500	938
Bank Charges, Visa/ MasterCard/On-line fees / Frais bancaire, Visa, MasterCard et en-ligne	69,000	27,000	64,748
<b>SALARIES &amp; BENEFITS / SOMMES DES SALAIRES ET DES CHARGES SOCIALES</b>	<b>519,356</b>	<b>505,999</b>	<b>460,646</b>
Salaries / Salaires	480,878	469,822	422,965
Benefits / Charges sociales	38,478	36,177	37,680
<b>EXAM EXPENSES / SOMMES POUR LES DÉPENSES D'EXAMENS</b>	<b>1,094,200</b>	<b>1,089,000</b>	<b>1,047,413</b>
Examiners Fees / Honoraires des correcteurs d'examens	865,200	875,000	811,592
Space Rental for Exams / Location d'espace pour les examens	170,000	160,000	184,891
Printing - Exams / Impression pour les examens	11,000	18,000	8,102
Courier - Exams / Messagerie pour les examens	22,000	21,000	19,320
Postage - Exams / Poste pour les examens	26,000	15,000	23,509
<b>OTHER EXPENSES / SOMMES AUTRES DEPENSES</b>	<b>125,250</b>	<b>145,500</b>	<b>103,307</b>
Accounting and Professional Fees / Comptabilité et honoraires professionnels	5,000	7,500	6,720
Legal Fees / Frais légaux	75,000	100,000	54,925
Appeal Committee / Réunion du Comité d'appel	22,750	3,000	14,715
Meetings / Réunions	15,000	15,000	10,581
Research & Professional Development / Recherche et développement professionnel	7,500	15,000	1,825
Task Force Implementation (NCA portion) / Implémentation pour le group d'étude sur l'attestation des diplômes canadiens en common law (Portion CNE)		5,000	14,542
Contingency / Fonds de prévoyance	45,834		
<b>TOTAL EXPENSES / SOMMES DES DÉPENSES</b>	<b>2,086,286</b>	<b>1,971,639</b>	<b>1,811,213</b>
Excess of Revenues over Expenses / Excédent des revenus par rapport aux dépenses	0	250,422	459,915

**Federation of Law Society of Canada  
2012-2013 Projections  
Levy Invoicing Schedule**

Appendix / Annexe "C"

Law Societies	FTE	2012-2013 Projections	GST/HST	Invoicing Schedule			Totals
				October, 2012	January, 2013	April, 2013	
		\$ 25.00 per FTE					
British Columbia / Colombie Britannique	11,094	277,350.00	12.00%	92,450.12	92,450.00	92,450.00	277,350.12
Alberta	8,561	214,025.00	5.00%	71,341.72	71,341.67	71,341.67	214,025.05
Saskatchewan	1,714	42,850.00	5.00%	42,850.05			42,850.05
Manitoba	1,940	48,500.00	5.00%	16,166.72	16,166.67	16,166.67	48,500.05
Upper Canada	33,834	845,850.00	13.00%	281,950.13	281,950.00	281,950.00	845,850.13
Barreau du Québec	22,136	553,400.00	5.00%	184,466.72	184,466.67	184,466.67	553,400.05
Chambre des notaires du Québec	3,780	94,500.00	5.00%	94,500.05			94,500.05
New Brunswick / Nouveau Brunswick	1,399	34,975.00	13.00%	11,658.46	11,658.33	11,658.33	34,975.13
Nova Scotia / Nouvelle-Écosse	1,943	48,575.00	15.00%	16,191.82	16,191.67	16,191.67	48,575.15
Prince Edward Island / Île-du-Prince-Édouard	233	5,825.00	5.00%	5,825.05			5,825.05
Newfoundland / Terre-Neuve	760	19,000.00	13.00%	19,000.13			19,000.13
Northwest Terr. / Terri. Du Nord Ouest	425	10,625.00	5.00%	10,625.05			10,625.05
Yukon	265	6,625.00	5.00%	6,625.05			6,625.05
Nunavut	265	6,625.00	5.00%	6,625.05			6,625.05
	<b>88,349</b>	<b>\$ 2,208,725</b>		<b>\$ 860,276</b>	<b>\$ 674,225</b>	<b>\$ 674,225</b>	<b>\$ 2,208,726</b>

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

August 10, 2011

Ronald J. MacDonald, Q.C.  
President  
Federation of Law Societies of Canada  
45 O'Connor Street, Suite 1810  
Ottawa, Ontario K1P 1A4

**Re: Final Report - Common Law Degree Implementation Committee**

Dear Mr. MacDonald,

As Chair of the Federation of Law Societies of Canada's Common Law Degree Implementation Committee (the "Committee"), I am pleased to provide you with the Committee's final report.

In accordance with its mandate, the Committee has developed a proposal to implement the uniform national requirement (the "national requirement") for entry to law society admission programs in Canadian common law jurisdictions. Our 20 recommendations develop a coherent implementation structure that is detailed and appropriately balanced in its effect on law schools, the National Committee on Accreditation (the "NCA"), law societies and the Canadian Common Law Program Approval Committee, the body that will determine compliance with the national requirement.

As the Federation of Law Societies of Canada (the "Federation") and its member law societies implement the national requirement there is a valuable opportunity to strengthen and advance the institutional relationship between law societies and Canadian law schools at a national level.

The Committee's process has convinced all its members that such a collaborative national dialogue is both feasible and vital to the interests of furthering law societies and the legal academy's commitment to a legal profession that is learned, competent and dedicated to the public interest.

There are a few considerations that were beyond the scope or time frame of the Implementation Committee's mandate, but the Committee wishes to identify them for the Federation as relevant to the ongoing relevance of the national requirement and the continued enhancement of the continuum of legal education.

## **1. Law School Learning Methodologies**

The 2009 Report of the Task Force on the Canadian Common Law Degree recommends that as part of the approval process a law school's course of study must consist

*“primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students”.*

The Committee’s Report recommends interpreting “primarily” in-person to mean that presumptively a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face instruction conducted with the instructor and students in the same classroom.

The Committee is aware of the rapidly changing nature of educational delivery methods. As such, it has included in the text of its report the following comment:

The Committee recognizes the ongoing value of law schools developing innovative and dynamic delivery approaches. As legal education and delivery methods continue to evolve the re-examination of this requirement will be appropriate and advisable. It is beyond the scope of the Committee’s mandate to undertake such an examination, but it recommends that the Federation broaden the discussion by engaging those with expertise in education delivery techniques, delivery of legal education and professional regulation to consider the issues.

This issue is relevant not only to the Federation’s national requirement, but to the NCA’s assessment of international credentials.

## **2. National Collaboration on Ethics and Professionalism**

In the course of the Committee’s discussions with law school representatives on the importance of ethics and professionalism to the legal profession the idea of promoting a voluntary national collaboration on ethics and professionalism among the Federation, law firms and law schools was raised. The Committee has recommended that the Approval Committee’s mandate include participating in efforts to enhance the relationship between law societies and law schools, including promoting such a voluntary collaboration on ethics and professionalism. (See Recommendation 16)

For the Federation’s information, I am setting out here the ideas that the Committee members discussed with the Ethics Professors Working Group in the course of its discussions on the ethics and professionalism course.

- The Federation/law societies/law firms could create a summer institute (even for a time limited period (e.g. three years)) to bring together ethics professors and representatives from law societies and law firms to discuss ethical issues and the teaching of ethics. This would go a long way to fostering relations between the Federation and the legal academy and would also encourage law schools whose teaching in this area is relatively recent to become more innovative in their approaches. Given that there is a group of ethics professors across the country that interacts regularly on issues related to teaching ethics, a summer institute would also enhance their ability to interact in person.
- Canada is hosting the International Legal Ethics Conference on July 12-14, 2012 in Banff. This might be a good opportunity for all involved to come together for professional development on issues of legal ethics.

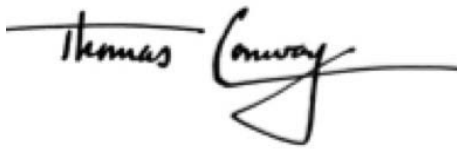


- Law firm initiatives supporting law school teaching in this area should be encouraged. Law firm sponsorships/recognition is very important. This could also have a salutary effect on encouraging law schools to innovate in this area. Innovation could be celebrated with awards.
- Groups already in existence to support the teaching of ethics in law schools could be engaged further and efforts to find funding for initiatives like the summer institutes could be stepped up to ensure schools are represented.
- The Federation could devote the educational portion of one of its semi-annual conferences to ethics and professionalism and invite representatives who teach the subject at the law school to participate.

If the collaborative approach and the thoughtful dialogue in which our committee members engaged throughout our deliberations are any indication, I believe we may well be ushering in a renewed and productive relationship between the legal academy and the law societies of Canada in the sphere of our mutual concern, that is the education and training of the legal profession in Canada.

I wish to thank and acknowledge all of the members of our committee for their many hours of thoughtful work and, in particular, to thank each of the staff members who supported our work. My job as chair was made very easy by their collective efforts.

Thank you for the opportunity to work on this important issue.



Thomas G. Conway, Chair  
Common Law Degree Implementation Committee

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# Common Law Degree Implementation Committee

## Final Report

August 2011

This report is presented to the Council of the Federation of Law Societies of Canada for consideration. None of the recommendations contained herein is effective unless approved by the Federation and its member law societies.

## TABLES AND APPENDICES

### TABLES

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Federation of Law Societies of Canada's Task Force on the Canadian Common Law Degree – Recommendations	APPENDIX 1
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## INTRODUCTION

The Federation of Law Societies of Canada's Common Law Degree Implementation Committee (the "Committee") is pleased to provide this final report to the Council of the Federation of Law Societies of Canada (the "Federation"). In accordance with its mandate, the Committee has developed a proposal to implement the uniform national requirement (the "national requirement") for entry to law society admission programs<sup>1</sup> in Canadian common law jurisdictions.

The Committee's 20 recommendations develop a coherent implementation structure that is detailed and appropriately balanced in its effect on law schools, the National Committee on Accreditation (the "NCA"), law societies and the body that will determine compliance with the national requirement. The recommendations ensure that the intent of the Federation's Task Force on the Canadian Common Law Degree (the "Task Force") and the manner in which the Task Force's recommendations are to be implemented are clear to:

- law schools that will meet the national requirement and report on their programs annually;
- the compliance body;
- the NCA, which will apply the requirements to applicants seeking Certificates of Qualification;
- law societies; and
- the public.

They reflect the principle underlying the Task Force's recommendations that its report should not interfere with innovation and flexibility in Canadian law school education.

As the Federation and its member law societies implement the national requirement there is a valuable opportunity to strengthen and advance the institutional relationship between law societies and Canadian law schools at a national level. The Committee's process has convinced all its members that such a collaborative national dialogue is both feasible and vital to the interests of furthering law societies and the legal academy's commitment to a legal profession that is learned, competent and dedicated to the public interest.

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<sup>1</sup> The term "law society admission program" refers to and includes all the pre-licensing processes, however named, of law societies in the common law provinces and territories leading to admission to the profession.

## RECOMMENDATIONS

### Recommendation 1

The commentary set out in **TABLE A** regarding the competency requirements be approved.

### Recommendation 2

The elaboration of the professionalism and ethics competency set out in **TABLE B** be approved.

### Recommendation 3

“Course” relating to ethics and professionalism instruction be interpreted to allow for both:

- a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies set out at **TABLE B**, and
- a demonstrable course of study devoted to ethics and professionalism that could be delivered:
  - (1) within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies set out in **TABLE B**; and/or
  - (2) in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies set out in **TABLE B**.

### Recommendation 4

By 2015, graduates seeking entry to law society admission programs be required to have taken a demonstrable course of study dedicated to ethics and professionalism that is a minimum of 24 hours, is formally assessed and, at a minimum, addresses the required competences set out in **TABLE B**.

### Recommendation 5

The commentary and direction set out in **TABLE C** regarding the approved common law degree academic program requirements be approved.

### Recommendation 6

The commentary and direction set out in **TABLE D** regarding the approved common law degree required learning resources be approved.

### Recommendation 7

Law schools be entitled to comply with the national requirement by using the Program Approval Model or the Individual Student Approval Model for a given program, including joint degree programs.

### Recommendation 8

A graduate from a school applying the Individual Student Approval Model to a given program be eligible for entry to law society admission programs if he or she provides an official transcript from the degree granting institution certifying that he or she has met the national requirement for entry to law society admission programs.

**Recommendation 9**

A graduate who has not met the national requirement who subsequently seeks entry to a law society admission program be required to obtain first a Certificate of Qualification from the NCA.

**Recommendation 10**

The Federation website identify whether schools apply the Program Approval Model or the Individual Student Approval Model to a given program.

**Recommendation 11**

The Canadian Common Law Program Approval Committee (the "Approval Committee") be authorized to make any changes, revisions or additions to the standardized annual report form set out in **Appendix 3** as it determines necessary, provided the changes, revisions or additions conform to the national requirement and reflect the purposes as described in this report.

**Recommendation 12**

The compliance process set out in **TABLE E** be approved.

**Recommendation 13**

The Approval Committee be authorized to make any changes, revisions or additions to the draft reporting timeline set out in **Appendix 4** and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.

**Recommendation 14**

Beginning in 2015 and annually thereafter the Approval Committee's final reports be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.

To reflect that the national requirement does not come into effect until 2015, the progress reports in 2012, 2013 and 2014 not be public.

**Recommendation 15**

The Federation establish a new committee to be called the Canadian Common Law Program Approval Committee.

**Recommendation 16**

The Approval Committee have the following mandate:

- To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.

- To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report.
- To make any changes, revisions or additions to the draft reporting timeline set out in **Appendix 4** and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.
- To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.
- To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.
- To ensure appropriate training for its members.
- To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.

### **Recommendation 17**

The Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process, the first to be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting timeline and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the timeline. Nothing in this recommendation should preclude adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate in Recommendation 16. It should be open to the Approval Committee to recommend the timing of the evaluations.

### **Recommendation 18**

The qualifications to be represented among the members of the Approval Committee set out in **TABLE F** be approved.

### **Recommendation 19**

The appointment process, size, member composition and term of service for the Approval Committee set out in **TABLE G** be approved.

### **Recommendation 20**

The Approval Committee be resourced forthwith and with sufficient professional and support staff and financial resources to enable it to fulfil its mandate. Law societies, through the Federation, fund the Approval Committee.

## THE REPORT

### BACKGROUND

The Federation's Task Force on the Canadian Common Law Degree (the "Task Force") issued its final report in October 2009. That Report recommends that law societies in common law jurisdictions in Canada adopt a uniform national requirement for entry to their admission programs (the "national requirement"). It further recommends that by no later than 2015, and thereafter, all applicants seeking entry to a law society admission program must have met the national requirement. The Task Force report recommends that the National Committee on Accreditation (the "NCA") apply the national requirement in assessing the qualifications of individuals with legal education and experience obtained outside Canada or in civil law degree programs in Canada who wish to be admitted to a law society in a common law jurisdiction. It also recommends that the national requirement be applied in considering applications for the approval of programs of new Canadian law schools.

The national requirement specifies the required competencies that graduates must have attained and the law school academic program and learning resource requirements that law schools must have in place to enable entry of graduates to law society admission programs. It applies to the J.D. or LL.B. programs of existing law schools and to applications for recognition of new common law programs.<sup>2</sup>

The Task Force report also recommends that the Federation establish a committee to implement its report and recommendations. The Task Force recommendations are set out in **Appendix 1**.<sup>3</sup>

All law societies in Canada approved the Task Force report and recommendations between December 2009 and March 2010. The Federation's model resolution, which law societies adapted to their individual use, contained a provision that the appointed

<sup>2</sup> "New common law programs" could include both those that are developed within a university setting and those that are not. "New common law programs" also includes those relating to a yet to be established Canadian law school and proposed new programs in established Canadian schools, including civil law schools proposing to establish common law programs.

<sup>3</sup> The Task Force report is available at [www.flsc.ca/\\_documents/Common-Law-Degree-Report-C.pdf](http://www.flsc.ca/_documents/Common-Law-Degree-Report-C.pdf).



implementation committee include appropriate representation from Canadian law schools.

In May 2010, a Federation working group reported to Federation Council with recommendations for the composition, mandate and reporting deadline of the Federation's Common Law Degree Implementation Committee (the Committee). Council approved the Working Group report, which is set out at **Appendix 2**. The Working Group report reflects the importance law societies place on including law school representatives on the Committee. It specifies two Law Deans as members. In addition, another member of the Committee is a law professor who is also a former law school Dean.

The members of the Committee are: Tom Conway (Chair), Professor Joost Blom, Dean Philip Bryden, John Campion, John Hunter, Dean Mayo Moran, Don Thompson, and Catherine Walker. The Managing Director of the NCA, Deborah Wolfe, also attended and participated in the meetings, as recommended in the Working Group report. Sophia Sperdakos and Alan Treleaven are staff to the Committee.

The Committee's mandate is:

- (a) to determine how compliance with Section C (Approved Canadian Law Degree)<sup>4</sup> of the recommendations of the Task Force on the Canadian Common Law Degree will be measured. Its mandate may include clarifying or elaborating on the recommendations, where appropriate, to ensure their effective implementation, but will not include altering the substance or purpose of them; and
- (b) to make recommendations as to the establishment of a monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining the Federation of Law Societies of Canada's ("the Federation") relationship with Canadian law schools. The Implementation Committee should consider any role the National Committee on Accreditation might play in that monitoring process.

This report fulfills the Committee's responsibility to present its final report to Federation Council no later than September 2011. In accordance with its mandate, the Committee has made recommendations on implementation and on the establishment of a "compliance body." The report discusses the nature, structure and composition of that body with

<sup>4</sup> Section C incorporates, by reference, the recommendations in Sections A and B. See Appendix 1.

a formal recommendation (Recommendation 15) that it be established and called the Canadian Common Law Program Approval Committee (the Approval Committee).<sup>5</sup>

Where appropriate, the Committee has clarified or elaborated on the Task Force recommendations to ensure their effective implementation, but has not altered the substance or purpose of them.

The Committee's goal has been to ensure that:

- the intent of the Task Force recommendations and the manner in which they are to be implemented are clear to:
  - o law schools that will meet the national requirement and report on their programs annually,
  - o the Approval Committee,
  - o the NCA, which will apply the requirements to applicants seeking Certificates of Qualification,
  - o law societies, and
  - o the public;
- the implementation structure is clear, effective and appropriately balanced in its effect on law schools, law societies, the NCA and the Approval Committee;
- the implementation approach reflects the principle underlying the Task Force's recommendations that its report should not interfere with innovation and flexibility in law school education; and
- the approach to implementation was developed following consultation with and input from law schools, beyond membership of two Law Deans and a former Law Dean on the Committee.

The Committee has benefited from the invaluable assistance and input of the Council of Canadian Law Deans (the CCLD). The CCLD established a Law Deans' Working Group consisting of Dean Mary Anne Bobinski (Faculty of Law - University of British Columbia), Dean Kim Brooks (Schulich School of Law at Dalhousie) and Dean Lorne Sossin (Osgoode Hall Law School) to provide initial comments on a variety of proposals the Committee developed during the course of its analysis. This allowed for refinement of proposals and

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<sup>5</sup> See Recommendations 15 – 20 and discussion beginning at page 39.

better understanding of the Deans' perspectives. The Committee also provided the CCLD with its proposal respecting the ethics and professionalism course requirement, the draft template for the annual report that Law Deans will complete and a memorandum outlining the Committee's proposals for implementation of the Task Force recommendations. The CCLD invited the Committee Chair to attend its meeting in Windsor, Ontario on May 6, 2011, which he did. The CCLD's input assisted in the refinement of the law school reporting process and annual report.

Because the Task Force's report includes a recommendation that graduates seeking to enter law society admission programs must have completed a course in ethics and professionalism at law school, the Committee invited law schools to provide input on implementation of the recommendation. An Ethics Professors' Working Group (EPWG) consisting of Adam Dodek (Faculty of Law - University of Ottawa), Jocelyn Downie (Schulich School of Law at Dalhousie), Trevor Farrow (Osgoode Hall Law School) and John Law (Faculty of Law - University of Alberta)<sup>6</sup>, met with members of the Committee to provide input and assistance in the development of the recommended approach.

The diversity of perspectives among the members of the Committee, the collaborative approach of its discussions and its external consultations have assisted the development of recommendations that will facilitate the effective implementation of the national requirement. The Committee has every confidence that the productive conversations about legal education that have occurred during this process will continue in the future, in the public interest.

## THE COMPETENCIES

The approved Task Force recommendations specify minimum competencies for entry to law society admission programs.<sup>7</sup> With the exception of the competency respecting "ethics and professionalism," which must be satisfied in "a course dedicated to those subjects and addressing the required competencies," each law school may determine how its students

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<sup>6</sup> The EPWG has acted as a liaison to the larger group of ethics and professionalism professors across the country.

<sup>7</sup> See Section B of Appendix 1.

satisfy the competency requirements. As the Task Force notes, “this allows law schools the flexibility to address these competencies in the manner that best meets their academic objectives, while at the same time meeting the regulators’ requirements that will allow their graduates to enter law society admission programs.”<sup>8</sup>

The required competencies are part of “an academic and professional legal education that will prepare the student for entry to a law society admission program.” Law schools comply with specified requirements respecting the academic program and learning resources.

The requirements leave significant additional freedom within law school curricula and structure for students to develop their particular interests and for law schools to pursue innovative teaching and research.

In examining the competencies, the Committee’s goal has been:

- to determine whether any of the competencies requires clarification or elaboration to facilitate implementation and compliance; and
- to provide such direction in this regard as is necessary.

While the Committee is satisfied that the competencies are generally clear and do not require clarification, it has identified some instances where clarification or elaboration would be useful not only to law schools whose students must meet them, but also to the NCA, which must assess the qualifications of individuals with legal education and professional experience obtained outside of Canada, or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada.

The Committee has also determined a number of instances where examples of how a competency could be satisfied would be useful and has included these. The Committee emphasizes that these are examples only and do not limit or circumscribe a law school’s ability to determine how its students satisfy the competency.

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<sup>8</sup> Task Force Report, p. 31.

For ease of understanding, the Task Force's competency requirements are set out in **TABLE A**, with the Committee's recommendations for clarification, elaboration or direction set out in an accompanying box. The ethics and professionalism competency is dealt with separately following the Table.

## **TABLE A**

### **Competency Requirements**

#### **B. Competency Requirements**

##### **1. Skills Competencies**

*The applicant must have demonstrated the following competencies:*

##### **1.1 Problem-Solving**

*In solving legal problems, the applicant must have demonstrated the ability to,*

- *identify relevant facts;*
- *identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*
- *analyze the results of research;*
- *apply the law to the facts; and*
- *identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*

No clarification necessary.
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##### **1.2 Legal Research**

*The applicant must have demonstrated the ability to,*

- *identify legal issues;*
- *select sources and methods and conduct legal research relevant to Canadian law;*

Given that the skills addressed in this competency relate to legal research, the reference to "Canadian law" should be read in that context. It should not be seen as referring to substantive Canadian law, but rather to the types of legal
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research, the reference to “Canadian law” should be read in that context. It should not be seen as referring to substantive Canadian law, but rather to the types of legal research resources that reflect the Canadian context (e.g. precedent-based research). This is relevant to the assessment of the qualifications of individuals with legal education and professional experience obtained outside of Canada or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada and is also applicable to those educated in common law Canadian law schools.

- *use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;*
- *identify, interpret and apply results of research; and*
- *effectively communicate the results of research.*

No clarification necessary.

### 1.3 Oral and Written Legal Communication

*The applicant must have demonstrated the ability to,*

- *communicate clearly in the English or French language;*
- *identify the purpose of the proposed communication;*
- *use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and*
- *effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.*

No clarification necessary.

## 2. Ethics and Professionalism

*The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,*

- a. *the duty to communicate with civility;*
- b. *the ability to identify and address ethical dilemmas in a legal context;*
- c. *familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,*

- i. *circumstances that give rise to ethical problems;*
- ii. *the fiduciary nature of the lawyer's relationship with the client;*
- iii. *conflicts of interest;*
- iv. *duties to the administration of justice;*
- v. *duties relating to confidentiality and disclosure;*
- vi. *an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and*
- vii. *the importance and value of serving and promoting the public interest in the administration of justice.*

Discussed separately below.

### 3. *Substantive Legal Knowledge*

*The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge.*

The Task Force recommendations specify minimum competencies required for entry to law society admission programs. The Task Force report recognizes that legal education in Canada is an enriched learning environment and agrees that it provides both a liberal legal education and a professional education. In law school students begin to “think like lawyers,” examine law critically and address deficiencies in legal systems and principles. The competencies that are included in the national requirement are therefore situated in this broader context.

This preamble to the section 3 competencies seeks Deans’ descriptions of how their school offers “a sufficiently comprehensive program of study” to enable graduates to “obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge.” Each Dean will be asked to address this in the annual report to the Approval Committee.

*In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:*

### 3.1 Foundations of Law

*The applicant must have an understanding of the foundations of law, including,*

- *principles of common law and equity;*

This competency could be addressed as part of courses in private law. It is open to schools to address this competency in other ways.

- *the process of statutory construction and analysis; and*

This competency could be addressed by any number of courses that are statute based (e.g. taxation, corporate, administrative, criminal, civil procedure, family, labour, etc.). It is open to schools to address this competency in other ways.

- *the administration of the law in Canada.*

This competency is directed at understanding the organization of the courts and tribunals **in Canada**, including appeal processes.

### 3.2 Public Law of Canada

*The applicant must have an understanding of the core principles of public law in Canada, including,*

The modifier “core” before “principles” is unnecessary and will not appear on the annual report to the Approval Committee law schools complete.

This section 3.2 requirement is fully addressed by the enumerated competencies below. All competencies under section 3.2 are intended to address public law **in Canada**.

- *the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*

The part of this competency requirement that states “the constitutional law of Canada, including...the rights of Aboriginal peoples of Canada” could be addressed in a number of ways, including, for example, in a constitutional law



course or as part of a property law course that addresses Aboriginal rights. It is open to schools to address this competency in other ways.

- *Canadian criminal law; and*

No clarification necessary.

- *the principles of Canadian administrative law.*

This competency contemplates the principles of **Canadian** administrative law. This competency could be addressed through a stand-alone administrative law course or through a course in which the subject matter is grounded in an administrative tribunal (e.g. labour/employment law, environmental law). It is open to schools to address this competency in other ways.

### 3.3 Private Law Principles

*The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,*

The modifier “foundational legal” before “principles” is unnecessary and will not appear on the annual report to the Approval Committee law schools complete.

- *contracts, torts and property law; and*

No clarification necessary.

- *legal and fiduciary concepts in commercial relationships.*

This competency contemplates a conceptual overview of business organizations, including fiduciary relationships in a commercial context. It is open to schools to address this competency through a course in corporate law or in other ways.

### **Recommendation 1**

**The commentary set out in TABLE A regarding the competency requirements be approved.**

## Ethics and Professionalism Competency

The Task Force report places particular emphasis on the need for law school graduates who seek entry to law society admission programs to have an understanding of ethics and professionalism. It notes,

Ethics and professionalism lie at the core of the profession. The profession is both praised for adherence to ethical codes of conduct and vilified for egregious failures. Increasing evidence of external scrutiny of the profession in this area and internal professional debates about ethical failures point to the need for each lawyer to understand and reflect on the issues. In the Task Force's view, the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better.

The Task Force believes that more, not less, should be done in this area and that legal educators and law societies together should be identifying ways to ensure that law students, applicants for admission and lawyers engage in focused and frequent discussion of the issues. To ensure that law students receive this early, directed exposure the Task Force believes a stand-alone course is essential.<sup>9</sup>

In addition to setting out the components of the ethics and professionalism competency, the Task Force report recommends that this competency be acquired in a course dedicated to the subject and addressing the competencies. This is in contrast to the approach to all the other competencies in the national requirement in which the report recommends that it be left to law schools to determine how their students meet them. As the Task Force indicates, "ethics and professionalism lie at the core of the profession."

The unique approach the Task Force takes to this competency led the Committee to consult, as described above in the 'background' section to this report, to ensure that the Task Force's recommendations respecting ethics and professionalism are implemented as effectively as possible, in keeping with both the spirit and letter of the recommendations.

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<sup>9</sup> Task Force Report, p.35.

The Committee received invaluable input and assistance respecting both the implementation of the stand alone course requirement, which will be discussed later in this report, and on the language of the ethics and professionalism competency, which is discussed here.

In the course of its consultations the following points were drawn to the Committee's attention:

- The way in which the actual competency is stated in the Task Force report is more narrowly focused than the rest of the Task Force report on the topic appears to have intended. This is because the components of the competency, as originally worded, focus mainly on issues addressed in Rules of Professional Conduct, rather than also reflecting the greater Task Force goal that students understand and reflect on broader ethical and professionalism issues.
- Presenting the competencies as a “list” of components could have the unintended effect of freezing curricula at a point in time. Making it clear that the list is not exhaustive would minimize the concern.
- The Task Force's intent to recognize the importance of ethics and professionalism would be more effectively addressed if the implementation approach more accurately reflects that intent.

The Committee agrees with these points. While maintaining all the components of the ethics and professionalism competency set out in the Task Force's report, the Committee has added additional language that reflects the broader philosophy underlying the Task Force's reasons for placing special emphasis on professionalism and ethics in its report.

The ethics and professionalism competency described below is the point of departure for those who teach this subject. Its components do not constitute an exhaustive list that limits them to teaching only those components. It sets out the required minimum coverage only.

The proposed wording for the ethics and professionalism competency is set out in

**TABLE B.**

## **TABLE B**

### **Ethics and Professionalism Competency**

#### **Ethics and Professionalism**

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes,

1. Knowledge of,
  - a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with,
    1. circumstances that give rise to ethical problems;
    2. the fiduciary nature of the lawyer's relationship with the client;
    3. conflicts of interest;
    4. the administration of justice;
    5. duties relating to confidentiality, lawyer-client privilege and disclosure;
    6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and the public; and
    7. the importance and value of serving and promoting the public interest in the administration of justice;
  - b. the nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public;
  - c. the range of legal responses to unethical conduct and professional incompetence; and
  - d. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.
2. Skills to,
  - a. identify and make informed and reasoned decisions about ethical problems in practice; and
  - b. identify and engage in critical thinking about ethical issues in legal practice.

For the NCA's assistance in assessing the competencies of international students, the Committee makes one additional comment on the ethics and professionalism competency. The reference to "Canada" in the competency's preamble and in section 1(a) reflects the requirement that the graduate must have acquired the competency in a course of study that addresses the subject in the Canadian context. Presently, there is no requirement that NCA candidates satisfy this competency in the Canadian context. The Canadian context requirement will mean that in future more NCA candidates may be required to meet this competency than is currently the case. Given the Task Force's emphasis on the importance of this topic in its Canadian context, the Committee is of the view that the applicability of the competency in the NCA context is in the public interest and therefore appropriate.

For Canadian law schools that have previously allowed students to obtain a compulsory ethics credit during an international exchange program by taking an ethics course that addresses ethics in the law of the country governing the exchange program, such a credit would not be eligible for the ethics and professionalism competency.

### ***Recommendation 2***

***The elaboration of the professionalism and ethics competency set out in TABLE B be approved.***

## **APPROVED COMMON LAW DEGREE - ACADEMIC PROGRAM AND LEARNING RESOURCES**

The Task Force report specifies that for graduates of a Canadian law school to be eligible to enter a law society admission program their school must offer an academic program and learning resources that comply with the national requirement.

The Task Force specifically avoids an overly prescriptive approach to the academic program, reflecting its underlying philosophy that law schools should be able to pursue an innovative and flexible pedagogical approach, in keeping with the goals and objectives of their individual programs, subject only to meeting certain minimum requirements for the purposes of entry of their graduates to law society admission programs.

The Task Force report states that:

wherever possible the institutional requirements set out in the national requirement for entry to law society admission programs should reflect current practice in Canadian law schools. This balances the regulatory objectives with law schools' desire to maintain flexibility of approach. By stating current practices as much as possible the Task Force leaves open the door for law schools to advise the Federation if current practices are no longer appropriate.<sup>10</sup>

The Committee has examined the Task Force's required components of the academic program and the learning resources and determined whether any of them require comment, clarification or elaboration to facilitate implementation.

For ease of understanding, the required components of the academic program are set out in **TABLE C** with the Committee's clarification, elaboration or direction set out in an accompanying box.

### **TABLE C** **Academic Program**

*The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:*

#### *1. Academic Program*

##### *1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.*

The Committee provides three comments here for clarification and direction, based upon and following the Task Force's own approach.

1. In specifying "three academic years" the Task Force is referring to three full-time academic years. The Committee is advised that in law schools currently offering the common law degree the "equivalent in course credits" to three

<sup>10</sup>

Task Force Report, p. 39.

full-time academic years presumptively means 90 credit hours. The Task Force refers to this in its report.

The Committee adopts this clarification so that paragraph 1.1 of the Task Force recommendation should be clarified to read:

- 1.1 The law school's academic program for study of law consists of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.
2. Many Canadian law schools offer joint degree programs in which students follow an integrated course of study with another related discipline, receiving a J.D. or LL.B. degree plus a degree from the other discipline. The typical joint degree program is four years, although some are three years. The Task Force discusses the joint degree in relation to the requirement set out in section 1.1 above:

In recent decades many Canadian law schools have introduced joint degree programs with related, but separate disciplines. The Task Force recognizes that interdisciplinary education is a rich and valuable part of law school education. Nothing in its recommendations should be interpreted to interfere with the capacity of law schools to offer such degrees. So long as the student has been engaged in a study of law for three years or its equivalent in course credits, and has acquired the competency requirements in so doing, joint degree programs should satisfy the national requirement. Law schools introducing major changes in their academic program, such as the introduction of a joint degree, should be encouraged to discuss them with the Federation to ensure that their graduates will continue to meet the competency requirements.<sup>11</sup>

For graduates of joint law degree programs to be eligible to enter law society admission programs their degrees will have to meet the national requirement, which includes, among other components, the required competencies and a requirement that the graduate of the joint degree program has followed an academic program for the study of law consisting of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.

The term “an academic program for the study of law” is broad enough to encompass joint degree programs **provided that** the study of law is integrated with another discipline sufficiently related to law **and** the interwoven content is specifically designed to enhance and enrich the learning in law. The eligibility of the joint degree program to satisfy the national requirement may be easier to accomplish in a four-year joint degree than in a three-year one, particularly in view of the need to satisfy the required competencies, but it will be open to schools that wish to have their

<sup>11</sup> Task Force Report, p. 41.

joint degree programs meet the national requirement for purposes of entry of their graduates to law society admission programs to satisfy the Approval Committee that they do.

Schools will report annually on each joint degree program for which they seek approval for the purposes of entry of their graduates to law society admission programs. It is important to note that schools may choose to offer some joint degree programs for which they do not seek approval. The Federation website will list only those programs for which approval has been obtained.

3. Some Canadian law schools accept transfer students from law schools outside of Canada. Each school determines whether transfer students will be entitled to apply any of their credits from their education outside Canada toward the degree requirements of the Canadian law school. With the introduction of the competency requirements, some of which address the competency in the Canadian context (e.g. principles of Canadian administrative law) schools will need to ensure that any credits for courses taken outside of Canada toward a competency requirement that must address the subject in the Canadian context actually do so. Schools will also need to ensure that graduates of their programs who take part of their program at another institution, either through an exchange or letter of permission, meet the national requirement.

### *1.2 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.*

Currently, Canadian law schools deliver most education through face-to-face instruction conducted with the instructor and students in the same classroom. At the same time, most Canadian law schools now supplement that face-to-face instruction to at least some extent by the use of a variety of instructional methods mediated by information technology. These methods can include electronic course management systems such as TWEN or Moodle or synchronous instruction via video-conference. Nevertheless, it is still the case that asynchronous on-line learning or traditional distance education is rarely employed in Canadian law school courses as the sole instructional method.

In its report, the Task Force recognizes that technology is having a significant impact on the delivery of legal information and legal education, and that innovation and experimentation are to be expected and encouraged. At the same time its recommendation focuses on the importance of face-to-face inter-personal connections in law school. Its report notes,

Technological advances for delivering information are moving rapidly. The Task Force does not wish to inhibit innovative delivery or experimentation



in this area. At the same time, however, it is of the view that Canadian law school education should, as it does today, provide a primarily in-person educational experience and/or one in which there is direct interaction between instructor and students. The use of the term "primarily" in the Task Force's recommendation is intended to allow for innovation and experimentation.<sup>12</sup>

From the Task Force's perspective, the in-person learning requirement is directed at the skills and abilities that graduates who seek entry to a law society admission program should have. The practice of law is an interpersonal endeavour. Problems are solved through interactions with others: clients, lawyers, witnesses, office staff, judges, and others. Some of these interactions may be written, but many of them are oral, and involve understanding how to deal with a person face-to-face. In particular, lawyers typically discuss legal problems with other lawyers. They need to understand how to do that. Those interactions involve legal problem solving and oral persuasion. The law school experience – involving face-to-face interactions with instructors as well as students – models that experience.

The Committee is satisfied that the Task Force's recommendation means that currently Canadian law schools are to deliver their programs mainly through in-person delivery methods. The clause "instruction and learning that involves direct interaction between instructor and students" modifies "in-person." This clause was inserted to address and permit some synchronous learning such as live videoconferencing, which is already being used to supplement the face-to-face in-person instruction that makes up most of law school education in Canada.

In the Committee's view the Task Force's reference to "primarily" in-person instruction should be considered in the context of:

- existing practices respecting face-to-face instruction in Canadian law schools;
- the extent to which some degree of alternative delivery is currently permitted; and
- the importance of allowing room for innovation in delivery approaches.

Given this context, the Committee recommends interpreting "primarily" in-person to mean that presumptively a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face instruction conducted with the instructor and students in the same classroom.

The Committee recognizes the ongoing value of law schools developing innovative and dynamic delivery approaches. As legal education and delivery

<sup>12</sup> Task Force report, p. 41.

methods continue to evolve the re-examination of this requirement will be appropriate and advisable. It is beyond the scope of the Committee's mandate to undertake such an examination, but it recommends that the Federation broaden the discussion by engaging those with expertise in education delivery techniques, delivery of legal education and professional regulation to consider the issues.

*1.3 Holders of the degree have met the competency requirements.*

This refers to the competency requirements set out in section B of the Task Force recommendations as clarified in this report, particularly in **TABLES A and B**.

*1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.*

The Task Force report emphasizes the importance of dedicated instruction in ethics and professionalism, beginning in law school. Although for all other competencies the Task Force recommends that it be left to law schools to determine how their students meet them, it specifies that respecting ethics and professionalism students must have acquired the competencies in "a course dedicated to those subjects and addressing the required competencies" defined in the Task Force report.

**TABLE B** reflects the clarification and elaboration of the ethics and professionalism competency that the Committee recommends.

As a further part of its mandate to implement the Task Force recommendations the Committee is clarifying what will satisfy the requirement for an ethics and professionalism "course." This is essential to effective implementation of the requirement so that:

- those who teach this subject matter understand the parameters of the requirement;
- Law Deans are in a position to address any resource implications and are able to report compliance;
- the Approval Committee is able to determine compliance; and
- the NCA is able to assess the qualifications of individuals with legal education and experience obtained outside Canada or in civil law degree programs in Canada who wish to be admitted to a law society in a common law jurisdiction in Canada.

The substantive goal of the Task Force recommendation is that serious attention be paid to ethics and professionalism in a way that is demonstrable and dedicated. At the same time it does not intend the language of the requirement to hamstring or interfere with innovative delivery. The substantive goal of the Task Force recommendation is that serious attention be paid to ethics and professionalism in a way that is demonstrable and dedicated. At the same time it does not intend the language of the requirement to hamstring or interfere with innovative delivery. Indeed, from the Task Force's perspective, which the Committee echoes, the innovation in teaching that has been growing in a number of schools is to be encouraged.

Drawing on the valuable consultations it has had on this subject, the Committee is clarifying the recommendation in a manner that reflects the importance of the subject and the Federation's requirements, while allowing law schools to be innovative. Having considered the input it received and reflecting on the context of the Task Force's goals and recommendations on this subject, the Committee is of the view that to allow the best development of teaching in this area, the term "course" should be interpreted to mean "a demonstrable course of study" whose goal is to develop in students the ability to think about and analyze ethical and professionalism issues in the legal profession. The approved competencies would be taught as part of the demonstrable course of study, allowing freedom to go beyond those competencies to address additional content.

The "course of study" could be developed in any number of ways, for example as a single course or within an ethics curriculum taught over a number of years as units demonstrably devoted to ethics, but situated within other courses. The learning could build on the previous year's unit reflecting the increasing sophistication of the student over time.

The "demonstrable" language is meant to ensure that the dedicated approach to ethics education that the Task Force identifies as a priority can be measured.

### **Recommendation 3**

***"Course" relating to ethics and professionalism instruction be interpreted to allow for both:***

- ***a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies set out in TABLE B, and***
- ***a demonstrable course of study devoted to ethics and professionalism that could be delivered,***

***(1) within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies set out in TABLE B; and/or***

***(2) in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies set out in TABLE B.***

While there are various criteria that could be applied to determine whether a school has met the requirement for a demonstrable course of study, the Committee is reluctant to be overly prescriptive, particularly since the Federation requirement for a “course” in this subject area is a new direction.

Accordingly, the Committee has concluded that articulating a minimum number of required hours would allow for certainty, while leaving significant freedom for schools in developing the course of study.

The Committee discussed 36 hours as the appropriate number of hours for the “course” requirement. Because, however, the ethics and professionalism course requirement is a new one that may have resource and staffing implications for some schools it is of the view that there should be some flexibility respecting this component.

The Committee recommends that the requirement be satisfied if a graduate has taken a “course” (as described above) that is a minimum of 24 hours. The Committee is also of the view, however, that the ultimate goal is for the requirement to be 36 hours, the implementation of this goal to be determined at a future date to be discussed with the law schools before actually being implemented.

As discussed, the required 24 hours could be acquired in a single course or in a course of study that spans two or three years of law school (e.g. 12 hours a year for 2 years, 8 hours a year over three years) or any other way the law school determines provided it satisfies the requirement for a “demonstrable course of study.”

***Recommendation 4***

***By 2015, graduates seeking entry to law society admission programs be required to have taken a demonstrable course of study dedicated to ethics and professionalism that is a minimum of 24 hours, is formally assessed and, at a minimum, addresses the required competences set out in TABLE B.***

*1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.*

No clarification necessary.

### **Recommendation 5**

***The commentary and direction set out in TABLE C regarding the approved common law degree academic program requirements be approved.***

## **Learning Resources**

In developing its recommendations respecting learning resources the Task Force notes the following:

The Task Force is reluctant to define in great detail the form law school must take, particularly given the role of provincial governments in approving degree granting institutions and the complex university-based decision making process that addresses many of the law schools' physical components. The Task Force does, however, recognize that there are certain necessities for an effective legal education whose graduates can serve the public. In the Task Force's view the most important consideration is that the law school be adequately resourced to fulfill its educational mission. At a time when all public resources are subject to financial pressures, the Task Force is reluctant to be too prescriptive in its recommendations, but has concluded that there are certain irreducible minima that must be maintained if law societies are to accept the law degree as evidence that the competency requirements are being achieved.<sup>13</sup>

An environment that supports learning is critical to the development of meaningful legal education. It may be easier to assess what is sufficient with respect to already established schools than with respect to new applicants for program recognition. At the same time, it is not appropriate to set a standard based on the resources that long-established schools have that would be impossible for a new school to meet.

It is necessary to provide additional guidance under "learning resources" to assist law schools to know what information they are expected to report on an annual basis. This will ensure consistency of information across schools and across years.

The Committee agrees with the Task Force's approach to resources that recognizes a connection between the resource requirements and a school's particular objectives. This allows for different types of law schools to exist that require different levels of resources. At the same time, however, the school's objectives and resources must be sufficient to meet the national requirement.

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<sup>13</sup> Task Force Report. p.42.

The Committee has consulted with the CCLD concerning the type of information that would elicit a reasonable picture of the learning resources to which the Task Force recommendations are directed. In addition, it has considered the approaches that other professional regulators take on this issue. Its goal is that law schools provide sufficient information to allow the Approval Committee to understand the learning resources context within which the national requirement is being met in each school.

To ensure that the information sought from law schools is both relevant and necessary it would be useful to use an iterative process to develop and refine the information to be provided under the learning resources section of the annual report. As the national requirement will not come into effect until 2015, the reports that law schools will file in 2012, 2013 and 2014 will be progress reports. The Committee considers these years as providing the opportunity for law schools and the Approval Committee to review the initial approach to the learning resources reporting and develop a standardized approach that will provide the most appropriate information and be applied as consistently as possible to all degree programs, whether established or new.

The guidance set out is intended for the responses in the 2012 report. Thereafter the Approval Committee should have the authority to adapt and change the required information as it considers appropriate flowing from the iterative approach.

For ease of understanding the required components of the learning resources are set out in **TABLE D** with the Committee's clarification, elaboration or direction set out in an accompanying box.

## **TABLE D**

### **Learning Resources**

- 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*

The Committee recommends that the following information be provided in this section:

- General description of numbers of full-time faculty, contract instructors, sessional lecturers and support staff, including significant changes from previous year.
- General description of full-time faculty, contract instructor and sessional lecturer qualifications.
- Number of full-time equivalent students in each program.
- General description of student support services.
- Overview of law school operating budget for the academic program from all sources, and sources of funding.

*2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.*

The Committee recommends that the following information be provided in this section:

- Overall description of law school space, including whether the space is adequate for the law program(s), any space challenges faced by the school and their impact on the program and proposed or planned solutions.
- Description of space available to the law school to carry out the academic program offered, including seminar rooms, quiet study space for students, etc
- Description of accessibility of the current space.

*2.3 The law school has adequate information and communication technology to support its academic program.*

The Committee recommends that the following information be provided in this section:

- Description of what IT services are provided at the law school.
- Description of dedicated or shared staff and level of support provided to faculty, staff and students.

*2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*



(A useful reference for this requirement is the Canadian Academic Law Library Directors Association's standards.)

The Implementation Committee recommends that the following information be provided in this section:

- Overview of library staff complement, qualifications and reporting structure.
- Overview of library facilities and description of collection and collections policies.
- Overview of library acquisitions budget.
- General description of support services available to faculty, students and other library users.

### **Recommendation 6**

***The commentary and direction set out in TABLE D regarding the approved common law degree required learning resources be approved.***

## **MEASURING COMPLIANCE**

In considering an appropriate national compliance mechanism the Task Force states:

The requirement for a national compliance mechanism does not... necessitate an intrusive or onerous approach. Existing Canadian law schools offer a high standard of education and the Task Force is satisfied that compliance with the competency requirements will not pose difficulty for any of them. At the same time, however, the Task Force does recognize that the creation of requirements represents a change in current practices and any compliance mechanism, however modest, will require some adjustment. It also recognizes that the recommendation for a stand-alone course relating to ethics and professionalism and the requirements to address competencies may require adjustment by some law schools.

The Task Force recommends that the compliance mechanism for law schools should be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function.

In the annual report the Dean would confirm that the law school has conformed to the academic program and the learning resources requirements and would explain how the program of study ensures that each graduate of the law school has met the competency requirements.<sup>14</sup>

<sup>14</sup> Task Force Report, pp. 43-44.



Among other tasks the Task Force report recommends this Committee undertake are the development of “the form and substance of the standardized annual law school report” and a mechanism to address non-compliance.

In developing its recommendations for the compliance mechanism the Committee has been guided by the Task Force’s views and has addressed the following issues:

- Compliance Models
- Form and Content of the Standardized Annual Report
- Compliance Process
- Publication of the reports

## COMPLIANCE MODELS

The Committee recommends that law schools be entitled to approach compliance using two possible models:

- Program Approval Model
- Individual Student Approval Model

### Program Approval Model

Law schools in Canada offer a variety of programs, including the traditional three full-time academic years or equivalent in course credits (presumptively 90 credits) J.D. or LL.B. program and joint degree programs, discussed above.<sup>15</sup>

A law school that applies the Program Approval Model to a particular program will require that each graduate of that program meet the national requirement for entry to law society admission programs. These law schools will not permit students in these programs to have the option to graduate without having met the competency requirements.

In the annual report on these programs the Dean will describe the process the school follows to determine that graduates in each of these programs meet the competency

<sup>15</sup> Law schools also offer LL.M. programs that are not relevant to the discussion here.

requirements, in accordance with the national requirement.<sup>16</sup>

In schools that apply the Program Approval Model to a given program, graduates from approved programs will by definition have met the competency requirements. In granting the degree the school will be confirming this.

Schools that apply the Program Approval Model, generally, may also have joint degree programs for which they do not seek approval. The Individual Student Approval Model may be relevant to these programs. The Federation website will list all the joint degree programs for which these schools have program approval.

### **Individual Student Approval Model**

Traditionally, there are law school graduates who choose not to be licensed to practise law. There are myriad career paths for which a J.D. or LL.B. degree is invaluable, but for which a license to practise is unnecessary. Although the required competencies in the national requirement have been designed to allow for ample additional opportunity for students to pursue their academic and intellectual interests in law school, it is possible that some students who do not want to be licensed to practise law would prefer not to satisfy all the required competencies. The Individual Student Approval Model will allow for this approach.

The Committee respects law schools' right to foster this academic path for their students, which may be in keeping with the school's objectives and mandate. Its only concern is that law societies be in a position to easily verify whether graduates from those programs, who do seek entry to law society admission programs, have met the required competencies.

If a school chooses the Program Approval Model for a given program, by definition every student granted a J.D. or LL.B. degree in an approved program will have met the competencies. If a school chooses the Individual Student Approval Model for a given program it will be necessary for individual transcripts for each graduate to indicate whether

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<sup>16</sup> As part of their existing internal processes law schools already conduct a "degree audit" for each student to ensure he or she has met all the program requirements necessary to graduate, including having met the school's required number of credit hours and fulfilled its compulsory courses or other requirements. Where a school is following the Program Approval Model for a given program, this degree audit process will also include a determination that each student will have met the Federation's competency requirements upon graduation.

he or she has met the national requirement.

A graduate who has not met the national requirement and subsequently wishes to enter a law society admission program can fulfill the missing competencies through the NCA by obtaining a Certificate of Qualification. It will be necessary for that graduate to provide the NCA with an official document from its degree granting institution setting out which competencies must still be fulfilled.

#### **Recommendation 7**

***Law schools be entitled to comply with the national requirement by using the Program Approval Model or the Individual Student Approval Model for a given program, including joint degree programs.***

#### **Recommendation 8**

***A graduate from a school applying the Individual Student Approval Model to a given program be eligible for entry to law society admission programs if he or she provides an official transcript from the degree granting institution certifying that he or she has met the national requirement for entry to law society admission programs.***

#### **Recommendation 9**

***A graduate who has not met the national requirement who subsequently seeks entry to a law society admission program be required to obtain first a Certificate of Qualification from the NCA.***

#### **Recommendation 10**

***The Federation website identify whether schools apply the Program Approval Model or the Individual Student Approval Model to a given program.***

## FORM AND CONTENT OF THE STANDARDIZED ANNUAL REPORT

The standardized annual report is the mechanism by which a law school will report compliance with the national requirement.

A standardized annual report:

- provides a template by which the Approval Committee will determine compliance with the national requirement;
- addresses each of the components of the national requirement with sufficient information and supporting documentation to allow compliance to be determined;
- enables a law school to report compliance in a transparent and efficient way;
- identifies the degree programs for which a school seeks approval for entry of graduates to law society admission programs and demonstrates how each program meets the requirements;
- identifies law school programs as following the Program Approval Model or the Individual Student Approval Model;
- provides overview information on the law school to situate the report in the context of the school's objectives and approach;
- documents changes to individual law school programs. Each year each law school report will comment on changes to any previously approved programs and the effective date of such changes. With annual reporting it will be essential that any changes to previously approved programs are identified and also approved. Schools will be encouraged to discuss proposed changes with the Approval Committee before they are implemented to ensure they will meet the national requirement; and
- documents the application of the national requirement.

The Committee has developed a draft form for the standardized annual report that addresses these purposes. The draft form, which was provided to the CCLD, is set out at

### **Appendix 3.**

The draft form is a living document that will evolve over the years as law schools and the Approval Committee seek to ensure its continued relevance and effectiveness. The Approval Committee should be authorized to make any changes, revisions or additions to the form as it determines necessary so long as the changes, revisions or additions conform to the approved national requirement and reflect the purposes described above.

#### ***Recommendation 11***

***The Canadian Common Law Program Approval Committee (the Approval Committee) be authorized to make any changes, revisions or additions to the standardized annual report form set out in Appendix 3 as it determines necessary, provided the changes, revisions or additions conform to the national requirement and reflect the purposes as described in this report.***

## **COMPLIANCE PROCESS**

### **a) Existing Canadian Common Law Programs**

The national requirement applies to graduates from Canadian common law schools beginning in 2015 and annually thereafter.

Programs whose students graduate in 2012, 2013 and 2014 will continue to be recognized under the current processes and are not subject to the national requirement. Law societies will continue to accept 2012, 2013 and 2014 Canadian common law school graduates into their admissions programs on the pre-national requirement criteria.

The annual report on their programs that law schools file in 2012, 2013 and 2014, will, therefore, be progress reports leading to determination of compliance in 2015. Reports submitted in 2012, 2013 and 2014 will describe the program actually followed by the students to the date of the report, as well as reporting on plans for the program to 2015 directed at meeting the national requirement. The Approval Committee will provide feedback to schools on their progress towards meeting the national requirement for 2015.

From 2015 and annually thereafter the annual reports will report on the program the graduates of that year will have completed. The Approval Committee will determine compliance with the national requirement.

It is expected that, typically, a program approved for graduates of 2015 will continue to be approved thereafter, unless there are significant changes to the program in the areas subject to the national requirement. In such cases, the Approval Committee will undertake the inquiry necessary to ensure that the program continues to meet the national requirement.

### **b) New Canadian Common Law Programs**

Where a new program is being proposed, either by an established Canadian law school that already offers J.D. /LL.B. programs and wishes to add additional programs or by a Canadian institution that does not yet offer any J.D. /LL.B. programs but seeks to do so,<sup>17</sup> the school will go through a two stage process. The first stage is the consideration of the proposal for a new program. That proposal will include a plan for implementing the new program, in which, typically, parts of the program are put in place over time.

The second stage begins once the proposal and plan have been approved, and implementation is underway. During this second stage, the school will report annually on the implementation of the plan, using a modified version of the annual report.

**TABLE E** sets out the Committee's recommended compliance process respecting new and existing programs to determine compliance with the national requirement.

<sup>17</sup> This would also include a Canadian institution already offering a civil law degree that seeks to offer a J.D. /LL.B.

## TABLE E

### Compliance Process

#### a) Existing Canadian Common Law Programs

1. Upon receipt of a law school's completed annual report, the Approval Committee reviews it and any supporting documents in accordance with a specified timeline, a sample of which is set out in **Appendix 4**.<sup>18</sup>
2. The Approval Committee determines compliance with the national requirement and provides a draft report to the law school, setting out the Committee's conclusions and the basis for those conclusions. The law school is invited to provide comments on the draft report.
3. If the Approval Committee is satisfied that the school's program(s) meets the national requirement, the Approval Committee's draft report is finalized and provided to the law school and posted on the Federation website.
4. If the Approval Committee is of the view that the annual report raises issues regarding compliance, its draft report identifies the issues using one or more of the following rating categories:

- o **Deficiency** - indicates non-compliance with one or more requirements. If a "deficiency" has been identified and the school and the Approval Committee cannot agree on how to address it, the Approval Committee issues its final report.

The compliance process will be an iterative one, the goal of which is to resolve deficiencies wherever possible before the Approval Committee issues a final report. The iterative process ensures that, if useful and directed, discussion toward a solution continues in an attempt to resolve the issues. It will be important to keep in mind, however, that there are annual time lines that must be met for issuing the Approval Committee's report. The Approval Committee ends discussion if it determines no further progress is being made.

- o **Concern** - indicates that although one or more requirements is currently met, it is at a minimum level that could deteriorate to become a deficiency. A school may note the "concern" without acting upon it, but it may be advisable for the school to resolve the concern, since it would be noted in the Approval Committee's final report. The iterative process described under "deficiency" could be used to resolve the "concern" if the parties agree.
- o **Comment** - this addresses a missing detail, a question, or a suggestion for more information. A school may take note of a "comment" without taking action upon it, but if it wishes to clarify or respond the Approval Committee can then re-issue its report reflecting this.

<sup>18</sup> **Appendix 4** sets out the sample timeline for the 2012 report. That report will be a progress report. The basic timeline would also apply in 2013 and 2014 and in 2015 and thereafter when the national requirement is in force.

5. As set out above, the school has the opportunity to respond to the draft report within a specified period of time. If the Approval Committee seeks more information or other action, the school may provide it or agree to undertake to do what is requested of it.
6. The conclusion of the Approval Committee's final report sets out one of the following ratings:
  - o "The law program has complied with the national requirements. *Approved.*"
  - o "The law program has mostly complied with the national requirements, except for deficiencies in the following areas... *Approved with notice to remedy specified areas of non-compliance.*"
 

The notice to remedy specifies that for the program to retain approved status the deficiencies must be addressed by the next reporting period, or in exceptional cases, by a subsequent reporting period.
  - o "The law program has not complied with the national requirement. *Not approved.*"
7. Only the final report of the Approval Committee will be public. All draft reports and ongoing discussions will not be public. The progress reports prepared in 2012, 2013 and 2014 will also not be public.

**b) New Canadian Common Law Programs**

**Proposal Stage**

8. Using the annual report format, the school provides its proposal for a new program. The proposal includes a plan describing how and when the program will achieve each of the provisions of the national requirement. The proposal is to be provided before the school takes steps to commence the program.
9. The Approval Committee determines prospectively whether the proposal, including implementation plan, if implemented, would comply with the national requirement. It provides a draft report to the law school, setting out its conclusions and the basis for those conclusions. The law school is invited to provide comments on the draft report.
10. When the Approval Committee issues a draft report respecting a new program it may contain "comments," "concerns" and/or "deficiencies" for the proposed new law school program to address before the Approval Committee issues a final report, and the school may respond as set out above. As in the case of the compliance process for established programs the process will be an iterative one leading to the final report.



11. Approval for a new program will be prospective because the first students will not graduate from the program until a number of years in the future. Accordingly the ratings for such programs will be:
  - o “The proposal and implementation plan for a law program, if followed, will comply with the national requirement. *Preliminary Approval, subject to implementation of the program as proposed.*”
  - o The law program as proposed will not comply with the national requirement. *Not Approved.*”
12. Only the final report of the Approval Committee will be public. All draft reports and ongoing discussions will not be public.

### **Reporting Stage**

13. The process in paragraphs 1-7, modified to measure progress against the implementation plan, continues to be followed annually until the first graduates of the program are in their final year. Thereafter the process in paragraphs 1-7 applies, without modification.

The Approval Committee should be authorized to make any changes, revisions or additions to the reporting timeline as it determines necessary to ensure that the compliance process in **TABLE E** operates in an effective manner.

### **Recommendation 12**

***The compliance process set out in TABLE E be approved.***

### **Recommendation 13**

***The Approval Committee be authorized to make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.***

## PUBLICATION OF REPORTS

Beginning in 2015 when the national requirement comes into effect and annually thereafter the Approval Committee's final reports will be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought. This recommendation is subject to the proviso that any information subject to privacy provisions or other personal or confidential information will not appear in the public report.

The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model. This will be important information for law societies, the NCA and law students.

Because the national requirement does not come into effect until 2015, the reports in 2012, 2013 and 2014 will be progress reports and will not be public.

### ***Recommendation 14***

***Beginning in 2015 and annually thereafter the Approval Committee's final reports be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.***

***To reflect that the national requirement does not come into effect until 2015, the progress reports in 2012, 2013 and 2014 not be public.***

## THE CANADIAN COMMON LAW PROGRAM APPROVAL COMMITTEE

As discussed above, the Committee recommends that the "monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining

the Federation’s relationship with Canadian law schools,” be called the Canadian Common Law Program Approval Committee (“the Approval Committee”). The name identifies the committee’s primary responsibility, but is not intended to limit the Approval Committee’s role to this single area. To fulfill the Committee’s mandate to make recommendations about the monitoring body this report addresses the following:

- Structure of the Approval Committee
- Jurisdiction and Mandate
- Committee Member Qualifications and Committee Composition
- Resourcing

## STRUCTURE OF THE APPROVAL COMMITTEE

Given that law societies have put in place a national requirement for entry to law society admission programs, it is logical that the Approval Committee be part of the Federation. As a national committee it will ensure a coherent approach to the implementation of the national requirement.

The Working Group report establishing the Committee directed that it consider the possible role of the NCA in the compliance process. While it may make sense in the future to bring the two bodies together, the Committee is of the view that it is important at this stage for the Approval Committee to be an entity structurally separate from the NCA. This will allow the national requirement compliance process to establish a unique profile that will be important, particularly in the early years of implementation.

In addition, the NCA has an established profile as the body that assesses the qualifications of individuals with legal education and professional experience obtained outside of Canada, or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada. Its mandate and workload are already demanding. At this stage it should not be required to take on a new function.

The Approval Committee should be established and populated forthwith to ensure that it is in place to assess the first law school compliance reports that will be due in 2012.

### **Recommendation 15**

***The Federation establish a new committee to be called the Canadian Common Law Program Approval Committee (the Approval Committee).***

## JURISDICTION AND MANDATE

The creation of the Approval Committee offers an opportunity to go beyond the required compliance function that was only one of the Task Force's interests. While this compliance function must be a central responsibility, the Approval Committee also has an important role to play in enhancing the institutional relationship between law societies and law schools at a national level. As the Federation continues to develop national approaches to regulatory issues (e.g. national standards for admission to law societies, model codes of conduct etc.), there will be increasing opportunities to advance the discussion of the continuum of legal education. The Approval Committee should play a role in this discussion.

Given that recommended membership of the Approval Committee will include both Law Deans and law society regulators from across the country, the opportunity for a meaningful exchange of ideas is significant.

### **Recommendation 16**

***The Approval Committee have the following mandate:***

- ***To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.***
- ***To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report.***
- ***To make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.***
- ***To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.***

- ***To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.***
- ***To ensure appropriate training for its members.***
- ***To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.***

To ensure that the national requirement and the compliance process remain relevant and effective it is essential that the Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process. The first evaluation should be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting time line and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the time line.

Nothing in this recommendation should be seen as precluding adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate above. It should be open to the Approval Committee to recommend the timing of the evaluations.

### ***Recommendation 17***

***The Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process, the first to be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting timeline and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the timeline. Nothing in this recommendation should preclude adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate in Recommendation 16. It should be open to the Approval Committee to recommend the timing of the evaluations.***

## COMMITTEE MEMBER QUALIFICATIONS AND COMMITTEE COMPOSITION

The Approval Committee's size should reflect both the need for a cross section of qualifications and the advantage of establishing a relatively small group to develop a coherent and expert approach to the issues.

The Committee has considered the qualifications that should be represented on the Approval Committee and the appointment process, size, member composition and term of service for this new body.

**TABLE F** contains the recommended qualifications.

### **TABLE F** **Qualifications for Members of the Approval Committee**

The members of the Approval Committee should be chosen with a view to competence and involvement with and understanding of the issues. The following qualifications should be represented on the Approval Committee, although there should not be a requirement that each member possess all the qualifications:

- Institutional knowledge concerning law societies and the Federation.
- Diversity of experience and perspective.
- Understanding of the regulation of lawyers and the operation of law societies.
- Experience with the regulation of lawyers and the operation of law societies and admission to the profession.
- Experience as a Law Dean or law school administrator (includes Associate, Assistant and Vice Deans).
- Benchers experience.
- Bilingualism, coupled with a common law background.

All members of the Approval Committee should:

- have sufficient time to devote to the work;
- have sound judgment; and
- the ability and willingness to work cooperatively and in a team for the effective implementation of the national requirement.

**TABLE G** contains the recommended appointment process, size, member composition and term of service for the Approval Committee.

**TABLE G**  
**Approval Committee Composition**

- The Approval Committee will have seven members, to be appointed by the Federation Council as follows:
  - o Three current or former Law Deans or Law School Administrators (includes Associate, Assistant and Vice Deans), to be recommended by the CCLD.
  - o One Law Society CEO or designate of the CEO.
  - o Three lawyers with experience in law society regulation.
  - o The Chair of the Approval Committee will be one of the three lawyers or the CEO or staff designate, and will be named as Chair by the Federation Council.
  - o If none of the three lawyers is a Federation Council member, the CCLD may appoint one of its members as a non-voting liaison.
  - o The Managing Director of the NCA will be invited to attend the meetings, without being a member or having a vote.
- Staff to the Approval Committee who attends the meetings will not be a member or have a vote.

- The term for each of the seven members will be three years, renewable once in the sole discretion of Federation Council. The term appointments will be made on a staggered basis, so that the terms of no more than three members will expire in any year. Some of the initial appointments may be made for shorter terms to enable the establishment of the staggered terms, as the Federation Council deems appropriate.

### ***Recommendation 18***

***The qualifications to be represented among the members of the Approval Committee set out in TABLE F be approved.***

### ***Recommendation 19***

***The appointment process, size, member composition and term of service for the Approval Committee set out in TABLE G be approved.***

## **RESOURCING**

The Committee is not in a position to state with certainty what the administrative and other resource needs of the Approval Committee will be. Clearly it will be essential to its effective operation that there be sufficient resources to support its work, including professional and support staff, office space and financial resources. It will be important that staffing be determined forthwith to support the Approval Committee.

The Committee recommends that law societies, through the Federation, fund the Approval Committee.

### ***Recommendation 20***

***The Approval Committee be resourced forthwith and with sufficient professional and support staff and financial resources to enable it to fulfil its mandate. Law societies, through the Federation, fund the Approval Committee.***



## CONCLUSION

This report and its recommendations are the blueprint for implementing the Task Force recommendations, providing the guidance and direction necessary for law schools, law societies, the NCA and the Approval Committee. The recommendations have been developed in a spirit of collaboration and with a view to establishing an implementation structure that is clear, effective and appropriately balanced in its effect on law schools, law societies, the NCA and the Approval Committee.

The recommendations recognize that the implementation process must be adaptable to changing conditions and realities in law societies and law schools. The composition of the Approval Committee ensures that discussion on the issues will include both law schools and law societies with the goal of ensuring the ongoing relevance of the national requirement in the public interest and recognizing the importance of Canadian law school education that is innovative and flexible.

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## **APPENDIX 1**

# Recommendations from the Task Force on the Canadian Law Degree

October 2009

## **FEDERATION OF LAW SOCIETIES OF CANADA'S TASK FORCE ON THE CANADIAN COMMON LAW DEGREE**

### **RECOMMENDATIONS**

1. The Task Force recommends that the law societies in common law jurisdictions in Canada adopt forthwith a uniform national requirement for entry to their bar admission programs ("national requirement").
2. The Task Force recommends that the National Committee on Accreditation ("NCA") apply this national requirement in assessing the credentials of applicants educated outside Canada.
3. The Task Force recommends that this national requirement be applied in considering applications for new Canadian law schools.
4. The Task Force recommends that the following constitute the national requirement:

#### **A. Statement of Standard**

##### **1. Definitions**

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.

##### **2. General Standard**

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or
- b. possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

## B. Competency Requirements

### 1. Skills Competencies

The applicant must have demonstrated the following competencies:

#### 1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

- identify relevant facts;
- identify legal, practical, and policy issues and conduct the necessary research arising from those issues;
- analyze the results of research;
- apply the law to the facts; and
- identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.

#### 1.2 Legal Research

The applicant must have demonstrated the ability to,

- identify legal issues;
- select sources and methods and conduct legal research relevant to Canadian law;
- use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;
- identify, interpret and apply results of research; and
- effectively communicate the results of research.

#### 1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- communicate clearly in the English or French language;
- identify the purpose of the proposed communication;
- use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and

- effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.

## 2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- d. the duty to communicate with civility;
- e. the ability to identify and address ethical dilemmas in a legal context;
- f. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,
  - i. circumstances that give rise to ethical problems;
  - ii. the fiduciary nature of the lawyer's relationship with the client;
  - iii. conflicts of interest;
  - iv. duties to the administration of justice;
  - v. duties relating to confidentiality and disclosure;
  - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and
  - vii. the importance and value of serving and promoting the public interest in the administration of justice.

## 3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

### 3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- principles of common law and equity;
- the process of statutory construction and analysis; and
- the administration of the law in Canada.

### 3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;
- Canadian criminal law; and
- the principles of Canadian administrative law.

### 3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- contracts, torts and property law; and
- legal and fiduciary concepts in commercial relationships.

## C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

### 1. Academic Program

1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.

1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

1.3 Holders of the degree have met the competency requirements.

1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.

1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.

2. Learning Resources
  - 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.
  - 2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.
  - 2.3 The law school has adequate information and communication technology to support its academic program.
  - 2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.
5. The Task Force recommends that the compliance mechanism for law schools be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function. In the annual report the Dean will confirm that the law school has conformed to the academic program and learning resources requirements and will explain how the program of study ensures that each graduate of the law school has met the competency requirements.
6. The Task Force recommends that the Federation, or the body it designates to consider proposals for new Canadian law schools, be entitled to approve a proposal with such conditions as it thinks appropriate, relevant to the national requirement.
7. The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking entry to a bar admission program must meet the national requirement.
8. The Task Force recommends that the Federation establish a committee to implement the Task Force's recommendations.

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## **APPENDIX 2**

# Working Group Report on the Establishment of the Implementation Committee

May 2010



## **RECOMMENDED PROCESS FOR ESTABLISHING THE IMPLEMENTATION COMMITTEE**

1. An Implementation Committee should be established to be known as the Federation of Law Societies of Canada's Common Law Degree Implementation Committee ("the Implementation Committee").
  
2. The Implementation Committee's mandate should be,
  - a. to determine how compliance with Section C (Approved Canadian Law Degree)<sup>1</sup> of the recommendations of the Task Force on the Canadian Common Law Degree will be measured. Its mandate may include clarifying or elaborating on the recommendations, where appropriate, to ensure their effective implementation, but will not include altering the substance or purpose of them; and
  
  - b. to make recommendations as to the establishment of a monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining the Federation of Law Societies of Canada's ("the Federation") relationship with Canadian law schools. The Implementation Committee should consider any role the National Committee on Accreditation might play in that monitoring process.
  
3. The Implementation Committee should have seven members, as follows:
  - a. Two law school deans chosen, where possible, from among those deans currently serving on Federation committees.
  
  - b. At least one law society member who served on the Task Force on the Canadian Common Law degree.

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<sup>1</sup> Section C incorporates by reference the recommendations in Sections A and B. The Task Force Recommendations are attached at the end of this report.

- c. At least one law society member who sits on the current Executive of the Federation.
  - d. At least one law society member who did not sit on the Task Force on the Canadian Common Law Degree.
  - e. At least one sitting bencher, either elected or appointed.
- 4. The Chair of the Implementation Committee should be one of the law society members. The Managing Director of the National Committee on Accreditation should be invited to attend the Implementation Committee meetings, without being a member of the Committee. The Federation of Law Societies Executive should appoint the Implementation Committee members and name the Chair.
- 5. Subject to the Federation's approval, the Implementation Committee should be entitled and encouraged to seek assistance from individuals in law societies, law school faculties and elsewhere as it considers appropriate to ensure the effective carrying out of its mandate.
- 6. To ensure that the Implementation Committee can carry out its mandate effectively, it should receive appropriate resourcing and funding, including staff and research assistance.
- 7. The Implementation Committee should present its final report to Federation Council no later than September 2011, with approval sought from law societies by December 2011. The Implementation Committee should begin meeting no later than June 2010.

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

## **APPENDIX 3**

# Canadian Common Law Degree Law School Report Form

Common Law Degree  
Implementation Committee

August 2011

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# Canadian Common Law Degree Law School Report Form

**Submitted by:**

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**Name of institution**

---

**Faculty name**

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**Date**

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## Canadian Common Law Degree Law School Report Form

### **PREFACE AND PURPOSE OF PROCESS:**

Each Canadian law school with a common law degree program is to complete the following report form to enable the Canadian Common Law Program Approval Committee (Approval Committee) to determine that the law school's graduates have earned degrees that meet the Federation of Law Societies of Canada's national requirement (national requirement) for entry to the admission programs of law societies in Canadian common law jurisdictions. The form contains two parts. Part 1 seeks information common to all the law school's programs and Part 2 seeks information respecting each program for which the law school seeks approval. Law schools will complete a Part 2 for each program, including joint programs, for which approval is sought.

Beginning in 2015 and annually thereafter the Approval Committee's final reports will be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. Because the national requirement does not come into effect until 2015, the reports in 2012, 2013 and 2014 will be progress reports and will not be public.

The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.



Canadian Common Law Degree  
Law School Report Form

**Contact Information**

**Name of Faculty/School:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Web Site Address (URL):**

\_\_\_\_\_

**Contact Person**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_



Canadian Common Law Degree  
Law School Report Form

**Signature Form**

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***(Name of Institution and Faculty/School)***

submits the following documentation to the Federation of Law Societies of Canada in accordance with the requirements for approval of the common law degree for purposes of entry of their graduates to the admission programs of law societies in Canadian common law jurisdictions.

The information submitted in this Report is a true and accurate description of the law faculty/school's academic program and learning resources on which information is requested.

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***Signature of Dean or other Administrative Head of the Faculty/School***

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**Name**

---

**Title**

---

**Date**

## Canadian Common Law Degree Law School Report Form

### **GLOSSARY OF TERMS - TBD**

### **GENERAL INSTRUCTIONS - TBD**

[The commentary and elaboration on the competencies and any other guidance will be provided here.]

### **CALENDARS**

Electronic copies of the latest calendar must be included. In cases where the latest calendar information does not correspond to the curriculum of the upcoming graduation class, an appropriate explanation must be part of the documentation provided.

### **EXHIBITS**

The following supplemental information should be attached at the end of the completed report.

- Exhibit 1: Documents describing the processes and policies for student admission, promotion, and graduation
- Exhibit 2: Copies of degree certificates and transcript entries for all variations of the program [This might need an explanation / examples – such as joint degrees with other professional faculties, joint degrees with other universities etc.]
- Exhibit 3: The program may wish to include a matrix of course and other offerings against the national requirements. See example at xxxx.
- Exhibit 4: Any other document that the program deems relevant for evaluation.

### **WHERE TO SEND YOUR MATERIALS**

[Contact information for Approval Committee will be inserted.]



## Canadian Common Law Degree Law School Report Form

### PART 1: INFORMATION COMMON TO ALL THE LAW SCHOOL'S PROGRAMS

Please provide a general description of the law school/faculty and any other introductory material.

Please list below all programs, including joint programs, offered by the law school and which compliance model will be followed for each, if any:

Names of Programs	Compliance Model (program approval, individual student approval, or no approval will be sought)



## Canadian Common Law Degree Law School Report Form

### 1. Learning Resources:

*1.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*

The Implementation Committee recommends that the following information be provided in this section:

- General description of numbers of full-time faculty, contract instructors, sessional lecturers and support staff, including significant changes from previous year.
- General description of full-time faculty, contract instructor and sessional lecturer qualifications.
- Number of full-time equivalent students in each program.
- General description of student support services.
- Overview of law school operating budget for the academic program from all sources, and sources of funding.

*1.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.*

The Implementation Committee recommends that the following information be provided in this section:

- Overall description of law school space, including whether the space is adequate for the law program(s), any space challenges faced by the school and their impact on the program and proposed or planned solutions.
- Description of space available to the law school to carry out the academic program offered, including seminar rooms, quiet study space for students, etc.
- Description of accessibility of the current space.

*1.3 The law school has adequate information and communication technology to support its academic program.*

The Implementation Committee recommends that the following information be provided in this section:

- Description of what IT services are provided at the law school.
- Description of dedicated or shared staff and level of support provided to faculty, staff and students.

## Canadian Common Law Degree Law School Report Form

- 1.4 *The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*

(A useful reference for this requirement is the Canadian Academic Law Library Directors Association's standards.)

The Implementation Committee recommends that the following information be provided in this section:

- Overview of library staff complement, qualifications and reporting structure.
- Overview of library facilities and description of collection and collections policies.
- Overview of library acquisitions budget.
- General description of support services available to faculty, students and other library users.

## PART 2: INFORMATION SPECIFIC TO EACH PROGRAM

Please indicate under which of the following your program is applying for approval, for this reporting period:

- ☐ Program Approval Model: Each graduate must have obtained an approved law degree for purpose of entry to law society bar admission/licensing programs
- ☐ Individual Student Approval Model: The law school will individually evaluate each student and determine which graduates will have an approved law degree for purpose of entry to law society bar admission/licensing programs.

## COMPETENCY REQUIREMENTS

### 1. Skills Competencies

*The applicant must have demonstrated the following competencies:*

## Canadian Common Law Degree Law School Report Form

### 1.1 Problem Solving

*In solving legal problems, the applicant must have demonstrated the ability to,*

- a. identify relevant facts;*
- b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;*
- c. analyze the results of research;*
- d. apply the law to the facts; and*
- e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

### 1.2 Legal Research

*The applicant must have demonstrated the ability to,*

- a. identify legal issues;*
- b. select sources and methods and conduct legal research relevant to Canadian law;*
- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;*
- d. identify, interpret and apply results of research; and*
- e. effectively communicate the results of research.*

## Canadian Common Law Degree Law School Report Form

Please describe how your graduates will meet this requirement (supporting documents may be attached):

### 1.3 Oral and Written Legal Communication

*The applicant must have demonstrated the ability to,*

- a. communicate clearly in the English or French language;*
- b. identify the purpose of the proposed communication;*
- c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and*
- d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

## 2. Ethics and Professionalism

*The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes,*

- 1. *Knowledge of,*
  - a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with,*
    - 1. *circumstances that give rise to ethical problems;*

Canadian Common Law Degree  
Law School Report Form

2. *the fiduciary nature of the lawyer's relationship with the client;*
  3. *conflicts of interest;*
  4. *the administration of justice;*
  5. *duties relating to confidentiality, lawyer-client privilege and disclosure;*
  6. *the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and the public; and*
  7. *the importance and value of serving and promoting the public interest in the administration of justice.*
- b. *The nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public.*
- c. *The range of legal responses to unethical conduct and professional incompetence;*
- d. *The different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.*
2. Skills to,
- a. *identify and make informed and reasoned decisions about ethical problems in practice; and*
  - b. *identify and engage in critical thinking about ethical issues in legal practice.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

### 3. Substantive Legal Knowledge

*The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:*

Please describe how your graduates will have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. (Supporting documents may be attached):

#### 3.1 Foundations of Law

*The applicant must have an understanding of the foundations of law, including,*

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

## Canadian Common Law Degree Law School Report Form

### 3.2 Public Law of Canada

*The applicant must have an understanding of the principles of public law in Canada, including,*

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

### 3.3 Private Law Principles

*The applicant must demonstrate an understanding of the principles that apply to private relationships, including,*

- a. contracts, torts and property law; and*
- b. legal and fiduciary concepts in commercial relationships*

Please describe how your graduates will meet this requirement (supporting documents may be attached):



## Canadian Common Law Degree Law School Report Form

### APPROVED CANADIAN LAW DEGREE

*The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria;<sup>19</sup>*

#### 4. Academic Program

*4.1 The law school's academic program for the study of law consists of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

*4.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

*4.3 Holders of the degree have met the competency requirements.*

Please add any comments in addition to the responses to the competency requirements, above:

<sup>19</sup> The Approved Canadian Law Degree criteria include both the Academic Program, in Part 2 of this form, and the Learning Resources, in Part 1 of this form.

## Canadian Common Law Degree Law School Report Form

Please describe how your program will ensure that transfer students from programs other than a Federation approved Canadian common law program will meet the national requirement:

Please describe how your program will ensure that graduates of your program who take part of their program at another institution (either through an exchange or letter of permission) will meet the national requirement:



## Canadian Common Law Degree Law School Report Form

*4.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies. ("Course" is properly interpreted to allow for both,*

- a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies, and*
- a demonstrable course of study devoted to ethics that could be delivered,*
  - (1 ) within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies; and/or*
  - (2) in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

*4.5 Subject to special, circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

*Federation of Law Societies  
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de juristes du Canada*

## **APPENDIX 4**

# Common Law Program Approval Timelines

Common Law Degree  
Implementation Committee

August 2011

# Canadian Common Law Program Approval Timelines

## ***Draft for 2012 Process***

This calendar is an approximate timeline of the approval process. The dates may vary depending on your situation.

**Transition note:** The Canadian Common Law Program National Requirement comes into effect for 2015 graduates. Therefore, the 2012, 2013 and 2014 approval processes will be prospective. That is, the Committee will be evaluating, at least in part, the future plans for the law programs, for which approval is being sought. As of 2015, and every year thereafter, the Committee will evaluate the program followed by the graduates of that year.

<b><i>Date</i></b>	<b><i>Event</i></b>	<b><i>Action by</i></b>
October - November 2011	Draft reporting form and instructions are distributed to the law schools for advance information.	Staff
November 2011	Dean acknowledges receipt of documentation and timelines for report completion.	Dean
December 2011	Preparation of report begins.	Dean/Law School Faculty and Staff
January 2012	Final version of reporting form is sent to the Dean.	Staff
February/ March 2012	Completed report is sent to Staff.	Dean
March 2012	Staff review form, seek any clarification required from the law school, and distributes it to the Committee members.	Staff
April 2012	Committee meets to consider the reports.	Committee and Staff

<b><i>Date</i></b>	<b><i>Event</i></b>	<b><i>Action by</i></b>
May 2012	Draft decision is sent to Dean for comment.	Staff
	Dean sends his/her comments/responses, if any, to Staff.	Dean
	Dean's comments, if any, are sent to Committee for review and response. Discussions on any deficiencies take place and involve the Dean, Committee Chair or his/her delegate.	Staff
	Committee finalizes decisions.	Committee
June 2012	Committee Final Report is prepared and reviewed.	Committee Chair and Staff
	Committee Final Report is sent to Dean by June 30, 2012.	Committee Chair and Staff
July 2012	Report on 2012 reviews is forwarded to Federation and law societies for information. No website posting because 2012 is a progress report.	Staff

