



# AGENDA

**MEETING:** Benchers  
**DATE:** Friday, December 2, 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 October 21, 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>Approval of 2012 Fee Schedules</b> <ul style="list-style-type: none"> <li>Memorandum from Mr. Hoskins for the Act and Rules Subcommittee</li> </ul>	Tab 2 p. 2000
3	<b>Approval of External Appointments: Nominations to LTSA Board of Directors; Re-appointment of LSS Director; Extension of YVR Director's Term of Office</b> <ul style="list-style-type: none"> <li>Memorandum from the Executive Committee</li> </ul>	Tab 3 p. 3000
4	<b>Approval of Revision to the Law Society Appointments Policy</b> <ul style="list-style-type: none"> <li>Memorandum from the Appointments Subcommittee</li> </ul>	Tab 4 p. 4000
5	<b>Amendments to Rules 3-18.3, 3-18.4 and Schedule 1: Implementation of Lawyer Education Advisory Committee CPD Recommendations:</b> <ul style="list-style-type: none"> <li>Memorandum from the Act and Rules Subcommittee</li> </ul>	Tab 5 p. 5000
6	<b>Oath of Office for Non-Bencher Hearing Panelists</b> <ul style="list-style-type: none"> <li>Memorandum from Mr. Hoskins</li> </ul>	Tab 6 p. 6000
7	<b>Courthouse Libraries BC: Draft Governance Plan for Approval</b> <ul style="list-style-type: none"> <li>Memorandum from Courthouse Libraries BC Review Task Force with CLBC Draft Governance Plan</li> </ul>	Tab 7 p. 7000

<b>REGULAR AGENDA</b>		
8	<b>President's Report</b> <ul style="list-style-type: none"> <li>Written report to be distributed electronically prior to meeting</li> </ul>	
9	<b>CEO's Report</b> <ul style="list-style-type: none"> <li>Written report</li> </ul>	Tab 9 p. 9000
10	<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>2009-2011 STRATEGIC PLAN IMPLEMENTATION (FOR DISCUSSION AND/OR DECISION)</b>		
11	<b>Year End Reports from the 2011 Advisory Committees</b> Updates from the Chairs of the 2011 Advisory Committees <ul style="list-style-type: none"> <li>Report from the Access to Legal Services Advisory Committee</li> <li>Report from the Equity and Diversity Advisory Committee</li> <li>Report from the Independence and Self-Governance Advisory Committee</li> <li>Report from the Lawyer Education Advisory Committee</li> </ul>	Tab 11  p. 11000
<b>2012-2014 STRATEGIC PLAN DEVELOPMENT (FOR DISCUSSION AND/OR DECISION)</b>		
12	<b>2012 – 2014 Law Society Strategic Plan: Final Review and Approval</b> <ul style="list-style-type: none"> <li>Memorandum from the Executive Committee</li> </ul>	Tab 12 p. 12000
13	<b>Feasibility Assessment: Bringing the Justicia Project to BC</b> Mr. Brun to report <ul style="list-style-type: none"> <li>Report from the Equity and Diversity Advisory Committee</li> </ul>	Tab 13 p. 13000
<b>OTHER MATTERS (FOR DISCUSSION AND/OR DECISION)</b>		
14	<b>Insurance Coverage for Trust Shortfalls Arising from “Bad Cheque” Scams</b> Ms. Forbes to report <ul style="list-style-type: none"> <li>Memorandum from Ms. Forbes</li> </ul>	Tab 14 p. 14000
15	<b>Progress on Regulatory Department Plan</b> Ms. Armour to report	
16	<b>Federation of Law Societies of Canada - Territorial Mobility Agreement Extension</b> Mr. Walker to report for the Credentials Committee <ul style="list-style-type: none"> <li>Memorandum from Ms. Small</li> </ul>	Tab 16 p. 16000
17	<b>Key Performance Measures and Bellwether Measures – 2011 Review</b> Ms. Andreone to report <ul style="list-style-type: none"> <li>Memorandum from the Audit Committee</li> </ul>	Tab 17 p. 17000

18	<b>Reconciling Qualifications for Differing Types of Legal Services, Strategy 3-5</b> Ms. O’Grady to report <ul style="list-style-type: none"><li>• Report from the Lawyer Education Advisory Committee</li></ul>	Tab 18 p. 18000
19	<b>Election of an Appointed Bencher to the 2012 Executive Committee</b>	
<b>FOR INFORMATION ONLY</b>		
20	<b>Federation Update</b> Mr. Hume to report	
21	<b>Complainants’ Review Committee – 2011 Review</b>	Tab 21 p. 21000
22	<b>Enterprise Risk Management Plan</b> Ms. Andreone to report	Tab 22 p. 22000
23	<b>Briefing Note from Mr. Whitcombe on BC Law Firms</b>	Tab 23 p. 23000
<b>IN CAMERA SESSION</b>		
24	<b>Bencher Concerns</b>	



# Minutes

## Benchers

**DATE:** Friday, October 21, 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	Claude Richmond
E. David Crossin, QC	Alan Ross
Tom Fellhauer	Catherine Sas, QC
Leon Getz, QC	Richard Stewart, QC
Carol Hickman, QC	Herman Van Ommen
Stacy Kuiack	Kenneth Walker

David Loukidelis, QC, Deputy  
Attorney General of BC, representing  
the Attorney General

**ABSENT:** David Renwick, QC

**STAFF PRESENT:**

Deborah Armour	Jeanette McPhee
Lance Cooke	Doug Munro
Charlotte Ensminger	Lesley Pritchard
Jeffrey Hoskins, QC	Susanna Tam
Michael Lucas	Alan Treleaven
Bill McIntosh	Adam Whitcombe

**GUESTS:**

Chris Axworthy, QC, Faculty of Law Dean, Thompson Rivers University  
Dom Bautista, Executive Director, Law Courts Center  
Mark Benton, QC, Executive Director, Legal Services Society  
Johanne Blenkin, Executive Director, Courthouse Libraries BC

Kari Boyle, Executive Director, Mediate BC Society  
 Jay Chalke, QC, Assistant Deputy Minister for Justice Services Branch  
 Donna Greschner, Faculty of Law Dean, UVIC  
 Jeremy Hainsworth, Reporter, Lawyers Weekly  
 Azool Jaffer-Jeraj, President, Trial Lawyers Association of BC  
 Jamie Maclaren, Executive Director, Access Pro Bono  
 Sharon Matthews, President, CBABC  
 Caroline Nevin, Executive Director, CBABC  
 Wayne Robertson, QC, Executive Director, Law Foundation of BC  
 Margaret Sasges, Chair, Law Foundation of BC  
 David Zacks, QC, Chair, Courthouse Libraries BC

## CONSENT AGENDA

### 1. Minutes

The minutes of the meeting held on September 9, 2011 were approved as circulated.

### Consent Resolutions

The following resolutions were passed unanimously and by consent.

### 2. Act & Rules Subcommittee: Conduct Review Subcommittee Report and Proposed Amendments to Rule 4-9

*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

### 3. Act & Rules Subcommittee: Powers of the President and Proposed Rule 1-3(8)

*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.

#### **4. Proposed Policy for Bencher Access to Law Society Regulatory Committees' Meeting Materials and Minutes**

***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 Bencher is not a current member.

#### **5. External Appointments: Approval of Revised Law Society Appointments Policy**

***BE IT RESOLVED to approve a policy for Law Society appointments to boards, councils and committees of other bodies (the Law Society Appointments Policy), as set out at page 5006 of the meeting materials (Appendix 1 to these minutes), effective immediately, with the exception of the following provisions under the heading of “Communication Expectations”, which are to be reviewed the Appointments Subcommittee in consultation with Ms. Berge and presented to the Benchers for approval at their next meeting:***

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.

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

#### **6. 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 elaborated on a number of matters, including those outlined below.

**a. Hearing Panel Pools – Eligibility of Retiring Benchers**

At their September meeting the Executive Committee confirmed that effective immediately, new Life Benchers are subject to same eligibility criteria and application protocol as current Life Benchers.

**b. Meeting with Chief Justice Bauman of the BC Supreme Court**

A productive review of various issues, including: the Law Society's draft 2012-2014 Strategic Plan; electronic court proceedings; improved sharing of information between the BC courts and the Law Society; and the appointment of Ian Donaldson, QC, Kenneth McEwan, QC and Dinyar Marzban, QC to the Committee on Relations with the Judiciary.

**c. Meeting with BC Supreme Court Subcommittee on Paralegals**

A positive discussion of pending expansion of the rights of paralegals to appear before BC courts, including plans for a family law pilot project.

**d. Meeting with BC Deputy Solicitor General / Legislative Amendments Update**

A positive 45-minute discussion of the Law Society's package proposed amendments to the *Legal Profession Act*.

**7. CEO's Report**

Mr. McGee did not report, as he was attending the Annual Conference of the International Institute of Law Association Chief Executives in Adelaide, Australia.

Ms. McPhee provided highlights of the CFO's Financial Report to the Benchers – First Nine Months of 2011 (page 7000 of the meeting materials).

**8. Report on Outstanding Hearing and Review Reports**

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

## **GUEST PRESENTATIONS**

### **9. Presentation by David Loukidelis, QC, Deputy Attorney General of BC: Justice Access Centres and the Ministry of Attorney General's Plans for Additional Locations**

BC Deputy Attorney General David Loukidelis, QC and Assistant Deputy Minister Jay Chalke, QC briefed the Benchers on the Ministry of Attorney General's plans for and early progress in deployment of Judicial Access Centres (JACs) to increase the public's timely and cost effective access to justice for civil problems. They reviewed early lessons learned from the JACs currently operating in Nanaimo and Vancouver, expressing hope that the Law Society will continue to support the operation of those centres. They noted the importance of a collaborative and problem-solving approach to resolving legal and related issues, highlighting:

- legal and non-legal services onsite
- relationships with community social serving NGOs
- plans for pilot projects for court appearance and representation by paralegals

Discussion followed the presentation, during which the following points were addressed:

- importance of collaboration with legal education institutions
- need to address language as a barrier to access to justice
- need for aspirational commitment as precursor for decisions and progress on allocation of resources

Mr. Hume noted that dialogue between the Ministry and the Law Society will continue, with the Society's involvement led by the Access to Legal Services Advisory Committee.

### **10. Presentation by Margaret Sasges, Chair of the Law Foundation Board of Governors: Annual Law Foundation Update to the Benchers**

Law Foundation Board Chair Margaret Sasges updated the Benchers on the Law Foundation's finances and operations. She circulated the Foundation's 2010 Annual Report and noted that the difficult market conditions described therein have persisted through 2011, requiring continued use of reserves to meet funding commitments.



Ms. Sasges commented on the value of the Law Society's support, noting particularly the contribution of the Trust Assurance dept in leading the recovery of over \$1 million in interest on trust funds from banks over the past three years.

Ms. Sasges identified the Law Foundation's priorities for 2012 as promoting access to justice and legal services, establishing the appropriate level of reliance on reserves to fund current commitments, exploring other sources of revenue, and defining the appropriate basis for decisions to reduce current funding commitments, if necessary.

Both Ms. Sasges and Executive Director Wayne Robertson, QC noted the availability of large project funding for 2012 (up to \$75,000 per project). Ms. Sasges flagged public legal education, collaboration, family law, technology and support for current grantees as key funding themes for 2012.

## **STRATEGIC PLANNING AND PRIORITIES MATTERS – for Discussion and/or Decision**

### **11. Alternative Business Structures in the Legal Profession (2009-2011 Strategic Plan Initiative 1-2b)**

Ms. Lindsay briefed the Benchers as Chair of the Independence and Self-governance Advisory Committee. She referred to the Committee's report at page 11000 of the meeting materials for a review of other jurisdictions' experiences to date with alternate business structures (ABSs) in the legal profession. Ms. Lindsay described the report's core theme as considering how outside ownership of law firms might trigger issues and duties impacting on core values of the Law Society.

Mr. Lucas summarized the conclusion of the Committee's review as determining that there is not enough evidence available to warrant recommending that ABSs be permitted and regulated in BC. The Committee also concluded that continued monitoring of ownership structures of law firms elsewhere and in BC is needed.

Ms. Lindsay moved (seconded by Mr. Van Ommen) the adoption and publication of the Committee's report, with the commitment that the Law Society continue to monitor developments in ownership and operational structures of law firms in other jurisdictions.

With a friendly amendment to replace "adoption" with "receipt, the motion was carried.

## **12. Reviewing Draft 2012-2014 Strategic Plan: Bencher Discussion**

Mr. Hume outlined the process followed by the Executive Committee in re-working the draft 2012-2014 Strategic Plan at page 12004 of the meeting materials. He reviewed various changes made to apply the input provided by the Benchers at their September meeting, including consolidation of the four goals from previous drafts of the Plan into the three goals as set out at page 12006:

- 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.**

In the ensuing discussion there was consensus on the following points:

- The goals should be re-worked with language and grammar that better reflect their aspirational nature
- Initiative 1-1(b) should be re-worked with language and grammar that better reflect the general (as opposed to specific) intention
- Initiative 1-1(a) should be re-positioned

It was agreed that the draft plan will be re-worked as discussed for the Executive Committee's review and further revision before being returned to the Benchers for review and approval at their December meeting.

## **OTHER MATTERS – For Discussion and/or Decision**

### **13. Courthouse Libraries BC Governance Planning: for Bencher Review and Input**

Courthouse Libraries BC Board Chair and Life Bencher David Zacks, QC outlined the process followed and recommendations developed by the CLBC board over the past two years in reviewing CLBC's governance structure. He referred the Benchers to the CLBC board's memorandum at page 13000 of the meeting materials, and the draft CLBC Constitution at page 13002 for details.

Mr. Zacks noted particularly the conclusion of the CLBC board that best practices and CLBC's sustainability warrant a smaller number of Society members and a smaller, non-stakeholder

board comprised of directors chosen for their skills and competencies by a Nominating Committee.

Mr. Zacks also noted that CLBC Executive Director Johanne Blenkin has been instrumental in improving web access to CLBC resources and is a national leader in developing innovative ways to enhance public access to legal information and resources.

Mr. Ross briefed the Benchers as Chair of the Courthouse Libraries BC Review Task Force, which was formed in February 2011 and comprises Lisa Nakamura for the Ministry of Attorney General, Eugene Raponi for the Law Foundation, Wayne Robertson, QC for the Law Foundation, Alan Treleaven and Alan Ross for the Law Society, with Mr. Ross as Chair. The task force has met five times in addressing its terms of reference, which are:

To make recommendations to the Law Foundation, Law Society and Ministry of the Attorney General on

1. The role of Courthouse Libraries BC in providing appropriate legal information services to the BC public and legal community
2. The costs and resources necessary for Courthouse Libraries BC to provide appropriate legal information services for
  - a. 2012
  - b. the medium term
  - c. the long term
3. funding and support for Courthouse Libraries BC by the contributions of the Law Foundation, Law Society and Ministry of Attorney General
4. the mechanism for Courthouse Libraries BC to report to the Law Foundation, Law Society and Ministry of Attorney General
5. collaborating with the Courthouse Libraries BC board on Courthouse Libraries BC's governance structure, including the governance role of the Law Society's appointees to the CLBC board.

Mr. Ross confirmed that the task force has consulted with Mr. Zacks and the CLBC board and agrees with their proposals for revising CLBC's governance structure and constitution. Mr. Ross thanked the members of the task force and particularly Ms. Blenkin for their hard work.

Mr. Zacks advised that a CLBC special meeting will be convened early in 2012 to review and approve the proposed revisions to CLBC's governance structure and constitution, upon the Benchers' approval.

Mr. Hume confirmed that the draft CLBC constitution will be on the agenda for the December Benchers meeting for approval.

#### **14. For Bencher Approval: Proposed 2012-2013 Federation Levy Increase**

Mr. Hume briefed the Benchers. He advised that the Federation's current staff resources are stretched very thin, and that more Federation staff are required to support effective implementation of the various initiatives being brought forward by the member societies. Mr. Hume referred the Benchers to Ms. McPhee's memorandum at page 14000 of the meeting materials for background.

Mr. LeRose moved (seconded by Mr. Vertlieb) that the Law Society approve the following resolution:

***BE IT RESOLVED THAT:***

the Federation of Law Societies of Canada levy be set at \$25 per FTE, effective July 1, 2012.

The motion was carried unanimously.

#### **15. Federation of Law Societies of Canada (FLSC) – Common Law Degree Implementation Report**

Mr. Walker briefed the Benchers as Vice-Chair of the Credentials Committee. He referred to the Final Report of the Federation's Common Law Degree Implementation Committee (at page 15003 of the meeting materials), noting that the Credentials Committee has reviewed and unanimously approved the report and its 20 recommendations (pages 15006 – 15008). Mr. Walker described the report as the product of excellent collaboration between the Federation, its member societies and the law schools.

Mr. Walker moved (seconded by Mr. Stewart) that the Final Report of the Federation's Common Law Degree Implementation Committee and the recommendations therein be adopted.

In the ensuing discussion there was agreement on the importance of continued collaboration between the Federation, its member societies and the law schools.

The motion was carried unanimously.

## **18. Federation Update**

Mr. Hume updated the Benchers as the Law Society's member of Federation Council. He briefed them on the proceedings of the Council meeting and Federation Annual Conference held in Charlottetown, PEI, September 15 – 17, 2011, referring to the report of Federation President Ronald MacDonald, QC for details (at page 18000 of the meeting materials).

## **19. CBA National Council Report**

Ms. Berge reported to the Benchers as the Law Society's representative on the CBA National Council. She provided a briefing on the proceedings of the CBA Canadian Legal Conference held in Halifax, NS, August 15 -17, 2011.

## ***IN CAMERA SESSION***

The Benchers discussed other matters *in camera*.

WKM  
2011-11-18

## 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.

## **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.



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee  
Date: November 21, 2011  
Subject: **2012 Fee Schedule; Application fee rules**

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The Act and Rules Subcommittee recommends a number of amendments to the Law Society Rules governing the requirements to pay a fee to apply for a benefit. Since those recommendations necessarily involve a number of amendments to the Fee Schedule (Schedule 1 to the Law Society Rules), I have combined the annual update to the schedules to the Subcommittee's proposals for amendments.

There is little consistency in the current rules in what these fees related to applications are called. In some cases, it is not clear that the fee is paid to compensate for the Law Society processing the application, which can include an extensive investigation into the background of the applicant to fulfill the Law Society's obligation to ensure that only those of good character and repute and fit are enrolled or admitted.

In a recent incident, an applicant whom the Credentials Committee was not prepared to enrol without a hearing, withdrew her application and demanded all of her fees be returned to her. It has been our policy not to refund the "enrolment" fee (\$250) once the Law Society has processed the application. However, a close examination of the rules indicated that she may well be entitled to even the "enrolment" fee, because she did not in fact become enrolled. Rather than litigate the issue, it was decided to refund the money in that case and look to making the rules more clear.

We looked at all of the other fees for applications to change credentials status as well and determined that there are other instances where it would be fair for the Law Society to retain all or part of the fee once the Society had expended staff time and other resources on processing the application. This gave rise to a number of proposed changes. The attached draft amendments are recommended by the Act and Rules Subcommittee for adoption. I also attach a suggested resolution to give effect to the changes.

## Drafting notes

Most of the proposed amendments are fairly self-explanatory, changing “permit fee”, “reinstatement fee” or “investigation fee” to “application fee” to show that the fee is paid for the benefit of making an application and having it processed, and not necessarily for the end product.

In order to make it more clear that there is no right of refund in most cases, a new Rule 2-71.1 is proposed setting out the condition on which a refund can be made, “if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.”

Changing the way that the fees are described in the substantive part of the Rules requires some parallel changes to Schedule 1, “Law Society Fees and Assessments”.

Rule 2-55 is amended in passing to rescind subrule (1)(d), which is spent. The provision establishes a period of time that must be no more than five years. Paragraph (d) provides one option as the time since January 1, 2006. It now being more than five years since that date, it can now never be a relevant option.

As to the annual revision of the fee schedules, each should be re-titled to show that it applies to 2012. Schedule 1 includes the increased annual practice fee and the decreased annual Special Compensation Fund assessment.

JGH

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Attachments:        amendments  
                         resolution

# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 1 – Practice of Law

#### Inter-jurisdictional practice

##### Inter-jurisdictional practice permit

- 2-11** (2) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (b) the ~~application permit~~ fee or renewal fee specified in Schedule 1,

#### Practitioners of foreign law

##### Practitioners of foreign law

- 2-18** (1) A person who qualifies under section 17 of the Act may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director
- (b) the ~~application permit~~ fee specified in Schedule 1.

#### Multi-Disciplinary Practice

##### Changes in MDP

- 2-23.5** (2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:
- (b) pay the ~~investigation~~ application fee specified in Schedule 1.

#### Admission program

##### Enrolment in the admission program

- 2-27** (3) ~~Application is made~~ An applicant may make an application under subrule (1) by delivering to the Executive Director the following:
- (e) the application fee specified in Schedule 1.

# LAW SOCIETY RULES

## Part-time articles

- 2-33** (1) An applicant for enrolment may apply to complete some or all of his or her articles part-time by submitting the following to the Executive Director not less than 2 months before the enrolment start date:
- (b) the application fee ~~for enrolment~~ specified in Schedule 1;

## Temporary articles

- 2-42** (1) A person may apply for enrolment in temporary articles by filing with the Executive Director, not less than 30 days before the enrolment start date,
- (c) the application fee for temporary articles specified in Schedule 1.

## Call and admission

### Transfer from another Canadian jurisdiction

- 2-49** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (f) the following fees:
    - (i) the ~~investigation~~ application fees and call and admission fees specified in Schedule 1;

### Transfer as Canadian legal advisor

- 2-49.3** (1) Subject to subrule (3), a member of the Barreau du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (e) the following fees:
    - (i) the application ~~investigation~~ fees and call and admission fees;

## Reinstatement

### Reinstatement of a former lawyer

- 2-52** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (b) the appropriate application ~~reinstatement~~ fee specified in Schedule 1.
- (2.1) On an application ~~from an applicant~~ under subrule (2)(c), the Credentials Committee may waive payment of all or part of the ~~reinstatement~~ application fee on any conditions that the Committee considers appropriate.

# LAW SOCIETY RULES

## Returning to Practice

### Definitions

**2-55** (1) In Rules 2-55 to 2-59, unless the context indicates otherwise,

“**relevant period**” is the shortest of the following periods of time in the immediate past:

(c) the time since the lawyer last passed the qualification examination;<sup>2</sup>

~~(d) in the case of a practising lawyer who has paid the full-time insurance fee since January 1, 2006, the time since that date.~~

## Division 3 – Fees and Assessments

### Application fees

**2-71.1** On application from a person who has paid an application fee under these Rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

# LAW SOCIETY RULES

## SCHEDULE 1 – ~~2011~~ 2012 LAW SOCIETY FEES AND ASSESSMENTS

<b>A. Annual fee</b>	<b>\$</b>
1. Practice fee set by members (Rule 2-70):	<del>1,729.14</del> <u>1,840.41</u>
2. Special Compensation Fund assessment (Rule 2-70)	<del>5</del> <u>1</u> .00
<b>C. Articled student fees</b>	
1. <u>Application fee for</u> <del>Enrolment</del> <u>enrolment</u> in admission program (Rules 2-27(3)(e) and 2-33(1)(b))	250.00
2. <u>Application fee for</u> <del>Temporary</del> <u>temporary</u> articles <del>fee</del> (Rule 2-42(1)(c))	125.00
3. <u>Application fee for</u> <del>Temporary</del> <u>temporary</u> articles (legal clinic) <del>fee</del> (Rule 2-42(1)(c))	25.00
<b>D. <del>Investigation and examination</del> <u>Transfer</u> fees</b>	
1. <u>Application fee for</u> <del>Transfer</del> <u>transfer</u> from another Canadian province or territory – <del>investigation fee</del> (Rule 2-49(1)(f))	1,125.00
<b>F. Reinstatement fees</b>	
1. <u>Application fee</u> <del>Following</del> <u>following</u> disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b))	600.00
1.1 <u>Application fee</u> <del>Following</del> <u>following</u> 3 years or more as a former member (Rule 2-52(1)(b))	500.00
2. <u>Application fee in</u> <del>All</del> <u>all</u> other cases (Rule 2-52(1)(b))	415.00
<b>G. <del>Application</del> <u>Change of status</u> fees</b>	
1. Application <del>fee</del> to become retired member (Rule 2-4(2)(b))	30.00
2. Application <del>fee</del> to become non-practising member (Rule 2-3(1)(b))	60.00
3. <u>Application fee for</u> <del>Nonnon</del> <u>non</u> -practising or retired member applying for practising certificate (Rule 2-56(b))	60.00
<b>H. Inter-jurisdictional practice fees</b>	
1. <del>Original-a</del> <u>A</u> pplication <del>for permit</del> <u>fee</u> (Rule 2-11(2)(b))	500.00
<b>J. Practitioners of foreign law</b>	
1. <del>Permit-Application</del> <u>fee</u> for practitioners of foreign law (Rule 2-18(1)(b))	600.00

## LAW SOCIETY RULES

2. Permit renewal fee for practitioners of foreign law (Rules s 2-18(1)(b)  
and 2-22(2)(c)) ..... 125.00

**L. Multi-disciplinary Practice fees** **\$**

2. ~~Investigation~~-Application fee per proposed non-lawyer member of MDP  
(Rules 2-23.3(1) and 2-23.5(2)) ..... 1,125.00

# **LAW SOCIETY RULES**

## **PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW**

### **Division 1 – Practice of Law**

#### **Inter-jurisdictional practice**

##### **Inter-jurisdictional practice permit**

- 2-11** (2) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (b) the application fee or renewal fee specified in Schedule 1,

#### **Practitioners of foreign law**

##### **Practitioners of foreign law**

- 2-18** (1) A person who qualifies under section 17 of the Act may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director
- (b) the application fee specified in Schedule 1.

#### **Multi-Disciplinary Practice**

##### **Changes in MDP**

- 2-23.5** (2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:
- (b) pay the application fee specified in Schedule 1.

#### **Admission program**

##### **Enrolment in the admission program**

- 2-27** (3) An applicant may make an application under subrule (1) by delivering to the Executive Director the following:
- (e) the application fee specified in Schedule 1.



# LAW SOCIETY RULES

## Part-time articles

- 2-33** (1) An applicant for enrolment may apply to complete some or all of his or her articles part-time by submitting the following to the Executive Director not less than 2 months before the enrolment start date:
- (b) the application fee specified in Schedule 1;

## Temporary articles

- 2-42** (1) A person may apply for enrolment in temporary articles by filing with the Executive Director, not less than 30 days before the enrolment start date,
- (c) the application fee for temporary articles specified in Schedule 1.

## Call and admission

### Transfer from another Canadian jurisdiction

- 2-49** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (f) the following fees:
    - (i) the application fee and call and admission fees specified in Schedule 1;

### Transfer as Canadian legal advisor

- 2-49.3** (1) Subject to subrule (3), a member of the Barreau du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (e) the following fees:
    - (i) the application fee and call and admission fees;

## Reinstatement

### Reinstatement of a former lawyer

- 2-52** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (b) the appropriate application fee specified in Schedule 1.
- (2.1) On an application under subrule (2)(c), the Credentials Committee may waive payment of all or part of the application fee on any conditions that the Committee considers appropriate.

# LAW SOCIETY RULES

## Returning to Practice

### Definitions

**2-55** (1) In Rules 2-55 to 2-59, unless the context indicates otherwise,

“**relevant period**” is the shortest of the following periods of time in the immediate past:

(c) the time since the lawyer last passed the qualification examination.

### Division 3 – Fees and Assessments

#### Application fees

**2-71.1** On application from a person who has paid an application fee under these Rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

# LAW SOCIETY RULES

## SCHEDULE 1 – 2012 LAW SOCIETY FEES AND ASSESSMENTS

<b>A. Annual fee</b>	<b>\$</b>
1. Practice fee set by members (Rule 2-70):	1,840.41
2. Special Compensation Fund assessment (Rule 2-70)	1.00
<b>C. Articled student fees</b>	
1. Application fee for enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b)) .....	250.00
2. Application fee for temporary articles (Rule 2-42(1)(c)) .....	125.00
3. Application fee for temporary articles (legal clinic) (Rule 2-42(1)(c)) .....	25.00
<b>D. Transfer fees</b>	
1. Application fee for transfer from another Canadian province or territory – (Rule 2-49(1)(f)) .....	1,125.00
<b>F. Reinstatement fees</b>	
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b))	600.00
1.1 Application fee following 3 years or more as a former member (Rule 2-52(1)(b)) .....	500.00
2. Application fee in all other cases (Rule 2-52(1)(b)) .....	415.00
<b>G. Change of status fees</b>	
1. Application fee to become retired member (Rule 2-4(2)(b)) .....	30.00
2. Application fee to become non-practising member (Rule 2-3(1)(b)) .....	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-56(b)) .....	60.00
<b>H. Inter-jurisdictional practice fees</b>	
1. Application fee (Rule 2-11(2)(b)) .....	500.00
<b>J. Practitioners of foreign law</b>	
1. Application fee for practitioners of foreign law (Rule 2-18(1)(b)) .....	600.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-18(1)(b) and 2-22(2)(c)) .....	125.00

## LAW SOCIETY RULES

### **L. Multi-disciplinary Practice fees**

\$

2. Application fee per proposed non-lawyer member of MDP  
(Rules 2-23.3(1) and 2-23.5(2)) ..... 1,125.00

## 2012 FEES

### SUGGESTED RESOLUTION:

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

1. *In Rules 2-11(2)(b) and 2-18(1)(b), by striking “the permit fee” and substituting “the application fee”.*
2. *In Rule 2-23.5(2)(b), by striking “the investigation fee” and substituting “the application fee”.*
3. *In Rule 2-27(3)*
  - (a) *by striking “Application is made” and substituting “An applicant may make an application”; and*
  - (b) *in paragraph (e), by striking “the fee specified” and substituting “the application fee specified”.*
4. *In Rule 2-33(1)(b), by striking “the fee for enrolment” and substituting “the application fee”.*
5. *In Rule 2-42, by striking “the fee for temporary articles” and substituting “the application fee for temporary articles”.*
6. *In Rules 2-49 and 2-49.3, by striking “the investigation fees” and substituting “the application fee”.*
7. *In Rule 2-52*
  - (a) *in subrule (1)(b), by striking “the appropriate reinstatement fee” and substituting “the appropriate application fee”; and*
  - (b) *by rescinding subrule (2.1) and substituting the following:*
    - (2.1) On an application under subrule (2)(c), the Credentials Committee may waive payment of all or part of the application fee on any conditions that the Committee considers appropriate.
8. *In Rule 2-55, definition of “relevant period”*
  - (a) *by striking the comma at the end of paragraph (Committee) and substituting a period; and*
  - (b) *by rescinding paragraph (d).*

**9. By enacting the following Rule:**

**Application fees**

**2-71.1** On application from a person who has paid an application fee under these Rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

**10. In the headings of Schedules 1, 2 and 3, by striking the year “2011” and substituting “2012”.**

**11. In Schedule 1**

**(a) by rescinding items A1 and A2 and substituting the following:**

- |   |         |
|---|---------|
| 1. Practice fee set by members (Rule 2-70)          | 1729.14 |
| 2. Special Compensation Fund assessment (Rule 2-70) | 5.00    |

**(b) by rescinding items C1 to C3 and substituting the following:**

- |   |        |
|---|--------|
| 1. Application fee for enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b)) ..... | 250.00 |
| 2. Application fee for temporary articles (Rule 2-42(1)(c)) .....                             | 125.00 |
| 3. Application fee for temporary articles (legal clinic) (Rule 2-42(1)(c)) .....              | 25.00  |

**(c) by rescinding the title and item 1 of part D and substituting the following:**

**D. Transfer fees**

- |   |          |
|---|----------|
| 1. Application fee for transfer from another Canadian province or territory – (Rule 2-49(1)(f)) ..... | 1,125.00 |
|---|----------|

**(d) by rescinding items F1, F1.1 and F2 and substituting the following:**

- |   |        |
|---|--------|
| 1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b)) | 600.00 |
| 1.1 Application fee following 3 years or more as a former member (Rule 2-52(1)(b)) .....  | 500.00 |
| 2. Application fee in all other cases (Rule 2-52(1)(b)) .....   | 415.00 |

**(e) by rescinding the title and items 1 to 3 of part G and substituting the following:**

**G. Change of status fees**

- |  |       |
|--|-------|
| 1. Application fee to become retired member (Rule 2-4(2)(b)) ..... | 30.00 |
|--|-------|

- |  |          |
|--|----------|
| 2. Application fee to become non-practising member (Rule 2-3(1)(b))  | 60.00    |
| 3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-56(b)) .....                       | 60.00    |
| <br><i>(f) by rescinding item H1 and substituting the following:</i>   |          |
| 1. Application fee (Rule 2-11(2)(b)) .....   | 500.00   |
| <br><i>(g) by rescinding items J1 and J2 and substituting the following:</i>   |          |
| 1. Application fee for practitioners of foreign law (Rule 2-18(1)(b)) ....   | 600.00   |
| 2. Permit renewal fee for practitioners of foreign law (Rules 2-18(1)(b) and 2-22(2)(c)) .....   | 125.00   |
| <br><i>(h) by rescinding item L2 and substituting the following:</i>   |          |
| 2. Application fee per proposed non-lawyer member of MDP (Rules 2-23.3(1) and 2-23.5(2)) .....   | 1,125.00 |
| <br><b>12. In Schedule 2, by revising the prorated figures in each column in accordance with the changes in paragraph 11(a) above.</b> |          |

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



# Memo

To: The Benchers  
 From: The Executive Committee  
 Date: November 23, 2011  
 Subject: **1. Nominations to LTSA Board of Directors; 2. Appointment to LSS Board of Directors; 3. Extension of YVR Director's Term Limit**

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## **1. Land Title & Survey Authority Board of Directors (Bencher Nomination, on advice of Executive Committee)**

### **a. Background**

<b>Current Appointments</b>	<b>Date First Appointed</b>	<b>Expiry Date</b>
Geoff Plant, QC	4/1/2008	3/31/2014
Richard Swift, QC	11/19/2004	3/31/2012

On March 31, 2012 Richard Swift, QC completes his final term on the LTSA Board of Directors. LTSA has requested that the Law Society provide names and resumes of between three and five suitable nominees by December 31, 2011.

LTSA Board Chair Geoff Plant, QC's September 30, 2011 letter to Tim McGee (TAB A) outlines skills and experience preferred by LTSA for this round of nominations:

- board experience
- legal
- business acumen
- government relations
- information technology

The LTSA Skills and Experience Profile (TAB B) confirms that all LTSA directors should possess the following personal attributes:

- (a) High ethical standards and integrity in professional and personal dealings;



- (b) Ability and willingness to raise potentially controversial issues in a manner that encourages constructive dialogue;
- (c) Flexibility, responsiveness and willingness to consider change;
- (d) Ability and willingness to listen to others;
- (e) Capability for a wide perspective on issues; and
- (f) Ability to work as a team member.

#### **a. Recommendation**

The Executive Committee recommends that the Benchers nominate Ralston Alexander, QC, William Cottick and Glen Ewan, QC to the Board of Directors of the Land Title and Survey Authority of BC, one of whom to be appointed by the board for a three-year term commencing April 1, 2012.

The Appointments Subcommittee considered LTSA's skill set request and Skills and Experience Profile, and canvassed a number of prospects in selecting the following prospective nominees for the Executive Committee's consideration as appropriate recommendations to the Benchers.

##### **i. Ralston Alexander, QC (Resume at TAB C)**

Mr. Alexander needs no introduction to the Benchers or to LTSA. He has served as the Law Society's representative on the LTSA Stakeholders' Advisory Committee since 2007. If nominated and appointed to the LTSA board, Mr. Alexander will have to be replaced on the LTSA Stakeholders' Advisory Committee. Mr. Hume has spoken with Mr. Alexander about his potential nomination to the LTSA Board of Directors. Mr. Alexander has confirmed his readiness to be nominated and to serve if appointed.

##### **ii. William Cottick (Resume at TAB D)**

Mr. Cottick practised with Russell & Dumoulin (real estate), pursued a wide-ranging corporate career, and recently retired as Executive Vice President & General Counsel for BC Ferries. Mr. Hume has spoken with Mr. Cottick about his potential nomination to the LTSA Board of Directors. Mr. Cottick has confirmed his readiness to be nominated and to serve if appointed.

##### **iii. Glen Ewan, QC (Resume at TAB E)**

Mr. Ewan has lived and practised law in Golden, BC since 1978. A former Law Foundation Governor and active in community service, Mr. Ewan acts as local counsel for a number of financial institutions and devotes about 50% of his practice to residential

and commercial conveyancing and mortgages. Mr. LeRose has spoken with Mr. Ewan about his potential nomination to the LTSA Board of Directors. Mr. Ewan has confirmed his readiness to be nominated and to serve if appointed.

## **2. Legal Services Society Board of Directors (Bencher Appointment, on advice of the Executive Committee and upon consultation with the Executive of CBABC)**

### **a. Background**

<b>Current Appointments</b>	<b>Date First Appointed</b>	<b>Expiry Date</b>
David Crossin, QC	9/7/2007	9/6/2013
Thomas Christensen	9/7/2009	9/6/2013
Deanna Ludowicz	1/1/2009	12/31/2011
Suzette Narbonne	5/1/2011	4/30/2014

Deanna Ludowicz was appointed by the Law Society to the LSS Board of Directors on January 1, 2009, for a three-year term that expires on December 31 of this year. She is eligible for re-appointment.

[LSS's website](#) confirms that Ms. Ludowicz is a current member of the LSS Executive Committee and slated to be the lead Board member of the LSS Strategic Planning Session in 2012. LSS Board Chair David Crossin's letter (TAB F) recommends renewal of Ms. Ludowicz's appointment as a LSS director and confirms her readiness to continue to serve in that capacity if re-appointed.

The CBABC Executive Committee supports Ms. Ludowicz's re-appointment.

### **b. Recommendation**

The Executive Committee recommends that the Benchers re-appoint Deanna Ludowicz to the Board of Directors of the Legal Services Society for a second three-year term, effective January 1, 2012.

### 3. Vancouver Airport Authority (YVR) Board of Directors (Bencher Appointment)

#### a. Background

Current Appointment	Date First Appointed	Expiry Date
Carol Kerfoot	6/1/2006	5/14/2012

YVR Board Chair Mary Jordan has written recently to Mr. Hume (TAB G): requesting an extension of Ms. Kerfoot's appointment: for a third three-year term (aligning with YVR's new nine-year limit for continuous directorship service); or alternatively, extension for a period short of the requested three years. Ms. Jordan's letter stresses the importance of "continuity, consistency and completion of [YVR's] current governance initiatives" and notes that, while this request has been made of all YVR nominating entities,

... in the case of Ms. Kerfoot, the continuity matter is even more important. As the Chair of our Governance Committee, Ms. Kerfoot has been leading the improvements to our governance and has been vital to our search, selection and recruitment of new directors. In short, her loss in the spring of 2012 would be especially difficult.

#### b. Assessment

We recognize the value of directorship continuity and experience, and the particular value to the YVR board of Ms. Kerfoot's continued contribution as Chair of the Governance Committee. We note that the Law Society Appointments Policy's six-year limit for total period of service is subject to lengthening or shortening, upon assessment of considerations relating to the particular appointment. We are not persuaded that a third three-year term would be appropriate. Our view is that an extension of one year addresses the board turnover and governance issues raised in Ms. Jordan's letter, and is more consistent with the Law Society's appointments policy and practice.

#### c. Recommendation

The Executive Committee recommends that the Benchers extend Ms. Kerfoot's current term of office as a member of the Vancouver Airport Authority's Board of Directors by the period of one year, to conclude May 14, 2013.

September 30, 2011

Tim McGee  
CEO and Executive Director  
Law Society of British Columbia  
845 Cambie Street  
Vancouver BC V6B 4Z9

Dear Tim McGee:

**Re: Land Title and Survey Authority of British Columbia - Board of Directors**

I am writing to request the Law Society of British Columbia's participation in the 2011-12 nomination process with respect to an appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia (the "LTSA"). The Law Society of British Columbia's responsibilities in supporting this round of LTSA Board renewal are in respect of the upcoming expiry of the Director term for Richard Swift, QC and his ineligibility for reappointment to the Board.

The LTSA is established pursuant to the *Land Title and Survey Authority Act* and its' self-generated 11 member Board of Directors is selected from nominations of the LTSA's stakeholders. For the 2011/12 renewal process, and pursuant to the LTSA Act, the LTSA is seeking between 3 and 5 nominations from each of the Law Society of British Columbia, the First Nations Summit and the Society of Notaries Public of BC with respect to three Director terms that are expiring on March 31, 2012.

To be selected and to serve as a Director, individuals must meet the qualifications set out in part 9 of the Act. In addition, Board Directors are expected to demonstrate personal attributes and competencies outlined in Schedule A (skills and experience profile) of the bylaws of the LTSA (attached with backgrounder). The Board should also attempt, in its composition, to reflect the geographic representation and diversity of the people and interests served by the land title and survey systems of British Columbia.

The LTSA has an established skills and experience profile for its Board, and has identified some of the preferred specific skills and experience it would be seeking in this round of nominations:

- board experience
- legal
- business acumen
- government relations
- information technology
- insurance.

.../2

- 2 -

In support of each nomination, we would ask that a nomination form (enclosed) be completed and signed by each candidate, and be submitted together with each candidate's resume. Please provide this information to Kelly Orr, Director of Corporate Strategies.

Nominee submissions from the Law Society of British Columbia must be **received by December 31, 2011** with the resulting Board selection process to result in an appointment to take effect as of April 1, 2012. Please note that if the LTSA does not receive nominations of qualified individuals from a stakeholder entity within the specified time, the Board must proceed to make an appointment and that individual will be deemed to be appointed from the stakeholder entity. For your information and that of interested candidates, we have attached a backgrounder with respect to the LTSA Board appointment process. We will also be providing this to you electronically, together with an electronic version of the nomination form.

At this time I would like to express the Board's deep appreciation for Richard Swift's contributions as an original Board member of the LTSA and his continuing leadership in various roles including Chair of the Human Resources Committee, Chair of the Governance Committee, and Vice Chair of the Board. His competent oversight and relevant perspectives have helped shape the success of the LTSA since its launch in 2005 and have continued to support the organization throughout significant change initiatives.

I look forward to the scheduled meeting with you and Godfrey Archbold (President and CEO) to discuss this topic further on September 30. Should you have any questions respecting the nomination submission process and materials, please do not hesitate to contact Kelly Orr at (250) 387-6827 or via email at [Kelly.Orr@ltsa.ca](mailto:Kelly.Orr@ltsa.ca).

Thank you for your assistance.

Yours truly,

A handwritten signature in black ink, appearing to read "Geoff Plant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Geoff Plant, Q.C.  
Chair  
Board of Directors

Attachments (3)

pc: Richard Swift, Q.C., LTSA Board Director  
Godfrey Archbold, President and CEO  
Leslie Hildebrandt, Vice President and Corporate Counsel

## SCHEDULE A

### SKILLS AND EXPERIENCE PROFILE

The directors of the Authority are required under section 19 of the Act to prepare a profile setting out the skills and experience that must be represented on the board and to include the skills and experience profile in the by-laws of the Authority.

The skills and experience profile will guide the appointments to the board.

#### Statutory Qualifications

1. Persons appointed to the board must be qualified to be a director under section 9 of the Act. Specifically, in order to be qualified to become or act as a director, an individual must be:
  - (a) 18 years of age or older;
  - (b) a Canadian citizen; and,
  - (c) a resident of British Columbia;
 and, must not be:
  - (d) an Officer of the Authority;
  - (e) an elected official or employee of the government of British Columbia, the government of Canada, a local government, a regional district or an aboriginal organization exercising governmental functions;
  - (f) an officer, director or employee of a stakeholder entity, defined as: government, the Law Society of British Columbia, the Association of British Columbia Land Surveyors, the British Columbia Real Estate Association, the British Columbia Association of Professional Registry Agents; the First Nations Summit; the Society of Notaries Public of British Columbia; and, the Union of British Columbia Municipalities;
  - (g) found by a court, in Canada or elsewhere, to be incapable of managing their own affairs;
  - (h) an undischarged bankrupt; or
  - (i) convicted inside or outside of British Columbia of an offence in connection with the promotion, formation or management of a corporation or an unincorporated business, or of an offence involving fraud, unless
    - i. the court orders otherwise,

- ii. 5 years have elapsed since the last to occur of
  - A. the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,
  - B. the imposition of a fine,
  - C. the conclusion of the term of any imprisonment
  - D. the conclusion of the term of any probation imposed, or
- iii. a pardon was granted or issued under the *Criminal Records Act (Canada)*.

#### Personal Attributes

- 2. All directors should possess the following personal attributes:
  - (a) High ethical standards and integrity in professional and personal dealings;
  - (b) Ability and willingness to raise potentially controversial issues in a manner that encourages constructive dialogue;
  - (c) Flexibility, responsiveness and willingness to consider change;
  - (d) Ability and willingness to listen to others;
  - (e) Capability for a wide perspective on issues; and
  - (f) Ability to work as a team member.

#### Core Competencies

- 3. All directors should possess the following core competencies:
  - (a) Strategic Thinking – Understands the level of strategic management needed to achieve results and mitigate risk and demonstrates an appreciation of the unique role of the Authority as the entity responsible for managing, operating and maintaining the land title and survey systems of British Columbia;
  - (b) Analytical and Technical Skills – Well-developed faculty for critical analysis; Financial literacy, including an ability to read financial statements and ability to understand the use of financial ratios and other indices to measure performance; the capacity to articulate penetrating questions respecting strategic issues, while maintaining positive support for Board decision-making processes and management;
  - (c) Knowledge – Understands basic responsibilities, accountabilities and liabilities as a Director and Board member; ability to distinguish corporate governance from management;

- (d) Personal Style – Can tolerate ambiguity; has the ability to balance the need to acquire information with the cost of acquiring it; trustworthy and conscientious and can be relied upon to act and speak with consistency and honesty;
- (e) Social Style – values diverse opinions and builds innovation on the foundation of other people’s views; experienced level of acumen/”saviness” at Board/stakeholder/company levels; personal business profiles that include demonstrated networks at the national and international level;

#### Representation

- 4. The board should attempt, in its composition, to reflect the geographic representation and diversity of the people and interests served by the land title and survey systems of British Columbia.

#### Key Skills and Experience

- 5. The board, as a whole, should possess all of the following skills and experience, while individual directors must possess more than one of the skills or experience.
  - (a) Leadership – experience at a senior level in managing the operations of a large or complex commercial or non-profit entity.
  - (b) Business Acumen – experience in operating a business in British Columbia.
  - (c) Board Experience – previous experience as a member of a board of directors of a commercial or non-profit entity.
  - (d) Accounting and Finance – an accounting or financial advisor designation or senior level experience as a financial officer in a large or complex commercial or non-profit entity.
  - (e) Legal – a law degree or experience in managing legal issues of a complex commercial nature.
  - (f) Marketing – experience in developing and/or leading marketing or customer service initiatives.
  - (g) Labour Management - knowledge of and experience in human resources and labour relations practices in British Columbia.
  - (h) Executive HR Strategies – knowledge and experience in strategic human resources policies related to senior executive recruitment, succession planning and compensation.
  - (i) Regulatory – experience working in or significant knowledge of the issues associated with, a commercial entity regulated by statute.



- (j) Land Information – knowledge of and experience working with land information products and services.
- (k) Information Technology – experience working in the information technology field with a demonstrated understanding of how information technology is applied to business processes.
- (l) Land Survey – a British Columbia Land Surveyor or experience in managing legal survey issues of a complex nature.
- (m) Communications – experience in public communications
- (n) Government Relations - experience in government relations at various levels with specific emphasis on provincial government relations.
- (o) Real Estate Lending and Banking – knowledge and experience in lending and banking industries.
- (p) Insurance – knowledge and experience in the insurance industry.

## **Curriculum Vitae**

**RALSTON STEWART ALEXANDER, Q.C.**

5095 Catalina Terrace  
Victoria, British Columbia

### **PERSONAL:**

Born in Toronto, Ontario, 1944  
Married 1967  
2 adult children

### **EDUCATION:**

Bachelor of Commerce, University of British Columbia, 1968  
Bachelor of Laws, University of British Columbia, 1969

### **EMPLOYMENT ETC.**

1969 - 1971	Student and Associate Lawyer Messrs. Pearlman & Lindholm
1971 - 2001	Partner - Messrs. Alexander Greene, (formerly Achtem Alexander and Alexander Greene Delsey).
2002- Present	Partner – Cook Roberts LLP
	Appointed Queen's Counsel - 1990
	UBC Law - Alumnus of Distinction Award - 2006

### **PROFESSIONAL SERVICE:**

1972 - 1977	Member of Board of Directors and Executive Committee, Victoria Bar Association.
1973 - present	Part time Lecturer in P.L.T.C., Bar Admission Program Law Society of British Columbia.
1978 - 1990	Intermittent part-time lecturer Real Property and Business Acquisitions, University of Victoria, Faculty of Law.
1979 - 1983	Victoria County Representative, Board of Directors, Continuing Legal Education Society of British Columbia

1983 - 1986	Treasurer,Vice President, and President - Victoria Bar Association
1990 - present	Member - Editorial Advisory Board - Land Title Practice Manual, Published by The Continuing Legal Education Society of British Columbia.
1989 - 1992	Non Bencher Member - Complainants Review Committee, Law Society of British Columbia.
1992- 1994	Non Bencher Member - Professional Standards Committee, Law Society of British Columbia.
1995- 2002	Bencher and Non Bencher Member - Ethics Committee, Law Society of British Columbia (Chair - 2002)
1996-1997	Non Bencher Member - Law Society of British Columbia Title Insurance Committee
1999 - 2005	Bencher - Law Society of British Columbia
2005	President – Law Society of British Columbia.
2002 - 2008	Member LSBC Task Force on Conveyancing Practices (chair 2002-2005)
2002 – present	Member Land Titles E-Filing Committee
2004 - Present	LSBC Appointee to Stakeholder Advisory Committee-Land Title and Survey Authority of British Columbia
2006 – Present	LSBC Appointee to Land Title and Survey Authority Committee on Electronic Filing

### **COMMUNITY SERVICE:**

1971 - 1979	Member and President, Board of Directors Need Crisis Line (Victoria)
1976 - 1991	Member and President, Board of Directors United Way of Greater Victoria
1981 - 1991	Member, Board of Directors and Executive Committee United Way of Canada
1983 - 1987	Vice President, Western Canada, United Way of Canada

1986 - 1988	Honorary Solicitor, United Way of Canada.
1988 - 1989	Senior Vice-Chair, and Chair of Executive Committee - United Way of Canada
1989 - 1990	Chair, Board of Directors, United Way of Canada
1988 - 1994	Member - Manpower Advisory Committee, Greater Victoria Hospital Society.
1997 - 2003	Director and Treasurer Uplands Golf Club
1997 - 2002	Director - Rotary Club of Victoria Housing Society (1998- 2002 - Chair)
2007 – present	Member - Victoria Police Board – Government Appointee by OIC Present Chair - Finance Committee

## WILLIAM RAYMOND COTTICK

6930 Mark Lane  
Victoria, BC  
V9E 2A1

Telephone: (250) 544-0446  
Cellphone: (250) 888-7858  
E-mail: [cottick@telus.net](mailto:cottick@telus.net)

### PROFILE

Achievement-oriented and highly effective senior executive and lawyer, with extensive experience in real property matters, and with wide-ranging Board and corporate governance experience. Following fifteen years of private practice in Vancouver in the areas of real property, corporate/commercial and transportation law, became a senior legal officer and member of the executive leadership team of a series of mid and large-cap public issuers operating within Canada and internationally. Held bottom-line responsibility for the residential and commercial real estate development division of Jannock Limited. Former lecturer in real property law for the BC Bar Admission course. Functional experience includes key executive leadership roles in real property development initiatives, large capital projects, corporate finance, corporate governance, strategic planning, environmental management, regulatory compliance, government relations and management of complex legal issues.

### CAREER SUMMARY

#### PRIVATE LEGAL PRACTICE

**2009 - present**

Principal of legal practice concentrated in corporate/commercial and transportation law, and corporate governance.

#### BRITISH COLUMBIA FERRY SERVICES INC.

**2003 - 2009**

##### BC FERRY AUTHORITY

**Executive Vice President, Corporate Affairs &  
General Counsel**

Senior executive and chief legal officer in world leading ferry and marine transportation company, with \$640 million in revenues, 37 ships, 4400 employees and over 50 land based facilities. Member of senior executive management committee providing strategic leadership to the organization. Responsible for management of overall legal and regulatory issues concerning the corporation and its subsidiaries, and various strategic initiatives. Key executive in major vessel and asset renewal programs and capital projects (>\$1 billion) financed in the public capital markets. Led relationship with economic regulator, the British Columbia Ferries Commissioner. Oversaw legal response to the sinking of a major vessel, the Queen of the North, including interface with various investigative agencies. Responsible for Corporate Secretarial support for the Board of Directors. Director of a number of affiliated companies.

#### PRIVATE LEGAL PRACTICE

**2000 – 2003**

Principal of legal practice concentrated in corporate/commercial law and corporate governance. Concurrently completed a Master of Business Administration (MBA) degree at the Richard Ivey School of Business, University of Western Ontario.

**JANNOCK LIMITED**  
**Vice President, General Counsel**  
**and Corporate Secretary**

**1997 – 2000**

Senior executive and chief legal officer in large, internationally-operated manufacturer and distributor of engineered building systems and construction products, which had approximately \$1.4 billion annual revenues, 74 manufacturing plants throughout Canada, the United States and in Guatemala, and 6,500 employees. Member of the Senior Leadership Team responsible for strategic and operational oversight of the corporation. Responsible for facilitating the effective operation of the Board of Directors and its Committees; corporate governance issues; public stock offerings and securities law compliance; mergers and acquisitions; oversight of environmental issues; and relations with government and regulatory agencies, including dealings with Canadian stock exchanges, NASDAQ, and numerous securities commissions.

Director of numerous subsidiaries located in various countries. Member of Strategic Planning Committee, comprised of four key executives and Board member, which oversaw a comprehensive corporate strategic review culminating in the decision to divest two of three principal business units and grow the remaining business; co-led successful sales of business units which exceeded Board expectations. Responsible for management of overall legal and regulatory issues concerning the corporation and its subsidiaries, as well as corporate security. Responsible for real estate division engaged in industrial site remediation, and development and sale of residential and commercial properties.

**LAIDLAW INC.**  
**Associate General Counsel**  
**and Corporate Secretary**

**1990 – 1997**

Senior legal executive in large, internationally operated environmental management, transportation and medical services corporation, having approximately \$4.5 billion annual revenues, and 70,000 employees. Director of several affiliated companies in a number of countries. Subsidiaries included Laidlaw Environmental Services, North America's largest hazardous waste management company, and various transportation entities such as Greyhound bus lines and Laidlaw Transit. Responsibilities included oversight and management of environmental claims and contaminated sites in Canada and the United States; acquisitions and mergers; large scale commercial transactions and capital projects; strategic planning and implementation of such strategies; and relations with government and regulatory agencies at the federal, provincial, state and municipal levels in Canada and the United States.

**COMMISSION OF INQUIRY INTO THE**  
**AIR ONTARIO CRASH AT DRYDEN, ONTARIO**  
**Counsel**

**1989 – 1990**

Counsel to the Commissioner in connection with the public inquiry into the causes of the air crash at Dryden, Ontario which occurred on March 10, 1989, including organization of investigation and hearings; collection, preparation and presentation of evidence at public hearings; and participation in preparation of safety recommendations and draft of 2000 page Commissioner's Report. The Commission delivered two Interim and a multi-volume Final Report which served as a template for the systemic overhaul of aviation safety in Canada.

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**WARDAIR INTERNATIONAL LTD.**  
**Associate General Counsel**

**1987 – 1989**

Member of senior management providing legal counsel for the Wardair Group of companies (revenues of \$625 million, assets of \$1.2 billion, 4,000 employees) during period of airline deregulation and significant change to air services in Canada. The Wardair Group included Canada's third largest international airline, Canada's largest international holiday tour operator, and hotel and insurance subsidiaries. Legal advisor and member of the senior management team in a number of major financings and asset acquisitions and divestitures including completion of public equity offering of approximately \$125 million and two public debt offerings totalling \$320 million; acquisition, financing and disposition of aircraft fleets and other assets. Provided management input and legal counsel regarding a wide variety of contractual and other commercial matters, anti-competition issues, licencing and regulatory matters, marketing and advertising initiatives, labour related issues, and corporate secretarial matters.

**PRIVATE LEGAL PRACTICE**

**1972 – 1987**

During fifteen years as a legal practitioner in Vancouver, including several years with a major law firm (Russell & DuMoulin, now Faskens), acted as counsel in a broad range of matters, including real estate development, corporate governance, corporate finance, commercial and real property transactions, loan transactions, joint venture and limited partnership agreements, and dispute resolution.

Represented clients before governmental and regulatory authorities, and in contract negotiations. Acted on behalf of banks and financial institutions, and real estate developers and brokers, and provided general advice to senior management of a number of companies on a broad range of issues. Lecturer in Real Property Law for the Law Society of B.C. Bar Admission Course.

**EDUCATION**

<b>Bachelor of Laws</b> – University of British Columbia	<b>1971</b>
<b>Master of Laws</b> – London School of Economics and Political Science, University of London Concentration in Corporate Law.	<b>1978</b>
<b>Master of Business Administration</b> – Richard Ivey School of Business, University of Western Ontario	<b>2002</b>
<b>Diploma in Air and Space Law</b> – London Institute of World Affairs	<b>1978</b>

**PROFESSIONAL QUALIFICATIONS**

Member of the Law Society of British Columbia  
 Called to the Bar of British Columbia – 1972  
 ICD.D (professional director designation)  
 Canadian Institute of Corporate Directors - 2007

**PROFESSIONAL ASSOCIATIONS**

Member: Canadian Bar Association. Former Member of the British Columbia and National Councils of the Canadian Bar Association.

Former National and Provincial Section Chair, and Executive Officer of various Provincial Sections, of the Canadian Bar Association.

Associate Member, American Bar Association. Member Business Law Section.

Member: Institute of Corporate Directors.

### **OTHER ORGANIZATIONS**

Member: Canadian Corporate Counsel Association; Rattlesnake Point G&CC, Union Club of BC.

Former member of Executive Committee and Board Advisor, Canadian International Air Show - member of Ethics Committee and Corporate Governance and By-Law Committee.

Former Director, British Columbia Aviation Council and Member of Advisory Board, Airport Owners and Operators Division. Past Chair, various Board Committees.

Former Secretary, Legal Affairs Committee, Air Transport Association of Canada.

### **AWARDS**

Recipient of National Post Western Canadian General Counsel Lifetime Achievement Award (2009).

### **REPRESENTATIVE PRIOR BOARD EXPERIENCE**

Corporate Secretary, BC Ferry Authority

Corporate Secretary, BC Ferry Services Inc. [\$640 million revenues, 4400 employees]

Corporate Secretary, Jannock Limited [TSX, NASDAQ listed, \$1.4 billion revenues, 6,500 employees]

Corporate Secretary, Laidlaw Inc. [TSX, NYSE listed, \$4.5 billion revenues, 70,000 employees]

Director, BCF Global Services Inc.

Director, Pacific Marine Ventures Inc.

Director, BCF Captive Insurance Company Ltd.

Director, Canada Brick Limited

Director, Westeel-Rosco Industries Limited

Director, Jannock Inc. [\$943 million revenues]

Director, Jannock Properties Ltd.

Director, Jenisys Engineered Products, Inc.

Director, Associated Building Systems, Inc.

Director, U.S. Brick, Inc.

Director, Bird Vinyl Products Limited

Director, Heartland Building Products, Inc.

Director, Kensington Windows, Inc.

Director, Richtex Corporation

Director, Drenajes y Tuberia Corrugada, S.A.

Director, Industria Textil de Centro America, S.A.

Director, Laidlaw Environmental Services Ltd. [Canada's largest hazardous waste management company]

Director, various Laidlaw affiliates



## Resume of Glen Ewan, QC

Ewan & McKenzie  
Barristers & Solicitors  
Box 429  
515 - 9th Avenue North  
Golden, BC  
V0A 1H0

Email: [glenewan@emlaw.ca](mailto:glenewan@emlaw.ca)  
Phone: 250-344-5258  
Fax: 250-344-7374

Lawyer in and a resident of Golden since 1978.

Designated Queen's Counsel in 1999.

Former Governor of the Law Foundation of BC.

Our law firm's business and my personal practice is about 50% residential and commercial conveyancing and mortgages. Act as local counsel for CIBC, Columbia Valley Credit Union, Kootenay Savings Credit Union, as well as TD, RBC and Bank of Montreal from time to time (only the CIBC and the Credit Union have offices in Golden). Have acted in the past for BDC and private lenders.

Frequent lecturer on law topics for lay people, for College of the Rockies at Golden and Invermere and for Pro Bono Law in Cranbrook, Kamloops and Kelowna.

Currently Chair of Town of Golden Select Committee for the Redevelopment of the Golden Civic Centre and recent past Chair and current Director of the Golden & District Community Foundation.



**Legal  
Services  
Society**

Providing legal aid  
in British Columbia  
since 1979

Suite 400  
510 Burrard Street  
Vancouver, BC V6C 3A8

Tel: (604) 601-6000  
Fax: (604) 682-0914  
[www.lss.bc.ca](http://www.lss.bc.ca)

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Executive Office

October 20, 2011

Gavin Hume, QC  
President  
The Law Society of British Columbia  
845 Cambie Street  
Vancouver, BC V6B 4Z9

Dear Gavin,

**Re: Deanna Ludowicz re-appointment to the Legal Services Society  
Board of Directors**

As you may be aware, Ms. Deanna Ludowicz' appointment as a Member of the Board of the Legal Services Society ("LSS") will be up for renewal December 31, 2011. I have spoken to Ms. Ludowicz and she has advised me that she is prepared to accept a further three year appointment to the LSS Board. I am pleased to recommend that Ms. Ludowicz' appointment be renewed.

Ms. Ludowicz is an active member of the Board; she has served as Vice-Chair, is a member of the Executive Committee and has served on the Stakeholder Engagement Committee and our Finance Committee. She has also assumed responsibility for the development of our next Board strategic planning session. In addition to these many contributions she also serves as one of the Kootenay Bar representatives on the BCCBA Provincial Council. As you may know, Ms. Ludowicz is a seasoned lawyer who practices in Grand Forks and she brings the practical wisdom of a small town lawyer to the critical decisions that the LSS Board must make in these difficult times. Her contribution to Board work and her advice to the Executive Director are significant assets to the Society. Ms. Ludowicz demonstrates the commitment and the leadership necessary for the Society's success.

As you know the Legal Services Society is facing significant challenges in meeting demand for services. Per capita legal aid funding from government is lower than it was 15 years ago and we would need almost \$20 million dollars to bring that spending to the national average. In these circumstances the Board feels that the re-appointment of Ms. Ludowicz would add an important element of continuity and a perspective that will support the Board's ongoing commitment to effective governance of the Legal Services Society, its efforts to secure needed funding, and our shared commitment to keep legal aid clients at the forefront of our consideration.



I would be pleased to discuss this request with you further and trust that Law Society officials will not hesitate to contact Ms. Gulnar Nanjijuma ([Gulnar.nanjijuma@lss.bc.ca](mailto:Gulnar.nanjijuma@lss.bc.ca), 604.601.6138) with any questions they might have.

Thank you for your ongoing support and encouragement

Yours truly,

E. David Crossin, QC  
Chair – LSS Board of Directors

Cc: Bill McIntosh, Manager, Executive Support, Law Society of British Columbia  
Mark Benton, Executive Director



September 29, 2011

Mr. Gavin Hume, QC, President  
Law Society of British Columbia  
845 Cambie Street  
Vancouver, BC V6B 4Z9

*Bill*  
*Appointments Sub Com →*  
*4 Oct*  
*Exec Com →*  
*Benches?*  
*Tu*

Dear Mr. Hume:

I am writing to advise of recent actions taken to improve the governance of the Airport Authority and to ask the Law Society for its assistance.

First a bit of context; Vancouver International Airport ("YVR") is central to British Columbia's economic success, but it is battling tougher and tougher international competition to remain a pre-eminent international airport. What is at stake is whether BC remains at the cross roads of international trade, tourism and travel and whether BC and Canada get their share of the Pacific Century. At the community level there are issues of pride in, and for, British Columbia's most visible entrance.

For the Authority to thrive in the coming years requires many changes, not the least of these being to ensure governance is not merely adequate, but superb. To this end, the Board has dedicated much time and effort to make its procedures efficient and effective and of paramount importance, dealing with both the challenge and the opportunity caused by the turnover of half of the non-executive Board directors in only two years.

The good news is that five highly qualified new directors commenced service on the Board this spring and we anticipate a sixth new Director before year-end. The issues we now face, therefore, are continuity, consistency and completion of our current governance improvement initiatives. I am hopeful that the Law Society will consider assisting the Authority in dealing with these concerns through a permanent amendment or granting an exception to your existing policy of limiting your appointments to our board to two terms of three years. As you know, the Authority now has a term limit of three terms (9 years), with the exception of the chair.

We would invite you to consider aligning with the Authority's new policy. Our deliberations led us to conclude that the complexity of the Authority's business means additional years of service ensure the fullest return on the years invested by strong directors in learning the business.

If the Law Society is not inclined to change its policy permanently, I would encourage you to consider an exception being made at this time. I have asked that continuity be considered not just by the Law Society but by all our Nominating Entities. Frankly, in the case of Ms. Kerfoot, the continuity matter is even more important. As the Chair of our Governance Committee, Ms. Kerfoot has been leading the improvements to our governance and has been vital to our search, selection and recruitment of new directors. In short, her loss in the spring of 2012 would be especially difficult.

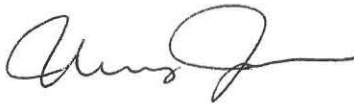
Letter to Mr. Gavin Hume, QC  
President of the Law Society of BC

Page 2 of 2

My experience of lawyers tells me that a statement of alternatives is not unwelcome, so let me say that whilst the Authority would benefit most from having Ms. Kerfoot serve another full three year term, should this simply be impossible for the Law Society, then might I request an extension of her term by the longest period possible.

I would be most pleased to discuss this with you or meet with one of your Committees. Thank you for taking the time to consider our request.

Yours very truly,



Mary B. Jordan  
Chair

✓ cc: Mr. Timothy McGee, CEO and Executive Director

# Memo

To: Benchers  
From: Appointments Subcommittee  
Date: November 22, 2011  
Subject: **Approval of Revised Law Society Appointments Policy**  
**Follow-up to October 21, 2011 Benchers Meeting**

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## 1. Background

The following resolution was passed at the October 21 Benchers meeting:

### **External Appointments: Approval of Revised Law Society Appointments Policy**

*BE IT RESOLVED to approve a policy for Law Society appointments to boards, councils and committees of other bodies (the Law Society Appointments Policy), as set out at page 5006 of the meeting materials, effective immediately, with the exception of the following provisions under the heading of “Communication Expectations”, which are to be reviewed the Appointments Subcommittee in consultation with Ms. Berge and presented to the Benchers for approval at their next meeting:*

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.

The Appointments Subcommittee has reviewed the above-referenced passages in consultation with Ms. Berge and Mr. Fellhauer. Consensus has been reached as follows:

- the adjective “accurate” makes an unhelpful contribution to the description of the listing of Law Society appointments and opportunities to be maintained on the Law Society website, and should be deleted.
- the adjective “appropriate” suitably reflects the nature of orientation and support to be provided by the Law Society to those appointees it expects to represent and communicate the Society’s interests, and should be retained.

## **2. Recommendation**

We recommend that the Law Society Appointments Policy be revised by deleting the adjective “accurate” from the the description of the listing of Law Society appointments and opportunities to be maintained on the Law Society website. See TAB A for the redline revision (under “Communication Expectations”).

## 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.

## **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 ~~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.

To Benchers

From Act and Rules Subcommittee

Date November 17, 2011

Subject **Rule Amendments arising from Benchers Approval of Recommendations in the Lawyer Education Advisory Committee's CPD Report**

---

## INTRODUCTION

On September 9, 2011 the Benchers approved and adopted the recommendations contained in a report prepared by the Lawyer Education Advisory Committee (the "Committee") on the Continuing Professional Development Review.

Implementing two of the recommendations will require rule changes. The Act and Rules Subcommittee has considered and approved the proposed rule changes and recommends they be approved by the Benchers. The recommendations and rule changes required are set out below.

## 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.

Rule 3-18.3 (1) currently reads:

3-18.3 (1) 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.

## CHANGE REQUIRED

Implementing Recommendation 1 will require amending Rule 3-18.3(1) in a way that provides for continuing the 12 hour minimum CPD requirement but relieves the Benchers from having to approve the hourly requirement on a yearly basis. While this could be accomplished either by including the specified number of hours directly in the rule itself or authorizing the Benchers to set a minimum number of hours once by resolution, which would remain in effect until such time as they might wish to change it, the Lawyer Education Advisory Committee preferred the latter approach. This is the simplest and most convenient method as it allows the Benchers to change the number of hours by majority vote at a future date without requiring a rule change.

The Act and Rules Subcommittee recommends this approach. A draft of the amended Rule 3-18.3 (1) is attached for your consideration.

### **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.

*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.*

## **CHANGE REQUIRED**

Implementing Recommendation 13(d) requires a change to the late payment fee as described above, to reflect the difference between completing CPD requirements on time but failing to report the hours on time, and failing to complete the actual requirements by the deadline. That requires a change to Rule 3-18.4. In addition, Schedule 1, which sets out the amounts of late fees, would need to be amended to reflect the additional \$500 late filing fee contemplated by Recommendation 13 (d)(ii).

A draft of the amended rule and Schedule is attached for your consideration.

## **CONCLUSION**

The Benchers are asked to adopt the proposed amendments to the Rules, as approved by the Act and Rules Subcommittee, in order to implement the recommendations adopted by the Benchers. A proposed resolution is attached to this memorandum.

CE/

# LAW SOCIETY RULES

## PART 3 – PROTECTION OF THE PUBLIC

### Division 2.1 – Education

#### Professional development

- 3-18.3** (1) ~~Before the commencement of each calendar year, the~~ Benchers ~~must~~may determine by resolution the minimum number of hours of continuing education that is required of a practising lawyer in ~~the following~~each calendar year.
- (2) ~~When making the determination required under subrule (1), the~~ Benchers may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.

#### Late completion of professional development

- 3-18.4** (1) A practising lawyer who fails to comply with Rule 3-18.3 by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does all of the following before April 1 of the following year:
- (a) completes the remainder of the required professional development;
  - (b) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
  - (c) pays the late completion fee specified in Schedule 1.
- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.
- (3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
- (a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
  - (b) pays the late reporting fee specified in Schedule 1.

# LAW SOCIETY RULES

## SCHEDULE 1 – 2011 LAW SOCIETY FEES AND ASSESSMENTS

### K. Late ~~filing~~ fees

1. Trust report late filing fee (Rule 3-74(2)) ..... 200.00
2. Professional development late completion fee (Rule 3-18.4(1)(c)).....~~200~~500.00
3. Professional development late reporting fee (Rule 3-18.4(3)(b))..... 200.00

# **LAW SOCIETY RULES**

## **PART 3 – PROTECTION OF THE PUBLIC**

### **Division 2.1 – Education**

#### **Professional development**

- 3-18.3** (1) The Benchers may determine by resolution the minimum number of hours of continuing education that is required of a practising lawyer in each calendar year.
- (2) The Benchers may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.

#### **Late completion of professional development**

- 3-18.4** (1) A practising lawyer who fails to comply with Rule 3-18.3 by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does all of the following before April 1 of the following year:
- (a) completes the remainder of the required professional development;
  - (b) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
  - (c) pays the late completion fee specified in Schedule 1.
- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.
- (3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
- (a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
  - (b) pays the late reporting fee specified in Schedule 1.



# **LAW SOCIETY RULES**

## **SCHEDULE 1 – 2011 LAW SOCIETY FEES AND ASSESSMENTS**

### **K. Late fees**

1.	Trust report late filing fee (Rule 3-74(2)) .....	200.00
2.	Professional development late completion fee (Rule 3-18.4(1)(c)).....	500.00
3.	Professional development late reporting fee (Rule 3-18.4(3)(b)).....	200.00

## CONTINUING PROFESSIONAL DEVELOPMENT

### SUGGESTED RESOLUTION:

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

**1. In Rule 3-18.3, by rescinding subrules (1) and (2) and substitute the following:**

- (1) The Benchers may determine by resolution the minimum number of hours of continuing education that is required of a practising lawyer in each calendar year.
- (2) The Benchers may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.

**2. In Rule 3-18.4**

*(a) by rescinding subrule (1)(c) and substitute the following:*

(c) pays the late completion fee specified in Schedule 1., *and*

*(b) by adding the following subrule:*

- (3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
  - (a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
  - (b) pays the late reporting fee specified in Schedule 1.

**3. In Schedule 1, by rescinding section K and substituting the following:**

**K. Late fees**

- |   |        |
|---|--------|
| 1. Trust report late filing fee (Rule 3-74(2))                      | 200.00 |
| 2. Professional development late completion fee (Rule 3-18.4(1)(c)) | 500.00 |
| 3. Professional development late reporting fee (Rule 3-18.4(3)(b))  | 200.00 |

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

# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC  
Date: November 21, 2011  
Subject: **Oath of office for non-Bencher hearing panel members**

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As you know, the Hearing Panel Pools are now established and non-Bencher lawyers and non-lawyers are beginning to take part in hearing panels. The Benchers' oath is broad in scope to cover all the various roles that they play in the Law Society. It seems appropriate that the importance and seriousness of the hearing panel function calls for a solemn promise of some kind by non-Bencher participants. However, the scope does not need to go so far as the Bencher oath. It is important that adjudicators promise to bring their knowledge and skill to the subject at hand and acknowledge the importance of keeping confidential matters secure.

This proposed oath is based on that of the federal Public Service, with a fair amount of plain language brought to bear:

I, \_\_\_\_\_, do [swear/solemnly affirm] that I will truly and faithfully and to the best of my skill and knowledge execute and perform the duties of a member of a hearing panel of the Law Society of British Columbia, including the duty of confidentiality of a panel member.

If the Benchers agree, I ask you to approve that form of oath.

I do not think that it would be necessary or useful to administer the oath in public or as part of the hearing itself. I suggest that the Bencher chairing a hearing administer the oath of any of the other members who have not previously taken the oath, privately, before the hearing begins.

JGH

E:\TRIBUNAL\JEFF\HEARING PANEL POOL\Oath for pool members.docx

To Benchers  
From Courthouse Libraries BC Review Task Force  
Date November 23, 2011  
Subject **Courthouse Libraries BC Governance Reforms**

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At the October 14, 2011 Bencher meeting, David Zacks, QC, Chair of the Board of Courthouse Libraries BC (CLBC), provided an update on developments at CLBC, and requested Bencher input on proposed changes to the constitution and bylaws in advance of a CLBC Special General meeting at which CLBC members will be asked to vote on the proposed changes. Alan Ross, Chair of the CLBC Review Task Force, a joint Task Force of the Law Society, Law Foundation and Ministry of the Attorney General, endorsed the proposed changes on behalf of the Task Force.

The Bencher agenda package includes a memorandum entitled *Courthouse Libraries BC Governance Planning: for Bencher Review and Input*, and the constitution and bylaws, which were also included in the October 14 Bencher agenda package.

Pursuant to the bylaws, the Law Society is a member of CLBC, and will be asked to vote on the proposed changes to the constitution and bylaws at the CLBC Special General Meeting, to be scheduled in early 2012.

### **Request of the Benchers**

The Benchers are asked to authorize the Law Society to support the proposed changes to the constitution and bylaws at the CLBC Special General Meeting

# 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



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

A Report to the Benchers by

Timothy E. McGee

December 2, 2011



## **Introduction**

In my report this month I have included updates on a number of on-going initiatives as well as news about a number of new items including my report on the International Institute of Law Association Chief Executives (IILACE) conference, which I attended recently in Adelaide. My report is longer this month than usual but there is much going on!

As this is my last report to the Benchers for the year I would like to take this opportunity to wish you all the very best for a safe and enjoyable holiday season.

### **1. 2012 – 2014 Strategic Plan**

The process to develop a new 3 year strategic plan for the Law Society began in December 2010 during the annual review of the current plan. Since that time the Benchers and each of the four Advisory Committees have engaged in a process to reassess and rearticulate our strategic goals and to develop and prioritize the strategies best suited to achieve those goals over the next 3 years.

In my view, the proposed new 2012 – 2014 Strategic Plan which is before the meeting is an excellent one because it is relevant, easy to understand, and achievable. Often strategic plans are doomed to fail because they are neither strategic nor focused. Rather they are laundry lists of things to do reflecting an unwillingness or inability to make choices among many options. That is not the case with this plan. The work which the Benchers, volunteers and staff alike have put into this plan over the past several months will go a long way to ensuring its ultimate success. Perhaps a testament to the power of “yellow stickies”?

It is also the hallmark of a good strategic plan that it not be too prescriptive but rather leaves some room to flesh out intent and to accommodate course corrections along the way. I believe those features have been properly built into the proposed new plan.

I look forward to the final discussions.

### **2. Governance Review – Planning Update**

In anticipation of the approval of a governance review as one of the strategies set out in the proposed new Strategic Plan, I can report that an informal steering committee comprised of the Ladder, Ms Andreone and Mr. Lloyd and me, met with Liz Watson, President of Watson Advisors Inc, in September to discuss a possible approach to this project. Based on those discussions, I subsequently met with Ms Watson in early November to further flesh out key items such as scope, process, communications, and timelines.

The goal is to have Ms Watson present a draft governance review plan for

consideration by the Executive Committee and a Task Force appointed by the President before the end of this year. I expect that the first step in the plan will be Ms Watson interviewing all the Benchers (including departing Benchers) in January to obtain their input and views.

### **3. Stakeholder Relations - Update**

As part of the strategic plan review we discussed the need to develop broader and more meaningful relationships with our stakeholders in the justice system. This discussion has resulted in a specific strategy to that affect in the proposed new 2012 – 2014 Strategic Plan.

I am pleased to report that in the past few months I have had productive discussions with the Deputy Attorney General David Loukidelis, QC and Assistant Deputy Attorney General Jay Chalke, QC about how we can better connect our respective staffs to develop deeper more sustaining working relations on matters of mutual interest. To this end, we are planning a staff working session early in the New Year to kick this off.

On another level, President Hume and I met over the summer with then Attorney General Penner and with Parliamentary Secretary John Les to brief them on the Law Society's proposed amendments to the Legal Profession Act. This fall, I attended a similar briefing with opposition Justice Critic Len Krog and Finance critic Bruce Ralston. In addition, First Vice President Bruce LeRose, QC attended a function with the Leader of the Opposition and others as a guest of our GR advisors Ascent Public Affairs where our proposed legislative amendments and other topics were discussed.

Our efforts to develop and promote stakeholder relationships across all levels including Benchers and staff will be a feature of my CEO reports to the Benchers throughout 2012.

### **4. 2011 International Institute of Law Association Chiefs (IILACE) Conference - Adelaide**

Please see my report on the highlights of the IILACE conference I attended in Adelaide, which is attached to this report as Appendix "A". I would be happy to discuss any aspect of my report and to answer any of your questions at the meeting.

### **5. Core Process Review Recommendations – "Project Leo"**

You will recall that one of the 3 principal recommendations of the Core Process Review Report delivered last year was the development of a new, organization wide integrated information management tool for Law Society operations. The

report concluded that how we create, manage, share and store information was at the heart of what we do. However, it also concluded that we are using a patchwork of systems, processes and protocols, which while adequate at one level, will not support our operational goals into the future.

We have now officially launched “Project Leo” to design, develop and implement the information management tools of the future for the Law Society. This is the largest project of its kind in the history of the Law Society and, as such, we have taken great care to plan and consult on all aspects of its design. For example, even the project name has been selected after a staff wide contest. “Leo” was selected out of many suggestions for two main reasons. First, the lion connotation reflects the size and significance of the project and its ultimate importance in our operational landscape, and second the lion is a part of the Law Society’s official seal and we are proud of that icon and its legacy.

We have appointed a project team to lead this important work, which will unfold over the next 2 years in a number of planned phases. The project team is headed by Robyn Crisanti, Manager, Communications and Public Affairs and has members drawn from our main user and support groups. The team will be supported by a systems and project management consultant with specific experience and know how in this area.

Work on Project Leo is already well underway. The current phase involves defining a Statement of Work including scope, deliverables and time lines. We expect this planning phase to be completed by the end of this year. Capital funding was allocated for this project by the Finance Committee as part of the Law Society’s overall 10 year capital plan reviewed in 2011. This item will be reviewed and updated by the Finance Committee as part of its annual review of the capital plan in the spring of 2012. The goal is to be in a position to commence a phased implementation of a new information management system in the fall of 2012.

Robyn Crisanti, will be on hand at the meeting to provide further details and to answer any questions you may have on Project Leo.

## **6. Aboriginal Mentoring Project – Staff Lawyer Hired**

The Law Society is undertaking a mentoring project to help retain Aboriginal lawyers in BC, improve access to legal services for Aboriginal peoples, and increase diversity within the legal profession.

To lead this project we have recently hired lawyer Rosalie Wilson to develop a collaborative mentoring program to support Aboriginal lawyers. Rosalie is a member of the Syilx (Okanagan) and Secwepemc (Shuswap) Nations. The first phase of her work will be consulting with Aboriginal lawyers to get their insights and ideas. This phase is fully funded by a grant from the Law Foundation of

British Columbia, for which we are very appreciative.

If you are interested in learning more about this project or meeting Rosalie please contact Staff Lawyer Susanna Tam. Additional information is in our recent [web posting](#).

## **7. Operational Updates**

### ***2011 Employee Survey***

We have recently concluded our annual employee survey for 2011. Our participation rate again this year was a stellar 82%, which is almost as important to management as the results because it indicates that staff are engaged in helping to make the Law Society a better place to work. The results are currently being compiled by our survey administrators TWI Surveys Inc.

As usual, TWI will review the top level survey results with the Benchers at the next meeting in January. This year there are a number of new questions relating to autonomy, innovation and effectiveness. These are designed to help us better understand what the current and desired culture of the Law Society is from the staff perspective. We have also retained questions in a number of areas such as communication, relationship with managers and resources, so that we can continue to assess and track these over time. I look forward to discussing the results with you in the New Year.

### ***Performance Management - Update***

In keeping with our annual plan for staff review and assessment, I am pleased to report that all staff (except for a very few stragglers) have now completed a detailed 2011 year end review with their managers. The reviews do not focus solely on performance but include, in addition, discussion regarding personal development, future goals and working relationships. We also recognize that while important, annual reviews are not a substitute for continuous, timely and meaningful feedback throughout the year, which is always in need.

### ***Earthquake Preparedness***

On September 9, 2011 (during a Bencher meeting), Vancouver and the surrounding area experienced a 6.4 magnitude earthquake centered about 300 kilometres west of Vancouver. The subsequent confusion about what to do during such an event brought to light the need for earthquake preparedness training for Law Society employees, other tenants of the building and Benchers. A training and awareness program for employees and staff in anticipation of an earthquake drill was quickly rolled out.

In October 2011, training about earthquake preparedness for floor wardens (including tenants) was provided by a professional firefighter and earthquake preparedness and rescue worker from Vancouver Fire and Rescue Services. The Law Society had 100% attendance from floor wardens. Abbreviated training sessions were offered at four different times for all employees of the Law Society and tenants in the building by the same professional trainer. All employees were provided with the following materials whether they attended the training or not:

- a quick reference card on “what to do in the case of...” for their workspace,
- earthquake preparedness training manual from Vancouver Fire and Security;
- and Braidner survival kits order form (with discount for Law Society staff and Benchers).

A hard copy of the reference cards will be available at the December 2 meeting.

If you have any questions about earthquake preparedness or you would like a copy of the training manual or kit order form please contact Jeanette McPhee or me.

### ***“The Great Purge” – Green.Wise Recycling Initiative***

For two weeks, the Green.Wise Committee ran an organization-wide clean up, called “The Great Purge”. The goals of the clean up were to educate staff about recycling and reusing office supplies, and to reduce ordering of unnecessary office supplies. All staff were encouraged to participate in this sustainable initiative by de-cluttering their workstations of excess office supplies, and recycling or disposing of supplies in an accountable way. Each floor had a designated area to return excess and unused supplies to, and staff had fun swapping their unwanted supplies for supplies left by others.

I thought you would be interested in knowing that the Great Purge was a huge success with the return of 160 binders, 246 pens/markers, 280 paper products, 32 plastic desk organizers, and 28 staplers/hole-punchers. Operations has confirmed that because of this the Law Society will not need to order additional supplies for 4 to 6 months! Green.Wise is now reviewing opportunities for 2012 recycling initiatives and the possibility for implementing an annual purge.

### ***Email Cleanup Campaign***

During the month of October, Law Society staff members were challenged to clean up their email boxes by:

- attending a 30-minute training session about managing emails and how to determine which emails are business records;
- deleting at least 10% of stored emails; and
- sharing email tips.

The goal of this email cleanup campaign was to reduce the burden on “Zuse” our email server and to reduce our carbon footprint – less bandwidth and less storage saves energy. The campaign was well received, resulting in an email reduction of 54 Gigabytes, or 537,418 emails.

### ***United Way Campaign***

The Law Society is a perennial strong participant in the United Way Campaign for Greater Vancouver and this year was no exception. Deb Armour led an enthusiastic team of staff volunteers through a series of events including our annual pancake breakfast (with President Hume as Honorary Flipper), a carnival fund raising event, on-line auction, and the like. We exceeded our target for giving again this year. The enthusiasm and willingness of Law Society staff to give both of their time and from their pocket for this worthy cause is impressive and appreciated.

Timothy E. McGee  
Chief Executive Officer

**International Institute of Law Association Chief Executives****2011 Annual Conference - Adelaide, South Australia****Conference Highlights****1. Delegates and Program**

This years' conference held in Adelaide, South Australia from October 19 – 22, 2011 brought together the Chief Executives of law regulatory and representative bodies from 18 countries around the world, including Canada, England, Australia, USA, Germany, Norway, Sweden, Ireland, Africa, Hong Kong and Korea. In all there were 38 delegates to the conference who collectively regulate and/or represent over 1 million practicing lawyers around the world.

This year the general theme was “Changing Legal Landscapes”. Over the course of the four days, we discussed and analyzed those areas of regulation and practice that are currently undergoing significant transformation. I have summarized the highlights from some of those sessions below.

**2. How the Regulation of Lawyers is Changing**

This topic no longer has the shock value it once had at IILACE conferences. The reason is that many of the delegates come from jurisdictions like England and Australia where the proverbial train of major change has long since left the station. The one exception to this was the briefing we received from the CEO of the Law Society of Ireland.

The Irish CEO, Ken Murphy, arrived at the conference a day late because he was in Dublin appearing on a nationwide television news program in Ireland debating with the Minister of Justice, the media and others regarding the government's proposed legislation to effectively strip lawyers of the power to regulate themselves. We heard that the proposed Irish government reforms would make the Clementi reforms of the regulatory regime in the UK look like a “mild tweaking” in comparison. Suffice to say that all of the aspects of Clementi which fundamentally shift oversight and ultimate authority for lawyer regulation to non-lawyer dominated bodies is being proposed in Ireland. The most startling aspect of the Irish proposals is the extent of the discretion and power to be vested specifically in the Minister of Justice. While this aspect of the reforms may not survive intact, it is likely that the Minister of Justice will play a much larger role going forward under any scenario.

We heard that the reforms in Ireland are the result of three factors converging in a regulatory perfect storm. First, there has been a change of government on the

heels of an economic meltdown. The new government has identified a populist mandate, which is to hold selected establishment groups to a new standard, whether or not they were causal in the economic demise. Second, the Law Society of Ireland has long regulated and officially represented the legal profession. Some observers have warned that the Society has been living on borrowed time by having this dual mandate. Third, the Minister of Justice wants to make an immediate impact, one way or another. Ironically, the Law Society of Ireland has a very solid track record of dealing with complaints against lawyers in a timely, thorough and fair fashion, unlike the regulators in England pre-Clementi.

The Law Society of Ireland and like-minded groups are launching a concerted campaign to oppose the reforms principally on the basis of the threat to lawyer independence and the threat that in turn poses to the public interest. It will also be argued that the rule of law is threatened when lawyer independence is at risk and that is bad for Ireland on the world stage, e.g. discouraging foreign investment in Ireland because of comparisons to undemocratic regimes. This message may well be encouraged from senior officials or heads of state in other countries to bring political pressure at home.

### **3. Alternative Business Structures**

Here is how I described the discussion at ILLACE on the topic of alternative business structures in the upcoming edition of Benchers' Bulletin:

The emergence of "alternative business structures" as a law firm business model in England and Australia was the topic among many on the conference agenda that drew the most interest and discussion.

Alternative business structures are business models through which legal services are delivered that differ from the standard sole proprietorship or partnership model.

In England there are more than 400 law firms owned at least 25% by non-lawyers. Starting in 2012, 100% of an English law firm can be owned by non-lawyers. The Australian firm Slater & Gordon went public in 2007 raising capital in the public markets and assuming the disclosure and other myriad responsibilities of a reporting issuer. Today Slater & Gordon has contributed share equity exceeding \$100 million.

What is behind these developments?

The emergence of significant non-lawyer ownership in law firms in England was attributed to a lack of capital generally for small to mid-sized firms. Of 10,000 law firms in England well over half derive 45% of their earnings from real estate transactions. Private investment by non-lawyers is a source of capital for these firms, which improves balance sheets and



provides greater financial capacity for investment in resources and infrastructure, among other things.

Slater & Gordon's significant equity play is now funding a broadly based acquisition and expansion strategy for that firm. Business results year on year are impressive, including total income up 46% to \$182 million, profits up 41% and the board increased the dividend to shareholders by 10%. For all its business merits, however, this model raises many issues and challenges for legal regulation, including the possibility of conflicting ongoing duties to clients, the courts and to shareholders, and conflicts arising upon the acquisition of a firm such as interlocking litigation. Should regulators care that Mr. Gordon left the firm to join a rival but still maintains a significant share holding in his old firm?

These real life examples of how alternative business structures are manifesting themselves in foreign settings may seem far away from the reality of the legal profession in British Columbia and indeed Canada. However, they bear watching and inspection to assess both their merits and weaknesses, including how they may affect professional values.

The Law Society's Independence and Self-Governance Advisory Committee has recently published a report entitled "Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations" (which can be found at [www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pdf](http://www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pdf)). I recommend it to you. We are at the forefront in terms of improving our understanding of developments in this area, which are gaining momentum around the world.

#### **4. The Future of Continuing Professional Development**

This topic was approached as a roundtable discussion focusing on similarities and differences in our respective approaches to CPD and highlighting evolving areas. I would say there was general alignment on most fronts but also a grab bag of differences across jurisdictions. Here is a brief summary:

Most of the major jurisdictions have instituted or are in the process of mandating a minimum level of CPD for practicing lawyers. The range of required hours canvassed was a low of 10 hours (Queensland) to a high of 50 hours (New Zealand) with the average around 15 hours. Many jurisdictions allowed the hours to be earned over a multi-year period and some allowed for carry over beyond the prescribed period.

Several CPD programs tailored the substantive requirements based upon years of experience and areas of practice. To be clear, no jurisdiction exempted any practicing lawyer based upon seniority or years of experience. However, for

example, in some programs a real estate practitioner must take real estate related CPD and a junior lawyer must take entry-level competency CPD.

There was a spirited discussion around the topic of wellness-related CPD. Most programs do not include wellness-related CPD offerings for credit, but that is changing in several jurisdictions including several US states. The rationale for including wellness CPD was “preventative maintenance”. That is, a healthy and emotionally stable lawyer is less likely to run afoul of professional rules of conduct and client service expectations. There was considerable data showing that breakdowns in personal wellness among lawyers was a factor in many discipline cases. We heard that including wellness as part of a CPD program would help build the resilience that lawyers need to meet the demands of practice. It was also pointed out that there is better data to support that conclusion than there is to support the proposition that taking substantive CPD will maintain or improve practice competencies.

## **5. Legal Ethics, Professional Responsibility and Core Values of the Legal Profession**

This year the discussion on this topic centered on the posed question “How and when can you know that a law student or lawyer is ethical ?”

The opened-ended question led to discussion on a number of fronts. For example, some speakers were of the view that ethical behavior, such as honesty, responsibility and accountability, is in our personal DNA and can be assessed starting with law school admissions, and later at call to the bar and periodically after that. We heard that in several jurisdictions medical boards require testing for ethical make-up at all stages of a physician’s journey from medical school to practice.

There were many comments to the effect that more needs to be done to get both the academic learning of ethics and the clinical real experience of ethics in a “live” context embedded into law school education.

The most novel and thought provoking part of the discussion arose in connection with the concept expressed as “ethical assurance”. That is, like a trust audit, what is the process to proactively be assured that practicing lawyers are ethical, rather than simply waiting for a failure to present itself. One delegate put it this way: “What is the equivalent of the road side testing device (used for ensuring compliance and deterrence of drinking and driving) for ensuring the public is being served by ethical lawyers?” If ethical behavior is a core value of the legal profession how can we not have an adequate answer to that question? The range of ideas in response to this question provided much food for further thought.

# The Law Society *of British Columbia*



## Year End Report

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### **Access to Legal Services Advisory Committee**

December 2, 2011

Art Vertlieb, QC, Chair  
Glen Ridgway, QC, Vice-Chair  
Haydn Acheson  
David Mossop, QC  
Johanne Blenkin, non-Bencher  
Anthony Vecchio, non-Bencher  
Wayne Robertson, QC, non-Bencher

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee /

Doug Munro 604-605-5313

## Purpose of Report

Advisory Committees are required to report to the Benchers twice a year. In the past, the year-end reports included the Advisory Committees' recommendations regarding the Strategic Plan. In 2011, the Advisory Committees made their recommendations in their mid-year reports. As such, this report only addresses the work the Committee performed since the mid-year report and, with one exception, does not address the 2012-2014 Strategic Plan.

## Review: July-December, 2011

The Committee held meetings in September, October and December. As this report was submitted before the December meeting, the content of that meeting is not summarized.

In 2011 the Committee performed two primary functions. The first function was monitoring developments in matters of access to justice and access to legal services, both locally and in other jurisdictions. The second primary function was overseeing the work of various groups in advancing the recommendations of the Delivery of Legal Services Task Force.

### *Monitoring Access to Justice and Legal Services*

As the Benchers are aware, access to justice is a high profile topic. The draft Strategic Plan reflects the importance the Benchers have placed on the subject. The Committee's monitoring function continues to confirm that jurisdictions around the world are grappling with access to justice challenges. In jurisdictions where there is the rule of law, and similar systems for resolving disputes as exist in British Columbia, there are similar challenges. This is particularly the case with respect to funding for legal aid, the presence of self-represented litigants, and the continuing adverse effects of the global economic distress.

There are many people of limited means who are confronted with legal problems and cannot afford traditional services to resolve the disputes. In fact, the economics suggest that families that would historically have been considered middle or upper middle class are also feeling the pinch, and have less disposable income to allocate to services. This has serious implications for how we think about the access problem, and model potential solutions.

In addition, the Committee monitored a number of stories out of the United States around the growing funding crisis that state courts in that country face. Concurrent with the funding cuts state courts face, a report of the Brennan Center observes that since the *Citizens United* case there has been an alarming rise in special interest spending to have

judges elected or removed from office to ensure the judiciary aligns with special interest, rather than the public interest or the rule of law.<sup>1</sup> This leaves the courts caught between the hammer of budget cuts and the anvil of special interest spending. This has troubling implications for the state of justice in the Americas.

While the Committee did not delve into the economic challenges people in British Columbia and elsewhere face, it observes that these issues will continue to create stresses for our justice system and citizens. Governments may claim that in times of fiscal restraint there is no more money to put into justice. If that is so, the Committee observes that society will either have to find new sources of funding, transform the justice system so it is less costly, or continue with the current approach and risk the consequences. The Committee anticipates that in 2012 many of its meetings will require deeper consideration of these challenges.

Locally, the Committee monitored the continuing work of the CBA on its media campaign, arising from the Public Commission Report. Also locally, as the Benchers may be aware, the Trial Lawyers Association plans to offer reduced Legal Aid services in 2012, from January through April, in order to draw attention to the fact that the rates paid to defence lawyers in legal aid are low (and disproportionately low relative to funding increases for Crown and judges). These activities will likely focus some attention on legal aid funding and justice system efficiencies, though it remains to be seen how the public will view these efforts.

### ***Delivery of Legal Services Task Force***

Since the Committee's mid-year report, the following additional steps have occurred with respect to the Delivery of Legal Services Task Force report.

In July the Ethics Committee considered the report and assigned a series of tasks to Jack Olsen and Jeff Hoskins, QC with respect to working on language for certain recommendations. The Ethics Committee will continue its deliberations in December. Once the Ethics Committee has completed its work, the materials it has reviewed as well as the Best Practice Guidelines that were created by a subgroup of the Access Advisory Committee, will be available for the Benchers to discuss. This work will allow the Law Society to put into practice the reforms that would allow certain paralegals to provide legal advice.

With respect to court appearances, in July the Family Law Task Force and the Litigation Subgroup provided a proposed family law pilot project to the British Columbia Supreme Court. In early October a select group of Committee and Task Force members, along with Gavin Hume, QC and staff met with representatives of the court to discuss the proposal. The meeting went well, and certain revisions were suggested. Some members

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<sup>1</sup> Skaggs, da Silva, Casey and Hall, "The New Politics of Judicial Elections 2009-10: How Special Interest "Super Spenders" Threatened Impartial Justice and Emboldened Unprecedented Legislative Attacks on America's Courts" (October, 2011).

of the Family Law Task Force, and participants from the earlier meeting, then met to revise the pilot and discussed the revisions with representatives of the Court on November 3, 2011.

On November 10<sup>th</sup> the Court met to discuss the proposed pilot project and will be discussing it further at a subsequent meeting. As of the deadline for submitting this report we have not received further feedback.

Concurrent with these discussions, some members of the Committee, staff and Mr. Hume met with the Provincial Court. The meeting with the Provincial Court did not lead to any agreement with respect to expanding roles for paralegals. Once we hear back from the Supreme Court, a follow-up with the Provincial Court will take place.

## **Other matters**

In addition to the matters identified above, the Committee considered the following matters.

### ***The Manitoba Family Law Pilot Project***

The Committee discussed the Manitoba Family Law Pilot Project (“MLS Pilot”) at its September and November meetings (and will continue to discuss at its December meeting). As the Benchers are aware, the MLS Pilot was discussed during the current strategic planning process. The Committee felt it was important to discuss the potential merits of the MLS Pilot in general, and with regard to a potential version in British Columbia.

The MLS Pilot is a project where family law lawyers can represent people who would otherwise not be able to pay for legal services in an upfront manner. The client puts up 1/3 of the retainer and the Law Society of Manitoba puts up 2/3. The client then pays the Law Society over time. The MLS Pilot has a \$250,000 budget, with \$100,000 as administrative costs. It is too early in the project to know what the ultimate costs will be, including issues of default and efforts to collect. To date, the MLS Pilot has 28 files and only 1 has defaulted, but these matters will go on for a while and clients will be repaying long after the legal matter has resolved. The project has been extended for another year to better evaluate the results.

As part of its discussion, the Committee invited Mark Benton, QC, Executive Director of the Legal Services Society to share his views on cost recovery programs. Mr. Benton explained that the Legal Services Society had an analysis performed on operating a cost recovery program, and that it would take five years to break even. He cautioned that the Legal Services analysis included criminal cases, which have a higher rate of default. Both Mr Benton and Ms Blenkin reported on their discussions with staff in Manitoba on the project. While the committee had tentatively agreed that adopting the same approach

in BC may not be viable given radically different demographics among other factors, they did discuss a possible scenario for a similar project in BC noting issues of whether the law society or an organization such as LSS may be better suited to managing such a project. The Committee recognized that any such project in British Columbia would carry a larger administrative cost, and the default demographics might be quite different than in Manitoba. The Committee intends to continue discussing the concept in December, recognizing the discussion may provide insight as to what kind of project might work in British Columbia. Put at end of last paragraph.

### ***Pro Bono***

At its November meeting the Committee heard from Jamie Maclaren, Executive Director of Access Pro Bono. The meeting continued the tradition of annual updates from Mr. Maclaren on the state of pro bono in British Columbia.

Mr. Maclaren informed the Committee that participation in pro bono continues to grow. Young lawyers and senior lawyers are well represented in Access Pro Bono's programs, and there is room for improvement amongst lawyers in the middle age demographic.

Access Pro Bono (as of the meeting) had 98 summary legal advice clinics, and has been opening more on a frequent basis. The clinics allow for a holistic model of delivering pro bono, and are often hosted in community buildings like churches. Access Pro Bono receives about 240 phone calls a day, and from April 1, 2011 to July 31, 2011 ("Reporting Period") Access Pro Bono provided information and made referrals to approximately 3,757 callers.

Mr. Maclaren explained that the civil chambers duty counsel program offered 288 hours of pro bono assistance and representation during the Reporting Period. The Nanaimo Children's Lawyer Project provided approximately 45 hours of legal representation to three children involved in high conflict custody cases. The Roster program received 218 referrals and enquiries during the Reporting period, and this led to 37 referrals to the APB Roster and 18 matches occurred. Mr. Maclaren indicated that in total 1,804 hours of pro bono services were provided during the reporting period at a net value of \$613,360 of donated legal services.

Mr. Maclaren reviewed with the Committee new and prospective programs, including a rural and disabled access program that will be an 18 month project using tele-video or Skype clinics to reach unserved communities and people with mobility and or language difficulties. Access Pro Bono is also starting a Victoria children's lawyer project in January 2012 for representing youth involved in acrimonious parental custody and access disputes in Provincial Court.

### *Economic Analysis*

The 2009-2011 Strategic Plan included initiative 1-4:

Develop in collaboration with interested parties a research project to develop an economic analysis of the justice system

Earlier this year, as part of their joint fund project, the Law Foundation of British Columbia and the Legal Services Society commissioned Allison McPhail to conduct preliminary research in this area. Ms. McPhail has suggested that a criminologist perform a survey of the existing materials of economic research, and provide a template for the types of work that might be beneficial. It is expected that this work will be complete in January 2012. At this point, the Committee does not know what the project might cost (or the cost of a proposed plan flowing from the work). Such material might, however, be supportive of a research symposium in 2012, which has been discussed as a possibility in discussions between the Law Society, the CBA, the Law Foundation, the Ministry of the Attorney General and the courts.

The Draft Strategic Plan currently proposes:

#### **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.

The Committee believes that the work that is presently underway by the Law Foundation and the Legal Services Society may be supportive of this strategy and initiative. The Committee will report to the Benchers in 2012 when it has more information as to the findings, and the potential for the Law Society to participate in this research moving forward.

### **Conclusion**

In 2011, the Committee was fairly involved in overseeing the remaining work of the Delivery of Legal Services Task Force. As that work is expected to wind up in 2012, the Committee anticipates a greater focus on the question of what the next steps are for improving access to legal services in British Columbia.



# The Law Society *of British Columbia*



## **Equity and Diversity Advisory Committee 2011 Year-End Report**

**For:** Benchers

**Date:** December 2, 2011

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Robert Brun, QC (Chair)  
Catherine Sas, QC (Vice-Chair)  
Thelma O'Grady  
Patrick Kelly  
June Preston  
Elizabeth Hunt  
Jennifer Chow  
Karen Whonnock

**Purpose of report:**

**Information**

**Prepared on behalf of:**

**Equity and Diversity Advisory Committee**

**Susanna Tam  
Policy and Legal Services  
604-443-5727**

## **EQUITY AND DIVERSITY ADVISORY COMMITTEE 2011 YEAR-END REPORT**

### **PURPOSE OF REPORT**

This report provides a brief review of the Equity and Diversity Advisory Committee's work for 2011. The Advisory Committee recognizes that much of its work in the latter part of the year was devoted to developing recommendations for the Benchers' strategic planning process. The Advisory Committee is pleased to see that diversity issues, particularly with respect to women lawyers and Aboriginal lawyers, are featured in the proposed Strategic Plan 2012-14.

The Advisory Committee met in January, March, September and November, 2011. The Advisory Committee also held a joint meeting with the CBABC Equality and Diversity Committee in May 2011.

### **ADVANCING THE STRATEGIC PLAN 2009-2011**

In this last year of the current strategic plan, the Equity and Diversity Advisory Committee made excellent progress on a number of key diversity issues and recommended that these issues be carried forward into the next strategic plan.

#### ***Supporting Aboriginal Lawyers***

The Law Society continued to support Aboriginal lawyer organizations in their networking and outreach efforts. The Law Society sponsored both the CBABC Aboriginal Lawyers Forum's speed mentoring event and PLTC information session. The Law Society also sponsored a reception to kick off an online auction for the CBABC Aboriginal Law Student Scholarship Trust. The Law Society was pleased to recognize National Aboriginal Day in June by sponsoring a number of Aboriginal lawyers from northern communities to attend a *Gladue* panel co-hosted by the Legal Services Society and the Justice Institute of BC.

The Advisory Committee's most important achievement in 2011 was the extensive development and successful launch of a collaborative mentoring initiative for Aboriginal lawyers throughout BC. Funded in part by the Law Foundation, this initiative aims to create a more inclusive and representative legal profession by supporting capacity-building within the Aboriginal bar. The initiative will be founded on research regarding best practices related to mentoring, and consultation with Aboriginal lawyers. This project has the support of the Indigenous Bar Association, the CBABC Aboriginal Lawyers Forum and the Legal Services Society's Aboriginal Program. It was launched in November 2011 with the support of project developer Rosalie Wilson, who has extensive experience in consultation and policy development with Aboriginal organizations and communities.

The Advisory Committee has also developed a case for enhancing diversity in the profession, including the retention of Aboriginal lawyers, based on recent research which indicates the significant underrepresentation of Aboriginal and visible minority lawyers in BC. *Making the Case for Diversity* is currently under review and revision, and will be released soon.

### ***Retaining Women Lawyers***

The Equity and Diversity Advisory Committee continued to look for opportunities to promote the business case for retaining women lawyers and to monitor the maternity leave benefit loan program and the equity ombudsperson program. The Law Society also launched an equity webpage to bring together equity-related resources, including the business case for women, model policies and information about the equity ombudsperson. The Advisory Committee has also developed a draft change of status survey to be launched next year. The survey is aimed at gathering information about lawyer career changes, particularly for women lawyers.

The Advisory Committee also assessed the feasibility of extending the *Justicia* project to BC and it has recommended that the Law Society move forward with a consultation and engagement plan. The first phase will focus on BC offices of national *Justicia*-participating firms, with a second phase aimed at engaging regional firms. The Advisory Committee will work closely with both the Law Society of Upper Canada and the Barreau du Quebec in implementing *Justicia BC*.

### ***Understanding Lawyer Demographics***

The Advisory Committee continued to identify the need for accurate demographic data regarding the legal profession in BC. With the assistance of Adam Whitcombe, the Advisory Committee developed a demographic report regarding the participation of Aboriginal and visible minority lawyers in BC, based on analysis of 2006 census data. The findings of the *Report on Aboriginal and Visible Minority Lawyers in BC* formed the foundation for the case for diversity. The Advisory Committee continues to work with the communications department regarding publication and communications strategies for the report, which will be released shortly in conjunction with *Making the Case for Diversity*, as the two initiatives are closely linked.

The Advisory Committee continued to monitor the Aboriginal self-identification data from the Annual Practice Declaration. The Advisory Committee has also recommended the addition of an enhanced demographic question to give visible minority lawyers, lawyers with disabilities and lesbian, gay, bisexual and transgender lawyers the opportunity to self-identify. A revised question will be proposed to the Executive Committee shortly. The Advisory Committee continues to work with other law societies to consider the possibility of shared or common questions, to increase comparability of data across jurisdictions.

The Advisory Committee continued to participate in the Law Societies Equity Network (LSEN), currently chaired by BC. The network is comprised of policy lawyers and equity ombudspersons from the Law Society of Upper Canada, the Barreau du Quebec, the Nova Scotia Barristers' Society, and the law societies of Alberta, Manitoba and Saskatchewan. Organized under the umbrella of the Federation of Law Societies of Canada, the Network has developed a strategic plan and an action plan with a number of areas for collaboration, including demographic data-gathering and retention of women through extending *Justicia*.

### **TAKING LEADERSHIP – STRATEGIC PLAN 2012-2014**

The Advisory Committee recognizes that diversity issues continue to be included in the proposed Strategic Plan 2012-14, particularly through support of the Aboriginal lawyer mentoring program, *Justicia BC* and additional initiatives for demographic data-gathering. However, the Advisory Committee continues to recommend that a staff lawyer position be created to support Aboriginal lawyers and students, and recognizes that while the Aboriginal lawyer mentoring program is an important first step, further steps will be required to increase the participation of Aboriginal lawyers.

In addition to initiatives related to strategic objectives being carried forward in the proposed new plan, the Advisory Committee expects to develop an initiative to enhance Benchers diversity by encouraging women, Aboriginal and visible minority lawyers to campaign for Benchers positions. The Advisory Committee believes it may be helpful to recruit more women, Aboriginal and visible minority lawyers to engage with the Law Society on committees and task forces before expecting more diversity in lawyers campaigning for Benchers positions.

### **CONCLUSION**

The Equity and Diversity Advisory Committee has worked hard this year to build a solid foundation for supporting Aboriginal lawyers and to build momentum for retaining women lawyers. The Advisory Committee will continue to monitor, advise and propose strategies for the Law Society to enhance diversity and ensure that the public is well-served by a more inclusive and representative profession.

# The Law Society *of British Columbia*



## **Independence and Self-Governance Advisory Committee Year End Report**

**For: The Benchers**

**Date: December, 2011**

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Jan Lindsay, Q.C., Chair  
Haydn Acheson, Vice-Chair  
Herman Van Ommen  
Claude Richmond  
Craig Dennis  
Hamar Foster, QC  
Cam Mowatt  
Leon Getz, QC

**Purpose of Report:**

**Information**

**Prepared on behalf of:**

**The Independence and Self-Governance Advisory  
Committee**

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

## **Independence and Self-Governance Advisory Committee Year End Report**

### **I. Introduction**

The Independence and Self-Governance Advisory Committee is one of the four advisory Committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze the policy implications of Law Society initiatives, and may be asked to develop recommendations for, or policy alternatives regarding, such initiatives.

The mandate of the Committee is to monitor developments on issues affecting the independence and self-governance of the legal profession and the justice system in BC. The Committee reports on those developments to the Benchers on a semi-annual basis.

This is the year-end report of the Committee. The Committee, in its mid-year report, outlined the issues that it considered were important to the Law Society's Strategic Plan, and those need not be repeated. This report will therefore outline the general monitoring activities conducted by the Committee this year and will refer to the major task undertaken by the Committee concerning Alternative Business Structures. The report ends with a request that the Benchers consider the Committee's request to change its name and modify, slightly, its mandate to better reflect the advisory role that the Committee sees as necessary.

### **II. Overview**

The Committee met February 1, May 11, June 28, October 5, and November 30, 2011.

As the Committee states at each opportunity, lawyer independence<sup>1</sup> is a public right of fundamental importance. It is not a right that is generally well understood nor the Committee suspects are the consequences of it being diluted or lost. Canadians are generally fortunate that they live in a society that recognizes the importance of the rule of law. The rule of law, to which everyone – including government – is subject and through which everyone is held accountable by the law, is best protected by lawyers who operate and are regulated independent of government. Self-governance must therefore be vigilantly monitored. The Law Society must deliver a clear message about the importance that independent lawyers play in the protection of the rule of law.

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<sup>1</sup> The definition of "lawyer independence" that the Committee works with is that defined in the Committee's Report of March 2008:

Lawyer independence is the fundamental right guaranteeing that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government, subject only to the lawyer's professional responsibilities as prescribed by the Law Society, and the lawyer's general duty as a citizen to obey the law.

While the Committee does not believe that lawyer independence is currently under any *immediate* overt threat in British Columbia, one must remain vigilant where a public right is concerned, especially one that tends to be taken for granted.

The Committee has noted with concern that lawyer independence *is* under threat in other western democracies and elsewhere in the world as well. The Committee's monitoring of the subject this year has in particular identified Ireland and the Netherlands as two countries where the right may be compromised.

### **III. Monitoring Activities, 2011**

#### **1. Regulatory Developments in Other Jurisdictions**

##### **(a) Ireland**

A Bill has been introduced in the Irish Parliament that will, if passed, essentially end the independence of the Irish legal profession from the State. The proposed legislation would set up a Legal Services Regulating Authority that would have broad powers over admission to the Irish legal profession, as well as powers over legal education and training. The Authority will have 11 members, four of whom will be nominated by the Bar Council and the Law Society. The rest will be appointed by the Irish government on the nomination of the Minister for Justice.

The Bill provides that the Authority must also (at the request of the Minister) prepare Codes of Conduct for the legal profession. Before the Codes can be published, they must be submitted to the Minister who can consent to them, or can order that modifications be made, thereby giving the Minister the final say. The Minister also appoints the Authority's chief executive officer, and will decide on its staffing levels as well.

The Bill creates a disciplinary tribunal that comprises 16 members, six of whom will represent the legal profession. Again, the balance will be lay people appointed by the government on the nomination of the Minister. But it will not have the power to strike off lawyers. It will however have the power to recommend to the High Court that lawyers be struck off.

This Bill was prompted by the requirement to review the manner in which lawyers were regulated in Ireland brought about as a condition of the bail-out of the Irish economy.

Interestingly, there has been some public opposition to the consequences of the proposed legislation on the independence of Irish lawyers. Media reports have pointed out the rationale behind the need for independent lawyers, and have specifically made reference to decisions of the Supreme Court of Canada about the importance of independent lawyers. Whether this will have any effect on the government remains to be seen and will be monitored by the Committee.

(b) The Netherlands

The Committee understands that the Dutch government has published a draft law that will create a Board of three non-lawyers who will be responsible for supervising lawyers. The Board will have the power to initiate dismissal or suspension proceedings against local bar Presidents, whose role in disciplinary proceedings will be diminished. Complaints will be made directly to a Disciplinary Council rather than to bar Presidents.

Supervisory and investigative powers over lawyers may also be vested by the Board in people other than local bar Presidents. These supervisors will be allowed to question (and perhaps review) lawyers' files, apparently without regard to the civil law's equivalent of solicitor-client privilege.

The Dutch government will appoint the members of the Board and will approve its budget, although the legal profession will provide the Board's funding. The profession will be able recommend candidates for appointment to the Board.

(c) Elsewhere

The Committee has been monitoring events in other countries where the rule of law and lawyer and judicial independence seem to be in some jeopardy. In particular the Committee has been monitoring events in China, where there have been several reports that call into question the health of the rule of law in that country, and that demonstrate the lack of lawyer independence. Other areas of the world that bear monitoring on this subject include Colombia, Haiti, Swaziland, and Russia.

While it is obvious that the Law Society is not in a position to fix problems existing elsewhere, it is important to understand the events or history that have given rise to the systems in place in some of these countries, and which ought to better inform us should concerns develop in British Columbia. From time to time, as the Committee comes across stories exhibiting gross violations of the rule of law or lawyer or judicial independence in other jurisdictions, the Committee will advise the Executive Committee for that Committee's consideration about whether the Law Society should make some public comment.

2. Other Professions

The most interesting recent development in the regulation of other "professions" has come about in British Columbia with the government's recent introduction of the Bill 12 – the *Teachers Act*. "Professions" has been placed in quotes above because the government has seen fit to change the name of the current legislation – the *Teaching Profession Act* – in the Bill.

The Bill makes significant changes to the manner in which teachers are certified and disciplined, and abolishes the College of Teachers. It sets up a new system to certify, regulate, and discipline teachers through shared responsibility between the government and the education sector. The College of Teachers is replaced by a 15-member Teachers



Council. A director of certification and a commissioner are appointed by the Minister. These two individuals are employees of the Ministry.

While the majority of the Council (53%) is made up of teachers, only five of those teachers (33%) are elected by the teachers themselves. Three other teachers are nominated by the BC Teachers federation but appointed by the Minister of Education. The Minister is given the power to make regulations respecting the nominations of the BCTF's candidates, including the ability to prescribe the minimum number of certificate holders that the BCTF must nominate. The Minister is therefore responsible for appointing 10 of the 15 (66%) members to the Council.

Whether or not there are any arguments that Bill 12 retains the concept of "self regulation" (in that the majority of the governors are teachers), the Committee notes that significant changes were made to the regulatory structure of teachers, brought about in many ways by concerns about how the College had operated and whether, given its current structure, it was able to act in the public interest.

#### **IV Specific Action by the Committee in 2011**

##### **1. Report on Alternative Business Structures**

As requested by the Benchers, and specifically in furtherance of Initiative 1-2b of the Law Society's Strategic Plan, the Committee prepared and presented its Report entitled "Alternative Business Structures in the Legal Profession – Preliminary Discussion and Recommendations" to the Benchers at their meeting of October 21, 2011.

##### **2. Other matters**

The Committee considered the speech given by the Governor General at the Canadian Bar Association Conference in Halifax. It also reviewed and considered the International Bar Association's "International Principles on the Conduct for the Legal Profession" and considered how these principles reflected those that this Committee advocates. Finally, the Committee reviewed and debated Prof. Alice Wooley's paper entitled "Rhetoric and Reality: What Independence of the Bar requires of Lawyer Regulation. The Committee intends to analyze the points made by Professor Wooley to determine how the Law Society stands against each one of them.

#### **V Proposal for Name Change**

Attached to the report is a memorandum from the Committee requesting the Benchers to approve a change of name for the Committee. This name change will, the Committee believes, better reflect the aim and purpose of the Committee in the future in its advisory role.

MDL/al

2011-11-14 Independence Year End Report (FINAL).doc

# Memo

To: The Benchers  
From: Independence and Self Governance Advisory Committee  
Date: October 4, 2011  
Subject: Request for a Name Change

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The Independence and Self Governance Advisory Committee is one of the four advisory committees that monitors developments on issues of importance to the Law Society. The Independence and Self Governance Advisory Committee has monitored developments and issues affecting the independence and self governance of the legal profession and the justice system in British Columbia, and has reported on those developments to the Benchers on a semi-annual basis.

The Committee asks the Benchers to consider changing the name of the Committee in order to make clearer the connection between the rule of law and the public right of lawyer independence. To be effective, the rule of law requires independent lawyers.

## Background

The Advisory Committee itself is the successor to the Independence and Self Governance Committee which was originally created in 2002 as a subcommittee of the Futures Committee. Its creation arose due to concerns that had been raised in part by the *Proceeds of Crime (Money Laundering) and Terrorist Financial Act* and its application to lawyers, as well as by stories that had surfaced from Australia about the imminent loss of self regulatory status of the legal profession in states such as Queensland. The subcommittee was formed in order to address issues about the importance of independence and self regulation of both the legal profession and the judiciary.

The subcommittee was “elevated” into committee status in 2005. Both the Futures Committee and the Executive Committee recommended that the creation of a Committee would be advisable in order to examine issues concerning independence and governance of the legal profession that, it was evident, were going to continue into the foreseeable future. It was particularly important for the Law Society to be able to be seen to be giving high priority to those issues.

The Committee has, from that time, continued to review matters relating to self regulation and lawyer independence around the world, with particular focus on developments in Australia and New Zealand, as well as those arising out of the *Clementi* report in England and the subsequent *Legal Services Act 2007* in the United Kingdom. The Committee has also been considering matters in connection with Supreme Court of Canada appointments, matters relating to the future of legal services, questions relating to the prosecutorial and adjudicative functions of Benchers, alternative business structures, multi-disciplinary practice, the Agreement on Internal Trade, and other numerous matters relating to or affecting lawyer independence and self-governance.

### “Independent Lawyers” and the “Rule of Law”

The Committee continues to monitor issues relating to independence and self-governance. It appears that law societies in Canada have succeeded to some degree in bringing to the fore the importance of lawyer independence and self-regulation. For this, the Law Society of British Columbia can likely take some credit. The Committee would like to think that it has had some part of that success. However, more and more, the Committee has noticed the connection that has been made between the independent regulation of lawyers as a cornerstone of the Rule of Law.

Other jurisdictions have, in fact, created a separate “Rule of Law” Committee. In particular, the New Zealand Law Society established a Rule of Law Committee in 2007, which has the following specific terms of reference:

- promoting the continued separation of the legislative, executive, and judicial functions of government and, in particular, to promote and protect judicial independence;
- monitoring and responding to Rule of Law issues arising from proposals, decisions, or actions that the New Zealand government or government agencies;
- monitoring the mechanisms of government, including constitutional conventions;
- maintaining a neutral, apolitical position;
- responding as appropriate to requests for advice and assistance from international legal associations on Rule of Law issues; and
- assisting the Law Commission and like bodies in their goals to achieve laws that are just, principled, and accessible.

Most, if not all, of the terms of reference from the New Zealand Committee would resonate in British Columbia as well. In New Zealand, the *Lawyers and Conveyancers Act* (2006) places a statutory obligation on the New Zealand Law Society to uphold the Rule of Law. While the *Legal Profession Act* in British Columbia is not specific about a requirement that the Law Society protect the Rule of Law, the *Legal Profession Act* does require the Law Society to

preserve and protect the rights and freedoms of all persons, and to ensure the independence, integrity, and honour of its members. These are undoubtedly aspects of preserving the Rule of Law. Moreover, the preamble of the Canadian *Charter of Rights and Freedoms* recognizes that Canada is founded upon principles that recognize the Rule of Law. It is not unreasonable to presume that the body regulating lawyers in British Columbia would work to ensure that the Rule of Law was upheld.

### Connecting With the Public

Moreover, the connection between lawyer independence (a term that is often misunderstood by the public as a right of lawyers rather than a public right) and the Rule of Law (a principle that no one would argue against) might help to clarify the purpose the independence of lawyers was serving. There are no shortages, worldwide, of abuses of the Rule of Law. While many of those incursions arise in the less democratic nations of the world, Professor Sir Jeffrey Jowell, QC (the Director of the Bingham Centre for the Rule of Law in London) has recently reminded us that “it is unrealistic to believe that violations of the Rule of Law are the preserve of “far away” countries.”

Monitoring and advising on the effects of actions near to home and how they affect the Rule of Law might be more clearly serving a public interest than would, on its face, examining how lawyer independence may be affected by those matters. Each serve the same end. However, one is more easily connected to, and understood by, the public than the other.

### Recommendation

With this in mind, the Committee debated whether it would be advisable to change the name of the Committee to include reference to the Rule of Law, and concluded that it should request the benchers for a change of name.

The Committee debated several different names. It opted against recommending a change of name to simply the “Rule of Law Committee” because it believes that there needs to be a continued focus on the independence of lawyers and how that public right connects to the Rule of Law.

Ultimately the Committee settled on the “Rule of Law and Lawyer Independence Advisory Committee.” That name permits the focus to be on both elements, and should assist the Law Society to more clearly establish the connection between the rule of law and the public right of lawyer independence. It drops the phrase “self-governance” from the current title, but the Committee believes that the focus on self-governance will persist, because self-governance is the most effective (some would say only) way to ensure that lawyers are independent of the State.

As a consequence of the change of name, the mandate of the Committee should be altered slightly. The mandate should reflect the imperative that the Committee monitor issues affecting the development and promotion of the rule of law and in particular those issues affecting the

independence and self-governance of the legal profession and justice system in British Columbia.

# The Law Society *of British Columbia*



## **Lawyer Education Advisory Committee Year End Report**

**For:**        **The Benchers**

**Date:**      **December 2, 2011**

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

**Purpose of Report:**        **Information**

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

**Alan Treleaven, Director, Education and Practice**  
**Charlotte Ensminger, Policy and Legal Services**

## INTRODUCTION

The Law Society Advisory Committees report to the Benchers twice yearly. This is the Lawyer Education Advisory Committee's 2011 year-end report, summarizing the Committee's activities for the second half of the year.

The Lawyer Education Advisory Committee's mandate is to:

- (a) monitor developments affecting the education of lawyers in BC,
- (b) report to the Benchers on a semi-annual basis on those developments,
- (c) advise the Benchers annually on priority planning and respective issues affecting the education of lawyers in BC, and
- (d) attend to such other matters as the Benchers or the Executive Committee may refer to the advisory committee from time to time.

## COMMITTEE ACTIVITY SUMMARY FOR 2011

The Committee's key priorities in 2011 have been to:

- (a) conduct a comprehensive review of the continuing professional development program ("CPD"),
- (b) develop and implement the professionalism and advocacy education recommendations approved by the Benchers,
- (c) consider and recommend whether CPD credit should be offered for providing pro bono legal services,
- (d) review the Law Society CPD accredited mentoring program,
- (e) report to the Benchers with preliminary recommendations on developing a roadmap approach to reconciling qualification standards for differing types of legal services and providers.

### (a) Review the Continuing Professional Development Program

The Committee surveyed BC lawyers in the spring of 2011 on their assessment of the CPD program. As reported in the Committee's mid-year report to the Benchers, of the 1,419 lawyers who responded to the survey, 78% agreed that continuing education should be mandatory for lawyers, with more than half agreeing that the annual CPD requirement would likely strengthen the quality of legal services that BC lawyers provide their clients. The results demonstrate that the overall assessment of the CPD program has been very positive.

This is the third year of the CPD program. The Committee completed its comprehensive review of the CPD program with a report and recommendations that went to the Benchers in September. The Benchers adopted the Committee's recommendations, and changes will be put into place effective January 1, 2012.

(b) Professionalism and Advocacy Projects

Strategies 3-2 and 3-3 of the 2009 - 2011 Strategic Plan focus on initiatives to educate lawyers on the topic of professionalism and to improve advocacy skills. The Committee presented two sets of recommendations at the December 10, 2010 Benchers meeting. The Committee's mid-year report provided the Benchers with updates on implementation of the various recommendations. The following material provides additional updates that reflect developments since that report.

(i) Professionalism Project

The two recommendations originated with the Professionalism Education Working Group. The Benchers approved the two recommendations.

***Recommendation 1***

*That the Law Society provide the Proposed Content Guideline and the sample resources template on undertakings, together with information on how they might be employed, to the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools;*

*Update:* The Content Guideline and sample resources template on undertakings have been provided to the CLE Society, CBA, Trial Lawyers' Association, and BC's law schools.

***Recommendation 2***

*That six months later the Law Society meet with the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools, and again periodically, to evaluate how effective this approach is in promoting the development of courses and resources in professionalism and ethics, and to collaborate strategically on next steps.*

*Update:* Follow-up discussions have taken place with the CLE Society, CBA and Trial Lawyers' Association, and are continuing. Discussions will take place with the law schools as they develop their professional responsibility courses.

(ii) Advocacy Project

The 7 recommendations originated with the Advocacy Education Working Group.



***Recommendation 1***

*That the Law Society endorse and encourage exploration of the establishment of a new advocacy organization for BC lawyers with a mandate similar to the Advocates' Society in Ontario.*

The Benchers, following extensive deliberations, referred this recommendation back to the Committee for further consideration. The Committee began its follow-up by considering how the Committee might take advantage of the Advocates' Society experience, and decided to invite representatives of the Advocates' Society to meet with the Committee.

On October 20, the Committee met with Peter Lucasiewicz, a Toronto-based member of the Advocates' Society Board, and Alexandra Chyczij, the Advocates' Society Executive Director.

The Committee was told that the Advocates' Society is recognized by the legal profession in Ontario for its successes in providing advocacy education and for its legal reform input. The Society's mission statement sets out five principal objectives:

- be the voice of advocates in Ontario;
- promote ethical and professional practice standards for advocates;
- expand its leadership role in teaching the skills of advocacy;
- protect the independence of the bar and the judiciary;
- foster collegiality among members.

The Committee heard that the Advocates' Society is a membership-based organization, which does not base membership eligibility on whether lawyers represent plaintiffs, defendants, Crown or accused. Membership is restricted, however, to those who spend a minimum of 75% of their practice in advocacy. It is not necessary to be a member to attend the Advocates' Society's courses. The Society has 4,500 members, based mainly in Ontario. Annual membership fees range from \$100 to \$395, depending on the membership category. Ontario also has a trial lawyers' association, which is restricted to plaintiffs' counsel.

The Advocates' Society offers a comprehensive continuing legal education curriculum of largely skills-based programs in civil litigation, criminal law, advocacy before administrative tribunals, advanced advocacy, and alternate dispute resolution. The Society runs its continuing legal education programs at cost. Its aims include training experienced advocates to become trainers in the advocacy programs. The Society also spends considerable time on issues related to professionalism and civility, and on informally mentoring younger lawyers.

The Advocates' Society is considering strategies for expanding educational opportunities across Canada. In BC, it has begun by offering two skills courses in early 2012, and is

soliciting BC affiliate memberships, at a yearly fee of \$99. The Advocates' Society has made no decisions on how to proceed on a national basis, and is currently testing potential interest. In light of these developments, the Committee decided to maintain a watching brief on the Advocates' Society initiatives in BC, and take no further steps on recommendation #1 for the time being.

#### *Recommendations 2 through 7*

The Benchers approved recommendations 2 through 7, all relating to improving lawyers' advocacy skills.

#### ***Recommendation 2***

*That the Law Society endorse the development of an online advocacy skills training "toolkit" as a consolidated resource and guide for supporting and enhancing the oral advocacy skills and performance of BC lawyers, and that Courthouse Libraries BC and the CLE Society of BC be approached to explore developing this initiative.*

*Update:* The Law Society is conferring with Courthouse Libraries BC and the CLE Society, and work is ongoing.

#### ***Recommendation 3***

*That the Law Society expand its promotion of the CPD mentoring program, including the focus on advocacy skills.*

*Update:* The Law Society Communications Department is assisting in implementing an effective promotional strategy for the CPD mentoring program, including utilizing the Law Society website and the *Benchers Bulletin*.

#### ***Recommendation 4***

*That the Law Society approach the Access Pro Bono Society of BC to discuss the feasibility of Access Pro Bono introducing a pro bono civil duty counsel program in Small Claims Court.*

*Update:* The Law Society has been conferring with the Access Pro Bono Society of BC, and Access Pro Bono is formulating plans to implement the proposal. It has applied for Law Foundation funding to run a pilot project, and will report to the Benchers early in 2012 on its activities and to discuss how the Law Society could assist Access Pro Bono with the project, which it hopes to roll out by mid-2012.

### ***Recommendation 5***

*That the Law Society encourage the development of a province-wide roster of senior counsel to be available by telephone to assist inexperienced lawyers with advocacy basics during a trial.*

*Update:* Law Society and BCCBA have held discussions at the staff level. The CBA's Practice Advisory Panel service is available to all lawyers, although non-CBA members cannot access the resource online without first contacting the CBA. The CBA is updating its Practice Advisory Panel list, and is seeking new volunteers. The CBA has offered to co-ordinate with the Trial Lawyers' Association to discuss working together to develop a broad-based roster of senior lawyers who would be available to assist lawyers throughout the province.

Once the CBA has completed the updating of its Practice Advisory Panel list, the practice resources area of the Law Society website can include a link to the CBA Practice Advisory Panels.

### ***Recommendation 6***

*That the Law Society contact the Crown and the Provincial Court judiciary to discuss their reintroducing the Crown Counsel advocacy training program.*

*Update:* In discussions with Crown Counsel, the Crown has been co-operative, and recognizes the desirability of supporting the development of advocacy skills in junior lawyers. Crown Counsel formed a small working group to discuss the proposed initiative, but decided to recommend against it at this time because resources are not available to support the scheduling, training and supervision required. On a positive note, the Law Society was asked not to forget about this initiative for the future and, accordingly, the Committee has directed staff to bring the issue forward for discussion in two years.

### ***Recommendation 7***

*That the Law Society develop a vigorous communication campaign to encourage law firms and senior lawyers to "take a junior to court".*

*Update:* The promotional strategy is well along in its development, and includes utilizing the Law Society website and the *Benchers Bulletin*.

#### **(c) CPD Credit for Pro Bono Service**

In 2009 the Benchers approved the following recommendation of the Access to Legal Services Advisory Committee: *"The Benchers should direct the Lawyer Education Advisory Committee to consider whether lawyers who provide pro bono through clinic and roster programs should be able to claim a portion of that time toward the ethics /*

*professional responsibility component of Continuing Professional Development ("CPD"). Because CPD requires a lawyer to spend at least two hours a year on matters of ethics and professional responsibility, the Lawyer Education Advisory Committee should consider whether there is a need to limit how many of the 12 hours of CPD may be met by providing pro bono."*

The Committee's CPD Report to the Benchers in September 2011 recommended, reluctantly, against offering CPD accreditation of pro bono legal services. The Benchers accepted the Committee's recommendation on this issue.

(d) CPD Credit for Mentoring

The mentoring program came into effect on January 1, 2010, and is being monitored by the Committee. The program permits both mentors and mentees to obtain CPD credit. The Committee considers mentoring to be one of the most effective ways to provide support and guidance to lawyers.

The Committee's September 2011 CPD report to the Benchers included recommendations for enhancing the mentoring program. The Benchers accepted the Committee's recommendations, which will be implemented effective January 1, 2012.

(e) Reconciling the Qualifications Required to Provide Different Types of Legal Services

On March 4, 2011 the Benchers considered the following issue.

*Are there some legal services that require a general background in legal education, but may not require a full Bachelor of Laws (or Juris Doctor) degree? The [former Futures] Committee concluded in 2008 that it is in the public interest to expand the range of service providers who are adequately regulated concerning training, accreditation and conduct. The work done to date concerning paralegals is one aspect of the Futures Committee's recommendations, but there are other things that could be considered concerning reconciling the level of qualification required to provide differing types of legal services.*

The Benchers asked the Lawyer Education Advisory Committee to present a preliminary report by the end of 2011 so that direction can be provided for this issue in the next strategic plan. The Committee's report, with recommendations, is included in the December Benchers' agenda materials.

# Memo

To: The Benchers  
From: The Executive Committee  
Date: November 21, 2011  
Subject: 2012 – 2014 Strategic Plan

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## **I. Introduction**

The Benchers have been considering the content of our next strategic plan since the initial presentation of the Advisory Committee reports and initiatives at the July Benchers meeting. Over the six months since then, the Benchers have been given the opportunity to discuss the proposed initiatives and to express their view of the relative importance of each initiative. At their October meeting, Benchers had the opportunity to review and comment on a draft Plan. Over this period, the Executive Committee has been assisting the Benchers and staff in establishing the relative priorities considering the financial, staff and volunteer resources we expect to be available over the next three years. The result of this discussion, consideration and collaboration is the final 2012 – 2014 Strategic Plan attached. The Committee would like to express its appreciation to the Benchers, the Advisory Committee members and the staff for all their contributions to development of our next Strategic Plan.

## **II. Changes Incorporated on the final 2012 – 2014 Strategic Plan**

As a consequence of the Bencher discussion on October 21 and the Executive Committee consideration on November 16, there have been some slight modifications to the draft Plan. For ease of reference, the Committee summarizes those changes as follows:

### **(a) Law Society Goals**

The goals have been amended following the discussion on October 21st. The goals have now been drafted in the future tense in order that they appear as aspirational statements rather than as declarative ones. In other words, the goals are now statements of what the Law Society wishes to achieve through its Strategic Plan.

(b) Strategies and Initiatives

- Former Initiative 1-1(a) (“Regulate just lawyers or regulate all legal service providers”)

There was some concern expressed at the last Benchers meeting about whether Initiative 1-1(a) was the first priority under Strategy 1-1. While the Committee noted that the order in which the initiatives appear in the Plan is not intended to indicate the priority with which the Law Society views the initiative, it did recognize that some may read the Plan this way. To address this concern, this initiative has been renumbered as Initiative 1-1(c). As a consequence, the other remaining initiatives under that heading have been renumbered.

- Former Initiative 1-1(b) (now Initiative 1-1(a) – “Improving regulatory Tools”)

It was noted at the Benchers meeting that Initiative 1-1(b) was phrased in both a general *and* specific manner, and that it would be preferable to have both matters referenced in the initiative specifically addressed through the initiative. Consequently, the Initiative has been reworded as “consider ways to improve regulatory tools and examine whether the Law Society should regulate law firms.” This should put both tasks on an equal footing.

- Initiative 1-2(a) (“Governance”)

(i) General comments

The governance initiative has been clarified as a result of discussion at the Benchers meeting about whether or not that initiative should include how the Law Society governs the *profession*. The Committee was of the view that the objective of the initiative is to examine the issues of governance of the *Law Society* and broader issues of governance of the profession should be left for future consideration.

The initiative has also been revised slightly to clarify that the bullet points are a non-exhaustive set of examples of what might be addressed.

(ii) “Independent Oversight”

There was some discussion at the meeting about whether or not the phrase “independent oversight” was the proper way to express the initiative. “Oversight” might be misinterpreted to mean “mistake”. Therefore, recasting

the initiative as “Independent Review of Law Society Processes” will better express the intent of the initiative.

- Initiatives 1-3(a) and (b)

After discussion at the Committee, these initiatives have been re-ordered in the draft Plan.

- Initiative 1-4(b) (“Qualification standards”)

The wording of this initiative has been revised in order to clarify its meaning.

- Initiative 3-2(b) (“Communicating the role of the Law Society”)

The wording of this initiative has been revised after consideration by the Committee. The Committee reached a consensus that the focus of the initiative should be on communication about the role of the Law Society rather than about the rule of law, although the Committee thought keeping the connection between the role of the Law Society and how that role advances the rule of law should remain part of the initiative.

(c) Focus on Members as Stakeholders

It was noted at the October Benchers meeting that “members” were not identified as stakeholders in the strategies identified under Goal 3. The Committee noted that the Law Society must advance a public-interest focus in looking beyond the interests of its members. However, the Committee agreed with the need to communicate with members and that the realities of the practice of law must be addressed and taken into account by the Law Society when developing policies and generally examining the public interest in the legal profession.

The Committee concluded that, rather than reword Strategy 3-1, addressing this need in the Introduction to the Strategic Plan would be preferable, and it has been revised accordingly.

### **III. New Initiatives Raised on October 21st**

Two new initiatives were raised at the Benchers meeting on October 21st. These were considered by the Committee on November 16. The Committee, for the following reasons, reached a consensus that these two issues should not be added to the Strategic Plan at this time.

(a) Immigrant Lawyers

The first new initiative raised at the Benchers meeting was to amend Initiative 2-1(b) to add immigrant lawyers as a group that the Law Society should specifically address.

Mr. Brun pointed out at the Benchers meeting that while the notion raised by the suggested addition was a good one, the Strategic Plan itself is aimed at the more immediately achievable matters. The Law Society is currently focused on issues concerning the support and retention of Aboriginal lawyers and women lawyers. Work has been done to identify needs to address those two groups.

As mentioned at the Benchers meeting, while there may be a need to address immigrant lawyer groups as well, the Law Society currently has no empirical evidence or research to support that conclusion nor to describe exactly what needs might need to be addressed. The Committee anticipates that Initiative 2-2(a), which is focused on the changing demographics of the profession and its effects, might identify issues out of which a new initiative, at a future date, might be created to support and retain immigrant lawyers. However, at this point in time, the Committee believes that it would be better to wait the outcome of Initiative 2-2(a).

(b) Small Firm Lawyers

The second new issue raised at the October 21 meeting was whether to address challenges faced by sole practitioners in Strategy 1-3 by creating a specific new initiative to identify issues focusing on that group.

The Committee noted that the Law Society's Small Firm Task Force had issued its Report in 2007, out of which a number of specific initiatives were identified to improve the abilities of small firm lawyers to practise competently and successfully, and that these have been implemented. As a result, the Committee agreed that, while there will come a time to review of the outcome of those initiatives, it is too soon to undertake that review at this time.

#### **IV. Conclusion**

The Benchers have now had several opportunities to consider the strategic direction for the Law Society over the next three years. These have been informed by the recommendations of the Advisory Committees generally as well as on information raised by individual Benchers. The Benchers as a whole have worked to prioritize the issues raised to ensure that there will be some likelihood of an effective use of Law Society resources in order to achieve demonstrable results that are in the public interest.

With all that in mind, the Committee presents the 2012 - 2014 Strategic Plan for the Benchers final review and approval.



# The Law Society *of British Columbia*



## 2012 – 2014 Strategic Plan

**For:** The Benchers  
**Date:** December 2, 2011

**Purpose of Report:** Discussion  
**Prepared on behalf of the Executive Committee**

## INTRODUCTION

Section 3 of the *Legal Profession Act* states 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.

To carry out its mandate effectively, the Law Society must keep in mind the interests and concerns of all parties that engage the justice system. This includes the public generally, users of the legal systems (both individual and corporate), courts, governments, and lawyers.

The Benchers have created a process to plan for and prioritize strategic policy development to properly meet the mandate of the Society and to optimize staff resources.

Through this process, the Benchers identified three principal goals and related strategies that the Law Society should pursue 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 this 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.

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 will be a more innovative and effective professional regulatory body.
2. The public will have better access to legal services.
3. The public will have greater confidence in the administration of justice and the rule of law.

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

The Law Society recognizes that it is important to encourage innovation in all of its 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)***

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

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

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

#### ***Initiative 1–1(c)***

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

### **Strategy 1 - 2**

Identify and develop processes to ensure continued good governance.

#### ***Initiative 1–2(a)***

Examine issues of governance of the Law Society generally including:

- identifying ways to enhance Benchers diversity;
- developing a model for independent evaluation of Law Society processes;
- creating a mechanism for effective evaluation of Benchers performance and feedback.

### **Strategy 1–3**

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

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

Work with continued professional development providers to develop programs about the new Code of Conduct.

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

Improve uptake of Lawyer Wellness Programs.

**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 necessary for the effective and competent provision of differing types of legal services.

## **GOAL 2: The public will have 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 and will continue to gather demographic data about lawyers to inform these strategies.

### **Strategy 2–1**

Increase the availability of legal service providers.

#### ***Initiative 2–1(a)***

Consider ways to improve the affordability of legal services:

- continue 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.

#### ***Initiative 2–1(b)***

Support and retain Aboriginal and women lawyers:

- implement the Justicia, or similar, program; and
- develop and implement the Aboriginal Lawyer Mentoring Program.

### **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, supported by an effective justice system, is essential to a civil society. This requires public confidence in both the rule of law and the administration of justice. The Law Society recognizes the importance of 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 to communicate through media about the role of the Law Society, including its role in protecting the rule of law.



# The Law Society of British Columbia



## **Equity and Diversity Advisory Committee Feasibility Assessment – Bringing the *Justicia* Project to BC**

**For:** Benchers

**Date:** December 2, 2011

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Robert Brun, QC (Chair)  
Catherine Sas, QC (Vice-Chair)  
Thelma O'Grady  
Patrick Kelly  
June Preston  
Elizabeth Hunt  
Jennifer Chow  
Karen Whonnock

**Purpose of report:**

**Discussion and Decision**

**Prepared on behalf of:**

**Equity and Diversity Advisory Committee**

**Susanna Tam  
Policy and Legal Services  
604-443-5727**

## **EQUITY AND DIVERSITY ADVISORY COMMITTEE FEASIBILITY ASSESMENT – BRINGING THE *JUSTICIA* PROJECT TO BC**

### **PURPOSE OF REPORT**

This report provides a brief description of the *Justicia* project in Ontario which is focused on the retention of women lawyers, and a feasibility assessment of bringing the project to BC.

The Equity and Diversity Advisory Committee has received positive interest in the *Justicia* project from BC firms, and recommends that the Law Society implement a consultation and engagement plan in 2012. The first phase of the plan will focus on BC offices of national *Justicia*- participating firms. The second phase will aim at engaging regional firms in BC.

While the Law Society cannot control policy and program development within the firms, the expected outcome of this project is that the Law Society will facilitate a strategic process to bring firms together, to collectively consider initiatives for retaining and advancing women lawyers.

The Advisory Committee is seeking approval from the Benchers to implement the initial phases of *Justicia* in BC.

### **BACKGROUND**

In 2009, the Law Society's Retention of Women in Law Task Force examined the *Justicia* project, which had just been launched at the time by the Law Society of Upper Canada (LSUC). The *Justicia* project brought together Ontario firms to work with LSUC in developing initiatives for the retention and advancement of women lawyers, including parental and flexible work policies, mentoring programs, and business development programs. The Task Force recommended that the Law Society consider the feasibility of creating a BC think tank for regional/mid-size and smaller firms.<sup>1</sup> This think tank was envisioned as an initiative modeled after *Justicia* and tailored for BC.

Since that time, the Advisory Committee has been working with the Law Societies' Equity Network (LSEN) on a number of equity issues, including the retention of women lawyers.<sup>2</sup> Through this network, LSUC proposed the idea of extending *Justicia* to other jurisdictions in a more coordinated manner, to maximize resources and to avoid unnecessary duplication. Rather than create its own think tank, the Advisory Committee

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<sup>1</sup> The Law Society of BC, *Report of the Retention of Women in Law Task Force*, June 30, 2009 at p. 9. Find the report here: <http://www.lawsociety.bc.ca/page.cfm?cid=5&t=Equity-and-Diversity>

<sup>2</sup> The Law Societies' Equity Network is comprised of policy lawyers and equity ombudspersons from the Law Society of BC, the Law Society of Upper Canada, the Barreau du Quebec, the Nova Scotia Barristers' Society, and the law societies of Alberta, Manitoba and Saskatchewan. The Network is organized under the umbrella of the Federation of Law Societies of Canada and it has developed strategic and action plans identifying areas for coordination and collaboration.

chose to consider bringing *Justicia* itself to BC. The Advisory Committee notes that the Barreau du Quebec has recently launched its own version of *Justicia*, and the Law Society of Manitoba is considering implementing certain components of the project.

## THE *JUSTICIA* PROJECT IN ONTARIO

The *Justicia* project in Ontario was developed as a core component of LSUC's "Retention of Women in Private Practice" initiative.<sup>3</sup> The first of its kind in Canada, the project has brought together over 50 firms committed to sharing best practices, developing resources and adopting programs to support women lawyers.<sup>4</sup> Each firm has pledged to achieve ambitious goals in the following core areas:

- Maternity and parental leave policies
- Flexible work arrangements
- Networking and business development
- Mentoring and leadership skills development
- Monitoring progress through tracking gender demographics

The project's aim has been to "create a shift in our legal culture and lead the way for innovative, systemic change that works for the profession and the public." It has been observed that *Justicia* also makes good business sense, as increasing numbers of clients are seeking out law firms that actively promote diversity.<sup>5</sup> In fact, LSUC has created and trademarked a "committed to *Justicia*" mark that participating firms can use in their promotional materials; anecdotally, women students and lawyers are considering this when choosing firms.

Launched in November 2008, *Justicia* has been very well-received in Ontario and the three-year pilot project has just been extended for an additional two years.<sup>6</sup>

## POSITIVE INTEREST IN BC

The Advisory Committee received very positive feedback from a number of BC offices of national *Justicia*-participating firms that were willing to work with the Law Society on this project. The Advisory Committee also received advice from *Justicia* participants in Ontario regarding their experiences. One key issue that was identified related to the capacity and infrastructure of national firms to engage with the project in contrast with regional and smaller firms.

The Advisory Committee firmly believes that there is excellent potential for success in bringing *Justicia* to BC. The Advisory Committee also believes that effective consultation and engagement of firms in BC would be better approached in two phases:

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<sup>3</sup> See the Law Society of Upper Canada's initiatives related to retention of women: <http://www.lsuc.on.ca/with.aspx?id=397>

<sup>4</sup> For a list of participating firms: [http://www.lsuc.on.ca/justicia\\_project/](http://www.lsuc.on.ca/justicia_project/)

<sup>5</sup> The Law Society of Upper Canada, "The Justicia Project: Enabling Professional Excellence," January 2011.

<sup>6</sup> For information regarding progress, see the Law Society of Upper Canada, "Retention of Women in Private Practice: Status Report," June 2011.

the first phase would involve working with BC offices of national *Justicia*-participating firms, with a focus on reviewing and making recommendations regarding the implementation of *Justicia* resources in BC; the second phase would involve engaging regional firms in identifying needs, and reviewing and considering the applicability of resources.

## 2012 CONSULTATION AND ENGAGEMENT

The Advisory Committee intends to build a solid foundation for *Justicia* in BC. It expects to start with a relatively small number of firms (10-20) and build size and momentum over time. The Advisory Committee has designed a 12-month consultation and engagement plan to be implemented starting January 2012, and fully expects to make recommendations at the end of the plan for further steps for the following year. The Advisory Committee is mindful of the fact that the Law Society has no control over whether, how and when law firms implement *Justicia* policies and initiatives, and believes the Law Society's role is to facilitate a strategic process by bringing firms together to share strategies and best practices. The expected outcome for 2012 is to have a number of firms collectively consider initiatives aimed at retaining and advancing women in private practice.

The first phase of the 2012 consultation and engagement plan will focus on the BC offices of national *Justicia*-participating firms that have already expressed their willingness to participate. This "seed group" of interested firms will review the *Justicia* resources, advise on implementation issues and help develop a communications and promotional strategy to engage other large firms. This group will also participate in a Managing Partners' Summit to discuss their firms' commitment and progress.

The second phase of the plan will focus on regional firms that may have different concerns and needs with respect to policies to support women lawyers, and may have different capacities and infrastructures to develop and implement programs.<sup>7</sup> This group may find various ways of implementing *Justicia*, either through adopting applicable components or adapting existing resources. This group will also participate in a Managing Partners' Summit, either separately or together with the other group, depending on the content of the Summit.

The Advisory Committee intends to develop *Justicia* in the context of the diversity of women in the profession in BC, and aims to engage Aboriginal women lawyers and visible minority women lawyers in particular. The Advisory Committee will work closely with both the Law Society of Upper Canada and the Barreau du Quebec in project implementation.

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<sup>7</sup> For example, some smaller firms may not have the same capacity for offering parental leaves and flexible work arrangements as compared with larger firms.

## PROJECT PLAN

Actions	Timeline
Meet with representatives of BC offices of national <i>Justicia</i> -participating firms	January – February 2012
Develop terms of reference, review resources	February – August 2012
Develop implementation plan and recommendations	September – November 2012
Develop communications and promotional strategy	September – November 2012
Deliver Managing Partners' Summit	November 2012
Final report with recommendations for next steps	December 2012
Meet with representatives of interested regional firms	April 2012
Develop terms of reference, identify needs and concerns	April – June 2012
Review resources and make recommendations regarding applicability	July – November 2012
Deliver Managing Partners' Summit	November 2012
Final report with recommendations for next steps	December 2012
Develop and implement evaluation strategy	Ongoing
Final report to include project evaluation (quantitative and qualitative data)	December 2012

## PROPOSED BUDGET

The Advisory Committee estimates an initial project budget of \$12,000 for 2012. The proposed budget would be used for project expenses including costs related to catering firm representative meetings, hosting the Managing Partners' Summit(s), and possible travel and meetings outside of the lower mainland. Additional costs may also be incurred if the group requires a web portal for resource-sharing or expert consultants to be retained; additional budget would be requested if and when the need is recognized.

## RECOMMENDATION

The Advisory Committee recommends that the Benchers approve the implementation of the proposed consultation and engagement plan for 2012 to bring *Justicia* to BC. The Advisory Committee strongly believes that this project will enhance the Law Society's leadership in retaining and advancing women lawyers in BC.



*Lawyers  
Insurance  
Fund*

# *Memo*

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*To* **Benchers**  
*From* **Su Forbes, QC, Director of Insurance**  
*Date* **August 30, 2011**  
*Subject* **Possible insurance coverage for “bad cheque” scams**

The Lawyers Insurance Fund is considering broadening the scope of coverage under the Policy to include trust shortfalls arising from the “bad cheque” or other scams. As this expansion has the potential to materially increase the risk to the insurance program, we raised the issue initially with the Executive Committee at their August 25<sup>th</sup>, 2011 meeting. The Executive Committee determined that it should go to the Benchers for a decision.

Our paper dealing with the issue is attached for your consideration.

SF/rd

Attachment



*Lawyers  
Insurance  
Fund*

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

**August 30, 2011**

**Prepared for: Benchers**

**Prepared by: Susan Forbes, QC  
Director of Insurance, Lawyers Insurance Fund**

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## **Introduction**

Executive Limitation D 1(b) requires Benchers approval of any material increase in risk to the liability insurance program. We are considering broadening the scope of coverage under the Policy to include trust shortfalls arising out of the “bad cheque” scam. As the expansion has the potential to materially increase risk, we seek your decision as to whether to broaden coverage and, if so, on what terms.

In the typical “bad cheque” scam, fraudsters steal money from a lawyer’s pooled trust account by convincing the lawyer to deposit a certified cheque into trust and then deliver a trust cheque for some or all of the funds to the fraudster. After the trust cheque is cashed, the lawyer discovers that the certified cheque is a fake. This results in a trust shortage and may also create an overdraft. Neither the trust shortage nor any overdraft created is covered under the current professional liability insurance Policy.

In response to some concerns about the lack of coverage, we have considered the merits and consequences of extending the Policy’s scope to include coverage for the trust shortages that may arise in connection with these scams. Our considerations are set out below.

## **Background**

### **Details of the scam**

The fraudsters spin different stories to frame the need for a deposit into trust and subsequent payment out. A common version involves a client retaining a lawyer to collect a debt from a third party. The lawyer sends a demand letter, and receives a bank draft in payment of all or a portion of the debt. The lawyer deposits the draft into trust, deducts an amount for fees and issues a trust cheque to the client for the balance. It is later discovered that the draft was counterfeit and the lawyer’s pooled trust account is now short.

Regardless of the ruse used, the scam typically involves a new client, fairly simple legal services and quick payments in and out of trust. The authentic looking deposit is made by way of counterfeit or forged certified cheque, bank draft or money order. Whatever the story or instrument, however, the fraud can only succeed if the lawyer pays out of trust before discovering that the deposit is no good.

In this paper, “bad cheque scam” and “scams” refers to the scam in all of its variations, and “bad cheque” refers to counterfeit and forged certified cheques, bank drafts or money orders.

### Coverage under the Policy

Lawyers caught by the scam make payments out of their pooled trust accounts on the basis of non-existent funds. Those payouts deplete the trust monies belonging to the lawyers’ clients, the beneficial owners of the funds. On discovery, lawyers are obligated under Rule 3-66(1) to immediately replenish those funds. If the payout exceeds the amount in trust, an overdraft is created that lawyers are contractually obligated to their banks to repay.

The Policy does not currently cover these losses. The basis for coverage under our professional liability insurance Policy is negligence, or falling below the standard of care in providing legal services. In these scams, there is no negligent provision of legal services giving rise to a claim for damages. Rather, the lawyer is the victim of a successful fraud, now liable in debt to clients, the bank or both.

### Experience

We have received one insurance report of a trust shortage arising from the scam. In that matter, the lawyer received a certified cheque for \$225,000 in partial payment of a \$291,000 debt owed to the lawyer’s “client.” The lawyer deposited the cheque into trust. A few days later, after deducting \$3,000 for legal fees, the lawyer electronically transferred \$222,000 to a bank in China. The lawyer’s bank then advised that the cheque was fraudulent, leaving the firm’s pooled trust account short

\$97,000 and overdrawn by \$125,000. The firm replenished the shortfall, as required by Rule 3-66(1).

We received a second report of a trust shortage arising out of a \$395,000 counterfeit certified cheque payable to a client, but endorsed over to a firm. The firm deposited the cheque and paid out \$50,000 to third parties before its bank advised that the cheque was counterfeit. As the firm did not pursue the matter, we have no further particulars.

We understand trust shortfalls have been paid by two other programs in Canada. Ontario calculated that it would pay \$2.6 million on a spate of 16 trust shortages that occurred when the scam was first surfacing. Manitoba paid \$150,000 on a phony debt collection scam.

### Risk management

Through awareness, care and quality control, lawyers can significantly reduce the risk of being caught in these frauds. The Law Society publishes fraud alerts to notify the profession of new twists that develop and offer risk management advice to help lawyers recognize and avoid the scam.

Although we expect that hundreds of attempts have been made, the small number of scams that have actually worked in our province shows that, for the most part, lawyers are paying attention and successfully avoiding the risk. However, not all lawyers will take the necessary care, or a fraud may be so cleverly designed that it is difficult to detect. Further, trying to avoid the fraud by implementing firm wide systems, applicable to each and every transaction, may not be workable. For instance, although the scam cannot work if funds are received by way of electronic funds transfer (“EFT”), the sheer volume of transactions many firms handle make EFT impractical. And although waiting for a cheque to clear will uncover many frauds, some matters may be too time-sensitive to wait. Commercial insurance for trust losses is available from some insurers for some firms, but as a prerequisite usually involves waiting a number of days before paying out, lawyers are still at risk.

## **Policy Objectives to be Served**

A key objective of the liability insurance program is to provide reasonable coverage at a reasonable price. Broadening cover for bad cheque scams will protect some lawyers, but at the expense of others who may consider the protection unnecessary. The public interest is already safeguarded through Rule 3-66(1) which requires lawyers to replenish trust shortages.

## **Key Comparisons**

Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia provided information about their coverage for trust shortfalls and overdrafts resulting from the scam. Trust shortfalls are excluded from cover in Alberta and Quebec but are covered in Manitoba, Ontario and Nova Scotia. Saskatchewan has not taken a position, but considers coverage questionable. With one exception, none of the programs provide cover for overdrafts.

## **Options**

We have identified the following three options in relation to trust shortfalls resulting from the bad cheque scam:

1. Maintain the status quo – continue to exclude from coverage;
2. Provide coverage subject to the existing \$1 million per claim limit and \$5,000 deductible; or
3. Provide coverage subject to limits and deductibles specifically tailored to this risk. The limits would be on the amount paid per claim and, on an annual basis, per lawyer, firm and the profession as a whole. The deductible would be a percentage of the loss. Specifics are as follows:
  - (i) a \$500,000 sub-limit to limit the coverage to \$500,000 per claim;

- (ii) a \$500,000 per lawyer and firm aggregate to cap total payments for any lawyer and firm;
- (iii) a \$2 million profession-wide annual aggregate to cap total payments for all scams in any given year; and
- (iv) a percentage deductible, equivalent to 35 per cent of the amount paid, to increase the amount of the firm's contribution in direct proportion to the amount of the claim.

Both options 2 and 3 contemplate expanding cover. Under option 2, we would pay up to \$1 million for each successful scam, less \$5,000 that the firm would pay by way of deductible. Under option 3, we would pay up to \$500,000 for each successful scam, less 35 per cent that the firm would pay by way of deductible. A profession-wide annual aggregate would limit our total exposure to \$2 million annually, and a per lawyer and firm limit of \$500,000 would ensure that no single lawyer or firm benefited disproportionately from the expanded cover.

If option 2 or 3 is chosen, we recommend reducing the deductible by the amount of any overdraft the firm is obliged to pay. We also recommend that coverage be contingent upon compliance with the client identification and verification rules.

## **Analysis of Implications**

### **Public interest**

It is undoubtedly in the public interest that trust shortfalls are replenished, and in our experience, the public will be protected regardless of the option chosen. We understand that the Law Society received some reports of trust shortages caused by the scam, all of which were made good by the lawyers involved. This is consistent with our expectation that lawyers will pay, given their Rule 3-66(1) obligations. Expanding cover would, however, enhance protection if a firm failed to meet the Rule's requirement. On the other hand, without expanding cover, we could advance payment to protect the public and seek reimbursement from the firm.

## Member relations

The impact of your decision on member relations will vary between lawyers. We know that the lack of coverage is of concern to some, but expect others may resent paying for claims that may well have been avoided with appropriate due diligence. We have explained our position on coverage for the scam to lawyers at numerous risk management presentations over the last two years. While a few are surprised, a majority appear to accept that the Policy does not respond to these sorts of losses.

## Financial implications

There will be a financial impact if you decide to expand coverage. We anticipate that both claims and operational costs will increase as explained below. No insurance fee increase has been sought or approved for 2012; however, this would not be an impediment to introducing new coverage next year.

## *Claim costs*

Increases in the cost of claims may be nominal or significant, depending on the number of successful scams and the amounts involved, and whether the scam leads to a shortfall, overdraft or both. Bad cheques unrelated to the scam may also create losses.

The scams typically involve amounts between \$200,000 and \$350,000 (one matrimonial scam involved \$2.6 million). The existence and amount of any shortfall depends on the amount of money in the lawyer's pooled trust account. A payout of \$350,000 from an account with \$800,000 in trust will create a \$350,000 shortfall. That same payout from an account with \$300,000 in trust will create a \$300,000 shortfall and a \$50,000 overdraft. If covered\*, just one successful scam each year that creates a shortfall of \$300,000 will cost each insured lawyer \$42 annually. Two

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\* with a \$5,000 deductible

successful scams that create shortfalls of \$700,000 – or one larger leading to the same shortfall – will cost each lawyer close to \$100 annually.

If shortfalls are covered by insurance, the financial consequences of the scam can be directly influenced by the level of due diligence exercised by lawyers. This includes following the client identification and verification rules (the “Rules”). Presently lawyers are personally at risk for shortages, and as a result there may be a heightened awareness of and desire to mitigate the risk. The comfort of insurance may reduce that watchfulness, leading to an increase in the number of successful scams. The purpose of a higher deductible, sub-limit (a lower claim limit) and profession-wide aggregate (a cap on payments), as well as a requirement to comply with the Rules, is to encourage lawyers to stay vigilant, keep the number of payments in check, and share the risk of loss more evenly between the firm causing the loss and the rest of the profession, while limiting the risk to the fund overall. Creating a per lawyer and firm aggregate (a cap on payments) also prevents any one lawyer or firm from unduly benefiting from the expanded cover. Setting the deductible as a percentage rather than a fixed amount (e.g. \$50,000 or \$75,000), ensures all firms are compensated for a portion of their loss regardless of the amount of the bad cheque.

If the scam also results in an overdraft, the firm will face paying both the deductible and the amount of any overdraft. A firm with sufficient trust funds to pay the bad cheque will avoid an overdraft and pay only the deductible. A firm with insufficient trust funds will pay both. As a result, you may wish to consider some financial relief to those firms. We suggest reducing the deductible for any firm that also experiences an overdraft by the amount of any overdraft payment made.

The chart at Appendix 1 shows how the financial consequences for the insurance program and firms differ under option 2 (\$1 million per claim limit and \$5,000 deductible) and 3 (\$500,000 sub-limit and deductible of 35%), depending on the amount of the bad cheque and the amount – if any – in trust.

The expanded cover will also pick up trust shortages resulting from bad cheques unrelated to the scam. For instance, a client obliged to provide funds as part of a

legitimate retainer might cross the line, and provide a counterfeit cheque. We expect such incidences are infrequent, and unlikely to add any significant increase to the cost of claims.

### *Operational costs*

We expect the cost of operations to also increase. If we assume the risk of bad cheque scams, we would expect to more directly manage the risk. Direct management would include responding to inquiries from lawyers about the coverage, advising lawyers seeking advice in relation to a suspected fraud, handling reports of potential scams and bolstering fraud prevention. We expect that these additional responsibilities will require more staff time.

### **Implementation and Evaluation**

If you decide to expand coverage, the Policy can likely be revised in time for the 2012 policy year. Members will be advised of the enhanced coverage through the *Insurance Issues: Program Report*. If the expansion results in an unusually high risk experience or is otherwise of concern, we will report back to you.



## Appendix 1

The following chart shows the financial consequences for the fund and the firm of a successful bad cheque scam if option 2 (existing limits and deductibles) or 3 (\$500,000 sub-limit, 35% deductible) is chosen, based on different amounts of the bad cheque and funds in trust:

SCENARIO			RESULT			OPTION (limit/deductible)	FINANCIAL CONSEQUENCES				
Amount of bad cheque	Amount in trust		Trust funds remaining	Overdraft created	Trust shortfall (amount of claim)	Option 2 \$1,000,000/\$5,000 Option 3 \$500,000/35% of claim	Firm pays				LIF pays
							Deductible (reduced by any overdraft)	Overdraft	Excess (amount over sub-limit)	Total	
A	1	\$800,000	\$650,000	\$0	\$150,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$145,000
						\$500,000/\$52,500 (35%)	\$52,500			\$52,500	\$97,500
	2	\$300,000	\$150,000	\$0	\$150,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$145,000
						\$500,000/\$52,500 (35%)	\$52,500			\$52,500	\$97,500
	3	\$70,000	\$0	\$80,000	\$70,000	\$1,000,000/\$5,000	\$0	\$80,000		\$80,000	\$70,000
						\$500,000/\$24,500 (35%)	\$0	\$80,000		\$80,000	\$70,000
B	1	\$800,000	\$450,000	\$0	\$350,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$345,000
						\$500,000/\$122,500 (35%)	\$122,500			\$122,500	\$227,500
	2	\$300,000	\$0	\$50,000	\$300,000	\$1,000,000/\$5,000	\$0	\$50,000		\$50,000	\$300,000
						\$500,000/\$105,000 (35%)	\$55,000	\$50,000		\$105,000	\$245,000
	3	\$70,000	\$0	\$280,000	\$70,000	\$1,000,000/\$5,000	\$0	\$280,000		\$280,000	\$70,000
						\$500,000/\$24,500 (35%)	\$0	\$280,000		\$280,000	\$70,000
C	1	\$800,000	\$250,000	\$0	\$550,000	\$1,000,000/\$5,000	\$5,000			\$5,000	\$545,000
						\$500,000/\$175,000 (35%)	\$175,000		\$50,000	\$225,000	\$325,000
	2	\$300,000	\$0	\$250,000	\$300,000	\$1,000,000/\$5,000	\$0	\$250,000		\$250,000	\$300,000
						\$500,000/\$105,000 (35%)	\$0	\$250,000		\$250,000	\$300,000
	3	\$70,000	\$0	\$480,000	\$70,000	\$1,000,000/\$5,000	\$0	\$480,000		\$480,000	\$70,000
						\$500,000/\$24,500 (35%)	\$0	\$480,000		\$480,000	\$70,000

# Memo

To: Benchers  
From: Lesley Small  
Date: November 24, 2011  
Subject: **Territorial Mobility Agreement Extension**

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The Council of the Federation of Law Societies of Canada has recently approved the request for indefinite renewal of the Territorial Mobility Agreement (the “TMA”). The Agreement has been referred to Canada’s law societies for their ultimate approval and execution. President Gavin Hume, QC has requested that this matter be considered by the Credentials Committee, which will meet on December 1, 2011. The Committee’s recommendations will be presented to the Benchers at the December 2 meeting for consideration and decision.

The Credentials Committee will consider the following options as its December 1 meeting:

1. Resolve to recommend to the Benchers that
  - a) the Law Society of British Columbia approve and execute the indefinite renewal of the TMA, and
  - b) the Law Society of British Columbia vote in favour of the motion before Council of the Federation to revisit consideration of the factors impeding participation by the territorial law societies in the temporary mobility provisions of the National Mobility Agreement;
2. Resolve to recommend to the Benchers that the Law Society of British Columbia approve and execute the indefinite renewal of the TMA;
3. Resolve to recommend to the Benchers that the Law Society of British Columbia not approve or execute the indefinite renewal of the TMA.

If an indefinite renewal of the TMA is approved, the Law Society Rules will need to be amended to remove the current expiration date of January 1, 2012. In the event that occurs, Jeffrey Hoskins, QC, has drafted a suggested resolution reflecting an amendment to the applicable rules.

## Background

When the National Mobility Agreement (the “NMA”) was adopted in 2002, concerns about the potential impact of temporary mobility on the territorial law societies caused those law societies to refrain from signing that agreement.

In November 2006, the Law Society signed the new TMA. Under the TMA, the Yukon, Nunavut and Northwest Territories law societies agreed to join the common law provincial law societies in the NMA with respect to permanent mobility (the transfer of lawyers from one jurisdiction to another), but not with respect to temporary mobility.

The TMA would remain in effect for five years, during which time the territorial law societies would evaluate their ability to become full participants in the NMA, including the temporary mobility provisions. At the expiration of the five years, each territory would have the option of signing on to full mobility (both permanent and temporary) or withdrawing from mobility.

## Discussion

The TMA is scheduled to expire on January 1, 2012. In May 2011, the Presidents of the three territorial law societies requested that the TMA be extended on an indefinite basis. The matter was referred to the Federation’s National Mobility Policy Committee for consideration and the development of a recommendation to the Council of the Federation.

While the Council of the Federation approved the request, we are advised by the Federation President, John J. L. Hunter, QC, that the motion was adopted with one abstention and two Council members voting against.

In his recent email to the Canadian law societies, President Hunter advises that the view expressed during the course of the Council’s vote was that, notwithstanding the indefinite nature of the extension of the TMA, Council should bring forward for consideration the factors impeding the territorial law societies from participating in the temporary mobility provisions of the NMA.

As a result, the Federation Executive has recommended that the following motion be put before Council at its meeting on December 13, 2011:

***“RESOLVED THAT: the Council of the Federation, no later than December 31, 2004, revisit consideration of the factors impeding participation by the territorial law societies in the temporary mobility provisions of the National Mobility Agreement, and whether there may be solutions to address such factors.”***

## Attachments

- November 22, 2011 email from John J.L. Hunter, QC, President, Federation of Law Societies

- November 2, 2011 Memorandum from Tim Killeen, Chair, National Mobility Policy Committee to the Council of the Federation and Law Society CEO's attaching:
  - Appendix "A" Renewal of the Territorial Mobility Agreement;
  - Appendix "B" blackline version of the agreement showing changes;
  - Appendix "C" May 16, 2011 letter from the Presidents of the three territorial law societies.
- Suggested Resolution prepared by Mr. Hoskins

## Territorial Mobility Agreement Extension

**From:** John Hunter **Sent:** Tuesday, November 22, 2011 2:49 PM **To:** Babak Barin; Catherine Walker; Gavin Hume, QC; Gérald Tremblay; Graeme Mitchell; Jeff Hirsch; Keith Boswell; Louis Sebert; Marie-Claude Bélanger-Richard; Maurice Piette; Mona T. Duckett; Ronald J. MacDonald; Sheila Greene; Susan Dennehy; Susanne Boucher; Tom Conway **Cc:** Alan Treleaven; Allan Fineblit; Brenda Grimes; Christian Tremblay; Claude Provencher; Darrel I. Pink; Don Thompson; Frank O'Brien; Howard Kushner; Jacques Houle; Jim Varro; Linda G. Whitford; Lise Tremblay; Lynn Daffe; Malcolm Heins; Marc L. Richard; Marilyn Billinkoff; Nalini Vaddapalli; Phyllis Weir; Susan M. Robinson; Tim McGee; Tom Schonhoffer; Bob Linney; Crystal Jannack; Daphne Keevil Harrold; Deborah Wolfe; Frederica Wilson; Jonathan Herman; Lise Désormiers  
**Subject:** Territorial Mobility Agreement Extension

Dear Colleagues,

On November 3, 2011, Council members were requested to vote on the following motion by November 9, 2011:

**WHEREAS** the Territorial Mobility Agreement came into force on November 3, 2006;

**WHEREAS** the Territorial Mobility Agreement will expire on January 1, 2012;

**WHEREAS** the Presidents of the law societies of Yukon, Northwest Territories and Nunavut have requested that the Territorial Mobility Agreement be renewed for an indefinite term;

**WHEREAS** the National Mobility Policy Committee has studied the matter and has recommended that the Territorial Mobility Agreement be renewed for an indefinite term;

**RESOLVED THAT** the Council approve the request for indefinite renewal of the Territorial Mobility Agreement and submit the agreement attached as Appendix "A" to member law societies for approval and execution.

I wish to confirm that the motion was adopted with one abstention and two Council members voting against.

During the course of the vote, the view was expressed that notwithstanding the indefinite nature of the extension of the Agreement, it would be desirable for Council to bring forward, within a reasonable period of time, the consideration of the factors impeding the territorial law societies from subscribing to the temporary mobility provisions of the National Mobility Agreement. Based on my conversations, I am convinced that it was never anyone's intent that the issues be set aside indefinitely despite the wording of the draft Agreement. In order to make this clear, the Executive recommends that the following motion be put before Council at its meeting on December 13, 2011:

**"RESOLVED THAT:** the Council of the Federation, no later than December 31, 2014, revisit consideration of the factors impeding participation by the territorial law societies in the temporary mobility provisions of the National Mobility Agreement, and whether there may be solutions to address such factors."

Many jurisdictions have informally indicated that this wording would be acceptable to them.

In the meantime, I would urge all jurisdictions that are in a position to do so, to identify the authorized representative who will execute the revised TMA when it is circulated to them by the Federation after our December Council meeting, such that the provisions of the TMA continue in force on January 1, 2012.

Kind regards,

John

John J.L. Hunter Q.C.  
President  
Federation of Law Societies of Canada

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

## **MEMORANDUM**

**FROM:** Tim Killeen, Chair, National Mobility Policy Committee

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

**DATE:** November 2, 2011

**SUBJECT:** Territorial Mobility Agreement

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**ACTION REQUIRED: FOR DECISION**

### **DRAFT MOTION:**

**WHEREAS** the Territorial Mobility Agreement came into force on November 3, 2006;

**WHEREAS** the Territorial Mobility Agreement will expire on January 1, 2012;

**WHEREAS** the Presidents of the law societies of Yukon, Northwest Territories and Nunavut have requested that the Territorial Mobility Agreement be renewed for an indefinite term;

**WHEREAS** the National Mobility Policy Committee has studied the matter and has recommended that the Territorial Mobility Agreement be renewed for an indefinite term;

**RESOLVED THAT** the Council approve the request for indefinite renewal of the Territorial Mobility Agreement and submit the agreement attached as Appendix "A" to member law societies for approval and execution.

### **ISSUE**

1. The Council is asked to approve the recommendation for renewal of the Territorial Mobility Agreement ("TMA") with no expiration date and submission of the agreement attached as Appendix "A" to member law societies for their approval and execution. For the convenience of members of Council, a copy blackline version of the agreement showing the changes is attached as Appendix "B".

## **BACKGROUND**

2. The TMA is scheduled to expire on January 1, 2012. By letter dated May 16, 2011, the Presidents of the three territorial law societies requested that the agreement be extended on an indefinite basis (copy attached as Appendix “C”). The matter was referred to the National Mobility Policy Committee (the “Committee”) for consideration and the development of a recommendation to the Council of the Federation.

3. When the National Mobility Agreement (the “NMA”) was adopted in 2002, concerns about the potential impact of temporary mobility on the territorial law societies kept those law societies from signing on to the agreement. The TMA, which came into force in 2006, recognized the unique circumstances of the northern law societies, extending the permanent mobility provisions of the NMA to those law societies and recognizing them as reciprocating jurisdictions without requiring them to participate in the NMA’s temporary mobility provisions.

4. The TMA had a five-year term, designed, as stated in the preamble to the agreement, to “allow the territorial law societies to evaluate their ability to become signatories to the NMA.”

## **THE MOBILITY LANDSCAPE TODAY**

5. Although it was originally intended that the national mobility regime established by the NMA be reciprocal, with every jurisdiction enjoying the same benefits and undertaking the same obligations, developments since it came into force have changed the mobility landscape.

6. The Quebec Mobility Agreement (the “QMA”), signed in March 2010, provides for limited mobility rights to and from Quebec. Members of the Barreau du Québec (the “Barreau”) may acquire restricted practice rights in common law jurisdictions as Canadian Legal Advisors (“CLAs”) and members of the law societies in common law jurisdictions may acquire the same rights in Quebec. Under a soon to be formalized addendum, members of the Chambre des notaires du Québec will also have been brought into this unique mobility arrangement that takes into account the different legal systems in Quebec and the rest of the country. CLAs are permitted to practice federal law and the law of their home jurisdiction only. Members of the law societies outside of Quebec may also acquire broader, but temporary practice rights in Quebec through a special permit system that is not part of the QMA. Members of the Barreau can acquire similar permits in other Canadian jurisdictions.

7. Although the temporary mobility provisions of the NMA do not apply to the territorial law societies, members of other jurisdictions may obtain special appearance permits allowing them to practice in the northern jurisdictions on a temporary basis.

## **THE COMMITTEE’S DELIBERATIONS**

8. The Committee held two meetings to consider the issue of renewal of the TMA, the first in early July, the second in mid-October. At the first meeting, Committee members considered the history of the TMA, and the changes to the mobility landscape since the agreement was implemented in 2006. At this meeting, the Committee had before it the



letter from the territorial law societies in which the presidents of the three northern law societies expressed satisfaction with the mobility regime that has operated in those jurisdictions for the past five years. The letter also raised questions about the feasibility of extending the temporary mobility provisions of the NMA to the North given the potential loss of revenue from a loss of non-resident members and fees for occasional practice permits.

9. At its first meeting, the Committee was also made aware of concerns expressed by some members of the CEOs group about renewal of the agreement for an indefinite term. As noted in the Committee's report to Council in September 2011, the matter was added to the agenda of the September meeting of the CEOs group to obtain their input. At that meeting, while recognizing that the extension of the temporary mobility provisions to the North could have a profound effect on the membership numbers and finances of the northern law societies, some CEOs suggested that a time-limited extension would be more appropriate and might provide an opportunity for examination of the broader challenges facing both the northern and other small law societies in Canada.

10. At the Committee's second meeting on October 19, 2011, members gave full consideration to both the concerns expressed by some at the CEOs meeting and the position of the territorial presidents that extension of the temporary mobility provisions to the northern jurisdictions would have serious, negative repercussions. The Committee concluded that, on balance, the preferable course of action would be to renew the TMA for an indefinite term. In arriving at this conclusion, members of the Committee recognized that the experience of the past five years under the TMA has been positive; the agreement brought the northern law societies into the mobility regime in a way that took account of their unique circumstances, providing for permanent mobility to and from the territorial law societies. Although the temporary mobility provisions of the NMA do not apply in the North, members of other law societies wishing to practice in a territorial law society on an occasional basis may do so for a fee. As a result, residents in the North have access to both a resident bar and legal counsel from other jurisdictions.

11. While recognizing that renewal of the agreement on an indefinite basis would not be consistent with the original goal of a reciprocal, symmetrical mobility regime, members of the Committee noted that, with the implementation of the QMA, the mobility regime has evolved into a reciprocal, but asymmetrical system. Renewal of the TMA for an indefinite term, to accommodate the continuing unique circumstances of the territorial law societies, would be consistent with the reality of the approach to mobility that exists today and would balance the interests of both the public and the legal profession in the North in a mobile bar, with the equally important goal of good governance of the northern law societies.

## **RECOMMENDATION**

12. It is recommended that the resolution set out on page one of this memorandum be adopted.

APPENDIX “A”

# **TERRITORIAL MOBILITY AGREEMENT**

## **Territorial Mobility Agreement**

# **FEDERATION OF LAW SOCIETIES OF CANADA**

November , 2011

### **Introduction**

The purpose of this Agreement is to extend the scope of the National Mobility Agreement in facilitating permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this Agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this Agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil law jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

### **Background**

In August, 2002, the Federation of Law Societies of Canada (the "Federation") approved the report of the National Mobility Task Force ("the Task Force") for the implementation of full mobility rights for Canadian lawyers. This led to adoption of the National Mobility Agreement by 10 law societies and its full implementation in nine jurisdictions. Since that time, all Canadian law societies have also signed the Quebec Mobility Agreement, which facilitates reciprocal mobility between Quebec and the common law jurisdictions.

## Territorial Mobility Agreement

### Territorial Mobility Agreement

The resolution adopted by the Federation in approving the Task Force report included an acknowledgement that “the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force’s terms of reference, but should be undertaken in the future.”

In 2005, an informal Territorial Mobility Group (“the Group”) was formed with representatives of the Task Force, the law societies of the provinces in Western Canada and the law societies of the territories. The Group developed a proposal respecting territorial mobility to address the unique characteristics of the law societies of the territories. This agreement gives effect to the Group’s proposal.

The purpose of this Agreement is to allow the law societies of the territories to participate in national mobility for lawyers to the extent possible for them, given their unique circumstances. Specifically, the signatories agree that the territorial law societies will participate in national mobility as reciprocating governing bodies with respect to permanent mobility, or transfer of lawyers from one jurisdiction to another, without a requirement that they participate in temporary mobility provisions.

The signatories to this Agreement who are not signatories to the NMA do not hereby subscribe to the provisions of the NMA, except as expressly stated in this Agreement.

### THE SIGNATORIES AGREE AS FOLLOWS:

#### Definitions

1. In this Agreement, unless the context indicates otherwise:

“**governing body**” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

“**home governing body**” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “**home jurisdiction**” has a corresponding meaning;

“**Inter-Jurisdictional Practice Protocol**” means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

“**lawyer**” means a member of a signatory governing body;

### Territorial Mobility Agreement

**“liability insurance”** means compulsory professional liability errors and omissions insurance required by a governing body;

**“National Mobility Agreement”** or **“NMA”** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

**“permanent mobility provisions”** means clauses 32 to 36, 39 and 40 of the National Mobility Agreement;

**“practice of law”** has the meaning with respect to each jurisdiction that applies in that jurisdiction;

**“Registry”** means the National Registry of Practising Lawyers established under clause 17 of the National Mobility Agreement;

#### General

2. The signatory governing bodies will
  - (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;
  - (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
  - (c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.
4. A signatory governing body will not, by reason of this Agreement alone,
  - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

### **Territorial Mobility Agreement**

- (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

- 5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

### **Permanent Mobility**

- 6. The signatories that are signatories to the National Mobility Agreement agree to extend the application of the permanent mobility provisions of the National Mobility Agreement with respect to the territorial signatories to this Agreement.
- 7. The territorial signatories agree to adopt and be bound by the permanent mobility provisions of the National Mobility Agreement.
- 8. A signatory that has adopted regulatory provisions giving effect to the permanent mobility requirements of the National Mobility Agreement is a reciprocating governing body for the purposes of permanent mobility under this Agreement, whether or not the signatory has adopted or given effect to any other provisions of the National Mobility Agreement.

### **Transition Provisions**

- 9. This Agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
- 10. Provisions governing permanent mobility in effect at the time that a governing body becomes a signatory to this Agreement will continue in effect: until this agreement is implemented.

### **Dispute Resolution**

- 11. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

### **Withdrawal**

- 12. A signatory may cease to be bound by this Agreement by giving each other signatory written notice of at least one clear calendar year.

**Territorial Mobility Agreement**

- 13.** A signatory that gives notice under clause XX will immediately notify its members in writing of the effective date of withdrawal.

# **Territorial Mobility Agreement**

SIGNED on the ● day of ●, 2011.

## **Law Society of British Columbia**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Alberta**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Saskatchewan**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Manitoba**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Upper Canada**

Per: \_\_\_\_\_  
Authorized Signatory

## **Barreau du Québec**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of New Brunswick**

Per: \_\_\_\_\_  
Authorized Signatory

## **Nova Scotia Barristers' Society**

Per: \_\_\_\_\_  
Authorized Signatory



**Territorial Mobility Agreement****Law Society of Prince Edward Island**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Newfoundland and  
Labrador**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Yukon**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of the Northwest  
Territories**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Nunavut**

Per: \_\_\_\_\_  
Authorized Signatory

# **TERRITORIAL MOBILITY AGREEMENT**

## Territorial Mobility Agreement

# FEDERATION OF LAW SOCIETIES OF CANADA

~~May, 2006~~November, 2011  
~~Charlottetown, Prince Edward Island~~

### Introduction

The purpose of this Agreement is to extend the scope of the National Mobility Agreement in facilitating permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this Agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this Agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil law jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

### Background

In August, 2002, the Federation of Law Societies of Canada (the "Federation") ~~accepted~~ approved the report of the National Mobility Task Force ("the Task Force") for the implementation of full mobility rights for Canadian lawyers. This led to adoption of the National Mobility Agreement by 10 law societies and its full implementation in nine jurisdictions. Since that time, all Canadian law societies have also signed the Quebec Mobility Agreement, which facilitates reciprocal mobility between Quebec and the common law jurisdictions.

## Territorial Mobility Agreement

~~The resolution that the Federation adopted included an acknowledgement that “the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force’s terms of reference, but should be undertaken in the future.”~~

~~Eight law societies signed the National Mobility Agreement (“NMA”) on December 9, 2002. Since that time, seven law societies have fully implemented the NMA. None of the law societies of Yukon, the Northwest Territories and Nunavut were among the law societies signing or implementing the NMA.~~

## Territorial Mobility Agreement

The resolution adopted by the Federation in approving the Task Force report included an acknowledgement that “the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force’s terms of reference, but should be undertaken in the future.”

In 2005, an informal Territorial Mobility Group (“the Group”) was formed with representatives of the Task Force, the law societies of the provinces in Western Canada and the law societies of the territories. The Group developed a proposal respecting territorial mobility to address the unique characteristics of the law societies of the territories. ~~This agreement gives effect to the Group’s proposal. , and the Task Force has approved the proposal. This Agreement is intended to give effect to the proposal of the Group as approved by the Task Force.~~

The purpose of this Agreement is to allow the law societies of the territories to participate in national mobility for lawyers to the extent possible for them ~~at this time~~, given their ~~current~~ unique circumstances. Specifically, the signatories agree that the territorial law societies will participate in national mobility as reciprocating governing bodies with respect to permanent mobility, or transfer of lawyers from one jurisdiction to another, without a requirement that they participate in temporary mobility provisions.

~~The signatories agree that this arrangement may subsist for a period of up to five years. This period will allow the territorial law societies to evaluate their ability to become signatories to the NMA. On January 1, 2012 this Agreement will expire and the signatories will be under no further obligation and have no further rights under this Agreement.~~

## Territorial Mobility Agreement

~~During the subsistence of this Agreement, the Group will continue to assist in facilitating the implementation of this Agreement and consideration of full participation of the territorial law societies in the NMA.~~

The signatories to this Agreement who are not signatories to the NMA do not hereby subscribe to the provisions of the NMA, except as expressly stated in this Agreement ~~and only for the period of time specified in this Agreement.~~

THE SIGNATORIES AGREE AS FOLLOWS:

### Definitions

1. In this Agreement, unless the context indicates otherwise:

**“governing body”** means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

**“home governing body”** means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **“home jurisdiction”** has a corresponding meaning;

**“Inter-Jurisdictional Practice Protocol”** means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

**“lawyer”** means a member of a signatory governing body;

**“liability insurance”** means compulsory professional liability errors and omissions insurance required by a governing body;

**“National Mobility Agreement”** or **“NMA”** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

**“permanent mobility provisions”** means clauses 32 to 36, 39 and 40 of the National Mobility Agreement;

**“practice of law”** has the meaning with respect to each jurisdiction that applies in that jurisdiction;

**“Registry”** means the National Registry of Practising Lawyers established under clause 17 of the National Mobility Agreement;

## Territorial Mobility Agreement

### General

2. The signatory governing bodies will
  - (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;
  - (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
  - (c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.
4. A signatory governing body will not, by reason of this Agreement alone,
  - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
  - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.
5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

### Permanent Mobility

6. The signatories that are signatories to the National Mobility Agreement agree to extend the application of the permanent mobility provisions of the National Mobility Agreement with respect to the territorial signatories to this Agreement.
7. The territorial signatories agree to adopt and be bound by the permanent mobility provisions of the National Mobility Agreement.

## Territorial Mobility Agreement

8. A signatory that has adopted regulatory provisions giving effect to the permanent mobility requirements of the National Mobility Agreement is a reciprocating governing body for the purposes of permanent mobility under this Agreement, whether or not the signatory has adopted or given effect to any other provisions of the National Mobility Agreement.

### Transition Provisions

9. This Agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
10. Provisions governing permanent mobility in effect at the time that a governing body becomes a signatory to this Agreement will continue in effect: until this agreement is implemented.
  - (a) ~~with respect to all Canadian lawyers until this agreement is implemented; and~~
  - ~~(b) with respect to members of Canadian law societies that are not signatories to this agreement.~~

### Dispute Resolution

11. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

### ~~Termination and~~ Withdrawal

- ~~12. This Agreement will terminate and cease to be effective at 12:01 a.m. Newfoundland Standard Time on January 1, 2012.~~
- ~~13.~~ 12. A signatory may cease to be bound by this Agreement by giving each other signatory written notice of at least one clear calendar year.
- ~~14.~~ 13. A signatory that gives notice under clause ~~13~~ XX will immediately notify its members in writing of the effective date of withdrawal.

# **Territorial Mobility Agreement**

SIGNED on the • day of •, 2011.

## **Law Society of British Columbia**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Alberta**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Saskatchewan**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Manitoba**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of Upper Canada**

Per: \_\_\_\_\_  
Authorized Signatory

## **Barreau du Québec**

Per: \_\_\_\_\_  
Authorized Signatory

## **Law Society of New Brunswick**

Per: \_\_\_\_\_  
Authorized Signatory

## **Nova Scotia Barristers' Society**

Per: \_\_\_\_\_  
Authorized Signatory



**Territorial Mobility Agreement****Law Society of Prince Edward Island**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Newfoundland and  
Labrador**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Yukon**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of the Northwest  
Territories**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Nunavut**

Per: \_\_\_\_\_  
Authorized Signatory



Law Society of Yukon  
Suite 202, 302 Steele Street  
Whitehorse, YK  
Y1A 2C5



Law Society of the  
Northwest Territories  
4th Floor, 5204 50th Avenue  
P.O. Box 1298, Stn. Main  
Yellowknife, NT  
X1A 2N9



Law Society of Nunavut  
Bldg. 917, 3rd Floor, Unit B  
P.O. Box 149  
Iqaluit, NU  
X0A 0H0

May 16, 2011

Federation of Law Societies of Canada  
45, rue O'Connor Street  
Suite 1810  
Ottawa, Ontario  
K1P 1A4

**Attention: Mr. Ron MacDonald, Q.C.  
President**

Dear Sir:

**RE: Territorial Mobility Agreement**

The Territorial Mobility Agreement (TMA) will expire on January 1, 2012. The Law Societies of Yukon, Northwest Territories and Nunavut propose to the Federation of Law Societies an extension of the Territorial Mobility Agreement.

The northern law societies have been pleased with the successes of the Territorial Mobility Agreement since its adoption in 2007. The TMA works well for the territories; it has resulted in simplified admission processes, which has increased access to legal services for our local populations.

However, the northern law societies do not believe it would be feasible to become full signatories to the National Mobility Agreement. The northern law societies believe that temporary mobility would be injurious to the financial stability of our societies, through the loss of all revenue from temporary practice certificates, the loss of non-resident members, and the potential loss of government members. These losses would threaten our ability to effectively deliver on our mandate to protect the public interest, and may harm the public's ability to be served by local, resident lawyers who are appreciative of the unique legal, cultural and geographic features of northern practice.

We encourage the Federation to indefinitely extend the Territorial Mobility Agreement. Since the TMA will be expiring January 1, 2012, we suggest that the process begin soon, and invite further discussion on the future of mobility in the Territories at the Federation's convenience.

Yours truly,



Susan B. Dennehy  
President, Law Society of Yukon



Sheila M. MacPherson  
President, Law Society of Northwest Territories



Susanne Boucher  
President, Law Society of Nunavut

c: Mr. Jonathan Herman

**TERRITORIAL MOBILITY AGREEMENT****SUGGESTED RESOLUTION:**

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

*1. In Rule 1, by adding the following definitions:*

**“National Mobility Agreement”** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

**“reciprocating governing body”**

(a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and

(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

**“Territorial Mobility Agreement”** means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.

*2. In Rule 2-10.1, by rescinding the definitions of “National Mobility Agreement”, “reciprocating governing body” and “Territorial Mobility Agreement”.*

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

*To* Benchers  
*From* Audit Committee  
*Date* November 19, 2011  
*Subject* **Key Performance Measures and Bellwether Measures – 2011 Review**

---

## **Background**

At the July, 2007 meeting, the Benchers adopted a set of key performance measures (KPMs) resulting from the work of the Audit Committee in reforming the then monitoring indicators. The objective of the KPMs was to provide goals and objectives for key areas of the Law Society in order for the Benchers and the public to evaluate the performance of the Law Society and to answer the question; “How do we know we’re doing a good job?”

As Mr. McGee noted during the Bencher discussion, the KPMs were not intended to be static. Experience since 2007 has even suggested that some of the KPMs measure processes, rather than outcomes and in some cases, are not relevant to the overall performance of the Law Society or are subordinate to outcomes that are relevant.

As a result, the Audit Committee undertook a review of the existing KPMs with a view to updating them in light of experience and public accountability. In addition, the Audit Committee suggested that it might be useful to identify some bellwether measures as high level, meaningful and measurable overall indicators. While the existing KPMs provide indications of performance in certain areas and departments, with few exceptions they are not measures of overall performance. The concept of bellwether measures has come to mean indicators of long term trends. In considering what could work as bellwether measures, the Audit Committee looked at what would be of most interest to the Benchers and the public and provide an indication of how the Law Society is performing against its mandate, in a measurable fashion.

## **Key Performance Measures – 2011 and forward**

The Audit Committee’s recommendations for changes to the KPMs are in Appendix A, which highlights the changes from the current KPM’s. Appendix B contains a clean version of the revised KPMs.

## **Bellwether Measures**

The Audit Committee recommends the adoption of the following two measures as bellwether measures.

1. The frequency of complaints.

*This measure is currently a Professional Conduct KPM but as noted in the discussions about the KPMs, it is better seen as an institutional measure reflecting all of our efforts to effectively regulate the legal profession. While recognizing that many complaints do not result in a finding of professional misconduct or conduct unbecoming, measuring the frequency of public complaints does provide some indication of public satisfaction with the legal services or advice they received, to the extent the public is moved to complain where they are not satisfied.*

2. The frequency of insurance reports.

*While not formally one of our current KPMs, this measure has been included in the Insurance part of our annual report on the KPMs, and is tracked and reported on to Benchers annually. While the frequency of reports is not a measure of lawyer competence, as an error in the performance in legal services does not equate to incompetence, frequency of reports is some indication of the degree to which those in private practice recognize and report that something or someone might claim that the legal services delivered failed to meet acceptable standards.*

The Audit Committee has added these bellwether measures as a standing item on its Agendas for 2012 and proposes to report on them in conjunction with the annual report on the Key Performance Measures. The Audit Committee also plans to discuss whether there are other bellwether measures that should be adopted at a future meeting.

## **Resolution**

Amend the current key performance measures as indicated in Appendix A and adopt the frequency of complaints and the frequency of insurance reports as bellwether measures.

# Memo

## The Law Society of British Columbia



### Appendix A

#### Professional Conduct and Discipline

Goals and Objectives	KPM	Comments
<ul style="list-style-type: none"> <li>Complaints about lawyers are handled fairly and in a timely fashion</li> <li>The exercise of the regulatory function by the Law Society is perceived to be fair, consistent and thorough</li> </ul>	<del>Frequency of complaints does not increase over time</del>	<ul style="list-style-type: none"> <li>The frequency of complaints becomes a Bellwether Measure</li> </ul>
	<ul style="list-style-type: none"> <li>At least 75% of Complainants express satisfaction with timeliness</li> </ul>	
	<ul style="list-style-type: none"> <li>At least 65% of Complainants express satisfaction with fairness</li> </ul>	
	<ul style="list-style-type: none"> <li>At least 90% of Complainants express satisfaction with courtesy</li> </ul>	
	<ul style="list-style-type: none"> <li>At least 65% of Complainants express satisfaction with thoroughness</li> </ul>	
	<ul style="list-style-type: none"> <li>At least 60% of Complainants would recommend someone make a complaint</li> </ul>	
	<ul style="list-style-type: none"> <li>The Ombudsperson, the Courts and the CRC do not find our process and procedures as lacking from the point of view of fairness and due process</li> </ul>	

#### Custodianships

Goals and Objectives		
<ul style="list-style-type: none"> <li>To provide a more cost effective model that will enhance management and reduction of outside service providers, standardize and centralize custodial procedures and administrative services.</li> </ul>	<ul style="list-style-type: none"> <li><del>The average cost of a custodianship will decrease under the new program based on comparable historic averages</del></li> </ul>	<ul style="list-style-type: none"> <li>Remove this KPM.</li> <li>Although the cost of each custodianship should be measured and tracked for internal purposes, this cost does not measure how well we are protecting the interests of clients or the public.</li> </ul>
	<ul style="list-style-type: none"> <li>The length of time required to complete a custodianship will decrease under the new program based on comparable historic averages</li> </ul>	

	<ul style="list-style-type: none"> <li>90% of clients whose former lawyers are subject to a <u>custodianship are satisfied or somewhat satisfied with the way in which the designated custodian dealt with their client matter</u></li> </ul>	<ul style="list-style-type: none"> <li>New KPM to measure client satisfaction</li> </ul>
<b>Trust Assurance</b>		
<b>Goals and Objectives</b>		
<ul style="list-style-type: none"> <li>All law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds.</li> </ul>	<ul style="list-style-type: none"> <li>Long term reduction in the number of financial suspensions issued by Trust Assurance program.</li> </ul>	
	<ul style="list-style-type: none"> <li>Long term reduction <u>in the percentage</u> of referrals to Professional Conduct <u>department as a result of a compliance audit</u>.</li> </ul>	
	<ul style="list-style-type: none"> <li>Improved performance on key compliance questions from lawyer's trust report filings.</li> </ul>	
<b>Credentials, Articling and PLTC</b>		
<b>Goals and Objectives</b>		
<ul style="list-style-type: none"> <li>Successful applicants for call and admission demonstrate entry-level competence</li> </ul>	<ul style="list-style-type: none"> <li>At least 85% of the students attending PLTC achieve a pass on the PLTC results</li> </ul>	
	<p>Students responding to the PLTC course evaluation rate PLTC's value at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> <li>PLTC helped prepare them to recognize and deal with ethical and practice management issues</li> <li>PLTC helped increase their knowledge of practice and procedure</li> <li>PLTC helped prepare them for the practice of law</li> <li>PLTC helped develop or enhance their lawyer skills</li> </ul>	
	<p>Principals responding to the PLTC survey rate PLTC's value at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> <li>PLTC helped prepare students to recognize and deal with ethical and practice management issues</li> <li>PLTC helped increase the students' knowledge of practice and procedure</li> <li>PLTC helped prepare students for the practice of law</li> <li>PLTC helped develop or enhance the students' lawyer skills</li> </ul>	



	Students surveyed on call and admission rate the value of their articles at an average of 3.5 or higher on a 5 point scale:	
	<ul style="list-style-type: none"> <li>• Articling helped prepare them to recognize and deal with ethical and practice management issues</li> <li>• Articling helped increase their knowledge of practice and procedure</li> <li>• Articling helped develop or enhance their lawyer skills</li> <li>• Articling helped prepare them for the practice of law</li> </ul>	
	<p>Principals surveyed on call and admission rate the value of articles at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> <li>• Articling helped prepare the students to recognize and deal with ethical and practice management issues</li> <li>• Articling helped increase the students' knowledge of practice and procedure</li> <li>• Articling helped develop or enhance the students' lawyer skills</li> <li>• Articling helped prepare students for the practice of law</li> </ul>	
	<ul style="list-style-type: none"> <li>• <del>98% of principals declare their student fit to practice law at the end of the Admission Program (PLTC and Articles).</del></li> </ul>	<ul style="list-style-type: none"> <li>• Remove this KPM as "fit" does not measure the effectiveness of the Admission Program (PLTC or articling). The term "fit" describes physical, emotional and intellectual capacity, not knowledge, skill professional judgment, or character.</li> </ul>
<b>Practice Advice</b>		
<b>Goals and Objectives</b>		
<ul style="list-style-type: none"> <li>• Delivering high quality advice and information on matters of practice and ethics to members in a responsive and timely fashion</li> </ul>	<ul style="list-style-type: none"> <li>• At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for:               <ol style="list-style-type: none"> <li>1. Timeliness of response</li> <li>2. Quality of advice</li> <li>3. Quality of resources to which you were referred</li> <li>4. Overall satisfaction</li> </ol> </li> </ul>	

## Practice Standards

Goals and Objectives		
<ul style="list-style-type: none"> <li>Determine whether lawyers referred to Practice Standards meet accepted standards in the practice of law and, where they do not, recommend and monitor remedial measures</li> <li>Assist lawyers in developing and enhancing their competence and efficiency</li> </ul>	<ul style="list-style-type: none"> <li>At least two thirds of the lawyers who complete their referral demonstrate an improvement of at least one point on a 5 point scale <u>in any one of the following categories:</u> <ol style="list-style-type: none"> <li>Office management</li> <li>Client relations and management</li> <li>Knowledge of law and procedure</li> <li>Personal/other.</li> </ol> </li> </ul>	
	<ul style="list-style-type: none"> <li>At least two thirds of the lawyers who complete their referral did so at an efficiency rating of 3 or higher on a 5 point scale <u>in any one of the following categories:</u> <ol style="list-style-type: none"> <li>Office management</li> <li>Client relations and management</li> <li>Knowledge of law and procedure</li> <li>Personal/other</li> </ol> </li> </ul>	
	<ul style="list-style-type: none"> <li>At least <del>85</del>90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for the following programs:               <ol style="list-style-type: none"> <li>Small Firm Practice Course</li> <li>Bookkeeper Support Program</li> <li>Succession and Emergency Planning Program</li> <li>Practice Locums Program</li> <li>Practice Refresher Course</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>For all 5 programs, the target was set as an aspiration, not based on information or evidence. By way of comparison, the measure for PLTC and articling is 85%. Our KPM experience has shown that the 85% figure is more realistic.</li> </ul>
	<ul style="list-style-type: none"> <li><del>The Technology Support Program is being held in abeyance by the Practice Standards Committee while it assesses the uptake and response to Clio, a free web-based practice management tool targeted at the sole practitioners and small firms, accessed through the Law Society website.</del></li> </ul>	<ul style="list-style-type: none"> <li>Remove KPM for "Technology Support Program," because the Practice Standards Committee decided not to implement the program in lieu of CLIO.</li> </ul>

<i>Policy &amp; Legal Services</i>		
Goals and Objectives		
<ul style="list-style-type: none"> <li>To provide timely, relevant and balanced information, analysis and advice to the Benchers, Committees, Task Forces and Tribunals</li> <li>To ensure policy development in the areas of independence and equity and diversity.</li> <li>To advance or defend the Law Society's objectives in litigation matters</li> <li>To protect the public from the unauthorized practice of law</li> </ul>	<ul style="list-style-type: none"> <li><del>Ratio of policy matters prepared by or with the assistance of policy staff and considered by the Benchers to policy decisions made by the Benchers in respect of those matters (Target 1:1)</del></li> </ul>	<ul style="list-style-type: none"> <li>Remove entire Policy KPM section.</li> <li>With respect to policy, there is no relevance from a public interest point of view. These are internal measures only.</li> <li>Benchers will continue to be asked to provide this feedback on an annual basis</li> </ul>
	<ul style="list-style-type: none"> <li><del>On the annual appraisal questionnaire, Bencher responses of 4 or greater (on 1 to 5 scale) to questions concerning:-</del> <ul style="list-style-type: none"> <li><del>facilitation of planning and decision making</del></li> <li><del>orientation and training</del></li> <li><del>keeping Benchers abreast of key issues</del></li> </ul> </li> </ul>	
	<ul style="list-style-type: none"> <li><del>Ratio of the number of hearing reports issued to the number of times the decision of a hearing panel is reviewed to the number of times the decision of a hearing panel is reversed on review (Target 1:0:0)</del></li> </ul>	
	<ul style="list-style-type: none"> <li><del>On the annual appraisal questionnaire, Bencher responses are an average of 4 or greater (on 5 point scale) to questions concerning support of tribunal functions</del></li> </ul>	
<i>Lawyers Insurance Fund</i>		
Goals and Objectives		
<ul style="list-style-type: none"> <li><del>The public is reasonably compensated for lawyer negligence and lawyer misappropriation</del></li> </ul>	<ul style="list-style-type: none"> <li>Policy limits for negligence and theft, the member deductible, and the premium are reasonably comparable with the 13 other Canadian jurisdictions</li> </ul>	

<ul style="list-style-type: none"> <li>Lawyers are reasonably protected against risk of excessive financial loss arising from malpractice.</li> <li>Claims are resolved cost-effectively, balancing the interests of the claimant, the insured lawyer, and the membership as a whole.</li> </ul>	<ul style="list-style-type: none"> <li>Suits under the Insurance Act by claimants are fewer than <u>0.05</u>% of files closed</li> </ul>	
	<ul style="list-style-type: none"> <li>Every five years, third party auditors provide a written report assessing LIF's claims management as effective</li> </ul>	
	<ul style="list-style-type: none"> <li>Insured lawyers demonstrate a high rate of satisfaction (<del>89</del>90% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms</li> </ul>	

# Memo

## The Law Society of British Columbia



### Appendix B

The Law Society of British Columbia

Mandate	Bellwether Measures	
To uphold and protect the public interest in the administration of justice	1. The frequency of complaints  2. The frequency of insurance reports	

Professional Conduct and Discipline

Goals and Objectives	KPM	
<ul style="list-style-type: none"><li>Complaints about lawyers are handled fairly and in a timely fashion</li><li>The exercise of the regulatory function by the Law Society is perceived to be fair, consistent and thorough</li></ul>	<ul style="list-style-type: none"><li>At least 75% of Complainants express satisfaction with timeliness</li></ul>	
	<ul style="list-style-type: none"><li>At least 65% of Complainants express satisfaction with fairness</li></ul>	
	<ul style="list-style-type: none"><li>At least 90% of Complainants express satisfaction with courtesy</li></ul>	
	<ul style="list-style-type: none"><li>At least 65% of Complainants express satisfaction with thoroughness</li></ul>	
	<ul style="list-style-type: none"><li>At least 60% of Complainants would recommend someone make a complaint</li></ul>	
	<ul style="list-style-type: none"><li>The Ombudsperson, the Courts and the CRC do not find our process and procedures as lacking from the point of view of fairness and due process</li></ul>	

Custodianships

Goals and Objectives	KPM	
<ul style="list-style-type: none"><li>To provide a more cost effective model that will enhance management and reduction of</li></ul>		

outside service providers, standardize and centralize custodial procedures and administrative services.	<ul style="list-style-type: none"> <li>The length of time required to complete a custodianship will decrease under the new program based on comparable historic averages</li> </ul>	
	<ul style="list-style-type: none"> <li>90% of clients whose former lawyers are subject to a custodianship are satisfied or somewhat satisfied with the way in which the designated custodian dealt with their client matter</li> </ul>	
<b>Trust Assurance</b>		
<b>Goals and Objectives</b>	<b>KPM</b>	
<ul style="list-style-type: none"> <li>All law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds.</li> </ul>	<ul style="list-style-type: none"> <li>Long term reduction in the number of financial suspensions issued by Trust Assurance program.</li> </ul>	
	<ul style="list-style-type: none"> <li>Long term reduction in the percentage of referrals to Professional Conduct department as a result of a compliance audit.</li> </ul>	
	<ul style="list-style-type: none"> <li>Improved performance on key compliance questions from lawyer's trust report filings.</li> </ul>	
<b>Credentials, Articling and PLTC</b>		
<b>Goals and Objectives</b>	<b>KPM</b>	
<ul style="list-style-type: none"> <li>Successful applicants for call and admission demonstrate entry-level competence</li> </ul>	<ul style="list-style-type: none"> <li>At least 85% of the students attending PLTC achieve a pass on the PLTC results</li> </ul>	
	<p>Students responding to the PLTC course evaluation rate PLTC's value at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> <li>PLTC helped prepare them to recognize and deal with ethical and practice management issues</li> <li>PLTC helped increase their knowledge of practice and procedure</li> <li>PLTC helped prepare them for the practice of law</li> <li>PLTC helped develop or enhance their lawyer skills</li> </ul>	

	Principals responding to the PLTC survey rate PLTC's value at an average of 3.5 or higher on a 5 point scale: <ul style="list-style-type: none"> <li>• PLTC helped prepare students to recognize and deal with ethical and practice management issues</li> <li>• PLTC helped increase the students' knowledge of practice and procedure</li> <li>• PLTC helped prepare students for the practice of law</li> <li>• PLTC helped develop or enhance the students' lawyer skills</li> </ul>	
	Students surveyed on call and admission rate the value of their articles at an average of 3.5 or higher on a 5 point scale: <ul style="list-style-type: none"> <li>• Articling helped prepare them to recognize and deal with ethical and practice management issues</li> <li>• Articling helped increase their knowledge of practice and procedure</li> <li>• Articling helped develop or enhance their lawyer skills</li> <li>• Articling helped prepare them for the practice of law</li> </ul>	
	Principals surveyed on call and admission rate the value of articles at an average of 3.5 or higher on a 5 point scale: <ul style="list-style-type: none"> <li>• Articling helped prepare the students to recognize and deal with ethical and practice management issues</li> <li>• Articling helped increase the students' knowledge of practice and procedure</li> <li>• Articling helped develop or enhance the students' lawyer skills</li> <li>• Articling helped prepare students for the practice of law</li> </ul>	
<b>Practice Advice</b>		
<b>Goals and Objectives</b>	<b>KPM</b>	
<ul style="list-style-type: none"> <li>• Delivering high quality advice and information on matters of practice and ethics to members in a responsive and timely fashion</li> </ul>	<ul style="list-style-type: none"> <li>• At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for:             <ol style="list-style-type: none"> <li>1. Timeliness of response</li> <li>2. Quality of advice</li> <li>3. Quality of resources to which you were referred</li> <li>4. Overall satisfaction</li> </ol> </li> </ul>	

### *Practice Standards*

Goals and Objectives	KPM	
<ul style="list-style-type: none"> <li>Determine whether lawyers referred to Practice Standards meet accepted standards in the practice of law and, where they do not, recommend and monitor remedial measures</li> <li>Assist lawyers in developing and enhancing their competence and efficiency</li> </ul>	<ul style="list-style-type: none"> <li>At least two thirds of the lawyers who complete their referral demonstrate an improvement of at least one point on a 5 point scale in any one of the following categories:               <ol style="list-style-type: none"> <li>Office management</li> <li>Client relations and management</li> <li>Knowledge of law and procedure</li> <li>Personal/other.</li> </ol> </li> </ul>	
	<ul style="list-style-type: none"> <li>At least two thirds of the lawyers who complete their referral did so at an efficiency rating of 3 or higher on a 5 point scale in any one of the following categories:               <ol style="list-style-type: none"> <li>Office management</li> <li>Client relations and management</li> <li>Knowledge of law and procedure</li> <li>Personal/other</li> </ol> </li> </ul>	
	<ul style="list-style-type: none"> <li>At least 85% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for the following programs:               <ol style="list-style-type: none"> <li>Small Firm Practice Course</li> <li>Bookkeeper Support Program</li> <li>Succession and Emergency Planning Program</li> <li>Practice Locums Program</li> <li>Practice Refresher Course</li> </ol> </li> </ul>	

### *Lawyers Insurance Fund*

Goals and Objectives	KPM	
<ul style="list-style-type: none"> <li>The public is reasonably compensated for lawyer negligence and lawyer misappropriation</li> <li>Lawyers are reasonably protected against risk of excessive financial loss arising from malpractice.</li> </ul>	<ul style="list-style-type: none"> <li>Policy limits for negligence and theft, the member deductible, and the premium are reasonably comparable with the 13 other Canadian jurisdictions</li> </ul>	
	<ul style="list-style-type: none"> <li>Suits under the Insurance Act by claimants are fewer than 0.05% of files closed</li> </ul>	
	<ul style="list-style-type: none"> <li>Every five years, third party auditors provide a written report assessing LIF's claims management as effective</li> </ul>	



<ul style="list-style-type: none"><li>• Claims are resolved cost-effectively, balancing the interests of the claimant, the insured lawyer, and the membership as a whole.</li></ul>	<ul style="list-style-type: none"><li>• Insured lawyers demonstrate a high rate of satisfaction (90% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms</li></ul>	
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# The Law Society *of British Columbia*



## **Reconciling Qualifications for Differing Types of Legal Services**

**For: The Benchers**

**From: The Lawyer Education Advisory Committee**

**Date: November 23, 2011**

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**Purpose of Report:**

**Discussion and Decision**

**Prepared on behalf of:**

**The Chair, Lawyer Education Advisory Committee**

## **INTRODUCTION**

The Law Society's current Strategic Plan includes

### **Strategy 3-5**

The Law Society will consider qualification standards or requirements for differing types of legal services. Are there are some types of legal services that could be offered without the provider qualifying as a lawyer and, if so, what qualifications would be appropriate or required?

**Initiative 3-5** tasks the Lawyer Education Advisory Committee with preparing a preliminary report for the Benchers by the end of 2011 to give some context to, and direction on, the issues raised in Strategy 3-5.

Strategy 3-5 has been carried forward in the strategic planning process for the 2012-2014 Strategic Plan.

## **BACKGROUND**

Strategy 3-5 and Initiative 3-5 derive from the work of the Law Society's former Futures Committee, which reported to the Benchers in January 2008 as part of the first strategic planning process. The Futures Committee concluded that it is in the public interest to expand the range of service providers who are adequately regulated in terms of training, accreditation and conduct, but took no further steps. (The Futures Report is attached as appendix A.)

More recently, the Access to Legal Services Advisory Committee and the Delivery of Legal Services Task Force have focused their attention on the discrete topics of expanding the role of paralegals and articulated students. Neither group has engaged in the broader analysis of whether the scope of legal practice should be opened up to other service providers who may or may not be lawyers, and the qualifications, standards and regulation necessary to provide different types of legal services.

The Lawyer Education Advisory Committee consulted with the Access to Legal Services Committee Prior to preparing this report to consider a suitable approach for meeting the objectives set out in Strategy 3-5.

## **RECOMMENDATIONS TO THE BENCHERS**

The Lawyer Education Advisory Committee and the Access to Legal Services Advisory Committee have both concluded that the policy issues and initiatives flowing from Strategy 3-5 are realistically beyond the scope of advisory committees in terms of timing, capacity and resources, and therefore recommend that a Task Force be created to address the issues.

The Lawyer Education Advisory Committee makes the following recommendations:

1. That a Task Force be struck and resourced to undertake the work contemplated by Strategy 3-5 with a two-phased approach.
  - a) Phase 1: A preliminary feasibility study to be presented to the Benchers that would:
    - identify priorities for types of legal services that might be offered without the provider qualifying as a lawyer, and that would most benefit the public;
    - identify priorities for types of legal services that might be offered by a lawyer with a restricted license, and that would most benefit the public;
    - identify the nature and scope of a public consultation strategy;
    - identify the kinds of resources required for a public consultation strategy;
    - make recommendations for Bencher consideration on follow-up steps for phase 2, including:
      - scope of the follow-up steps,
      - potential delivery models,
      - potential cost and resource scenarios.
  - b) Phase 2: Based on Bencher direction at the conclusion of phase 1, the Task Force would:
    - develop a detailed roadmap for completing those initiatives;
    - analyse and assess one or more potential delivery models, as directed by the Benchers following Phase 1;
    - make recommendations to the Benchers.
2. That the Task Force consider and build on the work of the former Futures Committee, and consult with other committees as appropriate in order to avoid duplication of effort and effectively utilize existing resources and expertise.

## DISCUSSION

The Benchers have expressed a commitment to making access to legal services a priority. Concerns about access to justice and the need to work more collaboratively within the justice sector have increased since the Futures Committee reported to the Benchers. The relationship between the Law Society and providers of legal services who are not under the law society umbrella is complex due to the variety and nuances of the subject matter.

The Lawyer Education Advisory Committee has recognized that prior to assessing different delivery models and the related qualifications and standards issues, a key policy question to be resolved is the nature and extent of consultation. This determination is a pre-condition to an analysis of standards and qualifications. The latter, in the Lawyer Education Advisory Committee's view, is difficult to address in the absence of clarification of the policy implications of the types of services and providers contemplated.

The focus of the proposed Task Force would be to build on the work of the various committees dealing with access, regulation and qualification standards issues, and to make recommendations as to the most effective mechanism for addressing the policy and practical considerations relating to alternate legal service providers. The range of complex considerations to which Strategy 3-5 gives rise would be best suited to a Task Force with the skills, resources and mandate to undertake the work. A project of this scope would risk overwhelming the monitoring and other functions of an advisory committee. Because access issues cross the boundaries of several committees, a Task Force is better suited to coordinating work in this area, as it can be staffed and resourced more broadly than an advisory committee.

A broad analysis of whether legal practice should be opened up to service providers who may or may not be lawyers, including lawyers with a restricted license to practice in one area of law only, and what the qualifications and standards requirements for differing types of legal services should be, is a complex undertaking. The Lawyer Education Advisory Committee recognizes the need for consultations, and concludes that a Task Force with a broader complement of members would be more effective in determining the scope and extent of consultations and in identifying the most effective method of establishing timelines and processes for a project of this scope.

The Lawyer Education Advisory Committee is of the view that to successfully undertake this project, qualification standards and requirements should be analyzed in the context of specific, discrete types of, or models for delivering legal services. The Family Law Paralegal Project, currently underway, is one such model. There are also other possible approaches. Potential models that could be explored include establishing new categories of Law Society membership that might involve a restricted license to practice in one area of law only. This approach, as an example, would maintain the Law Society's role as the regulator of lawyers in the delivery of legal services while potentially increasing the availability of, and options for, affordable legal services.

The Lawyer Education Advisory Committee believes that an approach to reconciling qualification standards and requirements based on an analysis of discrete delivery models would be more likely to produce tangible results, as the paralegal and articling student projects have shown. It would therefore be up to the Task Force to identify the model or models it wishes to put forward to the Benchers for consideration.

## **CONCLUSION**

The Lawyer Education Advisory Committee supports the creation of a Task Force to address the issues raised in Strategy 3-5. The Committee endorses a two-phased approach as described in the recommendations set out on page 3 of this memorandum. The Committee supports an approach that builds on the work done in 2008 by the Futures Committee, and that is coordinated with other committees to avoid duplication of effort and ensures effective utilization of existing resources and expertise.

# The Law Society *of British Columbia*



## **TOWARDS A NEW REGULATORY MODEL – REPORT TO THE BENCHERS FROM THE FUTURES COMMITTEE**

**January 30, 2008**

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**Purpose of Report:  
Prepared on behalf of**

**Information  
Futures Committee by:  
Policy and Legal Services Dept.  
David Newell, Corporate Secretary**

For some time the Futures Committee has been engaged in a discussion of the attributes of lawyers and the practice of law and whether the reservation of the practice of law to lawyers is defensible on principled grounds. Its object was to develop a framework for analysis of the question of access to legal services. The impetus for the discussion was the observation that the reservation of the practice of law is an aspect in common to several issues critical to the future of the legal profession, including the independence and self-regulation of lawyers, access to justice, competition law and the globalization of trade, and education standards both before and after qualification.

For example in the United Kingdom and Australia self-regulatory powers of the legal profession have been significantly curtailed in part on the basis that self-regulation has served more to preserve the economic advantages of a professional elite than to protect the public. Competition bureaus and their equivalents in Ireland and elsewhere have criticized the monopolistic nature of reserved areas of practice, asserting that it drives up the cost of legal services and reduces access to justice. The recently released report of the Competition Bureau of Canada acknowledged that there should be a balance between the potential anti-competitive effect and public benefit of regulation of professional services. However, it also asserted that *“a primary objective of the regulatory framework should be to promote open and effectively competitive markets”* and *“to help minimize unnecessary or overly restrictive regulation, all regulators should promote competition as a primary objective.”* In the background is the continuing work of the World Trade Organization on the General Agreement on Trade in Services (GATS), which has the potential to open the practice of law to global competition.

The strategic policy question is whether the current regulatory arrangements, in which lawyers have the exclusive right to practise law, facilitate or present a barrier to access to legal services and access to justice, or would the public have greater access to justice if some non-lawyers are permitted to provide some legal services? An ancillary question is who would regulate non-lawyers who provide legal services? If those questions are examined in a systematic and principled way, then the Law Society can either defend the status quo or advocate for progressive change on public interest grounds.

The discussions in 2007 proceeded on the premise that a complete reservation of the practice of law to lawyers cannot be maintained. Consequently, the committee considered principles for determining who in addition to lawyers might be permitted to engage in some or all of the activities comprising it. The committee began its discussions by considering whether it is possible, or useful, to attempt to articulate in detail the activities that comprise the “practice of law”, with a view to then examining those activities to determine whether or not they have a common attribute or set of attributes that justifies reserving them to lawyers. The committee also approached the discussion from the opposite direction by considering what attributes unique to lawyers might justify reserving to them some or all of the activities comprising the practice of law. Finally, the committee considered whether the value or significance of the outcome of legal work impacts on who should be able to do the work.

It is important to note that the Committee's discussions were at the level of principles and were not based on any empirical studies. The Committee recognized that significant change in this field would require legislation but did not deliberate on whether such legislation would likely be forthcoming.

As will become apparent on reading this paper and likely in the Benchers' own discussions, the issues involved are contentious and will definitely have far-reaching effects, some of which cannot be identified precisely. The Committee's discussions were vigorous, and although there were some points of agreement, the Committee has not reached any solid conclusions, nor does it have any specific recommendations at this time. However, some consensus views have emerged from the discussion as well as some fundamental questions, which the committee thinks the Benchers should consider as a matter of high priority before any significant further steps are taken or strategies formulated. The purpose of this report is to ask the Benchers whether it is time to open the debate and broaden the range of views by inviting participation by people and groups outside the legal profession.

### **What is the practice of law?**

As noted, the Committee first considered whether it is possible to describe in detail the activities that are encompassed by the "practice of law", and, if so, would such a comprehensive description disclose a principle or set of principles.

Statutory definitions of the practice of law focus on enforcement of unauthorized practice powers. They fall into two main categories: more or less detailed lists of services or activities, or very general statements. The *BC Legal Profession Act* is a good example of the first category and it is generally accepted that it has one of the more comprehensive definitions in Canada.

In most cases, statutory definitions of the practice of law are subject to exceptions found either in the statutes themselves or in the case-law interpreting them. For example, in BC the lawful practice of a notary public, as defined in the *Notary Public Act*, does not constitute unauthorized practice of law. Similarly, it is not the unauthorized practice of law for an immigration consultant to act as counsel before the Immigration and Refugee Board, as determined in the *Mangat* case. There are other "informal" exceptions where unauthorized practice powers are simply not enforced, such as when accountants give advice relating to tax laws. Perhaps the most significant exception found in the BC statute and others is for services provided without fee or reward.

The differentiation of authorized versus unauthorized services based on whether a fee is paid tends to emphasize the economic benefit to lawyers and diminish the public protection aspect of a reserved practice. The Committee did not think that whether a fee was charged or not provided a compelling criterion for defining an exclusive area of practice.



Even though the statutory definition includes terms such as “giving legal advice” that potentially cover a vast range of activities, it clearly does not encompass all the things that lawyers do; it encompasses just those things that by law only a lawyer is permitted to do (subject to the exceptions already mentioned). The statutory definition is intended to provide a practical basis for enforcement rather than a theoretically complete description of the activities lawyers engage in. The limitations and exceptions to statutory definitions of the practice of law make it clear that in the policy arena there is a distinction between “the practice of law” and “providing legal services”, the former being a subset of the latter.

The distinction has been explicitly acknowledged in Ontario in recent amendments to the *Law Society Act*, which creates two classes of licensees: persons licensed to practice law as barristers and solicitors, and persons licensed to provide legal services. The *Law Society Act* does not specify what activities are permitted to each class; that is left to the Law Society of Upper Canada.

We cannot look to the LSUC By-law for a complete description from a policy perspective of what constitutes either legal services generally or the practice of law more particularly. Quite aside from the very general nature of the description as far as it goes, it does not touch upon the wide array of transactional work that many lawyers perform.

In 1989 the Lord Chancellor’s Department in the United Kingdom published a Green Paper with the stated objective of seeing that “the public has the best possible access to legal services and that those services are of the right quality for the particular needs of the client, which it believed would be best achieved by ensuring that:

1. a market providing legal services operates freely and efficiently so as to give clients the best possible choice of cost effective services; and
2. the public can be certain that those services are being supplied by people who have the necessary expertise to provide a service in the area in question.

The Lord Chancellor’s department, like the Futures Committee, started in the fairly obvious place by considering the definition of legal services, and like the Futures Committee soon found that it is elusive. The Lord Chancellor wrote:

A comprehensive definition of what is meant by legal services is very difficult to frame, but, broadly speaking, legal services are concerned with the advice, assistance and representation required by a person in connection with his rights, duties and liabilities.

He went on:

Most services which are “legal”, in the sense that a lawyer often performs them in the ordinary course of his practice, may also be performed by non-lawyers. In England and Wales the only legal services which are by law reserved specifically

to lawyers are handling cases in court and applying for grants of probate or letters of administration for reward.

And:

In addition, conveyancing for reward is restricted to lawyers, licensed conveyancers and certain public officials. Solicitors used to have an effective monopoly in the provision of conveyancing services but this monopoly was abolished by Parliament in 1985, when licensed conveyancers were allowed to enter the conveyancing market in direct competition with solicitors.

The Green Paper expanded somewhat on those very general statements by describing the areas in which legal services are used.

1. The home

- conveyancing services or advice in connection with mortgages or insurance cover,
- disputes arising in connection with property, such as with landlords or neighbours.

2. The family

- advice, assistance or representation in connection with marriage or divorce, or with matters relating to children, elderly relatives, welfare benefits, pensions or wills.

3. Employment

- contracts of employment, redundancy or dismissal,
- conditions of work, racial or sexual discrimination,
- industrial action, unlawful behaviour of trade unions.

4. Social welfare

- advice, assistance or representation in connection with entitlement to welfare benefits or the resolution of problems caused by homelessness or nationality.
- social welfare;

5. Consumer protection

- rights and liabilities in connection with the purchase and sale of goods and services,
- product liability,
- consumer debt,

6. Commercial and financial operations

- setting up and running a business or company,
- taxation,
- bankruptcy and insolvency,
- intellectual property rights,
- commercial conveyancing,
- pensions,
- insurance,
- contracts,

- financial regulation of markets,
  - multi-national transactions.
7. Accidents and compensation for personal injury
- civil liability for automobile or other accidents,
8. Involvement in the criminal law

Even an incomplete list such as this demonstrates the wide range of activities that might reasonably be considered “legal services”. The Green paper also describes some of the providers people might seek legal services from, including: lawyers, licensed conveyancers, patent agents, insolvency practitioners, building societies, banks, accountants, other financial advisors, citizen’s advice bureaux, law centres, social workers, trade unions, trade associations, chartered secretaries, immigrants’ advisory services, and consumer associations. In British Columbia the list might be different but probably not much shorter.

The foregoing suggests to the Committee that compiling a complete, detailed description of the component activities comprising the practice of law might be necessary at a later date as part of an implementation effort but it is not especially helpful as a basis for establishing the boundaries of reserved areas of practice.

### **What are the attributes of lawyers?**

What are the attributes of lawyers that differentiate them from other potential providers of services and might justify reserving some or all areas of practice to them?

### **Education**

Lawyers are highly educated. All lawyers in BC have a law degree, most have another undergraduate degree, and many have post-graduate degrees as well. Additionally, most BC lawyers have undertaken some form of pre-qualification program such as the PLTC. Post-qualification (continuing) education has been voluntary and, therefore, variable.

We treat the profession as essentially monolithic in the sense that lawyers are permitted to engage in the full range of practice from the day they are qualified. There is no formal stratification of the profession that recognizes either limitation or specialization. Although that does not reflect the practical reality, it does necessitate a high standard of education as prerequisite to qualification. As a result, and as Professor Harry Arthurs notes [*Lawyering in Canada in the 21<sup>st</sup> Century*, Windsor Yearbook of Access to Justice, 1996, Vol. 15, p.202], lawyers who perform routine services for people of moderate means may be over-educated for the task and may be unable to amortize the real cost of obtaining their qualifications without charging fees that the market can no longer bear. At the other end of the spectrum ostensibly qualified lawyers may lack the specialized education, training and experience necessary to competently handle very complex or difficult legal work such as multinational business transactions or appellate advocacy. It

may also be observed that in some fields such as patents and taxation, non-lawyer service providers may be at least as educated as lawyers, and in some fields, such as conveyancing and mortgages, notaries with less education than lawyers (at least in terms of the breadth of education) are able to provide acceptable standards of service.

The Committee takes the view that education and training alone do not provide a complete basis for a reservation of all practice areas to lawyers.

### **Lawyer/client confidentiality and privilege.**

The ethical obligation to keep lawyer/client communications confidential, and the privilege that attaches to such communication sets lawyers apart from other service providers. In matters where there is a prospect of litigation, regulatory proceedings, or criminal proceedings, the privilege attaching to communications with lawyers is an important differentiating attribute of lawyers as a class of service providers that might justify reserving those areas of practice to them.

It should be noted, however, that although lawyers are currently the only service providers to whom privilege applies collectively as a class, communications with other classes of service providers may become privileged in the future. For example, in the United Kingdom communications with patent agents are granted privilege by statute. In *Chancey v. Dharmadi*, 2007 CanLII 28332 (ON S.C.) the court considered whether a “class” privilege should extend to paralegal/client communications. It was ultimately unnecessary to reach a conclusion on that point but in *obiter* Master Dash wrote:

*In my view there is no principled reason why a class privilege should not be extended to paralegal-client communications, however it must be restricted to communications with an identifiable group, namely paralegals licensed by the Law Society.*

The Committee also noted that there are some areas of practice where lawyer/client privilege may be of little significance. Lawyer/client privilege is critically important when it is a manifestation of independence from the state, which is the attribute of lawyers discussed next.

### **Independence**

Lawyers are independent. By this we mean that lawyers are both obligated and able to give advice or to advocate on a client’s behalf free of the influence of conflicting interests.

In many cases it is sufficient to maintain lawyer independence that the ethical rules of the profession, enforced by the Law Society, prohibit lawyers from acting in situations where their loyalties would be divided. This might be called “ethics-based independence” and while it is undoubtedly an important attribute of lawyers, it need not be unique to lawyers. One can imagine other regulated service providers who either have or could

develop similar ethical obligations. However, when a client's interests and the interests of the state conflict, the ethical obligation to remain free of conflicting interests is made possible by the independence from the state of the profession as a whole, as embodied in the Law Society. Thus, a lawyer can defend a person against a criminal prosecution by the state without fear, and more importantly, the accused person can be assured that his or her defence will not be constrained by defence counsel's desire to curry favour or avoid discipline at the hands of the state. Similarly, the freedom to challenge the constitutionality of legislation, whether in defence of individual or collective rights and freedoms, helps ensure that the legitimate power of the state is not exceeded or abused.

The importance of an independent legal profession to maintaining the rule of law brings a constitutional aspect to the principle that makes lawyers and the Law Society unique among the self-governing professions.

### **Lawyers as regulated professionals and officers of the court**

Lawyers are required to abide by the rules of professional conduct and are subject to regulation by the Law Society. This provides an obvious distinction between lawyers and people who are not members of any regulated profession. Members of other professions such as accountants are subject to their own professional codes of conduct and while there may be areas of overlap between the general concepts of those codes and the professional obligations of lawyers, they are not specifically directed at the delivery of legal services, so there remains a valid distinction between lawyers and other professionals when considering who should be permitted to engage in the practice of law.

As officers of the court lawyers have obligations that others do not. Those obligations are intended to protect the integrity of the courts and maintain the rule of law. This is particularly important in a common law system where the outcome of court cases affects the future development of the law. There is a proper public interest not only in seeing justice done in individual cases, but in the progressive development of the law. Participation of knowledgeable independent advocates who are nonetheless bound to respect the fundamental principles of fairness and the rule of law is essential to the proper present application and the future development of the law.

On a practical level, the courts rely on lawyers as officers of the court to understand and adhere to standards and forms of conduct that facilitate the just and expeditious disposition of the matters brought before them.

### **Other providers or potential providers of legal services**

As noted above, in addition to lawyers there are a number of classes of people who currently provide some legal services either with or without legal authority such as notaries, legal assistants employed by and under the supervision of lawyers, insurance adjusters, immigration consultants, accountants, workers' compensation consultants, and realtors. The committee categorized providers according to their general level of

education and training, whether they are subject to formal regulation (by a regulatory agency other than the Law Society), or whether they are subject to regulation by the Law Society (either directly as lawyers, or indirectly through employment and supervision by lawyers). The Committee agreed on four or possibly five categories of service provider, as follows:

1. unregulated non-expert. Essentially this category encompasses laypersons with no particular training in legal matters.
2. unregulated experts. Services providers such as WCB consultants would fit in this category. They are expert in their particular field but not formally regulated.
3. Regulated unsupervised non-lawyers. This category would include notaries, tax accountants, immigration consultants, and the like. In a jurisdiction where paralegals are permitted to practice independently, such as Ontario, they would fit in this category.
4. Regulated lawyer-supervised non-lawyers. Paralegals in BC would fit in this category. There was debate as to whether this should be rolled into the lawyer category.
5. Lawyers.

**Contextual factors: complexity and the importance of the outcome of legal work.**

The practice of law takes place in a wide range of circumstances that can affect whether the nature of the services or the unique attributes of lawyers are important enough to justify, in the public interest, reserving a particular activity or area of practice to lawyers. A principled basis for reserving an activity or area of practice to lawyers must take those contextual factors into account.

There has been a tendency in some other jurisdictions, such as the United Kingdom, to conflate consumer interests with the public interest. The Committee has resisted that tendency and resolved the public interest into two distinct components. The first is the individual's interest in obtaining competent and in some cases independent advice or assistance in legal matters at a cost that is commensurate with the significance of the matter to the individual. The second component is the societal interest in preserving the rule of law and constitutionally guaranteed freedoms for all people, and ensuring the continued availability of effective means of determining rights and resolving disputes at a cost that is proportionate to the significance of matters to the individuals involved and to society as a whole.

The Committee also recognized that for any activity within the practice of law the particular circumstances in which it occurs could significantly alter the impact of the activity on the public interest. The particular circumstances encompass such things as the technical complexity of the matter, the value or significance of the matter to the

individual party or parties, and the value of the matter to society as a whole (including the potential legal significance of a matter). These factors combine to provide a variable measure of the acceptable risk of an adverse outcome (related to the work of the service provider). The Committee described that measure as “what is at stake” in the matter. The Committee was mindful that it is not always easy to determine what is at stake in a matter from the outset and that the stakes may actually change over time.

### **Interaction of factors**

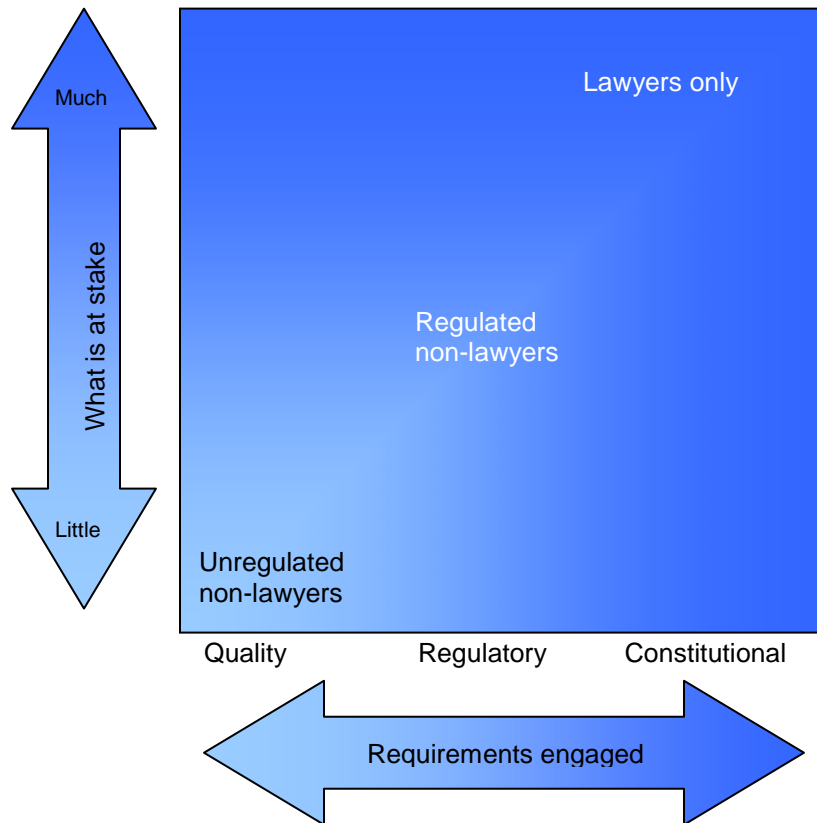
The factors discussed above: the type of service being provided, the attributes of the provider, and what is at stake, interact.

When “what is at stake” is viewed as a notional overlay on that range of activities that may constitute legal services, it is possible to describe three categories of requirements that any particular activity might engage. The categories are:

1. Quality requirements: meaning a need for substantive knowledge and training.
2. Regulatory requirements: meaning a need for regulation of accreditation, ethics, proper conduct, insurance, and supervision.
3. Constitutional requirements: meaning a need for independence (from government or government institutions) and privilege.

If the attributes of service providers, as categorized above, are then viewed as a further overlay, a matrix or pattern of interaction may be discerned that offers at least the potential for a principled basis for determining who might be permitted to perform which services under particular circumstances. For example, very simple legal services provided in circumstances where there is little at stake might engage quality requirements but not regulatory or constitutional requirements, such that it would be reasonable to consider permitting a trained but unregulated person to provide the services. Lawyers or regulated non-lawyers might also be permitted to provide such services, although market forces might make it unrewarding for them to do so. If the legal services are more technical or complex or what is at stake is more significant, a matter might engage both quality requirements and regulatory requirements, such that only lawyers or regulated non-lawyers should be allowed to provide them. In matters where constitutional requirements are engaged, such as defending against criminal charges, or where the complexity or magnitude of what is at stake is large, such as litigation in the superior courts, only lawyers have all the attributes reasonably required to perform the services and would continue to have exclusive legal authority to provide them. Of course, as the group of providers permitted to provide services in a particular field gets smaller, the issue of adequacy of access to justice becomes more significant.

Rendered graphically, the pattern might look something like this:



There is, of course, ample room for disagreement on where the lines should be drawn; indeed, it is difficult to draw distinct lines at all because there is a subjective element to determining what is at stake in every matter. The concept outlined above admits a much greater element of individual (consumer) choice in the selection of legal service providers than is possible at present. The existing system essentially seeks to define a broad area of exclusivity and then carves out exceptions to it. A system based on the above concept is the reverse. It starts with the notion that a consumer seeking legal services is free to choose any provider, and then restricts that choice only to the extent justifiable by the nature of the matter, the attributes of service providers, and the requirements that are engaged based on what is at stake from the perspective of the consumer and society as a whole. Despite the fundamentally different approach, some things would remain the same under a system based on the above concept. Matters that occupy the lower left on the diagram likely occur now and simply escape the Law Society's notice. The public interest is not sufficiently engaged to warrant action. Matters that occupy the upper right on the diagram would continue to be reserved to lawyers. The greatest difference would occur in the middle region. That is where the most difficult challenges would lie but also where the rewards might be the greatest.



## Consensus

Based on the foregoing analysis the Futures Committee came to consensus on three statements of principle that potentially define a new regulatory paradigm.

1. It is in the public interest to restrict the provision of paid legal services to lawyers when the constitutional values of independence and privilege are engaged, as when the power of the state is brought to bear on an individual's liberty or other constitutionally protected freedom, or when what is at stake in a matter (measured in terms of both the individual's interest and society's interest) is of sufficient magnitude that the education, skills, and professional obligations of a lawyer is needed to protect against the consequences of an adverse outcome.
2. It is in the public interest to expand the range of permissible choices of paid legal service provider to enable a reasonably informed person to obtain the services of a provider who is adequately regulated with respect to any or all of training, accreditation, conduct, supervision and insurance, and who can provide services of a quality and at a cost commensurate to the individual and societal interests at stake in a given matter."
3. It is in the public interest to prevent service providers other than those described in the preceding two paragraphs from engaging in the unauthorized practice of law.

## Who would regulate?

Application of these principles could open up the provision of paid legal services to a potentially wider group of providers, however, it would not necessarily entail less regulation. The public interest is clearly served by adequate and principled regulation. A key question is who would regulate? The Futures Committee has considered but not reached any conclusion on this question, except that the Law Society should continue to regulate lawyers, so the question may be recast as whether the Law Society is the best body to regulate non-lawyers or should that task be left to a different regulator or different regulators?

The United Kingdom offers a look at a multiple regulator model. So-called "frontline" regulators include the Bar Council, the Law Society, the Council for Licensed Conveyancers, the Institute of Legal Executives, the Chartered Institute of Patent Attorneys, and the Institute of Trade Mark Attorneys. One of the problems noted by Sir David Clementi in his *Review of the Regulatory Framework for Legal Services in England and Wales* (2004) was that people had difficulty having their complaints addressed or even knowing where to make complaints about different legal service providers. Clementi's solution to that problem was to propose a "super-regulator" to oversee the activities of all the frontline regulators. The implications of that solution for the independence of lawyers has been much discussed.

Closer to home, the regulation of medical services is based on a multiple regulator model in British Columbia. There are some 28 separate professional colleges either in existence or proposed to govern healthcare professionals in BC. It is likely too early to know whether the system will be successful from a public interest perspective, but there are already signs of difficulty with confusion and arguments over jurisdiction, and poor governance of the so-called “junior” medical professions. The experience of the government in establishing the multiple regulator model has not been positive and it is unlikely to have a taste for repeating it with another profession.

Ontario dabbled briefly with the multiple regulator model when it attempted to establish a separate regulatory body for paralegals. The failure of that attempt led the Ontario government to ask the Law Society of Upper Canada to take over regulating paralegals. As noted previously recent amendments to the *Law Society Act* create two classes of licensees: persons licensed to practice law as barristers and solicitors, and persons licensed to provide legal services. In BC the College of Dental Surgeons has taken over regulation of Certified Dental Assistants. Similarly, the Architectural Institute of BC has entered into memoranda of understanding with Building Designers and Interior Designers as the first step in bringing those groups under the regulatory umbrella of the AIBC.

A single regulator model in BC might be similar to the Ontario model, although BC already has a separately regulated group of legal service providers in the Notaries Public.

### **Options for the Benchers**

1. Maintain the status quo on the basis that this is not an issue of sufficient strategic importance to warrant further consideration.
2. Maintain the status quo on the basis that this is a strategically important issue but not of high enough priority to warrant consideration in the next three years.
3. Endorse further consideration of a new regulatory paradigm based on the principles outlined in this discussion paper by placing the matter among the high priority strategic issues to be dealt with in the next three years.

### **Next Steps**

If the Benchers include this in the high priority strategic issues, a key decision will be when and how to engage in external consultations. Significant further development of a new regulatory model would undoubtedly require consultation with a wide variety of external stakeholders including government, the judiciary, other Law Societies, the CBA, the Society of Notaries Public, representatives of other service providers, perhaps the Competition Bureau, consumer groups and other representatives of the public at large. The Futures Committee has not embarked on any such consultation because it recognizes that doing so will likely have repercussions such that the Benchers should first make the strategic decision to what extent and with whom the consultations should take place.

# Memo

To: Benchers

From: The Complainants' Review Committee:  
Haydn Acheson, Chair  
Satwinder Bains, Vice-Chair  
Ken Walker, Bencher  
Lee Ongman, Bencher  
Pinder Cheema, Ad-hoc Member  
Peter Gorgopa, Ad-hoc Member

Date: November 7, 2011

Subject: Complainant's Review Committee

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## BACKGROUND

The Complainants' Review Committee ("CRC") was established in late 1988 under Rule 103 of the *Law Society Rules* (now Rule 3-8). The Benchers' Meeting Minutes of December 4 and 5, 1987 indicate that the purpose of the CRC was "to give unhappy complainants a procedure to have their complaints reviewed by an impartial body". The CRC carries out a review function to determine whether complaints have been closed at the staff level when they should not have been.

The CRC initially consisted of three members: an Appointed Bencher (Chair), a Bencher and a non-Bencher lawyer. Due to the increasing demand for reviews by the CRC over the years, the CRC was increased to six members in 1995. The Rules provide that at least one member of the CRC must be an appointed Bencher. Traditionally, the Chair and Vice Chair have been appointed Benchers.

Any complainant may apply to the CRC for a review if the file was closed under Rule 3-6 of the *Law Society Rules* after investigation of a complaint. When a file is closed under Rule 3-6, every closing letter sent to a complainant advises of their right to request a review by the CRC. If a file is closed under Rule 3-5 of the *Law Society Rules* the CRC does not have the jurisdiction to review it.

The role of the CRC is to determine whether an adequate investigation was conducted and whether the decision of the staff lawyer was appropriate in light of the information before them. The *Law Society Rules* require that the CRC be provided a copy of the entire file. Unlike other Committees, the CRC has the opportunity to see some of the 800-900 files that are closed each year at the staff level, and to obtain an insight into the types of complaints that, while important to the complainants, do not give rise to further Law Society action.

The CRC met with the Chair of the Practice Standards Committee (PSC) and the Chair of the Discipline Committee (DC) this year to discuss their respective Committees and to gain a better understanding of each process.

After review of the file the CRC can:

- make inquiries of the complainant, the lawyer or any other person (The purpose of an inquiry is to seek clarification on an issue, but not extend to investigating an issue);
- confirm the staff decision to take no further action;
- refer the complaint to the PSC; or
- refer the file to the DC, with or without recommendation.

When the CRC process has concluded, the Chair sends a letter to the complainant and the lawyer advising of the decision. If the CRC decides to confirm the staff decision they advise the complainant if they have remaining concerns about the Law Society's investigation of their complaint they may contact the Office of the Ombudsperson. The Ombudsperson is empowered by legislation to investigate complaints about regulatory bodies.

For the procedure governing the CRC please refer to Rule 3-9 of the *Law Society Rules*.

## PROGRESS

In previous years the CRC held monthly reviews with agendas containing roughly 8-10 items. At the end of 2010 the CRC had a "backlog" of 49 files pending review, meaning it was taking around 6 months for a file to be reviewed by the CRC. At the beginning of 2011, the CRC reviewed the backlog of files. The CRC felt it was important to have files reviewed as soon as possible to maintain the fairness and integrity of a file, and set a goal for the year to review any new files within a 2-3 month timeframe. The CRC held two meetings a month until they had reached their goal and will continue to hold double meetings when necessary. The CRC cleared the backlog from 2010 in May of this year, has received 58 CRC requests to date for 2011, and only has 8 of those 58 files still pending review which are scheduled for review at the December meeting. Therefore, the CRC will be proceeding into the new year having achieved their goal, and most importantly, without any files in the backlog. Below is a snapshot of the CRC statistics as of November from 2010 and 2011.

## STATISTICS

2010	2011
87 Total Files Reviewed	99 Total Files Reviewed
79 No Further Action	90 No Further Action
5 Additional Information Requested*	4 Additional Information Requested
0 DC Referrals	5 DC Referrals
2 PSC Referrals	4 PSC Referrals
1 Other	0 Other
49 Backlog	0 Backlog

\*After receiving and reviewing the additional information, the CRC ordered that no further action be taken.

## Law Society of British Columbia

### Enterprise Risk Management – November 2011

#### Executive Summary

An enterprise risk is the threat that an event or action will adversely affect an organization's ability to achieve its strategic goals and mandate.

An Enterprise Risk Management Plan (ERM) is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, retaining, reducing, avoiding or transferring the risks

To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed by Management and will be reported to the Audit Committee on an annual basis.

The process going forward will be:

- Management Board will play a central role, with the Chief Executive Officer being the main liaison per the Executive Limitations
- The ERM plan will be maintained through semi-annual discussions by Management Board and related departments to refresh the Risk Schedule and related risk management efforts
- The Risk Schedule will be updated in conjunction with the annual review of the Key Performance Measures to the Audit Committee, and then to the Benchers
- Should a risk change or a new risk occur, the escalation process will be to inform the appropriate Management Board member, and/or the CEO, with a report out to the President (or Executive Committee) when required, subject to the Executive Limitations

The top eight strategic residual risks are noted below, with the full Risk Schedule attached as Appendix A.

Summary of Major Strategic Residual Risks (top 8 – yellow risks)		
Category	Risk	MB Lead
Regulatory	R1: Adverse change in Provincial <i>Legal Profession Act</i> or government policy direction	CEO
Regulatory	R3: Conflict of interest event by Benchers or staff	CEO
Financial	F2: Economic and/or financial market downturn	CFO
Operational	O1: Natural disaster	CEO
Operational	O3: Breach of confidential and/or FOIPPA information to members, employees and/or the public	Tribunal Counsel
Operational	O4: Unauthorized access to data and information	CIPO and CFO
Lawyers Insurance	LIF3: Catastrophic theft under Part B of the LPL policy	Dir of Insurance
Lawyers Insurance	LIF8: Investment devaluation	CFO

Law Society of British Columbia  
Enterprise Risk Management  
Risk Schedule – Prioritized - 2011

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Appendix A

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
REGULATORY	R1: Adverse change in Provincial <i>Legal Profession Act</i> or government policy direction	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self regulation</li> <li>• <b>Reputational:</b> diminished public perception of independence</li> </ul>		<ul style="list-style-type: none"> <li>• Bencher Strategic Plan</li> <li>• Meet KPMs and monitor Bellwether</li> <li>• Continuous review of regulatory model</li> <li>• Requests for appropriate amendments to <i>Legal Profession Act</i></li> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Bencher policies and training</li> <li>• Hearing panel composition and training</li> <li>• Media monitoring</li> <li>• Crisis communication plan</li> </ul>		<ul style="list-style-type: none"> <li>• Federation - National standards</li> <li>• 2011 Regulatory Plan</li> <li>• Formalized process and plan for maintaining positive stakeholder relations</li> <li>• Governance review in 2012</li> </ul>	Chief Executive Officer (CEO)
REGULATORY	R3: Conflict of interest event by Benchers or staff	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> </ul>		<ul style="list-style-type: none"> <li>• Hearing panel composition and training</li> <li>• Bencher policies and training</li> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Crisis communication plan</li> </ul>		<ul style="list-style-type: none"> <li>• Governance review in 2012</li> <li>• Enhanced role of the Tribunal Counsel</li> </ul>	CEO

Law Society of British Columbia  
Enterprise Risk Management  
Risk Schedule – Prioritized - 2011

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
FINANCIAL	F2: Economic and/or financial market downturn	<ul style="list-style-type: none"> <li><b>Financial:</b> investment devaluation as well as losses of market value in the building and revenue</li> </ul>		<ul style="list-style-type: none"> <li>Investment policies and procedures (SIIP)</li> <li>Quarterly reviews of investment performance and benchmarking</li> <li>Investment managers and pooled funds</li> <li>Annual operating and capital budgeting process</li> <li>Monthly and quarterly financial review process</li> <li>Long-term leases</li> <li>Real estate expert advice and monitoring</li> </ul>			Chief Financial Officer & Director of Trust Regulation (CFO)
OPERATIONAL	O1: Natural disaster	<ul style="list-style-type: none"> <li><b>Operational and financial:</b> injury of staff and/or building damage</li> <li><b>Operational:</b> service disruption</li> <li><b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>Off-site storage and servers</li> <li>Fire and earthquake safety plan and training</li> <li>Information technology backup plan</li> <li>Building due diligence reviews</li> <li>Insurance coverage</li> </ul>		<ul style="list-style-type: none"> <li>Update earthquake training</li> <li>Formal earthquake assessment of building</li> </ul>	CEO
OPERATIONAL	O3: Breach of confidential and/or FOIPPA information to members, employees and/or the public	<ul style="list-style-type: none"> <li><b>Reputational:</b> diminished public perception of independence and possible loss of reputation with membership</li> </ul>		<ul style="list-style-type: none"> <li>Information technology security policy, process and procedures</li> <li>Member file and case file management procedures</li> <li>Building security system and procedures</li> <li>FOIPPA training of staff</li> </ul>		<ul style="list-style-type: none"> <li>Perform privacy review</li> <li>Establish privacy of information policies</li> <li>Enhanced FOI employee training</li> </ul>	Tribunal Counsel
OPERATIONAL	O4: Unauthorized access to data and information	<ul style="list-style-type: none"> <li><b>Reputational:</b> diminished public perception of independence and possible loss of reputation with membership</li> </ul>		<ul style="list-style-type: none"> <li>Information technology security policy, process and procedures</li> <li>Records management policies</li> <li>Confidential shredding contract</li> </ul>		<ul style="list-style-type: none"> <li>Review of security system profiles and policies</li> </ul>	CIPO and CFO

Law Society of British Columbia  
Enterprise Risk Management  
Risk Schedule – Prioritized - 2011

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
LAWYERS INSURANCE FUND	LIF3: Catastrophic theft under Part B of the LPL policy	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of the profession</li> <li>• <b>Financial:</b> significant investigation expense and settlement payments</li> </ul>		<ul style="list-style-type: none"> <li>• Trust rules and audit program</li> <li>• Proactive claims and risk management practices</li> <li>• Policy wording on limits</li> <li>• Chartis insurance policy for Part B</li> <li>• Maintenance of surplus levels</li> </ul>			Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF8: Investment devaluation	<ul style="list-style-type: none"> <li>• <b>Financial:</b> insufficient reserves or surplus</li> </ul>		<ul style="list-style-type: none"> <li>• Investment policies and procedures (SIIP)</li> <li>• Investment managers and pooled funds</li> <li>• Quarterly reviews of investment performance</li> <li>• Real estate expert advice and monitoring</li> <li>• Maintenance of surplus levels</li> </ul>			CFO
REGULATORY	R2: Loss of a lawsuit alleging a failure of the Law Society to follow due process	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self regulation</li> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> lawsuit defense and settlement costs</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Benchers policies and training</li> <li>• Crisis communication plan</li> <li>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</li> <li>• D &amp; O policy underwritten by Chartis</li> <li>• Hearing panel training</li> </ul>		<ul style="list-style-type: none"> <li>• 2011 Regulatory Plan</li> <li>• Federation - National standards</li> <li>• Enhanced role of the Tribunal Counsel</li> </ul>	Chief Legal Officer (CLO)



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22004

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
REGULATORY	R4: Failure of the Law Society to stay within jurisdiction and/or wrongful prosecution	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Bencher policies and training</li> <li>• Crisis communication plan</li> <li>• Hearing panel training</li> </ul>		<ul style="list-style-type: none"> <li>• Enhanced role of the Tribunal Counsel</li> </ul>	CLO and Tribunal Counsel
REGULATORY	R5: Loss of a lawsuit alleging failure to sanction or deal with a lawyer	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages imposed through possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Bencher policies and training</li> <li>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</li> <li>• D &amp; O policy underwritten by Chartis</li> <li>• Crisis communication plan</li> <li>• Hearing panel composition and training</li> </ul>		<ul style="list-style-type: none"> <li>• National discipline standards</li> </ul>	CLO and Tribunal Counsel
REGULATORY	R6: Loss of a lawsuit alleging wrongful deprivation of lawyers (prospective) membership (livelihood)	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages imposed through possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Bencher policies and training</li> <li>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</li> <li>• D &amp; O policy underwritten by Chartis</li> <li>• Crisis communication plan</li> <li>• Hearing panel training</li> </ul>		<ul style="list-style-type: none"> <li>• National admission standards</li> </ul>	CLO and the Director of Education and Practice

Law Society of British Columbia  
Enterprise Risk Management  
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22005

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
REGULATORY	R7: Admission decisions are not reflective of the character, fitness, and competencies of a prospective lawyer	<ul style="list-style-type: none"> <li>• <b>Political:</b> possible loss of the right to self regulation</li> <li>• <b>Reputational:</b> diminished public perception of independence</li> <li>• <b>Financial:</b> costs and damages imposed through possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Law Society Admission Program</li> <li>• Revised Credentialing standards and procedures</li> </ul>		<ul style="list-style-type: none"> <li>• Legislative amendment to allow internal Law Society appeals of prior decisions</li> <li>• National admission standards</li> </ul>	Director of Education and Practice
FINANCIAL	F1: Misappropriation of Law Society financial assets	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> loss of reputation with the membership</li> <li>• <b>Financial:</b> loss of revenue, increased fees</li> </ul>		<ul style="list-style-type: none"> <li>• Internal controls</li> <li>• Schedule of authorizations</li> <li>• External audit</li> <li>• Monthly and quarterly financial review process</li> <li>• Crime insurance</li> </ul>			CFO
FINANCIAL	F3: Loss of tenants	<ul style="list-style-type: none"> <li>• <b>Financial:</b> losses of market value in the building and lease revenue</li> </ul>		<ul style="list-style-type: none"> <li>• Long-term leases, effect early renewals when appropriate</li> <li>• External property management firm expertise</li> <li>• Building maintenance plan</li> <li>• Building due-diligence reviews</li> <li>• 10 year capital plan</li> <li>• Annual operating and capital budgets</li> </ul>			CFO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
FINANCIAL	F4: Unexpected escalation of operating costs	<ul style="list-style-type: none"> <li>• <b>Financial:</b> loss of revenue</li> </ul>		<ul style="list-style-type: none"> <li>• Executive limitations</li> <li>• Schedule of Authorizations</li> <li>• Annual operating and capital budgeting process</li> <li>• Monthly and quarterly financial review process</li> <li>• External property management firm expertise</li> <li>• Building maintenance plan</li> <li>• Building due-diligence review</li> <li>• Ten-year capital plan</li> </ul>			CFO
FINANCIAL	F5: Inaccurate or untimely financial reporting	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> loss of reputation with the membership</li> <li>• <b>Financial:</b> loss of revenue or increase in costs</li> <li>• <b>Operational:</b> poor decision-making</li> </ul>		<ul style="list-style-type: none"> <li>• Internal control system</li> <li>• Executive limitations</li> <li>• Annual external audit</li> <li>• Investment policies and procedures (SIIP)</li> <li>• Quarterly reviews of investment performance and benchmarking</li> <li>• Annual operating and capital budgets</li> <li>• Monthly and quarterly financial review process</li> </ul>			CFO
FINANCIAL	F6: Lower member base	<ul style="list-style-type: none"> <li>• <b>Financial:</b> loss of revenue to the Law Society</li> </ul>		<ul style="list-style-type: none"> <li>• Benchner Strategic Plan</li> <li>• Research into profession demographics</li> </ul>			CEO

Law Society of British Columbia  
Enterprise Risk Management  
Risk Schedule – Prioritized - 2011

22007

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
OPERATIONAL	<b>O2:</b> Failure (not related to a natural disaster) in the infrastructure and/or security of the building	<ul style="list-style-type: none"> <li><b>Operational and financial:</b> injury of staff and/or building damage</li> <li><b>Operational:</b> service disruption</li> <li><b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>Off-site storage and servers</li> <li>Information technology backup plan</li> <li>External property management firm</li> <li>Building due-diligence reviews</li> <li>Ten-year capital plan</li> <li>Building maintenance plan</li> <li>Insurance coverage</li> </ul>		<ul style="list-style-type: none"> <li>Review of security system profiles and policies</li> <li>Project LEO re: scanning</li> </ul>	CFO and CIPO
OPERATIONAL	<b>O5:</b> Loss of data and information	<ul style="list-style-type: none"> <li><b>Reputational:</b> diminished public perception of independence and possible loss of reputation with membership</li> <li><b>Operational:</b> service disruption</li> <li><b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>Off-site storage and servers</li> <li>Information technology backup plan</li> <li>Information technology security policy, process and procedures</li> <li>Records management policies</li> <li>Off-site Iron Mountain storage for closed files</li> <li>Insurance coverage</li> </ul>		<ul style="list-style-type: none"> <li>Project LEO re: search capability</li> <li>Review of security system profiles and policies</li> </ul>	CIPO and CFO
STAFF AND WORKING ENVIRONMENT	<b>SW1:</b> Loss of key personnel	<ul style="list-style-type: none"> <li><b>Operational:</b> service disruption as well as loss of corporate knowledge</li> </ul>		<ul style="list-style-type: none"> <li>Succession planning and cross training</li> </ul>			CEO

Law Society of British Columbia  
Enterprise Risk Management  
Risk Schedule – Prioritized - 2011

22008

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
STAFF AND WORKING ENVIRONMENT	SW2: Inability to recruit and/or retain skilled staff as an organization	<ul style="list-style-type: none"> <li><b>Operational:</b> service disruption as well as loss of corporate knowledge</li> </ul>		<ul style="list-style-type: none"> <li>Compensation and benefits program</li> <li>Market benchmarking</li> <li>Employee Recognition Program</li> <li>Human resource and operational standards, policies and procedures</li> <li>Succession planning and cross training</li> <li>Employee survey and action plans</li> <li>Annual performance management and coaching process</li> <li>Hiring practices and use of recruiting firms</li> <li>Professional, leadership and skills development program</li> </ul>		<ul style="list-style-type: none"> <li>Redesign Employee Recognition Program</li> </ul>	CEO
STAFF AND WORKING ENVIRONMENT	SW3: Labour action (strike)	<ul style="list-style-type: none"> <li><b>Operational:</b> service disruption</li> </ul>		<ul style="list-style-type: none"> <li>Cross training</li> <li>Compensation and benefit philosophy</li> <li>PEA negotiations</li> <li>Employee Recognition Program</li> <li>Human resource and operational standards, policies and procedures</li> </ul>			CIPO
STAFF AND WORKING ENVIRONMENT	SW4: Unhealthy or unsafe conditions	<ul style="list-style-type: none"> <li><b>Operational and reputational:</b> injury to staff and/or diminished levels of staff performance</li> <li><b>Operational:</b> service disruption</li> </ul>		<ul style="list-style-type: none"> <li>Human resource and operational standards, policies and procedures</li> <li>Health and Safety Committee</li> <li>First Aid attendants</li> <li>Fire and earthquake safety plan and training</li> <li>Property management firm expertise and building maintenance plan</li> <li>Workers Compensation coverage</li> </ul>			CFO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
STAFF AND WORKING ENVIRONMENT	SW5: Loss of a lawsuit on human rights issues by staff	<ul style="list-style-type: none"> <li><b>Operational and reputational:</b> diminished levels of staff performance</li> <li><b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>Human resource and operational standards, policies and procedures</li> <li>Annual performance management and coaching process</li> <li>Leadership development training</li> <li>Legal counsel and advice</li> </ul>			CFO
LAWYERS INSURANCE FUND	LIF1: Inadvertent loss of captive structure for LIF	<ul style="list-style-type: none"> <li><b>Financial:</b> requirement to restructure insurance program</li> </ul>		<ul style="list-style-type: none"> <li>Legal and tax advice (review) of appropriate structure</li> </ul>			Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF2: Loss of third-party lawsuit against captive, insurance operations or in-house counsel	<ul style="list-style-type: none"> <li><b>Financial:</b> exposure to compensatory damage award</li> </ul>		<ul style="list-style-type: none"> <li>Established and documented quality control (Claims Manual)</li> <li>S.86 Legal Profession Act (possible statutory protection against lawsuits and liability)</li> <li>E &amp; O insurance policy underwritten by Markel</li> </ul>			Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF4: Catastrophic losses under Part A of the LPL policy	<ul style="list-style-type: none"> <li><b>Financial:</b> significant investigation expense and settlement payments</li> </ul>		<ul style="list-style-type: none"> <li>Policy wording on limits and “related errors”</li> <li>Proactive claims and risk management practices</li> <li>Monitoring of LPL insurance trends and risks</li> <li>Maintenance of surplus levels</li> </ul>		<ul style="list-style-type: none"> <li>Obtain and review options for stop-loss insurance</li> </ul>	Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF5: Significant error in advice to insured or payment (non-payment) of individual claim	<ul style="list-style-type: none"> <li><b>Financial:</b> unnecessary payments</li> </ul>		<ul style="list-style-type: none"> <li>Established and documented quality control (Claims Manual)</li> <li>E&amp;O insurance policy underwritten by Markel</li> </ul>			Director of Lawyers Insurance Fund

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level	Planned (In Progress) Strategies and Controls	Management Board Lead
LAWYERS INSURANCE FUND	LIF6: Error in actuarial advice	<ul style="list-style-type: none"> <li><b>Financial:</b> insufficient reserves</li> </ul>		<ul style="list-style-type: none"> <li>External actuarial</li> <li>External auditor reviews of actuarial methodology and numbers</li> <li>Monitoring of LPL insurance trends and risks</li> <li>Maintenance of surplus levels</li> </ul>			Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF7: Lawsuit for “bad faith” failure to settle / denial of coverage	<ul style="list-style-type: none"> <li><b>Reputational:</b> loss of reputation with the public or profession</li> <li><b>Financial:</b> exposure to excess damage award</li> </ul>		<ul style="list-style-type: none"> <li>Established and documented quality control (Claims Manual)</li> <li>Protocol to avoid “bad faith” losses</li> <li>S.86 Legal Profession Act (possible statutory protection against lawsuits and liability)</li> <li>E&amp;O insurance policy underwritten by Markel</li> <li>Maintenance of surplus levels</li> </ul>			Director of Lawyers Insurance Fund

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Likelihood (Rating)	Estimated Chance of a Single Occurrence Within Five Years
High (4)	80 - 100%
Medium-High (3)	60 – 80%
Medium (2)	40 – 60%
Low (1)	0 – 40%

Consequences (Rating)	Financial Consequences	Operational Consequences	Reputational Consequences	Political Consequences
High (5)	A material loss of financial assets or cash: > \$750,000 in general, or 200% of gross case reserves/expected value for LIF claims, or >20% negative return for LIF investments	A substantial proportion of operations cannot be restored in a timely manner, essential services are unable to be delivered, and/or there is a significant loss of corporate knowledge that will result in the under-achievement of the Law Society's mandate	An irreparable loss of member and stakeholder trust in, or severe public criticism at a national and provincial level that brings disrepute to the reputation of, the Law Society	Change in the mandate and/or the imposition of a new governance as well as management structure for the Law Society is enacted by the government
Medium-High (4)	A substantial loss of financial assets or cash: \$500,000 - \$750,000 in general, 190% of gross case reserve expected value for LIF claims >15% negative return for LIF investments	Part of the operation cannot be restored in a timely manner, with some disruption to essential services, and/or a loss of corporate knowledge that can impact on the ability to render key decisions for the Law Society in the short to medium term	A substantial loss of member and stakeholder trust in, or sustained public criticism at a provincial level of, the Law Society which will be difficult to remedy over the short to medium term	The Law Society is susceptible to a potential change in government rules and legislation with implications for its authorities and/or an imposed change in the management structure



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<p>Medium (3)</p> <p>Low-Medium (2)</p> <p>Low (1)</p>	<p>A moderate loss of financial assets or cash: \$250,000 - \$500,000 in general 180% of gross case reserves/expected value for LIF claims 10% negative return for LIF investments</p>	<p>Some parts of the operation will be disrupted, but essential services can be maintained, and/or there is some loss of corporate knowledge that warrants management attention but the implications for which are limited to select projects or processes</p>	<p>Some loss of member and stakeholder trust in, and local public criticism over a short period of time of, the Law Society which warrants management attention</p>	<p>A change in Provincial direction affecting the operations of the Law Society is likely, but can be addressed within the current governance and management structure</p>
	<p>A manageable loss of financial assets or cash: \$100,000 - \$250,000 in general 170% of gross case reserves/expected value for LIF claims 5% negative return for LIF investments</p>	<p>Some inefficiency will exist, leading to increased cost and/or time in the provision of essential services, and/or a loss of corporate knowledge that may result in minor disruptions in specific projects or processes</p>	<p>A relatively minor setback in the building of member and stakeholder trust in, or “one off” unfavorable local public attention put toward, the Law Society</p>	<p>Minor, non-routine changes may occur in regulation of relevance, and the nature of guidance that is provided by the government, to the Law Society</p>
	<p>A relatively immaterial loss of financial assets or cash: &lt; \$100,000 in general 160% of gross case reserves/expected value for LIF claims &lt;5% negative return for LIF investments</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>

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		Consequences				
		Low	Low-Medium	Medium	Medium-High	High
Likelihood		1	2	3	4	5
High	4					
Medium-High	3					
Medium	2					
Low	1					



# Briefing note

The recent report on Alternative Business Structures in the Legal Profession presented by the Independence and Self-Governance Advisory Committee (the “Report”) noted that throughout its history as a profession, law has been practised mostly by sole practitioners or through a partnership model. The Committee also noted that even now, lawyers in private practice in British Columbia generally practise law this way with 75% of all law firms in the Province being sole practitioners and another 19% of firms consisting of two to five lawyers.

There was some interest expressed in having more detailed information about the practice models lawyers in British Columbia employ and their characteristics. In addition to the sole practitioner and the general partnership model, the Law Society has recognized that lawyers can incorporate for the purposes of practising law in BC and there are currently over 3,400 law corporations registered with the Law Society. Despite the ability to practice as a corporation rather than a partnership, only 3% of all law corporations have more than one lawyer shareholder and only a handful have all the firm lawyers as shareholders.

In addition to law corporations, the Law Society has also permitted lawyers to practice as limited liability partnerships, with about 270 firms having adopted this variation on the traditional general partnership model.

Finally, the Law Society has recently permitted lawyers to participate in multi-disciplinary practices, although to date no MDPs have been established in BC.

As noted in the Report, the majority of legal practices in BC are sole practitioners or small firms.

Firm Size	# of Firms	%
Sole Practitioners	2399	75%
Firms with 2-5 lawyers	606	19%
Firms with 6-15 lawyers	151	5%
Firms with 16-50 lawyers	41	1%
Firms with more than 50 lawyers	16	0.5%

In terms of the number of lawyers, however, sole practitioners and firms of 2 to 5 lawyers represent only about 50% of all practising lawyers. And while firms of 50 or more lawyers account for only about 0.5% of all firms, they represent 19% of the lawyers in private practice, as the following table illustrates.

Firm Size	# of Lawyers	%
Sole practitioners	2399	30%
Firms with 2-5 lawyers	1732	21%
Firms with 6-10 lawyers	991	12%
Firms with 11-25 lawyers	990	12%
Firms with 26-50 lawyers	466	6%
Firms with more than 50 lawyers	1497	19%

The distribution of male and female lawyers by firm size does not vary much from the overall ratio of 68%/32%, with slightly fewer women sole practitioners and slightly more women in firms of 50 or more.

Firm size	Male	Female
Sole practitioners	70%	30%
Firms with 2-5 lawyers	69%	31%
Firms with 6-10 lawyers	66%	34%
Firms with 11-25 lawyers	68%	32%
Firms with 26-50 lawyers	69%	31%
Firms with more than 50 lawyers	66%	34%

In terms of part-time practice, as identified by insurance coverage, nearly 74% of all part-time insured practitioners practice on their own while just under 4% can be found at firms of 50 or more lawyers.

	Full Time	Part Time
Sole practitioners	1616	783
Firms with 2-5 lawyers	1574	158
Firms with 6-10 lawyers	945	46
Firms with 11-25 lawyers	966	24
Firms with 26-50 lawyers	458	8
Firms with more than 50 lawyers	1457	40

Finally, in terms of age distribution, nearly half of all lawyers in private practice who are 60 or older are sole practitioners and a disproportionate number of young lawyers can be found at firms of 50 or more lawyers, as the following table shows.

	25 - 29	30 - 34	35 - 39	40 - 44	45 - 49	50 - 54	55 - 59	60 - 64	65 +
Sole practitioners	29	98	168	222	306	387	390	433	366
Firms with 2-5 lawyers	89	199	201	199	203	237	257	189	157
Firms with 6-10 lawyers	87	155	131	127	109	101	118	93	70
Firms with 11-25 lawyers	65	183	127	147	108	101	113	75	71
Firms with 26-50 lawyers	39	86	54	57	49	53	47	50	31
Firms with more than 50 lawyers	151	283	195	196	160	172	147	125	68

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