The Law Society of British Columbia

Agenda

Benchers

Date: Friday, January 25, 2019

Time: **7:30 am** Continental breakfast
8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

Recording: ***Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.***

INTRODUCTORY MATTERS			
1	Administer Oaths of Office • President, First Vice-President, Second Vice-President and Jacqueline McQueen	10 min	The Honourable Chief Justice Robert J. Bauman
2	President's Welcome	5 min	Nancy G. Merrill, QC
CONSENT AGENDA Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.			
3	Minutes of December 7, 2018 meeting (regular session)		
4	QC Advisory Committee Appointment		
5	Recruitment and Nominating Advisory Committee		
6	BC Representatives for Federation of Law Societies' Committees		
REPORTS			
7	President's Report	5 min	Nancy G. Merrill, QC
8	CEO's Report	10 min	Don Avison
9	Briefing by the Law Society's Member of the Federation Council	10 min	Herman Van Ommen, QC

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GUEST PRESENTATION			
10	Presentation on Future Trends and the Legal Profession	30 min	Lawrence Alexander
DISCUSSION/DECISION			
11	A Proposal for a Futures Task Force	10 min	Nancy G. Merrill, QC
12	Annual Fee Review Working Group: Final Report	10 min	Dean Lawton, QC
13	Implementation of National Mobility Agreement 2013	10 min	Michael Lucas
UPDATES			
14	Report on Outstanding Hearing & Review Decisions (*To be circulated at the meeting*)	2 min	Craig Ferris, QC
FOR INFORMATION			
15	Second Legal Aid Colloquium: Letter from Legal Aid Advisory Committee to Attorney General		
16	Executive Committee and Bencher Meeting Dates for 2020		
17	Three Month Bencher Calendar – January to March		
IN CAMERA			
18	Litigation Report	Tara McPhail	
19	[Redacted]	Don Avison Adam Whitcombe, QC	
20	Other business		

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, December 07, 2018

Present:
Miriam Kresivo, QC, President
Nancy Merrill, QC, 1st Vice-President
Craig Ferris, QC, 2nd Vice-President
Jeff Campbell, QC
Pinder Cheema, QC
Anita Dalakoti
Jeevyn Dhaliwal
Martin Finch, QC
Brook Greenberg
Lisa Hamilton, QC
Roland Krueger, CD
Dean P.J. Lawton, QC
Jamie Maclaren, QC
Claire Marshall
Geoffrey McDonald
Steven McKoen
Christopher McPherson, QC
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Karen Snowshoe
Michelle Stanford
Sarah Westwood
Michael Welsh, QC
Guangbin Yan
Heidi Zetzsche

Unable to Attend:
Jasmin Ahmad
Jennifer Chow, QC
Barbara Cromarty
Tony Wilson, QC

Staff Present:
Don Avison
Gurprit Bains
Chantal Broughton
Lance Cooke
Su Forbes, QC
Mira Galperin
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Jason Kuzminski
Michael Lucas
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe

Guests:	Jacqui McQueen	2019 Bencher
	Karenna Williams	External Relations Executive Member, Aboriginal Lawyers Forum
	Margaret Mereigh	President, Canadian Bar Association, BC Branch
	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Bill Veenstra	Past President, Canadian Bar Association, BC Branch
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Kerry Simmons, QC	Acting Executive Director, Canadian Bar Association, BC Branch
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kari Boyle	Interim CEO, Courthouse Libraries BC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Dom Bautista	Executive Director, Law Courts Center
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	The Honourable Peter Leask, QC	Life Bencher

CONSENT AGENDA

1. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on November 9, 2018 were approved as circulated.

The *in camera* minutes of the meeting held on November 9, 2018 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

Language and gender reference corrections to BC Code rule 3.7-2 Commentary [1]

BE IT RESOLVED that:

The Commentary [1] to rule 3.7.2 of the BC Code be amended to reflect the changes indicated in the 'red-lined' version of the rule and Commentary presented below.

> ## Optional withdrawal
>
> **3.7-2** If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.
>
> ## Commentary
>
> **[1]** A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if the lawyer is deceived by the client, the client refuses to accept and act upon the lawyer's advice on a significant point, the client is persistently unreasonable or uncooperative in a material respect, or the lawyer is facing difficulty in obtaining adequate instructions from the client. However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

2019 Fee Schedules

BE IT RESOLVED to amend the Law Society Rules in Schedule 1, part F, by striking "$200" wherever it appears and substituting "$250".

EXECUTIVE REPORTS

2. President's Report

Ms. Kresivo began her report by welcoming the recently elected Vancouver County Bencher Jacqui McQueen, whose term will begin on January 1, 2019, and congratulating Benchers Michelle D. Stanford, Steven McKoen, Lisa Hamilton, and Ronald Krueger, CD on their election to the Executive Committee for 2019. She then reminded Benchers about the upcoming Recognition Dinner to be held that evening, and said Richard C.C. Peck, QC, the recipient of the Law Society Award for 2018, and the Attorney General, the Honourable David Eby, QC would both be speaking at the event.

Ms. Kresivo reported on the recent Annual General Meeting held on December 4, 2018 and said she was pleased everything worked well and that the meeting concluded. The resolutions passed at the meeting will need to be considered by Benchers in 2019. There are issues relating to legal aid, pro bono and alternate legal service providers. All are significant issues that will require careful consideration. On a related note, Ms. Kresivo said the consultation period for the alternate legal service providers consultation remains open until the end of December 2018.

She said the Executive Committee is committed to reviewing the Annual General Meeting process with a view to recommending improvements before the Annual General Meeting for 2019. It will consider how not to disenfranchise people so that they can vote, but look at alternatives such advanced voting. The Governance Committee has been tasked with looking at what can be done to make the whole process more efficient, while still keeping people engaged in the process and in the concerns and issues of the Law Society.

Ms. Kresivo reminded Benchers about the survey distributed by the Governance Committee. The survey seeks comments from Benchers on how well things are working. A report on the results will be prepared in early 2019.

Ms. Kresivo noted that, in lieu of a Bencher holiday gift, a charitable donation on behalf of Benchers had been made by the Law Society to West Coast Leaf. It is their mission to use the law to create a more equal and just BC.

Ms. Kresivo thanked people who attended the Annual General Meeting in fifteen locations, the Chairs and Vice-Chairs, and in particular, staff for their efforts to prepare for and support the Annual General Meeting.

She then summarized some of the key achievements of 2018; including dealing with financial issues and challenges, anti-money laundering, an increase in the number of files in the professional conduct department, looking at whether and how paralegals could be licensed, an inquiry into mental health in the profession, equity and the legal profession, a rule of law lecture, registration of law firms and the pilot project, participated in discussions on pro bono and access to justice, retreat was held on truth and reconciliation and our role, and we fostered a better relationship with government on access to justice issues.

3. CEO's Report

Mr. Avison indicated he wished to speak about five main themes.

The first theme Mr. Avison reported on was the Annual General Meeting. There were six additional locations added following the events at the first Annual General Meeting on October 30, 2018. A considerable amount of work was undertaken to increase the likelihood of success with the technology. He said the technology served us well during the course of the meeting on December 4, 2018; however, the pace of the meeting was slow. The current meeting rules are designed for an in-person meeting of 100 people or less that is held in the same building at one location, and not compatible with the modern reality of multiple locations with the expectation of greater online participation.

Mr. Avison said staff had already begun work on some potential changes that will help us streamline voting procedures in a manner that we hope will cause a greater degree of efficiency and reduction in the time required to complete the Annual General Meeting. He also wanted to thank and recognize the work of staff who assisted with the Annual General meeting.

The second theme was legislative amendments, specifically Bill 57, which was passed by the legislative assembly of British Columbia at the end of November 2018.

The third theme was the second legal aid colloquium that also took place in November 2018. He said it would be a significant area of focus for the Law Society in the coming year after the Legal Aid Advisory Committee makes recommendations to Benchers regarding positions the Law Society may wish to take or consider advancing on legal aid in 2019.

The fourth theme was the work of the Mental Health Task Force, which Mr. Avison met with the day before the Bencher meeting. A package from the Lawyers Assistance Program had been

made available to Benchers, recognizing that Benchers have discussions with students and that it could be a very helpful resource.

The final theme Mr. Avison reported on was a staffing update. He reported that interviews for the Chief Legal Officer position were complete and that he hoped to be in a position to make an announcement shortly.

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

Mr. Van Ommen, QC briefed the Benchers as the Law Society's member of the FLSC Council. He began by speaking about the new handmade podium Mr. Van Ommen built for the Law Society.

Mr. Van Ommen noted there had not been a Council meeting since the last Bencher meeting. He gave a brief report on one of the aspects of the Federation's work; namely, consultation with Federal Government over various pieces of legislation that it is considering passing.

He spoke about Bill C-86, an omnibus bill and referred to two main aspects. The first was that federally incorporated companies will have a requirement that they collect and keep information about beneficial ownership of their shareholders. In the anti-money laundering file, that is one of the key elements – to require disclosure of beneficial ownership. The legislation only requires the company to collect and keep that information. There are no provisions for public access to information but this is something being looked at. Two weeks ago, the federal government reached out to the Federation and to talk about how they would move to make that information publicly available or available to investigative bodies, like the Police and the Law Society.

Mr. Van Ommen said the bill also creates a college of patent agents. Patent agents will be regulated separately; however, this creates a problem as many patent agents are also lawyers who are regulated by law societies. The proposed legislation will require patent agents to be members of both regulatory bodies. The Federation has suggested this is unnecessary, that the requirements in both professions are similar, and that there should be an exemption for patent lawyers that they only be required to be register with one or the other. This is an example of the kind of work the Federation is engaged in on a continuous basis.

Mr. Van Ommen said he would be traveling to Ottawa soon for the next Federation meeting and that he would report on that meeting at the first Bencher meeting in 2019.

DISCUSSION/DECISION

5. Mental Health Interim Report with Interim Recommendations

Mr. Greenberg referred to the discussion about the Interim Report that took place at the last Bencher meeting. He said he appreciated the comments, discussion, and suggestions received at the last Bencher meeting when the report was introduced for discussion. He said these things have been taken on board for future consideration but that the report presented at the meeting today for decision is identical to the one that was before the Benchers at the last meeting. The report and recommendations remain the same, including references to the Code of Professional Conduct wording. In this respect, the Mental Health Task Force's recommendation is still for the Task Force to collaborate with the Ethics Committee on possible changes.

Mr. Greenberg informed Benchers that the report had been circulated publicly in variety of places, such as on LinkedIn, and it had received a lot of views. The feedback received about the report has been positive.

Mr. Greenberg then moved (seconded by Ms. Stanford) that the First Interim Report of the Mental Health Task Force be accepted and that its recommendations be approved. The motion was approved unanimously.

6. Annual Fee Review Working Group: Final Report

Mr. Lawton thanked the members of the Working Group and staff for their work in creating the final report.

Mr. Lawton introduced the final report and provided background in formation. In 2017, a member put forward a resolution at the Annual General Meeting that the Law Society should look into modifications and reductions of practice fees and insurance premiums for public interest practitioners. The Working Group was created and asked to produce a report in time for the 2018 Annual General Meeting. The consultation process for more involved than anticipated, which led to the delay in producing the report.

Mr. Lawton reminded Benchers of the mandate of the Working Group and indicated it had met four times. They invited the two lawyers who put forward the resolution at the 2017 AGM to attend a meeting and this led to a lively and engaging conversation about the scope of the proposal. The Working Group met in July and decided it would be appropriate to send out a draft consultation paper to the profession and the public.

Mr. Lawton said it was essentially a review of the work of a 2013 working group that had looked into a very similar request.

Recommendation 10 in the report recommends against providing public interest practitioners with reduced rates of practice and insurance fees. However, the Working Group also recommends that Benchers continue to consider this issue and that it will be up to Benchers to consider if a further working group should be struck.

Mr. Lawton said the Working Group wanted to understand and characterize who would fit into the group of "public interest practitioner". This was the same challenge faced by the 2013 working group. It was difficult to identify, fairly and in a principled way, that particular group and Mr. Lawton said this was a challenge throughout the entire process. Feedback received in response to the consultation paper provided helpful suggestions; however, the Working Group was not able to say who is clearly captured by the definition of "public interest practitioner".

Mr. Lawton said the Working Group thinks the Law Society needs to continue considering the above issue in the future, including whether in appropriate circumstances certain practitioners should have an adjustment or a sliding scale with respect to insurance fees and premiums. He said the Working Group also considered whether a lawyer's income should be one of the indicating factors for an entitlement to occur. However, that too was difficult and appeared to be arbitrary as there were a number of suggestions as to what annual income should trigger such an entitlement. Also suggested was that lawyers should receive the entitlement if half of their practice was legal aid. Once again, the Working Group had difficulty with this as many lawyers provide services outside the legal aid scheme and are earning marginal incomes.

The Working Group was concerned that it could not clearly define a "public interest practitioner" as an individual or a group, and for that reason, the Working Group could not recommend an adjustment to fees and insurance at this time. However, the Working Group does recommend further thought and exploration of the question.

Ms. Kresivo reminded Benchers that the item was on the agenda for discussion only and that the recommendations would not be before the Benchers for decision until the next meeting. Ms. Kresivo invited discussion on the final report.

Mr. McKoen asked Mr. Lawton to clarify that, if the Working Group could identify a class of lawyers who should be subject to a tariff reduction then the Working Group would have recommended a reduction, or if the Working Group stopped at the point of not being able to identify the class of lawyers. Mr. Lawton confirmed that it was the latter and said he had concerns in any event. Even if a particular group could be identified, there may be many other lawyers who also practice in that area that could be omitted from the opportunity to have a reduced fee. Mr. Lawton said, in the interests of treating everyone equally, the Working Group did not want to move too quickly in terms of a cultural change, but still wanted to be open-minded to the question of a reduced fee.

Mr. Campbell acknowledged the work of the Committee and the thought that went into the final report. He respectfully held a different view to the Working Group and thought it was workable to create a system where a limited group of lawyers receive a decrease in their membership fees based on the public interest nature of their work. Mr. Campbell referred to the United Kingdom where lawyers pay different fees based on their income. In BC, membership fees are becoming more expensive and this has a direct impact on the affordability of legal services.

Mr. Campbell acknowledged the Working Group's concerns but felt it was possible to establish a reasonable criteria that would be limited to lawyers who do exclusively legal aid work or who exclusively work for low income clients, and lawyers who themselves have a low income. He added that the reduction in fees did not need to be significant, and could be done in a modest way that does not have an unreasonable burden on the rest of the legal profession and is consistent with the public interest. This would encourage and recognize lawyers that do this important work and serve underrepresented clients.

Mr. Ferris asked Mr. Lawton if the Working Group considered reducing membership fees and insurance fees as one package, or if the Working Group thought about different considerations with respect to the membership fee or the insurance program. Mr. Lawton said the Working Group did consider different considerations, that it is possible to require certain higher risk individuals to pay higher insurance premiums, but that the Working Group did not think it was appropriate to make such recommendations in the report. He said this could be an area to be considered in the future.

Ms. Snowshoe adopted Mr. Campbell's comments and Mr. Ferris' suggestion to separate consideration of the membership fee and the insurance fee in the future.

Mr. McKoen referred to consideration of the budget and often feeling constrained when setting fees because of the disproportionate impact fees have on lower income practitioners versus members who practice in areas that are more lucrative. The Law Society is faced with increasing fee pressure because of items such as money laundering, which place increasing pressure and resources on the Law Society to appropriately deal with allegations against members of the profession. If the trend in that area continues, the Law Society will be facing increasing pressure to increase fees to fund the activities necessary to police the membership with respect to financial impropriety. The public interest sector is not particularly exposed to the money-laundering issue and it does strike him as something the Law Society needs to think about, so that the fee can be set in such a way that we can fund the operations that are falling on the Law Society and yet still not reduce the ability of the membership to provide services at the lower fee end of the spectrum.

Ms. Kresivo confirmed the final report will come back before the Benchers for decision at the first Bencher meeting in 2019.

REPORTS

7. Enterprise Risk Management Plan – 2018 Update

Mr. Ferris provided an update on the Enterprise Risk Management Plan. The Plan is prepared on a three-year cycle. In 2017 there was an in-depth review, which means in 2018 and 2019 there will be an annual update before another in-depth review occurs in 2020. He said this annual update went to the Finance and Audit Committee last month.

Mr. Ferris said the Plan identifies the risks to the Law Society's goals and mandate, as well as the priority of those risks and mitigation strategies in managing those risks. Mr. Ferris asked Benchers to bring to the attention of the Committee any risks not mentioned in the Plan, as it is an important document that governs the operations of the Law Society.

Ms. Merrill asked where she would find in the Plan the risk associated with the aborted Annual General Meeting. Mr. Ferris said the Committee did discuss this but that it is not included in the Plan.

Ms. Yan asked Mr. Ferris to clarify if the Law Society has a business continuity plan that would apply, for example, in the event of an earthquake or natural disaster. Ms. McPhee responded that the Law Society does have a crisis communication plan that lays out who should be involved when we experience any natural disaster, fire or earthquake. She said we also have significant secondary offsite storage and fire drills every year. Ms. McPhee said we do not have a formal plan document but there are a number of things in place in the event of any kind of emergency. Ms. Yan suggested creating a business continuity plan and establishing a committee that conducts an annual review of the Plan.

Mr. McPherson commented that the top concern is anti-money laundering and misuse of trust funds and trust account. He said this was an area the Law Society needs to continue to focus on.

8. Year-End Reports:

- **Access to Legal Services Advisory Committee**

Chair Jeff Campbell, QC began by thanking Committee members and staff. He explained that the Committee is an advisory committee and its role is to recommend to the Benchers ways the Law Society can promote access to legal services.

Mr. Campbell reported that, in 2018, the Committee looked at the viability of a non-profit law firm model. The concept of the model is to provide low cost services to clients who would not otherwise be able to afford to retain counsel. He said this model has been established with some

success in other places, such as Washington, DC. The Committee established a subgroup to work on this project and consulted with a number of people involved in non-profit legal services to get a better understanding of how those firms operate. More recently, the group engaged with former Bencher Stacy Kuiack, who has some experience with entrepreneurial start-up businesses. Mr. Campbell said the Committee recognizes it is not the role of the Law Society or the Committee to establish a non-profit law firm; rather, its intention is to engage with firms in private practice who might be interested in this initiative.

The Committee has also begun to review the data available from the new questions on the Annual Practice Declaration about access to justice. As the questions were added partway through 2018, some but not all lawyers have completed the new questions. The group that completed the new questions is heavily weighted towards government lawyers and in-house counsel. Mr. Campbell said the Committee will not have a full and accurate picture until 2019 when all lawyers have completed the new questions. However, the Committee has reviewed the questions to consider how they might be fine-tuned, improved and to see what could be learned from the responses.

Mr. Campbell reported that the Committee has also recently discussed a possible proposal to Benchers that there be a review of Law Society regulatory processes in order to improve access to justice. At the Annual General Meeting there was an overwhelming response from the profession that the Law Society do more to encourage pro bono work. In his view, this review would also be consistent with the Law Society's strategic plan, which includes the goal of reviewing regulatory requirements to ensure they do not hamper innovation or hinder the cost effective delivery of legal services.

Mr. Campbell said, while the Law Society has continued to be active in promoting access to justice, given recent events it is important the Law Society continue to be active and be seen to be active on this topic. He reported that the Committee had discussed the possibility of a review of Law Society processes and what principles might guide that review. At this time, the Benchers have not tasked the Committee with the assignment of carrying out this review. However, given recent developments, Mr. Campbell suggested this be included as part of the Committee's work in 2019 and form part of the strategic plan.

- **Rule of Law and Lawyer Independence Advisory Committee**

Chair Jeff Campbell, QC thanked Committee members and staff. He said the role of the Committee is to advise the Benchers on issues relating to lawyer independence and the rule of law.

Mr. Campbell reported that, in 2018, the Committee has continued to work on public education. A rule of law lecture was held in June 2018. This was the second annual event and the

Committee hopes to continue it in the future. The lecture was entitled "*Rule of Law and Social Justice*" and included presentations by former Supreme Court of Canada Justice the Honourable Ian Binnie, Dean of the Peter Allard School of Law at UBC, Dr. Catherine Dauvergne, and journalist Jonathan Kay. The lecture was attended by 170 people and was available to be viewed online. Mr. Campbell thought it was a thoughtful and engaging presentation, and was well received by the people who attended. The Committee plans to continue with a third lecture series in 2019.

Mr. Campbell reported that the Committee also offers an annual high school essay contest on the rule of law. It was open to high school students across the province and we received approximately 50 submissions. The winners were presented with the award at the July 2018 Bencher meeting.

Mr. Campbell said the Committee has also been involved in publicly commenting on rule of law issues. The Committee recently drafted an article on civil disobedience and the rule of law, which came about from the Committee's discussions about some of the protests surrounding the Trans-Mountain Pipeline. The article is soon to be published in the Benchers Bulletin.

The Committee has also been involved in commenting on different pieces of legislation. The Committee produced a paper, which is included in the materials for the Bencher meeting today, on section 3 of the *Legal Profession Act.*

Finally, Mr. Campbell commented on Bill 49. He said this was a piece of legislation the Committee has been following and discussing. The Committee brought it to the attention of the Executive Committee and thinks all Benchers should be aware of it. The Bill would create an Office of the Superintendent of Professional Governance. The intention is to create an office that would oversee a number of professions in the province. The professions covered mainly relate to resources. However, the Act also provides the superintendent with very broad powers to bring other professions under its authority and the superintendent can conduct an investigation into other regulatory bodies and issue directives, including directing the profession to exercise powers in a certain way if it is considered to be in the public interest. The profession would be statutorily compelled to comply with these directives. These are very broad powers and the legal profession is not excluded from the application of this Act.

Mr. Campbell said the Bill does not immediately affect the legal profession and all indications are that it was designed for certain natural resource professions. However, it is potentially in the future a risk to the independence of the Bar. It creates a framework that could allow for interference by the office with the legal profession and, in Mr. Campbell's view, the profession should not be complacent that this legislation could never be invoked for the legal profession. There may be no intention to use the legislation in respect of the legal profession at this time, but future governments may take a different view. The Committee will continue to monitor this Bill.

- **Equity and Diversity Advisory Committee**

Vice-Chair Brook Greenberg thanked Committee members and staff for their work throughout the year. Mr. Greenberg touched on some of the key aspects from the report.

Mr. Greenberg referred to the Justicia project, which has been supported and facilitated by the Law Society since its inception. The Committee has continued to support the promotion of Justicia resources that are available, including a staff presentation on model policies on parental leave and flexible work arrangements, which was made to the Crown prosecution service and a presentation by Pinder Cheema, QC to the CBA BC Women Lawyers Forum Annual General Meeting.

Mr. Greenberg reported on the Maternity Leave Loan Benefit Program, which was implemented as a pilot project in 2010. The Committee continues to review the program and look for ways to improve it. The Committee most recently created a survey, with the aim of trying to get more information about how the program could be improved.

He said the Committee has prepared a memorandum for the Governance Committee with respect to how to further foster equity and diversity at the Law Society in leadership positions. The memorandum follows up on some recommendations from an earlier Governance Committee report in 2012.

Mr. Greenberg reported that the Lawyer Education Advisory Committee is doing a comprehensive review of the articling program. That Committee consulted with the Equity and Diversity Advisory Committee about a survey and the Committee gave feedback on the survey from an equity and diversity perspective. Similarly, the Committee was consulted with respect to issues that have arisen regarding the credentials and admission process, and considering contextual factors when looking at people's admission. He said the Committee provided some guidance on that with a focus on education and training for tribunal members.

The Committee has also looked to collaborate with the Truth and Reconciliation Advisory Committee, who are looking at the Act, Code and Rules more generally with respect to equity and diversity issues.

Finally, the Committee plans to have a meeting with the editorial board of the advocate to discuss the diversity representation on the magazines covers and in future articles.

- **Lawyer Education Advisory Committee**

Chair Dean Lawton, QC acknowledged the members of the Committee and staff for their work. He reported that, under the strategic plan, the Committee was asked look at the value, existence

and future of articling in BC. The Committee, with the help of staff, designed a viable and statistically measurable way of getting responses from young lawyers in BC to their articling experience. A focus group and survey has been developed, which will go out to 1st, 2nd and 3rd year lawyers in the province. The survey will go to Executive Committee for review and approval in 2019.

Mr. Lawton reported that the Committee is wanting to know about the availability of articling positions, the effectiveness of articling and examining alternatives to articling. The Committee is closely following developments in Ontario with respect to their articling program. Mr. Lawton asked Mr. Treleaven to update Benchers on these developments. Mr. Treleaven said Ontario's report has not yet been made publicly available and that he would circulate it once it is published.

Mr. Lawton said if the Law Society of Ontario decides to go with different model, it may trigger a need on part of law schools in Canada to adjust their way of teaching law students. Mr. Lawton said he had a concern about overall quality and service, which would need to be considered.

Mr. Lawton referred to his presentation a year ago on the liberalization of CPD credit and, in particular, the question of whether pro bono should qualify for CPD credit. The Committee has spent considerable time looking at this and engaged the help of the Access to Legal Services Advisory Committee. He said there is no consensus because it is such a challenging issue. The Committee has prepared a report, which contains recommendations, but that it is not ready to be released yet.

In terms of going forward, the Committee is interested in maintaining its obligations and action plan with respect to truth and reconciliation. Mr. Lawton is keen to see the evolution of the curriculum with the Professional Legal Training Course, to have interwoven into all of its elements, consideration with respect to truth and reconciliation.

- **Legal Aid Advisory Committee**

Chair Nancy Merrill, QC thanked Committee members and staff for their hard work. Ms. Merrill said the Committee wanted to look at the cost to society of not properly funding legal aid. The data to support an economic analysis is not available. There is no empirical data that tells us how legal aid, or the absence of it, impacts people's lives and/or draws further on publicly funded resources. She said we may have to start lobbying the government, the courts, and the Legal Services Society to start collecting that data.

Ms. Merrill reported that a second colloquium was held on November 17, 2018. Justice Bruce Cohen acted as moderator. A variety of individuals and organizations were present and spoke about views on legal aid and what is needed; including Indigenous support services, transition

houses, mental health and addictions, immigration groups, users of legal aid, self-represented litigants, prison system representatives, the police, women's support services and the like.

Ms. Merrill said our role at the colloquium was to listen. Everyone spoke of the need to protect the most vulnerable in our society and the importance of a strong legal aid system. One of the things that came out of the colloquium was that the Law Society could lead a coalition of people to lobby the government for better funding for legal aid. She said this will be one of the Committee's main tasks in 2019.

- **Truth and Reconciliation Advisory Committee**

Chair Nancy Merrill, QC thanked Committee members and staff. Since the mid-year report, the Committee has been focused on implementing the Truth and Reconciliation Action Plan that Benchers approved earlier in the year. This will likely remain the focus of the Committee in 2019.

The Committee is endeavoring to move forward with the intercultural competence training. It will also invite a guest speaker to speak about the principles of Gladue reports and an invitation may be extended to the entire Bencher table.

The Committee is going to make a request of the Ethics Committee to look at adding to the Professional Code of Conduct a reminder to defence counsel to advise their indigenous clients of the availability of First Nations courts and Gladue rights.

In terms of outreach, Ms. Merrill said the Committee will be taking a more proactive approach to reach out to indigenous organizations and catalogue events coming up, such as courses, symposiums and conferences, because it is important for the Law Society to have a presence at these events.

- **Mental Health Task Force**

Chair Brook Greenberg thanked Committee members and staff for their work throughout the year. He referred to the Interim Report, which is on the Bencher agenda for decision. The report outlines what the Task Force has done this year and what the plans are for 2019. However, he wanted to make four main points.

The first was that there are other mental health task forces in various jurisdictions and BC is among the first to bring forward recommendations. He said he was proud and grateful to the Task Force and Bencher table for that and the Task Force plans to continue its good work.

Secondly, Mr. Greenberg said the focus on a communications strategy is continuing. There will be an article in the Benchers' Bulletin with respect to the Interim Report and there are plans for other communications initiatives.

The third topic is that the Task Force is not only focusing on future recommendations but on implementation of the recommendations adopted by Benchers today. He does not want the momentum to stall.

Finally, Mr. Greenberg referred to the recent article "*Big Law Killed My Husband*". Mr. Greenberg suggested all Benchers read the article and said it would be helpful for Benchers in conducting Bencher interviews and to assist with understanding the pressures experienced by students.

- **Alternate Legal Service Providers Working Group**

Chair Miriam Kresivo, QC thanked Committee members and staff for their work during the year, particularly in preparing the consultation paper and speaking to the family law bar.

9. Law Firm Regulation Task Force Update

Chair Steven McKoen referred to the pilot project launched in the spring of 2018. The goal of the pilot project was to distribute a self-assessment tool to approximately 10% of law firms in BC. The pilot project ran from July to October 2018. 348 firms were solicited for involvement and 6 firms withdrew for various reasons, leaving 342 firms remaining. 277 responses were received and 65 are outstanding. Mr. McKoen said he has been advised this is a good response rate compared to other jurisdictions.

The Task Force was hoping to have a full report and assessment of the self-assessment tool for Bencher consideration at the meeting today. However, given the delay in responses that will need to wait until early 2019. Mr. McKoen said the Task Force hopes to be able to deliver to Benchers a summary of the pilot project in the first few months of 2019. Following that, there will be an assessment of the actual responses to the self-assessment and a recommendation to Benchers as to whether or not the self-assessment tool should be rolled out to all law firms. If the Benchers recommend the self-assessment be applied to all law firms, the Task Force will make recommendations about the form of the self-assessment based on the feedback received from the pilot project. He said recommendations may also include the frequency of completing the self-assessment and timing and other procedural elements.

Other matters that will need to be discussed in the future are whether to include government and in-house lawyers and what that process might look like and how the idea of "law firms" would apply to those types of organizations. The Task Force will also look at identifying what

measurements and data can be collected and used to assess the efficacy of the system over time. He said the goal of the project is to create a regulatory environment that promotes processes, policies and procedures that improve and reduce the incidence of certain behaviours in the profession that create risk for everyone.

The experience in Australia has been that after doing the self-assessment process, the majority of incorporated law practices reported that they had revised their policies and procedures as a result of being asked to think about these issues. Mr. McKoen said ideally the data would show over time that the self-assessment process is achieving its goal.

Mr. Ferris said full implementation would be a large undertaking for the Law Society and asked if it would be possible to provide a budget as to how much it will cost the Law Society to fully implement the recommendations. Mr. McKoen agreed this would be a good idea.

10. Report on Outstanding Hearing & Review Decisions

Mr. Ferris thanked Jeff Hoskins for putting on the annual Tribunal Refresher course, which focused on intercultural fluency. Mr. Ferris updated the Benchers on outstanding hearing and review decisions, and emphasized the importance of getting decisions out in the timely manner.

Final Remarks

Mr. Avison paid tribute to outgoing President Kresivo and commented on some challenges faced in 2018 and the elegant way with which Ms. Kresivo guided the profession. On behalf of staff, he presented Ms. Kresivo with a gift as a token of our appreciation for her efforts throughout the year.

Ms. Kresivo responded that it was her honour and privilege to serve as the Law Society President for 2018. She said she learned a great deal, gained some new skills and made wonderful friends. Ms. Kresivo highlighted some of the key accomplishments in 2018, thanked staff for their hard work throughout the year and the Benchers for volunteering their time.

Ms. Kresivo then welcomed Nancy Merrill, QC as President for 2019, presenting her with the President's pin. She noted it was the first time there would be two female Presidents in a row and said Nancy would be an amazing President.

CBA(BC) President Margaret Mereigh then presented Ms. Kresivo with a gift on behalf of the CBA(BC) and thanked her for her dedicated work to serve the profession and members of BC.

KG
2019-01-17

The Law Society of British Columbia

Memo

To:	Benchers
From:	Executive Committee
Date:	January 16, 2019
Subject:	Law Society Representation on the 2019 QC Appointments Advisory Committee

Historically, each Fall two members of the Law Society appointed by the Benchers participate in an advisory committee that reviews all applications for appointment of Queen's Counsel, and recommends deserving candidates to the Attorney General. The Benchers' usual practice, on the recommendation of the Executive Committee, is to appoint the President and First Vice-President to represent the Law Society.

The other members of the QC Appointments Advisory Committee are the Chief Justices, the Chief Judge, the Deputy Attorney General and the CBABC President.

The Executive Committee recommends that the Benchers appoint President Nancy G. Merrill, QC and First Vice-President Craig Ferris, QC as the Law Society's representatives on the 2019 QC Appointments Advisory Committee.

The Law Society of British Columbia

Memo

To:	Benchers
From:	Executive Committee
Date:	January 16, 2019
Subject:	Recruitment and Nominating Advisory Committee

Each year, the Law Society has the opportunity to make appointments to a variety of institutions and organizations. Some of the appointments, such as those we make to the board of the Legal Services Society, reflect the engagement of the Law Society with issues related to the legal profession and the public interest in the justice system. Others, such as our appointment of a member of the board of the Vancouver Airport Authority, reflect the interest of those organizations in having a member of the legal community on their board.

All of these organizations have their own processes for recognizing and identifying likely appointments to their boards. Often, their own processes identify individuals who have served on committees or otherwise have indicated a commitment to the organization. The organizations frequently provide us with likely candidates for us to appoint based on these processes.

While acknowledging the legitimate interest these organizations have in the appointments we make to their boards, the Law Society also has to take the responsibility and the opportunity seriously and not simply rubber stamp the suggestions we receive.

Within the Law Society, the person or group empowered to the make the appointment varies. Most of the appointments fall to the Executive Committee, some are the prerogative of the President and a few require the Benchers to make the appointment.

Rule 1-51(j) provides that the powers of the Executive Committee include recommending to the appointing bodies on Law Society appointments to outside bodies. As a result, for some years the Executive Committee took responsibility for overseeing our process for getting information on potential appointments to the right person or group for decision. The Executive Committee eventually created a subcommittee, known colloquially as the Appointments Subcommittee, to assist in developing recommendations for appointments.

In April, 2017, then President Van Ommen, QC introduced a motion to create a Recruitment and Nominating Advisory Committee aimed at the active recruitment of qualified individuals from all regions of BC for appointment to both external and internal bodies.

The Recruitment and Nominating Advisory Committee ("RNAC") was expected to provide advice, as appropriate, about potential appointees to other organizations to which the Law Society makes appointments and to Law Society committees, task forces and working groups when appointees other than Benchers are required. The committee was expected to actively seek out well-qualified persons with the requisite character, knowledge, experience, expertise and willingness to serve and fulfill the responsibilities of the appointment.

Mr. Van Ommen's motion passed unanimously.

For 2017, the membership of the RNAC consisted of four members of the Executive Committee, including the President as Chair, along with Ms. Ahmad, Mr. Lawton and Ms. Stanford. For 2018, the membership of the Committee again consisted of four members of the Executive Committee, along with Mr. Campbell, Ms. Walkem and Ms. Westwood.

While the intention behind Mr. Van Ommen's initiative was laudatory, in practice the RNAC has simply taken over the function of the previous Appointments Committee while adding more time, process and resources to get to a decision.

As noted above, Rule 1-5(j) provides that the Executive Committee has the authority and responsibility of recommending Law Society appointments to outside bodies. In light of the experience with the RNAC to date, the Executive Committee recommends to the Benchers that the RNAC be wound up and that in the future the Executive Committee exercise the authority given it under the Rules to oversee and recommend to the appropriate appointing person or body within the Law Society on appointments to outside bodies.

The Law Society of British Columbia

Memo

To:	Benchers
From:	Executive Committee
Date:	January 15, 2019
Subject:	Law Society Appointments to Federation of Law Societies of Canada Committees

Rule 1-51(j) provides that the Executive Committee has the power and duty of recommending Law Society appointments to outside bodies.

As a result of Kris Dangerfield's decision to step down as Chair of the Federation's Standing Committee on the Model Code of Conduct ("Model Code Committee") and other vacancies on that committee, we have the opportunity to appoint someone to the Model Code Committee. Our Law Society was previously well represented on the Model Code Committee by Gavin Hume, QC until his departure in 2016.

The Executive Committee recommends Pinder K. Cheema, QC as our appointee to the Model Code Committee. Her experience from two previous terms on our Ethics Committee and as the current Chair of the 2019 Ethics Committee will provide the right background for her participation on the Model Code Committee.

In addition to the Model Code Committee appointment, we have the opportunity to appoint a member to the Federation's Standing Committee on National Discipline Standards. As our Chief Legal Officer, Deb Armour, QC was our representative on this Committee until her departure in the fall. The Executive Committee was of the view that we should continue to appoint our Chief Legal Officer as our representative on this Committee and recommends that the new Chief Legal Officer be appointed after joining the Law Society.

The Law Society of British Columbia

CEO's Report to the Benchers

January 25, 2019

Prepared for: Benchers

Prepared by: Don Avison

1. Addressing 2018 Priorities

With the commencement of a new year the staff of the Law Society look forward to working with President Nancy Merrill, QC, with the Executive Committee and with Benchers.

Work will continue on a number of fronts relevant to implementation of the Law Society's Strategic Plan. Key areas of focus will involve follow-up on the recommendations of the Mental Health Task Force (including plans for staff training), continuing the work of the Truth and Reconciliation Advisory Committee and providing advice on options for next steps on addressing access to justice issues. I also hope to meet with all Committee Chairs in the coming weeks to discuss how we can best support the work of their committees in 2019.

2. AGM Reform

Staff will be providing support to the Governance Committee and to Benchers in developing proposed reforms and process improvements in relation to the conduct of the Law Society's annual general meeting. The objective will be to improve online capacity and to develop proposals for Rule changes that would assist in improving the efficiency of the AGM voting process.

3. Collective Bargaining Update

Benchers will be provided with an update on the collective bargaining process and will be asked to consider ratification of an agreement with the Professional Employees Association.

4. Anti-Money Laundering Initiatives

As Benchers know, Law Society representatives met with the Attorney General, with Dr. Peter German and with others in 2018 to provide background on work that the Law Society has undertaken in this important area.

In addition to the work being done by Dr. German pursuant to the mandate given to him by the Attorney General, the Minister of Finance also established a Panel of Experts to examine Money Laundering in Real Estate. The Expert Panel is chaired by Maureen Maloney, a former Deputy Attorney General, and also includes Tsur Sommerville of UBC's Sauder School of Business and Brigitte Unger of the University of Utrecht in the Netherlands. The Panel has recently asked to meet with Law Society representatives and I expect that meeting will take place before the end of January.

5. Provincial Government Engagement

Subject to directions from Benchers, I anticipate there will be a significant focus this year on the gaps in British Columbia's legal aid program and how this adversely impacts the interests of citizens in need of assistance.

The provincial government's Speech from the Throne is scheduled for February 12, 2019 and will be followed a week later by the Budget Speech. While additional funds for legal aid were made available in the 2018 budget we will be looking to see if that trend continues in 2019.

As with last year, I expect the Law Society will again appear before the Standing Committee on Finance and work is also underway, in support of the work of the Legal Aid Task Force and of Benchers, to develop materials for government consideration regarding the pressing and substantial need for further investments in this area.

Don Avison
Chief Executive Officer

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: January 17, 2019
Subject: Futures Task Force: Establishment and Terms of Reference

Introduction

Section 9 of the *Legal Profession Act* provides that the Benchers may establish committees and authorize a committee to do any act or to exercise any jurisdiction that, by this Act, the benchers are authorized to do or to exercise, except the exercise of rule-making authority.

While the *Act* refers specifically to committees, the generally understanding of that term would include the establishment of task forces, working groups or any other group that the Benchers established to consider, investigate, take action on, or report on some matter.

The Executive Committee is recommending to the Benchers the establishment of a Futures Task Force. The proposed terms of reference for the Task Force are set out in the Appendix.

Background

It has been nearly twenty years since the Benchers charged a group with looking more broadly at the future of the legal profession and legal regulation in British Columbia and over ten years since the Benchers have considered a report from such a group[1]. While the Benchers have established a number of advisory committees to provide advice on specific issues and topics, such as the Legal Aid Advisory Committee and the Truth and Reconciliation Advisory Committee, there has been no particular group recently charged with looking more broadly at the overall topic of the future of this institution and the profession it regulates.

In recent years, the future of the legal profession has been the subject of a number of reports, several books and an almost overwhelming number of papers and articles.

[1] The last such report was *Towards a New Regulatory Model: Report of the Futures Committee*, January 2008

In 2014, the Canadian Bar Association Legal Futures Initiative issued its final report *Futures: Transforming the Delivery of Legal Services in Canada* which was the culmination of two years of consultation, original research and analysis on the future legal marketplace in Canada.

In 2016, the Law Society of England and Wales issued its report *The Future of Legal Services*, noting that it seems inevitable that solicitors and lawyers face a future of change on a varied scale, depending on area of practice and client types. Business as usual is not an option for many, indeed for any, traditional legal service providers.

In that same year, the American Bar Association's Commission on the Future of Legal Services issued its *Report on the Future of Legal Services in the United States*, noting that the Commission believed that significant change was needed to serve the public's legal needs in the 21st century.

In 2017, the Law Society of New South Wales issued its report *The Future of Law and Innovation in the Profession*, noting that it is no understatement to say that the legal profession in New South Wales and, for that matter, across Australia is undergoing change at a pace never experienced and in ways most lawyers would have found hard to predict at the beginning of the 21st century.

Early in 2018, LawPro, the insurance arm of the Law Society of Ontario, issued a report *Perspectives on the future of law – How the profession should respond to major disruptions* observing that the profession is in the midst of significant change, and is headed into a period where there will be even greater change. These changes are driven by disruptions that alter the very nature of how traditional legal services have been performed and provided to clients for decades.

All of the reports, books, papers and articles share a common theme: that the market for legal services is facing significant change that will dramatically affect the legal profession and delivery of legal services and have significant consequences for lawyers and legal regulation.

In light of all the work that has been down recently by others, it's reasonable to ask why we need to establish our own group to look at the future of the legal profession and legal regulation.

The first and most important consideration is that while the practice of law occurs almost everywhere in the world, there are significant differences in the impact of globalization, technology and regulation from jurisdiction to jurisdiction. The pressures and challenges facing a New York or London-based international law firm are meaningfully different from those facing a small firm in Port Hardy, BC. That said, there are also similarities which are worth exploring.

The second consideration is more practical. While a BC Futures Task Force can review, consider and build on the work in other jurisdictions, in order for any recommendations to have credibility

with BC lawyers, the work has to be informed by the views and concerns of the legal profession in BC.

Some might observe that consideration of the broader issue of the future of the legal services and the regulation of the legal profession is the responsibility of the Benchers as a whole. And the Executive Committee recognizes that this must be the case. But in recommending the creation of a specific Task Force charged with looking to the future, the Executive Committee is mindful that establishing a specific group with the responsibility for investigating, reviewing and reporting on the issues facing the Law Society and the legal profession will provide meaningful pre-board input for the Benchers. The Executive Committee does expect that the Benchers will have considerable opportunity to consider and discuss the work of the Futures Task Force as it conducts its work and to review and approve whatever recommendations might eventually be made by the Futures Task Force.

Recommendation

The Executive Committee proposes the following resolution:

The Benchers hereby establish a Futures Task Force with terms of reference as set out in the Appendix to this memorandum and that the Futures Task Force provide its final report to the Benchers no later than July, 2020.

Mandate and Terms of Reference for the Futures Task Force

Terms of Reference

Mandate

Recognizing that significant change in the legal profession and the delivery of legal services is expected over the next five to ten years, the Futures Task Force will identify the anticipated changes, consider and evaluate the factors and forces driving those changes, assess the impact on the delivery of legal services to the public, by the profession and on the future regulation of the legal profession in British Columbia, and make recommendations to the Benchers on the implications of the anticipated changes and how the Law Society and the profession might respond to the anticipated changes.

Composition

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.

2. At least half of the Committee members should be Benchers, and the Chair of the Task Force must be a Bencher.

Meeting Practices

1. The Task Force shall operate in a manner that is consistent with the Benchers' Governance Policies.

2. The Task Force shall meet as required.

3. Quorum consists of at least half of the members of the Task Force.

Accountability

The Task is accountable to the Benchers. The Task Force is responsible for fulfilling its mandate and such other tasks as the Benchers may assign during the tenure of the Task Force. If the Task Force requires direction in relation to its mandate, duties or responsibilities, the Task Force will advise the Benchers.

Reporting Requirements

The Task Force is expected to provide status reports to the Benchers every six months and to provide its final report by July 2020

Duties and Responsibilities

1. Ensure, to the extent consistent with its mandate, that the work of the Task Force does not duplicate work undertaken by other Law Society committees, task forces and working groups;

2. Take into account the work of the other law societies and legal professional organizations on the matters identified in the mandate;

3. Identify stakeholders in the future of the legal profession in British Columbia and consult with those stakeholders, other professional organizations and experts as appropriate to ensure a broad engagement on the matters identified in the mandate;

4. Ensure the work of the Task Force provides for input from Benchers and Law Society members in regard to matters within the Task Force's mandate; and

5. Provide a report to the Benchers on or before the Bencher meeting in July 2020 that responds to and addresses the mandate of the Task Force.

The Law Society of British Columbia

Final Report: Reduced Practice and Insurance Fees for Public Interest Practitioners

Annual Fee Review Working Group

Dean Lawton, QC Chair
Barb Cromarty
Roland Krueger, CD
Jamie Maclaren, QC
Phil Riddell

Date: October 29, 2018

Prepared for:	Benchers
Prepared by:	Staff
Purpose:	Decision

DM2114469

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Committee Process

1. In August of last year, a member resolution was received for consideration at the 2017 Annual General Meeting. The resolution sought to have the Law Society investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance premiums, which together comprise the annual fee.

2. Rather than have the resolution proceed to the annual general meeting, it was agreed that the Law Society would investigate and duly consider reduced rates of practice and insurance fees for public interest practitioners and the sponsors of the proposed member resolution would withdraw their resolution.

3. In order to fulfill that commitment, in January 2018, the Benchers approved the creation of the Annual Fee Review Working Group with the following mandate:

   The Working Group will investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance fees and will report back to the Benchers before the 2018 annual general meeting.

4. The President appointed Dean Lawton, QC as Chair of the Working Group and appointed Phil Riddell, and Barbara Cromarty as members, along with Jamie Maclaren, QC as a non-voting member. Following his appointment as a Bencher in April of this year, Roland Krueger, CD was appointed to the Working Group.

5. The Working Group has met four times during the course of the year.

6. In the course of the Working Group's initial teleconference discussion in March, 2018, the Working Group reviewed its mandate and considered how best to proceed with the review. The Working Group concluded that it would be helpful to hear from the proponents of the proposed resolution to better understand their understanding of public interest practitioners. The Working Group also concluded that it would be necessary to consult with the profession regarding reducing fees for a particular group and the professions' thoughts on who might qualify as public interest practitioners.

7. At the next meeting of the Working Group in May 2018, members heard from Mr. Aruliah, one of the two members who submitted the member resolution. Ms. Campbell, the other member, was unable to do so. Mr. Aruliah provided his thoughts on who they had hoped would benefit from the proposed fee reduction as well as their thinking behind the characterization of this group as public interest practitioners. The Working Group also reviewed a memorandum from Mr. Cooke providing basic information about the liability insurance requirements and offerings for lawyers in Ontario, because the original member resolution had referenced reduced insurance fees for lawyers practising criminal and immigration law, and exemptions for Ontario lawyers volunteering in a legal clinic, a student legal clinic, or an Aboriginal legal services corporation funded by Legal Aid Ontario.

8. The Working Group next met in July 2018, when they considered a draft consultation paper for distribution to the profession and provided comments. The consultation paper was posted on

the Law Society website and included in the July 2018 eBrief and highlighted again in August 2018.

9. The final meeting of the Working Group followed the Bencher meeting in September 2018. The Working Group discussed the submissions from individual lawyers and groups in relation to the specific issues and questions identified in the consultation paper.

Recommendation

10. The voting members of the Working Group recommend against providing public interest practitioners with reduced rates of practice fees and insurance fees but suggest that the Benchers give consideration to our current practice of charging all lawyers largely the same amount for practice and insurance fees regardless of factors such as type, volume of work, and area of legal practice, income from practice, risk, geography, clientele and other considerations identified in the consultation.

Background

11. As noted in the consultation paper, the Law Society had previously considered a similar proposal arising from a member's resolution at the 2012 AGM, that resulted in the creation of the Reduced Fee Feasibility Working Group in 2013 (the "2013 Working Group"). The 2013 Working Group produced its "Report on Fee Reduction Feasibility Review," in September, 2013 ("the 2013 Report") which concluded it was not feasible to offer a practice fee reduction to a specified class of Law Society members. A copy of the previous report is attached as **Appendix "A"**.

The Consultation

12. As noted, the Working Group conducted a consultation from mid- July to mid-September 2018.

13. The consultation paper provided background on the issues to be considered by the Working Group and asked that respondents consider several questions in their submissions as follows:

    1) Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

    2) If you would support the development and implementation of a fee reduction for public interest practitioners:

        a) How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

        b) What consequences or impacts of the fee reduction would you foresee as providing its justification?

c) How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

A copy of the consultation paper is attached as **Appendix "B"**.

14. The consultation resulted in over 30 submissions, copies of which are attached as **Appendix "C"**

Should the Law Society develop and implement a fee reduction for public interest practitioners?

15. The overarching question identified in the consultation paper was whether to provide a fee reduction for public interest practitioners. Overall, the Working Group received 25 submissions that favoured a fee reduction and 11 not in favour.

16. Some of the submissions were brief. By way of example, Mr. Mugford wrote:

> *I write to support a recent proposal from two Law Society members that a reduction in the annual practising fee and/or the insurance fee be made available to public interest practitioners on the premise that the current flat fees diminish members' capacity to start and sustain a practice in public interest law.*

17. More substantial submissions were made by the Criminal Defence Advocacy Society, West Coast LEAF, West Coast Environmental Law, YWCA Metro Vancouver Legal Education Program and the Arbutus Law Group LLP

18. By way of example, West Coast Environmental Law wrote:

> *West Coast strongly supports the development and implementation of a fee reduction for public interest practitioners. The Law Society should implement a fee reduction for public interest practitioners:*
>
> *a) in order to recognize and encourage public interest legal practice; and,*
>
> *b) as a measure to recognize the financial challenges of public interest law organizations and their clients …*
>
> *In this fiscal year, Law Society practice fees and insurance will add 6% on top of our salary costs for employing staff lawyers, an amount that if eliminated would allow us to add an additional entry level lawyer at .8 time to our team."*

19. Of the 11 submissions that were not in favour of a fee reduction, there were a variety of reasons for not supporting the proposal.

20. Mr. Horn commented:

> *I have read carefully both Reports and Appendices. I am of the view that the proposed differentiation in fees charged is neither practicable, nor morally justified. It is impracticable because the criteria for qualifying could never be exhaustively pre- determined and would have to be settled on a case by case basis … It is not morally justified because public interest lawyers receive the same benefits from their membership in the Law Society as all other practitioners and should shoulder the same burdens.*

21. Mr. Anderson wrote:

> *I just don't understand the idea that, based on the nature of their practice, some lawyers should pay more and some should pay less. It seems to me that, historically, the practice area which has resulted in the most significant demands on our insurance and other funds has been real estate practitioners. However, the "costs" of that practice has been allocated across all practice areas on the theory that it is more appropriate for all practitioners to bear the costs of the sins of real estate practitioners. I am content with this current model.*

22. Although the consultation paper was not directed at the public, there was one submission by a member of the public. Karin Litzcke wrote:

> *I am a non-lawyer who has just come across your call for input about reducing fees for public interest lawyers … I unfortunately don't have time before your deadline to do a full analysis and fee structure recommendations, but I do want to take a moment to say that this would be a spectacularly awful idea from any number of perspectives. I cannot think of a single reason why this would (a) be a good idea for the legal profession, or (b) engender any improvement in access to justice.*

How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

23. A number of the submissions responded to the request for suggestions about the criteria to be used to identify public interest practitioners.

24. Ecojustice suggested some criteria:

> *The characteristics of public interest law as defined above can be identified in a straightforward fashion:*
>
> *- the litigation is in the "public interest" in that its impact flows broadly or will have a substantial impact beyond the interests of litigants; and,*

- the claim cannot be monetized or, if it can, not to an extent the claim is justified in an economic sense.

Where services in the public interest are offered by a charitable or non-profit organization, these organizations will have traits that likewise identify the practice as in the public interest:

- the selection of cases by the organization is made based on criteria that defines and requires representing the public interest and/or by a board or committee that is representative of the public;

- the primary source of financial support of the organization is public and the scope of funding assures that the litigation does not act to benefit individuals akin to the private practice of law; and,

- the organization does not permit a donor to obtain a benefit from the litigation.

25. West Coast Environmental Law and West Coast LEAF provided similar suggestions.

26. There were common themes among other submissions revolving around a required number of hours or a percentage of total work for approved organizations or for clients who cannot afford to pay where the lawyer was earning an income less than available in private practice.

27. A few submissions referenced doing legal aid work as percentage of the lawyer's overall practice as a factor.

28. Ms. Olmstead commented: "*Employment by an NGO or proof that 40% or more of the lawyer's files are legal aid based, and the lawyer has a salary less than some benchmark, would greatly assist in promoting access to justice and is something that should be supported by the Law Society."*

29. The Criminal Defence Advocacy Society suggested:

Identification of those eligible for fee reduction should include:

- *Those earning less than $50,000.00, net, per annum;*
- *Those whose practice is made up of at least 50% legal aid.*
- *Those who are less than a 5 year call, in order to ensure continued access of young lawyers into the criminal law bar.*

30. Some of the submissions did question the feasibility of identifying the lawyers eligible to receive the fee reduction.

31. Mr. Barbeau observed: *"There is no accepted meaning or method for determining who would be included in the definition of "public interest practitioners", nor will there in the future*

likely be any objective measure for making such a determination … To the extent that non-public interest practitioner lawyers commit to significant pro bono work on behalf of charitable or not-for-profit organizations, one might reasonably question why those lawyers would not also request or demand, similar fee reduction accommodations, there then being no way to definitively delineate between public, social or community benefit as between public interest practitioners and non-public interest practitioner lawyers"

32. Mr. Whitman commented: *"I have read and agree entirely with the observations and conclusions of the Annual Fee Review Consultation Paper posted on the Law Society website. In particular, I agree with the committee that the process of identifying and defining a group is fraught with difficulty, so much so as to be practically impossible. If the LS were to adopt this process, it would inevitably become involved in making political judgments which should be outside its mandate."*

What consequences or impacts of the fee reduction would you foresee as providing its justification?

33. The responses to the consultation paper described a wide range of implications to providing a fee reduction.

34. Those in favour of providing a fee reduction focused on how it would encourage more lawyers to pursue careers in the public interest and create the conditions for new lawyers to choose a public interest law career, particularly in the area of criminal law.

35. It was also suggested that providing a fee reduction would demonstrate the Law Society's commitment to access to justice by extending legal services to the marginalized groups and in particular Indigenous accused. It would also be a way for members that are practising at market rates to support their colleagues who are addressing a societal need and are incurring a financial cost in doing so.

36. The Criminal Defence Advocacy Society commented that a fee reduction would assist by:

> *Ensuring the continuation and health of the criminal law bar;*
>
> *Extending access to justice to the marginalized groups our lawyers represent and in particular indigenous accused; and*
>
> *Maintaining the efficient use of court services by reducing the number of self-represented individuals involved in the criminal justice system*

37. West Coast LEAF suggested:

> *In regard to the impact of the fee reduction, from West Coast LEAF's perspective, the effect would be material to public interest lawyers and organizations … There would be a direct relationship between a reduction in expenses and provision of legal services in the public interest.*

38. Those opposed to the idea of a fee reduction tended to focus on the distributive consequences of the fee reduction and that all lawyers are free to make a choice about the areas in which they will practice.

39. Mr. Franklin commented: "*The idea behind the Law Society is that all lawyers are barristers and solicitors and for matters of convenience and to avoid exactly this sort of thing we all pay the same rates with some minor excepts* [sic] *for those who practice less.*

40. Mr. Kornfeld stated: *If the lawyer chooses to work in this manner, there is no need for the profession to support that choice.*

41. Mr. Barbeau said "*I would suggest that even if it was "feasible" (which I would agree, it is not), it is not an objective that the Law Society, and by extension its members, should be obligated to support, when other more viable and legitimizing options exist, for these individuals and their related organizations to seek and obtain support for their endeavours.*

How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

42. Unsurprisingly, most of the respondents who opposed the idea of a fee reduction did not provide a response to this part of the consultation. However, among those in favour of a fee reduction there were a number of suggestions about how much and to what the reduction should apply.

43. The most common suggestion was that the fees should be 50% of the regular fees and should apply both to the practice and insurance fees.

44. Other suggestions included the concept of a sliding scale, either predicated on the time spent doing public interest work, income or relative to their risk in relation to the insurance program.

45. Overall, the Working Group was mindful that the number of eligible lawyers and the amount of any fee reduction would have an impact on the financial position of the Law Society and, as a number of respondents pointed out, an impact on the fees that the remaining members of the profession would have to pay.

Conclusion

46. The Working Group was very appreciative of the time and effort reflected in the thoughtful comments from all of the respondents to the consultation.

47. In its consideration of the issues within its mandate and in developing the consultation, the Working Group was aware that the issue of differential fees had been recently considered by the Law Society through the 2013 Report produced by the 2013 Working Group. In particular, the Working Group observed that the 2013 Working Group had been challenged by the extent to which the proposal was incomplete, with its specifics remaining to be determined. In the result, the 2013 Working Group had found it difficult to come to answers that were non-arbitrary, principle-based, and practical.

48. The Working Group attempted to address the difficulties the 2013 Working Group had experienced in reaching a recommendation by asking specific questions in the consultation. As the above review of the consultation results shows, respondents provided suggestions and comments that spoke to the specifics of who should receive a fee reduction, how much it should be, and how it might be implemented.

49. As a result, the Working Group was provided with much more information to consider in reaching a conclusion with respect to the issues raised in its mandate. Nevertheless, the Working Group remained concerned about the feasibility and fairness of establishing a definition of "public interest practitioners" that was non-arbitrary, principle-based and practical. Although a few respondents dismissed the difficulty of defining and identifying with certainty those members who would be entitled to a fee reduction, the suggestions often amounted to placing trust in self-identification by members.

50. Moreover, the ability to define and identify those lawyers who would be entitled to a fee reduction had a significant impact on the justification for providing the reduction. For example, if the fee reduction was available to lawyers taking legal aid files, there would be a substantial number of lawyers engaged in legal work for clients in areas similar to those receiving legal aid assistance but who did not meet the financial criteria to receive legal aid. If the nature of the work and the need for better access to justice were the principled justifications for providing the fee reduction, limiting it to lawyers undertaking legal aid work would benefit some lawyers but perhaps not everyone to whom the justification would apply.

51. Ultimately in their considerations the voting members of the Working Group found it impossible to determine criteria for identifying a group of public interest practitioners that were non-arbitrary, principle-based and practical. As a result, the voting members of the Working Group concluded that they could not recommend to the Benchers providing public interest practitioners with reduced rates of practice fees and insurance fees.

52. The Working Group observed, however, that there are a number of different arguments or rationales, focusing on different sub-groups of lawyers and a range of potential justifications, that could in future lead to consideration of variations or alternatives to the fee-setting model that is currently used by the Law Society.

53. It would be difficult, in the context of successive relatively narrow mandates, such as the present one aimed at public interest practitioners, to do justice to a review of the broader policy decisions that have been taken in past. However, if the present allocation of practice fees and insurance fees represents a sufficiently important influence on the availability of legal services, then a more broad-based review may be warranted. Given the potential scope and complexity of such an investigation, the Benchers may wish to consider the level of priority that should be assigned to such a review and whether the idea should be revisited in the process of creating the Law Society's next strategic plan.

The Law Society of British Columbia

Memo

To: Executive Committee
From: Reduced Fee Feasibility Working Group
Date: September 4, 2013
Subject: Report on Fee Reduction Feasibility Review

Introduction

The Reduced Fee Feasibility Working Group (the "Working Group") has met, engaged in consultations, and identified and considered many issues relating to the proposal that a specific class of Law Society members, who practice within non-profit, non-governmental organizations, be charged lower annual practice fees than other Law Society members. **For a variety of reasons described below, the Working Group has concluded that the proposal to charge the group reduced annual practice fees is not feasible.** The Working Group recommends against the further development of the specific class fee reduction proposal.

Background

- The issue of the feasibility of a potential fee reduction for a specific class of members who practice within non-profit, non-governmental organizations was the subject of a member resolution at the Law Society's 2012 Annual General Meeting (**Attachment 1**).

- The member resolution passed by a vote of 85-75 and the Law Society was thereby requested to examine the feasibility of the proposed specific-class fee reduction.

- Subsequently, the Reduced Fee Feasibility Working Group (the "Working Group") was formed to conduct an initial feasibility review. The Working Group has included Benchers Jan Lindsay, QC (Chairperson), David Mossop, QC and Bill MacLagan, as well as Law Society staff members Jeanette McPhee (CFO), Lesley Small (Manager, Member Services) and Lance Cooke (Staff Lawyer, Policy & Legal Services).

- This Memorandum to the Executive Committee is the Working Group's report of its review of the feasibility of the proposed specific-class fee reduction.

Working Group Process

- The Working Group met a number of times in the course of its review. At its initial meeting the Working Group determined that it would be appropriate to enhance its understanding and appreciation of the issue at hand through consultation with proponents and critics of the proposal at the heart of the member resolution.

- Subsequently both proponents and critics of the member resolution were invited to attend and did attend consultations with the Working Group.

- One of the meetings, attended by member resolution proponents Scott Bernstein and Douglas King and by Ecojustice CEO and Law Society member Devon Page, was devoted to understanding the perspectives and concerns of those in favour of the proposed specific-class fee reduction.

- At another meeting the Working Group heard from Glen Ridgway, QC, who had previously addressed the proposed fee reduction in a letter to the President (**Attachment 2**) and was critical of the proposal. Law Society member David Mulroney, who had spoken against the member resolution at the Annual General Meeting, was also invited but was unable to attend due to unforeseen circumstances. The Working Group later received Mr. Mulroney's views on the proposal in the form of a written memorandum (**Attachment 3**).

- The Working Group benefitted significantly from the information and perspectives provided by all who participated in its consultation process and it is very appreciative of the time and effort of each of those participants.

- In addition to the consultations, the Working Group met to work through a range of issues, which were identified as significantly related to the feasibility of the proposed fee reduction, and to consider the implications of the information and comments provided by the consultation participants.

- The final draft of this Memorandum has been approved by all members of the Working Group. The Working Group's recommendation was reached by consensus.

Feasibility and Relevant Issues

As the Law Society was requested to "research the feasibility" of the proposed fee reduction, the Working Group gave some thought to what "feasibility" would mean in the present context. The Working Group decided that for present purposes "feasibility" included three components:

1. Financial Component: The Law Society's finances are in essence a "zero sum" matter. To collect less money from some members means that either other members would have to pay more or the organization's operating expenses (and services, potentially) would

have to be reduced accordingly. Moreover, if new systems or processes were required for the ongoing administration of the proposed fee reduction, the cost of implementing and operating those systems or processes would also need to be accounted for in the additional fees to be charged or the expenses to be reduced elsewhere. Accordingly, for the proposed fee reduction to meet the financial component of feasibility, it would need to be relatively inexpensive to administer and it should not be place an onerous burden on the other members, whose fees may be required to make up the difference and to cover the related administrative costs.

2. Operational Component: "Operational feasibility" takes into account the logistics and demands of implementing and operating a fee reduction program of the type suggested by the member resolution. If such a program were to be implemented, who would qualify for the reduction and on what criteria? Would the program involve an application process? Would applications be required from the non-profit employers of the eligible lawyers or from the lawyer's themselves? Would legitimacy checks be required for applications from members claiming the reduced rate? Who would be responsible for evaluating and determining fee reduction applications and supporting information? Could such a program be administered in the context of present Law Society staff resources or would it require the hiring of additional personnel? The Working Group's view is that a positive finding of feasibility would require significant visibility as to how the proposed fee reduction program would be set up and operated, the operational demands it would involve, and the Law Society's ability to meet those demands.

3. Justification Component: The final component of feasibility is the justification component. The Working Group has been concerned that if the Law Society were going to alter the manner in which practice fees are allotted and charged among its members, such changes would need to be justified and compellingly defensible. Also of concern is the prospect that changing from the present system in which all fully practicing members are charged the same amount in fees, to a system that exempts a specific subclass of members from a portion of the annual fees, might be apt to induce further requests from other sub-sets of Law Society members, either to be included in the proposed exemption or to be beneficiaries of a separate exemption applicable to their own specific group. With the potential that the demand for a practice fee reduction may spread beyond the present proposal, the Working Group considered that feasibility would require any proposed change to be based on principles that are acceptable and defensible and in keeping with both the Law Society's public interest mandate and its accountability for fair and reasonable treatment of its members.

Although the Working Group recognized the different aspects of feasibility represented by the three components, it also noted potential connections among them. Thus, a process that is relatively more demanding operationally is also likely to be more expensive and relatively more difficult to justify. On the other hand, the mere fact that an accommodating process is inexpensive and operationally undemanding does not necessarily imply that it is easily justified.

A suggestion might be inexpensive and operationally simple but manifestly unfair. Consequently, it is important to consider each of the identified aspects of feasibility.

Consultation: Information and Perspectives

Before the consultation meetings, the Working Group developed a list of potentially significant concerns and issues related to the possible implementation, operation, and justification of the proposed fee reduction **(Attachment 4)**. At the time the consultation meetings were being arranged, this list of potentially significant issues was provided to each of the individuals who indicated that they would attend and address the proposal with the Working Group. It was the Working Group's hope that the list of issues would provide a useful focus to the consultations and an opportunity for response and commentary on the issues that had been identified by the Group. None of the individuals with whom the Working Group consulted objected to any items on the list of issues or indicated that additional items should have been included.

PRO – Messrs. Bernstein and King (the "Proponents") and Mr. Page

Initially, the Working Group heard from Law Society members Scott Bernstein, Douglas King, and Devon Page, as representative proponents of the proposed specific-class fee reduction. Messrs. Bernstein and King are two of the three proposers of the member resolution at the heart of the Working Group's task. Each would be a member of the specific class to which the proposed fee reduction would apply. Mr. Page brought a somewhat different perspective, as the CEO of a non-profit, non-governmental organization that employs 18 lawyers in a variety of locations across Canada. Mr. Page contacted the Chair of the Working Group after learning that it had been created and tasked with examining the fee reduction feasibility issue.

The Proponents work for the Pivot Legal Society ("Pivot"). While the proposed fee reduction was envisioned as applying to lawyers who earn a lower income than many lawyers in private practice, the purpose was not to accomplish any significant income leveling effect. Instead, the envisioned purpose was more a recognition of the importance of the work performed by lawyers working for "public interest" non-profit employers, in particular a recognition that those lawyers had effectively chosen to dedicate their time to "public interest" work, despite the fact that the choice may have significantly constrained their potential incomes. The proposed fee reduction was envisioned as the Law Society's token of encouragement for lawyers who do that kind of work. The present income range for many such lawyers was suggested to be approximately $50,000 - $80,000 per annum. Although no specific maximum income level was suggested by the Proponents, their view was that there should be a threshold above which the fee reduction would not be available. The exact placement of that threshold was something that the Law Society would need to determine. When asked, the Proponents did not have a specific fee reduction percentage or amount in mind and they declined to suggest one.

The Proponents had initially envisioned the fee reduction as applicable to lawyers employed by an organization such as Pivot, which depends on grants and donations for its funding. While the

Proponents did not offer a complete model of how the fee reduction might be implemented, they suggested that one possible approach would be for the employer organizations to apply to the Law Society for reductions for their lawyer-employees. Apart from the suggestion of an upper limit on income, the non-profit status of the employer organization and some recognizable "public-interest" focus to the work of the organization and the lawyers, the Proponents did not offer a specific set of criteria for determining which applicant organizations would or would not qualify to obtain the proposed fee reduction. It was acknowledged that the suggested approach would leave the Law Society to determine what amounted to an appropriate or sufficient "public interest" focus on a case by case basis.

When asked, the Proponents indicated that they did not pay their practice fees themselves but that Pivot paid on their behalf and that Pivot's payment of the practice fees was included as a term in their employment agreements. They acknowledged that the proposed fee reduction would not necessarily have the effect of a salary increase or any additional money making it to the qualifying lawyers' hands. They also acknowledged, given the present size of the practice fee, that even a substantial percentage reduction might not amount to a significant financial incentive for lawyers to choose a path of "public interest" focused work for a non-profit organization. However, they thought that a significant component of the fee reduction rationale is the symbolic recognition of the importance of the kind of legal work that lawyers working for non-profit organizations do.

Mr. Page, CEO of Ecojustice, was quite candid that his primary interest in the fee reduction proposal was in the potential cost reduction to his organization. As with Pivot, Ecojustice pays the practice fees of the lawyers it employs, in accordance with the applicable employment agreements between the organization and the lawyers. Mr. Page related that fundraising is a substantial focus and concern of his, in his role at Ecojustice. He related that many donors want their donations to go to specifically to support one or more of the organization's causes. It is significantly more challenging for him to raise funds to pay for the organization's general administrative expenses, including lawyers' practice fees. In short: people who donate want to protect the land and the environment, not pay lawyers. From his point of view, any reduction to the practice fees that Ecojustice would need to pay on behalf of its staff lawyers would be a welcome saving of administrative costs.

Mr. Page indicated that, as of the date of the meeting, Ecojustice employed 5.8 full time lawyers in British Columbia and a total of 18 lawyers across Canada. The salary range for these lawyers was approximately $60,000 to $90,000 per year, depending in part on seniority and experience. Mr. Page indicated that the more senior the lawyers were, the further they tended to fall behind private firm pay rates for lawyers with comparable experience levels.

While Mr. Page did inform the Working Group as to his perspective and Ecojustice's interest in the proposed fee reduction, he did not specifically address the feasibility of the Law Society's potential implementation, operation and justification of the proposal.

CON – Mr. Ridgway, QC, and Mr. Mulroney

At a subsequent meeting The Working Group heard from Law Society member and past President Glen Ridgway, QC, as a representative critic of the proposed fee reduction. Mr. Ridgway initially wrote to then LSBC President Bruce LeRose, QC, by letter of October 17, 2012, **(Attachment 2)** to provide his views, which were critical of the proposed fee reduction. In his subsequent discussion with the Working Group, Mr. Ridgway indicated that his views on the issue had not changed in the interim. In brief, Mr. Ridgway's points were as follows:

- He urged the Benchers to exercise restraint in using fee revenue for core areas and to "avoid the temptation of pursuing many 'worthwhile' causes and initiatives."

- He noted that excusing some from their fee burden means that others would have to pay it.

- He suggested that the income of some lawyers in private practice in BC may be "exceeded … by earners of the minimum wage."

- He suggested that lawyers employed by non-profit organizations may enjoy very fulfilling work in keeping with the objectives of their employers or that their practices may "provide compensation in the long term."

- He noted that many non-profit organizations are "funded" and suggested that their levels of funding may already take account of "the cost of legal services and of membership in the Law Society of British Columbia."

- He noted that Law Society fees would be only a small part of the operating costs for non-profit organizations. He queried whether allowances from various levels of government or from landlords or utilities might be more impactful for the balance sheets of non-profit organizations."

- He suggested that the question of who would be included as eligible for the fee reduction was a significant question and he asked whether it would be extended to lawyers working for the Federal, Provincial, and Municipal Governments, lawyers working for the Law Society and other regulatory bodies or trade unions. He also asked about "lawyers who donate their time to non-profit organizations but who are not directly employed by them."

- He also suggested that a significant reason would be required to justify why a lawyer working in a rural community, advising members of his community, sometimes on a pro bono basis, providing employment to two or three people, and trying to earn a

profit to support a family, should pay practice fees when a lawyer working for a non-profit organization does not have to pay them.

- Mr. Ridgway summarized his opinion by saying that it was important that Law Society fees should be charged to everyone equally and that it would a mistake for the Law Society to begin selecting specific groups of lawyers to be excused from some or all of the applicable fees.

The Working Group also benefitted from the comments of Law Society member David Mulroney, who spoke against the member resolution when it was presented at the AGM. Mr. Mulroney subsequently provided the Working Group with a memorandum (**Attachment 3**) providing his criticisms of the fee reduction proposal. The following were among the points included in Mr. Mulroney's memorandum:

- There are great many different non-profit organizations with varying levels of public support; some engage in political activity or have controversial political agendas that many members would find objectionable.

- A policy of widespread or "blanket" support for non-profit organizations with funds from practice fees would run contrary to the Law Society's decision that membership in the Canadian Bar Association (which is also a non-profit organization) would not be mandatory for Law Society members.

- Many members would disagree with using fees to subsidize lawyers working for many or all non-profit organizations. Such subsidies would amount to financial support for the non-profit employer organizations. Even if the objecting members were in the minority, it would be unfair to force them to subsidize some of the non-profits, when they may disagree with those organizations' aims and activities.

- Given the diversity of non-profit organizations and their activities, any attempt to measure the relative worthiness of each individual organization would be extremely difficult and amount to an unjustifiable administrative burden relative to the size of the benefit of the proposed fee reduction.

- The Law Society's support of worthy non-profit organizations is already administered through the Law Foundation. The Law Foundation's work in allocating its support is difficult and complex. It would not be appropriate to simply spread such funds equally among organizations that employ lawyers and fit a non-profit definition. A more nuanced process would be required.

- Many lawyers who have legal aid criminal defence or family work as a significant component of their practices also make less than the average or median rate of income for the profession. They also provide a valuable public service.

- It does not make sense for those lawyers in private practice who make less money than many of the non-profit sector lawyers to be asked to subsidize them.

- It is better to have the charitable donation marketplace determine which non-profit organizations receive enough support to engage a staff lawyer than to have the Law Society compel support for those that do employ lawyers.

- Many lawyers in private practice choose to help people and do extremely worthwhile work, often to their own financial disadvantage. A system giving a financial break to others, to the detriment of those who choose how, when and to whom they will donate their time, would be unfair and bad policy.

- The proposed fee reduction is based on unsupportable assumptions about lawyers' incomes and the relative merit of various lawyers' work. It would be unfair to many lawyers and would be an inefficient means of recognizing and encouraging the contributions of lawyers who work for non-profit organizations.

Discussion

One of the challenges for the Working Group in considering the feasibility of the proposed fee reduction was the extent to which the proposal was incomplete, with its specifics remaining to be determined. Those in favour of the proposed fee reduction appeared to be flexible on such aspects as the amount or percentage of the reduction, the extent of the lawyers who might be eligible to receive the proposal, and the criteria to be used in determining whether a lawyer's work or employment was sufficiently oriented toward the public interest. While this flexibility in approach may have been intended to preserve the potential for the proposal to take on a feasible shape, it also meant that the task of envisioning the unstated specifics was left to the Working Group itself. What would be the "right amount" to consider as a potential fee reduction? Should it be extended to lawyers who had a significant component of legal aid work in their practices or who simply donated a significant amount of their time to pro bono legal work? If such additional lawyers were to be included, how might the issue of an upper income limit be decided and what means would be acceptable to demonstrate that a lawyer's income fell below the upper limit? In grappling with such issues, the Working Group found it difficult to come to answers that were non-arbitrary, principle-based, and practical.

(i) Financial Feasibility

Considering first the percentage or dollar amount that might be set for the proposed fee reduction, any choice seemed arbitrary. Despite that concern, if the amount were nominal it would be all the more likely to be ineffective as any kind of incentive or recognition for those who might receive its benefit. On the other hand, to the extent that the fee reduction might be considered unfair to any lawyers who would not receive it, then the more substantial the reduction might be, the more significant the impact of the unfairness.

While it might be possible, at least theoretically, for the Law Society to charge some members a reduced practice fee, the Working Group's understanding is that such a reduction would have to be offset by a corresponding fee increase to other members or by changes to the Law Society's budgeted program or service spending. To calculate the impact of the proposed reduction, the equation might need to take into account the magnitude of the fee reduction, the number of members who would be eligible to receive it, and the number of members over whom the corresponding fee increase would be defrayed. However, the "cost" of the fee reduction would not only include the total of the individual reductions; it would also include the administrative costs and staff resources devoted to implementing and operating the fee reduction program on an ongoing basis. Depending on how labour-intensive the operational processes might be, and how few individuals might end up being eligible, it is not difficult to imagine the "cost" component represented by the reduction itself being half, or less than half, of the total cost of the fee reduction program. Clearly, a fee reduction program that would require the creation and handling of applications, the determining of eligibility criteria, and of determining eligibility itself, annually, on a case by case basis, and any amount of supporting documentation, fact-checking, bencher-approval or committee-approval, in addition to an extra category of communications and record-keeping, might be judged to be relatively expensive and an inefficient means of accomplishing its motivating recognition and benefit. This foreseeable expense and relative inefficiency tend to speak against the financial feasibility of the proposed reduction. Simply stated, if it costs the Law Society an additional $50 per reduction-eligible member, to enable a fee reduction of $20, that probably speaks against the financial feasibility of the proposal, at least to the extent that there may be more efficient ways to recognize the value of non-profit sector lawyers, if that is what the broader membership would wish the law society to do with a portion of practice fee revenues.

Regarding the amount of a prospective fee reduction, the smaller the reduction and the fewer the eligible lawyers, the less onerous any offsetting corresponding fee increase would be. On the other hand, one might expect a relatively small fee reduction to have very little impact to those who would benefit by it, whether that impact is measured in dollars, in recognition, or in an incentive for other lawyers to be employed by non-profit organizations for less money than they might make in private practice.

To the extent that the fee reduction might be viewed on a par with charitable donations, it seems problematic that it should be considered and set in isolation from any consideration of the Law Society's other funding allocations related to public interest programs or charitable pursuits. If a financial recognition should be due the lawyers who might qualify to receive a fee reduction, or if the Law Society should choose to exercise its limited resources for the purpose of such a recognition of service and public value, then it makes sense for that decision to be made, not in isolation as a unique fee reduction would suggest, but in light of the extent of the resources that might be made available and a balanced weighing of the other worthy recognitions and charitable pursuits the Law Society would consider. In short, as recognitions of value go, there is no magic to the form of a fee reduction. An equally or more effective recognition might well be crafted in

the form of an award or charitable donation without raising many of the associated issues that would attend a change from the existing single level fee structure. In the view of the Working Group, if the hope for the fee reduction depends on its not being weighed on the balance with the other potential uses of the same resources, then it is likely not financially feasible. The creation and imposition of a fee reduction in isolation from the Law Society's overall financial reality is not financially feasible because, in the view of the Working Group, it would not amount to sound fiscal management of the Law Society.

Quite apart from the *amount* of money that would be involved, the Working Group was uncomfortable with the prospect that the proposed reduction would shift the fee burden of the eligible group, many of whom do not pay their own fees, to a group that would include a number of lawyers who do have to pay their own fees and who actually make less in annual income than the eligible lawyers do. While it might be possible for the Law Society's finances to manage such a shift, it is not clear that it would be insignificant to the finances of all of the lawyers who would bear the additional fee burden. The view of the Working Group is that if the fee reduction would amount to a shift that is both unfair and, for at least some ineligible lawyers, not insignificant, then the proposal is not financially feasible.

(ii) Operational Feasibility

From an operational point of view, one can consider the impact of the proposed fee reduction in terms of whatever additional administrative tasks and operational processes it would require. The Law Society's current processes and staffing provide the benchmark. Implementation of the fee reduction proposal would not reduce or eliminate any current operational processes but it would require additional processes. Among such additional processes, the Working Group are particularly concerned about those that would be required to determine which lawyers would be eligible for the proposed fee reduction and those that might be required in the event of any dispute or controversy about the lawyer-eligibility and program administration.

On one hand, the Working Group are not comfortable with the suggestion that the amount a lawyer would be charged for a practice fee would be contingent on a subjective value judgment as to the relative public interest merit of the work done by the lawyer or undertaken by the lawyer's employer organization. The prospect of staff's preparation of such matters for appropriately well-informed decision-making by a committee of Benchers would be prohibitively labour-intensive. However, the Working Group was even more unsatisfied with the prospect of assigning such a task to a Law Society staff member or staff group when such decisions would be open to criticism either as being arbitrary or as being an expression of the personal bias of the decision-maker imposed through the statutory machinery of the regulatory body. At the same time, the prospect of any reasonably nuanced or sophisticated process of application, evaluation and administration of a reduced fee category promises a significant additional drain on Law Society staff and resources in order to accomplish a result that is apt to be disproportionately insignificant. In this respect, the Working Group views the proposed fee reduction as lacking operational feasibility due to its propensity to decrease the efficiency of the

effected departments within the Law Society without a sufficiently significant offsetting gain for the public interest in the administration of justice.

The Working Group has similar operational feasibility concerns with respect to the proposed income level qualification. Aside from the seemingly inevitable arbitrariness concerns, if an acceptable upper income level cut-off were established, it would create a need for applicants to demonstrate that their income level is actually below the cut-off. Whatever processes might be put in place to receive and confirm the income level eligibility would necessarily require the handling and evaluation of that information by Law Society staff tasked with administering the fee reduction. It would create the potential for submitted documentation to be flawed or inadequate and the need for further communications surrounding the completion of a satisfactory application package. Given that in many cases, if not all, the primary beneficiary of the reduced practice fee is apt to be the employer organization, the upper income limit might have the unintended consequence of encouraging non-profit organizations to ensure that their lawyer-employees' salaries remain under the limit. Alternatively, it might be seen as an incentive to such organizations to find ways of increasing benefits to their employees that would not have the effect of increasing their salary – which could be seen as undermining the concept of the upper limit on income and cause a further operational burden for the Law Society in attempting to respond appropriately to such developments.

(iii) Justification Feasibility

The Working Group has been aware that any specific class fee reduction resulting from the member resolution would have to be justifiable, by and to the Benchers and more broadly to the membership as a whole. Ultimately, the Working Group is not of the opinion that the proposed fee reduction is justifiable.

To summarize the member resolution and the comments of its proponents in consultation, the purpose of the proposed fee reduction is to recognize and incentivize, even if just symbolically, the work of lawyers who have chosen to practice within the non-profit "public interest" environment. The terms of the resolution include an emphasis on the "public interest" character of the work and on the lawyers' choice to pursue that work despite the prospect of suffering personal financial disadvantage relative to many of the lawyers in private practice who earn higher incomes. The view of the Working Group is that the proposed fee reduction would not be an efficient and effective realization of its purpose and terms of reference. It does not appear that it would result in a financial recognition in the hands of the eligible lawyers. Instead it appears that the fee reduction would be much more likely to function as a charitable donation to the lawyers' employers. It also does not appear that it would function as an effective symbolic recognition because the fee assessment and payment process is one that has no public profile. Once put in place, the fact of such a fee reduction could fall into obscurity, except potentially for the attention of some of those ineligible lawyers whom it may continue to irritate on an ongoing basis and who may be expected to call for its abolishment. As such, the Working Group does not agree that the proposed fee reduction would have any practical value as an incentive for current

"non-profit" sector lawyers to continue to work for their employer organizations or for future lawyers to choose a career in the non-profit sector. The Working Group thus views the proposed fee reduction as lacking in justification because it does not appear that it would fulfill its own purpose.

The Working Group is also concerned that there is insufficient justification for the proposed fee reduction in virtue of its amounting to a change from the existing evenhanded treatment for all practicing members. Any such change raises at least the question of fairness, particularly so where the potentially perceived unfairness may be instantiated in dollars and cents. Fairness is an extremely important principle, especially as it may characterize the activities of a profession's regulatory body. It is debatable whether the imposition of an unfairness by a regulatory body can ever be adequately justified. In regard to the proposed fee reduction, a perceived unfairness would be the offsetting fee increase to be borne by other members of the Law Society, absent any cost savings by the cutting of staff and services.

Such perceived unfairness may be most acute with respect to other lawyers who pay their own fees, whose incomes are below the level of many that would be eligible for the proposed reduction, and whose work amounts to a significant benefit for their clients and, arguably, for the public interest. They may or may not do legal aid work, practice poverty law, or provide services in geographical areas where there would likely be no substitute available. There are many ways in which the work of a lawyer in private practice may benefit the public interest. The Working Group was unable to identify a principled basis for granting a fee reduction to one worthy group of lawyers while refusing it to others who might make a case for being similarly worthy. The prospect of such a fee reduction being restricted in an *ad hoc* manner again points to unfairness. It may be true that the increase to be borne by others in order to fund a modest fee reduction for a few would be a relatively small additional financial burden. But if unfairness is the result, the issue remains despite the measure. The view of the Working Groups is that there is insufficient justification for a fee reduction to warrant any measure of unfairness. The problematic question remains as to how foreseeable future requests could be refused fairly, if an initial specific class fee reduction were instituted.

Finally, it is important that the Law Society's fiscal management and budgeting decisions are made in full view of, and allow for a balanced consideration of, the various worthwhile programs calling for a funding allotment from the organization's limited resources. Increasing the complexity of the already difficult budgeting process by introducing new channels through which resources may be diverted to one or another specific cause is not advisable. Introducing a precedent of favouring one group or one cause, at the expense of others, by charging different practice fees to different groups is an example of just such an unnecessary increase in the complexity of the Law Society's tasks. The Working Group's concern is not merely that the new cause itself must be justified in its own right, but that the new method of channeling resources to the cause must be justified. The Working Group has concluded that there is no specific justification for why a recognition aimed at non-profit "public interest" lawyers would need to be created via a reduction in fees, even if it were determined that some form of recognition should

be created. In fact, the observation that many such lawyers do not pay their own fees and that the process of fee payment is not attended by any public display or public awareness tends to speak against the use of a fee reduction for the purpose of recognizing these lawyers and their valuable work.

Conclusion

In the discussion presented above, there are many significant points noted that tend to speak against the proposed specific class fee reduction. The Working Group's conclusion, following its process of consultation and analysis, is that the fee reduction proposed and described in the member resolution from the 2012 Annual General Meeting is not feasible. The Working Group's view is that proposed fee reduction would be sufficiently expensive and operationally demanding to administer as to outweigh its potential benefits. Those potential benefits ultimately are insufficient to justify the implementation of a fee reduction, particularly given that such a reduction would not appear to be an effective means of recognizing the contributions of lawyers working in the non-profit sector. The fee reduction would also appear to raise an issue of unfairness in the way that the Law Society treats different groups of its members. In light of all of the issues raised and concerns discussed in this memorandum, the Working Group has concluded that proposed fee reduction is not feasible.

Recommendation

The Fee Reduction Feasibility Working Group recommends against the further development of this specific class fee reduction proposed in the member resolution from the 2012 Annual General Meeting.

Whereas, the Law Society membership encourages the practice of law in not-for-profit, non-governmental organizations, and recognizes that these lawyers provide valuable legal services that address needs unmet by the private sector;

And whereas, non-profit lawyers and non-governmental organizations practicing law contribute to the positive image of lawyers in British Columbia, provide opportunities for lawyers in private practice to engage in high-profile pro-bono work at all levels of court, increase access to justice to the public, and provide opportunities for law students to intern and volunteer;

And whereas, lawyers in not-for-profit organizations are paid wages below the average market rates for private practice lawyers with equivalent experience;

Therefore, be it resolved that the Law Society membership direct the Law Society to research the feasibility of creating a class of membership for non-profit lawyers with a reduced rate of practice fees, and to present to the membership within six months information about the feasibility of such a class of membership.

_____

Scott Bernstein

_____

Katrina Pacey

"Douglas King"

_____

Douglas King

Rec'd 56
10/19

G. GLEN RIDGWAY, Q.C.
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October 17, 2012

The Law Society of British Columbia
845 Cambie Street
Vancouver, B. C. V6B 4Z9

Attention: Bruce LeRose, Q.C., President

Dear Sir:

Re: Annual General Meeting- September 25 \ 2012 Members' Resolution

I had the opportunity of attending the Nanaimo version of the Annual General meeting and thank you for the organization and presentation at that meeting.

I would like to speak to the issue of members' fees and the resolution put forth by certain members of the Law Society. It is clear that these members have organized and had sufficient supporters in place to pass the resolution. I believe the total participation in the Annual General Meeting was somewhere in the area of 200 while total membership is somewhat closer to 11,000. I urge Benchers to bear that in mind in their considerations and ensure that the other 10,800 members of the Law Society have some input. I will take this opportunity to provide my input.

First let me confirm that this is the first year that there is no members' resolution dealing with fees. The determination of fees is left solely to the Benchers and hopefully the Benchers will feel some restraint in ensuring that the fees over which they now have total control, are focused on those areas that are the core area of the Law Society. Please avoid the temptation of pursuing many "worthwhile" causes and initiatives.

With respect to the members' resolution I will pose a question at the end of this letter, which I believe if answered appropriately, will resolve the thrust behind the members' resolution. However, before posing a question I would like to make several points.

Firstly, the "maintenance of the public interest" which is the function of the Law Society is one that requires financing. That financing comes from all the members regardless of their economic position. To excuse some means that others will have to pick up the ball.

Secondly, we as lawyers are all in this together regardless of our earning power, our client base, or our own individual causes. Please remember that to some lawyers in this Province, the pursuit of "profit" results in a return that is exceeded in some circumstances by earners of the minimum wage.

Please consider as well that many "non-profit organizations" have objectives and purposes for which the "legal" aspect is only a small portion. While the economic return to the lawyers practicing in such organizations may not be large, please remember that there are other forms of compensation which many find very fulfilling or where that practice provides compensation in the long term. Please remember as well that many of these organizations are funded and the provision of funding includes the consideration of the cost of legal services and of membership in the Law Society of British Columbia. I am sure one of the considerations of the Law Foundation in funding an organization is that the cost of the provision of that service includes the Law Society fees.

Please remember as well that Law Society fees are only a very small portion of the overall costs of "non-profit organizations". There are many other factors in their expenses. What impact would the waiver of L.S.B.C. fees have on the expense side of the ledger? Would not a waiver of Federal, Provincial and Municipal taxes, a waiver of rent, a waiver of utility payments also free up additional funds for those organizations? Why is it only that the Law Society fees are being considered?

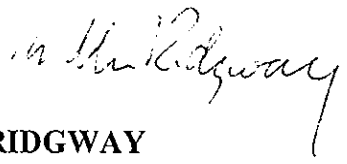
Then there is the question of what lawyers will be included in the group entitled to a waiver of the fees. What is a "non-profit organization"? Does this include lawyers who work for the Federal Government, the Provincial Government, the City of Vancouver? What about the legal staff at the Law Society, lawyers working for regulatory bodies, trade unions? What about lawyers who donate their time in advising non-profit organizations but who are not directly employed by them? Could they be entitled to a partial fee waiver?

And finally the question that I indicated I would pose.

> Why should a lawyer, perhaps in a rural community where we are having trouble attracting lawyers, with a practice in conveyancing, wills and estates, a bit of family, maybe some corporate law who advises people in his community, sometimes without compensation, and who has hired a couple of employees to help him provide this service and is working to make a "profit" to support his family pay the fees to the Law Society of British Columbia when a lawyer for a non-profit organization does not have to pay those fees?

Thanks for this opportunity of addressing this issue and I hope to hear from you.

Yours very truly,



G. G. RIDGWAY

GGR:aa

MEMORANDUM

To: Reduced Fee Feasibility Working Group
Fr: David S. Mulroney
Dt: July 22, 2013
Re: Resolution Opposition

I spoke in opposition to the reduced fee proposed for lawyers who were employed by not-for-profit organizations. While the resolution at first blush might seem attractive and seem to be supporting a worthwhile cause, the mechanism is objectionable and some of the underlying assumptions are incorrect or are generalizations that are often not true.

1. Not for profit organizations are diverse. Some have widespread public support and some do not. Some are particularly related to lawyers and others are not. Some engage in political activity, which might be objected to by many members of the Law Society. Some are pro-life. Some are pro-choice. Some are limited to rescuing animals. Some help people. The variety and objectives are endless.

2. The Canadian Bar Association and the BC Branch are part of a not-for-profit organization that has the education of lawyers and the advancement of interests of lawyers and the public at its core and yet the Law Society decided that requiring mandatory membership in the CBA was outside of the core interests of the Law Society and was also unfair to lawyers who disagreed with some of the political activity or positions taken by the Canadian Bar Association. As a result, mandatory membership was abolished. That principle should apply to blanket support of non-profits.

3. The subsidization of lawyers who work for not-for-profit organizations will amount to a similar financial support for organizations which many lawyers may not approve of or agree with. Even if a few lawyers disagree with the aims, activities, and objectives of a few of the not-for-profit organizations, forcing them to support those organizations may be unfair.

4. The diversity of not-for-profit organizations is far greater than the activities that the Canadian Bar Association, and any attempt to measure the worthiness of individual not-for-profit organizations will be extremely complex and an unjustifiable administrative load in light of the size of the benefit.

5. The law society already has an agency which attempts to choose laudable not-for-profit organizations or other ventures which are worthy of support.

The work of the Law Foundation is difficult and complex. No one could imagine that the Law Foundation would simply take the money it administers and spread it equally amongst organizations that had something to do with law and fit within a definition of not-for-profit. The process of allocating support needs to be and is far more nuanced.

6. The assumption that lawyers who work for not-for-profits make below the average market rates for private practice lawyers with equivalent experience may in fact be correct. However, it may not be correct. It is also clear that a large percentage of lawyers who have legal aid criminal defence or family work as major parts of their practice also make below average rates compared to the median. They also provide a valuable public service.

7. According to the government's opening submission on judicial compensation, twenty-five percent of the lawyers practicing in Vancouver make less than $60,373.00 per year (2010 figures). We do not know exactly what the distribution of that is, but that is a very significant percentage of our profession who might also be equally worthy of some degree of subsidization. It is quite possible that many of those lawyers who are in the lower quartile of income are there because they provide pro bono services on a regular basis or they work on legal aid files or they perhaps choose to work normal or limited hours to maintain a reasonable quality of life. Canadian Lawyer July 2013 edition relates that nationally, five percent of all partners in law firms make $50,000.00 or less. Presumably, if they have associates, the associates are even paid less than the partners. The article on the survey indicates that firms with up to nine lawyers paid first year associates as little as $40,000.00 and offered $60,000.00 on average. Does it make sense for those people to be supporting lawyers who work for non-profit organizations, some of whom may be making higher wages than the bottom quartile of the profession?

8. In light of the diversity of not-for-profit organizations, I would submit that the better approach is to have the marketplace determine which not-for-profit organizations are worthy of donation support through Canada's reasonably generous charitable giving tax laws. Those that have sufficient financial support from Canadian taxpayers and the Canadian public will be able to afford to employ lawyers but those individual not-for-profit organizations which do not have sufficient public support to get adequate donations from the Canadian public will not be able to afford to engage a staff lawyer.

9. I believe the Law Society must recognize that many members of our profession in private practice who are not engaged as staff lawyers by not-for-profit corporations choose to help people and do extremely worthwhile work, often to their own financial disadvantage. A system of giving a financial break to others to the detriment of those who are choosing how and when and to whom they will donate their time is unfair and bad policy.

10. We must remember that for every complex problem there is an answer which is simple, elegant, and wrong. The proposed resolution would be unfair to many lawyers, is based on unsupportable assumptions and will be inefficient at accomplishing its objectives.

Respectfully,

"David S. Mulroney"

David S. Mulroney
Mulroney & Company
301-852 Fort Street
Victoria, BC
V8W 1H8

From: Lesley Small
Sent: April-12-13 5:03 PM
To: 'scott@pivotlegal.org'
Cc: Jan Lindsay, QC; Bill Maclagan; David Mossop, QC; Jeanette McPhee; Lance Cooke
Subject: Reduced Fee Feasibility Working Group

Dear Mr. Bernstein and Mr. King,

Thank you for agreeing to come and speak with the Reduced Fee Feasibility Working Group in relation to the Member Resolution from the 2012 Annual General Meeting, which raised the question of reduced annual fees for a proposed class of Law Society members, including those who are employed by "not-for-profit, non-governmental organizations".

I confirm that the meeting will take place at the Law Society offices on Wednesday, April 24, 2013 at 4:30 pm in Room 914. Please proceed to the 8th floor reception for access to the 9th floor.

The Working Group has already begun to consider the terms of the Member Resolution and the many implications that may impact the feasibility question. While we are not looking for you to answer every potential issue for us, we would like you to be aware of the issues and questions that the Working Group has identified for itself and we would welcome your ideas and input on any of these points, as well as on any other aspects of the Member Resolution that you would like to address:

1. The Resolution speaks of "creating a class of membership for non-profit lawyers." What specific criteria would determine inclusion in and/or exclusion from the proposed class?

2. The Resolution noted that "lawyers in not-for-profit organizations are paid wages below the average market rates for private practice lawyers with equivalent experience." Was this assertion based on specific published statistics or an anecdotal understanding of remuneration levels within the legal profession? If the former, are the same statistics available for the Working Group to consider?

3. What is the full extent of the annual salary range for lawyers who might be included in the class of "non-profit lawyers?"

4. Apart from lawyers who practice in not-for-profit, non-governmental organizations, would the proposed class include lawyers in private practice who provide valuable services *pro bono* or who devote a portion of their practice time to working for not-for-profit organizations, on contract or file-by-file, possibly on a "reduced rate" basis?

5. The Law Society does not recognize any distinct classes within its membership for the purpose of assessing a reduced (or increased) practice fee. Lawyers in the Part Time Practising category pay a lower insurance fee but pay the same practice fee. At the same time, the Law Society is aware of a significant range of incomes and

profitability levels among its membership, including some members whose practices are at best marginally profitable. To the extent that a reduced fee might be justified by the lower than average income (or similar criterion) of the members of the proposed class, what are the implications with respect to marginally profitable private practitioners whose practice fees may be increased correspondingly, to offset the reduction for the proposed class?

6. To the extent that a reduced fee might be justified by the recognition that lawyers practicing in "not-for-profit, non-governmental organizations" provide valuable services addressing needs unmet by the private sector, what are the implications of marginally profitable private practitioners who practice in areas of law (such as poverty law) or in under-serviced geographical regions (such as remote, rural areas), such that the needs for their services might go unmet in their absence?

7. Combining 5 and 6 (above), what are the implications if another demographic group of Law Society members can be identified, which earns even lower wages than the proposed class, while also providing important services for needs that might otherwise go unmet?

8. One aspect of the feasibility of a potential fee reduction is the quantum. How much of a reduction should be considered? What might be the basis or justification for a specific quantum of reduction, given that a specific amount would need to be determined?

As indicated above, the Working Group will be pleased to hear your views on any aspect of the resolution and its implications that you wish to address. Any information or comments relevant to the listed issues that the Working Group has itself identified will be especially appreciated. Thank you in advance for your assistance with our review of this matter and we look forward to an interesting discussion.

Lesley Small | Manager, Member Services & Credentials

Law Society of British Columbia
845 Cambie Street, Vancouver, BC V6B 4Z9
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The Law Society of British Columbia

Annual Fee Review: Consultation Paper

Introduction

The Law Society's Annual Fee Review Working Group is seeking comment on a proposal from two Law Society members that a reduction in the annual practising fee and/or the insurance fee be made available to public interest practitioners on the premise that the current fees have an impact on the capacity for members to start and sustain a practice in public interest law. Law Society members wishing to provide their comments may send them to the following email address: annualfeereview@lsbc.org by September 15, 2018.

The Consultation Questions

While it is not necessary to frame your comments as answers to the following questions, it would assist the Working Group to receive responses to the following aspects of the fee reduction issue:

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

2. If you would support the development and implementation of a fee reduction for public interest practitioners:
    a. How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?
    b. What consequences or impacts of the fee reduction would you foresee as providing its justification?
    c. How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

Background

In August of 2017 the Law Society was approached by two members seeking to include a members' resolution on the agenda for the 2017 Annual General Meeting ("AGM"). The resolution proposed that the Law Society investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance premiums. Upon considering the proposal, the President, in consultation with the Executive Committee, agreed that the Law Society would investigate reduced rates of practice and insurance fees for public interest practitioners. With the agreement of the two lawyers, the members' resolution was withdrawn. The Annual Fee Review Working Group (the "Working Group") was subsequently created by resolution of the Benchers, with the mandate to "… investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance fees …."

The Law Society has previously considered a similar proposal arising from a member's resolution, from the 2012 AGM, which resulted in the creation of the Reduced Fee Feasibility Working Group in 2013 ("the 2013 Working Group"). That group produced its "Report on Fee

Reduction Feasibility Review," in September, 2013 ("the 2013 Report"), which concluded that it was not feasible to offer a practice fee reduction to a specified class of Law Society members. The 2013 Report is available by this link.

The Working Group has held initial meetings aimed at understanding various aspects of its mandate, as well as identifying and obtaining relevant information that might help to shape any resulting proposal and accompanying justification. One of the Working Group's meetings was attended by one of the proposers of the 2017 draft members' resolution, who advocated for the fee reduction proposal and provided perspective and insight into the originating intentions. The Working Group appreciates this assistance in helping to ensure that important aspects of the proposal are appropriately considered. As mentioned above, the Working Group has also determined that it should seek input more broadly from Law Society members. This consultation paper has thus been produced to draw the question of a potential targeted fee reduction to the attention of Law Society members and to request members' views and comments on that proposition.

Discussion

Currently, all full-time practicing lawyers pay the practice fee and lawyers in private practice are required to be insured and pay the insurance fee. However, non-practising and retired members pay a much reduced fee. In addition, the in-house counsel, lawyers working for government and other non-law entities do not pay the insurance fee and lawyers in private practice who work less than 25 hours a week on average pay 50% of the annual insurance fee.

The previous consideration by the 2013 Working Group of reducing the practice fee considered three factors relevant to the question of whether a reduced fee for a subset of practicing members was appropriate. The current Working Group considers that those three factors remain relevant to its investigation of whether it should recommend providing public interest practitioners with reduced rates of practice fees and insurance fees.

The first factor is the beneficial impact. The Working Group has been concerned that if the Law Society were going to alter the manner in which practice fees are allotted and charged among its members, such changes would need to be justified and justifiable to the profession as a whole. In addition, the Working Group has a concern that providing a fee reduction to one subset of the current practising membership may facilitate other justifiable requests for a similar fee reduction for another subset of the membership, defined by different criteria which may equally justifiable. Finally, the Working Group has been concerned to focus on the motivations for the suggested fee reduction, to attempt to identify its objective, which may serve as its justification. The focus on what a potential fee reduction would be trying to accomplish is important both in the evaluation of the significance of the proposal and in the assessment of the effectiveness and efficiency of any specific proposal. To this end the Working Group has received additional input on the context and motivations that gave rise to the fee reduction resolution. Additional comments

from one of the draft resolution's proposers have indicated a general motivation to increase access to justice and access to legal services.

The Working Group welcomes any comment on the benefits of providing public interest practitioners with reduced fees, including improved access to justice and legal services.

The second factor is the financial implications. The Law Society's finances are a "zero sum" matter. To collect less money from some members means that other members have to pay more to make up the difference in the Law Society's budget. In considering the financial impact of implementing and administering a fee reduction program, the Working Group has recognized that a fee reduction is not an end in itself but rather a means to an end. To the extent a targeted fee reduction would require that some members pay more, it would be important for that additional expense to amount to an efficient means of achieving the objective of the fee reduction.

The Working Group welcomes any comment on the extent to which the potential cost of assisting public interest practitioners through a reduced practice fee would be offset by the potential benefits.

The third factor is the operational impact. This factor takes into account the logistics and demands of implementing and operating a fee reduction program of the type suggested by the member resolution. If new systems or processes were required for the ongoing administration of a fee reduction, the cost of implementing and operating those systems or processes would also need to be accounted for in the additional cost to other members. In addition, any fee reduction for public interest practitioners would have to be sufficiently well defined to allow reliable assessment of who was entitled to the fee reduction. The Working Group has identified a significant challenge in locating, by reference to "public interest law" or within the group who might be considered "public interest practitioners," a clearly defined group to be the intended recipients of a fee reduction. The challenge of finding the most appropriate group for the potential reduction is complicated because a very broad range of lawyers may claim to have involvement in work that produces public interest benefits. The term "public interest practitioners" might be applied so broadly as to include most lawyers, as public interest benefits may flow even from lawyers' work for corporate clients in a civil litigation context. Additionally, the public interest value of the work or the objectives of organizations that would see themselves as serving an important public interest may be subject to significant debate and political disagreement.

The Working Group welcomes any comment on a definition or on specific criteria that could usefully determine a lawyer's eligibility for inclusion in the group who might receive a fee reduction.

In conclusion, the Working Group wishes to express its appreciation in advance to members who take the time to consider the potential fee reduction and related issues and provide comments in this consultation. The Working Group values the time and effort of Law Society members and considers that affording an opportunity for broad-based input is an important aspect of recognizing and evaluating the range of possible recommendations that could be made to the Benchers regarding the potential development of a fee reduction proposal for public interest practitioners.

From: Warren Wilson, QC
To: Annual Fee Review
Subject: Public Interest Practioners
Date: July 17, 2018 3:07:23 PM

For the reasons outlined in the distributed comments of the working group I am against offering public interest lawyers a reduced annual fee. I have no doubt many sub-groups can make a case for reduced fees but I am equally sure no member who will pay more if some members have reduced fees will be in favour of paying more. Once the Law Society departs from equal fees for each practicing lawyer there is no end to the potential chaos. Although it would be a ridiculous result, if 99% of the members can make a case for a 50% reduction the remaining 1% would see their fees increase by thousands of percentage. Let's not even start down the road.

Warren

From: Blair Franklin
To: Annual Fee Review
Subject: Request for comments
Date: July 17, 2018 4:08:17 PM

I read the Law Society E-Brief request for comments on the proposed fee reduction for public interest practitioners. I am opposed to the idea as it creates more administrative burden for lawyers, law firms and the law society in determining fees. The benefit is likely to be negligible because it is unlikely that anyone does not do "public interest" law because of the law society fees. We are also then going to have to look at reduced fees for criminal lawyers as they provide more to society than real estate lawyers. I have no idea why we would single out just public interest practitioners and how we would define it. The idea behind the law society is that all lawyers are barristers and solicitors and for matters of convenience and to avoid exactly this sort of thing we all pay the same rates with some minor excepts for those who practice less. Each one of these "I am special" I should pay less we grant the more complicated the system becomes. I also have a general problem with the idea that we should promote public interest law and not criminal law or family law or some other just as deserving area of law.

Blair Franklin
Lawyer
Johnston Franklin Bishop

From: George Hungerford
To: Annual Fee Review
Subject: Fee review consultation
Date: July 17, 2018 4:21:55 PM
Attachments: image001.png
image002.png

Comments on the review:

If there is to be a fee reduction for public interest practitioners, I think that those who practice on behalf of their ancestral Indigenous group (First Nation, Metis or Inuit) should be able to waive that percentage of time in their law society fees and insurance. Frequently, indigenous groups do not have the resources to pay full-rate for lawyers and lack the capacity to handle legal matters themselves. Practitioners would be practicing at substantially reduced rates or pro bono.

Alternatively, these practitioners should not have to pay insurance at all. Indigenous groups (be they tribal councils, bands, land claim corporations, etc.) are government. Why would Indigenous government be treated differently than federal, provincial or municipal governments, particularly with LSBC's commitment to truth and reconciliation?

George N.F. Hungerford

From: John Anderson
To: Annual Fee Review
Subject: Discrimiation between practices
Date: July 17, 2018 4:33:49 PM
Attachments: stikemanelliott_logo_rgb_120px.png

I just don't understand the idea that, based on the nature of their practice, some lawyers should pay more and some should pay less. It seems to me that, historically, the practice area which has resulted in the most significant demands on our insurance and other funds has been real estate practitioners. However, the "costs" of that practice has been allocated across all practice areas on the theory that it is more appropriate for all practitioners to bear the costs of the sins of real estate practitioners.

I am content with this current model. However, if we are going to go to a "user pays model" such as is the case with insurance premiums and WCB premiums, it only makes sense to me that the fees of ALL lawyers should be adjusted to reflect the experience/loss ratings of their particular area of practice, if not also their experience/loss ratings based on other factors such as: size of firm in which the person practices.

I am not sure that we have the time and resources to implement such a user pays model, and don't see the value in moving to such a system at the request of a very small number of public interest practitioners.

John Anderson

From: John Horn
To: Annual Fee Review
Subject: REDUCED FEES FOR PUBLICI INTEREST PRACTITIONERS
Date: July 17, 2018 5:04:06 PM

I have read carefully both Reports and Appendices.
I am of the view that the proposed differentiation in fees charged is neither practicable, nor morally justified.
It is impracticable because the criteria for qualifying could never be exhaustively pre- determined and would have to be settled on a case by case basis. Mr. Ridgeway eloquently addressed this concern .
It is not morally justified because public interest lawyers receive the same benefits from their membership in the Law Society as all other practitioners and should shoulder the same burdens.
The Law Society has no mandate to support public causes, however worthy. It is the CBA which has that mandate

John W. Horn Q.C.

From: Renee Miller
To: Annual Fee Review
Subject: Annual Fee Review Consultation
Date: July 17, 2018 5:05:37 PM

Dear Annual Fee Review,

I am grateful to the lawyer who initiated the idea of a fee review for public interest practitioners. I am a 12 year call and I practice entirely on the legal aid tariff, which means that I am routinely paid less than even the minimum LSS tariff for legal work I complete for my mostly indigenous clients.

As an example, I am counsel for [redacted] LSS told me that there is no judicial review of MCFD decisions, and the lack of any meaningful caselaw would certainly support that proposition. LSS initially refused to fund this petition. The administrative review authority considered the issue and shrugged it's shoulders. I am scheduled to argue the availability of judicial review of MCFD decisions next week. I am the first lawyer in 22 years in the entire province to even attempt this argument. While LSS initially refused to fund this work, they eventually relented in stages. The 40 hours I was eventually given to make this legal argument from scratch in the absence of any case law, expired 60 hours ago (and I still have preparation this week to complete before argument next week).

I have generously shared my filed Supreme Court pleadings with other lawyers interested in doing this work in an effort to try and address a child protection system in Canada that has been described as a national embarrassment, only to have to weather the threat of the Attorney General of having committed an offence involving a $10,000 fine and/or 6 months incarceration. The precedent value of such pleadings in the face of the gross overrepresentation of First Nations kids in care cannot be understated (and I successfully argued to keep those pleadings in the public domain). However, when I brought this issue to the attention of LSBC's Truth and Reconciliation Committee prior to the hearing, I was met with disinterest. I am on the front line of Provincial and Supreme Court where the rubber hits the road for First Nations clients in BC, doing the work that very few other lawyers want to do on a reduced sliding scale (on the above file I will be lucky to clear $25/hr at the end of the day). I have a Master's degree in English, I clerked for the Federal Court of Appeal in Ottawa, I have completed various courses of negotiation training at Harvard, and I was a Liberal candidate in the 2011 Federal Election. I have successfully argued important Charter decisions involving delay and striking some of Steven Harper's omnibus criminal Minimum Mandatory Sentence provisions. I am a public interest lawyer because I believe our laws must be applied fairly to everyone in Canada. I would welcome my law society fees being applied proportionately as well.

None of my clients have ever complained about me to the Law Society, and none of the legal aid lawyers that I know have ever been required to financially remunerate one of their clients from LSBC's insurance funds. As far as I can tell, my insurance premiums go to protect lawyers who erroneously operate trust accounts. I do not have a trust account since I do not accept any private retainers - none of my clients could afford to pay a retainer.

LSS lawyers are considering strike action in response to unfair remuneration for legal aid work generally. Lower membership fees for legal aid lawyers would be GREATLY appreciated.

Thanks kindly,

Renee Miller

From: Ron Kornfeld
To: Annual Fee Review
Date: July 17, 2018 5:14:08 PM

No. If the lawyer chooses to work in this manner, there is no need for the profession to support that choice. What of lawyers who do pro bono - are they entitled to a discount? And who decides what public interest groups qualify?

From: Paul S.O. Barbeau
To: Annual Fee Review
Subject: Annual Fee Review: Consultation Paper
Date: July 17, 2018 8:07:41 PM

LSBC Annual Fee Review Working Group ,

I am responding to the Annual Fee Review Consultation matter, raised in the Law Society E-Brief for July, 2018 (N.B. as received today). I understand that the Working Group is seeking comment from members on the idea of reducing Law Society fees for public interest practitioners.

In that regard, the following questions have been raised:

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?
2. If you would support the development and implementation of a fee reduction for public interest practitioners:
   a. How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?
   b. What consequences or impacts of the fee reduction would you foresee as providing its justification?
   c. How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

In response to question 1., I am **not** in favour of the Law Society developing and implementing a fee reduction for public interest practitioners, for the following reasons:

1. This matter was, in substance, considered by the Law Society back in 2013, and rejected;
2. There is no accepted meaning or method for determining who would be included in the definition of “public interest practitioners”, nor will there in the future likely be any objective measure for making such a determination;
3. The Law Society, if it were compelled to approve this fee reduction accommodation for “public interest practitioners”, would be committing its members to the support of the objectives of such individual “public interest practitioners”, without any clear and discernible test for quantifying the social and other objectives that may be pursued by such public interest practitioners;
4. To the extent that non-public interest practitioner lawyers commit to significant *pro bono* work on behalf of charitable or not-for-profit organizations, one might reasonably question why those lawyers would not also request or demand, similar fee reduction accommodations, there then being no way to definitively delineate between public, social or community benefit as between public interest practitioners and non-public interest practitioner lawyers; and,
5. Better options exist for such individual lawyers or groups of lawyers substantially engaged in public interest advocacy, to ameliorate the law society fee burden. Those options include the establishment of a practice as a non-profit operation (which is currently being done) and the seeking and obtaining of third party financial and other support for the endeavours.

While the 2013 Report determined that it was not **feasible** to offer a practice fee reduction to

a specified class of Law Society members, I would suggest that even if it was “feasible” (which I would agree, it is not), it is not an objective that the Law Society, and by extension its members, should be obligated to support, when other more viable and legitimizing options exist, for these individuals and their related organizations to seek and obtain support for their endeavours.

On the basis that I am not in favour of question 1., I have not addressed the questions set out at question 2.

Thank you.

Paul S.O. Barbeau LL.B.(Hons), J.D.

From: michael woodward
To: Annual Fee Review;
Subject: Public Interest Lawyers Fee Reduction Proposal
Date: July 17, 2018 11:30:01 PM

Q1 Differential fees should not be set. Should not further divide an already badly fractured bar (TWU Debacle, etc). On the other side of most public interest files is another client with a different lawyer who is not catching a fee break. Think that client will see the Law Society as even handed?

Our law society is not and should not be a social justice organization. Hundreds of other organizations fill that role.

Q2 Because this is impossible to do other than completely arbitrarily.

Sincerely
Michael Woodward

From: Glen Greene
To: Annual Fee Review
Subject: annual fee consultation
Date: July 18, 2018 9:35:40 AM

Dear sirs or mesdames

I suggest that there is no purpose in "asking for consultation" if you do not provide the "draft" proposal that the society is preparing for the last minute notice to the members. The entire idea behind consultation is that we have to know what is planned. It was asked for **because** the only notice on the budget that was being given was 2-4 weeks before that agm where the members are expected to "rubber stamp" whatever they are blessed with by the Benchers (read Law Society bureaucracy).

If the reader might detect a note of cynicism in this submission, the reader would be correct. The view of this writer is that the Law Society is being run "by the bureaucracy, for the bureaucracy and that the bureaucrats shall not perish from this earth"

As a practical submission, I believe that the budget should be drastically reduced. The Society does too many unnecessary political things badly. The only way that political waste will be eliminated is to reduce the budget of those who actually operate the society.

Glen Greene
Smithers B.C.

From: Peter Warner
To: Annual Fee Review
Subject: Feedback
Date: July 18, 2018 10:09:35 AM

While I have never in 42 years been a public interest lawyer, I think this fee reduction idea is a good one. They pose much less risk than a solicitor doing $50,000,000 loans.

From: Guy Whitman
To: Annual Fee Review
Subject: proposed fee reduction for "public interest practioners"
Date: July 27, 2018 11:33:41 AM

I have read and agree entirely with the observations and conclusions of the Annual Fee Review Consultation Paper posted on the Law Society website. In particular, I agree with the committee that the process of identifying and defining a group is fraught with difficulty, so much so as to be practically impossible. If the LS were to adopt this process, it would inevitably become involved in making political judgments which should be outside its mandate. As is frequently noted, one person's terrorist is another person's freedom fighter (and vice versa). Moreover, some individuals practicing in a particular area may be making great financial sacrifices for the furtherance of their ideals, while others are making very high income. Could the LS then use a low income as a principle criterion? Obviously that would create a whole new set of problems. In short, the proposal is impractical and if implemented will only have the effect of favouring certain political views or beliefs over others, and setting members against each other. This is not in the best interests of the profession or the public.

Guy Whitman

From: David Khang
To: Annual Fee Review
Subject: Support for reduction in the annual practising fee
Date: August 9, 2018 5:41:51 PM

I am a mature student who has gone back to law school do contribute to public interest law, after practising dentistry for two decades.
I wonder if an interdisciplinary comparison may shed some light on the situation.

As a dentist in BC, we have an annual licensing fee of a little over $3000.
If a dentist is in a "limited" category (in "education, armed services, or government"), the annual license fee drops to $700.
If a dentist limits her/his practice to scientific research, the fee is $73.
If a dentist (usually closer to retirement) chooses to do pro bono volunteer work, the fee is $zero.
https://www.cdsbc.org/registration-renewal/annual-renewal/renewal-fees

While this graduated fee scale doesn't map precisely onto the situation for BC's legal profession,
I do know of dental colleagues who have been incentivized by the fee system to do more public interest dentistry.

I hope that this information may prove to be useful to your deliberation.

Sincerely,

David Khang

From: Naomi Moses
To: Annual Fee Review
Subject: Fee reductions for public interest lawyers
Date: August 9, 2018 6:03:41 PM

Hello,

Below are my comments with respect to the proposed fee reductions for public interest lawyers. I have responded to the Working Group's consultation questions:

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

Yes, to promote access to justice and allow people of limited financial means to access needed legal services, and to encourage members of the profession (especially new members with outstanding law school debt) to pursue careers in the public interest to serve these goals.

2. If you would support the development and implementation of a fee reduction for public interest practitioners:
a. How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

Identify these lawyers based on the number or percentage of hours of legal work performed for clients who are unable to pay. Any percentage higher than 50% should make a lawyer eligible.

b. What consequences or impacts of the fee reduction would you foresee as providing its justification?

It would allow more lawyers to pursue careers in the public interest that serve people on low incomes, which is of net benefit to society as a whole. Research has demonstrated that providing people with free legal assistance when they cannot afford it allows them to more cost-effectively solve problems that would otherwise have financial consequences for other areas of the public sector (eg healthcare, child protection).

c. How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

It should apply to both fees, and could involve a sliding scale. Fees for lawyers who spend 80-100% of their time working for clients who are unable to pay should be nominal, perhaps a couple hundred a year, paid in instalments with a variety of payment options.

I do not object to paying more in fees in order to support these public interest lawyers who are doing such vital work for little recognition and almost no pay.

Thank you,

Naomi Moses

From: Sarah Allan
To: Annual Fee Review
Subject: In support of fee reduction
Date: August 10, 2018 9:31:02 AM

To address the questions posed in the consultation document...

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?
In short, yes. Those who choose to pursue a public interest career do so at great financial cost. The compensation in these roles, often with non-profit organizations, is low when compared to the private or government sectors, and it can be difficult to enter this career path, and stay in it. Having to come up with thousands of dollars a year, in two installments, is a source of much stress and anxiety for many public interest lawyers, particularly those with families to support. Additionally, most of the non-profit organizations doing legal work are headquartered in Vancouver, where the cost of living is extremely high. This adds an additional barrier to remaining in a public interest legal career. The Law Society should be working to remove barriers for young lawyers and women to practice law and to pursue public interest legal careers. Annual fees are a huge barrier and deterrent.

From my personal experience, I pursued a social justice education in law school at UBC, interned with non-profits, and was dead set on a public interest law career. I spent my first few years out of law school working for various non-profit organizations in Vancouver, always paying the majority of my own Law Society fees and insurance, as the organizations could not afford to pay them. I had two children, and suddenly I could no longer afford to work in non-profit organizations any longer, due to the low wages, annual fee burden, cost of daycare and cost of living in Vancouver. We've recently moved to Vancouver Island, where I am working with a small firm as a sole practitioner. Not the path I set out to pursue but working for a non-profit organization in Vancouver was no longer sustainable. What would have helped, especially in my early years while still paying off substantial student debt, would have been a discount in my fees, or even a way to pay them monthly, instead of two large payments. I know many other lawyers working in non-profits who have had to borrow money from family, or use credit, to pay their annual fees. These fees are a barrier that makes public interest law work only available to those with partners who subsidize their career, or who have no children to support. Non-profit work can be great for lawyers who are parents, particularly women, as the hours are reasonable and work rewarding, but it needs to make financial sense. Public interest work is vital to our society and a key part of the legal profession, and should be supported.

2. If you would support the development and implementation of a fee reduction for public interest practitioners: a. How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?
Maintain a list of approved organizations whose employees can apply for a fee reduction. If a lawyer works for a non-profit organization more than 60% of their working hours, they should qualify. Exceptions could be assessed on a case by case basis.

b. What consequences or impacts of the fee reduction would you foresee as providing its justification?
Encourage more young lawyers to pursue public interest careers, while having families to support and paying expensive costs to live in BC and paying off student debt. Financial need

is high at the start of ones career in ways that previous generations did not experience. Many young lawyers are working very hard, living paycheque to paycheque, and supporting families in very expensive cities. More passionate, driven lawyers could start and stay in public interest careers if they did not have to account for thousands of dollars in fees on meager non-profit salaries. Public interest legal work is really important and more non-profit organizations could attract lawyers to work with them if lawyers knew they would not have to carry their own fees in order to take that job. Many firms and private companies can offer this as part of their compensation package where non-profits cannot.

c. How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?
The fee should be applied to both and should be at least 50% to truly make an impact. Additionally, an option to pay fees by monthly installment should be offered.

Thank you,

From:
To: Annual Fee Review
Subject: Practising Fee and Insurance Fee Payable by Public Interest Practitioners
Date: August 10, 2018 4:12:51 PM

I write to support a recent proposal from two Law Society members that a reduction in the annual practising fee and/or the insurance fee be made available to public interest practitioners on the premise that the current flat fees diminish members' capacity to start and sustain a practice in public interest law.

This proposal serves both to reduce the difficulty of practising public interest law, and to signal the respect accorded to public interest practise by the Law Society.

William Edmund Mugford

From: Lois Salmond
To: Annual Fee Review
Subject: Reduction for Public Interest Lawyers
Date: August 13, 2018 8:11:41 PM

Dear sir or madam:

I am very much in favour of a reduction in practise fees for public interest lawyers which I would define to include
areas of law: mental health (but not for the medical profession); legal aid of any kind; animal law; human rights law ; not - for - profit law ;

The reasons for this are:

1) It would assist lawyers to enter and to continue in these areas . These areas assist people and animals who
are the most vulnerable in our society and the least able to pay legal fees;

2) It would increase the credibility of the legal profession here, in general ,with the public and that is always a concern
since lawyers are often perceived and portrayed as money -oriented, self-serving and aggressive which actually
has some root in fact;

3) It is patently UNFAIR that all lawyers pay the same fees when certain areas of practise are very lucrative and the ones
that assist the most vulnerable are the least lucrative. We are not in a business , but in a profession of which we should be proud;

4) Often the public interest - type lawyer does not have a pension plan and helping people and / or animals should
not be a recipe for financial hardship in old age, especially given the fact that these areas are fraught with difficulties and
are emotionally and physically demanding.

Thank-you.

From:
To: Annual Fee Review
Subject: My views on the fee review
Date: August 15, 2018 10:58:46 AM

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

Yes, there should absolutely be a fee reduction for public interest practitioners. A public interest practitioner is using his or her law degree for the good of an underprivileged population and is still bearing the full cost of living expenses in metro cities (as most PIPs are in the areas that require servicing large, disadvantaged members of the population). The profession should support those doing honourable work for less money than their business law counterparts.

2. If you would support the development and implementation of a fee reduction for public interest practitioners:

    a. How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

Those who are either solo or small firm practitioners who do work for organizations that are directly funded by public organizations or government where their income is LESS than that of the lowest paid government employee in their realm. For example, if they are a criminal defence practitioner who, at 4 year call, is making less than a Crown counsel at that level or an immigration and refugee lawyer who is making less than a PPSC counsel of their same year.

    b. What consequences or impacts of the fee reduction would you foresee as providing its justification?

Less struggle, less burnout and less service areas with reduced services. I also believe that people would feel better able to provide more probono work.

    c. How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

The fee reduction should be applied to the practice fee and should be at least 50% less than those who are practicing law and their firms are paying their practice fee. The insurance should be commiserate with the percentage of complaints that the practice area engenders (ie: criminal lawyers make up 8% of complaints to the Law Society, so their insurance should be scaled to reflect that).

Thank you for allowing me to provide a view on this.

Lisa Jean Helps
Barrister and Solicitor

From: Brittany Goud
To: Annual Fee Review
Subject: Annual Fee Review- part time practice perspective
Date: August 16, 2018 1:17:41 PM

Hello,

I am a part-time practicing lawyer in Victoria, BC. I am practicing part-time as I complete my LLM. I am a supervising lawyer at The Law Centre, a free legal service of the University of Victoria.

In my situation, even the part-time fees are prohibitive. It could take me up to a month to earn enough to cover the fees on my part-time schedule. During one term, I had considered just volunteering my time in order to reduce the fees further (application for pro bono status).

I hope this perspective is useful to you.

Best,

Brittany Goud

From: Erica Olmstead
To: Annual Fee Review
Subject: Law Society of BC seeing feedback on idea of fee reductions for public interest lawyers
Date: August 18, 2018 10:36:52 AM

Hi There - I am writing to comment on the proposal from two Law Society members that a reduction in the annual practicing fee and/or the insurance fee be made available to public interest practitioners on the premise that the current flat fees have a negative impact on members' capacity to start and sustain a practice in public interest law. I am wholly in support of this, especially where a lawyer's salary is well-below what it would be if they were not engaged in public interest work. Employment by an NGO or proof that 40% or more of the lawyer's files are legal aid based, and the lawyer has a salary less than some benchmark, would greatly assist in promoting access to justice and is something that should be supported by the Law Society.

From: Maria Sokolova
To: Annual Fee Review
Subject: Law Society of BC seeking feedback on idea of fee reductions for public interest lawyers
Date: August 19, 2018 2:31:51 AM

Hello,

As a lawyer who worked as a contractor at legal aid and, in the past, maintained an exclusively legal aid practice, I would like to voice my strong support for the idea of fee reductions for public interest lawyers.

The Law Society fees operate in a regressive manner and create impediments for those that want to work to make justice accessible. Not only are they measured by the standards of the salary of the "average" lawyer, for those lawyers that work at firms they are usually paid for by the firm. On the other hand, for lawyers that work at under-funded non-profits, or cash-strapped legal aid, they are an extra annual 'hit'. I have witnessed and personally experienced many times the impediments they create for public interest lawyers. They are a constant burden and never far from the minds of public interest lawyers. Not only the amount, but the manner in which the fees are to be paid in lump sum payments in June and November, creates cash flow issues and hardship. Here are just a few examples I have personally witnessed of how these fees deepen the access to justice crisis by creating hardship for public interest lawyers and undermining their ability to work for the most vulnerable:

- When I was a law student working with the Law Students Legal Advice Program (LSLAP), a graduate (Ph.D) student who was also called to the bar and created LSLAP's immigration program as well as often pointing us to sources of information, told us she could not become our supervising lawyer, even on a volunteer basis, because she was a student and could not afford the annual practice fees. The program, being non-profit, was not able to pay them;

- A colleague at legal aid, having completed her LLM has refused to return to the practice of law doing legal aid files because she cannot afford the practice fee unless she works for a firm taking private clients;

- I myself, have gone non-practicing on two occasions. The first time, I worked out of province. When I wished to return to BC to continue my legal aid practice, it was difficult for me to pay the fee before I began taking files. The second time, I left to complete my LLM. When I returned, I chose to do other temporary work (not public interest) which does not permit me to take legal aid files, because after being a graduate student, I could not afford the fees to start up a legal aid practice again. Moreover, the fees are a hardship for me while also paying student debt. When my temporary contract ends in September, I plan to take up a volunteer public interest opportunity. I worry about paying the November fees and my ability to continue with that opportunity given the amount;

- The fees of about $3500 amount to a significant portion of a public interest lawyer's annual earnings. When I had fewer years at the bar and maintained a legal aid practice, my annual earnings were, at best, about $60,000 gross. No one subsidized my fees or overhead. A few colleagues and I had office space and always (not only in June and November) worried about paying the fees in June and November at the same time as office rent and expenses and other expenses. We avoided buying items for our office (like a better printer) because we needed to have enough to pay the fees. Several of my colleagues restricted themselves to part time legal

practice because of the fees, which also meant they could not earn more and could not do more for clients. Eventually one of those colleagues took up a position which did not require qualification as a lawyer, which did not require her to pay fees. She expressly noted that being a mother, the fees made it difficult for her to earn enough at a public interest practice to support her family. A few others went to work for firms, doing far fewer legal aid files. Another left practice altogether.

Legal aid tariffs and public interest salaries are already very low, and these fees do nothing but add salt to the wound. They end up being the reason most of us either take up different positions where someone else pays, or simply go non-practicing. It is why good, experienced people cannot stay in public interest positions even if they want to and why many younger lawyers cannot fathom doing something like legal aid. When the Law Society decides, as it has done in the past, that it is "inequitable" to reduce the fees, it feels like a slap in the face, like the Society does not value or work and wants to do something else. I've often heard the "well if you can't pay the fees you can't hack it as a lawyer" line. This is ironic given how few people can afford the services of "real" lawyers and how few of those "real" lawyers pay their fees themselves as opposed to the firm paying them. I recommend the piece by Professor Eberts called "'Lawyers Feed the Hungry': Access to Justice, the Rule of Law, and the Private Practice of Law," (2013) 76:1 Saskatchewan Law Review 91, where she succinctly describes the under-class of lawyers she refers to as the "legal proletariat" (where incidentally, marginalized groups find themselves overrepresented) and the way that, among other things, the legal profession is structured to exploit them. This is a classic example. Public interest lawyers must pay the same, or perhaps more (since firms and other government posts pay for them) for the privilege of practice, and yet our practice is under-valued because earning less doing less lucrative files means you are not fit to be a lawyer.

I realize that in past years this proposal has been rejected as some feel that it is not possible to properly define which lawyers would qualify for this reduction. I strongly disagree it difficult to know who is and is not a public interest lawyer, but even if definition on the margins is difficult, this is no reason to do nothing in obvious cases. If one works for a non-profit organization that is not government, or if a certain proportion of one's files are legal aid (a % can be arrived at on consultation, but certainly 75%+ should qualify), in my view these cases are clear. Steps can be taken immediately, and there is no reason not to implement fee reductions for these lawyers just because there is some grey area remaining.

The grey area that everyone appears to be concerned about is sole practitioners, particularly those that that do civil cases. This fails to consider that that category would largely overlap with those whose practice is largely legal-aid based, due to the fact that legal aid operates on a contract basis in this province. Moreover, it is obvious by now that certain areas of law are less lucrative than others and some areas of law have a certain subset of issues that are not lucrative. For example, in immigration, business immigration is lucrative, refugee issues are not. In family, the property issues of high net worth individuals are lucrative, child protection is not. In many cases, the differentiation between practitioners can be made on the basis of what % of their practice is legal aid, because legal aid is targeted at the areas of law that are not lucrative. In civil cases where there is no legal aid coverage, it is still false to claim there is no difference between a practitioner who does business/corporate civil cases in firms, big or small, and that who does what may be referred to as "poverty law" issues. First of all a list of poverty law issues can be identified and the practitioner asked to certify that theirs is a poverty law practice that fits within those areas, or an area that the Law Society may approve on an ad hoc basis. Second, by defining issues as "poverty law/public interest" the Law Society can

target areas where it wishes to incentivize persons to practice because those are areas where access to justice is lacking. Third, the practitioner can be asked either to certify or provide proof that their income in the previous year, or several, was below a certain amount, say $100,000 to ensure that there is a reason for their fee reduction. There is nothing nefarious about choosing to provide services which result in lower pay, and the concern about practitioners being intentionally underemployed to qualify for fee decreases is misplaced in my view. The whole point is to incentivize lawyers to provide services on less lucrative files. Fourth, the fee reductions can be different. For example, those in non-profits or 75%+ legal aid can receive the maximum reduction, whereas those who practice civil law only some of which qualifies as "poverty law/public interest" can receive a lesser reduction.

This need not be administratively difficult. The current practice of having lawyers select the appropriate fee based on full time or part time practice, or the employer, is based on trust in the lawyers to select the right category. This could be the same. If for example, the Law Society maintains a list or a rule of what it considers to be public interest services as asks a lawyer to certify that their practice meets this definition, this only adds one box to the annual fee form.

The Law Society should also consider giving lawyers the option of paying their fees in more than 2 installments (monthly or even 4 times a year would be less of a burden). This should not be administratively difficult, given that everything nowadays is done electronically and recorded automatically.

This is not merely a matter of theory or principle. These fees result in actions and choices by lawyers every day - usually difficult choices to give up public interest practice. It is time they are reconsidered.

Thank you reviewing my comments. Please contact me if you wish to discuss.

Maria Sokolova

From: Jan Christiansen
To: Annual Fee Review
Subject: reduced Law Society fees for "public interest practitioners?"
Date: August 21, 2018 12:56:27 PM

You pose the question:

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

No. There is no definition of "public interest practioners" however it seems likely that what they really mean is practioners seeking to pursue very particular political agendas through the courts in antagonism with elected governments. They do not mean the "public interest" but rather the public interest as defined by their self selected interest group clients. There is no reason why the broad body of lawyers should be asked to subsidize the political agendas of other lawyers and clients - political agendas many of us may disagree with.

Your question #2 is not applicable since I am opposed.

Jan Christiansen, Lawyer

From: Devon Page
To: Annual Fee Review
Subject: 22 08 2018 Law Society Annual Fee Review Consultation.pdf
Date: August 22, 2018 1:15:40 PM
Attachments: 22 08 2018 Law Society Annual Fee Review Consultation.pdf

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Please find attached our response to the Law Society's Annual Fee Review Working Group request for comment on the proposal that a reduction in the annual practising fee and/or the insurance fee be made available to public interest practitioners.

Devon Page
Executive Director| Ecojustice

VANCOUVER CALGARY TORONTO OTTAWA HALIFAX

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August 22, 2018

Sent via email

The Law Society of British Columbia
Via annualfeereview@lsbc.org

Dear Sir/Madam:

Re: Law Society's Annual Fee Review – fee reduction for public interest practitioners

This is in response to the Law Society's Annual Fee Review Working Group request for comment on the proposal that a reduction in the annual practising fee and/or the insurance fee be made available to public interest practitioners.

1. **Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?**

Yes, the Law Society should implement a fee reduction for public interest practitioners for the specific purpose of cultivating this behaviour in the profession.

The basis for this position is that public interest law has distinct characteristics that merit the Law Society's particular support, primarily as it relates to access to justice.

Towards defining "public interest law" and its particular characteristics, in a 2015 submission to the Appeal and Federal Court Rules Committee, Ecojustice, the Canadian Environmental Law Association, and the University of Victoria ELC stated:

> …public interest litigants typically seek to assert the vindication of a public right or the enforcement of a Crown obligation that is often resistant to monetization (e.g. a Charter right for the former, or a duty to protect a listed species under the Species at Risk Act for the latter) or that targets a subject which is a common or public good (e.g. clean air or water). While litigants who bring public interest lawsuits may not always be devoid of private interest motives, private motives rarely justify bringing the claim in an economic sense.

> Furthermore, public interest litigants are driven by broader issues of public importance that transcend the immediate interests of the parties to the *lis*. In these circumstances, in our experience, settlement is rarely a realistic outcome.[1]

Because there is seldom a pecuniary benefit, generally public interest actions are either not brought or they are brought only where legal services are free. Practically, this means that access to justice is very limited, with corresponding, material detriment to the public interest:

> … environmental justice and access to courts is closely related to the civil and political ability of the public to act as stewards of the environment and to protect or improve a community's or individual's quality of life. As such access to justice is a significant element of a democratic society and is closely linked to wider social, economic and political macro and micro issues such as social exclusion, regeneration and public participation. At present numerous barriers to access of the court system mean that overall the court system does not act as tool for environmental justice.
>
> Consequently policies initiatives which would promote environmental justice such as environmental equality, environmental public participation, access to environmental decision making processes and access to information are likely to be undermined if barriers within the court system remain unaddressed. Such barriers stand to weaken any agenda of social inclusion and undermine the enforcement of environmental laws.[2]

This Australian study is somewhat unique in that it addresses the concept of access to public interest law resources as that term is defined above (as opposed to the profession's provision of *pro bono* services or publicly funded legal assistance for private interests[3]).

Our experience is that Australian conclusions about barriers to access to justice in the public interest, and the implications of that, apply equally in Canada. As in Australia, the role of lawyers in Canada is primarily a servant of private interests. Access to justice is becoming more limited and often only to those with means. This circumstance is at odds with what we tell ourselves and the public, "it is the object and duty of the Law Society of British Columbia to uphold and protect the public interest in the administration of justice."[4]

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[1] http://www.cela.ca/sites/cela.ca/files/Costs-Access-to-Justice-Public-Interest-Envl-Litigation.pdf

[2] Adebowale, M., Capacity – Global, Using the Law: Access to Environmental Justice, Barriers and Opportunities, https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2008-23/Amicus%20brief/AnnexBEJUsingtheLaw009Capacity04.pdf

[3] Noting that the provision of these services is likewise considered to be inadequate: Study on Access to the Justice System – Legal Aid, Canadian Bar Association Access to Justice Committee, 2016, https://www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a

[4] Introduction to the BC Code, Code of Professional Conduct for British Columbia https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/

2. **If you would support the development and implementation of a fee reduction for public interest practitioners:**
   a. **How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?**
   b. **What consequences or impacts of the fee reduction would you foresee as providing its justification?**
   c. **How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?**

The characteristics of public interest law as defined above can be identified in a straightforward fashion:

- the litigation is in the "public interest" in that its impact flows broadly or will have a substantial impact beyond the interests of litigants; and,
- the claim cannot be monetized or, if it can, not to an extent the claim is justified in an economic sense.

Where services in the public interest are offered by a charitable or non-profit organization, these organizations will have traits that likewise identify the practice as in the public interest:

- the selection of cases by the organization is made based on criteria that defines and requires representing the public interest and/or by a board or committee that is representative of the public;
- the primary source of financial support of the organization is public and the scope of funding assures that the litigation does not act to benefit individuals akin to the private practice of law; and,
- the organization does not permit a donor to obtain a benefit from the litigation.

These conditions could act as criteria toward enabling fee reductions for lawyers employed by public interest law organizations, or by private lawyers to the extent they undertake public interest law. The courts have little difficulty applying criteria to determine public interest fee waivers; the profession can do the same.

Regarding the impact of the fee reduction, from Ecojustice's perspective, the effect would be material. Currently, 97% of Canada's charitable giving is targeted to educational institutions, religious institutions and healthcare. Funding an organization that provides free legal services to protect the environment is challenging, particularly for the 'administrative' costs of legal practise. At Ecojustice, there could be a direct relationship between a reduction in expenses and provision of legal services.

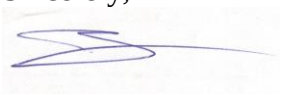
On the flip side, because the practice of public interest law in BC is very limited, it is a reasonable inference that the fiscal impact of a fee waiver for public interest practice would not be material.

The fee reduction should apply to both the practice and the insurance fees. Again, because of the unique characteristics of public interest law, the Society's oversight of public interest lawyers does not demand the same resources as practitioners practising private law. For example, because public interest law represents public not private interests, the circumstances typically do not give rise to malpractice liability. Also, public interest cases seldom deal with monetary outcomes. Where a hefty proportion of the Society's resources are allocated to regulating lawyers' use and misuse of trust accounts, Ecojustice has never needed to maintain trust accounts in our 27 years of operating a public interest litigation practice.

An insurance fee reduction would address the current situation of public interest practitioners being disproportionately burdened.

Lastly, as a grantee of the Law Foundation of BC, we know the Foundation plays a vital and material role in enabling public interest law in BC and likely has the best global sense of the its scope and impact. This inquiry would benefit from requesting a submission from the Foundation.

Sincerely,



Devon Page
Executive Director

ecojustice

From: Civil Supervising Lawyer
To: Annual Fee Review
Subject: Comments
Date: September 4, 2018 3:53:00 PM

To whom it may concern,

My name is Chris Heslinga and I am the Civil Supervising Lawyer for the UBC Law Students' Legal Advice Program ("LSLAP"). I am writing in support of the proposal proposal from two Law Society members that a reduction in the annual practising fee and/or the insurance fee be made available to public interest practitioners for the reasons that follow.

LSLAP provides free legal advice and representation to low-income, disadvantaged and marginalized people, throughout Vancouver and the Lower Mainland. Law School students meet with clients in the community and provide advice and representation through the supervision or myself and a Criminal Supervising Lawyer. LSLAP is the second biggest provider of legal services in B.C., second only to Legal Aid.

Our program helps thousands of low-income individuals each year. We primarily help those who could not afford legal representation otherwise, which in turn saves the court and the Tribunals we appear in untold amounts of time and energy by ensuring as few self-represented litigants appear as rarely as possible, making the court process smoother and more efficient. Therefore our services benefit the court and tribunal systems as well clients and the issues around access to justice.

LSLAP also provides training and education to hundreds of students ever year. Improving the profession, by training law students on how to actually practice law and work with clients. This also in turn saves the court and the profession untold amounts of resources by helping to create practice ready lawyers who understand the importance of client-centred practice and the need to follow their professional obligations. This also serves the public interest in helping train law students to be the best possible lawyers they can be.

LSLAP has also never, to the best of my knowledge, ever had a valid law society complaint or valid insurance claim made against us. Therefore limiting the resources practice fees and insurance pay for.

Despite all the benefits LSLAP provides to the public, the courts, and the profession, and the lack of corresponding costs, I still have to pay as much as lawyers who provide make 10 times my salary, provide no structural benefits to the public, courts, or profession and who have had successful insurance claims made against them. This does not seem fair or just.

Therefore I believe it would be more than fair to provide a reduction in annual practising fees and/or insurance to public interest practitioners.

Yours truly,

Chris Heslinga

From: Ardith Walkem
To: Annual Fee Review
Subject: annual fee review
Date: September 5, 2018 3:36:55 PM

Should the Law Society develop and implement a fee reduction for public interest practitioners?
Why or why not?

Yes. As a solo practitioner (lately small firm - 2 people) practitioner- I am very conscience of the financial differences between firms and areas of practice.

I would support a fee reduction for public interest practitioners - I would define this more broadly so that it was not just organizations who could apply - but individual practitioners, where for example:

It could be shown that a % of the work of the lawyer or firm (30-50%) was for not for profit clients - or perhaps provided at a discount or where a % of work was done on a pro bono basis.

I would also suggest that this might be an area where it was possible to offer some support to those lawyers who provide services on the legal aid tariff. While more thought would be needed, I would suggest that were a lawyer took X number of files, or could show that Y% of their time was dedicated to legal aid files, that they should likewise be eligible.

Another criterion could be to look at the income of the lawyer was below a certain threshold that could also qualify the lawyer for the reduced fee

I believe that this is both an access to justice issue (to provide some relief to members of the bar who service clients who cannot afford to pay the same fees) but also an issue of retention of certain groups within the profession to encourage diversity

From: Graeme Kotz
To: Annual Fee Review
Subject: reduction in fees for public interest lawyers
Date: September 10, 2018 12:34:02 PM

I write in regards to a proposal from two Law Society members for a reduction in the annual practicing fee and/or the insurance fee for public interest practitioners, the reason being that the current flat fees have a negative impact on members' capacity to start and sustain a practice in public interest law.

I am wholly in support of this. All my practice work to date has been with legal aid and I certainly felt the fees more than my friends who practiced in non-public interest law, some of whom didn't even know about the fees as they were paid by their firm. Honestly, I know interpreters and immigration consultants who were paid more than I was as a legal aid lawyer, and currently I am non-practicing in large part because of the (relative) financial hardship in this type of practice. It only seems fair to give a break to people who continue to take files at the legal aid tariff.

Regards,

Graeme Kotz

From: Karin Litzcke
To: Annual Fee Review
Subject: Quick input
Date: September 10, 2018 6:05:56 PM

Hi - I am a non-lawyer who has just come across your call for input about reducing fees for public interest lawyers, here: https://www.thelawyersdaily.ca/articles/7236.

I unfortunately don't have time before your deadline to do a full analysis and fee structure recommendations, but I do want to take a moment to say that this would be a spectacularly awful idea from any number of perspectives. I cannot think of a single reason why this would (a) be a good idea for the legal profession, or (b) engender any improvement in access to justice. It would not remotely serve the public interest, but would rather serve a group of lawyers whose practices veer dangerously close to rent-seeking and manipulation of the public interest for their own virtue-signalling and empire-building. The law and access to justice would be no better if that particular group of lawyers vanished from the face of the earth, so they are the last group to whom a fee reduction should be offered.

Something that is rarely considered by experts is the degree to which the public prefers to define its own interests, even if it needs experts to serve the interests it identifies. If you want to make changes to assist the public in doing so, I would have myriad suggestions, only one of which *might* be a change in fees.

But honestly, if the article is accurate in reporting how much fees currently are, they are gratifyingly low already, and no group of lawyers has any basis from which to demand a reduction. If any does, as I say, it is not this group; it would be a group whose income comes directly from individual (not institutional) clients' pockets, and in particular, not from grants.

If you'd like to know more about why I see this issue as I do, or what alternatives might exist for the society to improve access-to-justice, feel free to contact me; a more extensive consultation could be arranged.

Karin Litzcke, BHE, MBA

From:	Martin Peters
To:	Annual Fee Review
Cc:	Levy, Tamara; Gloria Ng; Brock Martland; Tony Paisana; Jeff Campbell, QC; Rachel Barsky
Subject:	Submissions from the Criminal Defence Advocacy Society (CDAS)
Date:	September 13, 2018 1:43:46 PM
Attachments:	CDAS submission.filed.docx

Annual Fee Review:
Please find attached submissions from CDAS.
Should the committee have any questions or require any further information from us, please contact me at your convenience.
Martin Peters, Director, CDAS

MEMORANDUM

TO: Law Society of British Columbia, Annual Fee Review Committee Working Group

From: Criminal Defence Advocacy Society

Date: September 13, 2018

Subject: Reduction in Fees and Insurance Costs for Young Lawyers whose practices Involve Primarily Legal Aid Cases

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The Criminal Defence Advocacy Society ("CDAS") is engaged in advocacy, law reform and education in matters relating to criminal defence work in the justice system. The Society was founded by members of the British Columbia criminal defence bar who identified a gap in the area of law reform for criminal justice issues specifically affecting criminal defence lawyers and their clients.

CDAS represents over 300 criminal defence lawyers practicing in most areas of the province. We comprise approximately 65% of all criminal law practitioners in the province.

Our Proposal:

CDAS submits that there should be a 50% reduction in practice and insurance fees for those lawyers:

- Who earn less than $ 50,000.00 per anum on a net basis;
- Whose practice is comprised of at least 50% of cases paid for by the Legal Services Society, ("Legal Aid"); and
- Who have been called to the bar within the past 5 years.

In September 2016 CDAS submitted a Report to the LSBC Committee on Improving Criminal Law Articles in British Columbia. That report touched upon the difficulty that annual Law Society fees pose for new and young criminal lawyers:

Some of those surveyed described a virtually untenable position upon being called to the bar. They are typically several thousands of dollars in debt from university, they have been paid a meager wage during articles that may or may not have resulted in a net debt after taking into account personal expenses not covered during the articling year (e.g. gas, cellular phone, etc.), and upon being called, are faced with a significant Law Society bill associated with their call, insurance and enrollment. The situation is well-illustrated by the response we received from one young lawyer who was recently called to the bar:

> There must be a reduction of the fees we are expected to pay upon being called or as new lawyers in criminal defence. I know of many students who simply delayed or avoided being

> called because they could not afford it. For many of us, we are not paid for our gas or vehicle expenses. If the firm a student articles with is busy enough, you end up making barely enough to cover your gas, insurance, and food. I was lucky to have lived at home during articles. I cannot imagine how someone who had to pay rent in Vancouver would have fared.
>
> I was called in May. Yet despite this and despite the lack of jobs, I had to pay $2760.15 on April 30, as a call fee and insurance for May - December. I still had not secured a position at that point and was staying on at my firm and being paid just over $1000 bi-weekly for two months. I would then be unemployed for the first time since I was 16. I remember writing to the Law Society to ask if there were any part of the fee that I could opt out of as a low-income individual and a criminal articling student who would be shortly jobless. The email I received back stated simply "there is no reduced rate and insurance fees are the same for all lawyers". I was told I could switch to non-practicing and pay the $300 installment fee. Of course I couldn't afford to do that because I was trying to remain employable in a field where salaried or associate positions are virtually nonexistent.
>
> I then received another bill from the Law Society for $2955.75 on November 1, which was due November 30. I am fairly certain that I paid this bill late as I simply didn't have the money.

Unfortunately this situation is not all that unusual. Many new criminal lawyers in Vancouver find themselves struggling to make ends meet if they want to stay in criminal practice. These observations do not fail to recognize that many lawyers struggle because there is not enough work to go around for the number of lawyers who want to practice in this area. However, in our view, there should be some recognition that it is especially difficult for newer lawyers, and assistance ought to be given to at least offer them a fighting chance to start a practice. (Emphasis added)

It must be remembered that a good portion of legal aid work is done by young defence counsel. Senior counsel often reject these retainers for a variety of reasons. As a result, the mentally ill, drug addicted and other marginalized souls in our system are routinely represented by young lawyers. It is thankless work, as a Judge of the Ontario Superior Court recently reminded us:

> [51] It is the role of criminal defence counsel, frequently a most difficult role, to fully and fervently represent those persons accused of criminal offences, recognizing that their efforts will often place them at odds with public sentiments, including a natural desire for retribution. As the intervener, The Criminal Lawyers' Association, said in its factum:
>
> > Defence counsel run the risk of unpopularity or misunderstanding about their role more than any other lawyer in the Canadian justice system. One reason is the defence lawyer represents a person accused of distasteful acts. Those charged with crimes are frequently unpopular or outside the "mainstream": the poor, addicted, mentally ill, racial and ethnic minorities.
> >
> > - Groia v. Law Society of Upper Canada, 2015 ONSC 686 at para. 51.

Nonetheless, every day in our courts, young lawyers are called upon to provide this important public service and are not properly compensated or supported in their work. They are regularly expected to work for free or nearly for free when dealing with subject matters like an individual's liberty, his or right

to privacy, and other vital interests that protect everyone. As Leonard T. Doust, Q.C. recently explained, legal aid and legal aid lawyers are invaluable to the proper functioning of our system:

> We are perhaps most familiar with legal aid in criminal matters. Persons who are accused of serious crimes and who cannot otherwise afford to pay for a lawyer must be provided with publicly-funded counsel in order to ensure their right to a fair trial and to safeguard the presumption of innocence. The underlying rationale for this protection of the presumption of innocence is two-fold. First, from the perspective of the individual, legal aid ensures that individuals who face the potential of incarceration have the means to adequately defend themselves. Second, from the perspective of the system, legal aid ensures that the criminal justice system can effectively avoid wrongful convictions, function fairly, and ensure that each and everyone one of us can be confident that we live in a society where we will never be punished for something that we did not do, nor will any of our family, friends, associates, or fellow members of our society.
>
> The rights of all of us are on trial in every criminal case. Without proper representation, pre-trial processes such as disclosure, admissions of fact, and plea bargaining are ineffective, and unrepresented accused are left floundering with complex processes, procedural, evidentiary, and legal issues…
>
> - Leonard T. Doust, Q.C., Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia; March 2011 at p. 14.

Young defence lawyers do this work because they are passionate about these issues. However, as we have seen, the stark financial reality of practising in this manner eventually catches up with young lawyers and they are forced to pursue other alternatives. This is a failing of our system that we must take steps to rectify immediately.

The CDAS September 2016 report recommended *inter alia* that in order to ensure an increase in criminal law articles, we:

> Encourage the Law Society of British Columbia to investigate reducing and/or waiving PLTC tuition, bar admission fees and insurance fees for criminal law students and new calls with a predominantly legal aid based practice (initiatives which have had some success in Ontario);

The circumstances facing young criminal lawyers has not improved since 2016. In the most recent budget of the Provincial Government, some increase in funding was provided to the Legal Aid. However, the stipulation with those increases was that none of it was to be utilized to increase the legal aid tariff. This tariff has not increased since 1992.

Young criminal lawyers work with the mentally ill, drug addicted and marginalized souls in our community that so readily find their way into the criminal justice system. It is thankless work that is barely rewarded by legal services. Any benefit that the Law Society is able to confer on young criminal lawyers will produce a net benefit in the level of services available to the most challenged people in our community. The public

interest will be served by a fee structure that permits young criminal lawyers to continue in this important work.

Law Society Reduced Fee Feasibility Working Group, 2013 Report:

On September 27, 2013 the Benchers resolved to accept the report of the Reduced Fee Feasibility Working Group, ("Working Group"). The Working Group had produced a report to the Executive Committee on September 4, 2013, (the "Report"). The Report concluded that:

> "The Working Group's view is that proposed fee reduction would be sufficiently expensive and operationally demanding to administer as to outweigh its potential benefits. Those potential benefits ultimately are insufficient to justify the implementation of a fee reduction, particularly given that such a reduction would not appear to be an effective means of recognizing the contributions of lawyers working in the not for profit sector. The fee reduction would also appear to raise an issue of unfairness in the way that the Law Society treats different groups of its members. In light of all of the issues raised and concerns discussed in this memorandum, the Working Group has concluded that proposed fee reduction is not feasible."

CDAS submits that these conclusions and the entire memorandum submitted by the Working Group, has little or no application or consideration to the position of the majority of young criminal lawyers in the province. In particular:

- The research of the Working Group focused on lawyers working in the "not for profit" sector. These are lawyers working for corporations who engage in social justice issues. Their fees are paid for by the corporation. Any reduction in fees owing by such young lawyers is a net benefit to the not for profit corporation that does not flow to the lawyers themselves or enhance these lawyer's ability to make legal services available to the marginalized members of our community;

- The Report of the Working Group was concerned about the unfairness to be visited upon:

  > "lawyers who pay their own fees, whose incomes are below the level of many that would be eligible for the proposed reduction and whose work amounts to a significant benefit for their clients and, arguably for the public interest. They may or may not do legal aid work, practice poverty law, or provide services in geographical areas where there would likely be no substitute available."

  These lawyers so described are the young criminal lawyers in this Province. The argument of unfairness, so expressed, does not and cannot apply the members of CDAS who do not generally work for anyone let alone a corporation that pays their fees.

- The major concern of the Report was that a fee reduction system would unfeasible from a financial, operational and justification stand point. In this

respect CDAS submits that a reduction in membership and insurance fees for young lawyers:

- Could be simply administered by a declaration that:
  - 50% of all work was funded by the Legal Services Society, ("LSS"); and
  - The lawyer in the prior year had earned on a net basis less that $50,000.00.

    Should there be a need to review such a declaration, a waiver of confidentiality with LSS as well as the production of the members tax return for the prior year would be all that is required.

Legal Aid Task Force:

In March 2017 the Benchers approved a report of the Legal Aid Task Force, ("Task Force") : "A Vision for Publicly Funded Legal Aid In British Columbia" ("Task Force Report").

The Task Force Report identified a number of important considerations pertinent to legal aid and those whose practices involve a significant portion of these files:

- Most lawyers who take on legal aid work do so at a financial loss.[1]
- The general decline in lawyers practising criminal law is a concern'[2]
- The survey conducted by the Task Force found that the primary motivation of those responding for doing legal aid work is a commitment to social justice, although the responses also indicate that the professional responsibility to do the work and the interesting nature of the work are also motivating factors.[3]

As part of its mandate in producing this report the Task Force reviewed ways the Law Society could promote and improve lawyer involvement in delivering legal services through legal aid plans. One of the considerations in this regard was reducing insurance costs and practice fees for young lawyers and for criminal and immigration lawyers. The Task Force consulted with staff at the Lawyers Insurance Fund. The preliminary conclusion of the Task Force was that the concept of a reduction in insurance fees was not worth pursuing.[4] It is noteworthy that the Task Force did not address in its report the issue of a reduction in practice fees.

The basis on which the Task Force did not consider a reduction in insurance fees as worth pursuing included:

- Lawyer insurance is not risk-rated by lawyer category. Graded insurance schemes have been considered by benchers in the past and rejected.

[1] Task Force Report, paragraph 27 and Appendix 2.
[2] Task Force Report paragraph 48.
[3] Task Force Report, Appendix 2.
[4] Task Force Report, paragraph 48

- There could be harmful or unintended consequences to lawyers with economically marginal practices;
- In firms, the benefit would accrue to the firm and not to the lawyer performing the legal aid work;
- Insurance premiums are low in British Columbia and stable relative to other operating expenses faced by lawyers;
- The Task Force believes the benchers may wish to explore payment schemes, quarterly or monthly payments.

For the reasons submitted in this Memorandum, CDAS submits that these are not appropriate reasons not to consider insurance fee reduction for young criminal lawyers working primarily on legal aid files. At the very least the benchers should implement the recommendation of the Task Force as to payment schemes.

Annual Fee Review: Consultation Paper

The Consultation Paper provided by the Annual Fee Review Committee Working Group ("Consultation Paper") lists three factors that were addressed by the 2013 Working Group that remain relevant. CDAS's position on these issues is partially addressed above. However, in order to ensure that this Working Group has the full benefit of our submissions we set out our further response below to the three issues as well as the primary questions posed by this Working Group's mandate:

- Justification:

  The Consultation Paper raises the question of the beneficial impact of a fee reduction, whether it can be justified, whether a similar request may be engendered by subsets of the membership and the motivation for the suggested fee reduction:

  - The benefits of a fee reduction for criminal lawyers working predominantly on files paid for by legal aid is justified by the net extension of legal services to poor, marginalized groups within our communities. As noted above, these include the addicted, mentally ill and homeless women and men in our communities.

  - There may be a subset of other members serving other groups in our communities. However, to the extent that poverty, mental illness, addiction and homelessness will be addressed by the fee and insurance decrease we are proposing, CDAS submits that other subsets of the membership that may feel left out will be few. If such hypothetical groups exist or may arise in the future, our position is that the Law Society should

carefully review the justification for such further requests. If the net benefit to the community is an increase in access to justice, a fee or insurance reduction may be warranted;

- The motivation of CDAS seeking a fee and insurance reduction on behalf of some, and it is expected the younger lawyers we represent, is to ensure the continued entry of young lawyers into criminal defence work. This will in turn improve the health of the criminal law bar and ensure access to justice for the marginalized groups for whom our lawyers act. The unfortunate corollary to not easing the burden of young criminal defence lawyers is that these people leave the service of their marginalized clients. This is a loss to the continued existence of a healthy and vibrant criminal law bar and a loss to our clients.

- Financial Implications:

  Clearly a concern of the 2012 Working Group who considered this issue was the expected fee increase that would flow to the members who do not seek or would not qualify for the fee reduction. The potential benefits socially in terms of ensuring access to justice warrant and justify the potential inequity of having two classes of fee-paying members. Ensuring access to justice is a fundamental part of the Law Society public interest mandate.[5] This fee reduction would further implement policies that will fulfill this mandate.

- Operational Impact:

  The implementation of the fee and insurance reduction proposed above would require a declaration and a waiver (of confidentiality with Legal Services) from members seeking the reduction. Such declarations are common for other services and practices now utilized by the Law Society, ie. the election of benchers. CDAS expects that the operational impact would be minimal. The benefits flowing from any increase costs are readily offset by ensuring access to justice to the poor, addicted, mentally ill and homeless members of our community.

[5] Section 3 of the Legal Profession Act, S.B.C. 1998 c. 9; The Legal Aid Task Force Report in Appendix 1 recognized that access to justice is a fundamental human right.

Primary Questions to Be addressed:

1 Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

- Yes: to the extent that public interest practitioners are young lawyers struggling to provide services to marginalized groups. CDAS submits that this group should not include employees of not for profit corporations;

2. If you would support the development and implementation of a fee reduction for public interest practitioners:

(a) How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

- Identification of those eligible for fee reduction should include:
  - Those earning less than $50,000.00, net, per anum;
  - Those whose practice is made up of at least 50% legal aid.
  - Those who are less than a 5 year call, in order to ensure continued access of young lawyers into the criminal law bar.

(b) What consequences or impacts of the fee reduction would you foresee as providing its justification?

- As noted above:
  - Ensuring the continuation and health of the criminal law bar;
  - Extending access to justice to the marginalized groups our lawyers represent and in particular indigenous accused; and
  - Maintaining the efficient use of court services by reducing the number of self-represented individuals involved in the criminal justice system;[6]

[6] The Legal Aid Task Force Report at paragraph 15 identified the phenomenon of the self represented litigant strains the litigant and the justice system. The increase in self represented litigants leads to results that are less likely to be consistent with the values of a democratic society subject to the rule of law. In addition to leading to inequality of justice, this leads to disillusionment in our system of justice and laws. When these problems become endemic, public faith in our society and the rule of law is eroded.

- Avoiding wrongful convictions for those charged with offences who cannot afford or cannot find counsel with the necessary experience.[7]

(c) How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

- The fees for participating members should be reduced by 50%;
- The reduction should apply to both practice and insurance fees.

CDAS thanks the Committee for providing an opportunity to comment on a matter that is critical to the lawyers whom we represent.

[7] The Legal Aid Task Force at paragraph 36 of their Report identified the increase cost to the justice system by the rising number of self-represented before the courts, accused persons making inappropriate guilty pleas, delay – to name but a few factors – is apparent, if not yet measured in dollars. The greater cost to the public goodf is manifested in an erosion in public confidence in our system of justice.

From: Naomi Minwalla
To: Annual Fee Review
Subject: Input - Public Interest Practitioner Fee Reduction
Date: September 13, 2018 10:53:41 PM

Dear LSBC Annual Fee Review Working Group,

Thank you for the opportunity to provide input on whether the Law Society should reduce practice and insurance fees for public interest practitioners.

As you will read in my below comments, I think the first step toward a fairer fee scheme would be to drop the idea of a public interest category. Alternative fee reduction models could apply to *all* lawyers, irrespective of their practice area and their institutional status. I offer a couple of alternative models at the end of this message, one based on objective financial criteria and the other based on more comprehensive discretionary criteria.

By way of background, I'm a sole proprietor who's been representing indigent and marginalized people in my small private practice for almost two decades. I've experienced financial hardships caused by practice and insurance fees when starting and then sustaining a practice in which most clients are poor and *pro bono* work is a core component. Despite my public interest focus and despite my general support for practice/insurance fee reductions, I'm opposed to a pre-defined class of eligible public interest practitioners.

I share many of the concerns raised in the September 2013 Reduced Fee Feasibility Working Group Memo and 2018 Consultation Report. My primary concern is that the fee reduction discussions to-date seem to have been locked within a 'public interest practitioner' framework that is futile to define even for those of us who would likely fall within it. The public interest practitioner focus also deflects from consideration of other fee models (see examples below) that could lead to a fairer fee arrangement for *all* lawyers.

I've not been part of your discussions, but I gather from the reports circulated to us that the fee reduction initiative has been driven by non-profit sector (NGO) lawyers. While I don't doubt the good work of NGO lawyers and their important contributions to the public interest, including access to justice and access to legal services, if there is an assumption that advancing those causes is confined to that sector then this is a wrong assumption. Private sector lawyers, including sole proprietors such as myself, may have similar motivations but choose to advance them privately *not* because of profit-seeking advantages but rather because we prefer to maintain our independence from institutional politics, mandates, and bureaucracies (whether with NGOs, governments or law firms). I think it's unwise, misleading and unhealthy for the profession to pit one sector of lawyers against another under the rubric of 'public interest practitioner'.

Even if private practitioners were included in the public interest category, how would the Law Society validate such claims? You can't tie the claims to legal aid referrals, status with non-profit institutions, or the amount of *pro bono* hours. Private sector lawyers contribute to public interest and access to justice issues in many different ways. For instance, charging at extremely reduced rates that result in a significant financial sacrifice for the lawyer but a high quality of service for clients.

A public interest category should not replace our provincial government's responsibility to earmark our 7% PST on legal fees to legal aid and other access to justice schemes, as was initially intended. Could the Law Society not push the PST issue further with our current provincial government?

Despite my concerns about the public interest category, I support the general need for a fairer fee scheme. I would encourage the Law Society to consider other jurisdictions where, irrespective of the type of law and the institutional nature of a lawyer's practice, fee amounts are tapered objectively according to income category. In England and Wales, the annual practice fee amount varies according to the following 2018/19 income categories for barristers:

Band	**Income Band**	**2018 Fees**
1	£0 - £30,000	**£123**
2	£30,001 - £60,000	**£246**
3	£60,001- £90,000	**£494**
4	£90,001 - £150,000	**£899**
5	£150,001 - £240,000	**£1,365**
6	£240,001 and above	**£1,850**

This would seem to be a fairer and more objective way to charge fees. Clearly, our current annual fees of about $4,000 are likely to be more onerous to a lawyer who earns less than $30,000 from the practice of law than to one earning $250,000. Administration of the scheme in England and Wales also seems efficient. Barristers self-declare their income category when they make their online fee payment. Although actual income is not declared, records may be selected for spot checking. Moreover, barristers who are renewing their practising certificate for the first time or who have zero earnings in a calendar year or who are returning from parental leave automatically fall into Band 1 (the lowest fee payment) for that year. When paying their fees, barristers have the option of making a *voluntary* contribution to a *pro bono* unit and Bar Council. The full England and Wales 2018/19 policy for barristers' compulsory practising fees is located at https://www.barstandardsboard.org.uk/media/1921614/60-authorisation_to_practise_2018-19-policy_and_guidance.pdf There is a similar, but more complex and expensive, tapered income category scheme for solicitors' practising fees in England and Wales.

Alternatively, the Law Society may wish to consider a discretionary compassionate fee reduction model. I haven't had sufficient time to think through this carefully, but I can offer some preliminary thoughts, including some of the disadvantages. The principles that govern

assessments could include: (1) that a reduction would be granted on an exceptional basis, (2) applications would be open to *all lawyers irrespective of the type of law practised and institutional status*, and (3) there would be an assessment of the *particular circumstances of each applicant.* Specific assessment factors could include, for instance: (1) earning capacity and direct significant financial hardship caused by the fees; (2) impact of fees on the ability to maintain a practice and support a livelihood; (3) the lawyer's contributions to the profession and commitment to access to justice; (4) insurance liability record to-date; (5) disabilities, medical issues, mental health issues, and unforeseen crises; (6) parental leave; (7) status as an indigenous person or other disadvantaged minority; and (8) any other extenuating circumstances and hardships that a lawyer may be experiencing. A submission based solely on the fact that a lawyer works for a public interest NGO would not, in my view, be sufficient. Nor should lawyers be allowed to apply if their employers cover their fees, directly or indirectly. There are some obvious disadvantages. Firstly, the tIme and resources it could take for the Law Society to consider applications. Moreover, a lawyer's anxiety of not being able to predict whether a fee reduction application would be approved. A discretionary model could also lead to accountability issues; for instance, why one lawyer got a reduction but another lawyer in apparently similar circumstances did not. I don't know the circumstances of all other B.C. lawyers so the volume of applications that the Law Society would potentially receive would be uncertain, as would the impact on the Law Society's financial position.

In conclusion, based on the information I have so far, I do not support the public interest practitioner idea. I would, however, ask that the idea of a fairer fee scheme be kept alive and that consultations with us continue, albeit with a shifted focus on alternative models that could result in fairer fees for all lawyers.

Thank you for your generous efforts with this important matter. I wish you well in your deliberations.

Kind regards,

Naomi

Naomi Minwalla
Barrister & Solicitor

From: Martin Peters
To: Annual Fee Review; Lance Cooke
Subject: Criminal Defence Advocacy Society (CDAS) submissions on annual fees
Date: September 14, 2018 8:09:47 AM
Attachments: CDAS submission.filed3.docx

Committee Members:
Please find attached the submissions of CDAS relevant to the questions raised in your Consultation Paper. CDAS submits that there should be an annual fee and insurance fee reduction of 50% for lawyers who are recently called to the bar, earn less than $50,000 per year and whose practices include at least 50% of work paid for by legal aid.

Should you have any questions or require any further information or submissions from us, please let us know.
Martin Peters
Director, CDAS

MEMORANDUM

TO: Law Society of British Columbia, Annual Fee Review Committee Working Group

From: Criminal Defence Advocacy Society

Date: September 14, 2018

Subject: Reduction in Fees and Insurance Costs for Young Lawyers whose practices Involve Primarily Legal Aid Cases

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The Criminal Defence Advocacy Society ("CDAS") is engaged in advocacy, law reform and education in matters relating to criminal defence work in the justice system. The Society was founded by members of the British Columbia criminal defence bar who identified a gap in the area of law reform for criminal justice issues specifically affecting criminal defence lawyers and their clients.

CDAS represents over 300 criminal defence lawyers practicing in most areas of the province. We comprise approximately 65% of all criminal law lawyers practicing in British Columbia.

Our Proposal:

CDAS submits that there should be a 50% reduction in practice and insurance fees for those lawyers:

- Who earn less than $50,000.00, net, per *anum*;
- Whose practice is comprised of at least 50% of cases paid for by the Legal Services Society, ("Legal Aid"); and
- Who have been called to the bar within the past 5 years.

In September 2016 CDAS submitted a Report to the LSBC Committee on Improving Criminal Law Articles in British Columbia. That report touched upon the difficulty that annual Law Society fees pose for new and young criminal lawyers:

> Some of those surveyed described a virtually untenable position upon being called to the bar. They are typically several thousands of dollars in debt from university, they have been paid a meager wage during articles that may or may not have resulted in a net debt after taking into account personal expenses not covered during the articling year (e.g. gas, cellular phone, etc.), and upon being called, are faced with a significant Law Society bill associated with their call, insurance and enrollment. The situation is well-illustrated by the response we received from one young lawyer who was recently called to the bar:

There must be a reduction of the fees we are expected to pay upon being called or as new lawyers in criminal defence. I know of many students who simply delayed or avoided being called because they could not afford it. For many of us, we are not paid for our gas or vehicle expenses. If the firm a student articles with is busy enough, you end up making barely enough to cover your gas, insurance, and food. I was lucky to have lived at home during articles. I cannot imagine how someone who had to pay rent in Vancouver would have fared.

I was called in May. Yet despite this and despite the lack of jobs, I had to pay $2760.15 on April 30, as a call fee and insurance for May - December. I still had not secured a position at that point and was staying on at my firm and being paid just over $1000 bi-weekly for two months. I would then be unemployed for the first time since I was 16. I remember writing to the Law Society to ask if there were any part of the fee that I could opt out of as a low-income individual and a criminal articling student who would be shortly jobless. The email I received back stated simply "there is no reduced rate and insurance fees are the same for all lawyers". I was told I could switch to non-practicing and pay the $300 installment fee. Of course I couldn't afford to do that because I was trying to remain employable in a field where salaried or associate positions are virtually nonexistent.

I then received another bill from the Law Society for $2955.75 on November 1, which was due November 30. I am fairly certain that I paid this bill late as I simply didn't have the money.

Unfortunately this situation is not all that unusual. Many new criminal lawyers in Vancouver find themselves struggling to make ends meet if they want to stay in criminal practice. These observations do not fail to recognize that many lawyers struggle because there is not enough work to go around for the number of lawyers who want to practice in this area. <u>However, in our view, there should be some recognition that it is especially difficult for newer lawyers, and assistance ought to be given to at least offer them a fighting chance to start a practice.</u> (Emphasis added)

It must be remembered that a good portion of legal aid work is done by young defence counsel. Senior counsel often reject these retainers for a variety of reasons. As a result, the mentally ill, drug addicted and other marginalized souls in our system are routinely represented by young lawyers. It is thankless work, as a Judge of the Ontario Superior Court recently reminded us:

> [51] It is the role of criminal defence counsel, frequently a most difficult role, to fully and fervently represent those persons accused of criminal offences, recognizing that their efforts will often place them at odds with public sentiments, including a natural desire for retribution. As the intervener, The Criminal Lawyers' Association, said in its factum:

> Defence counsel run the risk of unpopularity or misunderstanding about their role more than any other lawyer in the Canadian justice system. One reason is the defence lawyer represents a person accused of distasteful acts. Those charged with crimes are frequently unpopular or outside the "mainstream": the poor, addicted, mentally ill, racial and ethnic minorities.
>
> - Groia v. Law Society of Upper Canada, 2015 ONSC 686 at para. 51.

Nonetheless, every day in our courts, young lawyers are called upon to provide this important public service and are not properly compensated or supported in their work. They are regularly expected to work for free or nearly for free when dealing with subject matters like an individual's liberty, his or right to privacy, and other vital interests that protect everyone. As Leonard T. Doust, Q.C. recently explained, legal aid and legal aid lawyers are invaluable to the proper functioning of our system:

> We are perhaps most familiar with legal aid in criminal matters. Persons who are accused of serious crimes and who cannot otherwise afford to pay for a lawyer must be provided with publicly-funded counsel in order to ensure their right to a fair trial and to safeguard the presumption of innocence. The underlying rationale for this protection of the presumption of innocence is two-fold. First, from the perspective of the individual, legal aid ensures that individuals who face the potential of incarceration have the means to adequately defend themselves. Second, from the perspective of the system, legal aid ensures that the criminal justice system can effectively avoid wrongful convictions, function fairly, and ensure that each and everyone one of us can be confident that we live in a society where we will never be punished for something that we did not do, nor will any of our family, friends, associates, or fellow members of our society.
>
> The rights of all of us are on trial in every criminal case. Without proper representation, pre-trial processes such as disclosure, admissions of fact, and plea bargaining are ineffective, and unrepresented accused are left floundering with complex processes, procedural, evidentiary, and legal issues…
>
> - Leonard T. Doust, Q.C., Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia; March 2011 at p. 14.

Young defence lawyers do this work because they are passionate about these issues. However, as we have seen, the stark financial reality of practising in this manner eventually catches up with young lawyers and they are forced to pursue other alternatives. This is a failing of our system that we must take steps to rectify immediately.[1]

[1] Criminal Defence Advocacy Society Report of the Committee on Improving Criminal Law Articles in British Columbia, September 2, 2016 ("CDAS Articling Report"), pages 7-10.

The September 2016 CDAS Articling Report recommended *inter alia* that in order to ensure an increase in criminal law articles, we:

> Encourage the Law Society of British Columbia to investigate reducing and/or waiving PLTC tuition, bar admission fees and insurance fees for criminal law students and new calls with a predominantly legal aid based practice (initiatives which have had some success in Ontario).[2]

The circumstances facing young criminal lawyers have not improved since 2016. In the most recent budget of the Provincial Government, some increase in funding was provided to Legal Aid. However, none of these increases went to increase the legal aid tariff. This tariff has not increased since 1992.

Young criminal lawyers work with the mentally ill, drug addicted and marginalized souls in our community that so readily find their way into the criminal justice system. It is thankless work that is barely rewarded by legal services. Any benefit that the Law Society is able to confer on young criminal lawyers will produce a net benefit in the level of services available to the most challenged members in our communities. The public interest will be served by a fee structure that permits young criminal lawyers to continue in this important work.

Law Society Reduced Fee Feasibility Working Group, 2013 Report:

On September 27, 2013 the Benchers resolved to accept the report of the Reduced Fee Feasibility Working Group, ("Working Group"). The Working Group had produced a report to the Executive Committee on September 4, 2013, (the "Working Group Report"). The Working Group Report concluded that:

> "The Working Group's view is that proposed fee reduction would be sufficiently expensive and operationally demanding to administer as to outweigh its potential benefits. Those potential benefits ultimately are insufficient to justify the implementation of a fee reduction, particularly given that such a reduction would not appear to be an effective means of recognizing the contributions of lawyers working in the not for profit sector. The fee reduction would also appear to raise an issue of unfairness in the way that the Law Society treats different groups of its members. In light of all of the issues raised and concerns discussed in this memorandum, the Working Group has concluded that proposed fee reduction is not feasible."[3]

CDAS submits that these conclusions and the entire memorandum submitted by the Working Group, has little or no application or consideration to the position of the majority of young criminal lawyers in the Province today. In particular:

[2] CDAS Articling Report page 13.

[3] Reduced Fee Feasibility Working Group Report, September 4, 2013, ("Working Group Report"), page13.

- The research of the Working Group focused on lawyers working in the "not for profit" sector. These are lawyers working for corporations who engage in social justice issues. Their fees are paid for by the corporation. Any reduction in fees owing by such young lawyers is a net benefit to the not for profit corporation that does not flow to the lawyers themselves or enhance these lawyer's ability to make legal services available to the marginalized members of our community.[4]

- The Report of the Working Group was concerned about the unfairness to be visited upon:

  > "lawyers who pay their own fees, whose incomes are below the level of many that would be eligible for the proposed reduction and whose work amounts to a significant benefit for their clients and, arguably for the public interest. They may or may not do legal aid work, practice poverty law, or provide services in geographical areas where there would likely be no substitute available."[5]

  These lawyers so described are the young criminal lawyers in this Province. The argument of unfairness, so expressed, does not and cannot apply the members of CDAS who do not generally work for anyone let alone a corporation that pays their fees.

  The major concern of the Report was that a fee reduction system would be unfeasible financially, operationally and from a justification stand point.[6] In this respect CDAS submits that the fee and insurance reduction proposed herein could be simply administered by a declaration that:

  - 50% of all work was funded by the Legal Services Society, ("LSS");
  - The lawyer in the prior year had earned on a net basis less that $50,000.00; and
  - The year of call.

  Should there be a need to review such a declaration, a waiver of confidentiality with Legal Aid as well as the production of the members tax return for the prior year would be all that was required.

Legal Aid Task Force:

In March 2017 the benchers approved a report of the Legal Aid Task Force, ("Task Force"): "A Vision for Publicly Funded Legal Aid In British Columbia" ("Task Force Report").

[4] Working Group Report pages 7-8.
[5] Working Group Report, page 12.
[6] Working Group Report pages 8-12.

The Task Force Report identified a number of important considerations pertinent to legal aid and those whose practices involve a significant portion of these files:

- Most lawyers who take on legal aid work do so at a financial loss.[7]
- The general decline in lawyers practising criminal law is a concern'[8]
- The survey conducted by the Task Force found that the primary motivation of those responding for doing legal aid work is a commitment to social justice, although the responses also indicate that the professional responsibility to do the work and the interesting nature of the work are also motivating factors.[9]

As part of its mandate in producing this report the Task Force reviewed ways the Law Society could promote and improve lawyer involvement in delivering legal services through legal aid plans. One of the considerations in this regard was reducing insurance costs and practice fees for young lawyers and for criminal and immigration lawyers. The Task Force consulted with staff at the Lawyers Insurance Fund. The preliminary conclusion of the Task Force was that the concept of a reduction in insurance fees was not worth pursuing.[10] It is noteworthy that the Task Force did not address in its report the issue of a reduction in practice fees.

The conclusion of the Task Force on insurance fees was based upon:

- Lawyer insurance is not risk-rated by lawyer category. Graded insurance schemes have been considered by benchers in the past and rejected.
- There could be harmful or unintended consequences to lawyers with economically marginal practices;
- In firms, the benefit would accrue to the firm and not to the lawyer performing the legal aid work;
- Insurance premiums are low in British Columbia and stable relative to other operating expenses faced by lawyers;
- The Task Force believes the benchers may wish to explore payment schemes, quarterly or monthly payments.[11]

For the reasons set out in this Memorandum, CDAS submits that these are not appropriate reasons to not consider insurance fee reduction for young criminal lawyers working primarily on legal aid files. At the very least the benchers should implement the recommendation of the Task Force as to payment schemes.

[7] Task Force Report, paragraph 27 and Appendix 2.
[8] Task Force Report paragraph 48.
[9] Task Force Report, Appendix 2.
[10] Task Force Report, paragraph 48
[11] Task Force Report, pagraraph 48, page 14.

Annual Fee Review: Consultation Paper

The Consultation Paper provided by the Annual Fee Review Committee Working Group ("Consultation Paper") lists three factors that were addressed by the 2013 Working Group that remain relevant: justification, financial considerations and operational impact.[12] CDAS's position on these issues is partially addressed above. However, in order to ensure that this Working Group has the full benefit of our submissions we set out our further response below to the three issues as well as the primary questions posed by this Working Group's mandate:

- Justification:

  The Consultation Paper raises the question of the beneficial impact of a fee reduction, whether it can be justified, whether a similar request may be engendered by subsets of the membership and the motivation for the suggested fee reduction:[13]

  1. The benefits of a fee reduction for criminal lawyers working predominantly on files paid for by legal aid is justified by the net extension of legal services to poor, marginalized groups within our communities. As noted above, these include the indigenous, addicted, mentally ill and homeless women and men in our communities.

  2. There may be a subset of other members serving other groups in our communities. However, to the extent that poverty, mental illness, addiction and homelessness will be addressed by the fee and insurance decrease we are proposing, CDAS submits that other subsets of the membership that may feel left out will be few. If such hypothetical groups exist or may arise in the future, our position is that the Law Society should carefully review the justification for such further requests. If the net benefit to the community is an increase in access to justice, a fee or insurance reduction may well be warranted;

  3. The motivation of CDAS seeking a fee and insurance reduction on behalf of younger lawyers is to ensure the continued entry of young lawyers into criminal defence work. This will in turn improve the health of the criminal law bar and ensure access to justice for the marginalized groups for whom our lawyers act. The unfortunate corollary to not easing the burden of young criminal defence lawyers is that these people leave the service of their marginalized clients. This is a loss to the continued existence of a healthy and vibrant criminal law bar, the clients and the rule of law.

[12] Consultation Paper pages 3-4.
[13] Consultation Paper page 3.

- Financial Implications:

  Clearly a concern of the 2012 Working Group who considered this issue was the expected fee increase that would flow to the members who did not qualify for the fee reduction.[14] The potential benefits socially in terms of ensuring access to justice warrant and justify the potential inequity of having two classes of fee paying members. Ensuring access to justice is a fundamental part of the Law Society public interest mandate.[15] This fee reduction would further implement policies that will fulfill this mandate.

- Operational Impact:

  The implementation of the fee and insurance reduction proposed above would require a declaration and a waiver (of confidentiality with Legal Services) from members seeking the reduction. Such declarations are common for other services and practices now utilized by the Law Society, i.e. the election of benchers. CDAS expects that the operational impact would be minimal. The benefits flowing from any increase costs are readily offset by the enhancement to access to justice.

Primary Questions to be addressed:

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?[16]

   - Yes: to the extent that public interest practitioners are young lawyers struggling to provide services to marginalized groups. CDAS submits that this group should not include employees of not for profit corporations.

2. If you would support the development and implementation of a fee reduction for public interest practitioners:

   (a) How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?[17]

   - Identification of those eligible for fee reduction should include:

[14] Consultation Paper, page 4.
[15] Section 3 of the Legal Profession Act, S.B.C. 1998 c. 9; The Legal Aid Task Force Report in Appendix 1 recognized that access to justice is a fundamental human right.
[16] Consultation Paper page 2.
[17] Consultation Paper page 2

- Those earning less than $50,000.00, net, per *anum*;
- Those whose practice is made up of at least 50% legal aid.
- These who have been called to the bar less than 5 years.

(b) What consequences or impacts of the fee reduction would you foresee as providing its justification?[18]

- As noted above:
  - Ensuring the continuation and health of the criminal law bar;
  - Extending access to justice to the marginalized groups our lawyers represent and in particular indigenous accused; and
  - Maintaining the efficient use of court services by reducing the number of self represented individuals involved in the criminal justice system;[19]
  - Avoiding wrongful convictions for those charged with offences who cannot afford or cannot find counsel with the necessary experience.[20]

(c) How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?[21]

- The fees for participating members should be reduced by 50%; and
- The reduction should apply to both practice and insurance fees.

CDAS wishes to thank the Committee for providing an opportunity to comment on a matter that is critical to the criminal lawyers of this Province.

[18] Consultation Paper page 2.
[19] The Legal Aid Task Force Report at paragraph 15 identified the phenomenon of the self represented litigant strains the litigant and the justice system. The increase in self represented litigants leads to results that are less likely to be consistent with the values of a democratic society subject to the rule of law. In addition to leading to inequality of justice, this leads to disillusionment in our system of justice and laws. When these problems become endemic, public faith in our society and the rule of law is eroded.
[20] The Legal Aid Task Force at paragraph 36 of their Report identified the increase cost to the justice system by the rising number of self-represented before the courts, accused persons making inappropriate guilty pleas, delay – to name but a few factors – is apparent, if not yet measured in dollars. The greater cost to the public good is manifested in an erosion in public confidence in our system of justice.
[21] Consultation Paper page 2.

From:	Neil Chantler
To:	Annual Fee Review
Subject:	Submissions on proposed fee reduction for public interest practitioners
Date:	September 14, 2018 11:24:41 AM

To whom it may concern on the Annual Fee Review Working Group,

Thank you for considering my submissions on the proposed fee reduction for public interest practitioners. I am in favour of the proposal. In my respectful view, such a program would be consistent with the goal of improving access to justice as it would encourage lawyers to work in the public interest area. I recognize the negative financial and operational impacts of such a program but suggest those would be outweighed by the beneficial impact.

I am a sole practitioner with offices in downtown Vancouver. I would describe a significant portion of my practice as "public interest litigation." In 2017 I was the recipient of Pivot Legal Society's annual Access to Justice Award. A significant percentage of my clients are marginalized or disadvantaged persons with personal characteristics that create challenges for them when dealing with the legal system. Often the issues that cause them to be in contact with the legal system are much bigger than their individual case. These are the types of cases I consider to be in the "public interest." I enjoy this area of work, but often lament it as a terrible business model.

That said, I am not interested in a reduction of my own Law Society fees. After 11 years I have managed to develop a practice that balances my interests with the need to run a business. My motivation in making these submissions is different.

I never felt encouraged by my professors, PLTC instructors, or the Law Society to engage in this area of work. A fee reduction for public interest practitioners would be much more than an economic incentive to practice public interest law. In my view, it would be an express recognition by the Law Society of the importance of public interest work within the profession. It would demonstrate the Law Society wished to encourage lawyers to engage in public interest work. This would benefit lawyers wishing to engage in this work, the public, and the Law Society. The economic incentive, and express recognition from the Law Society would encourage new lawyers to engage in this work. The public would benefit from the increased access to justice. And the Law Society would be seen to be recognizing the problems of access to justice and its role ensuring important matters of public interest are taken on by its members.

Turning to the questions from the consultation paper:

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

Yes, for the reasons I have described above.

2. If you would support the development and implementation of a fee reduction for public interest practitioners:

a. How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

My suggestion is to include questions in the annual practice review pertaining to this issue, and perhaps require a written submission on why the member thought she or he was eligible for the fee reduction based on a set of criteria. The criteria could define public interest work as well as some measure of time or a percentage of the member's practice devoted to public interest work. Certainly, the program would depend on a reasonable measure of transparency by the applicant.

b. What consequences or impacts of the fee reduction would you foresee as providing its justification?

As above.

c. How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

It seems to me that the same justification for reducing fees for part-time lawyers applies to those engaging in public interest work, and the same scale of discount (up to 50%?) should apply.

Thank you for considering my submissions.

Regards,

--
Neil M.G. Chantler*

From: Kasari Govender
To: Annual Fee Review
Subject: Submissions re fee reduction
Date: September 14, 2018 4:40:41 PM
Attachments: Submission to the LSBC re public interest fees.pdf

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Dear Committee,

Please accept this submission in regard to the proposed fee reduction for public interest lawyers. Thank you for considering these submissions.

Regards,
Kasari

Kasari Govender
Executive Director & Lawyer
West Coast Women's Legal Education & Action Fund

West Coast Legal Education and Action Fund
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westcoastleaf.org

September 14, 2018

Sent via E-mail

Annual Fee Review Working Group
The Law Society of British Columbia
Via annualfeereview@lsbc.org

Dear Working Group Members:

Re: Law Society's Annual Fee Review – fee reduction for public interest practitioners

This is in response to the Law Society's Annual Fee Review Working Group request for comment on the proposal that a reduction in the annual practising fee and/or the insurance fee be made available to public interest practitioners.

1. **Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?**

West Coast LEAF is a mandate driven organization focussed on using the law to create an equal and just society for all women and people who experience gender based discrimination in BC. Our funding is entirely dependent on donors and funders who support our vision, and every dollar is used to support the legal work that is aimed at this vision. The legal work – the litigation, law reform, and public legal education – undertaken by West Coast LEAF is firmly rooted in the public interest.

By way of context, all staff lawyers at West Coast LEAF make under $100,000 a year, with a range from eight to fifteen years of call, all with graduate degrees. This, of course, is well under what a lawyer in private practice in Vancouver makes at this level of seniority and with the quality of legal work expected from this small team. West Coast LEAF pays for the practise fees and insurance for all staff lawyers, which represents a significant toll on the organization in the context of a small budget driven by charitable donations and grants.

In our submission, the Law Society should implement a fee reduction for public interest practitioners. Such a reduction would serve the Law Society's statement that "it is the object and duty of the Law Society of British Columbia to uphold and protect the public interest in the administration of justice."[1]

There are two ways in which a fee reduction would further the mandate of the Law Society:

[1] Introduction to the BC Code, Code of Professional Conduct for British Columbia https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/

- First, a fee reduction would relieve the pressure on organizations that pay the fee out of money that would otherwise go to supporting important public interest work.
- Second, a fee reduction would encourage lawyers to take on public interest work by reducing the financial burden of taking on this kind of work.

2. **If you would support the development and implementation of a fee reduction for public interest practitioners:**
   a. **How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?**
   b. **What consequences or impacts of the fee reduction would you foresee as providing its justification?**
   c. **How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?**

Generally, the characteristics of public interest law mean that its practice can be identified in relatively straightforward fashion:

- the litigation is in the "public interest" in that its impact flows broadly or will have a substantial impact beyond the interests of litigants; and,
- the claim cannot be monetized or, if it can, not to an extent the claim is justified in an economic sense.

Where services in the public interest are offered by a charitable or non-profit organization, these organizations will have traits that likewise identify the practice as in the public interest:

- the selection of cases by the organization is made based on criteria that defines and requires representing the public interest and/or by a board or committee that is representative of the public;
- the primary source of financial support of the organization is through fundraising and granting and the scope of funding assures that the litigation does not act to benefit individuals akin to the private practice of law; and,
- the organization does not permit a donor to obtain a benefit from the litigation.

These could act as criteria towards enabling fee reductions for lawyers employed by public interest law organizations, or by private lawyers to the extent they undertake public interest law. The courts have little difficulty applying criteria to determine public interest fee waivers; the profession can do the same.

In regard to the impact of the fee reduction, from West Coast LEAF's perspective, the effect would be material to public interest lawyers and organizations. Currently, 97% of Canada's charitable giving is targeted to educational institutions, religious institutions and healthcare. Funding an organization that provides free legal services to promote substantive equality is challenging. There would be a direct relationship between a reduction in expenses and provision of legal services in the public interest.

Conversely, given the characteristics of public interest law, its practice in BC is very, and regrettably, limited; it's a reasonable inference that the impact of a fee waiver for public interest practice would not be material.

In regard to scope of application, the fee reduction should apply to both the practice and the insurance fees. Again, because of the unique characteristics of public interest law, the Society's oversight of public interest law does not demand the same resources as private practitioners. This is particular so because public interest cases seldom deal with monetary outcomes. Where a hefty proportion of the Society's resources

are allocated to regulating lawyers' use and misuse of trust accounts, West Coast LEAF has never had need to maintain trust accounts. An insurance fee reduction would address the current situation of public interest practitioners being disproportionately burdened.

If the Law Society concludes that "public interest practice" is too difficult to define for the purposes of this fee reduction, we would support a fee reduction based on lawyer income. This would easily quantifiable and provable based on income tax returns, and would also address the concern about future groups of lawyers claiming similar discounts.

Finally, I would strongly urge the Committee to consult with the Law Foundation, which is the primary funder of public interest law in the province.

Thank you for considering this issue, which has important implications for the practice of public interest law in the province. I would be pleased to discuss the issue further, should such an opportunity arise.

Sincerely,

Kasari Govender
Executive Director

From: Jessica Clogg
To: Annual Fee Review
Cc: Erica Stahl
Subject: Submission to the Annual Fee Review
Date: September 14, 2018 7:19:02 PM
Attachments: 2018 09 14 Submissions to LSBC annual fee review.pdf

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Please find attached our submission to the Law Society's Annual Fee Review. Thank you for your consideration.
Sincerely,
Jessica

Jessica Clogg
Executive Director & Senior Counsel | West Coast Environmental Law

WEST COAST Environmental Law

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September 14, 2018

Sent via email

Annual Fee Review Working Group
The Law Society of British Columbia
Via annualfeereview@lsbc.org

Dear Working Group Members:
RE: Law Society's Annual Fee Review – fee reduction for public interest practitioners

We in response to the Annual Fee Review Working Group's request for comment on the proposal that a reduction in the annual practising fee and/or insurance fee be made available to public interest practitioners.

West Coast Environmental Law (West Coast) is one of Canada's oldest groups of public interest law practitioners in Canada and as such has direct and practical experience with the questions posed by the Working Group on this matter. West Environmental Law is dedicated to the protection of the environment through law, and consists of three provincially incorporated societies. We have been serving public interest environmental law needs for over 45 years.

Submissions on Working Group Questions

1. **Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?**

West Coast strongly supports the development and implementation of a fee reduction for public interest practitioners.

The Law Society should implement a fee reduction for public interest practitioners:

a) in order to recognize and encourage public interest legal practice; and,
b) as a measure to recognize the financial challenges of public interest law organizations and their clients

a) Recognizing the distinct value of public interest practice

Public interest law practice has distinct characteristics that merit the Law Society's particular support, particularly as it relates to access to justice and the role of law in addressing systemic societal issues. In this manner, a fee reduction would advance "the object and duty of the Law Society of British Columbia to uphold and protect the public interest in the administration of justice."[1]

Staff lawyers working for non-profit organizations that provide legal aid services, public legal education or law reform advocacy to uphold human rights, protect the environment or other non-pecuniary interests provide a

[1] Introduction to the BC Code, Code of Professional Conduct for British Columbia https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/

clear public benefit that is deserving of recognition by the profession. These legal services and activities contribute to the role of law in our democratic society –and access to justice –by ensuring that important values and perspectives are represented in public policy debate and decision-making that would not otherwise be.

In addition to our law reform work, West Coast sees the value of public interest legal services first hand through our two legal aid programs – the Summary Advice program and the Environmental Dispute Resolution Fund ("EDRF"). West Coast is one of the only providers of summary advice on matters of environmental law in BC, and we field hundreds of calls and emails each year from individuals, community groups, and First Nations facing threats to their health, drinking water, or other environmental or community values. For example, we fielded many calls for information and advice following the Mount Polley incident, the largest mining disaster in Canada's history.

The EDRF, meanwhile, is a Law Foundation funded program which grants $120,000 per year to British Columbians seeking to put public interest environmental cases before the courts or to resolve environmental disputes through alternative means. The monies granted can be put towards legal fees or expert fees. The EDRF caps the amount it pays lawyers at legal aid rates, with the option for a modest top up provided by the client.

Our Summary Advice clients and EDRF grant recipients face opponents who are almost always able to out-spend and "out-lawyer" them. Legal aid is a vital service in this context, making the playing field a little more level for environmental advocates in a justice system where, for better or worse, money counts.

b) Encouraging public interest practice

Unlike private practice, increase in workload does not augment the finances of non-profit law organizations. Public interest law organizations such as ours are rely on scarce grant funding or individual donations to maintain operations, the availability of which is not correlated with need or hours worked. Further, the requirement to fundraise in order to provide legal aid services or engage in public interest law practice takes away from time and resources that could otherwise be spent on legal work.

This directly affects our ability to achieve our public interest mandate. In this fiscal year, Law Society practice fees and insurance will add 6% on top of our salary costs for employing staff lawyers, an amount that if eliminated would allow us to add an additional entry level lawyer at .8 time to our team. In this manner, reduction or elimination of fees could have the direct potential to create new opportunities for public interest practice.

Alternatively, this savings could also have a modest impact on public interest law salaries. Simply put, public interest lawyers earn far less than their private bar counterparts. Many lawyers cannot afford to practice law in the public interest, and with the rising costs of law school tuition and associated debt this problem can only worsen. Easing the financial burden on public interest lawyers via a fee reduction would help lawyers who want to practice law in the public interest to do so.

2. **If you would support the development and implementation of a fee reduction for public interest practitioners:**
    a. **How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be appropriate?**

At a minimum the fee reduction should be made available to lawyers who practice law at not-for-profit organizations providing legal aid services, public legal education or undertaking public policy or law reform work to address systemic societal issues such as racism, inequality, environmental protection, human rights etc. The existence of societal debate about the appropriate manner in which to address such issues should not be a barrier to recognizing this work as being in the public interest. Indeed, the public interest bar has a critical role to play in ensuring that the legislature, the executive, and the judiciary have the opportunity to consider a range of perspectives on issues of significant public interest, and particularly in ensuring that voices and values that would not otherwise be heard (for financial, practical or other reasons such as systemic marginalization), are heard.

The fact that some clients may make a financial contribution to the costs incurred by a non-for-profit law organizations to provide services should **not** be a barrier to a staff lawyer receiving the fee reduction given the overall not-for-profit nature of the organization that employs them.

Additionally, in the context of public interest litigation we support the criteria articulated by our colleagues at Ecojustice. We endorse their broad proposal for identifying "public interest" litigation, i.e., that the litigation is in the "public interest" in that its impact flow broadly or will have a substantial impact beyond the interests of the litigants, and involves claims that cannot be monetized, of if they can, not to an extent that the claim is justified in an economic sense. Staff lawyers at not-for-profit organizations engaged in public interest litigation should be eligible for a fee reduction.

Finally, should it be practicable, we would also recommend that the Law Society consider implementing a fee reduction for private lawyers who take on public interest cases.[2] We know from our experience administering the EDRF that it is very difficult to find lawyers who are able to work on environmental cases for the legal aid rate. There are around 100 lawyers on our EDRF referral list, but in practice only a handful of these lawyers regularly accept our referrals. Our regular EDRF lawyers are generally near the beginning of their careers or starting to wind down their practices, while in the middle there are a few sole practitioners who keep their overhead costs low. The inference we draw from this observation is that, for the majority of lawyers who are interested in such work, litigating public interest cases is not financially sustainable or may not be compatible with cost structures of their private firms. A fee reduction could create an incentive for the private bar to take on more public interest work, and make a modest contribution to the financial sustainability of doing so.

However, any complexities in extending a fee reduction to lawyers in private practice who do public interest work should not delay or discourage timely introduction of fee reductions for public interest lawyers working in the not-for-profit sector.

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[2] For private practitioners the fee reduction could possibly be applied as a refund at the end of the year (or a reduced rate in the coming year) reflecting the percentage of a lawyer's time that was devoted to public interest cases during the reporting period. Alternatively, a fixed reduction might be available to lawyers who spent over a certain amount or percentage of time on public interest cases during a reporting period. One way of simplifying verification of the public interest nature of the legal work would be if were associated with a case supported by a non-profit public interest law organization like the EDRF, West Coast LEAF or BC Civil Liberties Association.

b. What consequences or impacts of the fee reduction would you foresee as providing its justification?

A fee reduction could have a direct impact on increasing the number of public interest law practitioners and creating the conditions for new lawyers to choose a public interest law career. Please see examples noted under the heading "*Encouraging public interest practice"* above.

In turn, a robust public interest bar enhances access to justice and advances efforts to address systemic societal issues through law.

c. How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

A fee reduction would ideally be applied to both the practice fee and the insurance fee. In order to achieve the benefits noted herein, the fee reduction should be as large as possible taking into account the financial needs of the Law Society. In particular, a significant reduction of insurance fees for public interest practitioners employed by not-for-profit organizations should be considered. Due to the nature of the work of organizations like ours do, with legal work principally carried out by staff lawyers serving as in-house counsel and without administration of trust accounts, there is a straightforward justification for our lawyers paying less than those in private practice.

Thank for the opportunity to contribute to your work. We welcome the Law Society's consideration of this important matter.

Respectfully submitted,
WEST COAST ENVIRONMENTAL LAW

Jessica Clogg, Executive Director and Senior Counsel
Erica Stahl, Staff Counsel

From: Amber Prince
To: Annual Fee Review
Subject: Submission on proposed fee reduction for public interest practitioners
Date: September 15, 2018 6:36:53 PM
Attachments: image003.png
image004.png
image005.png
image006.png
image007.png
image008.png
image002.png
Atira-LSBC-ltr-fees-Sept15-18.pdf
Law Foundation Salary Results.docx.pdf

Dear Annual Fee Working Group,

Please find attached my submission on the proposed fee reduction for public interest lawyers.

Thanks for your consideration.

Sincerely,

Amber Prince, Staff Lawyer
Legal Advocacy Program
Atira Women's Resource Society

Reply to: Amber Prince, Barrister & Solicitor
Direct: 604 331 1407 x 108
Direct Fax: 604 688 1799
Email: amber_prince@atira.bc.ca

atira
WOMEN'S RESOURCE SOCIETY

T 604 331 1407
F 604 688 1799
E office@atira.bc.ca

101 East Cordova St.
Vancouver, BC V6A 1K7

September 15, 2018

Via Email: annualfeereview@lsbc.org

Annual Fee Review Working Group
Law Society of BC
845 Cambie Street,
Vancouver, BC V6B 4Z9

Dear Annual Fee Review Working Group,

Re: Proposed reduction in the annual practice / insurance fees for public interest practitioners

I am a lawyer providing *pro bono* services to low-income women in the downtown eastside in Vancouver. I am employed by a non-profit organization, Atira Women's Resource Society, and funded by the Law Foundation of BC to provide these services.

Below are my responses to your questions regarding the proposed reduction in annual practice / insurance fees [the "fees"] for public interest practitioners.

1. **Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?**

   Yes. Public interest practitioners earn substantially less than private sector lawyers.[1] In the public interest sector, the median salary for a junior lawyer (5-year call) is $65,500, and $90,737 for a senior lawyer (10-year-call and over).

   Law Foundation of BC (2015), Salary Review Results[2]

   The median salary for a junior lawyer (5-year call) in private practice in Vancouver is $117,500, and $187,500 for a senior lawyer (10-year-call and over).[3]

   The fees therefore pose a greater financial hardship on public interest lawyers than private lawyers. Non-profit organizations, with modest budgets, also face

[1] I include "in-house lawyers" as private lawyers in this submission.

[2] Most recent data available from the Law Foundation of BC on median salaries across BC. Median salaries may have increased a modest amount since 2015. See attached.

[3] Zsa, (2018), *Salary Guide*, available here: http://www.zsa.ca/salary-guide/.

hardship in paying legal fees for public interest lawyers. Significant legal fees paid by non-profits could otherwise be allocated to salary increases or other benefits or resources for underpaid and under-resourced public interest lawyer staff.

Significant legal fees, combined with low salaries, are a disincentive for lawyers to become or continue as public interest practitioners. As law school tuition and student loan debt has increased significantly, many new law graduates simply cannot afford to become public interest practitioners.[4]

There is a dearth of public interest practitioners at the same time that our province faces serious access to justice problems.[5] Who will ensure that the most vulnerable among us have access to justice if public interest practitioners are not supported?

2. If you would support the development and implementation of a fee reduction for public interest practitioners:

(a) How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

Lawyers could apply to the Law Society for a fee reduction based on meeting the eligibility criteria. I would propose the following eligibility criteria:

1. lawyers who work at non-profit organizations and provide *pro bono* services should pay nominal legal fees;

2. lawyers in private practice who provide *pro bono* services should receive a proportionate reduction in legal fees. For example, if 15% of a lawyer's practice includes pro services, that lawyer should be eligible for a 15% reduction in legal fees; and

3. lawyers who accept a certain number of legal aid files per year should also receive a moderate legal fee reduction.

Lawyers could self-report online as we currently do for Continuing Professional Development credit. As officers of the court lawyers have a heightened responsibility to report their eligibility truthfully and accurately.

Self-reporting would also reduce the administrative burden on the Law Society.

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[4] H.G. Watson, (August 7, 2018), "The Debt Burden", *Canadian Lawyer*, available here: https://www.canadianlawyermag.com/article/the-debt-burden-16038/

[5] CBC, (February 16, 2017), "B.C. justice system 'heading towards a crisis,' in need of reform: report", available here: https://www.cbc.ca/news/canada/british-columbia/bc-justice-system-reform-1.3986523

(b) What consequences or impacts of the fee reduction would you foresee as providing its justification?

I recognize that wealthier lawyers or the provincial government may need to subsidize reduced fees for public interest practitioners. In my respectful submission, this is reasonable. Lawyers who have become wealthy through the practice of law can afford to give more and should have some obligation to contribute to the social good.

Our profession and government cannot merely pay lip service to the public interest and access to justice. We need to collectively take concrete steps.

The fee reduction appropriately supports and recognizes the important public service of public interest practitioners. If the Law Society takes this concrete step I foresee lawyer's having a greater capacity and incentive to take on more public interest work. Lawyers in BC will therefore be in a better position to meet the grave access to justice need in this province.

With lawyers taking on more *pro bono* or public interest cases, our Courts will see less frustrated unrepresented litigants fumbling through the court process and using the court process ineffectively. We will see better outcomes and greater public confidence in the legal system.

(c) How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

I have discussed how big the fee reduction should be in 2(a).

The fee reduction should be applied to both practice and insurance fees. As a lawyer I don't distinguish between the two fees as they are combined on Law Society invoices. What matters is that the fees pose a hardship to public interest practitioners and discourage public interest practice.

Please feel free to reach me as noted above with any questions about my submission.

Sincerely,

Amber Prince
Legal Advocacy Program

The Law Foundation of BC
2015 Salary Review Results

Position	#	Average of Adjusted Salary	Lowest of Adjusted Salary	Highest of Adjusted Salary	Median of Adjusted Salary
Administration/ Accounting assistant	22	$42,485	$24,582	$54,552	$42,500
Advocate	75	$47,109	$33,637	$65,664	$47,380
Coordinator	22	$61,757	$29,891	$100,000	$54,872
ED Lawyer	17	$102,578	$55,000	$145,846	$108,731
ED Non- Lawyer	10	$75,807	$42,250	$114,286	$77,112
Intake Worker	12	$39,698	$26,888	$49,000	$40,376
Lawyer – 5 Year call	11	$65,536	$53,000	$73,731	$65,500
Lawyer – 10 Year call	8	$77,477	$61,429	$92,743	$77,866
Lawyer – 10 Years and over	14	$94,807	$80,800	$112,079	$90,737
Program Office/ Manager	15	$52,702	$40,000	$69,607	$53,731
Other	27	$58,075	$22,821	$96,204	$53,731

Salary adjusted to full time: For comparison purposes, all salaries are adjusted to full time equivalent in this column.

Average of adjusted salary: Sum total of full time adjusted salary in each category, divided by the number of positions in that category.

Median of adjusted salary: This is the salary amount which is the mid-point in each category.

Other: This category includes miscellaneous positions that do not fit in other categories. These positions include finance managers, law student/articled student positions, technical writers/editors, graphic designers, researcher assistants, database managers etc.

Number of agencies surveyed: 69

Number of positions funded wholly or in part by the Law Foundation of BC: 250

Benefits:

195 positions have medical benefits, 38 positions do not.

169 positions have extended health benefits, 64 positions do not.

163 positions have life insurance, 70 positions do not.

Pensions:

116 positions have pensions or RRSP contribution and 117 do not.

For those who provided the amount of contribution (79 responses), the range is 2 - 9.78% contribution.

Holidays:

Many tiered 3-6 weeks (increased based on years of service)

Average 3-4 weeks

Sick days:

208 positions have sick days, 25 do not

Average sick days 13 per year

5 agencies allow carry over of sick days, 4 for up to 156 days maximum

From:	Erin Gray
To:	Annual Fee Review
Subject:	Annual Fee Review Submission
Date:	September 15, 2018 7:53:34 PM
Attachments:	image001.png 20180915 Ltr EG to LSBC re fee review.pdf

Hello,

Please find attached correspondence regarding the Annual Fee Review Consultation on Fees for Public Interest Practitioners.

Best regards,

Erin Gray, Associate Counsel

Arbutus
LAW GROUP LLP
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Micha J. Menczer
W. Ming Song*
Kathryn Deo*
Catherine Fagan

* practices under a law corporation

Reply To: Erin Gray, Victoria Office
778-679-7396 (Direct Line)
erin@arbutuslaw.ca

September 15, 2018

Annual Fee Review Working Group
Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Via Email: *annualfeereview@lsbc.org*

Attn: Annual Fee Review Working Group

Dear Annual Fee Review Working Group members,

Re: Annual Fee Review: Consultation on Fees for Public Interest Practitioners

I write in response to the request by the Annual Fee Review Working Group (the "Working Group") for input on a proposed fee reduction program for public interest practitioners. The Working Group asked the following specific questions:

> 1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?
>
> 2. If you would support the development and implementation of a fee reduction for public interest practitioners:
>
> > (a) How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?
> > (b) What consequences or impacts of the fee reduction would you foresee as providing its justification?
> > (c) How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

In the submissions that follow, I provide background on my experience as a public interest practitioner, and then answer each question in sequence.

In summary, I support reducing fees for lawyers who spend a substantial portion of their work hours practicing public interest law. I would consider "public interest" to include any work that is at a significantly reduced rate, and that contributes to the betterment of society (the LSBC may consider the CRA's guidelines on charitable purposes as guidance). This would include all lawyers working at charities, and may include

lawyers working at non-profit organizations as well as those in the private sector that devote a significant portion of their work hours to public interest work.

Background

I am in my third year of practice. I practiced as a solo practitioner for the first year and a half, and now work as an independent contractor with Arbutus Law Group LLP.[1] During my time as a solo practitioner, the vast majority of my work was environmental law-related work for citizen groups, non-profit organizations and First Nations, often funded by the Environmental Dispute Resolution Fund (EDRF), which is administered by West Coast Environmental Law (WCEL).[2] The EDRF is an invaluable service that WCEL provides to British Columbians, and has resulted in countless victories for the environment. One only needs to scroll through their website to learn how much of a difference it has made to communities across the province and how different some of our wild spaces would look without the work that lawyers and communities have put into projects funded by the EDRF.

I still spend about half of my work hours on EDRF or other public interest files. For example, I assist non-profit organizations with day-to-day legal questions, for a deeply discounted rate that is less than half of my regular hourly rate. Needless to say, this is a financial sacrifice.

1. Should the Law Society develop and implement a fee reduction for public interest practitioners? Why or why not?

Yes, the LSBC should develop and implement a fee reduction for public interest practitioners. As an independent contractor with a paperless home office, my main expense is LSBC membership and insurance fees. I have arranged my life and other work in such a way that it is possible for me to do public interest work that I think is important, for individuals that are underserved. But given that I'm a new lawyer with significant student debt, and that I already work part-time due to childcare commitments, I have a significantly reduced income. There are many other lawyers that are making similar (and much greater) sacrifices in the practice of public interest law. In my opinion, a fee reduction would:

- demonstrate that the LSBC and the rest of its members support these lawyers;
- encourage lawyers to engage in—or keep engaging in—this type of work (acknowledging that a reduction in fees will not result in closing the salary gap between those practicing public interest law and those practicing at market rates); and
- be an example of how the LSBC is supporting access to justice.

[1] The partners at Arbutus Law Group LLP are in support of these submissions.
[2] To provide details on the current funding arrangement, the EDRF will fund up to $80/hour (plus taxes) of a lawyer's time, and the lawyer may charge up to $160/hour; the client is expected to cover the difference. In many cases, the client cannot afford to compensate at the high end, and my experience has been working in the $80-100/hour range, while also having to write-off sometime significant unexpected timing overages.

2. If you would support the development and implementation of a fee reduction for public interest practitioners:

(a) How should the lawyers eligible to receive the fee reduction be identified? What eligibility criteria might be most appropriate?

I think that lawyers should self-identify and apply for the program. It should not be an onerous application, as the costs to administer such a program must be considered; and it *need* not be, as I think it unlikely that lawyers would try to take advantage of such a program. As with other aspects of the LSBC's regulation of lawyers in the province, audits should be possible.

In order to be eligible, lawyers should have spent a significant amount of time on public interest work in the past year. I do not know if it is appropriate to define a minimum percentage of one's work that must be in the public interest, but I understand that for the sake of administrative efficiency this may be desirable. If so, 25% seems fair, given the significantly reduced compensation for public interest work.

"Public interest work" should be any work that is for a significantly reduced rate, and that furthers a charitable purpose (the LSBC may consider using the CRA's guidelines on charitable purposes as a basis for this). This would include all lawyers working at charities, and may include lawyers working at non profit organizations and those in the private sector that qualify. Key considerations in developing the eligibility criteria should be:

- the financial sacrifice that the lawyer is making, as compared with what they would earn in the private sector; and
- the lawyer's contribution to bettering society.

(b) What consequences or impacts of the fee reduction would you foresee as providing its justification?

As mentioned above, a fee reduction would encourage lawyers who are already engaging in public interest work to continue to do so. It obviously would not close the gap between public interest salaries and market rate private practice salaries, but could be significant for some, and in any case would be an important symbolic gesture. It would also be one way that the LSBC could demonstrate its commitment—both to the public and to its members—to access to justice. Last, it would be a way for members that are practicing at market rates to support their colleagues who are addressing a societal need and are incurring a financial cost in doing so.

(c) How big should the fee reduction be and should the reduction be applied to the practice fee, the insurance fee, or both?

In my opinion, the reduction should be 50% of both the insurance fee and the practice fee. This is a large enough discount that it shows the LSBC is serious about access to justice and its support for lawyers doing public interest work.

Arbutus
LAW GROUP LLP
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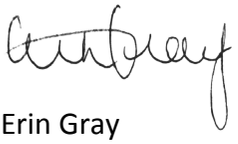
In summary, I think that the LSBC should implement a fee reduction program to reduce the cost to practise for those lawyers engaging in a significant amount of public interest work.

I welcome questions and would be happy to discuss this topic further with the Working Group.

Yours Truly,

ARBUTUS LAW GROUP LLP



Erin Gray
Barrister and Solicitor

From: Amanda Aziz
To: Annual Fee Review
Subject: Fee review
Date: September 15, 2018 9:19:42 PM

Dear Law Society,

I am writing to express my support for the proposal before the Law Society that a reduction in the annual practising fee and/or insurance fee be made available to public interest lawyers/those working in non-profits. Lawyers doing such work are often making much lower salaries than those in lucrative private law, and do not always have firm resources paying these fees for them. Introducing a lower fee would greatly assist in promoting access to justice, and could be based on the legal aid or employment arrangement a lawyer is engaged in.

I would also be interested to know the reliance on the Law Society's insurance for claims made against public interest lawyers versus private law practitioners. I imagine there would he quite a difference.

I sincerely hope the Law Society considers making this change, or at the very least, putting a proposal to the membership.

Thank you,

Amanda Aziz

From: D Lambert
To: Annual Fee Review
Subject: feedback on proposed fee reduction
Date: September 15, 2018 9:21:43 PM

Dear Working Committee:

I am a non-practicing lawyer, currently working as a college instructor. I went to law school to be a social justice lawyer. When I started practicing my plan was to focus on legal aid and I worked primarily in family law taking legal aid files. After only a couple of years of this I decided to leave the practice of law. It was simply too difficult to do this work - financially, socially, emotionally - with very little/no support. I have tremendous respect for social justice lawyers who do the essential work of assisting those most in need, who work tirelessly and for very little financial reward, whose efforts are often ignored or downplayed.

The current fees are just one of many barriers that act to discourage people from doing this important work. Three thousand something dollars must seem like a small amount to many of the privileged people reading this, however, to a sole practitioner legal aid lawyer just starting out, this sum can be a serious issue. Access to justice is not the sole responsibility of a few lawyers who dedicate their careers to this work, it is a social problem and our shared responsibility. There has been so much talk about this issue, and I have seen very little actually done by the Law Society in the way of improvements. Waiving all insurance fees for those who work primarily in legal aid would be most fair.

It also never made any sense to me why a legal aid lawyer pays the same fees as lawyers practicing in other areas when the legal aid lawyer's practice is far less likely to result in claims against the insurance fund.

Treating everyone the same when they are not the same is not always the fairest approach, and certainly in this case it is not fair at all.

I appreciate your consideration of this feedback, and would appreciate you not publishing my name if you use any of it.

Sincerely,

D Lambert
BA, LL.B, MA

From: Patrick Shannon
To: Annual Fee Review
Subject: Annual Fee Review submission
Date: September 15, 2018 10:34:03 PM

Dear Colleagues and Honourable Benchers,

I write to submit comments on a proposal from two Law Society members that a reduction in the annual practicing fee and/or the insurance fee be made available to public interest practitioners on the premise that the current flat fees have a negative impact on members' capacity to start and sustain a practice in public interest law.

As staff lawyer with the YWCA Metro Vancouver Legal Education Program, I work exclusively with women in YWCA transitional housing to resolve their Family Law, Immigration, and Child Protection matters. I frequently take over files once their legal aid hours have expired, sometimes only weeks before a hearing.

As the only lawyer in my position at the YWCA, I am responsible for negotiating a very tight program budget. The annual practicing and insurance fee I must pay to the Law Society represents a considerable chunk of that budget. I can advise that it impacts my ability to pursue continuing legal education and take on new clients. I rely on lower cost programs offered by the Law Courts Center to meet my requirements, and often review with some regret the excellent programs offered by CLE BC, knowing that taking a course, even at a lower rate, would mean fewer resources available to serve my clients. If I were able to pay a reduced rate, I would put that surplus into pursuing more legal education, joining professional associations, and building a supportive network to help me better assist the women who come into my office on East Hastings. It sounds mundane, but this surplus would also go right into purchasing the paper, binders, tabs, toner, and staples we all exhaust in startling quantities in preparation for trial. In turn, this would allow me to take on more clients.

I have been practicing since my transfer from Alberta in May, but was called to the Bar and signed the rolls this past Friday afternoon. It was very moving to hear Ms. Kresivo, Q.C., speak about our mission to uphold the rule of law, the public interest, with the confluence of the two being the right of the public to the services of our profession. It is my respectful submission that this proposal would greatly serve that particular mission.

I would like to thank the committee and the Benchers for their hard work and contributions to our profession, and I am absolutely at the committee's service should you have any questions.

From: Adrienne Smith
To: Annual Fee Review
Subject: fee reduction
Date: September 16, 2018 10:07:02 PM

Dear Working Group,

Thank you for the opportunity to provide my views about a reduction in Law Society fees for public interest practitioners. My comments are brief. I am in full support of a reduction. Lawyers taking legal aid cases, employed by not for profits, or those able to demonstrate that they take on pro bono cases should have access to a reduction.

I imagine you will receive submissions from those who say the cost of Law Society fees is bourn by employers, and as a result the actual quantum is academic. Let me be an example of the contrary view. I am a fairly new lawyer in my fourth year of call. I have a vaguely legal contract day job, and I provide 100% pro bono private practice on the side. My clients are drug users, sex workers and transgender people exclusively. None of my clients have the means to pay for legal services, but in my respectful view, it is these marginalized people who have the most need for competent and accessible legal services. I do about 20 hours of pro bono work per month. Because my firm does not turn a profit, and because my employer does not pay my Law Society fees, I find staying in practice to be an immense struggle because of my law society fees.I pay more that $3000 per year while at the same time, not making any money. I also struggle with the cost of CPD hours, and debilitating student loan payments.

I am a member of an equity-seeking group which is underemployed as a group (I'm a non-binary transgender person), and I'm finding the expense that comes with the privilege of this profession to be a constant barrier. I do not enjoy a reduction of my fees from any of the collegial associations (CBA, TLABC, Advocates Society etc), nor from the Law Society. At times I wonder why I do this kind of deep service at such an obvious personal cost. For me, an immediate reduction in fees would make me feel some recognition for the pro bono work I do, it would allow me to continue doing the level of free legal work I do, and it would help me stay in the practice of law for longer.

At its most equitable, a fee reduction proposal would include a sliding scale so those who need a reduction most would benefit most from it. A reduction for lawyers at not for profit organizations would see the burden to Law Society fees lifted from their employers so that grant money could be better allocated to salaries, so that lawyers taking on this kind of noble work could be paid in a way more commensurate with their skills- particularly in Vancouver where the cost of living is so great.

Thank you again for the opportunity to provide my input. I hope you decide to reduce fees for lawyers like me.

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: January 15, 2019
Subject: Unilateral Implementation of the National Mobility Agreement 2013

Purpose of Memorandum

The purpose of this memorandum is to recommend that the Benchers agree to implement the National Mobility Agreement 2013 ("NMA 2013") unilaterally and in the absence of reciprocity with the Barreau du Quebec (the "Barreau").

As was the case under the original National Mobility Agreement, the NMA 2013 was to be effective between Canadian provinces on a reciprocal basis with permanent mobility between the Law Society of British Columbia and the Barreau being effective once both societies had implemented its provisions.

While the Law Society of British Columbia had the regulatory authority to implement the NMA 2013, the Barreau du Quebec could only implement it in Quebec with the approval of the Office des professions du Quebec and the Government of Quebec. While the Barreau has sought this approval, it has not to date been granted and the NMA 2013 has therefore yet to be implemented in Quebec. Absent reciprocity, it is not currently possible for members of the Barreau to transfer to BC under the provisions of the agreement.

NMA 2013

The Benchers approved the NMA 2013 in May 2013 and the agreement was signed on behalf of all the provincial law societies of Canada on October 17, 2013.

The new agreement was intended to incorporate and replace all of the previous mobility agreements, with the exception of the Territorial Mobility Agreement.

The main change that was to be effected by the new agreement is the treatment of members of the Barreau the same as members of other law societies for the purpose of transfer of membership. Prior to that, most members of the Barreau could only become members of the Law Society of British Columbia and other common law provinces as Canadian Legal Advisors ("CLAs") which restricted areas on which they could practise law.

The significant changes that the new NMA 2013 brought about was the recognition of a Canadian civil law degree as sufficient academic qualification for a member of the Barreau to transfer membership in the BC Law Society and the end of the CLA status for members of the Barreau. The CLA status would continue only with respect to members of the Chambre des notaires du Quebec.

History of the Mobility Regime

A comprehensive mobility regime for Canadian lawyers has been in effect since 2002 with the implementation of the National Mobility Agreement ("NMA"), followed by the introduction of the Territorial Mobility Agreement ("TMA") in 2006 and 2011 and the Québec Mobility Agreement ("QMA") and amendments in 2010 and 2011.

In 2012, a recommendation was endorsed by the Council of the Federation of Law Societies to consider an expansion of the current permanent mobility ("transfer") between the Barreau du Québec and the common law jurisdictions in Canada to replace the Canadian Legal Advisor ("CLA") regime set out in the QMA.

The Barreau du Québec signed the original NMA in 2002. It was contemplated at the time that the Barreau could implement the NMA on the same basis as the common law signatories or, in the alternative, through an approach it determined. The relevant provisions of the NMA state as follows:

> PERMANENT MOBILITY BETWEEN QUEBEC AND COMMON LAW JURISDICTIONS
>
> 39. While the signatory governing bodies recognize that the Barreau must comply with regulations that apply to all professions in Québec, the Barreau agrees to consult with the other signatory governing bodies before changing regulations on the mobility of Canadian lawyers to Québec.
>
> 40. A signatory governing body, other than the Barreau, will admit members of the Barreau as members on one of the following bases:
>
> (a) as provided in clauses 32 to 36;
>
> (b) as permitted by the Barreau in respect of members of the signatory governing body.

In 2007 the Barreau introduced a Canadian Legal Advisor regime to implement permanent mobility and in 2010 the common law jurisdictions and the Barreau signed the QMA to create a reciprocal approach. While the reciprocal regime permitted lawyers to transfer between common and civil law jurisdictions without having to write examinations, their scope of practice was limited to the law of their home province or territory or matters under federal jurisdiction.

The Federation Council's September 2012 proposal sought to extend permanent mobility (transfer) to and from Québec on the same basis as applies to the other signatories to the NMA and TMA. The Federation Council considered the Report and unanimously approved it for dissemination to law societies for their consideration and approval.

In summary, the Federation National Mobility Policy Committee concluded that the extension of mobility between the common law and civil law jurisdictions in Canada is in the public interest because of:

1. the existence and approval of national competency standards across the civil and common law jurisdictions in Canada,

2. the ethical requirement for lawyers in all jurisdictions to provide legal services only in those areas in which they are competent,

3. the success of mobility in common law jurisdictions replacing a historically entrenched belief that only restrictive transfer rules could protect the public interest, and

4. the original contemplation of the NMA that the basis for mobility across the civil and common law jurisdictions could be entertained on an identical basis, without risk to the public.

The Benchers approved these recommendations in May 2013 and the NMA 2013 was signed on October 17, 2013.

Current Status in BC

Typically, a lawyer with a civil law degree practising in Quebec has, when seeking to transfer to BC (or another common law province), been required to have the degree assessed by the National Committee on Accreditation.

However, in anticipation of reciprocity with the Barreau occurring, the Benchers adopted various Rules designed to implement the terms of the NMA 2013 in order to recognize members of the Barreau with civil law degrees. One of the approved changes was to Rule 2-79 [*Transfer from another Canadian jurisdiction*], relating to proof of academic qualifications. Rule 2-79(1)(e)(ii) now reads:

> ***2-79*** *(1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:*
> *(e) proof of academic qualification*
> *(ii) for a member of the Barreau, proof that he or she has earned*
> *(A) a bachelor's degree in civil law in Canada, or*
> *(B) a foreign degree and a certificate of equivalency from the Barreau;*

Rule 2-81 [*Transfer under National Mobility Agreement and Territorial Mobility Agreement]* applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a **reciprocating** governing body of which the applicant is a member.

In addition, the Rules relating to Canadian Legal Advisors were changed to only recognize members of the Chambre and removing any reference to members of the Barreau.

What Has Changed?

In 2009, amendments to Chapter 7 of the Agreement on Internal Trade in effect mandated reciprocal recognition of credentials between Canadian jurisdictions, subject to any government-approved legitimate objectives. The BC government created only one "limited objective exemption". It permitted the Law Society to require examinations for lawyers transferring to BC from practice in a civil law jurisdiction (Quebec).

The Canadian Free Trade Agreement ("CFTA") came into effect on July 1, 2017, replacing the Agreement on International Trade ("AIT"). The processes of the CFTA with respect to labour mobility do not appear to differ substantially from those of the AIT.

Chapter 7 of the CFTA retains protection of legitimate objectives for provinces and territories but does not actually say whether or not the exceptions will be continued under the CFTA. The Federation of Law Societies had advised that it would be up to each jurisdiction to decide whether or not to continue the exemption. We were advised that the intention of the BC government was to transfer the exceptions to mobility under the AIT to the CFTA.

The Law Society of New Brunswick was contacted by the Government of New Brunswick asking whether the legitimate objective with respect to members of the Barreau was still required. The Law Society of New Brunswick took the position that the adoption of the NMA 2013 by all provincial law societies and its implementation by the Law Society of New Brunswick would appear to militate against the continued need for such a legitimate objective, with the limited exception that members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Barreau, as such lawyers are not entitled to exercise permanent mobility rights under the NMA. Accordingly, the Law Society of New Brunswick approved unilateral implementation of the NMA 2013 to permit the permanent mobility of membership by members of the Barreau.

In addition, the Law Society of Saskatchewan has also unilaterally implemented the NMA 2013 and permits the permanent mobility of members of the Barreau.

What Issue Are We Trying to Address?

While applicants from the Barreau are not eligible for call and admission on transfer under Rule 2-81, pursuant to Rule 2-79 the Quebec civil law degree for a member of the Barreau can be

accepted. The result of this, is that the applicant would be required to successfully complete the Law Society of BC's transfer examinations under Rule 2-79(3):

> *2-79 (3) Unless Rule 2-81* [Transfer under National Mobility Agreement and Territorial Mobility Agreement] *applies, an applicant under this rule must pass an examination on jurisdiction-specific substantive law, practice and procedure set by the Executive Director.*

However, given that New Brunswick and Saskatchewan have unilaterally implemented the NMA 2013, applicants are applying for call and admission from Quebec to New Brunswick or Saskatchewan under the terms of the NMA 2013, thereby becoming a member of a jurisdiction that *does* reciprocate with BC. While Rule 2-79(i)(e)(ii) originally contemplated a transfer directly from Quebec with a civil law degree, once they are a member of a reciprocating jurisdiction in accordance with Rule 2-81, Rule 2-79(1)(e)(ii) sets out that their academic qualifications meet the necessary requirements for transfer.

This is an indirect, complicated (and costly) , route to becoming a member in BC but without unilaterally implementing the terms of the NMA 2013, it appears to be the only way to do so that would not require the successful completion of examinations by either the National Committee on Accreditation or the Law Society of BC.

Recommendation

Given that the Benchers have already approved the NMA 2013 and have adopted various Rules designed to implement the terms of the NMA 2013 in order to recognize members of the Barreau with civil law degrees, the Executive Committee recommends that the Benchers unilaterally implement the NMA 2013 regardless of reciprocity. The Executive Committee is of the view that reciprocity ought not to be viewed as a key underlying principle of the mobility agreements. The Committee considered that the Law Society's responsibility was to protect the public interest in this province, and having already approved the policy position that it was not contrary to the public interest for a member of the Barreau to transfer to British Columbia and be regulated by this Law Society for the provision of legal services here, the fact that BC lawyers do not currently enjoy the same rights to transfer to Quebec ought not to be the determinative consideration.

The Benchers are asked, in principle, to adopt a rule change to permit Quebec lawyers to transfer to BC under the terms of the NMA 2013 regardless of reciprocity.

If the Benchers approve the issue in principle, the matter will be referred to the Act and Rules Committee to prepare any rule changes that may be necessary.

The Law Society of British Columbia

December 13, 2018

Sent via email and post

The Honourable David Eby, Attorney General
Office of the Attorney General
PO Box 9044 Stn Prov Govt
Victoria, BC V8W 9E4

Dear Mr. Attorney:

Re: Law Society of British Columbia's Second Legal Aid Colloquium

The Law Society held its Second Colloquium on Legal Aid on November 17, 2018. We appreciate that your schedule did not permit your attendance at the Colloquium, so I am taking this opportunity to provide you with a summary of the event together with some observations. We were very grateful that Deputy Attorney General Fyfe was able to attend.

The Colloquium provided an opportunity for a constructive discussion about the important role of legal aid in society, and we continue to look forward to working with the government and other justice system participants towards ensuring British Columbians are well-served by a strong legal aid system.

1. Law Society Vision for Legal Aid

In 2017, the Law Society adopted a *Vision for Publicly Funded Legal Aid*. The Vision contemplates the strengthening of a legal aid system by:

- Supporting the ability of all people to access justice and specifically to protect the rights of the most disadvantaged and vulnerable members of society;

- Assisting people in the exercise of their rights to obtain appropriate remedies, and to enjoy the benefits of professional legal advice concerning their remedies; and

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- Advising people about the obligations and responsibilities imposed on them as members of a democratic society, subject to the rule of law.

All British Columbians, regardless of means, deserve access to advice that helps them identify when a legal problem exists and are reasonably able to obtain legal advice and representation. As regulator of the legal professional, the Law Society has a role in ensuring the quality of legal services for everyone – including the most disadvantaged and vulnerable.

Central to The Vision is our commitment to work collaboratively with government, the Legal Services Society and other interested stakeholders towards a legal aid system that is more responsive to those who need to access it. The Colloquium was a continuation of this important collaborative work.

2. The Purpose of the Colloquium

Discussions about access to justice and the justice system often involve the usual stakeholders talking about problems about which, for the most part, we all agree (though the solutions may involve less consensus and prove to be more elusive). The purpose of the Colloquium was to hear from people and organizations that do not always have their voice take centre-stage in discussions concerning legal aid, and to enable those parties that usually participate – the Law Society included – to listen and reflect on what was said.

The Hon. Bruce Cohen, QC moderated the Colloquium, which included speakers representing

- women facing domestic violence and barriers to accessing justice,
- those helping immigrants and refugees who are struggling to navigate the system,
- advocates for prisoners who rely on legal aid to enforce their rights,
- police who must balance their mandate to serve and protect with the complex social and health issues that inform so many of their interactions with the public,
- a former accused person in the criminal justice system, who also experienced family law problems, who spoke to the transformative impact legal aid had on his life, and
- a former self-represented litigant in the family law system who spoke about the lack of affordable family law services.

The event ended with the reflections of a former justice of the Supreme Court of British Columbia about the impact of mental illness on criminal justice and the challenges self-represented litigants face in realizing equal justice. The Executive Director of the Law Foundation also provided some overarching perspectives.

Throughout the day, participants reflected on what they heard, sharing perspectives to draw out issues, explore challenges and opportunities, and discuss what we all might do to move forward from discussion to action.

3. What We Heard

Not surprisingly, there was consensus at the Colloquium that legal aid is, and has for some time been, underfunded. This is something you clearly recognize, and we raise it here simply to state that we cannot take the *status quo* to be acceptable simply because it is well known to us. Legal Aid is not sustainable without a substantial funding increase. But the commentary also disclosed that we must understand the *purpose* of legal aid, its objects and optimal delivery models in order to ensure the effective use of public resources directed at legal aid. The purpose of the Colloquium was not to arrive at a quantum of funding that is appropriate, or even arrive at concrete views about how funding should be prioritized. That important work remains, but it requires us to situate legal aid in an access to justice framework that we can agree upon.

In light of this, many people who spoke about the need to increase legal aid funding also recognized that it should not be assumed that within the current system of justice that legal aid is necessarily the best system for all matters that legal aid covers, and that considerations about how to improve funding and the impact of legal aid cannot be divorced from the broader issues of criminal and civil justice system reform. Some of these observations echo and align with views that the Law Society has been developing over the years.

With respect to the issue of system reform, discussion at the Colloquium identified that there are several weaknesses in the current system for delivering legal aid:

- The over-reliance on resolving issues through the adversarial justice system, particularly in the area of family law. Despite innovations of the Legal Services Society and a recent funding increase from the provincial government, the prevalence of self-represented individuals remains high, particularly in the area of family law.

- The lack of capacity to provide adequate legal assistance to Indigenous people. This is a profound problem, as Indigenous persons have faced systemic injustices and are increasingly overrepresented in the criminal justice system. While not discussed specifically at the Colloquium, the Law Society notes as an example, increased use of restorative justice programs and additional resources for *Gladue* reports, including resources for training *Gladue* report writers would be significant measures to address the dramatic overrepresentation of Indigenous people in federal and provincial corrections. While the Truth and Reconciliation Commission cautioned that *Gladue* reports are not enough to address overrepresentation of Indigenous people in prison, it also emphasized the importance of *Gladue* reports for sentencing and that some jurisdictions provide few resources for the lengthy and expensive process of producing adequate reports. That said, the most transformative opportunities

to reform justice for Indigenous peoples requires considering solutions that take place long before a matter reaches sentencing.

- The capacity of legal aid clients to communicate with lawyers. Presenters at the Colloquium noted that research indicates people prefer face-to-face meetings. This can be particularly challenging for rural clients who have a legal aid lawyer based elsewhere, and can only communicate by phone or email. Communication can also be a problem for those who are unable to afford a telephone, internet or a reliable means of transportation.

- There has been over the last years an increase in resources given to policing, prosecutions and court services. While these increased resources are no doubt necessary, they have not been matched with resources for legal aid to ensure that a reasonable level of equity has been demonstrated between those responsible for investigation and adjudicating on criminal matters with those defending them.

- The current system for delivery of legal aid suffers from the low tariff, and that it is a significant current weakness of the system. Stagnant funding levels are having an impact on attracting and retaining lawyers to serve legal aid clients. New lawyers are graduating with record levels of student loan debt. Economic pressures are diverting lawyers away from being part of the legal aid regime. Some senior lawyers who take criminal law legal aid referrals are beginning to retire, while others are being recruited to join the Crown. Unless action is taken to address the impact of inflation, we foresee further erosion of the legal aid bar over the next few years.

In discussing the strengths of the legal aid system, participants at the Colloquium reflected on the value of hybrid clinic-tariff models. These models may not be the least expensive option, but the majority view suggested that they were worthy of consideration because they brought together flexibility with depth of talent, established a means whereby expertise can develop and mentoring can occur, provide clients with face-to-face services that are often required, and permit collocation with other social and health services to provide a holistic delivery model that recognizes the users of legal aid have social and health problems with a legal aspect, and the legal aspect is not easily separable from the other challenges they face.

The discussion at the Colloquium evidences that legal aid in this province benefits from a resolute commitment of various justice system stakeholders to collaborate and find ways to improve legal aid service delivery, and this is also a strength. Indeed, it is encouraging that such groups want to work cooperatively to ensure that the most vulnerable British Columbians have equal access to high-quality legal information and advice. The resolute work undertaken by the Legal Services Society to maintain the architecture for the provision of legal aid and to develop measures to innovate delivery was also recognized as a significant strength of the current system.

Another strength is general support of the legal profession for legal aid and the willingness of the many lawyers who provide legal aid services to disadvantaged

British Columbians. These practitioners work in the public interest to assist clients who face a host of legal, social and economic problems, many of which are intertwined and escalating. To successfully help such a diverse range of clients with complex problems, legal aid lawyers require a high level of professional competency. Presenters at the Colloquium also spoke to the work done by community advocates.

Participants recognized that collaboration and coalition-building is necessary to support your efforts to make the case to Treasury Board that legal aid requires greater funding, and that greater funding provides tangible benefits to British Columbians.

Coalition-building requires developing a shared vision for legal aid, and making the business case, the social science case, and the legal values case to support proper legal aid funding. That work requires an exploration of the opportunities and challenges legal aid faces.

4. Opportunities and Challenges

The presentations and discussion at the Colloquium identified that the current state of legal aid presents certain opportunities and challenges. On reflection following the discussion, several consideration arise.

Opportunities

First, we believe that the government should articulate a clear vision of what access to justice means for British Columbians. Legal Aid – in whatever form it takes – is a tool for fostering access to justice. Having a clear statement of what access to justice means, and understanding the outcomes the government hopes to achieve by improving access to justice, will more easily allow the identification of systems and services that best support those objects. Once the systems and services are detailed, then a legal aid system can be developed that supports the objects by facilitating meaningful access to the systems and services that support access to justice. Looking at legal aid in isolation from the broader societal context will not resolve the access to justice problem confronting government.

Second, there is a shortage of credible data on the justice system, particularly with respect to costs, benefits, and whether the outcomes it produces are enduring. We have very little evidence of the benefits to individuals or society of going to court to pursue a civil claim, for example. Similarly, we have little evidence that our current adversarial model of litigation in a family law context serves the individuals involved, their children, and society better than less adversarial and more collaborative alternatives. What this means is that any efforts to transform legal aid, without also exploring whether the systems of justice it supports are the right ones, will not reduce the access to justice problem we face in a meaningful manner. In other words, whether one uses a clinical model of delivery or a tariff model, the act of connecting that model to an open-ended adversarial dispute resolution model, with all the procedural and substantive law trappings, and professional obligations of counsel, means that the ability to constrain costs while simultaneously improving outcomes, is limited. Legal aid reform, therefore, has to take place in the context of broader justice system reform.

To support this type of reform it is important for the government to collect better data about how our current system is used, its costs, processes and outcomes, as well as any new models that are established. Having done so, the systems can then be compared. To the extent justice issues arise from social and health issues, or might lead to them, integration of the data into a broader architecture is important. Our ability to understand if greater efforts at providing housing and early childhood health and education opportunities for disadvantaged communities create downstream economic benefits, and reduced cost to the justice system, requires developing a multi-ministerial data architecture to support those efforts. This data should be available for academic research and subject to non-partisan peer review to ensure it supports objective outcomes.

Third, the government must consult with and listen to the public to find out what is important in their lives and then translate that into the context of access to justice and legal aid.

Challenges

With respect to challenges, it was clearly noted at the Colloquium that publicly-funded legal aid programs require the expenditure of public resources, and that there are competing priorities on such funds. Recent history suggests that a significant challenge that adversely affects any vision of legal aid is the relatively lower level of priority that government gives to the justice system compared to, for example, the health and education systems. The lack of political will to place a priority on legal aid funding is both an unfortunate trend and a challenge for legal aid enhancement.

But in a broader context, there are two substantial challenges that impact enhancing legal aid services.

The first is the task of helping those in a position to make fiscal determinations about the justice system understand its value as opposed to simply its cost. Value cannot always be measured in purely monetary terms as a line item in a budget, and if cost becomes the sole determinant of what options are considered we run a significant risk of not developing the systems that are required. British Columbians deserve an appropriate balance.

The second substantial challenge relates to developing an appropriate data architecture to support access to justice and the legal aid system. The challenge has two parts. The first part relates to the numerous, complex privacy considerations that must be taken into account in building such a data architecture. The second relates to inertia on the part of decision-makers who may resist the establishment of a data architecture because it may in fact lead to uncomfortable conclusions.

The Law Society will support in whatever way it can any initiatives that will raise society's understanding about how increased legal aid will not only ensure that those who need legal advice are able to obtain it, but also as to how obtaining legal advice and representation to resolve disputes increases the health and well-being of society in general, thereby resulting in reduced costs and expenditures in social services and health spending.

5. Next Steps

The Colloquium left the Law Society with much to consider, and the Legal Aid Advisory Committee will engage in further reflection over the next few months. Given the focus at the Colloquium on the need for collaboration we expect we may begin reaching out to justice system stakeholders, including your office, to explore how best to work collaboratively to make the case for both proper system design for legal aid, a vision for how it fits within the justice system and supports efficient, fair and enduring outcomes, and an agreement as to what constitutes a sufficient quantum of funding for legal aid to realize these purposes.

We very much look forward to working with you and would be pleased to discuss these matters with you further.

Yours truly,

Nancy Merrill, QC
Chair, Legal Aid Advisory Committee

2020 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 16	Friday, January 31	New Year's Day: January 1 Welcome/Farewell Dinner: January 31
Thursday, February 20	March 6	Valentine's Day: February 14 Family Day: February 17 Federation Spring Meetings: Spring Break: March 16 –March 27
Thursday, April 2	Friday, April 17	Easter: April 10 - April 13
Thursday, May 14	Saturday, May 30	Victoria Day: May 18 LSBC Bencher Retreat: May 28 - 30 LSA Retreat: (TBD)
Thursday, June 18	Friday, July 3	Canada Day: July 1 BC Day: August 3
Thursday, September 10	Friday, September 25	Labour Day: September 7 ILACE Conference: (TBD) Rosh Hashanah: September 18 (sundown) – September 20 (sundown) Yom Kippur: September 27 (sundown) – September 28 (sundown)
Thursday, October 15	Friday, October 30	AGM: October 6 Thanksgiving Day: October 12 Federation Fall Meetings: (TBD)
Thursday, November 19	Friday, December 4	Remembrance Day: November 11 Bencher By-Election: November 16 Christmas Day: December 25