The Law Society of British Columbia

Agenda

Benchers

Date:	Friday, April 5, 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.***

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.

1	Minutes of March 1, 2019 meeting (regular session)	
2	Disclosure and Publication of Interim Orders Under Rule 3-10	
3	Transfer of members of the Barreau du Québec	
4	Anti-Money Laundering and Terrorist Financing Rules: Cash Transactions and Trust Accounting Rules	
REPORTS		
5	President's Report	Nancy G. Merrill, QC
6	CEO's Report	Don Avison
7	Briefing by the Law Society's Member of the Federation Council	Herman Van Ommen, QC
GUEST PRESENTATION		
8	Guest Presentation on LifeWorks	Denise Cuthbert
DISCUSSION/DECISION		
9	Law Society General Meeting Reform	Steven McKoen, QC

The Law Society of British Columbia

Agenda

UPDATES		
10	Report on Outstanding Hearing & Review Decisions (*To be circulated at the meeting*)	Craig Ferris, QC
11	2019 February YTD Financial Report	Craig Ferris, QC / Jeanette McPhee
12	National Discipline Standards	Natasha Dookie / Tara McPhail
13	2018 Year-End Report for the Lawyers Insurance Fund	Su Forbes, QC
FOR INFORMATION		
14	LifeWorks 2019 First Quarter Newsletter	
15	"Roads to Revival": An External Review of Legal Aid Service Delivery in British Columbia, conducted for the Attorney General of BC by Jamie Maclaren, QC, January 2019	
16	Letter from Nancy Merrill, QC to Attorney General dated March 27, 2019 Re: Roads to Revival	
17	Three Month Bencher Calendar – April to June 2019	
IN CAMERA		
18	Other Business	

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, March 01, 2019

Present:
Nancy G. Merrill, QC, President
Craig Ferris, QC, 1st Vice-President
Dean P.J. Lawton, QC, 2nd Vice-President
Jasmin Ahmad
Jeff Campbell, QC
Pinder Cheema, QC
Jennifer Chow, QC
Barbara Cromarty
Anita Dalakoti
Jeevyn Dhaliwal
Martin Finch, QC
Brook Greenberg
Lisa Hamilton, QC
Roland Krueger, CD
Jamie Maclaren, QC
Claire Marshall
Geoffrey McDonald
Steven McKoen, QC
Christopher McPherson, QC
Jacqui McQueen
Phil Riddell, QC
Mark Rushton
Carolynn Ryan
Karen Snowshoe
Michelle D. Stanford, QC
Sarah Westwood
Tony Wilson, QC
Guangbin Yan
Heidi Zetzsche

Unable to Attend:
Elizabeth Rowbotham
Michael Welsh, QC

Staff:
Don Avison
Gurprit Bains
Su Forbes, QC
Mira Galperin
Kerryn Garvie
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Jason Kuzminski
Alison Luke
Jeanette McPhee
Doug Munro
Veronica Padhi
Annie Rochette
Lesley Small
Alan Treleaven
Adam Whitcombe, QC

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dom Bautista	Executive Director, Law Courts Center
	Dr. Susan Breau	Dean of Law, University of Victoria
	Stephen R. Crossland	Chair, Washington Supreme Court LLLT Board
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Peter Leask, QC	Life Bencher, Law Society of BC
	Paula C. Littlewood	Executive Director, Washington State Bar Association
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Ian Mulgrew	Reporter, Vancouver Sun
	Caroline Nevin	CEO, Courthouse Libraries BC
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Michele Ross	President & Education Chair, BCPA Paralegal Association
	Robert Seto	Program Director, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Acting Executive Director, Canadian Bar Association, BC Branch
	Karen St. Aubin	Membership Director, Trial Lawyers Association of BC

CONSENT AGENDA

1. Minutes of January 25, 2019 meeting (regular session)

The minutes of the meeting held on January 25, 2019 were approved as circulated.

2. Minutes of January 25, 2019 meeting (*in camera* session)

The minutes of the meeting held on January 25, 2019 were approved as circulated.

3. Amendments to Rule 4-38 – Pre-hearing Conference

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 4-38 (8) to (10) and substituting the following:

(8) The conference may consider any matters that may aid in the fair and expeditious disposition of the citation, including but not limited to

(a) simplification of the issues,

(b) amendments to the citation,

(b.1) any matter for which the Bencher may make an order under subrule (10),

(b.2) conducting all or part of the hearing in written form,

(c) admissions or an agreed statement of facts,

(d) disclosure and production of documents,

(d.1) agreement for the hearing panel to receive and consider documents or evidence under Rule 4-41 (3) (e) *[Preliminary matters]*, and

(e) the possibility that privilege or confidentiality might require closure of all or part of the hearing to the public, or exclusion of exhibits and other evidence from public access.

(9) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order

(b) to withhold the identity or contact information of a witness,

(c) to adjourn the hearing of the citation,

(d) for severance of allegations or joinder of citations under Rule 4-22 *[Severance and joinder]*,

(e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-35 *[Application for details of the circumstances]*,

(e.1) that the Bencher may make under subrule (10), or

(f) concerning any other matters that may aid in the fair and expeditious disposition of the citation.

(10) The Bencher presiding at a pre-hearing conference may, on the application of a party or on the Bencher's own motion, make an order that, in the judgment of the Bencher, will aid in the fair and expeditious disposition of the citation, including but not limited to orders

(a) adjourning the conference generally or to a specified date, time and place,

(b) setting a date for the hearing to begin,

(c) allowing or dismissing an application made under subrule (9) or referred to the conference under this part,

(d) specifying the number of days to be scheduled for the hearing,

(e) establishing a timeline for the proceeding including, but not limited to, setting deadlines for the completion of procedures and a plan for the conduct of the hearing,

(f) directing a party to provide a witness list and a summary of evidence that the party expects that any or all of the witnesses will give at the hearing,

(g) respecting expert witnesses, including but not limited to orders

(i) limiting the issues on which expert evidence may be admitted or the number of experts that may give evidence,

(ii) requiring the parties' experts to confer before service of their reports, or

(iii) setting a date by which an expert's report must be served on a party, or

(h) respecting the conduct of any application, including but not limited to allowing submissions in writing.

(11) If an order made under this rule affects the conduct of the hearing on the citation, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

4. Revised Terms of Reference for Annual Fee Review Working Group

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Annual Fee Review Working Group be continued with terms of reference as attached [in the agenda package].

REPORTS

5. President's Report

Ms. Merrill provided a summary of the matters discussed at the Executive Committee meeting on February 14, including; the design of various Law Society awards, an update on the Counsel Resource Plan, recommended revisions to the annual practice declaration to revise questions about pro bono, a new mandate for the Alternate Legal Service Providers Working Group, formation of a legal aid coalition, an appointment to replace Heidi Zetsche on the CLEBC Board, and the date of the 2019 annual general meeting.

Ms. Merrill reported that she had almost completed populating the Futures Task Force. Mr. Ferris would be Chair and Ms. Dhaliwal would be Vice-Chair.

She said she attended a number of events over the last month, and had been arranging for various interesting and engaging guest speakers to attend Bencher meetings throughout 2019.

A Leadership Workshop for Women Benchers and Selected Guests would be held at the Law Society on April 3 and Respectful Workplace Training for Benchers would take place on May 1.

Ms. Merrill said she had sent a letter to the Attorney General following the release of the budget commenting on the funding of legal aid.

6. CEO's Report

Mr. Avison thanked Benchers and staff for volunteering to teach professional ethics at the PLTC program. He also reported that other Canadian law societies had expressed in our online practice management course and we have recently agreed to license the course to them.

Mr. Avison noted that he and Ms. Merrill both attended the pre-budget "lock up" in Victoria. There were modest funding allocations for legal aid supporting the establishment of eight legal aid clinics.

Mr. Avison reported on engagement over the past week with both Dr. Peter German and his colleagues, and the Maureen Maloney panel, on anti-money laundering. Staff from the Law Society and Mr. Riddell participated. There was a lot of discussion about the role of the Law Society, the audit cycle and areas of high risk.

Mr. Avison said Ms. Natasha Dookie, the new Chief Legal Officer, would be starting the following week and thanked Ms. Bains for her work in the Acting Chief Legal Officer role over the past few months.

The Federation meetings, which Mr. Avison would be attending with the President and senior staff the following week, will be held in Montreal. He said he would speak to a number of issues at those meetings, including continuing efforts to improve funding for legal aid, background to both the Dr. German and Maureen Maloney processes, the status of work in BC on the follow up to the Truth and Reconciliation Commission's Report, the work of the Mental Health Task Force, and the status of work in relation to alternate legal service providers/licensed paralegals.

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

Mr. Van Ommen was unable to attend and provide an update at the Bencher meeting.

GUEST PRESENTATIONS

8. Update on Washington State's Limited License Legal Technician (LLLT) Program

Ms. Merrill introduced and welcomed the guest speakers, Ms. Paula Littlewood, Executive Director of the Washington State Bar Association, and Mr. Steve Crossland, Chair of the Washington Supreme Court LLLT Board.

Ms. Littlewood began by setting the scene with some key points about the Washington State Bar Association and the provision of legal services in Washington State; namely, the legal profession's monopoly on legal services was lost many years ago. Examples given where legal services are not being provided by lawyers were real estate transactions and signing directives before surgery in hospitals. She also referred to the United Kingdom, where giving legal advice is not a reserved activity.

Ms. Littlewood's proposition was that "one size does not fit all" for the provision of legal services and that not every problem needs a lawyer, in the same way that not every medical problem needs a doctor. The issue, as Ms. Littlewood observed, it that there is a shortage of lawyers, public demand is increasing, and consumers are going elsewhere. This problem can be explained by predominantly two factors: declining numbers of law school applications and baby boomer lawyers transitioning out of the profession over the next 10-15 years, expect to be half of the total membership in Washington State, which equates to approximately 20,000 lawyers. She said the United States could triple the number of law schools and the unmet legal need would still not be met.

Ms. Littlewood divided the unmet legal need into four categories: low income (85% unmet need), moderate income (80% unmet need), middle income (50% unmet need) and those people that don't know they have an unmet legal need. She said they were all untapped markets, which have an estimated value of around $9 billion. The overall untapped market may be worth as much as $16 billion.

In her view, the issue is how to help lawyers get the work because there is a lot of it. One factor is that there are a number of other avenues or resources, such as Legal Zoom, that the public now use to access information about their legal problems. Much like drastic change that has occurred in other industries because of technology, such as how people book travel online and the online availability of newspapers and books, change is coming to the legal profession and the way in which legal services are provided.

As an example, Ms. Littlewood referred to the disaggregation of medical services in Washington with the creation of nurse practitioners. This role allowed doctors to "practice at the top of their license" and allow other licensed professionals to perform tasks that could be carried out by someone other than a doctor.

Similarly, the Supreme Court in Washington State created the Limited License Legal Technician role. Despite much opposition, a proposed LLLT rule was drafted following a Supreme Court directive. Subcommittees were convened that considered four practice areas: family, elder, immigration and landlord tenant law. Family law was recommended at the first practice area for the LLLT role in 2008. The LLLT Rule was not adopted by the Supreme Court until 2012, at which time the LLLT Board was authorized to administer the program. The Board was charged with creating and drafting the operational details for the license and determining the practice area and education requirements.

Family law was formally chosen as the first practice area and approved by the Supreme Court in 2013. Mr. Crossland then outlined the family law scope of practice and tasks a LLLT would be permitted to complete. Other minimum requirements were also put in place for LLLTs, including proof of financial responsibility and a minimum of 18 years of age.

Mr. Crossland said the Board came up with a pathway to admission, including educational requirements, examinations, an experience component and licensing requirements. Ms. Littlewood then provided more detail about how to become licensed as a LLLT.

The educational component is made up of "core" and "elective" components. The courses can be completed online by live streaming the classes, which she said was a huge advantage for people in rural communities. Ms. Littlewood then compared the cost of completing a law degree with the LLLT program, and said the LLLT program was significantly cheaper and less time-consuming to complete.

In terms of employment, Mr. Crossland provided a breakdown of the LLLTs currently working in Washington State, with 8 working in law firms, 27 LLLTs either jointly or independently owning a law firm, and 1 LLLT with a mixed model of practice.

Mr. Crossland and Ms. Littlewood also recognized that the LLLT program is not going to fix the unmet legal need, but were of the view that it was a good starting place and that the numbers of people seeking to become LLLTs was expected to increase with time. They also felt that, with expanded areas of practice for the LLLT program, the number of people enrolling in the program may increase.

Mr. Crossland and Ms. Littlewood finished their presentation by painting a picture of the future of the legal profession and the LLLT program. They hoped that in 10-15 years people would view the LLLT program as they view nurse practitioners today.

Mr. Crossland and Ms. Littlewood encouraged Benchers to include the public, lawyers and judges in discussions about any potential programs from the beginning and get "buy in" about the fact that there is a problem that needs to be fixed.

DISCUSSION/DECISION

9. Review of the Law Society's 2018 Audited Financial Statements and Financial Reports

Mr. Ferris introduced the item and asked Ms. McPhee to speak to the report.

Ms. McPhee noted that from an operating point of view, the Law Society had a positive year in 2018. This was mainly due to additional revenue that was received over the course of the year. The general fund revenue was $26 million, which was 5% over the budgeted $24.7 million. Ms. McPhee explained the additional revenue, noting D & O insurance recoveries on legal defense files, which amounted to $514,000, and interest income of $319,000. There was also practice fee revenue of $242,000 over budget, custodianship recoveries of $90,000 and 40 more PLTC students than budgeted.

Ms. McPhee observed that the practicing membership in BC was up 3.2% in 2018 and the number of PLTC students in 2018 increased to 540. The number of PLTC students in 2019 is expected to increase to between 640 and 660 students for 2019.

The Law Society's operating expenses were budgeted at $24.7 million and came in under budget at $24.1 million, which is 2.4%. Ms. McPhee provided reasons for the savings, including compensation savings of $343,000, external counsel fee savings of $65,000 and $174,000, HR savings of $196,000 in recruiting, legal and consulting fees, Bencher and committee savings of $113,000, meeting and travel expenses savings of $73,000.

Ms. McPhee then compared the actual results with the budget in 2018 for the Trust Assurance Fee and Trust Assurance Program. There were some savings because of staff vacancies.

Ms. McPhee then reviewed the general fund balance sheet for December 2018, which is made up of unrestricted net assets ($5.6 million), assets ($58.1 million), liabilities ($33.4 million), capital allocation ($2.2 million), trust assurance ($3 million) and capital assets ($12.9 million).

She then spoke about the Special Compensation Fund, followed by the Lawyers Insurance Fund. For the Lawyers Insurance Fund, there was an increase in revenue of 3% and significant savings in the operational expenses, due to staff vacancies, external counsel fees, and insurance and administrative expenses. In terms of claims, the provision for claims increased from $13.6 million in 2017 to $16.5 million in 2018.

The long term investment returns were then reviewed. Ms. McPhee said 2018 was not a good year resulting in a negative return. However, the Law Society has a diversified portfolio and it can expected to go up and down depending on the investment markets. The net assets of the Lawyers Insurance Fund went down 8.7%. There is no concern about the net assets overall because we still have a substantial fund.

Mr. Ferris thanked Ms. McPhee for her presentation. He said he was very satisfied with the work of PricewaterhouseCoopers and that the Law Society was in very good hands with them as our auditors. He then made the following motion, which was seconded.

BE IT RESOLVED to approve the Law Society's 2018 Combined Financial Statements for the General & Special Compensation Funds, and the 2018 Consolidated Financial Statements for the Lawyers Insurance Fund.

The motion passed unanimously.

10. Recommendation on CPD Credit for Pro Bono Work

Mr. Wilson introduced the item and asked Benchers to approve recommendation 10 in the Lawyer Education Advisory Committee's report:

> **Recommendation 10:** The Law Society will not recognize pro ono and legal aid work as eligible for CPD credit.

The motion was moved and seconded.

Mr. Wilson provided background information about the recommendation. While he recognized the range of courses that qualify for CPD credit has expanded over the years, and listed a few examples, the consideration of CPD credit for pro bono and legal activities goes back to December 2017. At that time, the Lawyer Education Advisory Committee unanimously recommended against providing CPD credit for pro bono and legal aid activities because it did not match the objective of the CPD program to promote lawyer competence.

The Lawyer Education Advisory Committee again considered the issue in 2018 and came to the same conclusion that providing CPD credit for pro bono and legal aid activities is not in line with the objective of the CPD program to promote lawyer competence.

The Committee recommended to the Benchers that they approve recommendation 10 as outlined in the report and repeated above.

Mr. Maclaren then proposed the following motion, should the motion proposed by Mr. Wilson fail.

> "To promote the objects of greater professional and experiential learning about the barriers to access to justice confronted by low-income British Columbians, and greater capacity to pursue fact-driven legal strategies for overcoming such barriers, the Law Society will grant up to two hours of annual CPD credit for twice the amount of time that a member spends interviewing clients through a pro bono or legal aid program."

Mr. Maclaren said, by providing CPD credit for pro bono or legal aid work, this would encourage lawyers to get out into their communities to learn more about the access to justice that low-income people confront on a regular basis. This would be a small step to make the profession more relevant to regular working people.

Some Benchers did not agree with the proposition that lawyers are out-of-touch with the needs of low-income people and believed approving such a motion would send the wrong message to the profession and the public. Furthermore, doubts were expressed about the effectiveness of providing CPD credit for pro bono as a means of encouraging pro bono. Rather than expanding CPD credit to pro bono work, there was an appetite for further work to be done to look at what else the Law Society can do to encourage pro bono itself in a meaningful and substantive way.

It was also suggested that by approving CPD credit for pro bono and legal aid, it may look to the public as though the Law Society is providing CPD credit for lawyers representing marginalised groups. In addition, concerns were expressed that this would be providing CPD credit for work that lawyers already know how to do instead of the intended educational component.

Some Benchers showed support for the proposed motion and were of the view that progress has been made in recognizing other forms of CPD credit, and CPD credit for pro bono and legal aid work should also be recognized. It was noted that the Law Society has limited tools available to change or encourage behaviour in the legal profession and CPD credit is one of those tools. Even though providing CPD credit for pro bono and legal aid may not significantly change behaviour, providing CPD credit for pro bono and legal aid would be better than doing nothing. Even if only a small number of lawyers would be impacted by the change, it would be worth it. These Benchers also did not like the optics of taking CPD credit off the table for pro bono and felt that,

on balance, the potential benefit to be gained from providing CPD credit for pro bono and legal aid outweighed the risk to the objectives of the CPD program.

Benchers then voted on the main motion on the understanding that, if it failed, Mr. Maclaren's motion would then be tabled. The motion passed with 15 in favour and 14 opposed.

11. Proposal for Licensed Paralegal Task Force

Mr. Ferris referred to the January 25 Bencher meeting *In Camera* discussion about where to go with what was called the Alternate Legal Service Provider Working Group. He said the matter went to the Executive Committee for consideration at the February 14 meeting, and the report now before Benchers is the product of that process.

Mr. Ferris said Benchers were being asked to approve the following resolution and that he hoped the proposed new Task Force and Terms of Reference were workable and would address the issues:

> *BE IT RESOLVED* that the Benchers establish a Licensed Paralegal Task Force with the following mandate to further develop the work of the Alternate Legal Service Provider Working Group:
>
> 1. Consider and identify opportunities, in consultation with the profession and others, for the delivery of legal services in areas where there is a substantial unmet legal need and the public would benefit from the provision of those services by licensed paralegals; and
>
> 2. If the Task Force identifies areas of legal services where licensed paralegals may meet an unmet legal need:
>
>   a) consider the scope of services that would be appropriate for licensed paralegals to provide in relation to the identified areas of legal services;
>
>   b) consider what education, qualifications, credentials, experience and insurance would be necessary to enable licensed paralegals to deliver legal services in a competent and ethical manner in the identified areas of legal services; and
>
>   c) make recommendations to the Benchers for a regulatory framework that will ensure that licensed paralegals provide legal services in a regulated, competent and ethical manner only in the identified areas of legal services approved by the Law Society.

Mr. Ferris said the Executive Committee wanted to make clear the reasons why the Task Force was being created and would be looking at licensed paralegals to provide certain legal services. There is an unmet legal need that the Committee believes licensed paralegals could meet. The

Committee is hopeful consultation with the profession and others will be meaningful and that the public will benefit from the provision of services by licensed paralegals. Mr. Ferris said, assuming the requirement identified in paragraph 1 of the Terms of Reference is met, the Task Force would then move on to consider areas of legal services, the scope of those legal services and the education requirements.

Mr. Ferris moved the resolution and the motion was seconded.

Mr. McDonald expressed concern that, while the work of the Task Force is important, the scope of the work of the Task Force was not broad enough. He made a motion that the resolution to approve the mandate be amended as follows:

> Paragraph 1 – include "affordable and accessible legal services" after "delivery of", and include "paralegals and/or licensed paralegals"; and
>
> Paragraph 1 – add "paralegals and/or" before every instance of "licensed paralegals"
>
> Paragraph 2(c) – add "affordable" after "competent"

The motion to amend the resolution was seconded. Debate on the motion to amend the resolution proposed by Mr. Ferris commenced.

Some Benchers expressed concern about including reference to affordable legal services and were of the view that it is not the Law Society's role to regulate the market. In addition, including undefined groups, such as unlicensed paralegals, may create uncertainty and it would be difficult to regulate those groups. Other comments included that by referring to the "public would benefit from the provision of those services", the language is necessarily broad enough to include consideration of improving access to justice as a whole, which is broader than affordability. The proposal is for licensed paralegals to be looked at as one solution, not the whole answer.

Mr. McDonald referred to "legal advocates" filling an unmet legal need, and that if the purpose of the Task Force is to fill gaps created by an unmet legal need, the mandate of the Task Force should not be limited to licensed paralegals. Other Benchers supported the view that adding "paralegal" to the mandate would broaden the scope of the work and prevent this issue having to be revisited again at a later date.

Three Benchers voted in favour of the amendment to the resolution, one Bencher abstained and the remainder voted against amending the resolution as proposed. The motion to amend the resolution therefore failed.

Benchers then voted on the main motion as outlined in the agenda package and recommended by the Executive Committee. The resolution was passed unanimously.

Life Bencher Mr. Leask, QC was in attendance and asked that the Benchers consider having non-family lawyers on the Licensed Paralegal Task Force.

12. Formation of a Legal Aid Coalition

Mr. Riddell introduced the item. He said the Legal Aid Advisory Committee, in looking at ways to advance the Law Society's vision for legal aid in BC, had studied the best ways in which to encourage the Government to increase funding for legal aid. In the fall of 2018, the Legal Aid Colloquium took place, which involved a number of consumer groups. One of the goals of the legal aid coalition, if established, would be for the Law Society to lead a group of interested organizations to advocate for a legal aid system that works and aligns with the Law Society's vision for legal aid in BC.

Mr. Riddell moved that the following resolution. The motion was seconded.

BE IT RESOLVED that the Benchers authorize the Law Society to engage with other organizations, whose mandates and work align with the Law Society's Vision for Publicly Funded Legal Aid, to work collaboratively in a Law Society led coalition with the objective of increasing funding for legal aid so as to better meet the legal needs of the most vulnerable and disadvantaged citizens of British Columbia.

The resolution was passed unanimously.

FOR INFORMATION

13. BC Legal Profession Demographics

There was no discussion on this item.

14. Three Month Bencher Calendar – March to May

There was no discussion on this item.

KG
2019-03-28

The Law Society of British Columbia

Memo

To: Benchers

From: Jeff Hoskins, QC for Act and Rules Committee

Date: February 28, 2019

Subject: **Disclosure and publication of interim orders under Rule 3-10**

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1. In July 2018, the Benchers approved the recommendation of the Executive Committee that amendments to Rule 3-10 were required to make it explicit that interim orders made under that rule can be made public.

2. I attach for your reference the Executive Committee's memorandum to the Benchers that was considered and approved by the Benchers at the July 2018 meeting.

3. This is the minute of the Benchers' consideration of the recommendation:

> **12. Publication or Disclosure of Interim Orders – Rule 3-10: Proposed Rule Amendments**
>
> Mr. Lucas introduced the recommendation for a proposed amendment to Rule 3-10. Currently, Rule 3-10 permits publication of suspensions ordered under that rule but not any restrictions or conditions that might be imposed on a lawyer. While there is no rule that says restrictions and conditions cannot be disclosed, it would be appropriate to make the authority to do so explicit.
>
> He noted that the recommendation can be found at paragraph 25 on page 49 of the Agenda materials.
>
> Mr. McKoen expressed concern that orders made in proceedings under Rule 3-10 are made before any investigation is completed and suggested that caution should be exercised when considering publication of the results of these types of proceedings. Mr. McPherson agreed with Mr. McKoen.
>
> Mr. Lucas observed that the publication intended was with respect to limitations and conditions placed on a lawyer's practice. While appreciating the concern about the

interim nature of the Rule 3-10 proceedings, he suggested that it is in the public interest for the Law Society to let the public know a lawyer's practice is limited or restricted in some manner.

The motion was moved (Riddell/Ahmad) and passed unanimously.

4. I attach as well draft amendments to give effect to the Benchers' policy decision, including a version that shows changes to the current rules. There is also a suggested resolution to enact the changes, which is recommended by the Act and Rules Committee.

5. The Committee considered it appropriate that the Benchers who make an interim order are required to consider whether the existence and effect of the order ought to be disclosed to the public. They are given the discretion, in extraordinary circumstances, to order that disclosure be restricted or prohibited.

6. For clarification, there is an exception for disclosure that is required to enforce the order, conduct the ongoing investigation or to obtain a custodianship order.

7. When the restriction order is no longer in effect, publication on the Law Society website must be removed. That is clarified so as not to apply to any mention of the order that may appear in the reasons for a decision of a hearing panel or review board.

8. There are other similar provisions in other parts of the Law Society Rules and the Committee recommends a similar provision clarifying that the removal of the conditions and limitations per se from the website does not require removal or redaction of a written decision of a hearing panel or review board or a decision of the Benchers, who historically conducted reviews of panel decisions.

9. The Committee recommends the changes to the Benchers for adoption.

Attachments: memo, Executive Committee to Benchers
draft amendments
suggested resolution.

JGH

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: June 29, 2018
Subject: Proposed Rule Amendments: Publication or Disclosure of Interim Orders – Rule 3-10

Issue

1. The Discipline department has raised an issue concerning the publication of interim orders made under Rule 3-10. The issue is particularly focused on the publication of orders under that Rule by which restrictions or conditions are placed on a lawyer's practice. The Rule is silent as to authorization to publish or disclose such orders. This is to be contrasted with specific authority (under Rule 4-47(2)) that permits publication of a suspension that may be ordered under Part 3 of the Rules, including Rule 3-10.

2. The Executive Committee, in its Regulatory Policy function, considered the request to recommend to the Benchers that the Rules be amended to provide specifically that restrictions or conditions imposed as a result of a proceeding initiated pursuant to Rule 3-10 can be published. The Committee recommends that the Benchers approve such amendments in principle and refer the matter to the Act and Rules Committee to draft appropriate rules.

Background

3. Rule 3-10 (formerly Rule 3-7.1) was created in 2010. While at that time there were (and still are) rules that permit seeking an interim order to suspend or place conditions or restrictions on a lawyer's practice, those rules permitted such orders only *after* a citation had been authorized against the lawyer. Rule 3-10 was created to provide a process to issue such orders *before* a citation had been authorized. It was noted at the time a new rule was being considered that there may be compelling public interest reasons to seek a suspension or place conditions on a lawyer's practice *before* the investigation of a matter against the lawyer was completed and before it had been determined whether there was sufficient evidence to warrant the authorization of a citation.

4. The Benchers approved the creation of what is now Rule 3-10, relying at the time on their general rule-making power under s. 11. However, they also resolved to seek an amendment to the *Legal Profession Act* to provide more specific authorization for such a rule, which request was granted in the *Legal Profession Amendment Act 2012* (and can be found in s. 26.01 of the *Legal Profession Act*)..

5. The heading of what is now Rule 3-10 is "Extraordinary action to protect public." At the time the rule was passed, it was noted that it was expected orders would only be sought in rare cases where extraordinary circumstances existed. Unlike interim orders sought *after* a citation had been authorized, an order sought under the new rule would not have the benefit of the evidence having met the threshold of issuing a citation. The threshold ultimately adopted in the legislation in 2012 was to permit three benchers to make such an order if *satisfied it is necessary to protect the public*. In 2012, the rule was amended, following the legislation, to add in the requirement of "reasonable grounds."

6. It was noted that seeking conditions, limitations or a suspension at such an early stage of an investigation was unusual, given that evidence may not have been tested to a significant degree. However, some cases were noted where the allegations arising in a complaint may be so egregious as to require the Law Society to address them in this manner, particularly where criminal charges had been laid from the same or related facts. Consequently, it was contemplated that, where such an order was made, it would be done in the public interest to ensure proper regulation of the profession, and better protection of the public seeking the services of lawyers.

Publication/Disclosure of Orders Made Under Rule 3-10

7. When the rule was passed, there were no provisions added concerning publication or disclosure of restrictions or conditions that were ordered pursuant to that rule. Interestingly, if a lawyer is *suspended* pursuant to that Rule, publication is permitted under what is now Rule 4-47(2), as the Executive Director is permitted to publish suspensions that are made under Part 2 or Part 3 of the rules. Rule 3-10 falls under Part 3 of the rules. Rule 4-47(2), however, has not been amended since 2007 (prior to the creation of Rule 3-10) and was therefore obviously created with other processes in mind, such as administrative suspensions.

Publication of Orders Placing conditions or limitations on the rules as they now exist

8. The Committee considered whether an order under Rule 3-10 that places conditions or limitations on the practice of a lawyer be published or disclosed? There is no rule that specifically says it cannot. That being said, Rule 3-3 generally prohibits the disclosure of information that forms part of a complaint, and while arguably an order made under Rule 3-10 is the *result* of information that forms part of a complaint and not the information itself, that is not without doubt.

9. However, Rule 3-3 permits the disclosure of information forming part of a complaint if it is for a purpose of complying with the objectives of the Act or the rules. The overriding objective of the Act is for the Law Society to protect the public interest in the administration of justice in a number of ways, one of which is by regulating the practice of law and another is by ensuring the competence of lawyers. The Act and the Rules give three Benchers the ability, if satisfied on reasonable grounds that extraordinary action is necessary to protect the public, to impose conditions or limitations on the practice of a lawyer who is the subject of an investigation so that the public is not unwittingly harmed by the lawyer. Applications pursuant to Rule 3-10 are only sought in the most extraordinary cases where there is a significant risk to the public. They are serious cases. It would be odd if, having made the decision that condition or limitations placed on a lawyer's practice pursuant to an order made on the application is necessary to protect the public, the Law Society would not be able to *inform* the public of the condition or limitation imposed.

10. The Committee considered that it was also worth noting that Rule 3-3(2)(c) permits the disclosure of an *undertaking* given by a lawyer during the course of an investigation that limits or prohibits a lawyer's practice of law. In other words, where a lawyer undertakes to a limitation during the course of an investigation, that is permitted to be disclosed. However, if the lawyer does not agree to give such an undertaking and it has to be imposed under Rule 3-10, there is no rule authorizing such publication.

11. The Committee noted that the rules provided explicit authority to publish suspensions made under rule 3-10, and that there is explicit authority to publish a condition, limitation or suspension to a lawyer's practice and the nature of that condition, limitation or suspension (see Rule 4-50) made under Rule 4-26 (which are made after a similar proceeding to that in Rule 3-10, but *after* a citation has been authorized).

12. The existence of explicit authority to disclose in those enumerated circumstances could be construed as implying an intent that no disclosure is permitted of orders of conditions or limitations made under Rule 3-10, on the statutory construction principle of *expressio unius est exclusio alterius*. Lack of any provisions permitting disclosure of conditions or limitations ordered under Rule 3-10 when there are provisions permitting publication or disclosure of suspensions that rule may lead one to presume the Law Society did not intend to permit disclosure of the former.

13. *Expressio unius* is not, however, strictly determinative. Sullivan on the Construction of Statutes (6th edition) references Cameron J.A. in *Dorval v. Dorval*, [2006] SJ No. 94 (CA):

> … [T]he maxim *expressio unius est exclusio alterius* is only an aid to statutory construction,. As Laskin C.J. noted in *Jones v. New Brunswick (Attorney General)*, "This maxim provides at the most merely a guide to interpretation; it does not pre-

> ordain conclusions." And its application calls for a considerable measure of caution lest too much be made of it. …"
>
> … First, much depends on context, including the particular subject-matter. Second, express reference to a matter may have been unnecessary and been made only out of abundant caution. Third, the lack of express reference may have been the product of inadvertence. Fourth, the express and the tacit, incongruous as they may be, must still be such as to make it clear they were not intended to co-exist. And finally, the indiscriminate application of *expressio unuius* to the particular subject-matter may lead to inconsistency or injustice.

14. The inference that can be drawn from the Law Society's object and duty under the *Legal Profession Act* can be argued to outweigh the inference that might be drawn from the inconsistency with which disclosure of the types of orders made under Rule 3-10 and 4-23 (see for example, *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722).

15. It is also true, however, that an order made under Rule 3-10 comes at a much earlier stage of investigation. This may warrant caution in publishing or disclosing any order outlining conditions or limitations on practice. But arguably such should be the case for the disclosure of a suspension as well. Whether a suspension or a condition or limitation, the lawyer's practice is affected by the order, and the public who may be considering retaining such lawyer may be interested in knowing what constraints have been placed on the lawyer by his or her governing body. The authority would be discretionary, which is a safeguard against a situation where disclosure would be unfair or cause undue hardship.

16. It would, as noted, be odd if, having made a decision that the condition or limitation ordered under Rule 3-10 needs to be made to protect the public, the Law Society would never be able to notify the public of the decision, and therefore the lack of specific authority may not be determinative in order to comply with the purpose of the Act. Many conditions or limitations that could be imposed under Rule 3-10 would be extremely difficult to enforce without disclosure to the public.

17. It would also, as noted, be odd to have created a regulatory regime that permitted disclosure of a restriction given by way of an undertaking but not one imposed by way of an order. But having expressly given the permission to disclose a limitation or restriction by way of an undertaking, the lack of an express permission to disclose the limitation imposed by an order might be viewed as significant.

Clarification of Disclosure or Publication through Amendments to the Rules

18. If publication or disclosure of conditions or limitations ordered under Rule 3-10 were made on the basis of the current rules, it is possible that a lawyer subject to the order would seek some way to restrain its disclosure or seek some other remedy against the Law Society for having disclosed it. The Committee thought that while the argument

against such a concern would be fairly strong, it is true that it could be made stronger by amending the rules to specifically authorize that the Executive Director is permitted to disclose and publish an order made under Rule 3-10. The possibility of the *exclusio unius* maxim applying would be removed if the publication provisions were consistent, or at least expressly set out for each circumstance.

19. This might best be accomplished through a full review of all the disclosure provisions in the Act as has been proposed through an examination of Disclosure and Privacy considerations proposed for Strategic Planning purposes.

20. In the interim, however, clarification might be done through amendments to Rule 3-3, or perhaps by addition of new rules concerning publication and disclosure of processes under Part 3 of the Rules or through amendments to Rule 4-47(2) by including a power to take action where conditions are placed on practice under Parts 2 or 3 in addition to the power that currently exists to do so where a person is suspended.

Conclusion, Recommendation and Next Steps

21. As the Rules currently stand, where a lawyer is *suspended* after a proceeding under Rule 3-10, the Executive Director has a discretion to publicize the existence of the suspension. That discretion, which might be inferred to extend to the publication of *conditions* or *limitations* imposed after a proceeding under Rule 3-10, is not set out directly in the Rules. Although no rule currently prohibits publication of conditions or limitations imposed under Rule 3-10, the lack of express reference to it despite there being express authority to publish suspensions made under the same rule, or to disclose restrictions if imposed through an undertaking creates a concern that the rules could be interpreted to not permit such disclosure and that an effort to do so could result in a challenge.

22. Creating a regulatory discretion with the Executive Director to disclose (through publication) conditions or limitations imposed by Rule 3-10 would be consistent with existing Law Society Rules concerning the publication of suspensions imposed under Rule 3-10. It would also be consistent with the Law Society's overall mandate to protect the public interest in the administration of justice by regulating the legal profession and ensuring competence of lawyers and with the Law Society's objective to be fully transparent and open about the regulatory process while at the same time protects the rights of the lawyer to a fair hearing. It also protects the public interest by ensuring that clients are alerted to the limitations on their lawyer's practice so that the client has full knowledge of the conditions or limitations under which their lawyer is permitted to practise law.

23. Creating a rule to provide a discretion to the Executive Director to publish permits a consideration to be given to the effect of publication on the lawyer as well, and permits there to be a decision by the Executive Director *not* to publish if there are (likely rare)

situations where the adverse effect of publication outweighs the public interest in publication, recognizing that the proceeding under Rule 3-10 may happen at an early stage of investigation. However, given that proceedings under Rule 3-10 are "extraordinary actions to protect the public interest," it may be expected that an exercise of discretion *not* to publish would itself likely require extraordinary circumstances.

24. While there are sound arguments on the principles of statutory construction that this lack of express reference to publication is not be determinative, this argument has not been tested.

25. The Committee therefore recommends that the Benchers approve in principle amendments to the Rules that specifically set out the authority to publish limitations and conditions placed on a lawyer's practice as a result of a proceeding undertaken pursuant to Rule 3-10 as a safer course of action, and to refer the matter to the Act and Rules Committee to prepare amended rules.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Extraordinary action to protect public

3-10 (1) An order may be made under this rule with respect to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) suspend a lawyer or the enrolment of an articled student.

(3) An order made under ~~this~~ subrule (2) or varied under Rule 3-12 *[Procedure]* is effective until the first of

(a) final disposition of any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) The Benchers who make an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the Benchers who made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, those Benchers may order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

LAW SOCIETY RULES

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Hearings and appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) The Benchers who make an order under subrule (6) must give written reasons for their decision.

(9) An order under subrule (6) may be made by a majority of the Benchers who made the order under subrule (2) (a).

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

Application for enrolment, admission or reinstatement

Disclosure of information

2-53 (5) The Executive Director may disclose the existence and nature of a condition or limitation imposed or agreed to under this division if the condition or limitation

(a) is ordered as a result of a hearing under this division,

(b) restricts or prohibits a lawyer's practice in one or more areas of law, or

(c) is imposed by Rule 2-78 *[Law school faculty]*, 2-80 *[In-house counsel]* or 2-87 *[Reinstatement of former judge or master]*.

(6) If the Executive Director discloses the existence of a condition or limitation under subrule (5) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

LAW SOCIETY RULES

Disclosure of practice restrictions

4-50 (1) When, under this part or Part 4 *[Discipline]* of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

(4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

Revocation of permits

9-11 (7) When a panel imposes a condition or limitation under which a law corporation may continue to provide legal services to the public under subrule (2) (c), the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation

(8) If the Executive Director discloses the existence of a condition or limitation under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(9) Subrule (8) does not apply to a decision of Benchers, a hearing panel or a review board.

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PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Extraordinary action to protect public

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(a) the subject of an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) suspend a lawyer or the enrolment of an articled student.

(3) An order made under subrule (2) or varied under Rule 3-12 *[Procedure]* is effective until the first of

(a) final disposition of any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) The Benchers who make an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the Benchers who made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, those Benchers may order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

LAW SOCIETY RULES

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Hearings and appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) The Benchers who make an order under subrule (6) must give written reasons for their decision.

(9) An order under subrule (6) may be made by a majority of the Benchers who made the order under subrule (2) (a).

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

Application for enrolment, admission or reinstatement

Disclosure of information

2-53 (5) The Executive Director may disclose the existence and nature of a condition or limitation imposed or agreed to under this division if the condition or limitation

(a) is ordered as a result of a hearing under this division,

(b) restricts or prohibits a lawyer's practice in one or more areas of law, or

(c) is imposed by Rule 2-78 *[Law school faculty]*, 2-80 *[In-house counsel]* or 2-87 *[Reinstatement of former judge or master]*.

(6) If the Executive Director discloses the existence of a condition or limitation under subrule (5) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

LAW SOCIETY RULES

Disclosure of practice restrictions

4-50 (1) When, under this part or Part 4 *[Discipline]* of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

(4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

Revocation of permits

9-11 (7) When a panel imposes a condition or limitation under which a law corporation may continue to provide legal services to the public under subrule (2) (c), the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation

(8) If the Executive Director discloses the existence of a condition or limitation under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(9) Subrule (8) does not apply to a decision of Benchers, a hearing panel or a review board.

DISCLOSURE OF INTERIM CONDITIONS

SUGGESTED RESOLUTION:

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

1. In Rule 2-53, by adding the following subrule:

(7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

2. In Rule 3-10, by rescinding Rule 3-10 (3) and substituting the following :

(3) An order made under subrule (2) or varied under Rule 3-12 *[Procedure]* is effective until the first of

(a) final disposition of any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) The Benchers who make an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the Benchers who made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, those Benchers may order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Hearings and appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) The Benchers who make an order under subrule (6) must give written reasons for their decision.

(9) An order under subrule (6) may be made by a majority of the Benchers who made the order under subrule (2) (a).

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

3. In Rule 4-50, by adding the following subrule:

(4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

4. In Rule 9-11, by adding the following subrule:

(4) Subrule (8) does not apply to a decision of Benchers, a hearing panel or a review board.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: March 11, 2019
Subject: **Transfer of members of the Barreau du Québec**

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1. At their January meeting the Benchers approved a recommendation from the Executive Committee to amend the rules governing transfer of membership under the National Mobility Agreement (NMA). The change would allow members of the Barreau du Québec the same privileges as members of other Canadian law societies, notwithstanding that the Québec regulator has not approved a reciprocal provisions that would allow BC lawyers the same privileges when transferring to the Barreau.

2. This is the rationale for the 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.

3. I attach the full memorandum from the Executive Committee for your reference.

4. The Benchers approved the change in principle and referred the matter to the Act and Rules Committee to implement with a recommended amendment.

5. I attach draft amendments to the provisions affecting permanent transfer of a member of the Barreau du Québec. These changes are approved by the Act and Rules Committee, which recommends them to the Benchers for adoption. I also attach a suggested resolution for adoption of the amendments.

6. The only necessary changes proposed are amending "reciprocating governing body" where that phrase occurs in rules governing transfer (as opposed to temporary mobility) to simply "governing body". The former phrase requires the law society in question to be a signatory to the NMA and to have implemented the provisions of the NMA. The latter is merely a generic term for a Canadian law society.

Attachments: draft amendments

JGH

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.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"governing body" means the governing body of the legal profession in another province or territory of Canada;

"reciprocating governing body"

(a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and

(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Call and admission

In-house counsel

2-80 ((4)On application of a lawyer called and admitted as in-house counsel, the Credentials Committee may relieve the lawyer of the restriction under subrule (3), on the lawyer

(b) completing the requirements under Rule 2-81 (3) *[Transfer under National Mobility Agreement and Territorial Mobility Agreement]*, if the lawyer

(ii) is entitled to practise law in the jurisdiction of a ~~reciprocating~~ governing body of which the applicant is a member, or

(iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body ~~that is now a reciprocating governing body,~~ of which the applicant was a member.

LAW SOCIETY RULES

Transfer under National Mobility Agreement and Territorial Mobility Agreement

2-81 (1) This rule 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.

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Insurance

Exemption from liability insurance

3-43 (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a ~~reciprocating~~ governing body of which the lawyer is a member.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"governing body" means the governing body of the legal profession in another province or territory of Canada;

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(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

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Call and admission

In-house counsel

2-80 (4) On application of a lawyer called and admitted as in-house counsel, the Credentials Committee may relieve the lawyer of the restriction under subrule (3), on the lawyer

(b) completing the requirements under Rule 2-81 (3) *[Transfer under National Mobility Agreement and Territorial Mobility Agreement]*, if the lawyer

(ii) is entitled to practise law in the jurisdiction of a governing body of which the applicant is a member, or

(iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body of which the applicant was a member.

Transfer under National Mobility Agreement and Territorial Mobility Agreement

2-81 (1) This rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a governing body of which the applicant is a member.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Insurance

Exemption from liability insurance

3-43 (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a governing body of which the lawyer is a member.

BARREAU TRANSFER

SUGGESTED RESOLUTION:

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

1. In Rule 2-80 (4) (b), by rescinding subparagraph (iii) and substituting the following:

(iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body of which the applicant was a member**..**

2. In Rules 2-81 (1) and 3-43 (3) by striking the phrase "in the jurisdiction of a reciprocating governing body***" and substituting "***in the jurisdiction of a governing body***".***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To:	Benchers
From:	Jeffrey G. Hoskins, QC for Act and Rules Committee
Date:	March 26, 2019
Subject:	**Anti-Money Laundering and Terrorist Financing Rules: cash transaction and trust account rules**

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1. In December 2018 the Benchers approved the report of the Anti-Money Laundering and Terrorist Financing Working Group of the Federation of Law Societies of Canada and instructed Mr. Van Ommen to vote for its adoption at the Federation Council meeting. The report and the model rules included in the report have since been adopted by the Federation Council.

2. The report comprises three major parts. For your reference, I attach the parts of the report dealing with two topics, cash transactions and trust accounting. The third and most complex topic, client identification and verification, will be dealt with at a later Bencher meeting.

3. The Act and Rules Committee has considered amendments to the BC Law Society Rules to give effect to the Federation model rules. I attach redlined and clean version of the proposed amendments, along with a suggested resolution to effect the changes. The Act and Rules Committee recommends adoption.

4. In 2004, when these rules were first proposed in the form of Model Rules, the Act and Rules Committee of the day considered the original model at a number of meetings and produced a set of rules that it felt was a better fit with the LSBC Rules than the Model Rules, and addressed some issues that were not included in the Model Rules at the time. As a result, the Act and Rules Committee has taken care to ensure to recommend that the Benchers adopt rule changes that are at least as effective as the model rules adopted by other law societies while respecting the integrity of the existing BC rules.

Drafting notes

5. In Rule 1, the definition of "trust funds" is narrowed so that money received that is not "directly related to legal services" is not considered trust funds. That will assist in prohibiting the use of a trust account for non-law-related transactions.

6. Although the CIV rules as a whole are not before this meeting, some changes to the definitions in that area are made so that they can be adopted by reference in the cash transactions area, Rule 3-53.

7. The trust accounting rule prohibiting use of trust accounts for non-law-related transactions is inserted after "deposit of trust funds" and before "cash transactions". There is also a clear heading, "Trust accounts only for legal services," which is intended to assist getting out the message that broad use of trust accounts is not permitted.

8. In the cash transactions provision, Rule 3-59, the draft follows the language of the model rule fairly closely while maintaining the more usual order of establishing the application of the rule before stating the substance.

9. The Act and Rules Committee recommends that adoption of the attached rule amendments by approving the suggested resolution.

Attachments: Working Group report
draft amendments

JGH

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Anti-Money Laundering and Terrorist Financing Working Group

Final Report on the Model Rules

Amended October 1, 2018

INTRODUCTION

1. The Federation of Law Societies of Canada and its member law societies have been actively engaged in the fight against money laundering and the financing of terrorist activities for more than 15 years. Ensuring effective anti-money laundering and terrorist financing rules and regulations for the legal profession continues to be a strategic priority of the Federation.

2. Two model rules, aimed at limiting the handling of cash by members of the legal profession and ensuring legal counsel engage in due diligence in identifying their clients, have been the cornerstone of the regulators' anti-money laundering and anti-terrorism financing initiatives. The No Cash and Client Identification and Verification Model Rules (the "Model Rules") adopted in 2004 and 2008 respectively have been implemented by all Canadian law societies.

3. In October 2016, the Federation Council asked the CEOs Forum to establish a working group of senior staff to review the Model Rules. The Council recognized that a review of the Model Rules was overdue, particularly in light of a number of developments on the anti-money laundering and counter-terrorist financing landscape, including amendments to federal anti-money laundering and terrorist financing regulations, and the report of the mutual evaluation of Canada's federal anti-money laundering regime by the Financial Action Task Force ("FATF").

4. The Anti-Money Laundering and Terrorist Financing Working Group (the "Working Group") is co-chaired by Jim Varro, Director, Office of the CEO at the Law Society of Ontario and Frederica Wilson, Executive Director, Regulatory Policy and Public Affairs and Deputy CEO at the Federation. The other members of the Working Group are:

    - Susan Robinson – Executive Director, Law Society of Prince Edward Island
    - Chioma Ufodike – Manager, Trust Safety, Law Society of Alberta
    - Elaine Cumming – Professional Responsibility Counsel, Nova Scotia Barristers' Society
    - Deb Armour – Chief Legal Officer, Law Society of British Columbia
    - Jeanette McPhee – CFO and Director of Trust Regulation, Law Society of British Columbia
    - Leah Kosokowsky – Director, Regulation, Law Society of Manitoba
    - Anthony Gonsalves – Team Manager, Professional Regulation, Law Society of Ontario
    - Sylvie Champagne – Secrétaire de l'Ordre et Directrice du contentieux, Barreau du Québec
    - Nicholas Handfield – Chef, Services juridiques et relations institutionnelles, Chambre des notaires de Québec
    - Brenda Grimes – Executive Director, Law Society of Newfoundland and Labrador

5. From October 2017 until mid-March 2018 the Working Group held a consultation on a number of proposed amendments to the Model Rules and the introduction of a new Trust Accounting Model Rule. The Working Group received comments on the proposed rule changes from nine of the 14 law societies, the Canadian Bar Association, the Ontario Bar Association and several individual lawyers. In addition to providing feedback on the amendments proposed by the Working Group and on the proposed new Trust Accounting Model Rule, a number of commentators recommended other changes to the rules. Where such additional changes were consistent with ones explored in the consultation, or were simple matters of wording, the Working Group has responded to them in the final amendments. There were, however, some recommendations that were outside the scope of the consultation. That development, together with the fact that the government introduced new amendments to the federal anti-money laundering regulations part-way through the consultation period that are relevant to the rules, led the Working Group to conclude that there would be merit in a second, focused review of the rules in the near future. Finally, the Working Group's research highlighted the potential value of a risk-based approach to law societies' anti-money laundering and anti-terrorism financing regulation. The Working Group suggests that the Federation may wish to consider a move in that direction in the future.

6. The final proposed amendments and the new trust accounting rule for approval by the Council are set out in full in appendices to this report. The proposed amendments and new rule, the rationale for them and a summary of the feedback received together with the Working Group's response to the feedback are discussed in the body of the report.

NO CASH MODEL RULE

Definitions

7. In its consultation report, the Working Group proposed the addition of several definitions to the No Cash rule. Those additions have been maintained, but additional changes have been made to the definitions section to ensure consistency with the definitions in the Client Identification and Verification rule. This includes revisions to the definitions of "financial institution" and "public body" and the addition of a definition of "financial services cooperative".

Exceptions

8. To reflect the intention to restrict the situations in which legal counsel can accept large amounts of cash, the Working Group had recommended the deletion of some of the exceptions in the rule. In response to feedback from a number of law societies and others, the Working Group reconsidered some of the proposed amendments to the circumstances in which legal counsel may accept more than $7,500 in cash. It is now proposed that exceptions for cash received from a peace officer, law enforcement agency or other agent of the Crown and to pay bail be maintained. The only exception that has been eliminated is that relating to cash received pursuant to a court order.

Other Amendments

9. The Working Group has maintained amendments to section 1 of the rule to clarify the amount of cash a lawyer may accept. The rule now specifies that a lawyer must not accept cash in an amount greater than $7,500. In response to feedback received during the consultation, the section has also been amended to delete the words “or transaction”. The Working Group agreed that it is clearer to tie the cash limit to client matters. Pursuant to the amended rule, legal counsel may not accept cash in an aggregate amount greater than $7,500 for any one client matter.

10. Also for greater clarity, the Working Group has removed the words “from a person” from section 1 and has changed “shall” to “must” or “will” (as appropriate) throughout the rule.

CLIENT IDENTIFICATION AND VERIFICATION RULE

Definitions

11. The Working Group is proposing a number of amendments to the definitions in the Client Identification and Verification rule, primarily to align with amended definitions in the federal regulations where similar terms are used in the Model Rule. These include the addition of definitions of “credit union central”, “disbursements”, “expenses”, “financial services cooperative” and “professional fees” and the deletion of the definition of “proceedings”. Amendments are also proposed to existing definitions including “financial institution”, “funds”, “public body”, and “securities dealer”. With the exception of additional changes to ensure the definitions refer to provinces and territories, the amendments to the definitions are unchanged from the version contained in the consultation document.

12. As reported in the consultation report, the Working Group discussed whether a band defined under the *Indian Act* (Canada) should be added to the definition of “public body”, although the corresponding definition in the federal regulations do not include Indian bands. This issue first arose some years ago and was the subject of research by the Federation, but no determination was made at that time. The Working Group considers this an important issue and to ensure that it is carefully considered, it is conducting additional research and will report on the issue at a later date.

Requirement to Identify Client

13. One of the amendments proposed in the consultation was the addition of language to subsection 2(1) of the client identification rule to situate the requirements of the section in the broader context of lawyers’ due diligence obligations. The amended provision reads (new language underlined):

> 2(1) Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the lawyer’s obligation to know their client, understand the client’s dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

dishonesty, fraud, crime or illegal conduct." It was suggested that this sets too high a standard. The Working Group notes that members of the legal profession are bound by rules of professional conduct not to "knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct." To address the concerns that were raised in the consultation, the provision has been amended to be consistent with the existing professional conduct obligation.

Other amendments

38. The Working Group is proposing a few other minor amendments for greater clarity and consistency. These include the substitution of "must" or "will" for the word "shall" as appropriate throughout the rule.

TRUST ACCOUNTING MODEL RULE

39. The consultation report included a new trust accounting model rule intended to restrict the use of lawyers' trust accounts to purposes directly connected to the provision of legal services. As noted in the report, a number of law societies already have such rules. In the view of the Working Group, allowing members of the legal profession to use their trust accounts for purposes unrelated to the provision of legal services unnecessarily increases the risk of money laundering or other illegal activity even when the money in question is not cash.

40. The proposed rule was generally well received, but there were some criticisms and questions about the drafting. The Working Group has redrafted the rule in response. In keeping with the general drafting style of law society rules and regulations, the proposed new model rule now makes it clear that the obligations are imposed on individual lawyers. In response to concerns that the commentary seemed to impose additional obligations on lawyers, it has been removed in the final draft. The Working Group will instead provide guidance on the rule in the guidelines for the profession that are being prepared. Finally, a definition of "money" has been added to the rule for clarity. The proposed rule now reads as follows:

Definitions
"money" includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions

1. A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer's law firm is providing.

2. A lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

Model Rule on Cash Transactions

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

"disbursements" means amounts paid or required to be paid to a third party by the lawyer or the lawyer's firm on a client's behalf in connection with the provision of legal services to the client by the lawyer or the lawyer's firm which will be reimbursed by the client;

"expenses" means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

"financial institution" means

(a) a bank that is regulated by the *Bank Act,*
(b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
(c) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
(d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
(e) a financial services cooperative,
(f) a credit union central,
(g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
(h) a trust company or loan company that is regulated by a provincial or territorial Act,

(i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or

(j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

"financial services cooperative" means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or right to or interest in them;

"professional fees" means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer's firm;

"public body" means

(a) a department or agent of Her Majesty in right of Canada or of a province or territory,

(b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,

(c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory,

(d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,

(e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or

(f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

1. A lawyer must not receive or accept cash in an aggregate amount ~~of~~ greater than $7,500 Canadian in respect of any one client matter.

2. For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency the lawyer will be deemed to have received or accepted the cash converted into Canadian dollars at

    (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or
    (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.

3. Section 1 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:

    (a) receiving or paying funds;
    (b) purchasing or selling securities, real properties or business assets or entities;
    (c) transferring funds by any means.

4. Despite section 3, section 1 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm

    (a) from a financial institution or public body,
    (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
    (c) pursuant to pay a fine, penalty, or bail, or
    (d) for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.

Model Rule on Recordkeeping Requirements for Cash Transactions

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

"money" includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

1. Every lawyer, in addition to existing financial recordkeeping requirements to record all money and other property received and disbursed in connection with the lawyer's practice, shall maintain

    (a) a book of original entry identifying the method by which money is received in trust for a client, and

    (b) a book of original entry showing the method by which money, other than money received in trust for a client, is received.

2. Every lawyer who receives cash for a client shall maintain, in addition to existing financial recordkeeping requirements, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature authorized by the lawyer who receives cash and of the person from whom cash is received.

3. The financial records described in paragraphs 1 and 2 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

4. The financial records described in paragraphs 1 and 2 shall be entered and posted so as to be current at all times.

5. A lawyer shall keep the financial records described in paragraphs 1 and 2 for at least the six year period immediately preceding the lawyer's most recent fiscal year end. [This paragraph does not apply to lawyers in Quebec as the Barreau requires that such records be retained without any limitation.]

Model Rule on Cash Transactions

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

"disbursements" means amounts paid or required to be paid to a third party by the lawyer or the lawyer's firm on a client's behalf in connection with the provision of legal services to the client by the lawyer or the lawyer's firm which will be reimbursed by the client;

"expenses" means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

"financial institution" means

(a) a bank that is regulated by the *Bank Act,*
(b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
(c) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
(d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
(e) a financial services cooperative,
(f) a credit union central,
(g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
(h) a trust company or loan company that is regulated by a provincial or territorial Act,

(i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or

(j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

"financial services cooperative" means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or right to or interest in them;

"professional fees" means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer's firm;

"public body" means

(a) a department or agent of Her Majesty in right of Canada or of a province or territory,

(b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,

(c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory,

(d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization~~.~~,

(e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or

(f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

1. A lawyer ~~shall~~must not receive or accept ~~from a person,~~ cash in an aggregate amount ~~of~~ greater than $7,500 ~~or more~~ Canadian ~~or more dollars~~ in respect of any one client matter ~~or transaction~~.

2. For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency ~~from a person~~ the lawyer ~~shall~~will be deemed to have received or accepted the cash converted into Canadian dollars at

    (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or
    (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.

3. ~~Paragraph~~Section 1 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:

    (a) receiving or paying funds;
    (b) purchasing or selling securities, real properties or business assets or entities;
    (c) transferring funds by any means.

4. Despite ~~paragraph~~section 3, ~~paragraph~~section 1 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm

    (a) from a financial institution or public body,
    (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
    (c) pursuant ~~to a court order, or~~ to pay a fine, penalty, or bail, or
    (d) ~~in an amount of $7,500 or more~~ for professional fees, disbursements, or expenses ~~or bail~~, provided that any refund out of such receipts is also made in cash.

~~(a) pursuant to a court order, or to pay a fine or penalty, or~~

~~(b) in an amount of $7,500 or more for professional fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.~~

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

MODEL TRUST ACCOUNTING RULE

Definitions

"money" includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders, and electronic transfer of deposits at financial institutions

1. A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer's law firm is providing.

2. A lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"trust funds" ~~includes~~ means funds directly related to legal services provided ~~received in trust~~ by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

"disbursements" means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

"expenses" means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

"financial institution" means

(a) an authorized foreign bank within the meaning of section 2 *[Definitions]* of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,

(b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,

(c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),

(c.1) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,

LAW SOCIETY RULES

(d) a company to which the *Trust and Loan Companies Act* (Canada) applies,

(e) a trust company or loan company regulated by a provincial or territorial Act,

(f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or

(g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

"lawyer" includes a law firm;

"professional fees" means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;

"public body" means

(a) a ministry or department of the government of Canada or of a province or territory, ~~or~~

(b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory, ~~.~~

(c) a body incorporated by or under an Act of a province or territory for a public purpose, or

(d) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

Trust account only for legal services

3-58.1 (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

(2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate.

Cash transactions

3-59 (1) This rule applies ~~to~~ when a lawyer or law firm~~when engaged~~ engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds;

(b) purchasing or selling securities, real property or business assets or entities;

LAW SOCIETY RULES

(c) transferring funds or securities by any means.

(2) Despite subrule (1), ~~This~~ this rule does not apply ~~to~~ when a lawyer or law firm ~~when~~receives or accepts cash in connection with the provision of legal services by the lawyer or law firm

(a) [rescinded]~~engaged in activities referred to in subrule (1) on behalf of his employer, or~~

(b) ~~receiving or accepting cash~~

~~(i)~~ from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,

~~(ii) pursuant to the order of a court or other tribunal,~~

(~~iii~~c) to pay a fine~~,~~ ~~or~~ penalty~~,~~ or bail, or

(~~iv~~d) from a ~~savings~~ financial institution or public body.

(3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount ~~in cash of~~ greater than $7,500 ~~or more~~ in respect of any one client matter ~~or transaction~~.

(4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount ~~in cash of~~ greater than $7,500 ~~or more~~ in respect of a client matter ~~or transaction~~ for professional fees, disbursements~~,~~ or expenses ~~or bail~~in connection with the provision of legal services by the lawyer or law firm.

(5) A lawyer or law firm ~~who~~ that receives or accepts cash in an aggregate amount ~~in cash of~~ greater than $7,500 ~~or more~~ under subrule (4) must make any refund greater than $1,000 out of such money in cash.

(6) A lawyer or law firm that ~~who~~ receives cash, unless permitted under this rule to accept it, must

(a) make no use of the cash,

(b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,

(c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and

(d) comply with all other rules pertaining to the receipt of trust funds.

(7) For the purposes of this rule, a lawyer or law firm that receives or accepts cash in foreign currency is deemed to have received or accepted the cash ~~to be~~ converted into Canadian dollars based on

(a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily ~~Memorandum of Exchange~~Noon Rates in effect at the relevant time, or

(b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day~~that the client would use for that currency in the normal course of business at the relevant time~~.

Division 11 – Client Identification and Verification

Definitions

3-98 (1) In this division,

"disbursements" has the same meaning as in Rule 3-53 *[Definitions]*;

"expenses" has the same meaning as in Rule 3-53;

"financial institution" has the same meaning as in Rule 3-53; ~~means~~

~~(a) an authorized foreign bank within the meaning of section 2 *[Definitions]* of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,~~

~~(b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,~~

~~(c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),~~

~~(d) a company to which the *Trust and Loan Companies Act* (Canada) applies,~~

~~(e) a trust company or loan company regulated by a provincial Act,~~

~~(f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or~~

~~(g) an organization controlled by a financial institution;~~

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"trust funds" means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

"disbursements" means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

"expenses" means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

"financial institution" means

(a) an authorized foreign bank within the meaning of section 2 *[Definitions]* of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,

(b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,

(c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),

(c.1) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,

(d) a company to which the *Trust and Loan Companies Act* (Canada) applies,

(e) a trust company or loan company regulated by a provincial or territorial Act,

(f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or

(g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

"lawyer" includes a law firm;

"professional fees" means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;

"public body" means

(a) a ministry or department of the government of Canada or of a province or territory,

(b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory,

(c) a body incorporated by or under an Act of a province or territory for a public purpose, or

(d) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

Trust account only for legal services

3-58.1 (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

(2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate.

Cash transactions

3-59 (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds;

(b) purchasing or selling securities, real property or business assets or entities;

LAW SOCIETY RULES

(c) transferring funds or securities by any means.

(2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm

(a) [rescinded]

(b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,

(c) to pay a fine, penalty or bail, or

(d) from a financial institution or public body.

(3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than $7,500 in respect of any one client matter.

(4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount greater than $7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.

(5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than $7,500 under subrule (4) must make any refund greater than $1,000 out of such money in cash.

(6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, must

(a) make no use of the cash,

(b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,

(c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and

(d) comply with all other rules pertaining to the receipt of trust funds.

(7) For the purposes of this rule, a lawyer or law firm that receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on

(a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or

(b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day.

Division 11 – Client Identification and Verification

Definitions

3-98 (1) In this division,

"disbursements" has the same meaning as in Rule 3-53 *[Definitions]*;

"expenses" has the same meaning as in Rule 3-53;

"financial institution" has the same meaning as in Rule 3-53;

CASH TRANSACTIONS TRUST ACCOUNTING

SUGGESTED RESOLUTION:

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

1. In Rule 1, by rescinding the definition of "trust funds" and substituting the following:

"trust funds" means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;**.**

2. In Rule 3-53:

(a) by rescinding the definition of "public body" and substituting the following:

"public body" means

(a) a ministry or department of the government of Canada or of a province or territory,

(b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory,

(c) a body incorporated by or under an Act of a province or territory for a public purpose, or

(d) a subsidiary of a public body whose financial statements are consolidated with those of the public body***., and***

(b) by adding the following definitions:

"disbursements" means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

"expenses" means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

"financial institution" means

(a) an authorized foreign bank within the meaning of section 2 *[Definitions]* of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,

(b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,

(c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),

(c.1) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,

(d) a company to which the *Trust and Loan Companies Act* (Canada) applies,

(e) a trust company or loan company regulated by a provincial or territorial Act,

(f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or

(g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

"professional fees" means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;**.**

3. By rescinding Rule 3-59 and substituting the following:

Trust account only for legal services

3-58.1 (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

(2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate.

Cash transactions

3-59 (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds;

(b) purchasing or selling securities, real property or business assets or entities;

(c) transferring funds or securities by any means.

(2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm

(b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,

(c) to pay a fine, penalty or bail, or

(d) from a financial institution or public body.

(3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than $7,500 in respect of any one client matter.

(4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount greater than $7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.

(5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than $7,500 under subrule (4) must make any refund greater than $1,000 out of such money in cash.

(6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, must

(a) make no use of the cash,

(b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,

(c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and

(d) comply with all other rules pertaining to the receipt of trust funds.

(7) For the purposes of this rule, a lawyer who receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on

(a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or

(b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day**.**

4. In Rule 3-98,

(a) by rescinding the definition of "financial institution" and substituting the following:

"financial institution" has the same meaning as in Rule 3-53;***, and***

(b) by inserting the following definitions:

"disbursements" has the same meaning as in Rule 3-53;

"expenses" has the same meaning as in Rule 3-53;**.**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

CEO's Report to the Benchers

March 28, 2019

Prepared for: Benchers

Prepared by: Don Avison

1. Federation of Law Societies of Canada – March Meetings in Montreal

The Federation Meetings took place on March 4 and 5, 2019 and consisted of a joint morning session on the Monday with Presidents and CEOs and two separate afternoon sessions for the Presidents and for the CEOs and senior staff. The Federation Council held its meeting on the Tuesday and Herman Van Ommen Q.C. was there as Council member for the Law Society of British Columbia.

The joint session with Presidents, CEOs and the Federation Leadership addressed three areas:

- a follow-up on the A.I./Technology conference held by the Federation in October, 2018;
- an assessment of areas of engagement where the Federation should/should not be engaged;
- a session with a "spotlight" on Alternate Legal Service Providers.

The first of those sessions covered a range of discussion points including:

- perspectives from some academics/experts that current regulatory rules in the legal profession may operate in a manner that "thwarts innovation" in an environment where technology may be oriented towards supporting a higher degree of interdisciplinary approaches;
- that so far, "simple platforms" are the ones proving to be most effective;
- tech-enabled solutions may challenge conventional views as to what constitutes the "unauthorized practice of law";
- that one of the more significant Canadian examples of the intersection of technology and law is British Columbia's Civil Resolution Tribunal which combines "Solution Explorer" technology and government policy that defines an evolving "scope of jurisdiction" for that entity.

The session on the role of the Federation suggested there was substantial support for the role the Federation plays now but more modest support for any significant expansion of that role.

The subsequent discussion on Alternate Legal Service Providers took stock of initiatives across the country. B.C. reported on legislative and other developments and indicated that the Law Society would be taking the time necessary to "get this right" which would include addressing concerns raised by the profession during the consultation process in 2018. Ontario's input was particularly interesting as it was delivered by the Law Society of Ontario's Council representative who is the first paralegal to take a seat at the Council table.

The afternoon session with CEOs and senior staff included a lively session on "What's Keeping You Up at Night?"

The Council meeting on the Tuesday addressed a number of priority areas. Frederica Wilson and Jim Varro, Co-Chairs of the Federation's Anti-Money Laundering Working Group, reported on discussions with senior officials of the federal departments of Finance and Justice on how government, policing agencies and regulatory bodies – including law societies – can work collaboratively to address the threat of money laundering.

Council Chair, Ross Earnshaw provided an overview of the work of the NCA Assessment Modernization Committee and Karen Wilford summarized the outcomes of the February 25, 2019 meeting of the Federation's TRC Calls to Action Advisory Committee.

The vote on a proposed model rule on technological competency was deferred to the June meeting after Nunavut raised concerns as to whether the language proposed was insufficiently attentive to the limits of available technology in that jurisdiction.

One page summaries were provided by all jurisdictions on their key issues and initiatives. Copies of those summaries will be made available at the April 5 Bencher meeting.

2. AML Update

As Benchers know, the reviews being conducted by Dr. Peter German and the Expert Panel chaired by Dr. Maureen Maloney are drawing to a close and their reports will likely be delivered to the Attorney General and to the Minister of Finance by the time of the April Bencher meeting. Dr. German has indicated that he would welcome an opportunity to attend a Bencher meeting following the release of his report.

I have included with my report a letter provided to Professor Maloney in follow-up to a meeting with the Expert Panel on February 25, 2019.

In addition, I should note that we have had preliminary discussions with the RCMP regarding a proposal to update the December, 2000 Memorandum of Understanding between the RCMP and the Law Society regarding "Disclosure of Information by the RCMP to the Law Society of British Columbia." I will provide some additional background on these discussions at the April 5 meeting.

The recent federal budget contained commitments to address AML initiatives but the nature and scope of the anticipated program have not yet been defined.

3. 2019 Bencher Retreat

Planning is well underway for this year's Bencher Retreat that will take place in Parksville, June 6 – 8, 2019.

The Retreat theme will focus on how technology and Artificial Intelligence have – and will – impact the practice of law. We have been working with First Vice-President Craig Ferris Q.C. to develop a program that will be of interest to the Benchers and we have secured commitments from a number of speakers who will discuss various aspects of existing and emerging technologies.

We will provide more specific program details at the May 3 meeting of Benchers.

4. Member Portal Update

Work is currently taking place to improve member portal security and to ensure every member has a unique member log-in identifier. These modifications are necessary in any event but will also help to facilitate implementation of process upgrades/additions that the Law Society may wish to consider over the coming months.

5. 2019 Justice Summits

The first of this year's Summits will be held at Simon Fraser University's Segal Centre on April 26, 2019, the theme of which will be "The Summits, Justice Reform and Assessing Progress." The goal of the session is to consider how the Summit process can be strengthened in a way that will support "a sustainable agenda for justice system reform." President Nancy Merrill Q.C. and I will attend on behalf of the Law Society.

Don Avison
Chief Executive Officer

The Law Society
of British Columbia

March 22, 2019

Sent via mail/email

Professor Maureen Maloney
Chair, Expert Panel on Money Laundering
Ministry of Finance
PO Box 9048 STN Prov Govt
Victoria, BC V8W 9E2

Donald J. Avison
Executive Director/Chief Executive Officer

Dear Professor Maloney:

Re: Anti-Money Laundering Measures of the Law Society of British Columbia

Introduction

I am writing to provide additional information regarding matters the panel raised with us during our recent meeting.

Permit me to begin by again confirming that the Law Society of British Columbia recognizes and takes very seriously the risks that money laundering and terrorist financing pose to the public interest. We have been, and will remain, committed to doing our part to address this important area of concern.

Our obligation is to ensure that lawyers in British Columbia subject to regulation by the Law Society do not facilitate, knowingly or otherwise, money laundering or any other illegal activities. Our work in this area encompasses the following five key areas:

1. Establishing Clear Rules and Expectations;
2. Educating the Profession;
3. Operating a Comprehensive Trust Assurance and Audit Program;
4. Investigations and Disciplinary Action; and
5. Engagement with Government and with other Investigative Agencies

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1. Establishing Clear Rules and Expectations

The Law Society has established clear rules in the Code of Professional Conduct for British Columbia (the "B.C. Code") stating that lawyers must not engage in conduct that they know or ought to know assists in or encourages dishonesty, crime or fraud. Rules have also been implemented to limit cash transactions (the "no cash" rule) at thresholds lower than current federal guidelines and rules regarding client identification and verification (the "CIV" rules).

The Law Society has also played a national leadership role through the Federation of Law Societies of Canada (the "Federation") and more specifically, with the Anti-Money Laundering and Terrorist Financing Working Group that recommended amendments to further strengthen the no cash and CIV rules and a new Model Trust Accounting Rule clarifying the proper use of trust accounts given the "gatekeeper" obligations expected of lawyers.

2. Educating the Profession

The Law Society dedicates substantial resources to educating lawyers – and those about to enter the profession – on expectations they must meet in the operation of trust accounts and in respect of their AML obligations.

Our Professional Legal Training Course for articled students includes materials and lectures on anti-money laundering and terrorist financing.

Our Practice Advice department develops and disseminates articles and other resources relevant to AML matters and our advisors (all of whom are lawyers) provide one-on-one advice to ensure that lawyers fully understand their obligations and comply with them.

Our Trust Assurance department provides education and resources for lawyers and for law firm staff, including a Trust Account course, the Trust Advice helpline/email, a Trust Accounting Handbook and various other materials.

Lastly, we publish on our website Hearing Panel decisions where lawyers have been found to have committed professional misconduct or have breached the rules. Summaries of these decisions are included in the Benchers' Bulletins and are linked to the lawyer's profile on our Lawyer Directory.

As we discussed during our meeting, the publication of the decision in Gurney[1] had considerable value from the perspective of both education and deterrence. In finding that Mr. Gurney had failed to perform appropriate due diligence in the management and use of his trust account, including failing to make necessary inquiries when faced with a "sea of red flags", the Panel said this:

> *"...there is a need for lawyers to understand the importance of their role in acting as gatekeepers to their trust accounts and to ensure they make the necessary inquiries with regard to transactions that reasonably appear to be suspicious prior to their allowing funds to be deposited into their trust accounts. General deterrence requires the profession to understand that the breach of that professional duty will be treated as a serious breach."*

3. Operating a Comprehensive Trust Assurance and Audit Program

The Trust Assurance department reviews annual trust reports from every law firm, conducts periodic compliance audits of all law firms, and provides education, advice and resources to help ensure that lawyers' handle trust funds to expected standards. Our Chartered Professional Accountants (CPA's) are well-trained, including some with special training in anti-money laundering, having obtained the Association of Certified Money Laundering Specialist certification.

Annual Trust Reports

Each year, the department reviews approximately 3,500 law firm trust reports.[2] The trust report is an educational tool to keep law firms informed of their trust responsibilities and also provides the Law Society with early indicators of possible non-compliance with the rules.

Trust Audits

The department's audit cycle sees each law firm audited at least once every six year. In addition, the department maintains a four year audit cycle for certain areas of practice, such as firms with significant practices in wills and estates or real estate.

The department expects to conduct approximately 600 audits in 2019.

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[1] In the matter of the Legal Profession Act, SBC 1998, c. 9 and a hearing concerning Donald Franklin Gurney (Gurney (Re), 2017 LSBC 15)

[2] Approximately 2,500 of the 3,500 law firms have trust accounts.

Specific AML Activities

The trust audit program ensures that:

- lawyers do not accept cash greater than $7,500;
- clients' identities are properly verified; and
- trust accounts are only used in connection with the provision of legal services.

The Trust Assurance department refers lawyers to the Professional Conduct group where their procedures identify evidence that the lawyer or firm has breached the AML rules.

4. Investigation and Disciplinary Action

Our Professional Conduct group reviews all complaints about lawyer conduct or competency and investigates where there is evidence of a discipline violation.

The Law Society has developed substantial in-house expertise to address alleged misconduct that may involve inappropriate financial transactions.

Investigations are conducted by either experienced lawyers or a CPA or both, with assistance from Trust Regulation's forensic accountants, forensic accounting analysts, an investigator who is a former RCMP officer, and paralegals as needed.

The Law Society's investigative powers are significant and include the ability to order a person to attend to answer questions on oath or affirmation and to produce records in their possession or control.[3]

Lawyers have a duty to cooperate with Law Society investigations. This includes providing written responses, producing books and records and attending interviews. A lawyer must produce their records to us and disclose information regardless of any objection or claim of privilege by their client.[4]

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[3] Section 26(4) of the *Legal Profession Act*

[4] Sections 88 (1.1) and (1.2) of the *Legal Profession Act*. Section 88 (2) provides that a person who, in the course of exercising powers under the Act, acquires information subject to solicitor client privilege has the same obligations respecting the disclosure of the information as the person from whom the information was obtained. These provisions are uniquely necessary in order to properly regulate the legal profession. See also, for example, *Skogstad* v. *Law Society of British Columbia* 2007 BCCA 310 and *Greene v. Law Society of British Columbia* 2005 BCSC 390

Pursuant to Rule 3-6, a lawyer who fails to cooperate with an investigation will be administratively suspended until such time as they cooperate.

In addition, the Law Society may obtain an order under Rule 4-55 from the Chair of the Discipline Committee (our charging body) to conduct a forensic audit of a lawyer's practice where there are reasonable grounds to believe that the lawyer has committed a discipline violation.

The Law Society has the ability to act quickly when the public is at risk even during the investigation phase. If there are reasonable grounds to believe that extraordinary action is necessary to protect the public, Rule 3-10 permits the Law Society to bring interim proceedings seeking a suspension or the imposition of restrictions or conditions on the lawyer's practice.

Where an investigation establishes evidence of a breach of the no-cash or CIV rules a referral is made to the Discipline Committee with a recommendation by the investigator for a disciplinary response.

5. Engagement with Government and with other Investigative Agencies

We support initiatives to elevate inter-agency collaboration, cooperation and where appropriate, information sharing.

We have developed relationships with other organizations such as the B.C. Securities Commission, the Society of Notaries Public and the Real Estate Council and have encouraged them to refer any concerns about lawyer conduct to us for investigations. The Law Society has also, together with other agencies, participated in discussions regarding AML and fraud-related trends, activities, typologies and "red flags" and we have expressed our interest in becoming part of an AML working group co-sponsored by the provincial Ministry of Finance and by the federal Department of Finance.

Information sharing protocols are in place with a number of policing agencies and we have indicated to the RCMP, in particular, that they should inform us about any lawyers they may have identified as having breached their obligations so that we, if the circumstances warrant, can commence an investigation.

6. Protecting Client Confidentiality

As we have discussed, our ability to share information will always be subject to the preservation of a lawyer's client confidentiality obligations. That obligation has been found to be a fundamental principle of justice by the

Supreme Court of Canada and that was certainly at the heart of the Court's decision in Canada (Attorney General v. Federation of Law Societies of Canada.[6]

In the Federation decision the Supreme Court made it clear that legislative initiatives designed to designate lawyers as reporting entities breached solicitor-client privilege obligations and unreasonably intruded upon a lawyer's duty of commitment to the client's cause – duty the Court characterized as "essential to maintain public confidence in the administration of justice." (para 97). The Court found that the applicable provisions violated section 8 of the Charter of Rights and Freedoms and, further that the violation could not be justified under section 1 of the Charter.

I believe it is also important to note that the Supreme Court's decision also observed that "the duty of commitment to the client's cause must not be confused with being the client's dupe or accomplice. It does not countenance a lawyer's involvement in, or facilitation of, a client's illegal activities. Committed representation does not, for example, permit let alone require a lawyer to assert claims he or she knows to be unfounded or to present evidence that he or she knows to be false or to help the client to commit a crime. The duty is perfectly consistent with the lawyer taking appropriate steps with a view to ensuring that his or her services are not being used for improper ends."

It is clear that where communications between a lawyer and a client are, of themselves, criminal or where those communications relate to obtaining advice with respect to facilitating a criminal enterprise, confidentiality protections either never applied or could be lost given the criminal nature of the activity.

The Martin Wirick case is a good example of this. The case involved substantial fraud-related activity in respect of property development schemes where Mr. Wirick became involved in an on-going criminal enterprise. Client confidentiality obligations were vitiated by the conduct of the lawyer and by the client. Mr. Wirick was disbarred as a member of the Law Society. Information was shared by the Law Society with the appropriate policing agency and Mr. Wirick was charged and convicted of fraud and given a seven year custodial sentence. I believe the case demonstrates how seriously the Law Society takes such matters.

7. Additional Policy Considerations

For some time now the Law Society has recognized the importance of addressing the transparency of beneficial ownership. In communications with

[6] [2015] 1 SCR 401, 2015 SCC 7

The Honourable Carole James, Minister of Finance and Deputy Premier and with The Honourable. David, Eby, Attorney General, we have supported the government's efforts to create a publicly accessible registry of beneficial ownership.

We provided detailed comments to The Honourable Carole James on September 19, 2018 as part of the Land Owner Transparency Act White Paper Consultation. In addition to ensuring that solicitor-client privilege is properly protected in the legislation, we noted that it would also be useful if the enforcement contemplated in the legislation extended beyond law enforcement per se.

As we discussed with you on February 25, 2019, there may be circumstances in a Law Society investigation or proceeding where it would be beneficial to the public interest for the Law Society to have recourse to the search provisions of the *Land Owner Transparency Act*, in addition to the investigative powers available to us under the *Legal Profession Act* and the Law Society Rules.

Submissions were also made by the Federation on March 20, 2018 and May 17, 2018 to the House of Commons Standing Committee on Finance regarding beneficial ownership and the Federation's anti-money laundering and terrorist financing initiatives. The Federation submitted that in light of the risk that a lack of transparency of beneficial ownership creates, it is essential that beneficial ownership information be available in publicly accessible registries.

I have also been informed by senior representative with the Federation that, since the Report of the Standing Committee on Finance they have been involved in positive and productive discussions with senior officials with both the federal Departments of Justice and Finance focusing now on working collaboratively with Law Societies and less on trying to identify "constitutionally compliant mechanisms" to intrude upon client confidentiality obligations.

8. Conclusion

The Law Society is committed to combating money laundering and terrorist financing and we have developed a robust regulatory regime designed to reduce the likelihood of lawyers assisting in such activity and to discipline them where there is evidence that they have done so.

To assist us in our work, we encourage government and others to:

- Report any concerns about a lawyer's involvement in a suspicious transaction to the Law Society for investigation;

- Share information with us about trends, money laundering models, and red flags of suspicious transactions, including inviting us to information meetings with law enforcement agencies;

- Share intelligence with us about suspicious persons, entities and transactions where appropriate;

- Provide us with the ability to conduct "back end" searches of databases, such as the BC LTSA and BC Registry Services. This will enable us to gather more information on a lawyer's activities or those of their clients;

- Provide lawyers, notaries and banks with access to government technology to detect fake BC Services Cards and fake BC Driver's Licences proffered by potential clients; and

- Continue considering legislative amendments to enhance transparency around beneficial ownership, including shareholder information.

As always, we welcome any questions you might have.

Yours Truly,

Don Avison
Executive Director/Chief Executive Office

DA/vp

cc: Nancy Merrill, QC
President, Law Society of British Columbia

Encl. Federation of Law Societies of Canada, Anti-Money Laundering and Terrorist Financing Working Group, Guidance for the Legal Profession, February 19, 2019.

The Law Society of British Columbia

Law Society General Meeting Reform

Committee: Governance

Steven R. McKoen, QC (Chair)
Pinder K. Cheema, QC (Vice-Chair)
Jasmin Z. Ahmad
Craig Ferris, QC
Claire Marshall
Linda I. Parsons, QC
Philip A. Riddell, QC

March 25, 2019

Prepared for:	Benchers
Prepared by:	Staff
Purpose:	Discussion

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Committee Process

1. In light of the experience with the 2018 Annual General Meeting, the Committee was asked to consider possible reforms to the general meeting rules to avoid the issues experienced at that AGM while maintaining or improving the opportunity that members have to participate in general meetings.

2. The Committee met in January and February to review the experience with the 2018 AGM, consider the issues that arose at the October 30 meeting and the experience at the continued meeting on December 4, and discuss options for reforming the general meeting process.

Background

3. The experience at the 2018 AGM has thrown into sharp relief some issues with our current rules regarding general meetings. The Governance Committee has given consideration to the issues and how they might be addressed.

4. The origin of the current general meeting Rules is found in amendments to the Rules made in 1995.

5. Although the *Legal Profession Act* only required the Benchers to hold an AGM at a place and time designated by the benchers, in April of that year the Benchers approved amendments to the Rules that created the requirement to hold the AGM in at least eight physical locations to be connected by telephone. As a result, the 1995 AGM was the first to be held at more than one location.[1]

6. The introduction of *Bill 15 – 1998 Legal Profession Act* in the 1998/99 3rd Session of the BC legislature added another element relevant to any consideration of the current Rules. The *Bill* introduced s. 12 of the current *Act* requiring the Benchers to make certain Rules regarding various matters that were previously covered in the *Act*. One of those matters was the conduct of general meetings of the society. The *Bill* removed most of sections 18 – 21 dealing with the AGM, the appointment of the auditors, special general meetings and quorum at a general meeting and then specifically provided in section 12(2) that the first rules must be consistent with the provisions of the *Legal Profession Act*, R.S.B.C. 1996, c. 255, relating to the same subject matter.

7. Section 12(3) of the Bill also provided that the benchers may only amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting in a referendum respecting the proposed rule, or the amendment or rescission of a rule. As a result, any amendments to the current Rules regarding the conduct of general meetings must be approved by the members, either at a general meeting or by referendum.

8. Subsequent amendments to the Rules have provided the Benchers with the discretion to webcast the meeting and permit members to vote online.

[1] The atrium of the Law Society Building and in teleconference locations in Victoria, Nanaimo, Castlegar, Kelowna, Prince George, Fort St. John, Terrace and Kamloops. A 1992 special general meeting on the Gender Equality in the Justice System report was held by teleconference on November 20, 1992. The meeting was held in Vancouver with remote teleconference locations in Courtenay, Kamloops, Nanaimo, Prince Rupert and Terrace and it was apparently not that successful due to unspecified technical issues.

Issues

9. In 1995, Jeff Hoskins, QC provided the Benchers with a memorandum covering a number of points raised by Benchers during the discussion that led to holding the AGM in more than one location. In particular, he provided a prescient summary of our efforts to expand the general meeting:

> *In the past, our experience has been that there is no technical service available to provide all of the various services necessary to conduct a meeting with remote locations. Nor is there a service available to take responsibility for making all the arrangements and ensuring that the operation works smoothly. As a result, considerable staff time is involved in organizing such an event. The lack of coordination among service providers can result in a technical product that is less than adequate, as was the case at the 1992 special meeting*

10. The introduction of webcasting and online voting at the most recent AGMs, in addition to maintaining the teleconference locations, has made Mr. Hoskins' observations even more telling.

11. The most recent experience with our AGM highlights the problems with our current procedure. Our present Rules reflect their origin: a meeting of perhaps 100 members in a single location once a year. To this concept we have tacked on Rules providing for at least eight satellite locations and for online participation by way of a webcast and online voting. While it made sense to require that members had to be present at a general meeting to vote by a show of hands when everyone attended in person at one location, the result is a legal fiction when we pass a Rule to provide that a person participating in a general meeting at any location connected by telephone or the internet is present at the meeting for the purpose of voting.

12. The Committee considered a number of aspects of the current general meeting procedure in light of the experience with the 2018 AGM and other past meetings where member interest and attendance has been considerable.

Attendance

13. As noted above, the Rules require that the Executive Committee must designate at least eight satellite locations around the province in addition to the main location in Vancouver at which members may attend the meeting and may provide for virtual online attendance and voting.

14. While all other law societies in Canada have a similar requirement to ours regarding holding an AGM, no other Canadian law society provides for more than one physical location or currently provides for online attendance and voting.

15. The Committee recognized the challenges with coordinating communication and participation among multiple physical locations and the online participation and voting. In particular, the Committee was mindful of the sometimes unsatisfactory experience that coordinating and communicating with all of the physical and virtual participants during the course of a continuous meeting presents.

Member Resolutions

16. Rule 1-8(6) requires that the participation of only two members is necessary to place a resolution on the agenda for the annual general meeting.

17. For comparison, section 13 of the *Legal Profession Act* requires at least 5% of members in good standing to request a referendum on any resolution passed at the annual general meeting in order to require that the Benchers implement the resolution.

18. Similarly, calling a for a special general meeting requires 5% of the members in good standing at the time the request is received by the Executive Director and the proponents must state the nature of the business that is proposed for the meeting (Rule 1-11).

19. The considerable interest in amending the three member resolutions that were presented to the 2018 AGM highlighted for the Committee the challenge presented by requiring that only the support of two members is necessary to place a member resolution before the members at the AGM.

Amendments

20. Rule 1-13(13) provides that a dispute concerning the procedure to be followed at a general meeting not provided for in the Act or these Rules is to be resolved in accordance with the most recent edition of Robert's Rules of Order Newly Revised. The result is that amendments properly before the AGM are permitted.

21. Roberts Rules of Order Newly Revised provides for a wide variety of permitted amendments to matters before meetings. Most notable was the notice we received prior to the first 2018 AGM of two motions to substitute. This type of amendment motion essentially permits the mover to substitute a different resolution for the one under debate as long as the subject matter of the amendment is germane to the subject matter of the main resolution.

22. The Committee considered the consequence of using Robert's Rules of Order Newly Revised for the conduct of the AGM.

23. The first consequence was that, if a motion to substitute is permitted, the purpose of giving 21 days' notice to members about the resolutions to be considered at the meeting is largely undermined, in the sense that members who chose not to attend

based on the notice might have decided otherwise if they had known about the language of a substituted motion.

24. The second consequence is that permitting amendments at the meeting can lead to the experience at the 2018 AGM where the mover of one of the member resolutions proposed an amendment to the original resolution and another member proposed an amendment to the amendment to the original resolution, resulting in the need for three separate votes in relation to original resolution. The result was numerous anecdotal reports that some members were not sure what they were voting on when asked to vote at various times during the meeting.

Voting

25. Under the Rules, a member must be present at a general meeting in order to vote. Since no one can vote until the President calls for the vote, the meeting can extend for several hours where there are a number of resolutions to be voted upon, such as occurred at this year's AGM. Members must therefore attend throughout the entire meeting to be able to vote on all of the resolutions.

26. The usual society AGM resolutions relating to the business of the society, being in our case the appointment of the auditors and the election of the Second Vice-President, do not generate much interest or participation, as the low turn-out at the 2017 AGM evidenced.

27. What does generate member engagement are member resolutions, such as the one considered at the TWU special general meeting or the resolutions at the 2018 AGM. Participation in the 2018 AGM, both online and in person, confirms that members do want to participate in voting on these types of issues.

28. The Committee noted that the requirement to be present at the meeting, even with multiple physical locations and online participation, gives rise to the concern expressed by many members that it is not possible for them to attend at all on the date and time set for the meeting or that they cannot attend throughout the entire meeting due to commitments in court or otherwise.

Timing of the AGM

29. The AGM has been held some time in the fall for a number of years now. This timing was necessary when the members had to approve the annual practice fee at the meeting, since development and presentation of the budget for the following year usually took at least until the July Bencher meeting.

30. As the members are no longer required to approve the annual practice fee, the timing of the annual general meeting is now dictated only by the requirement in Rule 1-8(7) that, at least 21 days before an AGM, the Executive Director must make available to

Benchers and members a notice containing, inter alia, the audited financial statement of the Society for the previous calendar year.

31. The Committee noted that holding the AGM sometime earlier in the year might reduce the number of events in the fall each year that must be managed by staff at the Law Society. Many years ago, AGMs were held much earlier in the year.

Discussion

32. Given the experience with the 2018 AGM and the concerns expressed by many members, the Committee agreed that the status quo is not an option.

33. The current necessity for attendance during the entire course of the physical and virtual meeting to be able to vote on the resolutions caused the Committee the most concern. The Committee recognized the merit in the substantial number of complaints that this requirement effectively disenfranchised members who simply wanted to vote on the resolutions but were unable to attend at the date and time set for the meeting, or could only attend for part of the meeting.

34. The Committee discussed at some length the current requirement that only two members are required to place a resolution before the meeting. While recognizing that this threshold can and did lead to resolutions that were controversial and were opposed by a number of members, the Committee also recognized that imposing a higher threshold might unduly constrain resolutions that ought to be before the members, even if controversial.

35. The Committee was very much of the view that permitting amendments at the meeting was not conducive to the orderly conduct of the AGM and not in keeping with much of contemporary practice regarding resolutions at AGMs. In particular, the Committee was also mindful that permitting motions to substitute undermined the utility of giving members notice of the resolutions to be considered.

36. The Committee spent some time considering whether to recommend removing Roberts Rule of Order Newly Revised as the basis for the conduct of the AGM in the absence of specific direction in the Rules. The Committee considered whether an alternative, such as Nathan's Company Meetings For Share Capital and Non-Share Capital Corporations, 11th Edition was more in keeping with the type of meeting which is our AGM. The Committee also considered a simple Rule stating that procedure not otherwise provided for in the Act or Rules was at the direction of the Chair.

37. The current practice of requiring members to be present at the meeting (including present online) in order to vote caused the Committee considerable concern. The requirement certainly limits the ability of all eligible members to express a view regarding the resolutions, given the practicalities of attending at the physical locations.

And while making online participation available in recent years has certainly increased the opportunity for members to vote without having to take the time to travel to a physical location, it still requires members to be present throughout the entire meeting to vote on all the resolutions. In the case of the continued 2018 AGM, this meant sitting online for nearly 4 ½ hours.

Solutions

38. In considering all of the experience with the 2018 AGM and the concerns expressed by members about that AGM and previous general meetings, the Committee concluded that it should recommend to the Benchers that the Rules be amended to provide for voting on resolutions in advance of the AGM.

39. The Committee was of the view that voting in advance over a period of time prior to the AGM would certainly enable those who, in the past, have been willing to make the time to attend, either online or in person, to more conveniently express their view on the resolutions before the meeting if they choose. It might also enable, and perhaps even encourage, those members who have not been able to attend due to work or other commitments to express their views by voting on the resolutions in advance.

40. The Committee suggested that there be a 30 day period during which members may submit resolutions for consideration at the AGM. Resolutions would be published on the Law Society website and circulated via email as they were received during that period. Following the initial 30 day period, members would then have 15 days to propose amendments to the movers of the resolutions or to persuade the movers to withdraw a resolution. If proposed amendments were accepted by the movers, the resolutions would be amended accordingly. Following the conclusion of the 15 day amendment period, members would be given a 15 day period to vote online with respect to the resolutions. The results of the online vote would be disclosed only in conjunction with the vote at the AGM on the day of the meeting.

41. The Committee was of the view that there should not be any change to the number of physical locations but that the opportunity to participate online should be limited to the period prior to the scheduled date and time for the AGM. Experience with advance voting may evidence a decline in the number of members willing to take the time to attend at the physical locations or online during the scheduled AGM. However, the Committee thought that any discussion or decision on this issue should be left for future consideration.

42. The Committee was of the view that the Rule 1-13(9), providing that a dispute concerning the procedure to be followed at a general meeting not provided for in the Act or these Rules is to be resolved in accordance with the most recent edition of Robert's Rules of Order Newly Revised, should be revised, either by adopting rules of order more conducive to the general meeting of a society, such as Nathan's company

meetings including rules of order or by providing that matters of procedure not otherwise covered in the Act or Rules shall be decided by the Chair.

Impact Analysis

43. The proposal for voting in advance and amending the present Rule regarding reference to Robert's Rules of Order Newly Revised will have impacts on both the operations of the Law Society and the conduct of general meetings.

44. Provided we retain the current physical locations, the addition of an online voting process in advance of a general meeting will increase the cost of conducting the AGM. Past experience with online voting in conjunction with our biennial election process suggests the cost would be in the range of $10,000 - $15,000 to the provider and time and resources on the part of Law Society staff. In particular, staff time and resources would be required to develop a means for acquiring and publishing proposed resolutions in advance of the meeting, likely in conjunction with revisions to the Law Society website Member Portal. And staff time and resources would also be required to police and publish the member resolutions, and any amendments, when received. The Committee's recommendation is to limit online participation to the period prior to the AGM. If this recommendation is adopted, the savings from not providing online participation at the AGM would offset the cost of providing voting in advance.

45. The provision of voting in advance would necessarily preclude amendments to resolutions during the actual AGM, as voting on the resolutions as stated would have been conducted during the 15 day online advance voting period.

46. Without making changes to the number of physical locations or the opportunity to participate online during the actual AGM, advance voting may not lessen the risk of a technical failure during the period of the actual meeting necessitating an adjournment of the meeting. It is expected, however, to reduce the likelihood of a significant number of members attempting to attend online during the meeting which may reduce the chance of a technical failure due to the volume or users.

47. As noted above, the Benchers may only amend Rules regarding general meetings in accordance with an affirmative vote of 2/3 of those members voting in a referendum respecting the proposed rule, or amendment or rescission of a rule. Should the Benchers wish to propose amendments to the existing Rules regarding general meetings, a referendum would require staff time and resources to set up the referendum question(s), along with the cost of conducting an online referendum. Past experience suggests that we should expect the cost of the online referendum to be in the range of $10,000 - $15,000.

48. In addition to the practical implications of the Committee's suggestions, there is also the possibility that a more inclusive process may encourage members to be more

active in putting forward member resolutions. While the current procedure for members to initiate a resolution is not cumbersome, voting in advance online may make the resolution process appear more like an opinion poll than general meeting resolutions. This, in turn, may have an impact on the Benchers and their decision-making process.

Next Steps

49. The background, issues and solutions provided in this report are for initial consideration by the Benchers. Following any discussion or directions at the Bencher meeting, the Committee proposes to bring a final report back at the May Bencher meeting for decision.

50. The Committee envisions the following timetable is required to enable any amendments to the Rules to apply to the 2019 AGM:

April 5, 2019	Benchers consider proposals for reform
May 3, 2019	Benchers approve proposals/authorize referendum of members
May 15, 2019	Electronic referendum of all members starts
May 30, 2019	Electronic referendum concludes - votes counted
July 12, 2019	Bencher meeting approves Rules amending AGM procedure
October, 2019	AGM conducted under new Rules

The Law Society of British Columbia

Quarterly Financial Report

February 28, 2019

Prepared for: Finance & Audit Committee Meeting – April 4, 2019
Bencher Meeting - April 5, 2019

Prepared by: The Finance Department

Quarterly Financial Report – to the end of February 2019

Attached are the financial results and highlights to the end of February 2019.

The first quarter results to the end of March 2019 are not available due to the timing of the FAC and Bencher meetings.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance to budget mainly due to the timing of operating expenses.

Revenue

Revenue was $4,578,000, $183,000 (4%) over budget, which is primarily due to a higher than projected number of lawyers.

Operating Expenses

Operating expenses were $3,263,000, $847,000 (21%) below budget mainly due the timing of expenditures.

2019 Forecast - General Fund (excluding capital and TAF)

At this time, we are forecasting to be ahead of budget in two main areas, practice fee revenue and PLTC student revenue, offset by additional PLTC student costs, for a positive variance of $300,000.

Operating Revenue

The number of full-time equivalent practicing lawyers is projected at 12,467, compared to a budget of 12,383, which will results in an additional $140,000 in practice fee revenue.

The number of PLTC students is projected at 645, compared to a budget of 540, which will result in an additional $285,000 in PLTC revenue.

Operating Expenses

At this time, operating expenses are projected to be at budget, other than the costs related to additional PLTC students. There is expected to be additional costs of $125,000 related to instructors and classroom rental.

TAF-related Revenue and Expenses

TAF revenue for the first quarter of 2019 is not received until the April/May time period. There has been $115,000 received to date that relates to TAF receipts that were received after the year-end financial statement cut-off. Trust assurance program costs are close to budget.

Special Compensation Fund

In 2017, pursuant to Section 50 of the Legal Profession Amendment Act, the unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund, with a small amount held back to pay for anticipated costs related to document production for past files.

Lawyers Insurance Fund

LIF assessment revenues were $2.7 million in the first two months of the year, close to budget.

LIF operating expenses were $986,000 compared to a budget of $1.3 million, with savings related to staff vacancy savings and the timing of external counsel fees and consultant costs.

The market value of the LIF long term investment portfolio is $175.1 million. The LIF long term investment portfolio return was 4.64%, slightly below the benchmark return of 4.78%.

The Law Society of British Columbia

Summary of Financial Highlights - February 2019
($000's)

2019 General Fund Results - YTD February 2019 (Excluding Capital Allocation & Depreciation)

	Actual*	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	3,756	3,606	150	4%
PLTC and enrolment fees	34	47	(13)	-28%
Electronic filing revenue	98	140	(42)	-30%
Interest income	85	85	-	0%
Credentials & membership services	90	102	(12)	-12%
Fines, penalties & recoveries	164	135	29	21%
Other revenue	120	63	57	90%
Building revenue & tenant cost recoveries	231	217	14	6%
	4,578	4,395	183	4%
Expenses (excl. dep'n)	3,263	4,110	847	21%
	1,315	285	1,030	

2019 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

Practice Fee Revenue	**Avg # of Members**
2015 Actual	11,378
2016 Actual	11,619
2017 Actual	11,849
2018 Actual	12,223
2019 Budget	**12,383**

	Actual Variance
Revenue	
Membership revenue projected to be ahead of budget (expecting 12,467 members, 12,383 budgeted)	140
PLTC revenue projected to be ahead of budget, projecting 645 students vs 540 budget	285
	425
Expenses	
Additional PLTC Expenses related to student numbers higher than budget	(125)
	(125)
2019 General Fund Variance	300

Trust Assurance Program Actual

	2019 Actual	2019 Budget	Variance	% Var
TAF Revenue **	115	-	115	
Trust Assurance Department	463	553	90	16.3%
Net Trust Assurance Program	(348)	(553)	205	

** Q1 revenue not due until April 30th - small amount relating to Q4, 2018, received after completion of audit

2019 Lawyers Insurance Fund Long Term Investments - YTD February 2019* *Before investment management fees*

Performance	4.64%
Benchmark Performance	4.78%

* March investment results not yet available

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The Law Society of British Columbia
General Fund
Results for the 2 Months ended February 28, 2019
($000's)

	2019 Actual	2019 Budget	$ Variance	% Variance
Revenue				
Membership fees **(1)**	5,916	5,822	94	2%
PLTC and enrolment fees	34	47	(13)	-28%
Electronic filing revenue	98	140	(42)	-30%
Fines, penalties and recoveries	164	135	29	21%
Application fees	90	102	(12)	-12%
Interest income	86	85	1	1%
Other revenue	120	63	57	90%
Building Revenue & Recoveries	231	217	14	6%
Total Revenues	6,739	6,611	128	2%
Expenses				
Regulation	1,305	1,488	183	12%
Education and Practice	543	620	77	12%
Corporate Services	380	417	37	9%
Bencher Governance and Board Relations and Events	111	129	18	14%
Communications and Information Services	344	313	(31)	-10%
Policy and Legal Services	295	322	27	8%
Occupancy Costs	285	343	58	17%
Depreciation	159	159	-	0%
Total Expenses	3,422	4,269	847	20%
General Fund Results before Trust Assurance Program	**3,317**	**2,342**	**975**	
Trust Assurance Program (TAP)				
TAF revenues	115	-	115	0%
TAP expenses	463	553	90	16%
TAP Results	**(348)**	**(553)**	**205**	37%
General Fund Results including Trust Assurance Program	**2,969**	**1,789**	**1,180**	

(1) Membership fees include capital allocation of $2.15m (Capital allocation budget = $2.13m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at February 28, 2019
($000's)

	Feb 28 2019	Feb 28 2018
Assets		
Current assets		
Cash and cash equivalents	22,319	12,357
Unclaimed trust funds	2,064	2,046
Accounts receivable and prepaid expenses	1,103	1,075
B.C. Courthouse Library Fund		393
Due from Lawyers Insurance Fund	12,282	19,325
	37,768	35,196
Property, plant and equipment		
Cambie Street property	12,785	12,412
Other - net	1,578	1,396
	14,362	13,807
Long Term Loan	365	276
	52,495	**49,280**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	3,761	4,609
Liability for unclaimed trust funds	2,064	2,046
Current portion of building loan payable	500	500
Deferred revenue	18,883	17,093
Deferred capital contributions	1	1
B.C. Courthouse Library Grant		393
Deposits	55	56
	25,263	24,699
Building loan payable	600	1,100
	25,863	25,799
Net assets		
Capital Allocation	1,857	2,167
Unrestricted Net Assets	24,775	21,314
	26,632	23,481
	52,495	**49,280**

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2019
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2019 Total	Year ended Dec 2018 Total
	$	$	$	$	$	$	$
Net assets - At Beginning of Year	12,919	5,623	18,542	2,955	2,167	23,664	20,997
Net (deficiency) excess of revenue over expense for the period	(238)	1,399	1,161	(348)	2,157	2,969	2,667
Contribution to LIF				-		-	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	46	-	46	-	(46)	-	-
845 Cambie	36	-	36	-	(36)	-	-
Net assets - At End of Period	**13,263**	**7,022**	**20,285**	**2,607**	**3,742**	**26,633**	**23,664**

The Law Society of British Columbia
Special Compensation Fund
Results for the 2 Months ended February 28, 2019
($000's)

	2019 Actual	2019 Budget	$ Variance
Revenue			
Annual assessment	-	-	
Recoveries	-	-	
Interest income	1	-	
Loan interest expense		-	
Other income	-	-	
Total Revenues	**1**	**-**	**1**
Expenses			
Claims and costs, net of recoveries	11	-	
Administrative and general costs	-	-	
Total Expenses	**11**	**-**	**11**
Special Compensation Fund Results before Contribution Lawyers Insurance Fund	**(10)**	**-**	**(10)**

Special Compensation Fund - Balance Sheet
As at February 28, 2019
($000's)

	Feb 28 2019	Feb 28 2018
Assets		
Current assets		
Cash and cash equivalents		
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	149	269
	149	**269**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		
Deferred revenue		
Net assets		
Unrestricted net assets	149	269
	149	**269**

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2019
($000's)

	2019 $	Year ended Dec 2018 $
Unrestricted Net assets - At Beginning of Year	159	276
Net excess of revenue over expense for the period	(10)	- (117)
Unrestricted Net assets - At End of Period	**149**	**159**

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 2 Months ended February 28, 2019
($000's)

	2019 Actual	2019 Budget	$ Variance
Revenue			
Annual assessment	2,675	2,678	(3)
Investment income	8,257	799	7,458
Other income	13	5	8
Total Revenues	10,945	3,482	7,463
Expenses			
Insurance Expense			
Provision for settlement of claims	2,866	2,866	-
Salaries and benefits	494	580	86
Contribution to program and administrative costs of General Fund	179	230	51
Insurance	89	78	(11)
Office	94	217	123
Actuaries, consultants and investment brokers' fees	29	32	3
Premium taxes	-	2	2
Income taxes	-	1	1
	3,749	4,006	257
Loss Prevention Expense			
Contribution to co-sponsored program costs of General Fund	103	151	48
Total Expenses	3,852	4,157	305
Lawyers Insurance Fund Results	**7,092**		

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at February 28, 2019
($000's)

	Feb 28 2019	Feb 28 2018
Assets		
Cash and cash equivalents	9,845	18,115
Accounts receivable and prepaid expenses	600	803
Current portion General Fund building loan	500	500
LT Portion of Building Loan	600	1,100
Investments	175,129	167,602
	186,674	**188,121**
Liabilities		
Accounts payable and accrued liabilities	303	1,777
Deferred revenue	5,395	5,268
Due to General Fund	12,282	19,325
Due to Special Compensation Fund	149	269
Provision for claims	73,754	68,901
Provision for ULAE	10,779	9,601
	102,661	105,141
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	66,513	65,480
	84,013	82,980
	186,674	**188,121**

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2019

	Unrestricted	Internally Restricted	2019 Total	Year ended Dec 2018 Total
	$	$	$	$
Net assets - At Beginning of Year	59,421	17,500	76,921	84,248
Net excess of revenue over expense for the period	7,092	-	7,092	(7,327)
Net assets - At End of Period	**66,513**	**17,500**	**84,013**	**76,921**

The Law Society of British Columbia

Memo

To:	The Benchers
From:	Gurprit Bains, Manager Investigations, Monitoring and Enforcement
Date:	March 13, 2019
Subject:	National Discipline Standards

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for the handling of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the National Discipline Standards at its meeting on June 13, 2014. All law societies in Canada have adopted the standards.

2. The standards address timeliness, openness, public participation, transparency, accessibility and training of adjudicators and investigators.

3. The standards are aspirational. As of 2017 year end, only one law society in Canada had met all of the standards and that occurred only once.

4. Standard 9 requires us to report to you annually. I provide that report below.

Report on LSBC Progress

5. LSBC progress on each of the standards is set out at Attachment 1.

6. For 2018, we met 17 of 21 standards, which matches our results in 2017. In 2016, we achieved our best results yet, meeting 18 of 21 standards.

7. For the first time, the Law Society met Standard 16 – ability to share information about lawyers with other law societies in a manner that protects solicitor/client privilege. In 2018, we enacted Rule 2-27.1, which gives us discretion to share information when it is in the public interest to do so and to provide confidential or privileged information if the information will be adequately protected against disclosure.

8. The four Standards we did not meet in 2018 are:

   a. Standard 2 requiring 100% of written complaints to be acknowledged in writing within 3 business days. We achieved 99.68% compliance with this standard. Of the 942 new complaints received from a complainant, there were 3 complaints that were not acknowledged within 3 business days due to an administrative error. We met this standard in 2017.

   b. Standard 7 requiring 90% of hearings to be commenced within 12 months of the citation being authorized. Only 16% of hearings in 2018 met this standard. We achieved 92% in 2017. Due to significant staff turnover in 2017, including at the managerial level, and a higher than normal volume of citations in 2017[1], we began 2018 with 53 open files. However, I am pleased to report that, of those 53 files, 36 are now completed and another file will close imminently. Of the remaining 16 files, all but 2 are in various stages of the hearing process. Dealing with the unprecedented number of older files has prevented us from commencing hearings on most of the 2018 citations so we anticipate it will take until 2020 to restore file completion capacity to a level we would consider appropriate.

   c. Standard 8 requiring 90% of hearing panel decisions to be rendered within 90 days of the last submissions. We are at 62% for 2018. A summary of our past performance is set out in the table below.

Year	**Percentage of decisions rendered within 90 days**
2017	65%
2016	70%
2015	55%
2014	71%

   d. Standard 19 requiring that there be a directory available with easily accessible information on discipline history for each lawyer. In 2016, changes were made to the Lawyer Directory to allow easy access to post-September 2003 discipline decisions. We have since made significant progress with regards to pre-September 2003 decisions and discipline histories dating back to 1989 are now posted online. The work on this project continues.

[1] There were 27 cites authorized in 2017 as compared to an average of 22.5 cites/year in the previous 4 years.

ATTACHMENT 1

NATIONAL DISCIPLINE STANDARDS

ANNUAL REPORT ON LSBC STATUS FOR 2018

	STANDARD	CURRENT STATUS
	Timeliness	
1.	*Telephone inquiries:* 75% of telephone inquiries are acknowledged within one business day and 100% within two business days.	**MET** 100% of telephone inquiries were returned within one business day.
2.	*Written complaints*: 100% of written complaints are acknowledged in writing within three business days.	**NOT MET** 99.68% of written complaints were acknowledged within three business days.
3.	*Timeline to resolve or refer complaint:* (a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months. 90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.	**MET** 88% of complaints were closed within 12 months. 92% of complaints were closed within 18 months.
	(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process: 80% of all internals reviews or internal appeals are decided within 90 days. 90% of all internal reviews of internal appeals are decided within 120 days.	**MET** 97% of all internal reviews were decided within 90 days. 100% of all internal reviews were decided within 120 days.

	STANDARD	CURRENT STATUS
	(c) Where a complainant has been referred back to the investigation stage from an internal review or internal appeal process: 80% of those matters are resolved within a further 12 months. 90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.	**MET** One complaint has been referred back to staff for further investigation and while the matter has not yet been concluded, it is still within the 12 and 18 month periods.
4.	*Contact with complainant:* For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.	**MET** For 100% of open complaints, complainants were contacted every 90 days.
5.	*Contact with lawyer or Québec notary:* For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.	**MET** For 98% of open complaints, the lawyer was contacted every 90 days.
	Hearings	
6.	75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization. 95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.	**MET** 98% of citations were issued and served within 60 days of authorization. **MET** 98% of citations were issued and served within 90 days of authorization.

STANDARD		CURRENT STATUS
7.	75% of all hearings commence within 9 months of authorization. 90% of all hearings commence within 12 months of authorization.	**NOT MET** 16% of hearings commenced in this reporting period were commenced within 9 months. **NOT MET** 16% of hearings commenced in this reporting period were commenced within 12 months.
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	**NOT MET** 62% of all decisions were rendered within 90 days of the last date the panel received submissions.
9.	Each law society will report annually to its governing body on the status of the standards.	**MET** A report was delivered to the Benchers reporting on LSBC progress at its meeting on January 26, 2018.
	Public Participation	
10.	There is public participation at every stage of discipline; i.e. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	**MET** There was one public representative on every disciplinary panel, at least two public representatives on every review board and a public representative on our charging body (the Discipline Committee).
11.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	**MET** Our Complainants' Review Committee has 2 public members. Every panel includes one public member.

STANDARD		CURRENT STATUS
	Transparency	
12.	Hearings are open to the public.	**MET** Hearings are open to the public unless the panel exercises its discretion under Rule 5-8 to exclude some or all members of the public.
13.	Reasons are provided for any decision to close hearings.	**MET** Rule 5-8(5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.
14.	Notices of charge or citation are published promptly after a date for the hearing has been set.	**MET** In all cases, we publish the fact that a citation has been authorized as soon as the respondent has been informed and the content of the citation after the respondent has been served.
15.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.	**MET** In all cases, we publish dates of hearings as soon as they are set.
16.	There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.	**MET** In 2018, we enacted Rule 2-27.1, which gives us discretion to share information when it is in the public interest to do so and to provide confidential or privileged information if the information will be adequately protected against disclosure.
17.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	**MET** Rule 3-3(5) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3(6) indicates we cannot share privileged material. Note however that, as a matter of practice, the Law Society does not provide non-public information on discipline matters to law enforcement.

	STANDARD	CURRENT STATUS
	Accessibility	
18.	A complaint help form is available to complainants.	**MET** We have online material that assists the public in making complaints as well as paper brochures describing our complaint process and jurisdiction.
19.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	**NOT MET** In 2016, changes were made to the Lawyer Directory to allow easy access to post-September 2003 discipline history. We have made significant progress with regards to pre-September 2003 decisions and discipline histories dating back to 1989 are now posted. Further work on this project is needed to fully meet this standard.
	Qualification of Adjudicators and Volunteers	
20.	There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.	**MET** All adjudicators have taken a basic course on the principles of administrative law, Law Society procedures and decision-writing. All lawyer adjudicators have taken an advanced workshop on decision writing and, before chairing a panel or review board, an advanced workshop on hearing skills. All adjudicators attended the annual refresher training in person or by video recording.
21.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	**MET** Orientation was provided to all new members of the Discipline Committee. There are no volunteers involved in conducting investigations.

LifeWorks Newsletter

2019 Q1

IN THIS ISSUE

Promoting good mental and physical health in the workplace

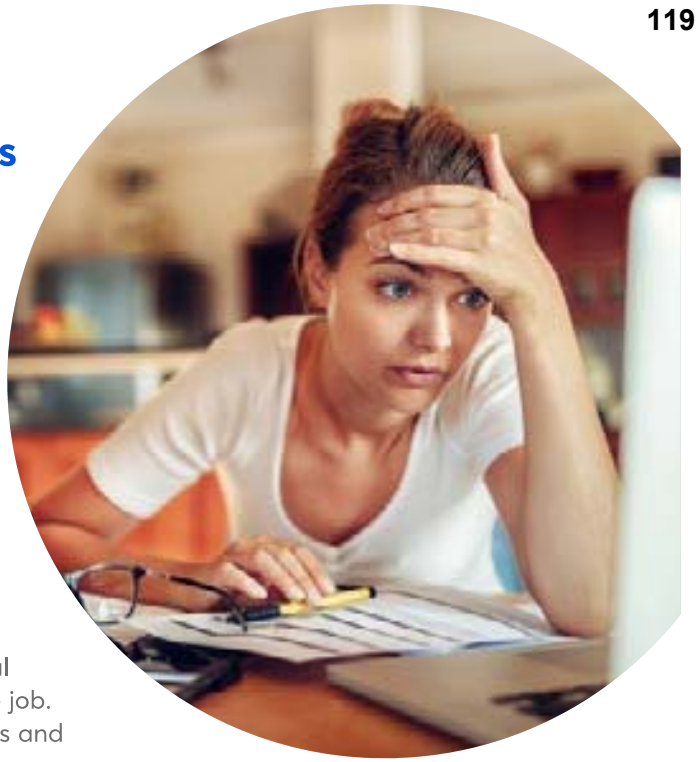
Many of us have sedentary office jobs which can cause physical and mental harm. But don't worry, there are things you can do to promote better health in the workplace. **Your physical and mental well-being are important!**

For more information, visit login.lifeworks.com
Username: lawsocietybc
Password: healthy
Toll-Free: 1-888-307-0590 TTY: 1-877-371-9978

Promoting good mental and physical health in the workplace

For many of us, our working day is spent in an office where we sit at a desk, staring at a computer screen and not moving for long periods of time. It's no wonder that so many of us suffer from:

- Lower back pain
- Shoulder and neck pain
- Carpal tunnel syndrome (pain and numbness caused by a pinched nerve in the wrist)
- Headaches and migraines
- Eye strain
- Stress-related illnesses, such as anxiety and depression



Mental health issues affect millions of employees in the workplace

The two most prevalent are anxiety and depression. Other common conditions include post-traumatic stress disorder, bipolar disorder, and obsessive-compulsive disorder, among others.

When a mental health disorder goes unrecognized and untreated, it can damage an individual's health and career. Mental health issues also cost employers billions of dollars a year due to missed work days, lower productivity, and disability costs.

With effective treatment and support, people with a mental health disorder can improve and be very productive on the job. As a manager, you play a crucial role in providing resources and support. Here are two guidelines.

1. **Learn to recognize and identify the signs and symptoms of emotional distress.** These include: a change in personality or behaviour; extreme sadness; taking excessive sick days; difficulty with memory or concentration; lack of energy; irritability; outbursts of anger; crying episodes; isolating themselves from others; expressing feelings of hopelessness or worthlessness; suicidal thoughts or talk of suicide. If an employee expresses thoughts of suicide or appears suicidal, make sure he or she is in a safe place with another supervisor and then contact HR or your EAP immediately for guidance.

2. **If you sense that an employee may have a mental health disorder, consult with HR on next steps and how to support the employee.** It is not your role to diagnose. It is your role to be aware of a potential issue and consult with HR or your EAP for guidance. The EAP can provide ongoing support — for you and for the employee.

The health risks of sitting all day

European researchers found that people who work 10 hours or more every day have a 60 percent greater risk of cardiovascular problems, including heart attacks and angina. We then get on the bus or into our cars and sit through the commute home. Then, after preparing dinner, we usually spend the evening sitting in front of a TV or another computer screen. This sedentary lifestyle is wreaking havoc with our physical and mental health. It's increasing our risks of:

- Diabetes
- High blood pressure
- Heart disease and stroke
- Osteoarthritis
- Certain Cancers
- Mood disorders, such as depression

Even exercising before or after work is not enough to counteract the harmful effects of sitting for most of the day. This may explain why so many people struggle with weight, don't get enough exercise, manage stress in unhealthy ways such as tobacco use, alcohol or drug abuse, prescription medications, and also experience depression and anxiety.

Well-being at work

Most organizations are recognizing the financial and human costs of poor employee health. Onsite gyms, subsidized gym memberships, in house weight loss programs, health and wellness committees and comprehensive employee assistance programs (EAPs) are just some of the things they're doing to help employees stay physically and mentally healthy.

However, there are also things you can do to promote good mental and physical health in the workplace. Here are a few suggestions:

- **Get up and move.** Not only will your muscles thank you, but also moving will improve your circulation, re-energizing you for that afternoon meeting. Take the stairs instead of the elevator. Park your car further in the lot, get off the bus one or two stops before you need to and walk. Go for a brisk 20-minute walk at lunch.
- **Desk-ercise.** Take a short break to do some gentle stretches at your desk or trade your chair for an exercise ball. There are dozens of exercises you can do at your desk, including stapler curls, leg lifts, some simple yoga poses and squats.
- **Connect with people.** Forming close relationships and enjoying regular social interaction has been shown to reduce stress and improve mental health. Go for lunch with a workplace friend. Organize a group of co-workers to go on a lunchtime walk. Chat with someone over coffee. Stay in touch with family and friends through email or text.
- **Have healthy snacks on hand.** Keep nuts and granola bars in your desk drawer or car, and bring in fresh fruit to munch on. This will help you avoid the temptation of the office vending machine.
- **Avoid fast food lunches.** It's easier to manage your weight and eat healthy foods if you brown bag it every day. If your team is ordering lunch in or going out for a group lunch, choose the healthiest option available.
- **Stay hydrated.** That 3:00 p.m. drop in energy can be due to dehydration, so drink plenty of water throughout the day. Fruits like oranges, grapefruit, grapes, watermelon, and apples can also help you stay healthy and hydrated.
- **Avoid long stretches of long days.** We often focus on getting a project done at any cost but aren't aware of the negative impact it's having on our health until our stress is at a high level and it's affecting our mood.
- **Take vacations.** Ongoing stress can impair our immune systems and increase our risks of developing physical and mental illnesses. Vacations help get our minds off work and recharge our batteries in a healthy way. Having loving relationships is essential to good physical and mental health, and vacations give us that time to reconnect with our spouse, family members and friends.
- **Know your limits.** Remember that ongoing stress can lead to a host of physical and mental ailments that can take a long time to resolve. So listen to your brain and your body. Know when you need to take a break, have a holiday or seek help. If you're feeling overwhelmed, talk to a trusted friend, or contact a counsellor or your EAP for professional help.

Finally, make health part of your corporate culture. Join your health and safety committee, encourage others to join your lunchtime walk, or even ask for healthy snacks for the vending machine. Sometimes organizations need someone like you to help champion and promote good mental and physical health efforts in the workplace.

ANXIETY IS A WAY TO DESCRIBE FEELINGS OF WORRY, FEAR, AND UNEASE, TYPICALLY, INCORPORATING BOTH THE EMOTIONAL AND PHYSICAL SENSATIONS WE EXPERIENCE.

- Anxiety Disorders: What are the most common kinds of anxiety disorders?
- Anxiety Disorders: Dealing with anxiety disorders
- Anxiety Disorders: What treatments are available?
- Anxiety Disorders: What are the most common kinds of anxiety disorders?
- How to Use the Employee Assistance Program (EAP)
- Taking Care of Yourself and the People You Manage

Is depression affecting your work and productivity?

Four out of five adults with depression report that it causes them at least some difficulty with work, home, or social activities. Therefore, it would be no surprise if depression were interfering with your productivity at work.

The signs of depression

In any given two-week period, 8 percent of Americans over age 20 had depression, according to a February 2018 report by the Centers for Disease Control and Prevention.

Depression, whether major depressive episodes or a longer-lasting type called Persistent Depressive Disorder (PDD), has many symptoms, and different people manifest depression differently. Here are the most common signs of depression:

- Having less energy or getting tired easily
- Sleep disturbances
- Loss of interest or pleasure in ordinary activities
- Isolating oneself from friends and family
- Feeling worthless or very guilty
- Significant changes in appetite or weight
- Overeating or eating too little
- A decrease in productivity or performance
- Memory difficulties and difficulty concentrating or making decisions
- Feelings of anger or irritability
- Chronic aches and pains that don't respond to treatment
- Frequent crying episodes
- Suicidal thoughts or talk of suicide **(in which case, seek professional help immediately)**

How depression affects work and productivity

Depression can have a significant impact on your productivity and the quality of your work. You may feel too tired to manage your tasks or do a good job. It might be hard to focus or concentrate. You may feel uninterested in work that normally engages you. You might be less friendly or communicative. You may even miss work by taking sick days.

Four out of five adults with depression report that it causes them at least some difficulty with work, home, or social activities, according to the CDC.

Handling work responsibilities when you are experiencing depression

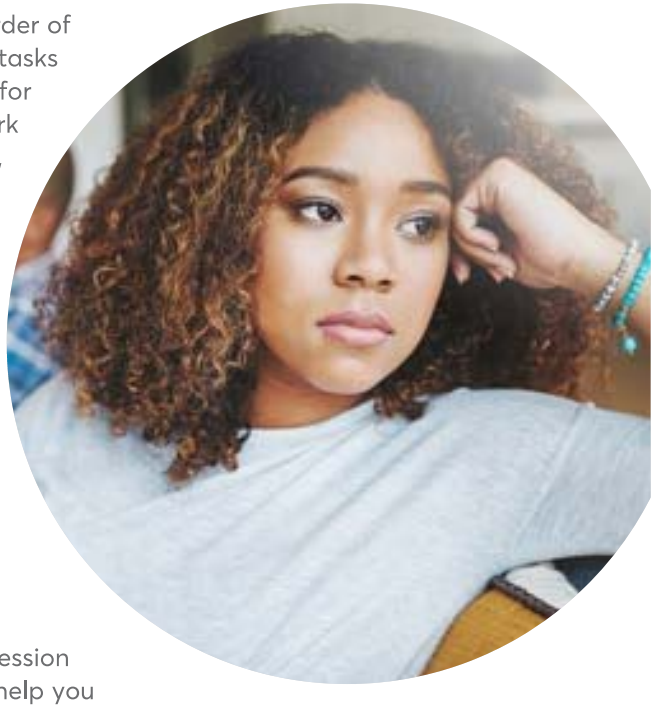
Here are some ways to cope at work while you're depressed:

Recognize the symptoms. Pay attention to how you feel when a depressive episode is coming on. With fair warning, you can take steps to lessen the impact, such as employing coping mechanisms that you find effective and seeking support.

Find coping mechanisms that work for you — and use them. Deep-breathing exercises, mindfulness meditation, taking a short walk, or doing a quick stretching workout may help you return to work with your mind more fully engaged in the tasks at hand and avoid falling into a worse mood. Try different methods to see what helps, and then schedule these into your day. Every person is different, and different strategies work for different people. Think about how you feel, and look back to see if you've experienced this same feeling in the past. If you have, what were small things that helped you through it? If you can identify the tools that worked best for you, you can apply them to your current situation in hopes of gaining some relief. If your symptoms persist, speak to your doctor about what you are experiencing.

- **Prioritize.** Organize your tasks and responsibilities by order of importance. Set a realistic schedule for getting specific tasks done. Having a list of ordered priorities and a schedule for completing them will help you stay focused and get work done. If you find it hard to set a schedule and stick to it, try out one of the many time management techniques you can find online and in books. You'll find some tips in this article.

- **Talk with your supervisor.** If you feel comfortable sharing personal information, let your supervisor know you're unwell. You don't have to specify the problem. Ask if there might be flexibility with certain tasks, if co-workers can be assigned to step in and help temporarily, or if other allowances might be made.



Keeping a lid on job stress

Job stress can exacerbate symptoms of depression, and depression can make work feel more stressful. Reducing stress will likely help you cope more effectively. Here are some effective ways to manage stress:

- **Get regular exercise.** A wealth of scientific evidence shows that regular exercise helps improve your overall health and sense of well-being. More specifically, exercise boosts endorphins, the brain's "feel-good" neurotransmitters.

- **Eat healthily.** Adjust your diet to focus on high-fibre, low-fat meals with plenty of carbohydrates. Include lots of fruits and vegetables, and cut back on meat and high-fat dairy foods like cheese and whole milk.

- **Avoid alcohol.** Many people drink alcohol to cope with stress. For most people, a glass of wine or beer now and then won't cause any harm. However, alcohol is a depressant, and any amount can increase feelings of depression. Also, heavy drinking, along with the aftereffects are likely to make you more, not less, anxious.

- **Avoid caffeine and sugar.** Caffeine gives you a quick boost of energy. However, that effect comes from an artificial boost in stress hormones, and caffeine remains in your system for many hours. As for sugary snacks and drinks, there's some evidence that heavy consumption of sweet foods and beverages may contribute to depression, according to research published by the National Institutes of Health.

- **Try relaxation techniques.** Even just a couple of minutes of deep-breathing exercises can relieve stress. Studies have also shown that regularly practising mindfulness meditation significantly reduces anxiety and depression.

Finding support

Depression is highly treatable. Talking with a mental health professional can help you identify the causes and find ways to overcome both the underlying problems and the symptoms of depression. Medication is effective for many people as well.

Contact your health care provider if you have symptoms of depression that last for more than a few weeks, especially if they are interfering with your work or your relationships.

Remember, depression is an illness, not a weakness. Don't hesitate to seek help, including seeing a psychotherapist for treatment, if depression is hurting your productivity at work or impacting your relationships and well-being.

LOG IN TO THE PLATFORM ANY TIME TO ACCESS OTHER HELPFUL RESOURCES RELATED TO ANGER AND OTHER NEGATIVE EMOTIONS, SUCH AS:

- Getting Help for Depression podcast
- How Therapy Can Help
- Managing Your Moods: Simple and Practical Tools for Everyday Living Podcast
- Managing Your Moods at Work: Keeping up positive moods throughout the day
- Managing Your Moods at Work: If you could use help controlling your moods
- Safely De-escalating Anger at Work

Workplace stress or signs of depression?

Most of us find our jobs stressful at times. We may feel we have too much to do without enough support or resources. We may have too little job satisfaction or problems with managers or co-workers.

Alternatively, we may worry about global trends like outsourcing or economic downturns. One survey found that nearly half of employees have missed time at work due to job-related stress, and about two-thirds say that it's led to physical illness, family issues, and other concerns. Often these feelings go away after a crisis at work or at home has passed.

However, sometimes feelings of stress linger and affect your work, your relationships, or your overall well-being. Stress can also be a sign of depression or other physical or mental health concerns.

You may be struggling to differentiate workplace stress from other issues. Symptoms of stress can also be indications of another mental health issue, such as depression. Depression affects nearly 1 in 10 people in the U.S. at some point in their lives.

Some of the signs of depression include:

- A decrease in productivity or performance
- Taking more sick days or being late more than usual
- Unprovoked outbursts of anger
- Having less energy or getting tired easily
- Loss of interest or pleasure in ordinary activities
- Isolating oneself from friends and family members
- Feeling worthless or feeling very guilty for no reason
- Changes in appetite or weight
- Memory difficulties and difficulty concentrating or making decisions
- Chronic aches and pains that don't respond to treatment
- Frequent crying episodes
- Suicidal thoughts or talk of suicide **(seek professional assistance immediately)**

Talk with a mental health professional if you have any of these symptoms for more than a few weeks or if they are interfering with your work or your relationships. Depression is treatable and can have many causes besides stress. The best way to cope with it is to work closely with a trained professional. Research has found that most people who get help for depression benefit from treatment.

We're here for you, 24/7

If you're looking for information and resources to help you deal with many of life's changes or challenges — and the difficult emotions that may go along with those significant events — log in to the platform to discover hundreds of online well-being resources.

On our Toolkits landing page, you'll find the following:

- Addiction and Recovery
- Addiction in the Workplace: Toolkit for Managers
- Change and Resilience
- Depression
- Divorce
- Financial Well-being
- Health and Well-being
- Mindfulness
- Stress Management
- Wellness Support and Solutions

Have you downloaded our app yet?

Simply search for "LifeWorks" (the name of our app) in the App Store or on Google Play, and look out for our logo!

ROADS TO REVIVAL

An External Review of Legal Aid Service Delivery in British Columbia

Conducted for the Attorney General of BC
by Jamie Maclaren, QC
January 2019

Roads to Revival:
An External Review of Legal Aid
Service Delivery in British Columbia

January 2019
Written by: Jamie Maclaren, QC
Copy Editor: Susan MacFarlane

The opinions in this report, and any errors,
are those of Jamie Maclaren.

Table of Contents

Acknowledgments

I extend my sincere thanks to the hundreds of people who took the time to contribute their thoughts to my review. Whether they engaged by way of research, personal consultation or written submission, I refer to them all as "contributors" in this report. I bear sole responsibility for the report and its recommendations, but I owe a debt of gratitude for the collective care and ideas that inspired them.

I am most grateful for the research assistance of Heather Wojcik and Michelle Stimac. They both volunteered many hours on short timelines to inform my thinking. Heather specifically helped me to understand and appreciate the issues around legal aid independence, immigration law and serving Indigenous people.

Kayla Johnson assisted me in giving order to the voluminous review materials. Susan MacFarlane lent me her considerable editing skills. I could always count on Kathleen Rawlinson, Kurt Sandstrom, QC, and Wendy Jackson from the Ministry of Attorney General for good advice and timely information. The wonderful staff at Access Pro Bono often covered for me at my day job. I thank each of them from the bottom of my heart.

I gratefully acknowledge the extensive time and knowledge that Legal Services Society staff shared with me under what I imagine were disquieting circumstances for them. Being reviewed is never pleasant, but they all participated with enthusiasm and grace. Mark Benton, QC, Heidi Mason and Sherry MacLennan were especially giving of their time.

My final thanks are to my partner Meika, our son Morogh and our dog Horacio for the undying love and support they give to me even when I am not there to appreciate them.

— Jamie Maclaren, QC

Methodology and Approach

In early October 2018, I was appointed by the Attorney General of British Columbia, the Honourable David Eby, QC, to conduct an external review of legal aid service delivery in BC.

MANDATE

I was given the mandate to review the effectiveness and efficiencies of legal aid service delivery models from the perspective of British Columbians who use legal aid services. The overall aim was to advance the rule of law and access to justice in the province.

My Terms of Reference are included at Appendix A.

CALL FOR SUBMISSIONS

The Ministry of Attorney General posted an open call for submissions on the govTogetherBC public website between October 4, 2018 and November 23, 2018.

The questions posed were:

- What is your or your organization's connection to the topic of legal aid service delivery?
- What do you perceive as the strengths of BC's current system for delivering legal aid services?
- What do you perceive as the weaknesses of BC's current system for delivering legal aid services?
- What are your practical suggestions for making legal aid services in BC more efficient, effective and user-centred?
- Do you perceive any trends and/or challenges that may impact your suggestions for legal aid service enhancement?

I posed the same questions by way of online survey to over 1,000 legal aid lawyers, pro bono lawyers and legal advocates throughout the province.

WRITTEN SUBMISSIONS

My survey and the call for submissions drew a range of very diverse and engaging responses. The list of 130 individuals who provided a written response is included at Appendix C. The list of 12 organizations that provided a written response is included at Appendix D.

PERSONAL CONSULTATIONS

From early October 2018 to mid-December 2018, I met and discussed the subject of my review with a wide variety of legal aid stakeholders from BC and across Canada, including LSS staff, judges, lawyers, legal advocates, articled students, law students, legal aid plan administrators, non-profit service providers and members of the public.

The total time of my personal consultations exceeded 100 hours. The list of 110 individuals who graciously met with me in person or by telephone is included at Appendix B.

LIMITATIONS

My review was limited by time. I had a limited amount of time in which to meet with legal aid stakeholders. There is no shortage of people in BC and Canada who are vitally interested in the topic of legal aid, and I could have spent several more months learning from their diverse experiences.

My review was also limited by geography. I had a limited ability to travel to see and hear how legal aid is delivered in different communities across BC. Wherever possible, I consulted with people at their workplaces to better understand the context of their experiences. The 240 individuals who engaged with my review work or live in 37 different BC municipalities.

Finally, my review was limited by the study sample. I had a limited ability to contact current and former legal aid clients, and members of the public who have experience with legal aid services. The irony of conducting a user-focused review with limited access to users is not lost on me. I did my best to compensate for this limitation by engaging at length with frontline lawyers and legal advocates, and by reviewing LSS's extensive library of client surveys. I also drew from my own experience of serving about 1,500 low-income clients over thirteen years as a pro bono clinic lawyer in Vancouver's Downtown Eastside.

APPROACH

I approached my mandate with the user experience foremost in mind. I considered "legal aid user" to include legal aid clients, lawyers and other service providers who frequently interact with LSS.

I generally assessed legal aid services and systems by applying Access to Justice BC's Triple Aim Framework, and its three core objectives of better user outcomes, better user experiences and lower system costs.

Executive Summary

Legal aid is not broken in BC. It has simply lost its way. Years of underfunding and shifting political priorities have taken their toll on the range and quality of legal aid services, and especially on the people who need them. Still, the will exists in BC to make legal aid more accessible and effective for all of its many users.

The Legal Services Society (LSS) is a high-functioning organization with some exceptional leaders. It has the knowledge and the space to improve the quality and accessibility of its services at current levels of funding. Meaningful change, however, will only come with more government investment. My report provides 25 recommendations that identify where current legal aid service efficiencies can be found, and where and how effective new investments should be made.

My report focuses on legal aid service delivery from the perspective of the "legal aid user": a composite entity that includes legal aid clients, lawyers and other service providers who frequently interact with LSS. My recommendations are informed by principles of user-centred design, evidence-based analysis, collaboration and experimentation. They are prioritized according to severity of need, ease of implementation and scalability.

It is time to move beyond speculation and anecdotal information in redesigning legal aid services. System reform should not be a linear process led by experts, but rather an iterative process involving continuous learning and adaptation that leads to improvement from the perspective of users. I have adopted this approach throughout my report, along with Access to Justice BC's Triple Aim Framework, with its three core pursuits of better user outcomes, better user experiences and lower system costs.

GENERAL RECOMMENDATIONS

RECOMMENDATION 1 *(PAGE 4)*

Endorse the CBA's National Benchmarks for Public Legal Assistance Systems in support of a user-centred, evidence-based and collaborative approach to legal aid service delivery.

Inspiration: Australia's National Partnership Agreement on Legal Assistance Services

Effective system reform requires stakeholders to work across organizational boundaries and extend their accountabilities outward to each other. The Canadian Bar Association's National Benchmarks for Public Legal Assistance Systems provides an ideal framework for setting aspirational service standards for all Canadian governments and legal aid plans to meet. The underlying principles of user-centred design, open and transparent measurement of system-wide progress, and inter-agency collaboration work particularly well in the BC context.

RECOMMENDATION 2 *(PAGE 5)*

Develop and implement cross-system methods for contemporaneous user feedback to promote user agency and to continuously assess and refine legal aid service delivery systems.

Until recently, the Canadian justice system paid little attention to how people prefer to engage with legal services, and what they seek from legal service providers. The user-design approach is commonly employed in the technology sector, and stands in contrast to the standard approach to legal service design, which prioritizes the perspectives of legal experts. User design promotes user agency, and can be used to deliver more responsive and effective legal aid services.

RECOMMENDATION 3 *(PAGE 6)*

Develop and launch an online client portal to accept legal aid applications, to diagnose and treat clients' legal problems, and to empower clients in the active management of their own cases.

Inspiration: MyLawBC; BC Civil Resolution Tribunal's Solution Explorer

⚠ **HIGH PRIORITY**

Many legal aid users would benefit from a well-designed online client portal that could handle application intake, issue triage, problem solving by guided pathways, and active case management. A single entry point for legal aid services would allow applicants, legal advocates or other intermediaries to preload application information for quick and cost-efficient vetting by LSS staff. It would also enhance communication between clients and staff, and provide greater transparency to client service delivery.

RECOMMENDATION 4 *(PAGE 7)*

Task and support an independent body, like Access to Justice BC, the Access to Justice Center for Excellence or the Office of the Auditor General, to coordinate the collection and analysis of standardized performance data across BC's justice system.

Inspiration: Quebec's *Accès au droit et à la justice*

There is too little being done across Canada to coordinate the collection and analysis of justice system data. This stifles innovation and contributes to duplication of justice reform efforts. BC would benefit from an independent and overarching body that is mandated and resourced to coordinate the collection and analysis of standardized justice system data from across the province. The data could then be used to assess the individual and aggregate performance of justice sector organizations—like LSS, the BC Prosecution Service and the courts—against national benchmarks. This would cultivate greater transparency and accountability in measuring performance.

RECOMMENDATION 5 *(PAGE 8)*

Promote multidisciplinary and cost-sharing approaches to legal aid client problem resolution that attract a wide array of funds from government and non-government sources.

Isolated legal aid lawyers too often serve as one-person multidisciplinary service centres. They find themselves serving as untrained psychologists, social workers or settlement workers for their clients. When legal aid lawyers work in a team environment with other service professionals, the outsized value of their work is better seen and appreciated. A multidisciplinary service approach also gives service partners the opportunity to share costs and diversify funding. Co-located organizations can share infrastructure costs and find cost efficiencies from operating in a "one-stop shop" environment. They can also attract funds from a wide array of private and public sources, including from different government ministries.

RECOMMENDATION 6 *(PAGE 10)*

Develop and apply the same performance measures, including user experience and outcome data, across all models and aspects of the legal aid plan to compare model cost-effectiveness, to increase system transparency and accountability, and to better inform continuous system refinement.

My report recommends the experimental and scalable development of new staff and clinic models of legal aid service delivery to address current service gaps. It is important to compare the performance of these new service models against current service models by using common measures of productivity. It is equally important to incorporate user experience and outcome data into common measures of effectiveness.

RECOMMENDATION 7 *(PAGE 17)*

Introduce strategic, scalable and quasi-experimental iterations of staff and clinic models to fill legal aid service gaps, and to foster assistive competition between models.

Inspiration: Burnaby Public Defender Study; Manitoba Competitive Service Delivery Model

LSS's current mixed model of service delivery tilts heavily toward the tariff model. A more balanced service delivery mix between the tariff model, the clinic model and the staff model would allow for distribution of legal aid cases among tariff, clinic or staff lawyers according to who is best suited to the task. My report recommends the development of community legal clinics providing family law and poverty law services, specialty clinics, Indigenous Justice Centres, an experimental Criminal Law Office and a Major Case Team of lawyers and paralegals specializing in long and complex criminal cases. Rebalancing the current mixed model to introduce mutually assistive competition between model types should lead to system cost savings and better client service.

RECOMMENDATION 8 *(PAGE 25)*

Amend the *Legal Services Society Act* to provide for the following framework for eleven director appointments:

- four appointments by the provincial government;
- four appointments by the Law Society of BC; and
- three appointments by frontline community service organizations, including two organizations specifically serving Indigenous people.

Inspiration: *Legal Services Society Act* pre-2002

The LSS board should be seen to be independent from government, and should reflect a balanced representation of the interests of government, the legal profession and the communities it serves. For community interests to be heard—and seen to be heard—the board should include space for the expertise and wisdom of people who represent Indigenous communities, women's centres, anti-poverty groups, people with disabilities, mental health providers, immigrants and refugees, and other legal aid user groups.

RECOMMENDATION 9 *(PAGE 26)*

Engage the Office of the Auditor General to perform a value-for-money audit of LSS operations.

Inspiration: Office of the Auditor General of Ontario's semi-regular audit of Legal Aid Ontario

Several review contributors mentioned LSS's high administration costs and other cost inefficiencies. I was not equipped to determine whether their fiscal management practices are sound, although I saw no indication otherwise. The Office of the Auditor General of Ontario periodically conducts a value-for-money audit of Legal Aid Ontario. The BC government may wish to engage the Office of the Auditor General for a similar purpose.

AREA-SPECIFIC RECOMMENDATIONS

PLEI SERVICES

RECOMMENDATION 10 *(PAGE 28)*

Support an external governance review of the provincial PLEI sector to establish clear organizational roles and accountabilities, and to streamline PLEI service delivery options from a legal aid user's perspective.

RECOMMENDATION 11 *(PAGE 30)*

Create a Clinic Resource Centre within LSS to communicate with a new network of community legal clinics, to gather and dispense collective knowledge and expertise, to inform responsive development of PLEI materials, and to promote inter-agency awareness and collaboration.

Inspiration: Legal Aid Ontario's Clinic Resource Office

FAMILY SERVICES

RECOMMENDATION 12 *(PAGE 36)*

Broaden availability of expanded duty counsel and Family LawLINE services to improve access and convenience for working people and their families.

RECOMMENDATION 13 *(PAGE 38)*

Fund and support an integrated network of independent community legal clinics with modular teams of lawyers and advocates providing family law and poverty law services.

Inspiration: LSS's former Community Law Offices; Legal Aid Ontario's Community Legal Clinics

⚠⚠ **HIGHER PRIORITY**

INDIGENOUS SERVICES

RECOMMENDATION 14 *(PAGE 42)*

Broaden the scope of Indigenous legal aid services to include more preventative services that are not premised on agreeing to state intervention or correction, which impose stigma.

⚠⚠ **HIGHER PRIORITY**

RECOMMENDATION 15 *(PAGE 43)*

Create a Child Protection Clinic to help parents before child protection concerns have reached the level of Ministry of Children & Family Development intervention, and to serve as a practice resource centre for lawyers representing parents in contested child protection matters.

⚠⚠⚠ **HIGHEST PRIORITY**

RECOMMENDATION 16 *(PAGE 44)*

Support the iterative and scalable development of Indigenous Justice Centres as culturally safe sites for holistic legal aid service to Indigenous people.

⚠⚠⚠ **HIGHEST PRIORITY**

IMMIGRATION AND REFUGEE SERVICES

RECOMMENDATION 17 *(PAGE 47)*

Create and embed a Refugee Legal Clinic in the integrated services hub at the Immigrant Services Society of BC's Welcome Centre in Vancouver or Surrey.

Inspiration: Legal Aid Ontario's Refugee Law Offices

⚠⚠ **HIGHER PRIORITY**

CIVIL (POVERTY) SERVICES

RECOMMENDATION 18 *(PAGE 52)*

Fund and support an integrated network of independent community legal aid clinics with teams of lawyers and advocates providing poverty law services.

Inspiration: LSS's former Community Law Offices; Legal Aid Ontario's Community Legal Clinics

⚠⚠⚠ **HIGHEST PRIORITY**

RECOMMENDATION 19 *(PAGE 52)*

Develop and nurture a strategic network of specialty legal aid clinics to serve specific communities of legal need.

CRIMINAL SERVICES

RECOMMENDATION 20 *(PAGE 55)*

Enhance LSS's current non-trial resolution tariff, or develop a new discretionary tariff for case preparation that results in early resolution and avoids trial, based on a detailed account of the scope of preparation and its impact on settlement.

RECOMMENDATION 21 *(PAGE 56)*

Develop an LSS telephone complaint service and a quality assurance audit program, including enhanced user feedback and after-case peer review, to better assure the quality of lawyers' services.

RECOMMENDATION 22 *(PAGE 59)*

Create an experimental Criminal Law Office along a major transit route in Metro Vancouver, with a team of criminal staff lawyers, paralegals, administrators and support workers providing general and specialized legal aid services.

Inspiration: Burnaby Public Defender Study

⚠⚠ HIGHER PRIORITY

RECOMMENDATION 23 *(PAGE 59)*

Create a Criminal Resource Centre at the Criminal Law Office that offers free access to tariff lawyers, pro bono lawyers and other legal aid service providers, and provides space for co-working and training as well as resources for legal research and practice management.

⚠ HIGH PRIORITY

RECOMMENDATION 24 *(PAGE 62)*

Develop a Major Case Team of LSS staff lawyers and paralegals to provide in-house capacity and to support tariff lawyer capacity for long and complex criminal case work.

⚠ HIGH PRIORITY

COLLABORATION

RECOMMENDATION 25 *(PAGE 65)*

Collaborate with other justice system stakeholders, like the Law Foundation of BC, the Law Society of BC, the BC Branch of the Canadian Bar Association and other branches of government, to promote legal aid practice and reduce justice system costs and delay.

1. Introduction

This is a report about legal aid service delivery in BC, in which I consider and recommend different strategies for delivering more cost-effective legal aid services to people throughout the province. It is meant to guide the Attorney General of BC, LSS and other system stakeholders forward as they make important executive and policy decisions about where to invest in legal aid, and how to better serve British Columbians.

My report focuses on legal aid users—people who need legal aid and therefore live with the consequences of important policy decisions. Legal aid users include the Indigenous mother whose newborn baby is taken by a social worker, the young woman who is scared to leave a violent relationship, and the legal aid lawyer who chooses to pay his professional fees instead of rent. They include thousands of disadvantaged British Columbians who rely on government benefits for survival but are denied legal aid when those benefits are reduced or withheld.

The problem of inadequate legal aid has rested on the shoulders of disadvantaged British Columbians and their service providers for too long. It has caused immense human suffering. It has produced downstream social and economic costs that are crippling other government support systems. In time, it has grown to be a "wicked problem" that is resistant to singular solutions and quick fixes. Positive change will only come from a common and sustained commitment to collaboration and experimentation.

In this report, I provide 25 recommendations for positive legal aid reform. The recommendations are informed by principles of user-centred design, evidence-based analysis, collaboration and experimentation. This report follows a path that any disadvantaged person facing legal problems might follow, were those legal problems to go untreated. That path starts with front-end legal education and information needs, proceeds through personal conflict to struggles with the state, and ends with criminal defence needs.

My proposed changes require a bit of sacrifice from everyone. Put another way, they involve everyone. Reviving legal aid will be a collective effort. There are many roads to follow.

2. First Principles

Viewed from the high level of rights and policy, legal aid is an essential element of a fair, humane and efficient justice system based on the rule of law. Most people do not think of legal aid in these terms, if they think of legal aid at all. Most people think of legal aid when they encounter a legal problem that threatens their well-being, and they have no money to retain a lawyer. Some people are more likely to encounter legal problems than others. Poor people, in particular, "are always bumping into sharp legal things"[1] and needing legal services. For most people at ground level, legal aid means a government-funded lawyer when you need one.

As a practical matter, "when you need one" is not solely determined by the potential consequences of your legal problem. It is also determined by the budgetary needs and priorities of funders. In times of economic austerity, the scope of legal aid coverage tightens for poor and disadvantaged people, and excludes some of their legal needs. This can make it difficult to fulfil an ambitious rights-based approach to legal aid, in the practical sense that anything less than a constitutional right to counsel is subject to budget priorities. That is not to say that a rights-based approach to legal aid cannot foster systemic change, or set a floor for what is ethical and right.

Some rights are always worth pursuing. An effective rights-based approach can force positive change upon reluctant governments. It can shift spending priorities, and cause policy makers to rethink when a person needs a lawyer. At the same time, setting evidence-based benchmarks can create interest and space for cooperative advancement on public policy where asserting elevated rights often cannot. Benchmarks assume minimum requirements but set aspirational standards, and may include targets for progressive implementation.

NATIONAL BENCHMARKS

In 2016, the Canadian Bar Association (CBA) endorsed a set of six legal aid benchmarks developed by its Access to Justice Committee in cooperation with the Association of Legal Aid Plans of Canada.[2] The benchmarks are meant to serve as guiding principles for an integrated national system of public legal assistance services focused on improving access to justice and meeting the needs of disadvantaged people across Canada.

1. **A National Public Legal Assistance System**
   Canadian public legal assistance systems are sustainably funded and provide comprehensive, people-centred legal services tailored to local, regional, provincial and territorial circumstances to meet essential legal needs and contribute to the health and well-being of disadvantaged and low-income Canadians.

2. **Scope of Services**
   Public legal assistance services are provided to individuals, families and communities with essential legal needs who are otherwise unable to afford assistance. Essential legal needs are legal problems

1 Wexler, Stephen, "Practicing Law for Poor People" (1970) *Yale Law Journal* 79:6, at p. 1050.

2 Canadian Bar Association Access to Justice Committee, *Study on Access to the Justice System* (December 2016) <www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a>.

or situations that put into jeopardy a person or a person's family's liberty, personal safety and security, health, equality, employment, housing or ability to meet the basic necessities of life.

3. **Service Priorities**
   Public legal assistance services are provided on a priority basis to individuals, families and communities who are financially disadvantaged or are otherwise vulnerable to experiencing unmet essential legal needs.

4. **Spectrum of Services**
   Public legal assistance service providers use discrete and systemic legal strategies and work in collaboration with non-legal service providers to offer a broad range of services—from outreach to after-care—targeted and tailored to people's legal needs, circumstances and capabilities.

5. **Quality of Services**
   Public legal assistance services in all provinces and territories are fully accessible, timely, high quality, culturally appropriate and cost-effective. Services will lead to evaluated meaningful participation and fair and equitable outcomes, and contribute to the empowerment and resilience of individuals, families and communities.

6. **A Supported, Collaborative, Integrated Service Sector**
   Public legal assistance service providers participate in collaborative service planning across this sector and are mandated and supported to innovate and to fulfil their integral role of ensuring access to justice and an effective justice system, working in partnership with all stakeholders.

The CBA uses the term "public legal assistance systems" to describe a broad range of public legal services that extends beyond the common view of legal aid as a government-funded lawyer for poor people. It includes the range of services currently provided by Canadian legal aid plans, and more:

> These systems include what is traditionally thought of as legal aid [...], through to services responding to legal needs, health and empowerment more broadly by supporting legal literacy and capabilities and providing legal information, assistance, dispute resolution and representation services, either directly or through referrals to other agencies.[3]

To move this rich mosaic of public legal services into functional alignment as a national network, the CBA pins its hopes on three principles:

1. user-centred design,
2. open and transparent measurement of system-wide progress, and
3. inter-agency collaboration.

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3 Canadian Bar Association Access to Justice Committee, *Study on Access to the Justice System* (December 2016) <www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a>, at p 1.

Those three principles are essentially the same principles that are recommended in this report for effective and efficient delivery of legal aid services in BC.

RECOMMENDATION 1

Endorse the CBA's National Benchmarks for Public Legal Assistance Systems in support of a user-centred, evidence-based and collaborative approach to legal aid service delivery.

USER-CENTRED APPROACH

USER-CENTRED DESIGN

User-centred or UX design is a methodology that begins with a fundamental concern for user experience. It identifies problems that users encounter in a system, clarifies user needs and goals, and then takes an experimental and iterative approach to solving those problems. It is commonly employed in the technology sector where product teams research consumer behaviour, create new technology to suit consumer needs and desires, and continuously test products to see how consumers respond. It prioritizes practical feedback and test results from actual users, rather than the expert evaluation of system professionals.

This user-focused approach stands in contrast to the standard approach to legal service design, which prioritizes the perspectives of legal experts (lawyers and judges) in dispute resolution. In the legal aid context, the standard process for intervention corresponds more or less with the linear elements of courtroom practice. For example, a litigant and their lawyer attend court to apply for an interim order, and later return for trial. This linearity provides a logical structure for tariffs. It also gives rise to process thinking; a legal aid lawyer analyzes what needs to be done to solve the client's problem, lays out a litigation process against the tariff, and gets on with the task at hand.

From my research and consultations, it is clear to me that legal aid clients are not at all concerned about process. Outcomes, however, concern them very much. They do not want a lawyer so much as they want a fair and final resolution to their legal problem. A lawyer is simply a means to this end. If a computer is better able to achieve a fair and final resolution, they will choose a computer over a lawyer. This seems obvious, but it has taken our justice system a long time to consider the user's perspective. There has been little thought given to how clients prefer to engage with legal aid services, and what they seek from their service providers.

LSS contracts an independent research organization to conduct a mostly quantitative client satisfaction survey every two years. They also have plans to monitor client satisfaction by conducting regular exit surveys and recording calls to the LSS call centre. These are helpful user-response tools, but they fall short of the continuous "built-in" feedback needed to properly assess and refine user-centred systems. I was reminded in several consultations that tariff lawyers are legal aid users too. They use systems like LSS Online (a secure online portal for legal aid lawyers) to submit invoices and authorization requests, access practice resources and communicate with system administrators.

A few lawyers told me that interacting with LSS managers on case management issues became such a chore that they stopped accepting cases altogether (this issue is further explored in Chapter 6: Family Services). I heard that, "For what it paid, it just wasn't worth the hassle." Some measure of red tape is inevitable when working with a bureaucracy of LSS's size and complexity, but improving lawyers' user experiences is critical to sustaining effective capacity for service delivery.

RECOMMENDATION 2

Develop and implement cross-system methods for contemporaneous user feedback to promote user agency and to continuously assess and refine service delivery systems.

USER AGENCY

It is not enough to announce that a legal aid plan is user-centred, or that legal aid services are designed with the user in mind. To be effective, a user-centred legal aid plan must embed continuous user-feedback methods in all aspects of service delivery. This is achieved by engaging users throughout the service continuum: inserting surveys, engaging focus groups, and performing interviews and qualitative research about client needs and experiences. It is further assisted by conducting controlled experiments to assess the effectiveness of different service delivery models.

Wherever possible, a user-centred legal aid plan should loop clients into the design and implementation cycles of service. Legal aid service providers should work with their clients—not only for them—to achieve their goals. This participatory approach is particularly suited to family and civil areas of legal aid practice (especially poverty law). It involves collaborating with clients and other service providers at each phase of problem identification, strategy formation and solution implementation. It adapts well to an unbundled (and therefore modular or scalable) approach to legal aid service delivery.

"Collaborative lawyering" also promotes user agency by transferring legal knowledge and power from service providers to their clients in a highly contextualized way. It arms clients with legal problem-solving skills to apply to their own personal and cultural circumstances. As Gerald López states in his influential book, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice,*

> if people subordinated by political and social life can learn to recognize and value and extend their own problem-solving know-how, they [...] may gain confidence in their ability to handle situations that they would otherwise experience as utterly foreign and unmanageable, with or without a lawyer as representative.[4]

USER CHOICE

One way to promote user empowerment is to give legal aid clients more choice over when and how they use their allocated service hours. Clients can benefit from being able to choose when to seek a lawyer's help with their case and when to conserve their legal aid allocation by going it alone.

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4 Lopez, Gerald, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Colorado: Westview Press, 1992) at p. 70.

Making an effective choice requires a well-defined range of unbundled service options, and more service continuity and client control over case management than LSS currently offers (though family duty counsel services do present a meaningful degree of user choice). It also requires an online portal—a client version of LSS Online—where clients can manage their client profile, check on their case status and consider the different unbundled service options available to them.

LSS's MyLawBC and the Civil Resolution Tribunal's Solution Explorer are two BC-born online systems that offer self-guided pathways to users. They are user-friendly artificial intelligence systems that employ simple question-and-answer tools to equip people with plain-language legal information and free self-help resources tailored to their needs. Both online dispute resolution platforms are internationally acclaimed for their cutting-edge technology.

MyLawBC's guided pathways serve four distinct legal areas from diagnosis to review by a legal professional: separation and divorce; abuse and family violence; foreclosure; and will drafting. LSS intends to use the MyLawBC platform to pilot the uptake and effectiveness of online dispute resolution in family law. They are also shifting to an open-source technology approach that better aligns with the prevailing non-profit culture of cost-effectiveness, collaboration and continuous improvement.

LSS's 2018 client satisfaction survey found that 96 percent of their clients have internet access, and 93 percent of their Indigenous clients have a smart phone. Their survey may favour people predisposed to technology use, but it is clear that technology has a growing role to play in helping low-income people overcome their legal problems.

Many British Columbians would benefit from a well-designed online client portal—similar to MyLawBC or Solution Explorer. Such a portal could handle application intake, issue triage, problem solving by guided pathways and active case management. It would provide a single entry point or one-stop resource for people seeking legal aid services—no matter where they are located or when they seek access. At the same time, it is critical to maintain existing channels for access to legal aid, since many British Columbians with disabilities and other vulnerabilities have difficulty accessing and using online services.

RECOMMENDATION 3

Develop and launch an online client portal to accept legal aid applications, to diagnose and treat clients' legal problems, and to empower clients in the active management of their own cases.

EVIDENCE-BASED ANALYSIS

There is growing recognition across Canada that we need to improve justice sector data collection and analysis. Good policy development depends upon good data for measurement and evaluation. Yet there is little being done on the provincial or the federal level to measure justice system performance. Not much is known, for example, about whether the current court-based model of family dispute resolution serves individual litigants, their children and society better than collaborative and less adversarial alternatives.

Justice stakeholders, including legal aid clients, are too often left to guess about the positive potential of systemic reforms. This stifles innovation and contributes to duplication of reform efforts. In BC, important justice stakeholders, including the Ministry of Attorney General, each of the three courts, Access to Justice BC, LSS and the Law Foundation of BC, have formed a Research Framework Working Group with a goal of creating a "data observatory" to collect high-quality justice data for sector-wide use and analysis. Group leader Jerry McHale, QC, has commented on the limiting effects of a fragmented approach to justice data collection and analysis:

> We do not have cross-jurisdiction agreement on a system-wide infrastructure or architecture to guide and coordinate the collection and utilization of data. In fact, many, if not most, provincial jurisdictions lack strategies or agreements guiding the collection and utilization of data. Operationally, the justice system is organized in silos and, as a result, data is typically collected and utilized in silos. The independence of the judiciary and the executive translates into parallel data collection processes, objectives that are not complimentary and challenges in sharing across systems. As a further consequence, data collections are often built on different definitions of justice events, making coordination and comparison almost impossible. It also means that no one part of the system has an overarching vision or understanding of what data exists in the system.[5]

The current situation in BC begs for an independent and overarching body to coordinate the collection and analysis of standardized justice data across the province. In a later phase, such a body could use its data architecture to assess the individual and aggregate performance of justice sector organizations—like LSS, the BC Prosecution Service and the courts—against national benchmarks. This would cultivate greater transparency and accountability for performance.

BC can draw inspiration from Quebec, where several universities and justice stakeholders have travelled a fair distance down the road of justice system evaluation. The *Accès au droit et à la justice* (ADAJ) project creates and collects data to measure justice system performance against national benchmarks. It uses indicators like user satisfaction, judicial process delays and user access to legal services. Eventually, they intend to issue an annual report on justice system performance to foster public accountability. In BC, a similar role could be given to an independent and measurement-driven body like Access to Justice BC, the Access to Justice Center for Excellence or the Office of the Auditor General.

RECOMMENDATION 4

Task and support an independent body, like Access to Justice BC, the Access to Justice Center for Excellence or the Office of the Auditor General, to coordinate the collection and analysis of standardized performance data across BC's justice system.

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5 McHale, Jerry, *"The Justice Metrics Problem" Background Paper* (Victoria, March 3, 2017) <http://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/590a60968419c273fe4dd99c/1493852311174/AC+Background+Paper+March+YVR+FINAL.pdf> (17 February 2018), at p. 5.

COLLABORATION ACROSS DISCIPLINES

It hardly needs to be said that a multidisciplinary approach to legal aid service offers multiple and exponential benefits to clients and service providers. A multidisciplinary model can respond to the myriad needs of people who are marginalized by their social, medical or psychological circumstances. Offering a suite of legal and non-legal services in one accessible community location—directly "in the path of the client"—allows for greater efficiency and continuity of care for people who would otherwise lack access to resources and support systems.

Clients benefit from not having to travel from one agency to another to receive a full range of user-centred and outcome-oriented services. Also, they are more likely to access services when fewer barriers are placed in their way.

A multidisciplinary approach also provides an effective way to address mental health and addiction issues that so often underlie serious legal problems, and that weigh heavily on the service providers:

- Health, social support and housing providers can use their different skills at early stages of intervention, in order to develop more comprehensive and lasting solutions for clients.
- Lawyers and advocates, in turn, can call upon these service providers to enhance their legal services, or for help with the emotional demands of their challenging line of work.

These early and integrated treatment strategies have been shown to substantially reduce the number of people with mental illness who come into contact with the police. They reduce downstream costs to other ministries. They also reduce the need to engage diversionary strategies in mental health and drug courts at the correctional "back-end" of the multidisciplinary model.

Embedding legal aid services in a multidisciplinary service environment brings their systemic value to the forefront. When isolated tariff lawyers help their clients with non-legal problems—when they serve as untrained psychologists, social workers or settlement workers—the problem-solving and cost-saving impacts of their extra efforts are lost on system analysts. The value they provide is not captured in any metrics. They are providing value for (modest) fees to the Ministry of Attorney General, and value for no fees to other government departments like the Ministry of Health, the Ministry of Children & Family Development, the Ministry of Mental Health & Addictions, and the Ministry of Municipal Affairs & Housing. When legal aid lawyers work in a team environment with other service professionals, the outsized value of their work is better seen and appreciated.

A multidisciplinary service approach also gives service partners the opportunity to share costs and diversify funding. Co-located organizations can share infrastructure costs and find cost efficiencies from operating in a "one-stop shop" environment. They can also draw on their different organizational profiles to attract funds from a wide array of private and public sources, including from government ministries—in amounts that reflect the direct value they provide.

RECOMMENDATION 5

Promote multidisciplinary and cost-sharing approaches to client problem resolution that attract a wide array of funds from government and non-government sources.

3. Service Delivery Models

Canadian legal aid plans have been variously described in different times and locations. Though often labeled differently, they rely on one or more of three main service delivery models:

- The **staff model** (best known for its public defender version in US criminal law), where lawyers are employed directly by the plan to serve clients;
- The **tariff model** (sometimes known as the certificate model or the judicare model), where clients are matched by choice or referral to a private lawyer who represents the client and bills the plan according to a predetermined schedule of fees; and
- The **clinic model**, where the plan contracts with an independent community clinic to serve clients by way of the clinic's own staff lawyers and a possible tariff complement.

Each of the three models may incorporate the use of duty counsel and expanded duty counsel. They may also include paralegals and lay advocates as alternative legal service providers.

- Duty counsel are staff or tariff lawyers who provide onsite legal assistance services at courthouses on a limited-scope or "unbundled" basis.
- Expanded duty counsel are staff or tariff lawyers assigned to the same court for a prolonged period of time, who may represent a client from intake to resolution before trial.
- Paralegals and lay advocates are often employed by community clinics to provide limited legal aid services under the supervision of staff or tariff lawyers.

CANADIAN MIXED MODELS

In Canada, no provincial or territorial legal aid plan fits entirely into a staff, tariff or clinic model. Each of the thirteen plans operates on a mixed model, although the mix varies significantly from one jurisdiction to another.

At one end of the country, Newfoundland relies on staff lawyers to provide the vast majority of its legal aid services. At the other end of the country, BC makes almost exclusive use of tariff lawyers. Ontario—the largest Canadian plan by a wide margin—uses the tariff model for the bulk of its services, but oversees an established network of community clinics for poverty law services. Alberta and Manitoba are tilted toward the tariff model, while Saskatchewan, the Maritimes and the Territories all favour staff lawyer services. Quebec comes closest to a true balance.

No matter the size or components of a service delivery plan, legal aid service delivery is a complex and multidimensional problem. Clients come to what appears to them to be a byzantine justice system, and they bring their own special tangles of issues that require personalized treatment.

Prominent Canadian access-to-justice researcher Albert Currie popularized the term "complex mixed model" to describe a plan that supplements the main models with a variety of adaptable delivery modes to target specific service needs.[6] A complex mixed model most often includes expanded duty counsel,

6 Currie, Albert, "Legal Aid Delivery Models in Canada: Past Experience and Future Developments" (2000) *UBC Law Review* 33:2 at p. 305.

but may also include clinical pilot projects, assisted self-representation and block contracting to practice-specific law firms. The overall trend in Canada is toward greater use of the complex mixed model.

COST-EFFECTIVENESS

Much ink has been spilled on the question of which model is most cost-effective. Still, the evidence for accurate cross-evaluation has never been clear. Even when considering simple plans from several decades ago, reviewers struggled to reconcile complicated staff and tariff program variables. The trend toward complex mixed models, and the general lack of data on user experiences and outcomes, means that developing reliable comparisons of such models based on cost-effectiveness is increasingly challenging.

Intra-plan comparisons of model cost-effectiveness tend to focus on average cost per case in the relatively linear criminal case-flow environment. Primary variables for analysis include tariff costs, salary/benefit costs, overhead, productivity and (less often) case outcomes. Assessing the relative cost-effectiveness of staff and tariff models involves measuring the productivity of tariff lawyers and the sum of their tariff costs and related overhead on one side, and the productivity of staff lawyers and the sum of their salary/benefit costs and related overhead on the other.

It is important to use a common measure of productivity, such as measuring staff lawyer service in block tariff terms, so as not to compare apples with oranges. It is also important to incorporate user experience and outcome data into the measures of effectiveness.

Older research on cost-effectiveness should be addressed with caution, because circumstances are continually changing. Little stands still in the legal aid realm, apart from tariff rates. That said, every empirical study that I uncovered from the 1980s and 1990s concluded that the staff model is less expensive than the tariff model. The studies found that staff lawyers are associated with similar conviction rates as compared to their counterparts in the private bar, yet fewer custodial sentences. They also found equal client satisfaction levels.

RECOMMENDATION 6

Develop and apply the same performance measures, including user experience and outcome data, across all models and aspects of the legal aid plan to compare model cost-effectiveness, to increase system transparency and accountability, and to better inform continuous system refinement.

SERVICE QUALITY

Over the course of my consultations, I heard a few off-hand comments about the inferior quality of criminal staff lawyers. These comments are rooted in something other than recent BC experience, since the last LSS criminal staff lawyer office closed in 2002. They perhaps stem from the overworked and hapless public defender meme so widely spread by US movies and TV. They parallel a few comments I heard about criminal tariff lawyers running unnecessary trials to increase their compensation.

During the final stage of my review, the Auditor General of Ontario released her 2018 Annual Report with a chapter on a "value-for-money audit" of Ontario's legal aid plan.[7] Among other things, the Annual Report found that Legal Aid Ontario (LAO) is failing to ensure that its tariff lawyers are providing quality services to the public. It recommended that LAO "work with the Law Society of Ontario to create a quality assurance audit program, including after-case peer review, to oversee lawyers or seek changes to legislation that would allow it to develop and implement a quality assurance program by itself."[8]

LSS has its own quality assurance program, which has more investigative tools than LAO. It appears to be more robust. Still, no legal aid service plan can boast a quality assurance program that is foolproof. There are incompetent and deceitful legal aid lawyers in BC just as there are in every other province. They are more than urban legends. I am confident that they are exceptions to the rule, though LSS's quality assurance program could benefit from some strategic enhancements. (I discuss these further in Chapter 6: Family Services and Chapter 10: Criminal Services.) For the purpose of comparing cost-effectiveness of models, it is simply worth noting that quality assurance is more easily achieved in the staff model context of direct or indirect employment.

BURNABY PUBLIC DEFENDER STUDY

In 1979, LSS set up an experimental staff lawyer office in Burnaby to answer questions about the impacts and costs of delivering criminal legal aid by way of staff lawyers as compared to tariff lawyers. The office staff included three full-time staff lawyers (selected with different seniority to represent the general pool of lawyers who might be employed in a staff lawyer office), one paralegal and one administrative assistant. The staff lawyers represented clients primarily in Provincial Court, from first appearance through to disposition. They also acted as duty counsel at times. Legal aid cases were distributed evenly and randomly between the staff lawyers and their private bar counterparts in Burnaby and Vancouver.

LSS and the federal Department of Justice published an evaluation of the experimental project in 1981.[9] The evaluation showed that the staff lawyers handled cases at an average cost of $235, compared to $225 for Burnaby private bar lawyers and $264 for Vancouver private bar lawyers. The staff lawyers spent about 20 percent of their time as duty counsel. Had the staff lawyers dropped this aspect of their practice, they would have increased their caseloads by about 14 percent, and dropped their average cost per case to $192.

The evaluation revealed that both staff lawyers and tariff lawyers resolved most of their cases on the day of trial. The evaluation also made several important findings related to staff lawyers:

- Staff lawyers provided more continuity of representation than tariff lawyers. They made first contact with their clients sooner than tariff lawyers, and more frequently acted for their clients at all proceedings.
- There were more guilty pleas and fewer trials in cases handled by staff lawyers.

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7 Office of the Auditor General of Ontario, 2018 Annual Report (Vol 1), pp. 253-295.

8 Office of the Auditor General of Ontario, see note 7, at p. 279.

9 Brantingham, Patricia, et al., *The Burnaby Experimental Public Defender Project: An Evaluation* (Ottawa: Department of Justice, 1981).

- Staff lawyer clients received fewer prison sentences than tariff lawyer clients, but longer probation periods. Tariff lawyer clients received more absolute discharges.
- Court staff perceived an improvement in the quality of administration of justice with the introduction of staff lawyers.
- Crown counsel entered into more discussions and reached more agreements with staff lawyers than with tariff lawyers.
- Staff lawyer offices could be introduced in modest fashion across BC with limited disruption of private practice.

EMPIRICAL RESEARCH

Canadian studies that followed the Burnaby Public Defender Study consistently concluded that the staff model is less expensive than the tariff model for criminal legal aid. A 1988 Saskatchewan study estimated that moving the provincial plan from a 98 percent staff model to a two-thirds staff model would increase its total costs by 13 percent.[10] It also estimated that moving the plan entirely to a tariff model would increase total costs by 64 percent. The same study found no noticeable difference in the conviction rates for staff lawyer clients and tariff lawyer clients, but striking differences in sentence outcomes. Staff lawyer clients received prison sentences 14 percent of the time, while tariff lawyer clients received prison sentences 32 percent of the time.

A 1987 study of the Manitoba plan calculated an average cost per provincial court criminal case for staff lawyers of $197, compared with $307 for tariff lawyers.[11] To control for differences in case complexity between models, the study also examined the average cost by quarterly case thresholds. It found that staff lawyers completed the first 25 percent of their caseload for an average cost of $48 or less, compared with $201 for tariff lawyers. The average cost of the staff lawyer caseload edged closer to the average cost of the tariff lawyer caseload as it neared the final threshold, but never came close to surpassing its private equivalent.

From 1993 to 1996, the Alberta plan set up two staff lawyer clinics in Calgary and Edmonton to provide legal aid to young offenders. A 1996 study of the clinics assessed the average cost per case for staff lawyers at $353 compared to $500 for tariff counterparts.[12] The study estimated that staff duty counsel saved the plan $2.4 million in tariff costs over three years of early resolution. The study also concluded that staff lawyers resolved matters at an earlier stage than tariff lawyers.

ADAPTING TO AUSTERITY

By the turn of the millennium in Canada, intra-plan cost-effectiveness studies had largely dried up. In several provinces, this ebb of scientific enquiry coincided with a flow of austerity measures to control provincial government deficits tied to federal transfer reductions. Staff lawyer salaries continued to tick upward in line with collective agreements, while tariff rates remained static or were even reduced. This altered the calculus enough to give rise to a competing sense that tariff models are less expensive than staff models. Reality soon caught up to this perception in BC.

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10 DPA Group Inc., *Evaluation of Saskatchewan Legal Aid* (Ottawa: Department of Justice, 1988).

11 R. Sloan and Associates, *Legal Aid in Manitoba: An Evaluation Report* (Ottawa: Department of Justice, 1987).

12 RPM Planning Associates, *Evaluation of the Staff Lawyer Pilot Project* (Edmonton, 1996).

Under a new mantra of fiscal discipline in the early 2000s, many provincial governments tightened their belts and cut legal aid services. System stakeholders pivoted to defend their preferred model of service delivery with as much reliance on principle and intuition as empirical data.

STAFF MODEL ADVANTAGES

As the dust-gathering research shows, the staff model can cost less than the tariff model under favourable circumstances (i.e. relatively low salary and benefit costs, relatively high tariff rates, and competitive productivity). It can also provide better client outcomes, greater economies of scale and specialization, and more consistent and verifiable quality of service.

The staff model has its own structural advantages to lend to an effective mixed model of service. These include:

- Versatility in use of lawyers and lower-cost paralegals as direct legal service providers.
- Continuity and consistency in service from permanent lawyers and paralegals.
- Capacity to monitor and directly report on court practices and systemic changes.
- Buildable capacity to deliver services in underserved communities.
- Onsite training, resource sharing and collaboration with pro bono lawyers and social service providers.

In my consultations, former LSS staff lawyers and community advocates frequently identified the staff model as better suited to serve "high-need" clients and cases with multi-dimensional challenges. They described serving clients with significant mental health challenges and knotted legal and non-legal issues not easily untangled by a single tariff lawyer mindful of the opportunity cost of extended service.

It was also said to me that staff lawyers operate in a less categorical service context than tariff lawyers. They operate in a team environment where they are able to provide more comprehensive client service within the margins of their employment contracts. By most accounts, this holistic approach enhances user experience and produces better case outcomes. But these days, it comes at a higher cost per case.

TARIFF MODEL ADVANTAGES

On the other side of the debate, I heard from many lawyers about the benefits of a private and decentralized tariff model approach to service. It optimizes freedom of choice of counsel, maximizes lawyer loyalty to client interests, and ensures meaningful independence from state interference or influence (particularly in criminal prosecution, child protection and immigration matters where government is a party to proceedings).

Where the tariff model is included as a component of a mixed model of service, there are structural advantages:

- Flexibility to accommodate sudden shifts in service demand.
- Large network capacity to serve a wide geographic range of communities.
- Quick adaptability to real or perceived conflicts of interest.

No matter where they stood on cost-effectiveness, lawyers and advocates expressed profound concern that BC's tariff-dominant model has been left to decay with stagnant tariff rates. I heard this time and again in my consultations, and I share in the common despair. Low tariff rates have steadily eroded lawyers' capacity to serve British Columbians in need. Low tariff rates have created more reasons for lawyers to group or "stack" client matters for quick handling in court, and fewer reasons for lawyers to provide holistic service. They have weakened the bonds between the legal profession, LSS and government. Most concerning of all, over nearly two decades, they have visited harsh and indelible consequences on the lives of BC's most vulnerable residents.

Purely from the perspective of short-term cost-savings, low tariff rates mitigate the first order costs of tariff services. They tilt the economic balance heavily in favour of the tariff model. Many lawyers expressed admiration at the job LSS has done in administering tariff services on a very tight budget. Several lawyers remarked at the ease of registering for legal aid service, accepting a client file and then billing for service. LSS's efficient online case management system has contributed to far-reaching if not enthusiastic lawyer engagement. Wherever lawyers practise in BC, there is at least the potential for the tariff model to serve people well.

CLINIC MODEL ADVANTAGES

The clinic model is particularly well-liked by community advocates, public interest lawyers and lawyers who worked in the old community law offices. They view legal aid clinics as more accessible to disadvantaged people, more effective in community outreach, and much better suited to advancing collaborative law reform initiatives for systemic change.

The clinic model shares many of the structural advantages of the staff model when used within a mixed model, but it also has these distinct advantages:

- Flexible capacity to serve client needs in unprofitable and underserved areas of law.
- Ability to embed services in holistic and locally trusted social service sites.
- Concentrated expertise and knowledge development in niche areas of poverty law.

Many frontline advocates told me that decentralized legal clinics are psychologically and physically more accessible to their low-income clients than law firms or legal aid plan offices. Clinics are more often accepted as low-barrier, culturally safe environments. They are places where people feel emotionally and physically safe from any challenge to their identity and needs. Clinic services are perceived as more broadly available to the community, as opposed to private bar services that are only available under special circumstances.

Lawyers and advocates told me about the collaborative service potential of legal clinics. In the clinical context, collaborative service involves lawyers or advocates working with clients and coaching the clients to be able to identify and solve their own problems. This service approach is premised on the user-centred notion that clients fare better when they are given agency in their legal issues, so they can become more empowered in their self-advocacy.

Many people reminded me that clinics tend to carry much lower infrastructure costs than conventional staff lawyer offices, because they attract more mission-guided legal service providers who are willing to do "impact work" for lower remuneration.

MIXED MODEL ASCENDANCY

By now, most if not all Canadian plans have come around to regarding the most efficient and cost-effective service delivery model as "all of the above." In research and in practice, the general consensus is that the mixed model—more specifically the complex mixed model—is best able to respond to the multi-dimensional legal problems of modern legal aid clients.

A mixed model allows for the distribution of cases to service delivery modes best suited to the task. Where choice of counsel is a non-issue, case managers may match clients to staff, clinic or tariff lawyers based on their capacity, experience, special expertise and relevant client skills. Case managers must always strike a balance between profile matching and equitable distribution, but the main factors in assigning cases should be quality of service and cost-effectiveness. On these measures, some healthy competition between models should lead to overall cost savings and better client service.

HEALTHY COMPETITION

Setting up legal aid service delivery models for productive competition is easier said than done. Great care and attention must be given to balancing lawyer compensation and caseload levels. When setting staff lawyer compensation and caseloads, a mixed model must be sensitive to the opportunity costs of staff lawyers forgoing private work (including tariff work) and work across the aisle as Crown counsel. If salaries are set too low and caseloads are set so high as to negate the typical lifestyle benefits of a secure public service job, staff lawyer positions will only attract inexperienced and unsuccessful lawyers with low opportunity costs. Needless to say, this will have a diminishing effect on quality of service.

Likewise, in setting tariff rates, a mixed model plan must be sensitive to the opportunity costs of lawyers taking on tariff work and forgoing full-rate work or more steady work as a staff lawyer, Crown counsel or a different type of lawyer altogether. If the tariff rate sits well below the level of the opportunity costs (as it currently does in BC), then mostly inexperienced lawyers or older and unsuccessful lawyers with low opportunity costs will be drawn to regular tariff work. Again, quality of service will suffer.

Introducing competition is particularly challenging in a monopoly or near-monopoly situation. Whether it is a union representing staff lawyers or an association of tariff lawyers, a self-interested group of legal aid lawyers can wield considerable political leverage where no service alternative exists. Confronted with change, they can coordinate withdrawals of service with devastating impacts on the court system and the lives of legal aid clients. The effectiveness of these withdrawals tends to be inversely related to the percentage of legal aid work done by their staff or tariff counterparts. It is therefore critical that model change is introduced in an iterative and empirically defensible manner. A well-timed lift in remuneration helps as well.

MANITOBA'S COMPETITIVE SERVICE DELIVERY MODEL

Legal Aid Manitoba (LAM) operates a "competitive service delivery model" with tariff lawyers providing about 70 percent of services across the plan. Under this mixed model, LAM requires its staff lawyers to enter time and activity details for each legal matter, and to bill completed legal matters using the private bar tariff of fees. They refer to this performance measurement tool as the "Complexity Weighted Caseload" measure. Each matter completed by staff lawyers is assessed credit under the tariff.

LAM also sets an annual billing target of $130,000 (equivalent to 1,625 billable hours at $80 per hour) for each staff lawyer. Although no tariff money is paid out to staff lawyers, their productivity is assessed, to some degree, in terms of whether they meet the billing target. According to LAM, the Complexity Weighted Caseload measure fosters demonstrable competition between staff and tariff lawyers for the same work. Last fiscal year, LAM's top 25 staff lawyer billings averaged about $153,000 (equivalent to about 1,900 billable hours), while their top 25 tariff lawyer billings averaged about $223,000 (equivalent to about 2,800 billable hours).

Finally, LAM measures the number of tariff lawyers accepting legal aid matters, and assesses whether the supply of tariff lawyers is meeting the demand for services in all areas of coverage. They use these measures to determine whether vacant staff lawyer positions should be filled to cover any tariff service gaps around the province. Any unused salary funds are returned to the plan's operating budget, to ensure the efficient and cost-effective provision of services in other areas.

Using the Complexity Weighted Caseload measure, LAM has concluded that an average staff lawyer completes a basic tariff case at 1.4 times the cost of an average tariff lawyer. It should be noted that their staff lawyer costing includes a staff lawyer's salary, benefits and share of administrative overhead, while their tariff lawyer costing only includes straight billings.

USER EXPERIENCE AND TRIPLE AIM FRAMEWORK

LAM's competitive service delivery model is remarkable in its ability to compare apples with apples. It applies tariff metrics to staff and tariff lawyers, and this helps to isolate costs for direct comparison. On the other hand, it appears to chain staff lawyers to the structural constraints of the tariff system, and restrict the holistic service advantage of the staff model. This surface judgment may be unfair to LAM's model, but the measure does seem to overlook user experience as a vital aspect of user-centred analysis.

Access to Justice BC's Triple Aim Framework offers a more comprehensive if less precise approach to evaluating legal aid models. It hinges on three core pursuits of better user outcomes, better user experiences and lower system costs. In the context of legal aid services, it takes a broad view of user experience by considering qualitative dimensions like the client's trust in the service provider, the extent to which the client felt respected by the service provider, and the client's level of satisfaction with the substantive outcome of their case. Though somewhat imprecise in nature, this type of evaluative measure is indispensable to serving vulnerable client groups like victims of domestic abuse, refugees and mental health patients.

MENTAL HEALTH LAW PROGRAM

BC's Community Legal Assistance Society (CLAS) receives funding from the Ministry of Attorney General via LSS to operate its venerable Mental Health Law Program (MHLP). The MHLP was established in 1977, and currently provides two major services:

- Representation at Criminal Code Review Board hearings in BC's Lower Mainland to people found unfit to stand trial or not criminally responsible on account of a mental disorder.
- Representation at Mental Health Review Board hearings throughout BC to people detained under the province's *Mental Health Act*.

The MHLP uses a mixed model of four staff advocates, a 0.4 FTE staff lawyer, two administrative support staff and a roster of 68 tariff lawyers to provide client services. In 2017, the program embarked on a new funding and monitoring arrangement with LSS, and expanded staff capacity for service. Over the first year of the new arrangement, MHLP staff handled 503 of 910 representation files at an average cost per case of $1,011. They predominantly served a high concentration of client need in the Lower Mainland. Tariff lawyers, meanwhile, handled 407 files throughout BC at an average cost per case of $722. The MHLP anticipates that its staff cost per case will stabilize at $834 in a non-transition year.

In early 2018, LSS conducted a file review of MHLP staff files, and also conducted interviews with tariff lawyers, Mental Health Review Board members and Access Pro Bono staff lawyers. MHLP staff received very positive reviews for the quality of service and care they devoted to client interests. The cost per case disparity between staff and tariff lawyers was ascribed to the extra time and attention that staff dedicated to their files to enhance client experiences and outcomes.

The MHLP is a good example of a mixed model clinic that is scalable and adaptable to changing circumstances. It uses tariff lawyers to extend service reach to all areas of BC, but relies heavily on a core of lower-cost advocates to serve the legal needs of vulnerable clients—with no apparent harm to quality of service. The MHLP acts as a hub for resources, training and mentoring for less experienced tariff lawyers. And it serves the Mental Health Review Board by offering a single point of contact for individual and systemic case management issues.

RECOMMENDATION 7

Introduce strategic, scalable and quasi-experimental iterations of staff and clinic models to fill legal aid service gaps, and to foster assistive competition between models.

4. Legal Aid in BC

Legal aid has travelled a long and arduous road in BC; a road with many ups and downs and roundabouts. You would be forgiven for thinking it has almost led legal aid right back to where it began in the middle of the twentieth century, as a service built on the benevolence of lawyers. Legal aid in BC started as a loosely coordinated approach to pro bono service, and its evolution is worth tracing from there, if only to show how much of the discourse around legal aid is cyclical. Most of what can be imagined as potential reform has been tried once or twice before.

EARLY YEARS

In BC after the Great Depression, volunteer lawyers worked together to serve the province's growing number of poor people. The informal pro bono networks focused on civil legal needs until 1952 when the Law Society of BC began covering administrative expenses for a system of criminal representation. For the next 18 years, the Law Society operated a voluntary legal aid plan via local bar association clinics. The province began paying a small honorarium to the plan's volunteer lawyers in 1964.

Legal aid in BC first took corporate shape in 1970 as the Legal Aid Society. Established by the Law Society and supported by a nascent Law Foundation, the new society provided criminal legal aid using a tariff model financed by the province. In 1972, the province and the federal government entered into a cost-sharing agreement for criminal legal aid. A family tariff followed a year later under the Canada Assistance Plan. The Legal Aid Society operated six branch offices to manage its criminal and family tariff services, each staffed by two lawyers and a secretary. Civil legal needs were still left to pro bono service.

The Attorney General created the Justice Development Commission in 1973 to plan the funding and development of legal services in BC. The Commission, in turn, created the Delivery of Legal Services Project and appointed Peter Leask as its leader. Leask issued a report on legal service delivery models a year later, in which he criticized the Legal Aid Society's tariff model and praised the concept of community law offices. He proposed a more decentralized and community-based approach to legal service delivery.

FORMATIVE YEARS

In late 1975, an NDP government enacted the *Legal Services Commission Act*. The *Act* established a Legal Services Commission with the mandate to ensure that "legal services are effectively provided to, and readily obtainable by, the people of British Columbia, with special emphasis on those people to whom those services are not presently available for financial and other reasons."[13]

The *Act* was roundly criticized a year later in a study of the community law offices for being "insufficiently well thought out, having been written with a view to political expediency and in such a way as to try and avoid offending the Bar, rather than any real understanding of the needs of the

13 *Legal Services Commission Act*, 1975, S.B.C. 1975, c. 36.

community it was designed to serve."[14] The legal profession disapproved of the use of paralegals in community law offices for what they saw as the unauthorized practice of law. For their part, community legal workers perceived the legal profession as self-interested, insensitive to poor people's realities, and unwilling to share the stage.

In 1979, a Social Credit government decided to merge the Legal Aid Society and the Legal Services Commission into the Legal Services Society. Under the *Legal Services Society Act*, LSS was given a broad mandate to ensure that "services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons; and education, advice and information about law are provided for the people of British Columbia."[15] To pursue its mandate, LSS was given control of the Legal Aid Society's criminal and family tariff services, as well as the Commission's PLEI programs and agency funding responsibilities.

In the 1980s, as the provincial economy slid into recession, LSS faced a steady increase in service demand. Government funding failed to keep pace, and by 1982, LSS was forced to close offices, restrict eligibility criteria, constrain service coverage and cut tariffs by 13 percent. A resulting crisis in professional confidence spurred two legal aid reviews by Ted Hughes: the 1984 Task Force on Public Legal Services and the 1988 Report of the Justice Reform Committee. Although the reports were well-received by the legal profession, Hughes's recommendations failed to register with government.

AGG REPORT

By 1992, it was Timothy Agg's turn to review legal aid services in BC. Amid rapidly escalating legal aid costs and mounting deficits, Agg conducted a review of—among other issues—the suitability of different service delivery models, the adequacy of LSS's leadership, and ways to reduce costs.[16] He issued no less than 108 recommendations to the Attorney General. The more impactful recommendations included:

- Capping LSS's annual budget allocation, and legislatively prohibiting future deficits.
- Adopting a more flexible mix of tariff and staff model services, with increased use of paralegals and increased support of community advocates.
- Reducing the criminal tariff by about 10 percent, with savings allocated to the family and human rights tariffs.
- Moving to a 50-50 division between tariff and staff lawyer delivery.
- Placing local legal aid services under the control of community boards, with authority for local budget, staff and service planning.

The provincial government followed up on many of Agg's recommendations. LSS announced plans to move toward an even split between tariff and staff lawyer services. In response to the proposal, the Association of Legal Aid Lawyers organized a withdrawal of tariff lawyer services. LSS soon relented and retained the dominant tariff model.

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14 Morris, P. and Stern, R., *Cui Bono: A Study of Community Law Offices and Legal Aid Society Offices in British Columbia.* (Vancouver, Queen's Printer, 1976) at p. 74.

15 *Legal Services Society Act*, 1979, R.S.B.C. 1979, c. 227.

16 Agg, Timothy. *Review of Legal Aid Services in British Columbia.* (Victoria: Queen's Printer,1992) (the "Agg Report").

AUSTERITY MEASURES

In 1997, an NDP government froze funding to LSS, and required it to eliminate its $18 million deficit within four years. New austerity measures almost worked to plan, as the deficit was reduced to $6.6 million. However, a new BC Liberal government was not content with that outcome, and slashed LSS's budget by almost 40 percent in 2002. This resulted in the elimination of all poverty law services and dramatic restrictions in family law services. LSS's family law caseload dropped precipitously, and its annual number of poverty law cases plummeted from 40,000 to zero.

By 2005, LSS had reduced its office and agency staff by 74 percent. It replaced its province-wide network of 60 branches, community law offices, Indigenous community law offices and area directors with a more tariff-dominant model using seven regional offices, 22 local agents and a telephone legal advice service called the LawLINE. The transition away from a clinic model had devastating impacts on BC's most marginalized communities, as advocacy organizations retooled with Law Foundation funding to cover massive gaps in poverty law service.

LSS suffered further funding cuts in 2009 that caused the organization to close its last family law clinic, replace five staff lawyer offices with contract lawyer services, eliminate the LawLINE and further reduce staff by 80 full-time positions. By 2010, LSS had moved away from being a true mixed model to becoming an almost entirely tariff model.

DOUST REPORT

In the summer and fall of 2010, prominent Vancouver lawyer Leonard Doust, QC, led his Public Commission on Legal Aid on a provincial tour to discuss the future of legal aid. Backed by large justice institutions like the Canadian Bar Association's BC Branch, the Law Society and the Law Foundation, the Public Commission heard from individuals and organizations about the legal aid system's general failure to meet the basic legal needs of disadvantaged British Columbians.

In his subsequent report published in March 2011, Doust issued nine recommendations designed to overcome the system's perceived deficiencies:

1. Recognize legal aid as an essential public service.
2. Develop a new approach to define core services and priorities.
3. Modernize and expand financial eligibility.
4. Establish regional legal aid centres and innovative services.
5. Expand public engagement and political dialogue.
6. Increase long-term stable funding.
7. The legal aid system must be proactive, dynamic and strategic.
8. There must be greater collaboration between public and private legal aid service providers.
9. Provide more support to legal aid providers.

Once again, the recommendations for reform were well-received by the profession and the public at large. But few of them were implemented. Among the unheeded recommendations were Doust's call for legal aid to be treated as an essential public service, and his calls for increased legal aid scope, coverage and funding.

RECENT YEARS

Since the Doust Report, LSS has concentrated its efforts on driving justice reform and innovating services within a narrow funding envelope. Its long list of service innovations since 2011 is a testament to the unrelenting will and expertise of its leadership. None of the innovations can be characterized as game-changing, but they demonstrate as a whole that LSS is committed to moving forward with a user-centred and outcome-oriented approach to service delivery within its budget.

Among others, the innovations include:

- MyLawBC website
- Expanded criminal duty counsel in Port Coquitlam
- Parents Legal Centres
- Expanded Family LawLINE
- Expanded family duty counsel at the Victoria Justice Access Centre
- Domestic violence courts in Nanaimo and Surrey
- Community partner program

LSS has also made impressive progress in developing services specifically for Indigenous people[17] by Indigenous people. It has created a policy that representation of Indigenous people within LSS should be proportional to the numbers of Indigenous clients that the organization serves. It intends to accomplish this through an Indigenous equity policy in hiring, and by increasing Indigenous representation on its board of directors (including the current Chair). Legal aid clients who self-identify as Indigenous comprise 41 percent of child protection clients, 33 percent of criminal law clients and 23 percent of family law clients.

Despite this progress, serious legal aid service gaps have persisted and even widened in communities across BC, especially in the areas of family law and poverty law. In many ways, the access to justice crisis for low-income British Columbians has worsened. These unfortunate truths are explored in subsequent chapters of this report.

CURRENT STATE

It is important to remember that legal aid in BC is more than the sum of LSS's services. Since the 2002 legal aid cuts, the Law Foundation has developed a network of over 70 community advocates serving poverty law needs in over 40 locations around the province. It also funds a number of public interest law organizations (like the Community Legal Assistance Society and Pivot Legal Society), several PLEI organizations, an elder law clinic, a children's legal clinic and law student clinics at each of BC's three law schools. BC is also home to Canada's largest network of pro bono services; Access Pro Bono operates 116 advice clinics throughout the province that serve as entry points to further pro bono legal services.

17 References to "Indigenous people" in this report include status and non-status Indians (as defined by the Indian Act, R.S.C. 1985, c. I-5) First Nations, Inuit and Metis, living on and off-reserve in BC.

Still, LSS provides almost all of the publicly funded legal services in BC. It has two staff offices (one in Vancouver and another in Terrace) and 26 contracted community partners providing access to LSS services in 33 locations. It has 20 contracted local agents providing in-person legal aid services (including intake of legal aid applications) in 35 communities. Local agents also provide outreach services to 16 Indigenous communities. Client intake is available province-wide through LSS's call centre. An online application process that protects solicitor-client privilege is apparently in development.

Since 2002, LSS's PLEI services are no longer statutorily mandated. They are funded by the Law Foundation, and delivered in person by intake workers, legal information outreach workers, an Indigenous community legal worker, local agents and community partners. LSS also offers information through a number of publications and websites, including the MyLawBC website that alone had 41,271 users in 2017/18.

Criminal and family duty counsel provide legal advice in and out of courthouses across the province. Immigration duty counsel provide legal advice to detainees at the Canada Border Services Agency's enforcement centre in Vancouver. The Family LawLINE and the Brydges Line offer legal advice by telephone (the latter for people who may or have been arrested). In 2017/18, LSS lawyers assisted clients 128,091 times through these channels.

Finally, LSS offers legal representation services to financially eligible people with serious family, child protection, or criminal law problems. Legal representation is also available for people who face a refugee or deportation hearing, a Mental Health Review Panel or a BC Review Board hearing, or who have a prison issue for which the *Charter of Rights and Freedoms* establishes a right to counsel.

In 2017/18—across its criminal, family, immigration and child protection areas of service—LSS issued 26,061 legal representation contracts (down from 28,286 the year before) with 930 lawyers.

LSS GOVERNANCE

LSS is governed by a nine-member board of directors. Under the society's bylaws, the board's role is to "ensure the effective governance of the society through setting direction, monitoring performance, and hiring and supporting the executive director."[18] Of LSS's nine directors, five are appointed by the Lieutenant-Governor in Council on the recommendation of the Attorney General, and four are appointed by the Law Society after consultation with the BC Branch of the Canadian Bar Association. The directors view themselves as duty-bound fiduciaries to LSS.

Strictly speaking, the issue of LSS governance is not within the scope of this review. I mention it here only because it is connected to the issue of LSS's independence from the Ministry of Attorney General. It has some bearing on the choice of service delivery model in the criminal, immigration and child protection contexts.

18 LSS webpage, <http://lss.bc.ca/about/ourGovernance.php>.

In the past, legal aid independence from government typically meant governance by the legal profession. Law societies managed most of the provincial legal aid plans through the 1980s and 1990s, until external reviewers began recommending a move away from total law society control over legal aid. The Agg Report noted that a model where the Law Society appoints all of the members of the board "works to the extent that legal aid services are deemed to be the preserve of the legal profession. However, for 20 years, other interests have staked out 'ownership' claims. They should not be excluded."[19]

Similarly, Professor John McCamus made the case for changing the legal aid governance model in Ontario (where the Law Society of Upper Canada had administered legal aid for the previous fifty years) in his 1997 review of the Ontario Legal Aid Plan. McCamus observed that law societies themselves are not necessarily "independent" and may be more apt to protect the interests of legal aid service providers than those of legal aid clients. He noted that "it is difficult for the Law Society to insulate itself from the interests of the legal profession. The Law Society would thus face special challenges in implementing reforms to the judicare [tariff] system."[20]

From 1979 to 1996, the *Legal Services Society Act* provided for 14 LSS directors; seven directors appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General, and seven directors appointed by the Law Society. The Agg Report recommended that the *Act* be amended to create a board structure with equal representation from government, the Law Society and community law offices. In Agg's view, this solution respected the importance of the two traditional appointing authorities (government and the Law Society) while ensuring that community interests also had a voice at the board table.

The Agg Report led to changes in the 1996 version of the *Act* whereby government appointed five directors, the Law Society appointed five directors, and community organizations appointed five directors (two Native Community Law Association appointments, two Association of Community Law Office appointments and one joint appointment).

In 2002, the government amended the *Act* to its current allocation of five government appointments and four Law Society appointments.

LSS INDEPENDENCE

In consultations with criminal tariff lawyers, I heard some pointed concern that the current LSS governance structure does not provide legal aid lawyers—particularly staff and clinic lawyers if they are re-introduced—with enough protection from government influence in matters where government is the other party to litigation (i.e. criminal prosecution, immigration and child protection matters). Critics argue that without a higher degree of political insulation, legal aid lawyers may pull back on their client advocacy efforts for reasonable fear of government interference or retribution (like withdrawal of billing number or cancellation of agency funding). As Allan Fineblit once stated from experience, such a fear seems far-fetched:

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19 The Agg Report, see note 16, at p. 27.

20 Trebilcock, Michael, *Report of the Legal Aid Review, 2008*,<http://www.legalaid.on.ca/en/publications/downloads/advisorygroups/transform-poverty_trebilcock.pdf> at p. 13.

> The point is that the governance of legal aid by an independent board or commission does not ensure independence when the board membership, mandate, tariff, eligibility, staffing or funding is controlled by government. It is worth noting, however, that when most people think about the independence issue what immediately comes to mind is a telephone call from the Attorney General, to his political crony chairing the Legal Aid Board, asking her not to fund the defence of an accused in a high profile case. It never happens. In twenty years at Legal Aid Manitoba, ten of them as Executive Director, working under four different administrations and seven different Attorneys General, not once was such a call ever made, nor have I ever heard of such a call in any other Canadian jurisdiction.[21]

It may comfort the critics to know that, by percentage measure of government appointments, LSS is more independent than most Canadian legal aid plans, including plans in Saskatchewan, Manitoba, Nova Scotia and Newfoundland and Labrador that all rely heavily on staff lawyers. To my knowledge, there has been no widely reported issue of government interference in any Canadian legal aid plan. LSS considers itself to operate at arm's length from government by virtue of its statutory mandate and a transparent accountability framework that includes a regular three-year memorandum of understanding with the Attorney General. In all, the independence concern appears to be rooted in ideology more than evidence.

Still, perception can be as important as reality. A majority of board appointments does not give government any greater control over LSS operations (this is evident from the often frayed relationship between the LSS board and the Ministry of Attorney General), but it does come at a cost to perceived independence. It opens LSS and government to unnecessary criticism. This can be avoided.

At the same time, my engagements with community advocates and legal aid clients revealed a common perception that LSS leadership lacks real understanding of the complex needs of BC's low-income communities—particularly many Indigenous communities. This may not be fair to the current LSS board given that it includes several community-minded people, including some of Indigenous ancestry. But it remains a problem of at least perception for an organization that aims to be user-centred and outcome-oriented. This also can be avoided.

The LSS board should reflect a balanced representation of the interests of government, the legal profession and the communities it serves. For community interests to be heard—and seen to be heard—the board should include space for the expertise and wisdom of people who represent Indigenous communities; women's centres; anti-poverty groups; people with disabilities; immigrants and refugees; mental health providers and so forth. This is particularly the case if LSS is to help resurrect a network of community legal clinics as this report recommends.

LSS expressed to me its satisfaction with a board of nine directors. Nine was viewed as an appropriate number for purposes of management and diversity. I recognize that an odd number of directors helps to avoid deadlocked votes, but I do not view nine directors as sufficient to encompass the wide diversity of legal aid interests across BC. I recommend that government amend the *Legal Services Society Act* to provide for eleven director appointments that include:

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21 Perozzo, Ron, *A Review of Legal Aid Manitoba* (Winnipeg: Manitoba Justice, 2004) <www.gov.mb.ca/justice/publications/pubs/legalaidreviewfinal.pdf>, at p. 69.

- four appointments by the Lieutenant Governor in Council, on the recommendation of the Attorney General;
- four appointments by the Law Society, after consultation with the BC Branch of the Canadian Bar Association; and
- three appointments by frontline community service organizations with province-wide reach, including two organizations specifically serving Indigenous people.

I point to the Native Courtworker and Counselling Association of BC, the BC Aboriginal Justice Council and PovNet as examples of community organizations that could be called upon to serve as appointment bodies in the latter category.

RECOMMENDATION 8

Amend the *Legal Services Society Act* to provide for the following framework for eleven director appointments:

- four appointments by the provincial government;
- four appointments by the Law Society of BC; and
- three appointments by frontline community service organizations, including two organizations specifically serving Indigenous people.

LSS ADMINISTRATION

At the end of its 2017/18 fiscal year, LSS had 163 employees (full-time equivalents). It had annual revenues totaling $84.6 million and annual expenses totaling $86 million. The provincial government provided $80.7 million in annual funding to LSS, with the remaining $3.9 million coming from the Law Foundation, the Notary Foundation and a few other sources. The $86 million in annual expenses included $59.2 million in tariff costs, $12.9 million for salaries and benefits, $2.8 million for building and amortization, and $11.1 million in other costs. The tariff expenses include payments to the private bar, direct service contracts (e.g. community partners, legal information and outreach workers), and an allocation for both public services and tariff administration costs.

The issue of LSS's administration costs came up more than a few times in my consultations and submissions. Several contributors shared the view that LSS carries heavy administration costs out of proportion to the services it provides. I was unable to substantiate these views. LSS management is very adept at budgeting to the dime, and there is no outward indication of wasteful spending. The organization's 2017/18 financial statements show "Total administration" costs of $9.3 million, including $1.4 million in "Executive Office" costs and $3.4 million in "IT Services" costs.

LSS was occasionally described as "top-heavy" in its staff structure, and there was some speculation that its Information Technology service costs are too high for the value they provide to the organization's mission. Again, I could not substantiate these views. Each year, the total of LSS's categorized administration costs are roughly in line with the 10% budgeting threshold that the Law Foundation and other funders demand of legal non-profit organizations.

That said, LSS also lists "Tariff administration" costs under its financial Summary Tables for most of its service areas: roughly $2 million for Criminal Services; $756,863 for Family Services; $361,201 for Child Protection Services; and $122,757 for Immigration and Refugee Services. These amounts are above and beyond the costs allocated to lawyer fees and disbursements, which are separately budgeted. If the roughly $3.3 million total of "Tariff administration" costs was added to the organization's "Total administration" costs of $9.3 million, the sum would be $12.6 million or about 15 percent of its overall budget.

LSS was made aware of these concerns, and responded to this review as follows:

> The BC government mandates that government organizations such as LSS follow Public Sector Accounting Board (PSAB) reporting standards for their audited financial statements.
>
> In compliance with PSAB reporting standards, and as approved by LSS's independent auditors, LSS's administrative expenses are those costs not directly related to the delivery of specific legal aid services. These costs include: the executive office and board, strategic planning, policy development, financial management, office administration, information technology, human resources and amortization.
>
> Consistent with PSAB reporting standards, costs related to the delivery of services provided by lawyers in criminal, family, child protection and family cases (referred to as "tariff services"), including "public services" (client intake) and "tariff administration" (invoicing and payment) are included in the cost of the specific service.

LSS appears to be abiding by the applicable reporting standard. I am not equipped to comment on whether administrative expenses ought to be calculated in a different way, so I simply leave this as an issue for possible investigation.

In the summer of 2014, the professional services firm of Ernst & Young conducted a study on how BC's "Service Delivery Crown Corporations" might share services in order to reduce costs. The study compared the operational costs of several BC Crown agencies like LSS, PavCo, BC Housing, BC Transit and Knowledge Network. In almost every cost category, LSS compared favourably to its peers. The notable exception was the category of real estate leasing costs, where LSS was a distinct outlier on account of its relatively expensive office space in the heart of Vancouver's central business district.

It is difficult for me to determine where LSS expenses are justified or unjustified. Overall, the organization has a good reputation for skilled and efficient management of its resources. To some degree, this is a matter of perspective. For someone accustomed to the costs and circumstances of a downtown Vancouver law firm, LSS's operational costs likely seem very modest. For someone (like me) more accustomed to the costs and circumstances of a frontline legal non-profit organization, the same operational costs seem somewhat extravagant. This speaks to the severe under-resourcing of BC's frontline legal service sector more than anything. But it does go to show that LSS can find greater operational cost-efficiencies.

RECOMMENDATION 9

Engage the Office of the Auditor General to perform a value-for-money audit of LSS operations.

5. PLEI Services

Public legal education and information (PLEI) services help people to understand their legal rights and responsibilities, take early steps to address their legal problems, and find their way through the legal system. PLEI services improve legal literacy and capability within communities.

By most measures, BC is the national leader in PLEI services. As a review contributor from outside the province put it, "BC has an embarrassment of PLEI riches." This bittersweet description is apt because the provincial PLEI situation is vibrant and robust in terms of accessibility and range of service. But it is not so positive in terms of cost.

PLEI IN BC

There are no less than four major PLEI organizations in BC:

- Courthouse Libraries BC
- People's Law School
- Justice Education Society
- Legal Services Society (LSS)

They are each venerable organizations with somewhat different missions, and they each produce high-quality PLEI materials.

COURTHOUSE LIBRARIES BC

Formed in 1975 as the BC Law Library Foundation, Courthouse Libraries BC operates 28 law library branches in courthouses around the province. It serves as a lead curator of legal information in BC, and as a physical and online hub for legal and library communities. Its signature PLEI offering is Clicklaw—an online portal that helps British Columbians find relevant legal information, educational resources and services from over 40 contributor organizations.

PEOPLE'S LAW SCHOOL

People's Law School was established in 1972. It produces a range of free legal education resources in print and online formats to help British Columbians solve "everyday legal problems." It also offers live legal education classes in communities around the province. The classes are led by lawyers, notaries and other experts.

JUSTICE EDUCATION SOCIETY

The Justice Education Society was established in 1989 as the Law Courts Education Society. It offers live and online legal education programs to improve legal capability and to increase access to justice in BC and around the world. It also offers a wide array of digital legal information resources for people facing legal problems. Its signature PLEI offering is Ask JES—an online chat, email or telephone portal with legal information and advice in several areas of law.

LEGAL SERVICES SOCIETY

LSS has provided PLEI services since its incorporation in 1979. Its suite of PLEI services includes a family law website, an Indigenous legal aid website, a large catalogue of online and print publications, and information and referrals from contracted outreach workers and partner agencies. Its signature PLEI offering is MyLawBC (briefly described in Chapter 2: First Principles). MyLawBC is an online portal with guided pathways for resolving specific legal problems.

For many years, the four organizations developed projects in relative isolation from one another. This resulted in some expensive duplication of effort. Around 2014, the Law Foundation attempted to broker a merger of the People's Law School and the Justice Education Society. Although the merger attempt failed, it appears to have provoked better service coordination.

That said, over the course of my review, several advocates and lawyers expressed confusion about where to send clients who have legal information needs. In LSS's 2016/17 tariff lawyer satisfaction survey, 68 percent of respondents supported LSS taking an "integrated or holistic approach to providing legal aid services." But only 25 percent of respondents agreed with the statement, "I am satisfied with the level of support LSS gives me so I can help clients address their related legal issues."

In the PLEI context, it is challenging to make effective client referrals, but not for the lack of options. The sheer diversity of BC's PLEI services can overwhelm users. Work must be done to integrate and communicate PLEI service options so they are more coherent and approachable as a whole. The PLEI sector requires more user-centred analysis and further rationalization—even if the task is daunting.

RECOMMENDATION 10

Support an external governance review of the provincial PLEI sector to establish clear organizational roles and accountabilities, and to streamline PLEI service delivery options from a legal aid user's perspective.

LSS BEFORE 2002

LSS's engagement in PLEI service provision stems from the original *Legal Services Society Act*, which included the mandate to "provide education, advice, and information about the law for the people of British Columbia."[22] In the 1980s and 1990s, LSS viewed PLEI as an essential component of province-wide service delivery. Its wide-ranging PLEI developments included:

- a Legal Resource Centre that provided legal information services to community partners, and to the public via a telephone hotline (the now defunct LawLINE);
- a Native Programs Department that delivered customized PLEI services to Indigenous people in partnership with Indigenous community law offices; and
- a Public Legal Education Program that supported community-based, law-related initiatives through a small grants program, and fostered working relationships with frontline community organizations to serve their legal information needs.

22 *Legal Services Society Act*, R.S.B.C. 1979, c. 227, s. 3(1)(b).

LSS's PLEI services relied heavily on collaboration and a two-way community engagement strategy. For example, the Legal Resource Centre created an institutional partnership with BC's public library system to provide province-wide public access to appropriate legal information and referral services. In 1997, LSS helped to create PovNet—an effective online communications network for BC anti-poverty advocates—in collaboration with anti-poverty advocates and publicly funded poverty-law practitioners. Twenty-two years later, PovNet serves as the communications backbone for frontline advocates throughout BC.

LSS AFTER 2002

After the 2002 funding cuts and *Legal Services Society Act* changes—when several dozen LSS branches, community law offices and Indigenous community offices were closed—LSS lost vital community connections around the province. At the same time, PLEI became the primary way to serve legal needs in areas of law that had been previously served by legal representation (e.g. poverty law and most aspects of family law and immigration law). LSS shifted its main PLEI service approach from community-based in-person service to centralized technology-based service (e.g. LawLINE hotline service, LawLINK online portal). With the loss of its community law offices and poverty-law representation services, LSS soon became invisible to many community organizations and people dealing with non-criminal matters. Seeking to re-establish these community connections and refer more people to its centralized legal information resources, LSS created these new community-based roles for staff and contract service providers:

- legal information outreach workers (LIOWs) and Aboriginal community legal workers (ACLWs) who provide information and outreach services from a limited number of community offices (currently Vancouver, Terrace and Prince Rupert for LIOWs, and Nanaimo and Duncan for ACLWs);
- community partners (currently 26 contract service agencies in 33 locations) who provide legal information and referrals in smaller BC communities; and
- local agents (currently 20 contract lawyers serving 35 communities previously served by regional centres) who process legal aid applications, provide legal information and referrals, assign legal aid cases to local tariff lawyers, and schedule local duty counsel.

Today, LSS also provides legal education and information to community agencies via its Community and Publishing Services department. This department develops print and online public legal education resources, and holds legal education workshops and conferences around the province for its LIOWs, ACLWs, community partners and other frontline workers.

RESOURCING CLINICS

This report recommends (in Chapter 8: Civil (Poverty) Services) the development of an integrated network of independent community legal clinics. These clinics would provide services covering poverty law and family law, as well as more specialized needs, such as legal issues arising in refugee claims, child protection, and mental health.

This report also recommends (in Chapter 7: Indigenous Services) the development of integrated Indigenous Justice Centres by Indigenous-led organizations. The advent of such a wide-ranging community legal clinic system will bring many opportunities for agency integration and collaboration,

along with many challenges to sharing legal education and information. By virtue of its past and current PLEI structures, LSS is ideally positioned to foster effective service and knowledge integration across the clinic network.

In some ways, supporting a new network of community legal clinics will only require LSS to restore its pre-2002 community engagement programs to work alongside its current programs. Updated versions of its former Legal Resource Centre and former Native Programs Department (essentially its current Indigenous Services Department) can be combined with its current Community and Publishing Services department to serve community legal clinics quite well.

For added value, a new two-way community engagement strategy should incorporate a much lighter version of Legal Aid Ontario's Clinic Resource Office. There, staff lawyers prepare legal research memoranda, maintain a clinic legal information portal, annotate crucial legislation with important poverty law cases, and generally assist Ontario's 74 community legal clinics to serve client needs and pursue law reform.

In the early stages of clinic redevelopment across BC, LSS should resurrect the Legal Resource Centre as an online repository of curated pleadings, letter templates, research memoranda and other practice aids for use and refinement by clinic lawyers and advocates.

LSS should develop and support a new Clinic Resource Centre by redistributing current resources. LSS budgeted $1,820,500 for 20 local agent contracts in 2017/18 ($91,025 per contract). Once community agencies begin to add family and poverty lawyers to their staff components, community partner and local agent service roles should be given to agencies to manage at much less cost. Embedding LSS information service roles in community legal clinics should increase service visibility and promote inter-agency collaboration.

RECOMMENDATION 11

Create a Clinic Resource Centre within LSS to communicate with a new network of community legal clinics, to gather and dispense collective knowledge and expertise, to inform responsive development of PLEI materials, and to promote inter-agency awareness and collaboration.

6. Family Services

Family law has long been the area of greatest unmet need for legal services in BC and throughout Canada. According to Statistics Canada's Civil Court Survey, there were 57,407 active family law proceedings in BC's trial courts in 2016/17.[23] Despite the frequency of their contact with the justice system, most families in relationship breakdown are unable to access legal representation. The federal Department of Justice estimates that between 50 and 80 percent of litigants are self-represented when they appear in court for family law matters.[24] At the BC Court of Appeal, 46 percent of family law appeals filed in 2016 involved at least one self-represented litigant.[25]

AN ISSUE OF EQUALITY

Women suffer disproportionately from inadequate access to family legal services. In January 2018, LSS confirmed that approximately 70 percent of family legal aid applications are made by women;[26] however, 55 percent of all family legal aid applications are refused.[27] Access to family legal aid is clearly an equality issue.

Women are more likely to have sacrificed education and employment opportunities to take on larger portions of the parenting responsibilities at home, and they are more likely to continue to be primary caregivers to children after relationship breakdown. Without access to legal advice and representation, women are less able to pursue support claims that may be critical to keep them and their children out of poverty.[28] The situation is worse for women living in rural and remote communities who often experience greater physical abuse and greater frequency of violence, yet remain trapped in abusive relationships longer than their urban counterparts. They face the additional obstacles of isolation from in-person legal aid services, lack of available family lawyers, and professional conflict-of-interest issues in small communities.[29]

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23 Statistics Canada, "Civil court cases, by level of court and type of case, Canada and selected provinces and territories 2016/17" (April 18, 2018) online: Statistics Canada <http://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510011201&pickMembers%5B0%5D=1.6&pickMembers%5B1%5D=2.1&pickMembers%5B2%5D=3.3>.

24 Department of Justice, Research and Facts Division, "Self-Represented Litigants in Family Law: Fact Sheet" (June 2016) online: Department of Justice <http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html>.

25 "Court of Appeal Annual Report 2016" (2016) online: BC Court of Appeal <http://www.courts.gov.bc.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2016_CA_Annual_Report.pdf> at 14.

26 Mulgrew, Ian, "Stretched legal aid living on hope in B.C." *Vancouver Sun* (January 7, 2018) online: Vancouver Sun <http://vancouversun.com/news/national/ ian-mulgrew-stretched-legalaid-living-on-hope-in-b-c>.

27 *Legal Services Society 2017/18 Annual Service Plan Report.* July 2018. http://lss.bc.ca/assets/aboutUs/reports/annualReports/annualServicePlanReport_2017.pdf

28 Track, Laura, Shahnaz Rahman, and Kasari Govender "Putting Justice Back on the Map: The route to equal and accessible family justice" (Vancouver: West Coast LEAF, February 2014) online: West Coast LEAF <http://www.westcoastleaf.org/wp-content/uploads/2014/10/2014-REPORT-Putting-Justice-Back-on-the-Map.pdf> at 13.

29 Eileen Skinnider and Ruth Montgomery, "Enhancing Access to Justice for Women Living in Rural and Remote Areas of British Columbia: Reviewing Practices from Canada and Abroad to Improve Our Response" (Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy, 2018) online: ICCLR < http://icclr.law.ubc.ca/wp-content/uploads/2018/09/BCLF-WA2J-Report-Final.pdf> at 9.

SHIFT TO NON-ADVERSARIAL VALUES

In its 2013 report, *Meaningful Change for Family Justice – Beyond Wise Words*, the Family Justice Working Group (the "FJWG") of the Action Committee on Access to Justice in Civil and Family Matters presented its vision of a more accessible and effective family justice system for all Canadians, and particularly for women. It outlined nine guiding principles for change that mesh well with the underlying principles of this report, and are worth presenting here in full:

- **Minimize conflict** - Programs, services and procedures are designed to minimize conflict and its negative impact on children.
- **Collaboration** - Programs, services and procedures encourage collaboration and CDR is at the centre of the family justice system, provided that judicial determination is readily available when needed.
- **Client Centred** - The family justice system is designed for, and around, the needs of the families that use it.
- **Empowered families** - Families are, to the greatest extent possible, empowered to assume responsibility for their own outcomes.
- **Integrated multidisciplinary services** - Services to families going through separation and divorce are coordinated, integrated and multidisciplinary.
- **Early resolution** - Information and services are available early so people can resolve their problems as quickly as possible.
- **Voice, fairness and safety** - People with family justice problems have the opportunity to be heard, and the services and processes offered to them are respectful, fair and safe.
- **Accessible** - The family justice system is affordable, understandable and timely.
- **Proportional** - Processes and services are proportional to the interests of any child affected, the importance of the issue, and the complexity of the case.[30]

Informed by these principles, the FJWG made several recommendations for changing how and when legal services are delivered to families dealing with relationship breakdown. They identified collaboration and early resolution as service approaches that particularly help to minimize the cost and duration of a dispute, and mitigate the possibility of protracted conflict. The FJWG encouraged a fundamental shift of resources and services to the "front-end" of the family justice system, so that legal service providers spend less time and resources on supporting litigation, and more on services and non-adversarial processes to help families resolve their legal problems quickly and affordably.

LSS FAMILY SERVICES

The systemic shift toward more collaboration and early resolution services occurred as LSS was reimagining its family services (and other services) to support an increasingly outcomes-focused justice system in BC. In 2012, the Attorney General of BC asked LSS to provide advice on a number of issues, including new legal aid service delivery models that assume no funding increase. This led to the development and/or expansion of more cost-effective family service models beginning in 2013, including enhanced family and child protection duty counsel services, unbundled family services, and

30 *Meaningful Change for Family Justice – Beyond Wise Words*, the Family Justice Working Group, April 2013.

telephone advice services (i.e. Family LawLINE). Along with PLEI services and the family tariff for legal representation in "serious family situations," these services essentially comprise the range of family services that LSS provides today.

FAMILY REPRESENTATION SERVICES

LSS issues family representation contracts to tariff lawyers in cases where low-income applicants' safety or the safety of their children is at risk, when they have been denied access to their children on an ongoing basis, or where there is a risk that their children will be permanently removed from the province. Tariff lawyers are allocated 35 hours of general preparation time (increased from 25 hours with new funding in early 2018), and an additional ten hours for preparing for a Supreme Court matter, out-of-court dispute resolution, or issues related to matrimonial real property on reserve.

Extended family services are available for clients whose primary legal issues require more time than was given in the initial representation contract. The extended family services are contingent upon assessed merit, available budget, and whether the clients or their children would be left at significant risk if coverage were ended.

In late 2018, LSS made limited family representation (i.e. unbundled service) contracts available to legal aid applicants who have financial security issues and do not meet the coverage guidelines for a full representation contract. To qualify for unbundled family service, clients must need legal assistance to effectively negotiate a settlement or represent themselves in a matter.

In 2017/18, LSS received a total of 7,261 applications (now called "service requests") for family representation, and issued 3,276 contracts (i.e. 45 percent of the time). The family contract issue rate is considerably less than for criminal (79 percent), immigration (76 percent) and child protection contracts (73 percent) in the same year.[31] It is also down from 50 percent in 2016/17. Among other factors, the relatively low family contract issue rate is a result of an inconsistent supply of tariff lawyers and the rationing of LSS resources by more restrictive application of client-eligibility criteria.

INTAKE AND CASE MANAGEMENT

Many review contributors expressed dissatisfaction with how LSS staff exercise their discretion to accept or deny applications for service. Some frontline advocates who assist clients to make legal aid applications voiced concern that LSS intake decisions are often inconsistent and arbitrary. They encouraged LSS to post its Intake Policies and Procedure Manual on its website for easy public reference. They also encouraged LSS to relax its document requirements, which they perceived to create unnecessary barriers to service for more marginalized clients.

Many of these concerns would be satisfied or at least mitigated by the development of an online client portal (as recommended in Chapter 2: First Principles) where applicants, advocates or other intermediaries could preload application information for quick and cost-efficient vetting by LSS intake staff. A client portal could also provide real-time feedback on the status of an application, and brief

31 Legal Services Society 2017/18 Annual Service Plan Report. July 2018. <http://lss.bc.ca/assets/aboutUs/reports/annualReports/annualServicePlanReport_2017.pdf>.

hyper-linked reasons for confidential intake decisions. Overall, it would provide greater transparency to client intake processes.

As supply-side legal aid users, some tariff lawyers were critical of the quality and speed of LSS staff response to their case management requests. Several lawyers commented on the rigidity of the LSS Online system, the extensive time and effort required to pursue basic authorizations (particularly for lawyers without administrative support), the lack of legal knowledge applied to their case management issues, and a less than cooperative staff approach to fielding time-sensitive queries. One lawyer described the approach as "punitive." Another lawyer reflected on the relationship with LSS as follows:

> I think there needs to be a better relationship of trusting each other—both ways between LSS and the lawyers who take the files. Because there isn't much trust. It always seems like a battle. It would really help to build goodwill if we all acted like we're in this together.

Any external review of a large bureaucracy will attract a generous amount of constructive criticism. People are more likely to provide complaints than accolades. The complaints that I received about LSS were almost always qualified with praise for their wider accomplishments. For example, tariff lawyers generally viewed LSS Online as a positive development, despite some commonly perceived weaknesses; this is reflected in its increased satisfaction ratings in LSS's 2016 Tariff Lawyer Survey.[32] Still, the same survey showed growing dissatisfaction with the "Case Management – Authorizations" aspect of LSS Online, with the top concern relating to "poor or no explanations about decisions."

FAMILY DUTY COUNSEL

LSS's Family Duty Counsel (FDC) provide brief in-person legal advice to clients with family law issues in courthouses throughout the province. FDC can provide advice about parenting issues, guardianship/custody, child support, tentative settlement agreements, court procedures, and property issues (to a limited extent). FDC can also speak on a client's behalf in court for simple matters. They provide a maximum of three hours of service per client, and they cannot represent clients at trial.

Provincial Court FDC attend courthouses on list days (sometimes called first appearance or remand days). They give priority to financially eligible people who are in court that day, either on the court list or to make emergency court applications. Once court ends, they can provide advice on a drop-in basis to people who are not appearing in court that day. Supreme Court FDC can assist people in Supreme Court Chambers if the matter is simple, unopposed or by consent. They can also attend a case conference.

Expanded FDC were introduced to the Victoria courthouse in 2014 as a pilot project. They have since been introduced to courthouses in seven other BC cities. Expanded FDC make efforts to schedule one-hour appointments (with the help of two dedicated administrators) so that clients may work with the same lawyer over their maximum six hours of service, thereby providing greater service continuity. Expanded FDC are also able to instruct or "coach" clients on aspects of the court process, such as how to address the judge and present the case.

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32 2016 LSS Tariff Lawyer Survey <http://lss.bc.ca/assets/aboutUs/reports/lawyers/tariffLawyerSatisfactionSurvey2016.pdf>.

The FDC service model is widely valued. Justice system users—including judges, lawyers, advocates and litigants—have particularly high regard for the contributions of Expanded FDC. A formal evaluation of the Victoria pilot reported very high levels of client satisfaction:

> Clients … expressed a high level of satisfaction, with 83% of respondents saying that they were either very satisfied (51%) or satisfied (32%) with the help and support they received from the FDC. As well, 91% of respondents said that they felt treated with respect by the duty counsel and 85% said they felt the duty counsel listened to them and took the time to understand their legal issues.[33]

The same evaluation found that litigants were coming to the court registry and court with better-prepared documents, and that assistance from Expanded FDC resulted in a noticeable decrease in unnecessary court appearances.[34] It also found that the pilot had the potential to save $50,000 to $250,000 in annual court costs, depending on whether it could effect a 10% to 50% reduction in court time by diverting cases and reducing appearances. The Victoria pilot cost $277,039 in 2015/16, and served 1,290 clients (a $215 cost per client). From a system-wide perspective, Expanded FDC almost has the potential to pay for itself.

The FDC service model also has its critics. I heard from a few FDC and other tariff lawyers who reported seeing FDC use their interactions with FDC clients to generate regular tariff work or private retainer work. They also perceived cronyism and repeated favouritism in how FDC contracts are assigned, including local agents repeatedly assigning "cold referrals" (i.e. clients who do not exercise their choice of counsel) to friends and associates over other available lawyers. They suggested that all cold referrals be assigned to FDC and regular tariff lawyers on a purely rotational basis.

I could not find any evidence of favouritism in LSS contract assignment, despite receiving multiple reports. Some local agents and LSS staff did explain to me that it is occasionally helpful to match client needs to the skills and attributes of specific lawyers. This makes sense. However, for the sake of greater transparency and lawyer trust in LSS systems, I encourage the adoption of a rotating roster system of client referral where exceptions to the rotation can be made and clearly documented for purely user-centred reasons.

FAMILY LAWLINE

Family LawLINE is a service that provides brief family law advice over the telephone for eligible clients during business hours. Tariff lawyers give clients up to six hours of "next step" advice about family law issues like parenting time, spousal and child support, family violence or protection orders, child protection, and court procedures. Clients access the province-wide service through LSS's call centre, and tariff lawyers connect to provide advice from a VoIP telephone in their private office. The service team includes a lead lawyer, two or three administrators, and a roster of 13 to 15 roster lawyers who provide client service for a typical minimum of six to eight hours (split between two shifts) per week.

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33 Evaluation of the Expanded Family Duty Counsel Summative Evaluation Report, p. 38. July 2016 <http://lss.bc.ca/assets/aboutUs/reports/EXPFDCSummativeFinal.pdf>.

34 Evaluation of the Expanded Family Duty Counsel Summative Evaluation Report, see note 33, at p. 30.

In a 2016 evaluation of the service, 85 percent of Family LawLINE clients reported being satisfied with the help and support they received, and 55 percent reported being very satisfied. Family LawLINE clients were considerably more likely to have resolved all or some of their issues out of court without a trial than through an order from a judge after a trial. On the downside, the service suffered slightly from lack of public awareness and under-utilization. It also lacked meaningful integration with other free or low-cost family legal service providers in the province.

To the extent that they were aware of the service, review contributors were quite positive about Family LawLINE. They encouraged greater publicity for the service, and expansion of its availability into evenings and weekends when working people are better able to find time to address and resolve their legal problems.

RECOMMENDATION 12

Broaden availability of expanded duty counsel and Family LawLINE services to improve access and convenience for working people and their families.

SERVICE QUALITY

In *Meaningful Change for Family Justice – Beyond Wise Words*, the FJWG described the field of family justice as the "poor cousin" in the justice system—one that is "regarded as an undesirable area of practice by some lawyers and law students."[35] The FJWG further observed that family law has been "de-emphasized by law schools, in favour of subjects more attractive to large law firms and global practice." The cultural devaluation of family law has contributed to fewer lawyers practising in the area, and tighter budgeting for family legal aid.

The Honourable Donna Martinson commented on this troubling phenomenon in her submission to this review:

> This devaluing of family law is difficult to understand. It deals with issues that profoundly affect Canadian families. It is perhaps the area of the justice system with which people come into contact the most and by which they form their views about whether the justice system is in fact fair and just. Though family law proceedings are private, in the sense that "the state" is not a party to the proceedings, as in criminal proceedings or child protection proceedings, there is a significant public interest in having both processes and outcomes that are fair and just and that effectively address the pressing issue of family violence and its impact.

In serving the public interest, legal aid plans are forced to contend with a growing demand for family legal aid services while the supply of family lawyers diminishes. These market dynamics make it difficult to entice family lawyers to provide legal aid on any basis other than benevolence. Most experienced family lawyers are reluctant to do tariff work at $92 per hour when they could be collecting several times that amount in regular practice. The pay gap is immense, and even wider than for criminal lawyers. Many review contributors remarked on how the growing opportunity costs of family tariff work have contributed to declining quality of service. A few lawyers speculated that some of their colleagues only

35 *Meaningful Change for Family Justice – Beyond Wise Words*, the Family Justice Working Group, April 2013 at 13.

engage in tariff work because they struggle to find private clients. They told stories of tariff lawyers who "pump and dump" legal aid files, i.e. they serve legal aid clients up to the maximum paid time under contract and then abruptly move on to the next file. These stories were invariably qualified by a statement that the vast majority of family tariff lawyers are very dedicated and professional. Overall, I was left with the impression that most family tariff lawyers view legal aid as a form of community service; they are motivated less by money and more by professionalism and the desire to help others.

SERVICE CAPACITY

Outside of the Metro Vancouver area, the changing demographics of the BC bar present significant challenges to sustaining capacity for family legal aid service, much less building capacity. The rural bar is aging out of practice, and many young lawyers are servicing large student debts that limit their ability to take on low-paying work. That said, LSS statistics show that in 2006/07, the median years of call for family tariff lawyers was 14.1 years. In 2016/17, it was 9.6 years. Over those ten years, the number of issued contracts dropped from 5,270 to 4,710.

LSS staff were candid in reporting their struggles to fill FDC shifts at sixteen courthouse locations, including urban centres like Kamloops, Kelowna, Nanaimo and Prince George. They provided a list of reasons for these struggles: low tariff rates, well-paying private work, lack of local family lawyers, retirements, illnesses and deaths. They also noted an emerging issue as hiring by new Parents Legal Centres is drawing down talent in local FDC pools. This is interesting because it suggests that at least some local family lawyers are willing to move from private practice—with all of its potential to pay them very well—to a more secure but generally lower-paying staff lawyer position.

To fill FDC shifts at some locations, LSS pays a travel fee to out-of-town lawyers. Vancouver and Prince George lawyers, for instance, are flown into Dawson Creek and Fort St. John. Williams Lake and 100 Mile House lawyers are brought over to Quesnel. Victoria lawyers travel to Duncan. Some communities like Hazelton and Houston simply do without FDC altogether.

To build new capacity for service, LSS engages in ongoing FDC recruitment and training. Despite these efforts, LSS staff believe they are losing the battle against FDC attrition. They view their current strategy of transporting FDC to underserved communities and recruiting new FDC as expensive and unsustainable.

COMMUNITY LEGAL CLINICS

It is clear to me that BC's legal aid sector must exert greater control over the market forces that determine capacity for family legal aid service. This should be done using a mixed model of service delivery. It should involve clinical teams of staff lawyers and advocates supported by regional tariff lawyers (much like the Mental Health Law Program profiled in Chapter 3: Service Delivery Models). And it should be built up and rolled out on an iterative and scalable basis—community by community, as opportunities and needs demand.

The prototypical community legal clinic would have independent governance and provide a mix of family and poverty law services. It would have a modular structure with a full- or part-time family lawyer

and one or two family law advocates on one team, and a full- or part-time poverty lawyer and one or two poverty law advocates on the other. The service teams would share client information and administrative support. The separation of service teams along areas of law is critical, since Ontario's experience was that community legal clinics that combined the two areas of service were soon overwhelmed by family law matters to the detriment of their poverty law services.

The family law team would receive funding from the Ministry of Attorney General via LSS (with all of the same accountability structures as the Mental Health Law Program). It would be fully integrated with LSS services, and refer clients to a roster of regional tariff lawyers as needed. The family lawyer could take on local agent and FDC roles. Its advocate roles could evolve as the Law Society's licensing structure allows.

The poverty law team would also receive funding from the Ministry of Attorney General but via the Law Foundation (with all of the same accountability structures as current Law Foundation-funded agencies – see Chapter 9: Civil (Poverty) Services). It would receive PLEI support from LSS's Community Resource Centre (as recommended in Chapter 5: PLEI Services).

The exact staffing and service priorities for each community legal clinic would be guided by local needs and circumstances. They would be encouraged to adopt multidisciplinary and collaborative approaches to service delivery. At present, there are several Law Foundation-funded agencies—in areas underserved by family legal aid services—that have the necessary infrastructure, expertise and community trust to operate this mixed model of service delivery. Examples are Fort St. John Women's Centre, Ki-Low-Na Friendship Centre in Kelowna, and Active Support Against Poverty in Prince George. The model could also be operated by an Indigenous Justice Centre (see Chapter 7: Indigenous Services).

My consultations with law students and lawyers give me confidence that many skilled family lawyers would be enticed by a stable and varied public interest legal position with a forward-thinking community legal clinic—even at a relatively modest salary. I am also encouraged by the fact that West Coast LEAF recommended a similar "in-house counsel" model for holistic service delivery in its 2014 report, *Putting Justice Back on the Map*.[36]

RECOMMENDATION 13

Fund and support an integrated network of independent community legal clinics with modular teams of lawyers and advocates providing family law and poverty law services.

36 Track, Laura, Shahnaz Rahman, and Kasari Govender "Putting Justice Back on the Map: The route to equal and accessible family justice", see note 28.

7. Indigenous Services

The crisis in overrepresentation of Indigenous people in state custody is perpetual and ongoing across Canada. The first of the Truth and Reconciliation Commission's 94 Calls to Action calls upon federal, provincial, territorial and Indigenous governments to commit to policy and justice reforms that will reduce the number of Indigenous children in care. It is followed by calls to eliminate the overrepresentation of Indigenous youth and adults in the criminal justice system by 2025.[37]

In his 2016 report, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions,* Grand Chief Ed John called for more collaborative efforts to increase access to justice for Indigenous families in BC:

> What I heard resoundingly through my engagement with Indigenous people and communities was that the justice system in Canada, and in particular court proceedings in BC, are not serving the best interests of Indigenous children and youth, and that improving access to justice for Indigenous people must be something we all work together to collectively address in order to see meaningful improvements in the child welfare system.[38]

Canada's federal, provincial and territorial governments have all pledged to implement the TRC's Calls to Action. The BC government has also committed to implement all 85 recommendations from Grand Chief Ed John's report. But time is ticking down to 2025, and I was told by numerous Indigenous service providers and lawyers who serve Indigenous clients that—despite all of the government-level commitments to positive change—there has been no discernible change in outcomes for most Indigenous individuals and families at the ground level.

DISADVANTAGE AND TRAUMA

Last year, Canada's Correctional Investigator reported that between 2007 and 2016, as the federal prison population increased by less than five percent, the Indigenous prison population increased by 39 percent.[39] Also, while Indigenous people made up less than five percent of the Canadian population in 2017, they comprised 26 percent of the total federal inmate population, and 38 percent of the federal female inmate population. Many of these incarcerated women have young children, so the cycle of disadvantage continues.

Indigenous service providers told me that the most common route to incarceration passes through the provincial child welfare system. There are now more Indigenous children in care in BC (56 percent of all children in care) than there were at the height of the residential schools era. In northern BC, Indigenous children count for more than 80 percent of all children in care.

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37 Truth and Reconciliation Commission of Canada, "Calls to Action" <www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf>

38 John, Grand Chief Edward, *"Indigenous Resilience, Connectedness and Reunification,"* <http://fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf>, p. 87.

39 Annual Report of the Office of the Correctional Investigator 2016-2017 <www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20162017-eng.aspx#s5>.

Indigenous people in BC are much more likely than non-Indigenous people to be criminalized and imprisoned for offences related to personal histories that include poverty, mental health issues, substance abuse, and trauma from physical and sexual abuse. At the same time, Indigenous people in BC are much more likely than non-Indigenous people to be victims of crime, to suffer systemic discrimination and to have traumatic interactions with the provincial child welfare system.

BC's sorrowful legacy of colonialism, residential schools, the Sixties' Scoop, and a culturally biased child welfare system continues to inflict intergenerational trauma on Indigenous communities across the province. This cultural context presents many challenges in delivering effective legal aid services to Indigenous people.

CONCEPTIONS OF JUSTICE

In Canada, Indigenous people and people of predominantly European ancestry often have very different conceptions of justice. The mainstream "Euro-Canadian" approach to justice can be frightening, alienating and discriminatory to Indigenous people. The BC First Nations Justice Plan, written in 2007, explained the conceptual difference this way:

> There are key differences in the way that First Nations and Canadian society view justice. Primarily, society as a whole tries to control actions it considers potentially harmful, and the key focus of justice policies is on punishment of the person to protect society and to prevent re-occurrence of the behaviour. However, First Nations view justice as a way to restore the peace and balance within the community; there is a sense that the entire community has been affected and that reconciliation needs to occur with everyone involved: the accused, the victim, and the community. This difference in perspective challenges the appropriateness of the present legal and justice system for First Nations.[40]

To bridge this cultural divide, legal aid plans must work with Indigenous communities and organizations to ensure the cultural safety, acceptance and credibility of their services. Cultural safety refers to a safe environment where there is no assault on, challenge to, or denial of a person's Indigenous identity. The people best able or equipped to provide a culturally safe environment are people from the same culture as those they serve. This means that legal aid for Indigenous people must be Indigenized; it must be provided in a way that reflects Indigenous cultural values, and actively involves Indigenous peoples and organizations in service design and delivery.

LSS INDIGENOUS SERVICES

As previously mentioned in this report, LSS has made impressive progress in Indigenizing relevant aspects of its operations. It established an Indigenous Legal Services department that is led primarily (if not exclusively) by Indigenous people. It created a Reconciliation Action Plan that sets out the Society's strategy for Indigenous services. It has a hiring policy requiring its number of Indigenous staff to be proportional to the number of Indigenous clients that it serves. LSS clients who self-identify as Indigenous comprise 41 percent of its child-protection clients, 33 percent of its criminal law clients and 23 percent of its family law clients.

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40 <http://nccabc.ca/wp-content/uploads/2016/06/BC-First-Nations-Justice-Plan-2007.pdf>.

In 2017/18, LSS served its Indigenous clients in the following ways:

- Funded 131 Gladue reports for Indigenous clients for sentencing hearings;
- Developed new publications about Gladue submissions and Gladue reports;
- Assisted clients 1,338 times through its Aboriginal Community Legal Worker in the Nanaimo area;
- Supported existing First Nations Courts by providing honoraria for Elders, providing dedicated duty counsel, and hosting an Elders Conference; and
- Opened a new Parents Legal Centre (PLC) in Surrey (LSS currently operates six PLCs in the province).

Review contributors generally applauded the expansion of LSS's Indigenous services, and the overall trend of increased funding and focus on serving Indigenous people by way of Gladue reports, First Nations Courts (sometimes called Gladue courts) and PLCs. However, several lawyers who serve Indigenous clients had less regard for the same services, as they perceived them to do little to address the root causes for state intervention in Indigenous people's lives. Some lawyers also held the view that because Gladue reports, First Nations Court and most PLC services are premised on state sanction or an Indigenous person's agreement to state intervention (guilty pleas and guilt findings for Gladue reports and First Nations Courts; parental consent to Ministry of Children and Family Development action for PLC services), they actually serve to perpetuate colonial injustices.

GLADUE REPORTS AND FIRST NATIONS COURTS

Gladue reports and First Nations Courts are restorative justice measures meant to repair criminal harm and reduce overrepresentation of Indigenous people in the criminal justice system. Counsel for Indigenous offenders have a duty to bring individualized information about a client's life circumstances, history of trauma, and experiences of systemic racism before the court in the form of a Gladue report. Sentencing (and bail and parole) judges must consider whether alternatives to a prison sentence are appropriate to restore balance and harmony to the Indigenous offender, the victim or victims, and their community.[41]

First Nations Courts currently operate in six BC communities. They are sentencing courts that provide an Indigenous perspective, based on a holistic and restorative approach, to sentencing Indigenous persons who have acknowledged responsibility for their criminal offence. Local Indigenous Elders and Knowledge Keepers give advice on a healing plan. The judge may then incorporate the healing plan as part of the appropriate sentence for the Indigenous person who has pled guilty.

While noting the positive impacts of Gladue reports and First Nations Courts on Indigenous offenders who are truly guilty of a crime, a few review contributors cited examples of Indigenous clients who entered a guilty plea for the explicit purpose of accessing the restorative justice measures—without giving due consideration to the full range of defences and other options presented to them. The service providers expressed concern that, by increasing access to these restorative justice measures without similarly increasing early access to legal representation and diversion possibilities, LSS and BC's criminal justice system are inadvertently contributing to the criminalization of Indigenous people.

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41 *R. v. Gladue*, [1999] 1 S.C.R. 688, at para 65.

As one lawyer put it to me, if we are to truly heed the call to eliminate the overrepresentation of Indigenous people in Canadian prisons, we must take a closer look at the processes that create more criminals and criminal records (like processes that accused persons cannot access unless they are convicted), and find ways to divert Indigenous people away from the criminal justice system at an earlier stage.

RECOMMENDATION 14

Broaden the scope of Indigenous legal aid services to include more preventative services that are not premised on agreeing to state intervention or correction, which impose stigma.

PARENTS LEGAL CENTRES

The first PLC opened as a pilot project in Vancouver in 2015. There are now six locations across BC, each operating a staff model of service with one or more lawyers, an advocate/paralegal, and an administrator. PLCs help eligible parents to achieve early and collaborative resolutions of their child-protection issues. PLC services include legal information and advice, as well as support, advocacy, referrals to other services, and representation in collaborative processes and uncontested hearings. Parents may only access PLC services in cases where they agree with or consent to Ministry of Children and Family Development (MCFD) orders.

I heard from many frontline legal service providers about the individual and community impacts of PLCs. Most of them praised the PLC staff model for the holistic range of services it is able to arrange in developing customized support for parents in crisis. At the same time, most of them disapproved of the PLC policy of only serving parents in uncontested child-protection matters. In cases where parents wish to challenge an MCFD order, they must make a standard application to LSS for a lawyer funded by legal aid. Some review contributors viewed this policy as giving tacit encouragement to parents and guardians to consent to MCFD orders even when they fundamentally oppose them. Giving consent may, in some cases, result in a child being placed in foster care. This creates an unfair choice for parents who may not appreciate that other options are available to them.

In reference to the PLC policy, one lawyer said:

> If the premise you're starting with is that you have to agree to a state intervention, particularly where that state intervention is not legal or right, then you've created a deeply flawed model right from the beginning that just replicates the colonial injustice of the past and puts a new face on it.

CHILD PROTECTION PRACTICE

I also had the opportunity to consult with a number of lawyers who represent parents in child-protection cases against MCFD. They observed that relatively few lawyers choose to serve as parents' counsel, since the contracts for representing MCFD are more stable and lucrative. This mirrors the situation in criminal law where tariff lawyers are compensated at a much lower rate than Crown counsel, despite an adversarial system premised on the state and the individual having equal opportunity to influence the course and outcome of a trial.

Parents' lawyers also reported that they practise in complete isolation from one another. There is little to no opportunity to share knowledge and effective advocacy strategies with their colleagues around the province. This fragmented approach to client advocacy impedes system reform and stands in contrast to the centralized body of knowledge and practice resources available to MCFD lawyers. It is particularly problematic in light of MCFD's authority to remove children from their parents without prior judicial authorization. Parents must wait up to seven days for the first chance to advocate for the return of their child at a presentation hearing. The next judicial opportunity to seek the return of their child is at a protection hearing up to 45 days later. There is immense pressure for parents to agree to MCFD orders in the lengthy interim.

Since 56 percent of all children in care in BC are Indigenous, many lawyers view this situation as ongoing evidence of systemic discrimination. Despite governments agreeing to reduce the overrepresentation of Indigenous children in care, little has been done to correct the power imbalance that Indigenous parents confront when the state intervenes to remove their children. As a vital step toward correcting this imbalance, parents' lawyers proposed the creation of a child-protection clinic. It would be similar in its holistic approach to a PLC, but not premised on parental consent to MCFD orders. Such a clinic would provide parents with sufficient supports—including representation by staff or tariff lawyers—to challenge MCFD decisions, if they so desire. The clinic would also serve as a centre for shared knowledge, strategy and practice resources for tariff lawyers across the province. It should be located in the Metro Vancouver area, and include Indigenous and non-Indigenous staff lawyers and advocates who are sufficiently resourced to travel to different BC communities, as needed. The creation of this clinic is the highest priority of all of my recommendations.

RECOMMENDATION 15

Create a Child Protection Clinic to help parents before child protection concerns have reached the level of Ministry of Children & Family Development intervention, and to serve as a practice resource centre for lawyers representing parents in contested child protection matters.

INDIGENOUS JUSTICE CENTRES

By virtue of the TRC Calls to Action and other Indigenous-led calls for change, there is much greater appreciation of the need to decolonize and Indigenize the legal institutions that serve Indigenous people. The need extends to legal aid service delivery in BC—it is time for a new approach.

In my consultations and research for this review, I learned of a new clinic concept for Indigenous legal service delivery called the Indigenous Justice Centre. It is being developed by Indigenous community leaders for Indigenous communities throughout BC. It aims to create culturally safe spaces across the province, where Indigenous people can access services and participate in designing their own paths to wellness:

- By accessing a range of services and supports that promote prevention, early identification and resolution of issues that—when left untreated—can contribute to more serious problems (like criminal behaviour, domestic violence and child neglect) that engage the mainstream justice system; and

- By developing proven Indigenous pathways to justice and wellness that solve problems in collaborative engagement with locally developed networks of Indigenous and non-Indigenous service providers.

A key component of the Indigenous Justice Centre model is the engagement of local Indigenous leaders and organizations in the design of services and problem-solving mechanisms that divert people away from the mainstream justice system and into alternate dispute resolution processes. This approach normalizes "alternative" dispute resolution as the preferred path. It also draws on two general advantages of the clinic model: greater acceptance by clients due to the culturally safe environment, and greater potential for locally tailored and holistic treatment of complex client needs.

Cultural safety is critical in the community service context, as explained by Ardith Walkem, QC, in a 2007 report she wrote for LSS:

> Aboriginal people prefer to speak with an Aboriginal person and may not seek the legal help they need if they are unable to do so. This preference reflects the complex and difficult history of Aboriginal peoples' involvement within the justice system and inter-generational experience of institutional racism.[42]

The importance of cultural safety was underlined in several review submissions from Indigenous legal service providers. They advised that no single and centrally administered service approach will be appropriate for all Indigenous communities. Each community possesses a unique framework of Indigenous laws, legal systems and norms to which local services must adapt. They also advised that Indigenous people in more remote areas of the province can be very skeptical of lawyers who fly in and out of their communities without seeking to understand their local customs or build lasting relationships on the ground.

While the Indigenous Justice Centre concept holds great potential for holistic service and cultural safety, it is not obvious which Indigenous organization has the current capacity to coordinate the development of a far-reaching clinic network—even on an iterative and scalable basis. Nor is it clear that sufficient service capacity exists among BC's Indigenous lawyers to staff more than a handful of such clinics.

In any case, capacity building for future clinical service should start now. It is important for BC's law schools and clinical programs like the Indigenous Community Legal Clinic to develop and promote clear pathways for Indigenous law students to follow to future service in their own communities.

LSS has done well to Indigenize its operations serving Indigenous people. The integration of its Indigenous services will be critical to the success of Indigenous Justice Centres. Its Reconciliation Action Plan should make space for the creation of Indigenous Justice Centres on a community-by-community basis as local capacity permits.

RECOMMENDATION 16

Support the iterative and scalable development of Indigenous Justice Centres as culturally safe sites for holistic service to Indigenous people.

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42 Walkem, Ardith, *Building Bridges: Improving Legal Services for Aboriginal Peoples*, (Vancouver: LSS, 2007) <https://lss.bc.ca/assets/aboutUs/reports/legalAid/buildingBridges_en.pdf> at p. 8.

8. Immigration and Refugee Services

As a signatory to the 1951 *United Nations Convention Relating to the Status of Refugees* along with the 1967 *Protocol Relating to the Status of Refugees*, Canada has committed to protecting refugees on its territory. Refugee claimants are further entitled to all of the constitutional guarantees under the *Charter of Rights and Freedoms*.

Despite these protections, refugee claimants are among the most vulnerable people in Canada. They face many challenges as newcomers to the country, including language barriers, education barriers, limited support networks, and limited knowledge of Canadian laws. Asylum seekers may be fleeing situations where they were exposed to violence and trauma, leaving them with deep psychological scars. No one wants the legal process refugees face for determining their status in Canada to create additional unnecessary barriers. Further, no one wants legitimate claimants to be turned away because they were unable to navigate the system, and had no advocate to help them.

Legal representation plays a critical and necessary role throughout the refugee determination process. Numerous studies of refugee claims in Canada have shown that claimants who are represented by lawyers have a significantly higher chance of success. A study of over 70,000 refugee claim decisions from 2005 to 2009 found that represented claimants were 75 percent more likely to succeed with their claim than unrepresented claimants.[43]

SERVICE CAPACITY

Tariff lawyers provide all of the immigration and refugee legal aid services in BC. The immigration tariff covers the range of immigration proceedings that could lead to a person being removed from Canada to a country where that person risks persecution. The immigration tariff budget also funds duty counsel to represent persons detained pursuant to the *Immigration and Refugee Protection Act* (IRPA) at detention review hearings, and a telephone advice line for detained persons making refugee claims.

In late 2012, two new pieces of federal legislation—the *Balanced Refugee Reform Act* and the *Protecting Canada's Immigration System Act*—significantly compressed the timelines of all stages of the refugee claim process. Many refugee lawyers adapted to these changes by being more selective in taking cases, and by reducing their legal aid caseload. As Vancouver lawyers Peter Edelmann and Lobat Sadrehashemi explained in their 2015 report, *Refugee Reform and Access to Counsel in British Columbia*, many refugee lawyers became less inclined to take on legal aid cases in general:

> The work in the new system happens over a shorter period of time. Where in the old system a case from the beginning (filing the claim) to the end (decision at the Refugee Protection Division) may have run 18 months, in the new system this timeline would be two to three months. This means that the work to be done by counsel has to be done over a very intensive period of time... The work on a case is so intensive that once a lawyer takes it on, it has to take primary importance, making the lawyer less able to take other cases that are financially more viable for their practice.[44]

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43 Rehaag, Sean, "The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment" (2011) 49 *Osgoode Hall Law Journal* 71 <http://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss1/3/>.

44 Sadrehashemi, Lobat, et al. at p. 40 <http://bcpiac.com/wp-content/uploads/2015/09/LFBC-Refugee-Reform-Paper-Final-July-30-2015-2.pdf>.

Furthermore, refugee lawyers became less inclined to take on cases with high levels of complexity, given the high opportunity costs to their practices.

SERVICE QUALITY

In my consultations, some refugee lawyers expressed concern about the quality of service provided by inexperienced colleagues. They saw short timelines of the refugee process and low tariff rates combining to make immigration tariff work unprofitable to all but the newest lawyers. As one lawyer put it, to serve a refugee claimant well on the tariff, lawyers were required to "subsidize the system by doing double and getting paid half." Many refugee lawyers shared the view that competent advocacy required them to work against their financial interests. They also observed that LSS has no qualification standards for tariff lawyers (unlike other legal aid plans), and that most refugee lawyers work in relative isolation from others, with few opportunities for mentorship and collaboration within the short timelines.

Some refugee lawyers also commented on the negative impacts of disruptions in LSS funding. LSS funding for immigration tariff work has become uncertain and changeable, so that experienced lawyers become reluctant to integrate such work into their practices. The LSS annual immigration tariff budget is set according to the previous year's service demand. Immigration and refugee service demand is highly susceptible to external factors like political turmoil, war and famine in foreign countries. One year's service demand is not always a good indicator of the next year's service demand. In 2016/17, the volume of refugee (non-appeal) service requests in BC increased by 70 percent over 2015/16.[45] In 2017/18, it increased by another 32 percent.[46] Refugee lawyers spoke of the disruption and uncertainty they experienced when, in the middle of that fiscal year, LSS announced that it would suspend immigration and refugee services for lack of funding. After the federal and provincial governments reached a new funding agreement, LSS was able to avoid suspending services and was able to continue services to the next fiscal year. Still, refugee lawyers pointed out that the perennial funding uncertainty makes it difficult to plan a practice around regular tariff work, and results in more "dabbling" by inexperienced lawyers.

ONTARIO'S REFUGEE LAW OFFICES

Legal Aid Ontario (LAO) operates a truly mixed model for immigration and refugee legal aid services. Tariff lawyers serve the vast majority of Ontario's refugee claimants, but claimants may also request service from staff lawyers at one of LAO's Refugee Law Offices (RLOs) in Toronto, Hamilton or Ottawa.

The Toronto RLO opened in 1994, and has since established itself as a centre of excellence for immigration and refugee law in Canada. It has an annual operating budget of $2.4 million and is led by eight experienced staff lawyers who provide legal representation and advice services to clients in several different languages. They also develop materials, precedents and arguments for refugee claims, appellate cases and test cases. All of these resources are shared freely with tariff lawyers and community organizations that serve refugee populations. Sharing practice resources increases the overall quality of refugee legal aid services, and reduces the time and cost of preparing individual cases. Three licensed paralegals support the staff lawyers in hearings and appeals, and represent clients in expedited cases. Seven legal aid workers and

45 *LSS of BC Annual Report 2016/17.*

46 *LSS of BC Annual Report 2017/18.*

two legal support staff provide further client support and administrative services.

The Hamilton and Ottawa RLOs are significantly smaller than the Toronto RLO. Each office has an operating budget of $250,000. Each office employs two staff lawyers and one person as support staff. The staff lawyers provide legal representation to clients both through the RLO staff program and through its duty counsel service. Like the Toronto RLO, the Hamilton and Ottawa RLOs each play a significant role in educating the local tariff bar and community organizations in their region.

LAO has developed a stringent qualification process. To serve on the "panel" (i.e. roster) of refugee lawyers eligible for legal aid referrals, lawyers must demonstrate relevant experience in immigration and refugee law. They also must submit copies of recently completed documents relevant to the practice, and keep up-to-date with professional development requirements.[47] Further, LAO has a robust refugee-panel mentorship program that assists junior lawyers to meet panel standards and maintain high-quality service.

REFUGEE LEGAL CLINIC FOR BC

The stellar reputation of the Toronto RLO extends far enough west that it was repeatedly mentioned by review contributors as a suitable model for replication in BC. Several refugee lawyers were enthusiastic about the idea of developing a new refugee legal clinic in Metro Vancouver where refugee claimants could access a wide range of legal and non-legal services. The clinic would operate in parallel with and in support of the tariff system. It would employ a small team of experienced lawyers and paralegals who could take on urgent and complex cases that are increasingly prevalent under the current refugee determination system. It would be closer in size and service volume to the Ottawa and Hamilton RLOs than the Toronto RLO, and would similarly serve as a centre of practice knowledge and expertise for access and use by tariff lawyers and community organizations.

The Immigrant Services Society of BC (ISSBC) operates two Welcome Centres in Metro Vancouver—one in Vancouver and another in Surrey. At these Welcome Centres, newcomers to Canada have streamlined access to a holistic range of services delivered by ISBCC and many co-located community partners. The Vancouver Welcome Centre offers 18 housing units, multilingual settlement services, an employment resource centre, and the services of community partners. These community partners include Settlement Orientation Services, the Mount Pleasant Family Centre Society, and the Vancouver Association for Survivors of Torture (an organization providing trauma counselling and support to refugee claimants).[48]

ISSBC leadership is eager to explore the integration of refugee legal aid services at either of its Welcome Centre locations. The circumstances appear ideal for the development of a new Refugee Legal Clinic using the same mixed model as the Community Legal Assistance Society's Mental Health Law Program (see Chapter 3: Service Delivery Models).

RECOMMENDATION 17

Create and embed a Refugee Legal Clinic in the integrated services hub at the Immigrant Services Society of BC's Welcome Centre in Vancouver or Surrey.

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47 LAO Refugee Panel Standards <www.legalaid.on.ca/en/publications/downloads/refugeepanelstandards/panel-standard--general-05-2015.pdf>.

48 ISS of BC Welcome Centre Brochure: < http://issbc.org/wp-content/uploads/2018/03/iss-welcome-centre-2016-brochure-general-web.pdf>.

9. Civil (Poverty) Services

Civil legal aid (also known as "poverty law" to those who work in the sector) is generally understood to cover matters concerning a person's liberty, livelihood, health, safety, sustenance or shelter. It relates, in other words, to a person's basic needs. These needs can include access to government benefits, such as Canada Pension Plan, Old Age Security, Income Assistance, Disability Assistance and workers' compensation. People may also require legal representation for housing issues (like tenants' rights violations, unlawful evictions and foreclosures) or debt-related issues (like bankruptcy and unfair lending practices).

EVERYDAY LEGAL PROBLEMS

We live in a "law-thick world,"[49] and people who rely on government to provide their basic needs are often said to be "living within the law." As fish are said to not see water, people living "within the law" may not see their problems as legal problems. They are even less likely to see, or to look for, legal solutions. It is therefore critical that low-income people have easy access to public legal education and summary legal advice services to identify and address their everyday legal problems.

For people surviving on low incomes, their legal problems are rarely discrete or separable from their non-legal problems. Their problems are intertwined or clustered in ways that are best addressed by a less adversarial and more holistic approach to legal service. One poverty law lawyer explained it this way:

> Often the legal resolution to their problem is not a zero-sum game as in a lot of litigation. They will have to continue to depend on their caseworker, their housing provider, their landlord, their employer, on into the future for the necessities of their lives. There will likely be other 'sharp legal objects' into the future of these relationships. This can take a different kind of approach to resolving their legal problems, often alternative dispute resolution, rather than resorting to the adversarial system. Low-income people don't get to just vanquish their foe in the courtroom and then triumphantly stride away.

In Canada, people surviving on low incomes, as well as Indigenous people and disabled people, are all more likely than the average person to experience multiple legal problems, and are less likely to take action to resolve them.[50] They are generally less capable of overcoming their legal problems without the benefit of legal advice or representation. And they are more likely to suffer adverse consequences that serve to perpetuate the cycle of poverty and entrench their social exclusion.[51]

In 2011, the Doust Report underlined the harsh consequences of denying effective civil legal aid to BC's most marginalized communities. In some cases, it can be the difference between life and death:

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49 Hadfield, Gillian, "The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law" (2014) 38 *International Review of Law and Economics*, at p. 43, online: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.680.5745&rep=rep1&type=pdf>.

50 Currie, Ab, "The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians" (Ottawa: Department of Justice, 2009), online: <www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf> at p. 23.

51 CBA Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act* (November 2013), online: </www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf> at p. 36.

> For a person of minimal income today in British Columbia, access to these legal entitlements and protections can mean the difference between having a safe place to live or living on the streets, between having food, or going hungry. Inadequate legal aid jeopardizes the survival of our most vulnerable citizens, including people with mental or physical disabilities, the elderly, and single mothers with young children.[52]

Despite the high stakes and the crying need for help, the provincial government has not provided any funding for civil (poverty) legal aid services for 17 years.

POVERTY LAW SERVICES IN BC

From 1979 to 2002, the provincial government funded LSS to deliver poverty law services throughout the province. By 2001, LSS employed 85 lawyers and 62 full-time equivalent paralegals and legal information counsellors to work in 45 offices across BC.[53] A year later, the provincial government slashed LSS's budget by almost 40 percent. This resulted in the elimination of all of LSS's poverty law services. Within another year, LSS's annual number of poverty law cases plummeted from about 40,000 to zero.

To its immense credit, the Law Foundation quickly entered the void left by the 2002 legal aid cuts, and organized a province-wide array of legal advocates into a highly functional poverty law service network. Serving in independent community service agencies throughout the province, the Law Foundation-funded legal advocates help local low-income people with their poverty law issues. The legal advocates attend a yearly training course organized by the Law Foundation, and their organizations provide regular operational and financial reports to the Law Foundation in return for continued funding.

Many legal advocates represent clients in administrative tribunal hearings, and work under the supervision of volunteer lawyers. All legal advocates and other community workers have access to telephone legal information and advice support from a former LSS poverty law lawyer now employed by the Community Legal Assistance Society (CLAS).

There are very few former LSS poverty law lawyers still practising any amount of poverty law in BC. They have almost all moved to other areas of practice, retired or passed away. A handful of lawyers provide poverty law services through organizations like CLAS, Access Pro Bono, Atira Women's Resource Society, Rise Women's Clinic, Seniors First BC and Together Against Poverty Society. But there are very limited employment opportunities in BC for the growing number of law school graduates who seek public-interest law jobs.

As the provincial supply of poverty law lawyers has diminished, the demand for their services has expanded. More civil (non-family) dispute resolution has been pushed to administrative tribunals, and the jurisdiction of Small Claims Court has expanded to cover claims from $5,001 to $35,000.

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52 Leonard Doust, *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (Vancouver: Public Commission on Legal Aid, 2011) at p. 16.

53 McEown, Carol, *Civil Legal Needs Research Report* (2nd ed.), (Vancouver: Law Foundation of British Columbia, March 2009) online: <www.lawfoundationbc.org/wp-content/uploads/Civil-Legal-Needs-Research-FINAL.pdf> at p. 39.

As expected, the number of self-represented litigants in civil matters has dramatically increased in BC. In Small Claims Court, individuals appear without legal representation in 90 percent of cases.[54]

THE ONTARIO EXPERIENCE

It is widely acknowledged that community legal clinics are best suited for civil (poverty) legal aid services. They once served BC well, and they continue to serve Ontario well. Legal Aid Ontario funds 74 specialized community legal clinics that assist individuals and communities with a wide range of legal and non-legal issues.

Ontario clinic lawyers and administrators place a great deal of emphasis on serving communities, and not simply the people in them. Local community governance is viewed as a critical aspect of Ontario's clinics. Community development and law reform are treated as key elements of poverty law service delivery. A former Ontario clinic lawyer described the positive potential of community development:

> An example is a tenant with disrepair problems in their high-rise tower. While a legal service provider may take that landlord to a court or housing tribunal for a remedy, there may be repercussions for that tenant, they may be evicted on other grounds, they may have their rent increased, they may of course lose at the tribunal in the first place. They may be dragged through a judicial review or appeal. However if the tenants in that building are organized into a tenants association, they can speak more safely and effectively with one voice. There is not just safety but also power in numbers, not to mention cost efficiency. They are likely to get their landlord to take notice and do the repairs. A rent strike, which may or may not be legal in the circumstances, can be a considerable bargaining chip.

Ontario's experience supports the general view of many review contributors I spoke to who said that, as compared to centrally administered legal aid offices, independent legal aid clinics are more accessible to disadvantaged people, more accepted as culturally safe sites of service, more effective in community outreach, and much better suited to advancing collaborative law reform initiatives for systemic change.

Review contributors reminded me again that clinics tend to carry much lower infrastructure costs than conventional staff lawyer offices, because they attract more mission-guided lawyers and advocates who are willing to do "impact work" for lower remuneration.

COMMUNITY LEGAL CLINICS

Setting up civil (poverty) legal aid clinics in BC is a relatively simple matter of building on the current landscape of Law Foundation-funded poverty law services, resurrecting many of the lawyer-driven services that existed before 2002, and applying lessons from Ontario's experience. Thankfully, BC's network of independent poverty law service agencies provides the ideal foundation for re-introducing clinic staff lawyers. The recommended model is essentially the complementary half of the community legal clinic model recommended in Chapter 6: Family Services. It should also be built up and rolled out on an iterative and scalable basis—community by community, as opportunities and needs demand.

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54 Rowles, Anne, and Connor Bidfell, "The Case for Replacing the 2002 Legal Services Society Act Part II: A Call to Action" (2016) 74 Advocate 529 at 534. Online: <www.lrwc.org/ws/wp-content/uploads/2016/07/The-Case-for-Replacing-LSA.-Part-II.-Rowles-Bildfell.pdf>.

The prototypical community legal clinic would have independent governance and provide a highly defined mix of poverty and family law services. Some community legal clinics, however, would only provide poverty law services. Each community legal clinic would include a full- or part-time poverty lawyer and one or two poverty law advocates. The separation of the poverty law service team from any family law service team is critical, since Ontario's experience was that clinics that combined the two areas of service were soon overwhelmed by family law matters to the detriment of their poverty law services.

A clinic's poverty law team would receive funding from the Ministry of Attorney General via the Law Foundation. In most cases, this would simply involve supplementing the current amount of Law Foundation funding for the host agency, and updating its accountability structures as necessary. The poverty law team would receive PLEI support from LSS's Community Resource Centre (as recommended in Chapter 5: PLEI Services) and collaborate with other poverty law teams through existing channels like PovNet and CLAS.

The exact staffing and service priorities for each community legal clinic would be guided by local needs and circumstances. They would be encouraged to maintain or adopt multidisciplinary and collaborative approaches to service delivery. At present, there are several Law Foundation-funded agencies that have the necessary infrastructure, expertise and community trust to supplement their advocate-driven services with poverty law lawyers. Examples are MOSAIC in Burnaby, Sources Community Resources in Surrey, Abbotsford Community Services, Chimo Community Services in Richmond, Wachiay Friendship Centre in Courtenay, the Port Alberni Friendship Centre, and Community Connections Society in Cranbrook. The model could also be operated by an Indigenous Justice Centre (see Chapter 7: Indigenous Services).

Poverty law lawyers could also be introduced to add value and impact to BC's law school clinical programs, including the University of Victoria Law Centre, Rise Women's Legal Centre, the Thompson Rivers University Community Legal Clinic, and the Law Students Legal Advice Program and the Indigenous Community Legal Clinic at the University of British Columbia.

My consultations with law students and lawyers give me confidence that many skilled lawyers would be enticed by a stable and varied public-interest legal position with a forward-thinking community legal clinic—even at a relatively modest salary.

Finally, I was reminded by one review contributor that a new community legal clinic system must be built to last. Another round of introducing and then removing critical community legal services will only amplify the common distrust in BC's civil justice system:

> [W]hen a service which provides valuable service to a community is closed, the impact is far ranging. Way beyond just the impact upon those who work to provide the service. The user community usually has no other options, and the trust which has been built up by the service with that user community and then is lost, contributes to a despair and a disillusionment which is pretty deep. Therefore, if there is a new service set up, it is important that it be one which will last, that will have reliable basic or core funding. No more "here today, gone tomorrow."

RECOMMENDATION 18

Fund and support an integrated network of independent community legal clinics with teams of lawyers and advocates providing poverty law services.

The community legal clinic model is also well-suited to serve specific groups within the regional population that have legal needs in common. Following Ontario's experience, BC should develop specialty legal clinics that focus on specific marginalized groups or particular areas of law that affect large numbers of low-income people. This should be done on the same iterative and scalable basis as other community legal clinics, including the Child Protection Clinic and the Refugee Legal Clinic recommended in this report. It should follow the model used by CLAS for its Mental Health Law Program and used by West Coast Prison Justice Society for its Prisoners' Legal Services clinic.

Community legal clinics are more often accepted by the people who need them and who perceive them as being more accessible, low-barrier, culturally safe environments than government or Crown agency services. Community legal clinics offer the unique potential to embed targeted legal aid services in holistic and locally trusted social service environments. As specialty legal clinics, they can offer additional, substantive guidance on specific legal issues facing individuals and communities, going far beyond the intake and referral of clients to private lawyers or other information resources.

Specialty legal clinics should be set up or supplemented by lawyers to serve the specific and expanding legal needs of BC's seniors, people with disabilities, tenants, injured workers, and linguistic and cultural communities. Disability Alliance BC, as one example, supports the concept of a specialty clinic for British Columbians with disabilities:

> Disability Alliance BC supports the idea of a legal aid clinic that is dedicated to supporting British Columbians with disabilities. We note that the ARCH disability law centre in Ontario uses a similar model and we believe it should be used as a starting point to determine how to implement an impactful and high-functioning legal aid clinic for people with disabilities in BC.

As specialty clinics are set up in BC, it is important to maintain multiple channels for access to legal aid services. A specialty clinic should be one significant alternative rather than a substitute for other legal aid services.

RECOMMENDATION 19

Develop and nurture a strategic network of specialty legal clinics to serve specific communities of legal need.

10. Criminal Services

Earlier in this report, I observed that for most people, legal aid simply means a government-funded lawyer when you need one. Typically, that means a government-funded criminal lawyer when you need one, since the public tends to view legal aid through a criminal justice lens. This common association of legal aid with criminal law is fed by heightened media attention to real-life stories of law and order, and the intense human dramas that regularly play out in BC's courtrooms. Legal aid lawyers are often the public face of these media reports, and the political matters that concern them can gain considerable public profile.

My consultations with criminal legal aid lawyers confirmed the obvious—no matter concerns them more than tariffs. No matter has higher profile. The anger at what they see as grossly inadequate compensation was palpable and direct. Every conversation began on the subject of tariffs, and many ended there as well. Eliciting other creative and constructive ideas for service delivery change was challenging, as the focus always returned to diverting taxes and increasing tariff rates. I eventually succeeded in drawing out other ideas—which I proudly present below—but these alternatives may not find favour or gain traction among criminal legal aid lawyers without a complement of higher tariffs.

Passionate advocacy for higher tariffs extends to the tariff model as well. Many lawyers cling tightly to the tariff model as a cost-effective way to deliver criminal legal aid. They believe it to be inherently superior to the staff model or any mixed model. In the few places where they see the current model failing to serve British Columbians well, they see the solution as more funding. They generally perceive criminal tariff services to be accessible, cost-efficient and of good quality.

CRIMINAL TARIFF STRUCTURE

LSS's criminal tariff structure is simple in that it pays lawyers for defined units of work. A tariff lawyer completes a task (or a "block" of tasks) to serve the client's interests, and then bills the system. The tariff structure is also complex in that the system architecture promotes modular compensable tasks, which can be delivered cost-effectively, and discourages services that are less susceptible to being modularized. As with most highly engineered systems, the tariff structure has many unintended consequences. Some of them are explored later in this chapter.

From the clients' perspective, the system is fairly simple. Accused persons can retain lawyers on legal aid contracts if there is a reasonable prospect that, upon pleading guilty or receiving a conviction, the accused persons would face specific consequences:

- going to jail;
- receiving a conditional sentence that would severely limit their liberty;
- losing their means of earning a living; or
- becoming subject to an immigration proceeding that could lead to deportation from Canada.

Once an accused person's legal aid application is approved by LSS, that legal aid client can take that referral to a lawyer the client chooses. Or LSS can find that client a lawyer. Once a lawyer accepts the

legal aid referral, the lawyer provides services and bills against the tariff. Some services are paid on an hourly rate, but most services are paid according to a block tariff. For example, the block tariff for a bail hearing of a summary conviction offence is $125. The block tariff for resolving an indictable matter without a preliminary hearing or a trial is $325.

Complex and lengthy criminal trials are paid according to LSS's hourly tariff rate rather than a block tariff. These cases are subject to oversight by LSS's Criminal Case Management (CCM) program, which promotes prudent and cost-effective measures to limit expenditures. LSS offers an enhanced tariff rate of $125 an hour to attract senior, experienced counsel to CCM cases.

LSS also offers an "exceptional responsibility" premium in CCM cases that are unusually complex and lengthy. To qualify for the premium, senior counsel must satisfy the requirements for enhanced fees, and must demonstrate that they have executive case management skills. The premium rate is a 15 percent increase on any tiered rates or enhanced rates. It applies to very few cases and caps out at $143 an hour.

TARIFF EFFECTS

LSS treads a fine line between incentivizing early resolution of criminal matters by way of guilty plea and incentivizing a full and vigorous defence of criminal charges by way of trial. The overriding goal is to serve legal aid clients in the best way possible, but LSS's financial concerns and tariff lawyers' livelihood concerns are influential factors. One lawyer described the resulting tension this way:

> On one hand, there's almost too much of an incentive to resolve a simple charge without looking at it carefully. You have no time to look at the file, and you're only paid $225 to do a guilty plea. It's peanuts. So you have the perverse incentive to settle early because there's no time or money to look at the information. Then on the other hand, if you do put in the prep time and look at everything like you should, there's an incentive to bring matters to trial. Because that's the only way you're going to get paid for preparing properly.

Another lawyer outlined the personal cost of preparing a comprehensive defence in advance of trial, and then settling the matter in the client's best interests:

> I was involved in a case where we pushed and pushed, and we worked out a resolution before a murder trial. We knocked it down to manslaughter from second-degree murder. And we did it through tons of work and tons of *Charter* applications and notices—what I think of as real substantive litigation strategies. And when it resolved, we didn't get any benefit from that. You set aside several weeks of time to do a trial, you push Crown into a favourable resolution, and then you're left with weeks of unpaid vacation. There are lots of lawyers out there who'll run the trial anyway. They'll just call it in.

Early resolutions are a boon to the justice system. Each settlement saves the individual and institutional costs of convening judges, prosecutors, sheriffs, clerks and witnesses to administer justice. And yet, as I frequently heard in my consultations, they can be very costly to lawyers who have prepared a thorough defence and booked days (or weeks) for trial. For many lawyers who practise alone and live paycheque-to-paycheque, the resulting loss of income can wreak havoc in their lives.

To encourage tariff lawyers to fully explore early resolution of criminal matters and also to prepare thoroughly for trial, I recommend that LSS augment its criminal tariff structure—specifically, its non-trial resolution fee. I recommend that LSS allow discretionary payment of legal fees on a case-by-case basis according to lawyers' detailed written accounts of how their preparation and advocacy efforts contributed to early case resolution and avoided trial. The lawyer's written account may be supported by comments from the client or Crown counsel, to the extent it is available or required.

RECOMMENDATION 20

Enhance LSS's current non-trial resolution tariff, or develop a new discretionary tariff for case preparation that results in early resolution and avoids trial, based on a detailed account of the scope of preparation and its impact on settlement.

COST SHIFTING

Review contributors told me about a few cost-shifting issues and their (perhaps) unintended consequences that are worth noting here.

- The first issue arises in northern BC, where some tariff lawyers are unwilling to take on CCM cases for what they view as low pay and administrative aggravation. To cover the occasional CCM case in the north, LSS flies in Vancouver tariff lawyers and pays them an extra $360 in daily travel fees under the tariff. The northern lawyers dislike the intrusion of the Vancouver lawyers, and apparently refer to the extra travel fees as a "backdoor tariff". They say it would be more cost-effective to increase the CCM tariff for local lawyers in the first place.

- The second cost-shifting issue relates to criminal appeals. To obtain a government-funded lawyer for their appeal, appellants must follow a two-step process. The first step is an application to LSS for a tariff lawyer. If LSS denies the application, the second step is an application to the court under section 684 of the *Criminal Code*, which authorizes the court to appoint a lawyer if it serves the interests of justice. This two-step process often takes several months.

  Many of LSS's first-step assessments are made without the benefit of the transcript from the lower court. LSS rarely orders a transcript as part of its assessment, so the court is often left to order a transcript before hearing a section-684 application. The court orders it because it can be difficult to assess the merit of an appeal without reviewing the transcript. Whether or not LSS or the court ultimately appoints a lawyer, the cost of that transcript is covered by government.

These are relatively minor issues in the grand scope of BC's justice system, but they serve to illustrate that shifting public costs from one budget or budget-line item to another does not make them disappear. Effective service delivery reform must consider consequences for all system stakeholders.

SERVICE QUALITY

A legal aid model's quality of service obviously depends on who delivers the services. In conducting consultations for this review, I was repeatedly reminded that a proficient lawyer can make a second-class model look good, and an incompetent lawyer can make a first-class model look bad. Regrettably, under the current tariff model it is difficult to determine who is doing a good job and who is not. The only qualification or entry standard for tariff lawyers is that they have practising status with the Law Society of British Columbia. Unlike staff and clinic models that incorporate various means and measures for monitoring service delivery, there are few formal checks on service quality.

LSS has a robust quality assurance program as far as billing practices are concerned, but its monitoring of lawyers' services is mostly complaint-driven. LSS relies on clients to submit written complaints to their Audit and Investigation Department or to the Law Society. On the whole, legal aid clients are more vulnerable than paying clients, and may not know if the level of service they receive is adequate. Even if they have sufficient literacy and procedural knowledge to file a complaint about a lawyer, they are unlikely to submit it in writing to institutions of authority. Criminal legal aid clients are particularly disinclined to engage in formal discipline processes.

In addition to receiving written complaints, LSS reviews lawyers' billing patterns to identify quality concerns. It has allocated new funding to provide more professional development opportunities, expand its mentoring program, and create new competency requirements for tariff lawyers. These are helpful measures, but they fall short of what is required to assure stakeholders and clients that the services are of a high quality.

To ensure such service, I recommend that LSS develop a telephone system for fielding initial complaints about lawyers, and partner with the Law Society to develop a quality assurance audit program that is informed by enhanced user feedback and after-case peer review.

RECOMMENDATION 21

Develop an LSS telephone complaint service and a quality assurance audit program, including enhanced user feedback and after-case peer review, to better assure the quality of lawyers' services.

SERVICE CAPACITY

I met two basic types of criminal tariff lawyer in my consultations. First, there is the type that does a small amount of legal aid as part of their regular practice, but does not rely on it for steady income. They often view legal aid service as a professional responsibility, and a way to give back to their community. They tend to be older, more experienced, male, and practising in small urban firms or alone in small urban or rural communities.

Second, there is the type that does a lot of legal aid, or does exclusively legal aid, and relies on a steady stream of referrals to keep their practice afloat. They tend to be younger, less experienced, male or female (although still predominantly male), and practising alone in large urban communities. Perhaps

because they are less likely to have practised when tariff rates were higher (relatively speaking), or perhaps because they are too busy serving their legal aid clients, they tend to be less vocal about the current state of legal aid in BC.

These are very broad generalizations drawn from my personal observations. I met and heard from many criminal tariff lawyers who fall outside of these rough categories. LSS's five-year lawyer supply statistics appear to support my observations on the whole. The criminal tariff bar is slowly improving its gender balance (18.3 percent female in 2006/07 to 24.6 percent female in 2016/17). The criminal tariff bar is also becoming slightly more experienced (the median year of call was 15.3 in 2006/07 and 17.1 in 2016/17). The other statistics do not show any notable demographical shifts.

Some of the stories I heard from criminal tariff lawyers are much more dramatic, particularly from the lawyers who rely on legal aid to earn a basic living. One lawyer spoke of suffering from crippling trauma after working on sexual assault files for several years. Another lawyer talked about repeatedly missing rent payments from being unable to bill for casework as planned. Several lawyers from the Metro Vancouver area spoke of driving to five or six courthouses in an average day, and working from their cars with a laptop and a portable printer. One lawyer expressed concern for a few colleagues who practice in isolation and appear to struggle with mental health issues.

The criminal tariff bar appears to be very collegial and supportive, but it is clearly under significant stress. Some lawyers talked about running on adrenaline. Others talked about giving up practice altogether. The bar is aging, and succession is a serious issue in many small urban and rural communities. Service capacity is precarious, and many lawyers need support.

MOVING TO A MIXED MODEL

Notwithstanding these strains on capacity, many tariff lawyers are confident that the tariff model continues to serve British Columbians well—or at least better than any mixed model could fare. I am not so sure. There is no basis for model comparison beyond fading memories of offices that operated on a staff lawyer model decades ago. We are forced to rely on speculation rather than evidence-based analysis. Meanwhile, other provinces like Saskatchewan, Manitoba, Quebec, Nova Scotia and Newfoundland have embraced a more mixed model to very positive effect.

A leader of a provincial legal aid plan that operates a predominantly staff model said this to me:

> I am a huge believer in the staff lawyer model. I think it gives you way better control over your services, better control over your costs, quality control over the services being provided, who's representing clients. Staff lawyers have no interest whatsoever in artificially inflating or delaying matters before the court. In fact, it's quite the opposite. To me, it's the better way across the board to provide service to people.

One young lawyer reflected on experiences working in an American public defender office:

> I was conscious of the best way to spend my limited time on files. I had to be careful about issue triage. But I never had to worry about chasing after clients, or what a file might pay. I managed my caseload and

> made case management decisions based on the degree of risk to people's liberty, on the legitimacy of the issues, on the client's best interests, and then I went to work. I was evaluated based on whether or not I was working hard and well. If my caseload got out of hand, my supervisors would redistribute some of it and look for systemic causes.

Other lawyers and advocates frequently identified the staff model as better suited to serving "high-need" clients and cases with multi-dimensional challenges. They described serving clients with significant mental health challenges in ways that are not covered under the tariff.

As previously described in this report, the staff model has several structural advantages it would bring to an effective mixed model of service:

- Versatility in using lawyers and lower-cost paralegals as direct legal service providers.
- Continuity and consistency in service from permanently employed lawyers and paralegals.
- Capacity to monitor and directly report on court practices and systemic changes.
- Scalable capacity to deliver services in underserved communities.
- Onsite training, resource sharing and collaboration with pro bono lawyers and other social service providers.

CRIMINAL LAW OFFICE

It is time to introduce some healthy competition to the criminal tariff model, and benefit from the structural advantages of a mixed model with staff lawyer services. This should be done on an experimental and iterative basis, and in a way that supports sole practitioners and small firm lawyers who are struggling to maintain their livelihoods.

To those ends, I recommend the creation of an experimental Criminal Law Office in the Metro Vancouver area. It should be located at a site along a major transit corridor (perhaps along the Skytrain's Expo line) that provides reasonably quick access to each of the Vancouver, New Westminster and Surrey courthouses. It should provide ample parking, office space that is large enough to accommodate a new Criminal Resource Centre (see below), and shared meeting space for free and open use by tariff lawyers, pro bono lawyers, articled students and different social service providers.

The new Criminal Law Office should have a core staff component of five-to-ten lawyers, and an equally large (or larger) component of paralegals and administrative staff. It should function as a general criminal defence firm along the same lines as the former Burnaby Public Defender Office (described in Chapter 3: Service Delivery Models), with staff lawyers handling all types of criminal cases, and also serving as duty counsel from time to time. It should engage some staff lawyers, paralegals and contracted social service providers in serving the intensive needs of clients with mental health and/or addiction issues. Staff lawyers should travel to cover tariff service gaps around the province as needed. The general criminal defence aspect of the Criminal Law Office should be evaluated against the tariff model, according to the following measures:

- The cost of delivering legal aid services (this may be assessed using a version of Legal Aid Manitoba's Complexity Weighted Caseload measure, as described in Chapter 3: Service Delivery Models);

- The effectiveness of legal aid services as assessed by case outcomes and client feedback;
- Client satisfaction with legal aid services; and
- Feedback from other justice system users like Crown counsel, judges, judicial case managers and court administrators.

Evaluating the Criminal Law Office should include developing a projection of the costs and benefits of expanding the concept to other locations around the province.

RECOMMENDATION 22

Create an experimental Criminal Law Office along a major transit route in Metro Vancouver, with a team of criminal staff lawyers, paralegals, administrators and support workers providing general and specialized legal aid services.

CRIMINAL RESOURCE CENTRE

The Criminal Law Office should double as a centre of knowledge and collaborative practice offering free access to all legal aid service providers. Modelled on co-working spaces in other industries, the Criminal Resource Centre should offer shared administration and amenities. It should offer services like reception and mail service, private and shared offices and workspaces, conference and meeting rooms, secure printing and copying, and free high-speed internet with supported connections to LSS Online.

It should also offer mentorship opportunities, in-house professional development training opportunities, and a library of legal research materials. The legal research materials would include submissions and precedents for use by staff lawyers, tariff lawyers, articled students, paralegals and other legal aid providers.

The Criminal Resource Centre should be evaluated for how it assists tariff lawyers to build their practices and incomes. It should also be evaluated from the client perspective, measuring how it increases the quality of service they receive.

RECOMMENDATION 23

Create a Criminal Resource Centre at the Criminal Law Office that offers free access to tariff lawyers, pro bono lawyers and other legal aid service providers, and provides space for co-working and training as well as resources for legal research and practice management.

CHOICE OF COUNSEL

The staff model is often criticized for restricting the freedom of clients to choose their own lawyer. Choice of counsel is necessary, the critics say, because trust is an essential element of the solicitor-client relationship, and people are more likely to trust lawyers they choose themselves. They also argue that legal aid clients who cannot choose their lawyer may perceive that they are receiving second-class service as compared to paying clients who have complete freedom of choice.

In reality, under any service delivery model, legal aid clients' freedom of choice is already restricted. Client choice is limited to the pool of lawyers who they already know or have heard about, and it is also limited by the capacity of those lawyers to serve them. Also, most Canadian studies have shown that legal aid clients tend to be at least as satisfied with staff lawyers as they are with tariff lawyers of choice. Professor Alan Young commented on the issue of choice of counsel in a 1997 review of Legal Aid Ontario:

> The Canadian Bar Association reports that the majority of clients are "unable or unwilling to exercise choice when given the opportunity." Unlike clients seeking legal service in the corporate and commercial fields, most accused persons (especially first offenders) have insufficient information upon which to base a decision as to counsel of choice. The accused person may know the names of high-profile lawyers from media reports, but it is unlikely he/she would be able to retain the services of this lawyer on a legal aid certificate.
>
> In a very general sense, the presence of choice may enhance client satisfaction; however, it appears that the importance of choice of counsel is magnified in the eyes of the private lawyers. This may be why choice of counsel has not been recognized as a constitutional imperative. It is a luxury, not a necessity.[55]

Since it is not a constitutional requirement, most Canadian legal aid plans do not offer choice of counsel for major aspects of criminal legal aid service delivery.

The BC Supreme Court decision of *R. v Bacon*, 2011 BCSC 135, provides a summary of the right to counsel of choice in the context of state-funded counsel and complex criminal trials. In that case, counsel for Mr. Bacon argued that LSS's tariff rates were so inadequate as to deprive Mr. Bacon of his right to counsel of choice (a team of defence lawyers in this case), and therefore of his right to a fair trial. His counsel further argued from anecdotal evidence that LSS had previously negotiated much higher tariff rates for counsel in high-profile criminal matters, so the client was being unfairly treated. Counsel sought a court order requiring LSS to approve higher rates of pay to Mr. Bacon's counsel of choice.

Justice Stromberg-Stein reviewed the jurisprudence and noted the following principles (among others) regarding the right to counsel in state-funded cases:

- The obligation for setting legal aid rates and policies relating to counsel lies with the legal aid plan, not the court;
- Where legal aid is refused, and a court makes a Rowbotham order, it is not reviewing the decisions of the legal aid plan, but is inquiring whether the accused person can afford counsel;
- There is no positive obligation on the state to fund counsel of choice, with a few "unique" and "unusual" exceptions;
- Legal aid counsel must be sufficiently qualified to deal with the issues with a reasonable degree of skill; and
- An accused person does not have a constitutional right to "the most brilliant counsel" or "the best around".

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55 Young, Alan. "Legal Aid and Criminal Justice in Ontario," *Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services* (Toronto: Ontario Ministry of Attorney General, 1997), Vol. 2: 629 at 663.

Justice Stromberg-Stein found no evidence that the tariff rates offered by LSS were so inadequate that they would deny Mr. Bacon adequate representation at trial. She held there was no justiciable issue regarding the legal aid retainer, and she invited counsel for Mr. Bacon to either accept the retainer offered by LSS or seek to withdraw.

MAJOR CASES

The *Bacon* decision has significant implications for LSS's management of major cases, since it confirms that LSS must ensure that tariff lawyers are "sufficiently qualified" to defend the interests of their clients "with a reasonable degree of skill."[56]

LSS has developed considerable expertise in the management of long and complex criminal cases. Its CCM program is widely respected for the skill of its practitioners. CCM also serves to promote prudent and cost-effective expenditures, but for the reasons discussed below, costs become difficult to contain when government policy, prosecution decisions and police actions all influence the demand for legal aid.

Major cases typically require three or more Crown counsel to be assigned for great lengths of time, usually for at least two years. On the largest major case prosecutions, which tend to involve multiple accused persons connected to organized crime, cases can take several years to reach a conclusion. Police use increasingly complex and exhaustive investigative techniques, which often require prior judicial authorization because of their intrusive nature or because of the use of confidential informants.

The process of organizing, reviewing and vetting disclosure of police investigation materials and providing them to defence lawyers can take multiple years. The significant amount of disclosure normally requires a very lengthy pre-trial motion phase to determine the admissibility of evidence and deal with other preliminary issues. The trial phase, which can take longer than a year, is often the shortest phase of the prosecution process. So it is often said that LSS and its tariff lawyers are "at the end of the line" when it comes to influencing the duration and costs of major cases.

Under a special funding agreement, the Ministry of Attorney General funds "Category C" cases that cost over $175,000 or pay an hourly rate above LSS's standard enhanced fee. LSS and the contracted tariff lawyer negotiate the budget and fees for each Category C case. The Ministry provides LSS an annual budget of $2.855 million for defending Category C cases, but costs have historically exceeded the budget and have been covered by access to contingencies.

For major cases, LSS assists the contracted tariff lawyer in setting up an effective defence team. LSS retains external review lawyers who provide advice to case management lawyers. As a condition of receiving legal aid, clients must consent to their lawyers sharing information with LSS. This permits an ongoing analysis about the resources required to mount an effective defence as the case unfolds. In setting its tariff fees and negotiating major-case budgets, LSS has generally taken the approach espoused in the 2008 Code-Lesage Report[57] that retaining highly experienced counsel to argue major

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56 *R. v Bacon*, 2011 BCSC 135 at para. 26.

57 LeSage, Patrick J. and Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures* (Toronto: Ontario Ministry of Attorney General, November 2008), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code>.

cases will result in major cost efficiencies and save the wider justice system time and money in the end. Contributors I canvassed for this report generally supported this approach, and often pointed to the Air India and Robert Pickton trials as examples of cases that were managed efficiently and well by highly skilled counsel. I also heard concern that LSS's premium tariff rates and privately negotiated fees—as much as they drive major-case costs over budget—are not nearly high enough to attract the most skilled counsel to take on major cases.

MAJOR CASE TEAM

To rein in major-case costs and expand its own choice of counsel, LSS should develop some in-house capacity for defending large and complex cases. Such new capacity would offer the ability to compare staff lawyer costs against the current tariff model. It would also make it easier for LSS to negotiate fees for exceptional services on the basis of what is reasonable and appropriate.

Where staff lawyers are sufficiently qualified to represent clients well, and have no conflicts, there is no constitutional impediment to marshalling staff lawyers and paralegals to assist lead tariff counsel. Similarly, staff and tariff service providers could be combined as an entire defence team in some major cases.

LSS should develop a Major Case Team in gradual and scalable fashion. An initial team of two or three experienced lawyers and several experienced paralegals should operate from the new Criminal Law Office, where they can work on smaller legal aid files when not assigned to major cases. They should be made individually available to defence teams led by tariff lawyers. Major Case Team paralegals should be frequently deployed to organize and review Crown disclosure materials. Several lawyers told me that, at present, tariff lawyers are often being tasked with organizing and reviewing volumes of disclosure materials, which is clearly an avoidable cost to the system.

In the short term, the Major Case Team should develop training materials and practice resources for sharing with the tariff bar at the Criminal Resource Centre. These resources should be used to build more tariff-lawyer capacity for long and complex criminal case work. LSS should expand the Major Case Team as needs demand, and create new and compartmentalized iterations of the Major Case Team at other LSS offices to serve clients without causing conflicts of interest.

RECOMMENDATION 24

Develop a Major Case Team of LSS staff lawyers and paralegals to provide in-house capacity and to support tariff lawyer capacity for long and complex criminal case work.

11. Collaboration

There are many roads to legal aid revival. But it is not very clear how they arrive there. The problem of inadequate legal aid service delivery is a "wicked problem." Wicked problems are characterized by conflicting values and perspectives, uncertainties about complex causal relationships, and debate about the effectiveness of policy options. The debate around legal aid policy options has been occurring for decades in BC. My report is simply the latest to take a turn at mapping the way to a more effective and efficient delivery system.

If there is one difference in this latest round of system exploration, it is perhaps a much broader acceptance and understanding, among most legal aid stakeholders, that there are no quick fixes (not even higher tariff rates). I saw widespread recognition that organizations must work together in new and innovative ways that involve trials, prototypes and multiple iterations.

In so many organizations, the policy perspective has shifted from the expert to the user. That puts more emphasis on adaptable learning:

> The style is not so much of a traveller who knows the route, but more of an explorer who has a sense of direction but no clear route. Search and exploration, watching out for possibilities and inter-relationships, however unlikely they may seem, are part of the approach. There are ideas as to the way ahead, but some may prove abortive. What is required is a readiness to see and accept this, rather than to proceed regardless on a path which is found to be leading nowhere or in the wrong direction.[58]

FAMILY JUSTICE PATHFINDER PROJECT

Walking down an unknown path can be disorienting. I was reminded of this when I went to profile the Family Justice Pathfinder Project for this chapter. It is a collaborative project supported by Access to Justice BC, the Ministry of Attorney General and local service providers in Kamloops. Its vision is that all BC families can connect to the services they need early in the transitions of separation and divorce. The focus is on the well-being of family members, particularly children.

The project strategy is to start small, focusing first on the Kamloops population. Work is currently underway to test and learn from smaller components of a larger pathfinder design. Once the smaller components have been tested and modified so that they work for families, they will be integrated into a larger design that again is tested and modified until it demonstrably serves the larger Kamloops population. Then, the design will be expanded province-wide and adapted to local conditions.

By listening to local service providers and family members with lived experience, the project has highlighted an overarching need to maintain the focus of everyone's attention on the needs of the children involved. It has also identified opportunities to improve online access to information and tools, and early triage and referral to online and local in-person resources and services.

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58 Clarke, Michael, and J. Stewart, *Handling the Wicked Issues—A Challenge for Government*, (Birmingham UK: University of Birmingham,1997) at p. 15.

The project is very challenging to describe in terms of outcomes and deliverables. Because its service delivery mechanics are not yet obvious, it is difficult to package and present as a concept to funders. It is even difficult to describe. For all that, it is proving to be a rich learning experience for the project collaborators. It has given them unique knowledge and experiences that they are applying iteratively to develop increasingly responsive service design.

Review contributors gave me a wealth of inspiring ideas for collaboration and experimentation that could increase the effectiveness of BC's legal aid system. Many of their ideas involve organizations other than LSS and the Ministry of Attorney General, so I present them here as encouragements more than recommendations, or some final concepts to ponder.

LAW SOCIETY OF BC

Many lawyers expressed admiration for the Law Society's efforts to develop its own vision for publicly funded legal aid,[59] but an equal number of lawyers thought that the Law Society could do more to support legal aid engagement. Some lawyers promoted the idea of reductions in practice fees or insurance fees for Law Society members who surpassed a minimum amount of legal aid work in the previous year. They pointed to Ontario as a jurisdiction where professional insurance premiums are reduced for lawyers who restrict their practices to criminal law or immigration law.

Some sole practitioners discussed their challenges in paying fees and complying with regulations that they saw as designed for large law firm practice. A few tariff lawyers wished that the Law Society would permit them to act as a principal to more than two articled students at a time as a rule, so they could serve more legal aid clients.

Several family lawyers warned against licensing paralegals to provide family law services, on the argument that it would diminish professional standards of service. On the other hand, many lawyers supported the idea of licensed family paralegals as a way to extend family legal services to the middle class, and create a new type of legal aid service provider.

CANADIAN BAR ASSOCIATION – BC BRANCH

A few rural practitioners hoped that the CBA would continue its REAL (Rural Education and Access to Lawyers) initiative to encourage second-year law students to article and practice in rural and small urban communities where legal aid capacity is suffering. I see potential for REAL placements to align with the staffing needs of new community legal clinics and Indigenous Justice Centres.

LAW FOUNDATION OF BC

One organization encouraged the Law Foundation to partner with the Ministry of Attorney General in experimenting with John-Paul Boyd's concept of an "administrative model of family law dispute resolution."[60]

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59 A Vision for Publicly Funded Legal Aid in British Columbia, https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LegalAidVision2017.pdf

60 John-Paul Boyd, "An Administrative Model of Family Law Dispute Resolution" (March 9, 2018) *Slaw: Canada's online legal magazine*, online:

Boyd's model agency would consist of three departments: a decision-making tribunal; an investigative commission; and a family support centre. The centre would provide counselling and legal advice services to family members. The commission would play an investigative and information-gathering role, and recommend post-separation parenting arrangements. The tribunal would provide mediation services, as well as dispute resolution by arbitration in the event that mediation fails or proves to be inappropriate.

LAW SCHOOLS

Several review contributors thought that BC's law schools could do more to promote family law as a core subject area that is critical to legal aid. One contributor observed that family law has lost its way in most Canadian law schools, and has been de-emphasized in favour of subjects more attractive to large law firms. Another contributor suggested that the Law Foundation collaborate with BC's law schools to administer a loan forgiveness program for graduates who practise with public interest law organizations or in underserved rural and remote communities for a reasonable length of time.

Many lawyers commended the services provided by law school clinical programs. One lawyer held out the University of Victoria's Law Centre clinic as a good multidisciplinary service model for future community legal clinics in the province. Another lawyer saw Rise Women's Legal Centre as a suitable prototype for new legal aid clinics serving only women.

I encourage each of the law school clinical programs to explore future arrangements with community legal services, including the services that I am proposing in this report. My proposed community legal clinics, Indigenous Justice Centres and Criminal Law Office could develop relationships with the law school clinical programs such that their articling students are hired each year from a pool of dedicated student clinicians. This should promote law student engagement in the clinical programs, and provide clear pathways for law students to follow to future legal aid service.

RECOMMENDATION 25

Collaborate with other justice system stakeholders, like the Law Foundation of BC, the Law Society of BC, the BC Branch of the Canadian Bar Association and other branches of government, to promote legal aid practice and reduce justice system costs and delay.

Slaw <www.slaw.ca/2018/03/09/an-administrative-model-of-family-law-dispute-resolution/>.

Appendix A: Terms of Reference

Terms of Reference of the External Review of Legal Aid Service Delivery in British Columbia

Mandate

- A comprehensive review of legal aid service delivery models will be undertaken and a report with recommendations submitted to the Attorney General by December 31, 2018.
- The review will examine the effectiveness and efficiencies of current and potentially new models with a user-focus to help ensure optimal access to justice for British Columbians.

Scope

- The review should consider analysis of the current service delivery models used by Legal Service Society, including the following elements and issues:

    - Workflow and caseload demand;
    - Certificate/private bar models;
    - Mixed models;
    - Duty Counsel;
    - Choice of Counsel;
    - Clinics;
    - Major cases;
    - Paralegals;
    - Trends and challenges: geographical; cultural/demographic; technological; priorities; flexibility; resourcing; capacity;
    - Models used in other jurisdictions, including staff lawyers; and
    - Other topics the reviewer considers relevant.

- The final report should include prioritized recommendations for potential improvements in legal aid service delivery on the basis of demand, resource-efficiencies and positive outcomes for citizens dealing with their legal matters.

Consultations

- The reviewer should engage in consultations with any individuals or organizations you think would assist in developing your recommendations, as necessary.

Appendix B: Personal Consultations

A

Emily Adams – law student
Kenneth Armstrong – Canadian Bar Association BC Branch
Haran Aruliah – lawyer

B

Brett Bagnall – Legal Services Society of BC
Rhaea Bailey – Legal Services Society of BC
Robin Bajer – lawyer
Patricia Barkaskas – UBC Indigenous Community Legal Clinic
Denice Barrie – lawyer
Dom Bautista – Amici Curiae Friendship Society
Robert Bellows – lawyer
Mark Benton QC – Legal Services Society of BC
Aleem Bharmal – Community Legal Assistance Society
Johanne Blenkin – retired lawyer
Les Blond – retired lawyer
Andrew Bonfield – lawyer
John-Paul Boyd – lawyer
Kari Boyle – retired lawyer
Michael Bryant – lawyer
Kelly Broom – member of the public
Andrea Bryson – Rise Women's Legal Centre

C

Jeffrey Campbell QC – lawyer
Roy Chan – Legal Services Society of BC
Gilbert Clifford – Legal Aid Manitoba
Randall Cohn – articled student
Janice Conick – Legal Services Society of BC

D

Tracey Downey – BC Aboriginal Justice Council

E

Peter Edelmann – lawyer

F

Anne Fletcher – advocate
Richard Fowler QC – lawyer
Chris Friesen – Immigrant Services Society of BC

G

Carlos Garcia – lawyer
Chief Judge Melissa Gillespie – BC Provincial Court
Drew Gilmour – lawyer
Brian Gilson QC – lawyer
Maegen Giltrow – lawyer
Craig Goebel – Legal Aid Saskatchewan
Kasari Govender – West Coast LEAF
David Griffiths – Legal Services Society of BC

H

Rita Hatina – Community Legal Assistance Society
Brett Haughian – Community Legal Assistance Society
Todd Hauptman – Trial Lawyers Association of BC
Kim Hawkins – Rise Women's Legal Centre
Lisa Helps – lawyer
Chief Justice Christopher Hinkson – BC Supreme Court
Claire Hunter – Access Pro Bono BC

J

Zahra Jimale – Canadian Bar Association BC Branch
Paul Jon – law student

K

Thomas Kampioni – member of the public
Doug King – Together Against Poverty Society

L

Tish Lakes – advocate
Terry Laliberte QC – lawyer
Vicky Law – Rise Women's Legal Centre
Peter Leask QC – lawyer
Kyla Lee – lawyer
Casey Leggett – lawyer
Karen Leung – BC Provincial Court
Linda Locke QC – lawyer

Megan Longley – Nova Scotia Legal Aid
Kevin Love – Community Legal Assistance Society

M

Dr. Julie Macfarlane – National Self-Represented Litigants Project
Sherry MacLennan – Legal Services Society of BC
Jamala MacRae – lawyer
Talia Magder – lawyer
Frances Mahon – lawyer
Sandra Mandanici – lawyer
Kevin Marks – Crown Counsel Association of BC
Heidi Mason – Legal Services Society of BC
Branka Matijasic – Legal Services Society of BC
Geoffrey McDonald – lawyer
Jerry McHale QC – law professor
David McKillop – Legal Aid Ontario
Margaret Mereigh – Canadian Bar Association BC Branch
Jennifer Metcalfe – West Coast Prison Justice Society
Shawn Mitchell – Trial Lawyers Association of BC
Jennifer Muller – member of the public
Michael Mulligan – lawyer

N

Forrest Nelson – lawyer
Lisa Nevens – Canadian Bar Association BC Branch
Caroline Nevin – Canadian Bar Association BC Branch
Carrie Ng – lawyer
Diane Nielsen – Community Legal Assistance Society

O

Tim Outerbridge – BC Court of Appeal

P

Katrina Pacey – lawyer
Richard Peck QC – lawyer
Geoff Plant QC – lawyer
Blake Price – UBC Law Students' Legal Advice Program

R

Micah Rankin – lawyer
Martha Rans – lawyer
Sarah Rauch – lawyer
Sam Reposo – Legal Aid Manitoba
Wayne Robertson QC – Law Foundation of BC

S

Lobat Sadrehashemi – lawyer
Shannon Salter – BC Civil Resolution Tribunal
Marilyn Sandford QC – lawyer
Hardeep Sangha -- lawyer
Allan Seckel QC – lawyer
Elton Simoes – ADR Institute of Canada
John Simpson – Legal Services Society of BC
Kathryn Spracklin – Legal Services Society of BC
Nick Summers – Newfoundland and Labrador Legal Aid Commission

T

Laura Track – lawyer
Donna Turko QC – lawyer

V

Bill Veenstra – Canadian Bar Association BC Branch
Olga Volpe – Legal Services Society of BC

W

Ardith Walkem QC – lawyer
Leslie Anne Wall – Canadian Bar Association BC Branch
Alison Ward – Community Legal Assistance Society
Doug White – BC Aboriginal Justice Council
Rosalie Wilson – BC Aboriginal Justice Council
Patricia Woroch – Immigrant Services Society of BC

Total of 110 personal consultations

Appendix C: Personal Written Submissions

A

Thomas (Yong-il) Ahn – member of the public
Katy Allen – lawyer
Brent Anderson – lawyer
Debra Apperley – advocate
Janice Ascroft – member of the public

B

Michelle Beda – lawyer
Yolonda Beaudry – lawyer
Mark Berry – lawyer
John Bilawich – lawyer
Paul Bosco – lawyer
Tannis Boxer – lawyer
Heather Brownhill – advocate
Crystal Buchan – lawyer
Chris Budgell – member of the public
Karen L. Bunner – advocate
Peter Burton – lawyer

C

Alex Chang – lawyer
Jeanette Cohen – lawyer
Shane Colclough – advocate
Bill Coller – lawyer
Rosemary Collins – advocate
Chandra L. Corriveau – lawyer
Elizabete Costa – lawyer
Jeremy Crowhurst – lawyer

D

Anne Davis – advocate
Erika Decker – lawyer
Janet Delgatty – lawyer
Lisa Demidoff – member of the public
David Desautels – advocate
Samantha de Wit – lawyer
Kim Donaldson – advocate
Katie Duke – lawyer

F

E. Murphy Fries – lawyer

G

Angela Gallant – member of the public
Paul Gandall – lawyer
Ian Gartshore – member of the public
Doreen Gee – member of the public
Sarbjit Gill – lawyer
Drew Gilmour – lawyer
Marla Gilsig - lawyer
Kate Gower – lawyer
Matthew Granlund – lawyer
Emily Gray – lawyer
Claire Griffiths – member of the public
David Grunder – lawyer

H

Claire Haaf – lawyer
Jean-Michel Hanssens – lawyer
Greg Heywood – lawyer
Kyle Hyndman – lawyer

J

Miriam Jurigova – lawyer
Dave Juteau – lawyer

K

Betty Keding – advocate
Sarah Khan – lawyer
Shelagh Kinney – lawyer
Ian Knapp – lawyer
Naomi Kovak – lawyer
Elaine M. Kurek – lawyer

L

Michelle Lalonde – lawyer
Joshua Lam – lawyer
Stan Lanyon QC – lawyer
Adena Lee – lawyer
Ryan Lee – lawyer
James Legh – lawyer
Caroline Lennox – member of the public
Sarah Levine – lawyer
Margot Liechti – lawyer
Luke Lin – lawyer
Julie Loerke – lawyer

M

Harriet Manson – advocate
Sonia Marino – advocate
Donna Martinson – retired judge
Brock Martland – lawyer
Heather Mathison – lawyer
Don McConnell – advocate
Michael McCubbin – lawyer
Steve McKoen – lawyer
Hugh McLellan – lawyer
Donald McLeod – lawyer
Peter Mennie – lawyer
Brandon Mewhort – lawyer
Dave Miles – lawyer
Roy Millen – lawyer
Murray K. Morrison – lawyer

N

Lisa Nevens – lawyer
Craig Neville – lawyer
Hilary Nyte – lawyer

O

Erica Olmstead – lawyer
Jeanette M. Oostlander – lawyer

P

Adam Pawlovich – lawyer
Joyce Percey – lawyer
Inga Phillips – lawyer
Michael Prestwich – lawyer
Andrew Prior – lawyer
Amber Prince – lawyer

R

Louise Richards – lawyer
Virginia Richards – lawyer
Glen Ridgway – lawyer
Will Roberts – lawyer
Erin C. Roth – lawyer

S

Kimberly Santerre – lawyer
Sandra Sarsfield – retired lawyer
Catharine Schlenker – lawyer
Tim Schober – lawyer
Miranda Seymour – lawyer
Jeremy Shragge – lawyer
Peter Shrimpton – lawyer
Ram Sidhu – lawyer
Rodney W. Sieg – lawyer
Susan Sinnott – lawyer
Angela Sketchley – lawyer
Adrienne Smith - lawyer
Kevin R. Smith – lawyer
Paul Smith – lawyer
Stephanie Smith – advocate
Claudia Stoehr – lawyer
Ashley Syer – lawyer

T

Kathleen Tanner – lawyer
Heidi Taylor – lawyer
Ryan Teraverst – advocate

W

Trudy Wale – advocate
Kevin Walker – lawyer
Leslie-Anne Wall – lawyer
Katherine Wellburn – lawyer
Laura Wilson – lawyer
Oliver Wilson – lawyer
Nina Wolanski – member of the public
David Wu – lawyer

Y

Jimmy Yan – member of the public
Michelle Yardley – advocate
Patricia Yaremovich – lawyer

Z

Robert Zeunert – lawyer

Total of 130 personal written submissions

Appendix D: Organizational Written Submissions

A

Access to Justice BC Steering Committee

B

BC Government and Service Employees' Union (BCGEU)

C

Canadian Bar Association BC Branch Access to Justice Committee
Canadian Bar Association BC Branch SOGIC Section
Community Legal Assistance Society

D

Disability Alliance BC

E

Environmental Law Centre, University of Victoria
Equifax Canada

I

Ishtar Transition Housing Society

L

Law Society of BC
Lawyers' Rights Watch Canada (LRWC)

W

West Coast Prison Justice Society

Total of 12 organizational written submissions

The Law Society of British Columbia

March 27, 2019

Sent via email and mail

The Honourable David Eby, Attorney General
Office of the Attorney General
PO Box 9044 Stn Prov Govt
Victoria, BC
V9W 9E4

Nancy G. Merrill, QC
President

Office Telephone
604.605.5394
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president@lsbc.org

Dear Mr. Attorney:

Re: ***Roads to Revival – An External Review of Legal Aid Service Delivery in British Columbia***

The recent report by Jamie Maclaren, QC *Roads to Revival – An External Review of Legal Aid Service Delivery in British Columbia* has emphasized the continuing inadequacy of legal aid and the consequences for British Columbians.

At the outset, we should note that the underlying premise of the Report is consistent with the Law Society's Vision for Publicly Funded Legal Aid. As Mr. Maclaren noted, and we agree,

> *The problem of inadequate legal aid has rested on the shoulders of disadvantaged British Columbians and their service providers for too long. It has caused immense human suffering. It has produced downstream social and economic costs that are crippling other government support systems.*

The Report reiterates points that have been made previously about the importance of legal aid. It counts as yet another study that identifies the necessity of improving the legal aid system after years of underfunding and shifting political priorities that have taken their toll on the range and quality of legal aid services.

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Government can explore service models and options but, to achieve results, funding levels will need to be increased. When funding was cut by government in the early 2000s, Joy McPhail, MLA, commented in the Legislature that the cuts would

> *...tremendously impact British Columbians in terms of their well-being, physically and mentally. Those who cannot afford legal representation in these matters [she had specifically identified family law and poverty law programs] will simply have justice denied to them. Access to justice will simply be denied to this group of people.*

What Ms. McPhail predicted has come to pass.

Funding for legal aid has not come close to restoring the levels from the early 2000s and the hard realities of inflationary pressures have simply been ignored. As a result, too many people are still being denied access to legal advice and too many lawyers are missing rent payments, working from their cars and clearly working under significant stress.

Like the reports that precede it, *Roads to Revival* highlights the need for the properly funded delivery of legal aid. We are hopeful that this latest in a series of studies and reports will spur government to increase funding for legal aid to counteract the years of underfunding that have taken a toll on the availability of legal aid services for those who desperately need them, and a serious toll on the ability of lawyers to provide them.

Yours truly,

Nancy Merrill, QC
President