



Minutes

Benchers

DATE: Friday, December 2, 2011

PRESENT:

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

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

ABSENT:

Kathryn Berge, QC	Jan Lindsay, QC
Carol Hickman, QC	

STAFF PRESENT:

Tim McGee	Jeanette McPhee
Deborah Armour	Doug Munro
Charlotte Ensminger	Lesley Pritchard
Su Forbes, QC	Susanna Tam
Jeffrey Hoskins, QC	Alan Treleven
Michael Lucas	Adam Whitcombe
Bill McIntosh	Rosalie Wilson

GUESTS:

Bill Maclagan, Bencher-Elect, County of Vancouver
Maria Morellato, QC, Bencher-Elect, County of Vancouver
Phil Riddell, Bencher-Elect, County of Westminster

Tony Wilson, Bencher-Elect, County of Vancouver
Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Johanne Blenkin, Executive Director, Courthouse Libraries BC
Kari Boyle, Executive Director, Mediate BC Society
Anne Chopra, Equity Ombudsperson
Ron Friesen, CEO, CLEBC
Donna Greschner, Faculty of Law Dean, UVIC
Jeremy Hainsworth, Reporter, Lawyers Weekly
Marc Kazimirski, First Vice-President, Trial Lawyers BC
Ronald G. Lamperson, Board Chair, CLEBC
Sharon Matthews, President, CBABC
Kerry Simmons, Vice-President, CBABC
Allan Parker, QC, Program Consultant, Access Pro Bono

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on October 21, 2011 were approved as circulated.

Consent Resolutions

The following resolutions were passed unanimously and by consent.

2. Approval of Amendments to Application Fee Rules

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

- 1. In Rules 2-11(2)(b) and 2-18(1)(b), by striking “the permit fee” and substituting “the application fee”.*
- 2. In Rule 2-23.5(2)(b), by striking “the investigation fee” and substituting “the application fee”.*
- 3. In Rule 2-27(3)*
 - (a) by striking “Application is made” and substituting “An applicant may make an application”; and*

(b) in paragraph (e), by striking “the fee specified” and substituting “the application fee specified”.

4. In Rule 2-33(1)(b), by striking “the fee for enrolment” and substituting “the application fee”.

5. In Rule 2-42, by striking “the fee for temporary articles” and substituting “the application fee for temporary articles”.

6. In Rules 2-49 and 2-49.3, by striking “the investigation fees” and substituting “the application fee”.

7. In Rule 2-52

(a) in subrule (1)(b), by striking “the appropriate reinstatement fee” and substituting “the appropriate application fee”; and

(b) by rescinding subrule (2.1) and substituting the following:

(2.1) On an application under subrule (2)(c), the Credentials Committee may waive payment of all or part of the application fee on any conditions that the Committee considers appropriate.

8. In Rule 2-55, definition of “relevant period”

(a) by striking the comma at the end of paragraph (Committee) and substituting a period; and

(b) by rescinding paragraph (d).

9. By enacting the following Rule:

Application fees

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

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

11. In Schedule 1

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

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

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

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

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

D. Transfer fees

1. Application fee for transfer from another Canadian province or territory – (Rule 2-49(1)(f))	1,125.00
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(d) by rescinding items F1, F1.1 and F2 and substituting the following:

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

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

G. Change of status fees

1. Application fee to become retired member (Rule 2-4(2)(b))	30.00
2. Application fee to become non-practising member (Rule 2-3(1)(b))	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-56(b))	60.00

(f) by rescinding item H1 and substituting the following:

1. Application fee (Rule 2-11(2)(b))	500.00
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(g) by rescinding items J1 and J2 and substituting the following:

1. Application fee for practitioners of foreign law (Rule 2-18(1)(b))	600.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-18(1)(b) and 2-22(2)(c))	125.00

(h) by rescinding item L2 and substituting the following:

2. Application fee per proposed non-lawyer member of MDP (Rules 2-23.3(1) and 2-23.5(2))	1,125.00
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12. In Schedule 2, by revising the prorated figures in each column in accordance with the changes in paragraph 11(a) above.

3. Approval of External Appointments: Nominations to LTSA Board of Directors; Re-appointment of LSS Director; Extension of YVR Director’s Term of Office

BE IT RESOLVED to nominate Ralston Alexander, QC, William Cottick and Glen Ewan, QC to the Board of Directors of the Land Title and Survey Authority of BC (LTSA), one of those nominees to be appointed by the board as an LTSA director for a three-year term commencing April 1, 2012.

BE IT RESOLVED to re-appoint Deanna Ludowicz to the Board of Directors of the Legal Services Society for a second three-year term, effective January 1, 2012.

BE IT RESOLVED to extend to Carol Kerfoot’s current term of office as a Vancouver Airport Authority Director by one year, to conclude May 14, 2013.

4. Approval of Revision to the Law Society Appointments Policy

BE IT RESOLVED to revise the Law Society Appointments Policy approved at the October 21, 2011 Benchers meeting by deleting the word “accurate” from the description of the listing of Law Society appointments and opportunities (under the heading “Communication Expectations”) to be maintained on the Law Society website, as indicated in the redline draft attached as Appendix 1 to these minutes.

5. Amendments to Rules 3-18.3, 3-18.4 and Schedule 1: Implementation of Lawyer Education Advisory Committee CPD Recommendations:

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

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

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

2. In Rule 3-18.4

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

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

(b) by adding the following subrule:

(3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:

- (a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
- (b) pays the late reporting fee specified in Schedule 1.

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

K. Late fees

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

6. Oath of Office for Non-Bencher Hearing Panelists

BE IT RESOLVED to approve the following oath of office, to be sworn or affirmed by any member of a Law Society hearing panel who has not previously taken the oath, to be taken before the hearing begins and administered by the Bencher chairing the panel:

I, _____, do [swear/solemnly affirm] that I will truly and faithfully and to the best

of my skill and knowledge execute and perform the duties of a member of a hearing panel of the Law Society of British Columbia, including the duty of confidentiality of a panel member.

7. Courthouse Libraries BC: Draft Governance Plan for Approval

BE IT RESOLVED:

- a. to approve the draft Governance Plan and Constitution of Courthouse Libraries BC (CLBC), as set out at page 7000 of the meeting materials and Appendix 2 to these minutes; and
- b. to authorize the Law Society representative(s) attending the next special general meeting of the members of CLBC to vote in favour of adopting the proposed changes to the CLBC constitution and bylaws.

REGULAR AGENDA – for Discussion and Decision

8. President's Report

Mr. Hume referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President since his last report, and elaborated on a number of matters, including those outlined below.

a. Attendance at International Bar Association (IBA) Annual Conference in Dubai (October 30 – November 4)

The Conference proceedings confirmed that the Law Society, Canadian law societies and the Federation are moving in the right direction in terms of priorities, regulatory policy development and technology issues. Sessions on alternative business structures and cloud computing were notable examples. There were many valuable opportunities throughout the conference to meet with representatives of other law societies, both Canadian and international, confirming the value of the Law Society's participation in IBA proceedings.

b. Law Society Indigenous Lawyer Mentoring Project

Mr. Hume introduced Ms. Rosalie Wilson as the lawyer retained to develop Phase 1 of the [Law Society Indigenous Lawyer Mentoring Project](#).

9. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 3 to these minutes), including the following matters:

- a. 2012 – 2014 Strategic Plan**
- b. Governance Review – Planning Update**
- c. Stakeholder Relations – Update**
- d. 2011 International Institute of Law Association Chiefs (IILACE) Conference – Adelaide**
- e. Core Process Review Recommendations – “Project Leo”**
- f. Aboriginal Mentoring Project – Lawyer hired to implement Phase 1**
- g. Operational Updates**
 - 2011 Employee Survey
 - Performance Management – Update
 - Earthquake Preparedness
 - “The Great Purge” – Green.Wise Recycling Initiative
 - Email Cleanup Campaign
 - United Way Campaign

10. Report on Outstanding Hearing and Review Reports

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

2009-2011 STRATEGIC PLAN IMPLEMENTATION – for Discussion and/or Decision

11. Year End Reports from the 2011 Advisory Committees

a. Report from the Access to Legal Services Advisory Committee

Mr. Vertlieb briefed the Benchers on the work of the Access to Legal Services Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11000 of the meeting materials for details. Discussion followed.

b. Report from the Equity and Diversity Advisory Committee

Mr. Brun briefed the Benchers on the work of the Equity and Diversity Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11006 of the meeting materials for details. Discussion followed.

c. Report from the Independence and Self-Governance Advisory Committee

Mr. Lucas briefed the Benchers (on behalf of Committee Chair Jan Lindsay, QC) on the work of the Independence and Self-Governance Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11010 of the meeting materials for details. Discussion followed.

Mr. Lucas noted that the Committee has also submitted a memorandum (at page 11015 of the meeting materials), recommending at page 11017 that the Benchers change the Committee's name and revise its mandate as follows:

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

As a consequence of the change of name, the mandate of the Committee should be altered slightly. The mandate should reflect the imperative that the Committee monitor issues affecting the development and promotion of the rule of law and in particular those issues affecting the independence and self-governance of the legal profession and justice system in British Columbia.

After discussion the Benchers agreed to defer discussion of the proposed name-change and mandate-revision to a later meeting.

d. Report from the Lawyer Education Advisory Committee

Ms. O'Grady briefed the Benchers on the work of the Lawyer Education Advisory Committee in 2011, outlining that Committee's recommendations for 2012 and referring to the report at page 11019 of the meeting materials for details. Discussion followed.

2012-2014 STRATEGIC PLAN DEVELOPMENT - for Discussion and/or Decision

12. 2012 – 2014 Law Society Strategic Plan: Final Review and Approval

Mr. Hume outlined changes made by the Executive Committee and staff to the draft 2012 – 2014 Strategic Plan (12004 of the meeting materials and Appendix 4 to these minutes) since the Benchers reviewed the previous draft plan at their October 21 meeting.

The Benchers then conducted a clause-by-clause review of the current draft 2012 – 2014 Strategic Plan, agreeing on the following friendly amendments:

Initiative 2-1(b)

Support and retain Aboriginal and women lawyers:

- implement the Justicia, or similar, program, and
 - develop and implement the Aboriginal Lawyer Mentoring Program.
- to be separated into two initiatives, as follows:

Initiative 2-1(b)

Support the retention of women lawyers by implementing the Justicia Project.

Initiative 2-1(c)

Support the retention of Aboriginal lawyers by developing and implementing the Indigenous Lawyer Mentoring Program.

Strategy 3-2

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

- to be revised as follows:

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

Mr. Lloyd moved (seconded by Ms. Andreone) to adopt the 2012 – 2014 Strategic Plan as amended.

The motion was carried unanimously.

The Benchers thanked and congratulated Mr. Hume for his leadership throughout the strategic planning process over the past year.

13. Feasibility Assessment: Bringing the *Justicia* Project to BC

Mr. Brun briefed the Benchers as Chair of the Equity and Diversity Advisory Committee. He outlined the history of the *Justicia* Project introduced in Ontario by the Law Society of Upper Canada, where more than 50 law firms have committed to sharing best practices, developing resources and adopting programs to support women lawyers. Each firm has pledged to achieve goals in the following core areas:

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

Mr. Brun noted that the Committee has developed a two-phase plan for consultation and engagement of BC law firms regarding implementation of *Justicia* in this province. He referred to the Committee's report at page 13000 of the meeting materials, particularly pages 13004-13005 for the detailed project plan, proposed budget and recommendation for implementation of phases 1 and 2 in 2012.

Mr. Brun moved (seconded by Ms. O'Grady) that the Benchers approve the Committee's proposed budget and implementation of phases 1 and 2 of the plan for consultation and engagement of BC law firms regarding launching *Justicia* in this province.

The motion was carried.

OTHER MATTERS – For Discussion and/or Decision

14. Insurance Coverage for Trust Shortfalls Arising from “Bad Cheque” Scams

Ms. Forbes briefed the Benchers on the ‘bad cheque scam’ scenario and its widespread incidence in BC, other provinces and around the world over the past couple of years. She explained that LIF's current Policy wording does not cover trust losses arising from such ‘bad cheque scams’, that the Executive Limitations require Bencher approval of any material increase in risk to the

liability insurance program, and that broadening the scope of current coverage to include such trust losses might trigger such risk. Ms. Forbes noted the variability of coverage available in a number of other provinces.

Ms. Forbes outlined factors militating for and against the coverage, including the public interest, member relations, financial implications, claim and operational costs, referring the Benchers to the paper at page 14001 of the meeting materials for detailed discussion. She noted the three options set out at page 14006, recommending Option 3 as striking the right balance between providing some protection and maintaining a real incentive for lawyers to remain vigilant:

1. Maintain the status quo – continue to exclude from coverage;
2. Provide coverage subject to the existing \$1 million per claim limit and \$5,000 deductible; or
3. Provide coverage subject to limits and deductibles specifically tailored to this risk. The limits would be on the amount paid per claim and, on an annual basis, per lawyer, firm and the profession as a whole. The deductible would be a percentage of the loss. Specifics are as follows:
 - (i) a \$500,000 sub-limit to limit the coverage to \$500,000 per claim;
 - (ii) a \$500,000 per lawyer and firm aggregate to cap total payments for any lawyer and firm;
 - (iii) (iii) a \$2 million profession-wide annual aggregate to cap total payments for all scams in any given year; and
 - (iv) (iv) a percentage deductible, equivalent to 35 per cent of the amount paid, to increase the amount of the firm's contribution in direct proportion to the amount of the claim.

Ms. Forbes pointed out that the proposed coverage does not extend to the firm's own indebtedness to its financial institution (overdraft losses), and that it is a matter of chance whether a particular 'bad cheque scam' loss triggers an overdraft as well as a trust shortage. As a result, she recommended that if the Benchers approve Option 3, the deductible should be reduced by the amount of any overdraft the firm is obliged to pay, and coverage should be contingent upon compliance with the client identification and verification rules.

An extended discussion ensued, during which the Benchers considered:

- whether a lower sub-limit, a longer aggregate period per firm, or a higher or lower deductible should apply
- trade-offs inherent in the proposed coverage with a deductible of 35%, including prudence and due diligence incentives versus risk of catastrophic losses to small firms and sole practitioners, resulting in insolvency and inability to replenish trust shortfalls as required by Rule 3-66(1)
- capriciousness of the timing factors underlying circumstances where ‘bad cheque scams’ trigger both trust shortages and overdrafts
- scale limitations on the availability and practicality of purchasing insurance coverage for this risk through a broker
- need for a robust communications ~~strategy and~~ plan to ensure adequate understanding by lawyers and the public of the purpose and limitation ~~of~~ on any expansion of coverage

The Benchers approved implementation of Option 3 coverage effective January 1, 2012, with reduction of any deductible payable by the amount of any overdraft the firm or lawyer is obliged to pay, and with provision of coverage to be contingent upon compliance with the client identification and verification rules.

15. Progress on Regulatory Department Plan

Ms. Armour briefed the Benchers on progress made in implementation of the Regulatory Department Plan they approved in March 2011. She outlined organizational, staffing and performance improvements in a number of areas, including:

- enhanced intake
- new investigative techniques
- working environment
- timeliness of disposition of complaint files

Ms. Armour reviewed 2011 KPM results to date, noting that 2010 performance has been equaled or exceeded in all areas of measurement this year.

Ms. Armour also briefed the Benchers on the Discipline Administrators’ Conference (DAC), an annual meeting of discipline administrators from all Canadian law societies. She stressed the value of participation by the Law Society’s key regulatory staff, both in formal sessions and informal discussions. The 2011 DAC included sessions on the following topics:

- National Discipline Standards
- Issues arising from a virtual practice
- Use of judicial comments in discipline
- Search and seizure of a virtual office
- Benchmarking standards
- Inter-jurisdictional complaints and investigations

16. Federation of Law Societies of Canada - Territorial Mobility Agreement Extension

Mr. Walker briefed the Benchers, reporting that the Federation Council has recently approved the request for indefinite renewal of the Territorial Mobility Agreement (the “TMA”) and that the TMA has been referred to Canada’s law societies for their ultimate approval and execution. Mr. Walker advised that the Credentials Committee has considered the request and recommends that the Benchers approve the Law Society’s adoption and execution of the indefinite renewal of the TMA.

Mr. Walker moved (seconded by Mr. Meisner) that the Benchers resolve as follows:

- the Law Society of British Columbia approve and execute the indefinite renewal of the TMA, and
- the Law Society of British Columbia vote in favour of the motion before Council of the Federation to revisit consideration of the factors impeding participation by the territorial law societies in the temporary mobility provisions of the National Mobility Agreement.

The motion was carried unanimously.

Mr. Walker moved (seconded by Mr. Meisner) that the Benchers adopt the draft resolution set out at page 16026 of the meeting materials, as follows:

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

1. In Rule 1, by adding the following definitions:

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

“reciprocating governing body”

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

“Territorial Mobility Agreement” means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.

2. In Rule 2-10.1, by rescinding the definitions of “National Mobility Agreement”, “reciprocating governing body” and “Territorial Mobility Agreement”.

The motion was carried unanimously.

17. Key Performance Measures and Bellwether Measures – 2011 Review

Ms. Andreone briefed the Benchers as chair of the Audit Committee, confirming that the Committee has completed its review of the Law Society’s key performance measures (KPMs). She noted that KPMs are important for good governance of the Law Society, and particularly for ensuring that its resources are used properly and effectively.

Ms. Andreone reported that that the Audit Committee has revised the current KPMs and developed two new bellwether measures as indicators of long term trends: frequency of complaints and frequency of insurance claims. She advised that Audit Committee has added these bellwether measures as a standing item on its Agendas for 2012 and proposes to report on them in conjunction with the annual report on the Key Performance Measures. The Audit Committee also plans to discuss whether there are other bellwether measures that should be adopted at a future meeting. Ms. Andreone referred the Benchers to Appendix A of the Audit Committee’s report (pages 17002-17007 of the meeting materials and Appendix 5 to these minutes) for a redline depiction of the proposed KPM amendments.

Ms. Andreone moved (seconded by Mr. Walker) that the Benchers approve:

- the amendment of the Law Society’s current key performance measures, as set out in Appendix 5 to these minutes, and
- the adoption of *frequency of complaints* and *frequency of insurance reports* as bellwether measures

In the ensuing discussion there was consideration of the rationale and approval process for the various KPM target percentages. It was agreed to defer until 2012 any decision on whether the

Executive Committee, the Audit Committee or a task force should be requested to review the various KPM target percentages.

The motion was carried.

18. Reconciling Qualifications for Differing Types of Legal Services, Strategy 3-5

Ms. O'Grady briefed the Benchers as chair of the Legal Education Advisory Committee. She referred to the Committee's report at page 18000 of the meeting materials, noting that the report and its recommendations flow from Strategy 3-5 and Initiative 3-5 of the current Strategic Plan:

Strategy 3-5

The Law Society will consider qualification standards or requirements for differing types of legal services. Are there are some types of legal services that could be offered without the provider qualifying as a lawyer and, if so, what qualifications would be appropriate or required?

Initiative 3-5

The Lawyer Education Advisory Committee will prepare by the end of 2011 a preliminary report to give some context to and direction on the issue.

Ms. O'Grady moved (seconded by Mr. Blom) that the Benchers approve the Committee recommendations set out at page 18002 of the meeting materials, as follows:

1. That a Task Force be struck and resourced to undertake the work contemplated by Strategy 3-5 with a two-phase approach.
 - a) Phase 1: A preliminary feasibility study to be presented to the Benchers that would:
 - identify priorities for types of legal services that might be offered without the provider qualifying as a lawyer, and that would most benefit the public;
 - identify priorities for types of legal services that might be offered by a lawyer with a restricted license, and that would most benefit the public;
 - identify the nature and scope of a public consultation strategy;
 - identify the kinds of resources required for a public consultation strategy;

- make recommendations for Bencher consideration on follow-up steps for phase 2, including:
 - scope of the follow-up steps,
 - potential delivery models,
 - potential cost and resource scenarios.
 - b) Phase 2: Based on Bencher direction at the conclusion of phase 1, the Task Force would:
 - develop a detailed roadmap for completing those initiatives;
 - analyse and assess one or more potential delivery models, as directed by the Benchers following Phase 1; and
 - make recommendations to the Benchers.
2. That the Task Force consider and build on the work of the former Futures Committee, and consult with other committees as appropriate in order to avoid duplication of effort and effectively utilize existing resources and expertise.

In the ensuing discussion it was confirmed that the Committee expected the proposed task force:

- to develop its own time line for the Benchers' approval, in the course of conducting Phase 1's feasibility study
- to complete Phase 1's feasibility study in about six months.

The motion was carried.

19. Election of an Appointed Bencher to the 2012 Executive Committee

Mr. Lloyd announced that the appointed Benchers have elected Mr. Kuiack as their representative on the 2012 Executive Committee.

20. Federation Council Update

Mr. Hume briefed the Benchers as the Law Society's member of Federation of Law Societies of Canada Council on various Federation matters, including:

a. Federation Presidency

Law Society Life Bencher and Past-President John Hunter, QC began his one-year term as Federation President on November 15. Mr. Hunter has identified three issues on the

Federation Strategic Plan for his emphasis as President: harmonizing national regulatory processes and standards; advancing national solutions on access to legal services issues; and implementation of the Model Code of Professional Conduct.

b. Model Code Update

The 'current client conflict' issue appears to be near resolution. The Standing Committee on the Model Code has delivered its Conflicts report and recommendations to the Council. If approved at its December 13 meeting, this final element of the Model Code will then be sent to the member societies for their review and approval.

21. Complainants' Review Committee Report for 2011

Mr. Acheson briefed the Benchers as chair of the Complainants' Review Committee for 2011. He reported that the 2011 Committee set two goals at the beginning of the year: eliminate the backlog of 49 files, and establish a turn-around time of two to three months for new files. Mr. Acheson confirmed that both goals have been achieved. He thanked Law Society support staff Andrea Brownstone, Ashleigh Faskan and Ramona Treptow and the six members of the 2011 Committee for their hard work over the past year.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM / 2011/12/29

LAW SOCIETY OF BC APPOINTMENTS POLICY

Objective

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

Term of office

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

Benchers or non-Benchers

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

Consultation

Canadian Bar Association:

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

Outside Body:

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

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

Geographic considerations

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

Equity

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

Appointment of judges

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

Communication Expectations

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

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
 - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

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

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

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

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

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

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

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



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

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

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

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

Request of the Benchers

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



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

December 2, 2011

Introduction

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

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

1. 2012 – 2014 Strategic Plan

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

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

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

I look forward to the final discussions.

2. Governance Review – Planning Update

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

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

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

3. Stakeholder Relations - Update

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

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

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

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

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

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

5. Core Process Review Recommendations – "Project Leo"

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

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

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

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

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

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

6. Aboriginal Mentoring Project – Staff Lawyer Hired

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

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

British Columbia, for which we are very appreciative.

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

7. Operational Updates

2011 Employee Survey

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

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

Performance Management - Update

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

Earthquake Preparedness

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

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

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

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

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

“The Great Purge” – Green.Wise Recycling Initiative

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

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

Email Cleanup Campaign

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

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

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

United Way Campaign

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

Timothy E. McGee
Chief Executive Officer

APPENDIX A

International Institute of Law Association Chief Executives

2011 Annual Conference - Adelaide, South Australia

Conference Highlights

1. Delegates and Program

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

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

2. How the Regulation of Lawyers is Changing

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

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

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

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

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

3. Alternative Business Structures

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

The emergence of "alternative business structures" as a law firm business model in England and Australia was the topic among many on the conference agenda that drew the most interest and discussion. Alternative business structures are business models through which legal services are delivered that differ from the standard sole proprietorship or partnership model.

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

What is behind these developments?

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

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

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

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

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

4. The Future of Continuing Professional Development

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

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

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

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

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

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

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

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

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

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

The Law Society
of British Columbia



2012 – 2014 Strategic Plan

For: The Benchers
Date: December 2, 2011

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

INTRODUCTION

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

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

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

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

Through this process, the Benchers identified three principal goals and related strategies that the Law Society should pursue over the next three years. In identifying these goals, strategies and initiatives, the Benchers have been mindful not only of what the role of the Law Society is in relation to its mandate, but also of what may be achievable within that mandate.

The goals, strategies and initiatives set out in this strategic plan are in addition to the overall operations of the Law Society's core regulatory programs, such as discipline, credentials, and practice standards. These programs are fundamental to fulfilling the Law Society's mandate and will always be priorities for the Law Society.

The plan will be reviewed on an annual basis during its three year term to ensure that the strategies and initiatives remain appropriate and to address any additional strategies or initiatives that may be necessary in light of changing circumstances.

Law Society Goals

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

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

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

Strategy 1 – 1

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

Initiative 1-1(a)

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

Initiative 1-1(b)

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

Initiative 1–1(c)

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

Strategy 1 - 2

Identify and develop processes to ensure continued good governance.

Initiative 1–2(a)

Examine issues of governance of the Law Society generally including:

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

Strategy 1–3

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

Initiative 1-3(a)

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

Initiative 1-3(b)

Improve uptake of Lawyer Wellness Programs.

Strategy 1– 4

Ensure that admission processes are appropriate and relevant.

Initiative 1–4(a)

Work on national admission standards while considering the rationale and purpose of the overall admission program.

Initiative 1–4(b)

Consider qualification standards or requirements necessary for the effective and competent provision of differing types of legal services.

GOAL 2: The public will have better access to legal services.

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

Strategy 2–1

Increase the availability of legal service providers.

Initiative 2–1(a)

Consider ways to improve the affordability of legal services:

- continue work on initiatives raised by recommendations by the Delivery of Legal Services Task Force;
- identify and consider new initiatives for improved access to legal services.

Initiative 2–1(b)

Support and retain Aboriginal and women lawyers:

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

Strategy 2–2

Improve access to justice in rural communities.

Initiative 2–2(a)

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

Initiative 2–2(b)

Develop ways to improve articling opportunities in rural communities.

Strategy 2–3

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

Initiative 2–3(a)

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

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

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

Strategy 3–1

Develop broader and more meaningful relationships with stakeholders.

Initiative 3–1(a)

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

Strategy 3–2

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

Initiative 3–2(a)

Identify methods to communicate through media about the role of the Law Society, including its role in protecting the rule of law.



<i>Professional Conduct and Discipline</i>				
Goals and Objectives	KPM	Comments		
<ul style="list-style-type: none"> Complaints about lawyers are handled fairly and in a timely fashion The exercise of the regulatory function by the Law Society is perceived to be fair, consistent and thorough 	<p>Frequency of complaints does not increase over time</p> <ul style="list-style-type: none"> At least 75% of Complainants express satisfaction with timeliness At least 65% of Complainants express satisfaction with fairness At least 90% of Complainants express satisfaction with courtesy At least 65% of Complainants express satisfaction with thoroughness At least 60% of Complainants would recommend someone make a complaint The Ombudsperson, the Courts and the CRC do not find our process and procedures as lacking from the point of view of fairness and due process 	<ul style="list-style-type: none"> The frequency of complaints becomes a Bellwether Measure 		
	<i>Custodianships</i>			
	Goals and Objectives		KPM	Comments
	<ul style="list-style-type: none"> To provide a more cost effective model that will enhance management and reduction of outside service providers, standardize and centralize custodial procedures and administrative services. 		<p>The average cost of a custodianship will decrease under the new program based on comparable historic averages</p> <ul style="list-style-type: none"> The length of time required to complete a custodianship will decrease under the new program based on comparable historic averages 	<ul style="list-style-type: none"> Remove this KPM. Although the cost of each custodianship should be measured and tracked for internal purposes, this cost does not measure how well we are protecting the interests of clients or the public.

	<ul style="list-style-type: none"> 90% of clients whose former lawyers are subject to a custodianship are satisfied or somewhat satisfied with the way in which the designated custodian dealt with their client matter 	<ul style="list-style-type: none"> New KPM to measure client satisfaction
Trust Assurance		
Goals and Objectives		
<ul style="list-style-type: none"> All law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds. 	<ul style="list-style-type: none"> Long term reduction in the number of financial suspensions issued by Trust Assurance program. 	
	<ul style="list-style-type: none"> Long term reduction in the percentage of referrals to Professional Conduct department as a result of a compliance audit. 	
	<ul style="list-style-type: none"> Improved performance on key compliance questions from lawyer's trust report filings. 	
Credentials, Articling and PLTC		
Goals and Objectives		
<ul style="list-style-type: none"> Successful applicants for call and admission demonstrate entry-level competence 	<ul style="list-style-type: none"> At least 85% of the students attending PLTC achieve a pass on the PLTC results 	
	<p>Students responding to the PLTC course evaluation rate PLTC's value at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> PLTC helped prepare them to recognize and deal with ethical and practice management issues PLTC helped increase their knowledge of practice and procedure PLTC helped prepare them for the practice of law PLTC helped develop or enhance their lawyer skills 	
	<p>Principals responding to the PLTC survey rate PLTC's value at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> PLTC helped prepare students to recognize and deal with ethical and practice management issues PLTC helped increase the students' knowledge of practice and procedure PLTC helped prepare students for the practice of law PLTC helped develop or enhance the students' lawyer skills 	

	<p>Students surveyed on call and admission rate the value of their articles at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> • Articling helped prepare them to recognize and deal with ethical and practice management issues • Articling helped increase their knowledge of practice and procedure • Articling helped develop or enhance their lawyer skills • Articling helped prepare them for the practice of law 	
	<p>Principals surveyed on call and admission rate the value of articles at an average of 3.5 or higher on a 5 point scale:</p> <ul style="list-style-type: none"> • Articling helped prepare the students to recognize and deal with ethical and practice management issues • Articling helped increase the students' knowledge of practice and procedure • Articling helped develop or enhance the students' lawyer skills • Articling helped prepare students for the practice of law 	
	<ul style="list-style-type: none"> • 98% of principals declare their student fit to practice law at the end of the Admission Program (PLTC and Articles). 	<ul style="list-style-type: none"> • Remove this KPM as "fit" does not measure the effectiveness of the Admission Program (PLTC or articling). The term "fit" describes physical, emotional and intellectual capacity, not knowledge, skill professional judgment, or character.
<p>Practice Advice</p>		
<p>Goals and Objectives</p>		
<ul style="list-style-type: none"> • Delivering high quality advice and information on matters of practice and ethics to members in a responsive and timely fashion 	<ul style="list-style-type: none"> • At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for: <ol style="list-style-type: none"> 1. Timeliness of response 2. Quality of advice 3. Quality of resources to which you were referred 4. Overall satisfaction 	

Practice Standards

<p>Goals and Objectives</p>		
<ul style="list-style-type: none"> Determine whether lawyers referred to Practice Standards meet accepted standards in the practice of law and, where they do not, recommend and monitor remedial measures Assist lawyers in developing and enhancing their competence and efficiency 	<ul style="list-style-type: none"> At least two thirds of the lawyers who complete their referral demonstrate an improvement of at least one point on a 5 point scale <u>in any one of the following categories:</u> <ol style="list-style-type: none"> <u>Office management</u> <u>Client relations and management</u> <u>Knowledge of law and procedure</u> <u>Personal/other.</u> 	
	<ul style="list-style-type: none"> At least two thirds of the lawyers who complete their referral did so at an efficiency rating of 3 or higher on a 5 point scale <u>in any one of the following categories:</u> <ol style="list-style-type: none"> <u>Office management</u> <u>Client relations and management</u> <u>Knowledge of law and procedure</u> <u>Personal/other</u> 	
	<ul style="list-style-type: none"> At least 8590% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for the following programs: <ol style="list-style-type: none"> Small Firm Practice Course Bookkeeper Support Program Succession and Emergency Planning Program Practice Locums Program Practice Refresher Course 	<ul style="list-style-type: none"> For all 5 programs, the target was set as an aspiration, not based on information or evidence. By way of comparison, the measure for PLTC and articling is 85%. Our KPM experience has shown that the 85% figure is more realistic.
	<ul style="list-style-type: none"> The Technology Support Program is being held in abeyance by the Practice Standards Committee while it assesses the uptake and response to Clio, a free web-based practice management tool targeted at the sole practitioners and small firms, accessed through the Law Society website. 	<ul style="list-style-type: none"> Remove KPM for "Technology Support Program," because the Practice Standards Committee decided not to implement the program in lieu of CLIO.

Policy & Legal Services		
Goals and Objectives		
<ul style="list-style-type: none"> To provide timely, relevant and balanced information, analysis and advice to the Benchers, Committees, Task Forces and Tribunals To ensure policy development in the areas of independence and equity and diversity. To advance or defend the Law Society's objectives in litigation matters To protect the public from the unauthorized practice of law 	<ul style="list-style-type: none"> Ratio of policy matters prepared by or with the assistance of policy staff and considered by the Benchers to policy decisions made by the Benchers in respect of those matters (Target 1:1) 	<ul style="list-style-type: none"> Remove entire Policy KPM section. With respect to policy, there is no relevance from a public interest point of view. These are internal measures only. Benchers will continue to be asked to provide this feedback on an annual basis
	<ul style="list-style-type: none"> On the annual appraisal questionnaire, Bencher responses of 4 or greater (on 1 to 5 scale) to questions concerning:- <ul style="list-style-type: none"> facilitation of planning and decision making orientation and training keeping Benchers abreast of key issues 	
	<ul style="list-style-type: none"> Ratio of the number of hearing reports issued to the number of times the decision of a hearing panel is reviewed to the number of times the decision of a hearing panel is reversed on review (Target 1:0:0) 	
	<ul style="list-style-type: none"> On the annual appraisal questionnaire, Bencher responses are an average of 4 or greater (on 5 point scale) to questions concerning support of tribunal functions 	
Lawyers Insurance Fund		
Goals and Objectives		
<ul style="list-style-type: none"> The public is reasonably compensated for lawyer negligence and lawyer misappropriation 	<ul style="list-style-type: none"> Policy limits for negligence and theft, the member deductible, and the premium are reasonably comparable with the 13 other Canadian jurisdictions 	

<ul style="list-style-type: none"> • Lawyers are reasonably protected against risk of excessive financial loss arising from malpractice. • Claims are resolved cost-effectively, balancing the interests of the claimant, the insured lawyer, and the membership as a whole. 	<ul style="list-style-type: none"> • Suits under the Insurance Act by claimants are fewer than <u>0.05</u>% of files closed 	
	<ul style="list-style-type: none"> • Every five years, third party auditors provide a written report assessing LIF's claims management as effective 	
	<ul style="list-style-type: none"> • Insured lawyers demonstrate a high rate of satisfaction (89<u>99</u>% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms 	