

The Future of Legal Services, Legal Practice and the Legal Profession in BC

A public consultation by the Futures Task Force

December 2019



The Law Society
of British Columbia



Futures Task Force Consultation Paper

Introduction

The Law Society of British Columbia's Futures Task Force is seeking input from lawyers, notaries, paralegals, the judiciary, organizations and the public to assist in its consideration of the future of legal practice, the legal profession in British Columbia and legal regulation. Specifically, the Task Force is seeking feedback on the factors and forces that are likely to influence the delivery of legal services and the regulation of the legal profession and legal practice over the next decade.

Background for this consultation

The Law Society of British Columbia's Futures Task Force was established by the Benchers in January of this year. The Benchers recognized that there are a number of developments in the delivery of legal services and within the legal profession that are likely to have a significant influence on both the future of how legal services are delivered and on the regulation of the profession. With that in mind, the Benchers created the Futures Task Force with a mandate to:

The Task Force is seeking feedback on the factors and forces that are likely to influence the delivery of legal services and regulation of the legal profession and legal practice over the next decade

- identify the anticipated changes,
- consider and evaluate the factors and forces driving those changes,
- assess the impact on the delivery of legal services to the public by the profession and on the future regulation of the legal profession in British Columbia, and
- make recommendations to the Benchers on the implications of the anticipated changes and how the Law Society and the profession might respond to the anticipated changes.

The members of the Task Force are Craig Ferris, QC (Chair), Jeevyn Dhaliwal (Vice-Chair), Lawrence Alexander, Lynne Charbonneau, Dr. Cristie Ford, Steven McKoen, QC, Katie Sykes and Tony Wilson, QC.

Scope of the consultation

The Task Force has identified a number of forces and factors that it wishes to explore in relation to its mandate, including:

- the demographics of the legal profession in British Columbia;
- the influence, implementation and adoption of technology, particularly artificial intelligence;
- the available supply and unmet demand for legal services in relation to access to justice;
- the business pressures facing law firms
- the existence and growth in alternate business structures and alternatives to lawyers providing legal services;
- the future of self-regulation;
- the ability to preserve and protect the core values of the profession;
- changes in legal education, including pre-call education, articling, continuing professional development and mentorship;
- the importance of addressing and supporting health and wellness of members of the legal profession, cognizant of the levels of mental health and substance use issues and their impact on delivery of legal services;
- potential for innovations in the Law Society's discipline, diversion and remediation programs;
- challenges to the rule of law; and
- engaging with Indigenous peoples and the influence of Indigenous law.

The Task Force recognizes that this list may not include all of the factors and forces driving the future delivery of legal services and the future of the legal profession and legal regulation and invites feedback on other influences that may have an impact.

A select bibliography of reports, articles and papers that the Task Force has considered can be found at the end of this consultation paper.

Demographics of the Legal Profession in British Columbia

It has been said that demographics is destiny. Over the past couple of decades, the legal profession in British Columbia has seen significant changes in the number of lawyers over 65 who continue to practise law, in the gender balance within the profession, the lagging diversity of the profession relative to the population of British Columbia, the change in the distribution of lawyers throughout the province and the influence of the expectation of younger lawyers regarding both practice and careers. In the Task Force's view, no consideration of the future of the legal profession over the next decade can avoid the influence that the demographics of the profession will have on the future delivery of legal services.

Consultation Question:

How will the changing demographics of the legal profession, including the growth in lawyers over the age of 65, the narrowing gender balance, the lagging diversity of the legal profession and the expectation of the next generation of lawyers affect the future delivery of legal services?

The influence, implementation and adoption of technology, particularly artificial intelligence

The Task Force notes that it is virtually impossible to read any legal publication or report without being confronted by predictions about the imminent demise of the legal profession in the face of advances in technology and artificial intelligence. But while the apocalyptic headlines may overstate the situation, the reality is that technology and artificial intelligence are having a significant influence on the delivery of legal services in many areas.

Consultation Question:

How will developments in legal technology impact the future delivery of legal services in British Columbia, particularly sole practitioners and smaller law firms?

The available supply and unmet demand for legal services in relation to access to justice

Considerable research and numerous reports have documented the prevalence of everyday legal problems and the degree to which those experiencing problems are unable to obtain legal advice and service. These studies indicate that as much as 85% of civil legal needs go unmet and that almost half of all Canadians over 18 will experience at least one civil or family justice problem over any given three-year period. The situation is often described as an access to justice crisis. It has led to the creation of A2J advocacy groups and promoted significant efforts to address unmet and underserved needs, including the introduction of the Civil Resolution Tribunal.

But despite the efforts to date, the Task Force recognizes that there remains a significant gap between need for and availability of legal services, as manifest in a growing number of self-represented litigants and in government's efforts to find alternatives to the traditional dispute resolution mechanisms.

Consultation Question:

To what extent, if any, will the unmet need for legal advice and services continue to impact the public and the profession and what solutions, beyond the efforts currently in place, might be provided to increase access for those who are currently unable to obtain assistance?

The business pressures facing law firms

Several recent studies have questioned the business model and practices of law firms. These studies may not reflect the experience of sole practitioners and small firms in British Columbia. For example, a 2016 study of American law firms has suggested that, out of an eight-hour workday, the average small firm collects payment on only 1.5 hours of billable time and that nearly six hours each day is spent in administrative, overhead, and marketing-related activities. Another recent study has noted that over a five-year span between 2007 and 2012, the total dollar amount earned by American firms acting for individual clients declined by nearly \$7 billion.

In looking at the economics of firms focusing on individual clients, the study observed that building a financially successful law practice out of low-stakes, high-volume cases requires capital for technology and marketing along with significant business acumen and managerial ability and that very few small firm lawyers possess these resources and skills. The Task Force is interested in the extent to which law firms are feeling business pressures and if so, what they are and how firms are responding.

Consultation Question:

To what extent, if any, are lawyers and firms feeling business pressures and if so, how are they responding?

The existence and growth of alternate business structures and alternatives to lawyers providing legal services

A recent report has projected that the alternative legal service provider market in the United States, the United Kingdom and Canada is expected to be \$10.7 billion this year. Several recent reports have also focused on the opportunities that regulated paralegals may provide in addressing the unmet need for legal advice and service, recognizing that regulated paralegals are already in place in Ontario and other jurisdictions. And while there are few multi-disciplinary practices in British Columbia, the Law Society Rules do provide for the opportunity for lawyers to engage with other professionals in providing legal services and some have.

The Task Force recognizes that legal regulators in some jurisdictions', including those in the UK and Australia, have modified their regulatory regimes in response to challenges associated with technology, the access to justice crisis, business pressures facing law firms, and alternate legal service delivery models. Recently, the state of Utah is has proposed a "risk-based" regulatory regime for lawyers, which includes a "regulatory sandbox" where innovators can secure a reasonable degree of freedom to experiment with new service delivery models.

Consultation Question:

To what extent, if any, are alternative legal service providers and alternate business structures likely to impact lawyers and law firms in British Columbia?

In-House Counsel, Government Lawyers

Nearly 3,300 practising lawyers provide legal services and advice as in-house counsel to government, corporations and non-profit organizations and regulatory bodies. In these roles, they practice in circumstances significantly different from those lawyers in private practice and face different issues in doing so. Lawyers who are not revenue generators experience lower levels of practice support than those in private practice.

The need to deliver legal services efficiently and effectively with limited resources (including diminishing budgets for external legal spend) is driving innovation in operations, process and use of technology, as well as the potential for increasing use of alternate legal service providers and global resourcing arrangements. The Task Force considers that the context and environment in which these lawyers practice requires particular consideration as self-regulation evolves to support and realistically accommodate the evolving practice of law.

Consultation Question:

As nearly one-quarter of all practising BC lawyers are engaged in providing legal services to government, corporations and non-profit organizations and regulatory bodies, what more could or should be done to support these lawyers in the roles they play for their employers?

The future of self-regulation

As the recent report on the College of Dental Surgeons illustrates, professional self-regulation demands a focus on the public interest which can be undermined by prioritizing the interests of the profession. The Task Force has observed that over the past decade, a number of professional regulators have faced challenges as a result of issues with governance or performance that have led to an increasing awareness within government about the importance of ensuring that professional regulation is provided in the public interest, as manifest in the recent Professional Governance Act, and it has not gone unnoticed that there has been a shift away from self-regulation of the legal profession in other Commonwealth countries. There are also efforts in several American states to move towards more open and innovative regulation of the legal profession.

Consultation Question:

What pressures will the Law Society face to adjust the self-regulation model in a changing landscape?

How do shifts in other jurisdictions away from the self-regulation model, and the challenges faced by some other self-regulating professions in British Columbia, affect this discussion?

The ability to preserve and protect the core values of the profession

While not always very precisely defined, the Task Force recognizes that the core values of the legal profession such as duties of a lawyer to a client, avoidance of conflicts of interest, lawyer independence and the maintenance of solicitor-client confidentiality and privilege are have a special significance for the legal profession and support fundamental principles of the justice system as a whole, including the rule of law. As alternate business structures become more prevalent, and as people other than lawyers engage in the delivery of legal services, these values may be undermined with consequences to the structure of the justice system.

Consultation Question:

How can core values of the legal profession that underpin fundamental structures of the justice system be maintained in the face of a changing marketplace for the delivery of legal services?

Changes in legal education, including pre-call education, articling, continuing professional development and mentorship

Although it's said that legal education today looks very much like it did 50 years ago, the reality is that law schools, pre-call education by law societies and articling are all being challenged to adapt to the current trends in legal practice and regulation. One example is the recent approval of a law school at Ryerson University in Toronto, which is offering a different type of legal education, one based on experiential learning, increasing access to legal services, and a response to the call for practice-ready professionals.

The mandatory pre-call education programs provided by law societies as part of their admission process vary considerably across the country and several are in the process of review and renewal. The future of articling has been a subject of considerable discussion in Ontario and has been looked at in other jurisdictions. And the increasing number of students acquiring their legal education outside Canada who are returning to Canada with the intent of becoming lawyers is also creating challenges for admissions processes. It has been suggested by at least one commentator that the lawyer development system, which is the structured yet largely informal process by which a law student on his or her first day of classes eventually becomes a confident, competent lawyer, is in trouble.

Consultation Question:

Are current educational efforts to ensure effective lawyer development throughout the continuum from law school to continuing professional development preparing future lawyers to be effective and maintaining that effectiveness and if not, what changes are necessary?

The level of wellness within the profession and the impact on the delivery of legal services

As a 2016 study published in the Journal of Addiction Medicine reported, there is a high incidence of possible alcohol dependence and depression within the legal profession, ranging from 20% engaging in hazardous, harmful, and potentially alcohol-dependent drinking and 28% experiencing some level of depression. Factors such as unreasonable work schedule expectations, unrealistic deadlines, and billable hour targets may all contribute to lawyers' experience with stress and depression. The Stigma continues to be identified as a barrier to lawyers obtaining treatment.

In addition to supporting the work of the Lawyers Assistance Program and providing the services of LifeWorks Canada, the Law Society's Mental Health Task Force is looking to identify ways to reduce the stigma of mental health issues and to conduct an integrated mental health review concerning regulatory approaches to discipline and admissions. While the Mental Health Task Force has been reporting on its work over the past year and half, the Task Force is aware that the need to address mental health and substance use within the profession continues.

Consultation Question:

What are the impacts mental health and substance use on lawyers, clients and the public and how will our ability to address the impacts effectively affect the future delivery of legal services?

Innovation in the Law Society's discipline, diversion and remediation programs

One of the challenges the Law Society faces in enforcing the Rules and the Code of Professional Conduct is that existing procedures fail to deal effectively with two groups of lawyers. The first group is those who are experiencing challenges in the delivery effective legal services due to mental health and substance use issues. The second class is lawyers who repeatedly face disciplinary action over the course of their career. Both classes of lawyers require innovative approaches to maintain an effective regulatory response to protect the public interest, since our conventional approach may not adequately deal with the underlying issues.

Innovation in technology may also help address the volume of complaints that do not disclose evidence of professional misconduct. There could, for example, be a more structured process for receipt of complaints. Potential complainants would be provided with a guided process to assist them in filing their complaints. The hope is that this would assist complainants to understand what we can do for them while ensuring that we receive relevant and useful information to assist with the evaluation of the complaint.

Consultation Question:

What can the Law Society do to make its regulatory processes more responsive to lawyers who are experiencing challenges in the delivery effective legal services due to mental health and substance use issues and to deal more effectively with lawyers who repeatedly face disciplinary action over the course of their career?

Challenges to the rule of law

The rule of law has been described by the Supreme Court of Canada as a “fundamental postulate of our constitutional structure.” It is generally considered a necessary guarantee of fundamental human rights and freedoms. But the principle is unevenly developed and applied in all areas of the world, and even in first world countries – including Canada – it faces threats from time to time. The Task Force recognizes that legal profession plays a role in maintaining the rule of law and challenges to the rule of law are challenges to the future ability of the profession to (as stated in the *Legal Profession Act*) “uphold and protect the rights and freedoms of all people.”

Consultation Question:

Could changing the regulatory structure of the legal profession or how legal services are delivered benefit the rule of law or create risks to its preservation?

Engaging with Indigenous peoples and the influence of Indigenous law

The report of the Truth and Reconciliation Commission of Canada in 2015 underlines the imperative of acknowledging and remedying the consequences of over a century of colonialist government policy. As the report reminds us, the purpose of that policy was to eliminate Indigenous governments; ignore Indigenous rights; to undermine the obligations set out in the Treaties; and, through a process of assimilation, cause Indigenous peoples to cease to exist as distinct legal, social, cultural, spiritual, and racial entities in Canada.

The 94 Calls to Action set out an ambitious program of reconciliation, including Call to Action 27, which called upon law societies to ensure that lawyers receive appropriate cultural competency training. With the introduction of a joint degree in Canadian Common Law and Indigenous Legal Orders at the University of Victoria Faculty of Law in 2018, we move one small step closer to recognizing influence and importance of Indigenous law within the legal systems of Canada.

Consultation Question:

How could the Calls to Action and the engagement with Indigenous legal orders influence the future delivery of legal services?

Have your say

Consultation Question:

What other factors and forces are likely to influence the future delivery of legal services and the future of the legal profession and legal regulation in British Columbia?

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