



Annual Fee Review: Consultation Paper

Introduction

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

The Consultation Questions

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

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

Background

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 With the agreement of the two lawyers, the members' resolution was withdrawn.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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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