



Responding to COVID-19 and adjusting regulation to improve access to legal services and justice

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Note: The Benchers considered this report at their December 3, 2021 meeting, at which time they approved Recommendations 1-3.

December 3, 2021

Prepared for: The Benchers

Prepared by: Policy and Planning Department

Purpose: Discussion and Decision

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Committee Process

1. At the beginning of the year, the President asked the Committee to advise the Benchers how *to maintain and enhance measures adopted in response to the COVID pandemic that have improved access to legal services and access to the justice system*. The Committee expanded on this request by also considering how access to legal services and the justice system have been compromised as a result of COVID and require further work. In addition, the Committee explored the Strategic Plan initiative relating to how to reduce regulatory barriers in order to improve access to legal services.
2. The Committee discussed these topics at several meetings, and engaged in consultation with the profession.
3. The consultation consisted of seeking written input from lawyers about the topics, as well as conducting four virtual town-hall meetings with lawyers from the following regions by way of Zoom videoconferencing: Vancouver Island, Northern Mainland, Southern Mainland, and the Lower Mainland. In total, over 40 lawyers participated in the consultation process. The Committee is very grateful to all who participated.
4. While the feedback the Committee received and the participation in Zoom sessions was consistently thoughtful, the sample size is too small to rely on for statistical purposes. That said, the Committee is of the view that the perspectives are important, they pass the threshold of “reasonableness,” and it is appropriate to consider these ideas as part of the ongoing work that remains. The concepts raised in this report should be considered as starting points for further inquiry, and not conclusions regarding solutions. There will continue to be opportunities to consult and collaborate and to test the ideas in this report against other perspectives.
5. The Committee was supported in its work by Michael Lucas, QC, Jason Kuzminski, Doug Munro, Amanda Kerr, Cary Ann Moore, Anna Lin, Vinnie Yuen and Valence Li. Mr. Kuzminski played a pivotal role in bringing together the Zoom video consultations, and participating as an emcee at three of the events.

Executive Summary

6. COVID-19 has disrupted the manner by which legal services are delivered and accessed. Government, the courts, lawyers, and the Law Society responded to the pandemic by accelerating the adoption of virtual services and modifying rules and policy to permit a range of remote services to occur.
7. The Committee engaged in consultation with lawyers across British Columbia, during four regional video sessions and by inviting written submissions, in order to obtain a better understanding how access to legal services and justice was affected by COVID-19 and how the various responses to the pandemic have operated in practice.
8. During these consultations, the Committee also sought feedback on what regulatory barriers exist that limit or preclude lawyers providing their services to more people, including extending services to help those who might not otherwise be able to afford the services or readily access them.
9. This report provides an overview of what is working as well as areas where change may still be needed. The process the Committee engaged in was designed to be the start of conversations and not lead to conclusions at this stage. Instead, the present purpose was to collect evidence based on the experience of people in the field, and test that information against existing information. After that is completed, a path forward can be identified through which the Law Society can explore what justice system responses to COVID-19 should be continued and how the delivery of legal services, and its regulation, might be improved going forward to promote greater access to legal services and justice.

Resolution

10. The Committee recommends that the Benchers adopt the following resolution:

THAT the Law Society adopt the following recommendation made by the Access to Justice Advisory Committee:

Recommendation 1:

The Law Society adopt the principles for regulatory review set out at paragraph 19 of this report for the purpose of guiding policy development on reducing regulatory barriers to accessing legal services and justice.

Recommendation 2:

The Law Society will work with government, the courts and other justice system stakeholders to maintain justice system responses enacted to address COVID-19, and

explore ways to expand and improve upon those system changes, including exploring how to simplify and modernize the requirements for remote execution of affidavits.

Recommendation 3:

Staff will evaluate what changes can be made to Law Society regulatory requirements, including: in the following areas,

1. Simplifying and modernizing the client identification and verification process;
2. Simplifying and modernizing the trust accounting rules, as well as considering modernizing the rules to address law firm regulation;
3. How to make the payment of practice fees more equitable, including exploring whether to permit alternate payment schedules and means of payment;
4. Evaluate existing resources related to how lawyers can use technology and attempt to simplify the resources where possible. This review may include considering whether the Law Society should change its practice of not endorsing particular technology.

And, where policy changes are needed, will report to the Benchers with suggestions or options.

Background

11. In late 2019, reports began to appear of a novel coronavirus (COVID-19) having been detected in China. In early January 2020 the first recorded case was noted outside China. On March 11, 2020 the World Health Organization characterized the disease as a “pandemic”. On March 17, 2020 British Columbia declared a state of emergency in response to COVID-19. As of early November 2021, when this report was written, there have been more than 248 million reported cases of COVID-19 globally, with over five million deaths. British Columbia has seen over 200,000 cases and over 2,100 deaths caused by the disease. The virus has been devastating.

The Issue

12. This report makes recommendations to the Benchers regarding two types of “issues” relating to access to legal services and access to justice.
13. The first issue is how COVID-19 impacted the delivery of legal services and people’s ability to access justice. There are two levels to this. At one level there are the barriers created by

COVID-19 to accessing legal services and justice due to services being shut down, and rules relating to social distance, gatherings, and quarantine being imposed. The second level relates to institutional responses to COVID-19, including changes made by the Law Society, government and the courts, and the legal profession. These responses improved access to legal services and justice for some, but created greater barriers for others.

14. The second issue involves identifying ways in which Law Society regulation might impede the ability of lawyers to provide services to clients, or expand the reach of legal services. This topic was not limited to a COVID-19 impact analysis. For this part of its work the Committee considered the need to balance the object of improving access with the public interest purpose of rules or policies that might create barriers to accessing legal services.
15. Any effort to succinctly capture the scope of COVID-19's impact on access to justice and legal services is apt to fail. COVID-19 has profound impacts on all aspects of society, from health, work, housing, travel, human rights, immigration, entertainment, to name a few. Because COVID-19 affects everyone, and often in ways where legal rights or obligations are implicated, its impact is considerable. In order to simplify matters the Committee focused on whether people faced more or fewer barriers to accessing legal services (or delivering such services) and accessing our justice system as a result of COVID-19 and society's responses to the disease. The Committee recognizes that this process of simplification means some important matters will be missed, and that this report cannot be exhaustive of the issues or potential solutions.
16. As noted in the CBA BC Branch report, "Who's Getting Left Behind: The Impact of the Ongoing Digital Transformation of the Court System on Access to Justice in British Columbia" (July 2021) ("CBA Report"), COVID-19 accelerated the digitization process that was already underway in BC.¹ Most of the responses to COVID-19 can be categorized as "digitization" of existing services and systems, rather than transformation of how we deliver services. In other words, justice system stakeholders attempted to replicate paper and in-person processes with digital solutions. This approach made sense as society needed to act quickly to address the shutdown caused by COVID-19. Moving forward, there is time to reflect on the extent to which our legal systems and services can also be transformed to better improve access.

Evaluation Criteria

17. The Committee applied several evaluation criteria in analyzing the issues. The Committee considered the nature of the barriers and the responses of justice system stakeholders,

¹ At p. 4.

assessing ways in which access has been improved or diminished, and what might be done to improve matters.

18. The Committee divided its analysis of feedback and options into matters that fall within the Law Society’s ability to control and matters that the Law Society can influence but not control. This approach is consistent with the Law Society’s Access to Justice Vision.
19. With respect to the topic of regulatory barriers, the Committee considered additional factors based on evaluation criteria the Committee presented in its 2018 year-end report to the Benchers:²
 - a. *Reforms and innovation must balance theoretical benefits with actual safeguards* – This principle includes the idea that a certain benefit should trump a theoretical one, unless the magnitude of realizing the theoretical benefit greatly outweighs the actual impact of the benefit that is certain;
 - b. *Reforms must target real problems and offer practical solutions* – Most policy analysis should include identifying and understanding the problem the Law Society seeks to address, and from that determine the causal relation between regulation or innovation and the problem or its potential solution. In order for lawyers to embrace changes and promote access, the changes need to be practical and alive to the realities of practising law;
 - c. *Reforms should not sacrifice professionalism or standards of competence in order to maximize access* – The goal is not simply to improve access to justice and legal services, but access to meaningful justice and to competently delivered legal services;
 - d. *The Law Society must not try to bring about change by regulating outside its jurisdiction; but should be prepared to make constructive suggestions beyond its jurisdiction when the public interest requires it* – In order to withstand judicial scrutiny and to achieve acceptance by the profession and other justice system stakeholders, it is important to ensure regulatory reform and innovation is consistent with s. 3 of the *Legal Profession Act*. However, because some matters within the Law Society’s mandate affect (and are impacted by) broad, societal conditions that lie outside its mandate, the Law Society might in some circumstances lend its voice to issues the Benchers determine it is in the public interest to do so; and

² In July 2019 the Benchers adopted new governance policies that include a process that is to be applied when “enacting, rescinding or amending proposed rules”. The principles recommended in this report are not intended to supplant the governance policy and are intended rather as a complementary process that would apply to policy development at initial stages, often before it is clear that creating or modifying rules is necessary.

- e. *The Law Society should explore what opportunities exist through regulation and innovation to promote access to justice and legal services, subject to the overriding object of protecting the public interest in the administration of justice* - The Committee recognizes the importance of a pro-active, positive statement of purpose to support the objects of advancing access to justice and legal services as being consistent with the Law Society's broad, public interest mandate.

The Committee recommends that any work undertaken to change regulatory processes to improve access to legal services should include, as part of its development, consideration of these evaluation criteria by the group assigned the work.

Consultation Feedback

In this section, the Committee sets out some feedback it received during its consultations and possible options for the Law Society to pursue. The Committee deals with these in two branches. First is the feedback related to matters in the control of the courts and the government. The second relates to matters that are within the Law Society's ability to control.

Matters that lie outside the Law Society's control:

20. Several matters that were raised in the consultation relate to matters over which the Law Society has no direct authority, but over which it may exercise so moral suasion and could be an effective advocate or collaborator with others to achieve outcomes.
21. The Committee recognizes that policy decisions of governments operate independent of the Law Society, and the courts are independent bodies as well. The concepts for outreach, therefore are framed as part of the general policy directive the Society adopted in its Access to Justice Vision of outreach and collaboration, rather than prescriptive statements of what the government and the courts must do.

Remote witnessing and execution of documents:

22. The most common and consistent responses the Committee received related to the changes that allow for remote witnessing and execution of documents. Everyone who identified these changes indicated that the system would be improved by allowing for a continuation of remote witnessing and execution of documents going forward, even after the pandemic ends. In addition, most people observed that these processes need to be reviewed and simplified where possible. For example, several participants spoke about how much longer it takes to finalize an affidavit in the virtual model than one created / reviewed in person. The responses included observations that it is difficult to walk some clients through an affidavit page by page over a video service like Zoom, and queried whether there was a way to have a secure third party service that allowed for the client to work through the document (similar to DocuSign)

and then the lawyer would verify by video afterward. The Committee understands that staff has identified this issue, and it is already under consideration with the intent of following up the discussions with the courts on this subject that gave rise to the current practice that was put into place.

Courts & virtual proceedings:

23. The Committee received responses encouraging the Law Society to maintain its own virtual hearing processes, but also to advocate for continued use of virtual court and tribunal processes. It was recognized that virtual processes will not work in all circumstances, but the general feedback is that they expand access to justice and legal services by allowing greater flexibility for accessing the system. Also, several lawyers spoke about how virtual services were less intimidating to participants, and because of this people are more likely to embrace such services.³
24. Because virtual services are not location dependent, they permit access without people having to travel and incur the costs and time associated with travel. These savings can be profound, particularly for those of marginal means. For people who have to arrange for care for their children it can be easier to have the children at home while accessing a service remotely, than paying for care and travelling to access a service.
25. The Triple Aim of Access to Justice BC, which the Law Society endorsed, includes making legal services more user focused. Maintaining and improving upon virtual services will be an essential part of achieving this objective.

Courts' systems:

26. The Committee heard several examples of how the courts might improve access going forward, including having judges write orders rather than counsel, and improved process service systems, such as adopting models similar to those used by the US Federal District Court in which, the Committee is advised, users upload documents to a system that time stamps them and automatically emails all parties. The responses indicated the courts need to modernize and simplify how parties communicate with the court.

Prisoners and people involuntarily detained:

27. People who are detained in correctional facilities have experienced greater barriers to accessing legal services and justice than most. In normal circumstances, counsel can meet with a detained individual in person prior to court appearances. This allows for conversations with privileged information to occur. COVID-19 changed this, with the result that lawyers

³ Recent Small Claims Rules amendments reflect some of the progressive reform that is already underway, see: [Small Claims Rules amendments effective August 16, 2021 include new form | Provincial Court of British Columbia](#).

can't meet with their clients in the facility or in advance of court appearances, and Corrections has not made it a priority to provide an alternative. The result is that during a video appearance, the judge has to "clear" the virtual court to give defence counsel an opportunity to talk with the client. This is inefficient and some clients will not feel comfortable to speak freely in this circumstance. In addition, it was observed that technological solutions do not guarantee that the level of confidentiality and privilege expected of the solicitor-client relationship is preserved for people detained by the State. The Committee is of the view technological solutions and practical policies can be put in place to allow defence counsel to speak with a client, if not in person, by way of video, in advance of the appearance taking place.

28. A related issue that arises for people who are detained involves lack of access to Native Court Workers, Mental Health Workers and other third-party service providers. Historically, these service providers were available in the courthouse to lend needed assistance. With matters pushed to a video model the court system needs to develop a model by which these essential services are accessible when needed. Helping guide people through the process, making them aware of the next appearance to avoid bench warrants and unnecessary delay is a critical part of making courts operate smoothly. Virtual or even hybrid models need to accommodate these services.

Issues of etiquette and professionalism:

29. The Committee heard that as we move forward into an increasingly digital and virtual world, it is important to educate lawyers, litigants and judges about professionalism and etiquette while using virtual platforms. Some of the solemnity of court is lost by a transition to virtual hearings, and the Law Society can work with the courts and the profession to correct this. Examples the Committee heard were of a judge turning off the judges' video during a matter, and of lawyers and litigants not always acting as if the virtual matter was a courtroom. Quite apart from viral examples of "cat people" making appearances in court, simple matters like having dogs barking, or checking one's phone for messages, or having family members walking in the background can all detract from the focus and decorum expected of formal legal matters.
30. The Committee observes that we have all been living with virtual justice long enough now to recognize we can and should do better, and stop bad habits before they become ingrained. There is opportunity for the Law Society to work with the profession, the courts other dispute resolution bodies to establish acceptable norms of behavior for virtual proceedings.

Courthouse libraries:

The Committee heard about the critical role courthouse libraries provide. The Committee acknowledges the excellent job Courthouse Libraries has done in keeping resources available during a challenging time, including making available a considerable amount of high quality,

free CPD content. Some of the feedback the Committee heard is not a criticism of Courthouse Libraries *per se*, as much as a recognition that for some people when libraries are shuttered it locks out the public from accessing important resources or speaking with librarians.

Participants encouraged finding ways to make library content more widely available and free for the public. Because we live in a society where many people cannot afford professional legal services, we need to find ways to make essential legal information and resources available to the public for free. The feedback reveals that even useful resources like CanLII probably need to be supplemented with access to librarians or, eventually, improved A.I. to assist people in using the resources.

Safety concerns:

31. Some participants provided feedback related to improved safety as a result of adopting digital service delivery platforms. At the obvious level, technology allowed lawyers and clients and courts to connect without risk of spreading COVID-19. But, some lawyers pointed to additional benefits of allowing people to speak to a matter without having to be physically present with the other disputant. This was particularly beneficial where violence was part of the relation between disputants.

The Committee also heard about a preference amongst some judges for people to not have a mask on, ostensibly so the judge could better hear what people were saying. This raised concerns for health risks and created a pressure to balance health concerns with the object of being responsive to judges' wishes.

Process improvements the Law Society can make:

32. Participants identified a variety of ways the Law Society can improve its processes and practices.

Gender:

33. The Committee heard how the Law Society's forms and communications can be improved by removing gender markers or designations. The Committee understands that work is already underway within the Law Society to address gender self-identification in forms, at hearings, and in official Law Society communications.

Client Identification and Verification:

34. In a similar vein, the Committee heard how the client identification and verification process can create access barriers for transgender people. The Committee heard that transgender people's government identification will not necessarily match the individual's gender identity or chosen name, and this can lead to barriers by requiring the lawyer to collect the government

identity. This can “out” the person as transgender and can have negative consequences for the person’s acceptance of the system or process.

35. In addition, people who are economically vulnerable and/or homeless may lack the necessary identification. This makes the client identification process difficult. To the extent a main purpose of the client identification and verification rules are to check against money laundering, it was observed that these marginalized individuals are not realistic conduits for money laundering.
36. The Committee recognizes that the Law Society already has considerable resources directed to the issue of client identification and verification and anti-money laundering, but encourages the Society as part of its ongoing work to consider how to minimize the unintended impact of our rules on marginalized members of society and equity-seeking groups. These issues exist at the intersection of matters of concern to the Law Society, namely, anti-money laundering, access to justice, and equity, diversity and inclusion. These issues are really beyond the remit of this Committee, but the Committee wanted to ensure they were recorded for consideration by other groups in the Law Society who are tasked with examining these matters.
37. The Committee also heard that the Law Society should explore technological solutions to client identification and verification to allow for it to take place remotely. During the course of conversations it was observed that the Land Title Survey Authority has better technology for verifying identity than that which lawyers are permitted by the Law Society to use. It was suggested that software can better detect the markers of fraudulent ID than a lawyer looking at a document in person. Participants encouraged the Law Society to modernize its approach to client identification and verification.
38. The conversation about client identification and verification tracked along themes that were explored during talks about remote witnessing of documents, holding hearings or Chambers applications by video, and virtual services in general. The digitization and liberalization of rules and systems expands the ability of lawyers to connect with clients who otherwise face geographic or other barriers to accessing services in person. The Law Society was encouraged to advocate for the continued use of technology and its normalization.
39. During these conversations it was made clear (as also noted in the CBA Report) that virtual solutions do not work for everyone. So a complete transformation of bricks and mortar to digital would leave many people without access to legal services or justice. Hybrid models are also required, as well as the government and courts committing to the infrastructure necessary to bring technology to remote communities. While the Law Society cannot bring about such change, it can act as a champion for change and work with government, the courts, the CBA and the Law Foundation of BC and others to ensure modernization of legal services and systems are accessible to all who need them.

Simplification of Law Society rules and processes:

40. The Committee heard on a number of occasions that trying to comply with Law Society rules during the pandemic was onerous. Trust accounting rules were identified most often as being complex and time consuming. To be clear, the feedback was not that the Law Society should not regulate trust accounting; it was that the way the Law Society goes about that regulation is complex and very demanding, particularly on sole practitioners and small firms.
41. During the conversations and consultations several examples were provided. A common issue was that the public uses technology and communicates using technology that lawyers are not permitted to use or the use of which is unclear regarding professional obligations. Technology changes, and new applications and services are being used at a rate faster than Law Society rules and processes develop. Some clients expect to be able to communicate with their lawyers using technology that might not meet the standards the Law Society expects of lawyers. Lawyers were not suggesting that professional responsibilities regarding confidentiality and privilege are not important. They did suggest that the profession could do more to “meet” clients and communicate with clients in ways the clients are comfortable with.
42. At one consultation session concerns were raised about the Law Society’s process for lawyers unable to practise, or return to practice, during COVID-19 and the issue of how much time a lawyer can be absent from the practice of law before needing to pass examinations or obtain the permission of the Credentials Committee. The Committee understands from staff that Credentials as well as Member Services have dealt with a high volume of COVID-19 related inquiries. Although the Committee is of the view that access to justice issues related to credentialing and membership might have been compounded by COVID-19, the Credentials Committee is the appropriate body to balance those issues against existing processes and the evidence learned during the pandemic. Therefore, the Committee has referred the relevant feedback it received to staff for consideration by the Credentials Committee as part of its work.

Practice fees:

43. The Committee heard from several lawyers that greater flexibility with how and when to pay practice fees would be helpful, as would the possibility of reduced practice fees in order to support the continued viability of necessary but economically marginal practices. Examples included being able to pay by credit card, additional installment options, and potentially offering reduced rates based on meeting objective threshold criteria that merited a reduction. The Committee recognizes that the issue of differential practice fees and practice fee flexibility has been considered a number of times and recognizes that the Executive Committee has referred to the Finance and Audit Committee the issue of considering a differential fee model.

Interac e-Transfers:

44. The Committee heard that the Law Society should differentiate between Interac e-Transfers and electronic transfers, and simplify rules relating to the former as they often involve small sums. In addition, in order to send an Interac e-Transfer there is no need to collect the client's bank account number so the feedback was that the Law Society forms should be changed to reflect how Interact e-Transfers work.

Customized software for trust accounting compliance:

45. During its review of the issues, the Committee considered whether it was possible to have specific software created to help lawyers comply with trust accounting requirements; a sort of "TurboTax" for trust accounting. Not everyone can afford a bookkeeper and highly skilled bookkeepers are a precious commodity. It occurred to the Committee that one area for technological innovation, therefore, is on the law firm accounting and administration end. While the Law Society would not be expected to create or code such software, it might explore what is possible in order to provide the profession an easy to use program that aids in compliance. Such software, if uniform in nature, might also assist with audits on the back end.
46. Several participants noted how difficult it is for sole practitioners and small firms to navigate the rules for trust accounting compliance. Good bookkeepers can be "poached" by larger firms, and it is hard to get quality help, and even more difficult to navigate the system alone. Participants expressed the hope that not only might processes be simplified, but the Law Society might create tools and educational materials to help lawyers operate trust accounts and provide training for book-keepers to understand the requirements of trust accounting (perhaps including the Law Society Trust Accounting Department providing training sessions).

Compliance with professional obligations while using technology:

47. Some lawyers spoke about the difficulty of complying with Law Society requirements for cloud computing technologies. Some lawyers lack the technical understanding of the services they are using, and do not have dedicated IT support. Some lawyers are choosing to avoid embracing cloud computing in order to avoid the difficulty of assessing whether they can comply with the rules. Some participants asked whether there is anything the Law Society can do to identify approved types of services and service providers.

Demographic impacts:

48. As part of its consultations, the Committee sought input on which groups face the greatest barriers to justice and access to legal service, and how COVID-19 has affected these groups.

The feedback received tracks the findings in the CBA Report and speaks to the need for thoughtful design of our systems and services moving forward.⁴

General comments

General observations about Law Society outreach:

49. The feedback the Committee received about the Law Society's efforts at outreach during COVID-19, including the various forums and consultations, was positive. The lawyers the Committee consulted with were grateful for the Law Society's efforts to keep the profession informed and engaged, and encouraged the Society to continue in this vein.

Discussion

50. As noted earlier, the feedback discussed in this report does not constitute recommendations for specific courses of action or solutions. The concepts fit within several categories that merit further consideration and action:

- a. Working with government and the courts to ensure virtual justice solutions form part of the normal system, and simplifying these systems and ensuring they are accessible to all people;
- b. Reviewing the Law Society's rules and processes related to trust accounts, fees, and practice advice related to the use of technology, and simplify the requirements where possible in order to make it less time consuming, costly and onerous for lawyers to comply;
- c. Continuing to engage in outreach, consultation and collaboration with justice system stakeholders while working to modernize how legal services and justice are delivered.

51. The Committee believes the Law Society should reach out to government and the courts to discuss how to modernize the delivery of justice in British Columbia, so that we leverage the lessons of justice delivery learned during the pandemic, and move forward towards a modern and more inclusive system of justice. The forces of human nature that will compel us to revert back to the old way of doing things once infection rates drop below a certain level will be powerful, but it is essential to resist that impulse. We have an opportunity to take the invention brought about by the necessity of responding to COVID-19 and craft something positive out of a human tragedy. These opportunities for alignment of thinking and reform do not come around often, and the Committee is of the view it is essential for the Law Society to

⁴ People without access or reliable access to broadband, people with language or technological competency barriers, are examples of some of the demographic groups at risk of being left behind.

commit to advocating for much needed changes to how legal services are delivery and justice is accessed in British Columbia.

52. The Committee is well aware that while statements of intention are easy to make, change is hard. It is important, therefore, to enter consultations and collaborations with open minds and realistic expectations. The Committee is of the view the Law Society can contribute to change by ensuring the public interest is at the forefront of discussions, and that the process of change is principled.

Recommendations

53. The Committee believes that there are several projects the Law Society should undertake as part of a review of how regulation might be modified to be less onerous, and hopefully make it easier for lawyers to provide access to their services or maintain viable practices.
54. As noted above, the Committee recommends that as the Law Society works to reduce regulatory barriers to accessing legal services, the principles and criteria identified at paragraph 19 be utilised to guide policy development.

Recommendation 1:

The Law Society adopt the principles for regulatory review set out at paragraph 19 of this report for the purpose of guiding policy development on reducing regulatory barriers to accessing legal services and justice

55. Next, the Committee encourages and recommends that the Law Society continue working and consulting with government, the courts, and other justice system stakeholders to maintain changes to processes implemented in response to COVID-19 that have worked and to discuss how successes in this regard can be expanded and improved.

Recommendation 2:

The Law Society will work with government, the courts and other justice system stakeholders to maintain justice system responses enacted to address COVID-19, and explore ways to expand and improve upon those system changes including exploring how to simplify and modernize the requirements for remote execution of affidavits.

56. Next, the Committee recommends a range of topics that the Law Society should to consider how to modernize them to better reflect current uses of technology, and to simplify rules and processes where possible. As many of the possible changes will be operational, it is preferable for staff to identify and resolve these matters without conflating them with policy development. Where policy changes are needed, staff should conduct a review, with a goal to recommend to the Benchers options for moving forward.

Recommendation 3:

Staff will evaluate what changes can be made to Law Society regulatory requirements, including: in the following areas,

1. Simplifying and modernizing the client identification and verification process;
2. Simplifying and modernizing the trust accounting rules, as well as considering modernizing the rules to address law firm regulation;
3. How to make the payment of practice fees more equitable, including exploring whether to permit alternate payment schedules and means of payment (e.g. credit cards);
4. Evaluate existing resources related to how lawyers can use technology and attempt to simplify the resources where possible. This review may include considering whether the Law Society should change its practice of not endorsing particular technology.⁵

And, where policy changes are needed, will report to the Benchers with suggestions or options.

Some Concluding Comments

57. The Committee also considers it important to note three points arising from consultation that likely do not fall directly within its mandate, but which it believes are important to note for future consideration by the Law Society.
58. The first is in regard to fees. The Committee understands that the follow up to prior work on fees is in the hands of staff, to report back to the Executive Committee. The Committee passes along this report for consideration by staff to that end with the suggestion that the idea of differential fees be considered as part of that review. In addition, assuming the Benchers adopt the principles noted earlier, the group would also be expected to consider the issue with reference to the principles outlined in Recommendation 1.

⁵ This review might include whether it is appropriate reconsider the general policy decision that the Law Society not “endorse” particular products. The Committee recognizes that the concept has significant challenges and is not, therefore, recommending it as a solution. It is simply something that, at this point, the Committee considers that the Law Society should review, as it appears some lawyers are struggling to keep pace with technological change and regulatory compliance. The Committee anticipates these issues will only grow as virtual legal services and cloud-based legal services become normalized

59. The second point relates to the client identification and other anti-money laundering rules. Given the feedback received from the consultations, the Committee urges the Law Society, as part of its ongoing work on anti-money laundering, to minimize as much as it can any unintended, adverse impacts of those rules on marginalized communities and equity-seeking groups.
60. The third point is that the Committee notes the positive feedback received relating to outreach as a result of the consultations the Committee engaged in. The Law Society should build upon its outreach and collaboration efforts regarding access to justice, and other, policy initiatives. As noted, while the sample size was small, the quality of the feedback was high and the initiative was well received.

/DM