

The Law Society of British Columbia



Reconciling Qualifications for Differing Types of Legal Services

For: The Benchers

From: The Lawyer Education Advisory Committee

Date: November 23, 2011

Purpose of Report: Discussion and Decision

Prepared on behalf of: The Chair, Lawyer Education Advisory Committee

INTRODUCTION

The Law Society's current Strategic Plan includes

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 tasks the Lawyer Education Advisory Committee with preparing a preliminary report for the Benchers by the end of 2011 to give some context to, and direction on, the issues raised in Strategy 3-5.

Strategy 3-5 has been carried forward in the strategic planning process for the 2012-2014 Strategic Plan.

BACKGROUND

Strategy 3-5 and Initiative 3-5 derive from the work of the Law Society's former Futures Committee, which reported to the Benchers in January 2008 as part of the first strategic planning process. The Futures Committee concluded that it is in the public interest to expand the range of service providers who are adequately regulated in terms of training, accreditation and conduct, but took no further steps. (The Futures Report is attached as appendix A.)

More recently, the Access to Legal Services Advisory Committee and the Delivery of Legal Services Task Force have focused their attention on the discrete topics of expanding the role of paralegals and articulated students. Neither group has engaged in the broader analysis of whether the scope of legal practice should be opened up to other service providers who may or may not be lawyers, and the qualifications, standards and regulation necessary to provide different types of legal services.

The Lawyer Education Advisory Committee consulted with the Access to Legal Services Committee prior to preparing this report to consider a suitable approach for meeting the objectives set out in Strategy 3-5.

RECOMMENDATIONS TO THE BENCHERS

The Lawyer Education Advisory Committee and the Access to Legal Services Advisory Committee have both concluded that the policy issues and initiatives flowing from Strategy 3-5 are realistically beyond the scope of advisory committees in terms of timing, capacity and resources, and therefore recommend that a Task Force be created to address the issues.

The Lawyer Education Advisory Committee makes the following recommendations:

1. That a Task Force be struck and resourced to undertake the work contemplated by Strategy 3-5 with a two-phased 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;
 - 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.

DISCUSSION

The Benchers have expressed a commitment to making access to legal services a priority. Concerns about access to justice and the need to work more collaboratively within the justice sector have increased since the Futures Committee reported to the Benchers. The relationship between the Law Society and providers of legal services who are not under the law society umbrella is complex due to the variety and nuances of the subject matter.

The Lawyer Education Advisory Committee has recognized that prior to assessing different delivery models and the related qualifications and standards issues, a key policy question to be resolved is the nature and extent of consultation. This determination is a pre-condition to an analysis of standards and qualifications. The latter, in the Lawyer Education Advisory Committee's view, is difficult to address in the absence of clarification of the policy implications of the types of services and providers contemplated.

The focus of the proposed Task Force would be to build on the work of the various committees dealing with access, regulation and qualification standards issues, and to make recommendations as to the most effective mechanism for addressing the policy and practical considerations relating to alternate legal service providers. The range of complex considerations to which Strategy 3-5 gives rise would be best suited to a Task Force with the skills, resources and mandate to undertake the work. A project of this scope would risk overwhelming the monitoring and other functions of an advisory committee. Because access issues cross the boundaries of several committees, a Task Force is better suited to coordinating work in this area, as it can be staffed and resourced more broadly than an advisory committee.

A broad analysis of whether legal practice should be opened up to service providers who may or may not be lawyers, including lawyers with a restricted license to practice in one area of law only, and what the qualifications and standards requirements for differing types of legal services should be, is a complex undertaking. The Lawyer Education Advisory Committee recognizes the need for consultations, and concludes that a Task Force with a broader complement of members would be more effective in determining the scope and extent of consultations and in identifying the most effective method of establishing timelines and processes for a project of this scope.

The Lawyer Education Advisory Committee is of the view that to successfully undertake this project, qualification standards and requirements should be analyzed in the context of specific, discrete types of, or models for delivering legal services. The Family Law Paralegal Project, currently underway, is one such model. There are also other possible approaches. Potential models that could be explored include establishing new categories of Law Society membership that might involve a restricted license to practice in one area of law only. This approach, as an example, would maintain the Law Society's role as the regulator of lawyers in the delivery of legal services while potentially increasing the availability of, and options for, affordable legal services.

The Lawyer Education Advisory Committee believes that an approach to reconciling qualification standards and requirements based on an analysis of discrete delivery models would be more likely to produce tangible results, as the paralegal and articling student projects have shown. It would therefore be up to the Task Force to identify the model or models it wishes to put forward to the Benchers for consideration.

CONCLUSION

The Lawyer Education Advisory Committee supports the creation of a Task Force to address the issues raised in Strategy 3-5. The Committee endorses a two-phased approach as described in the recommendations set out on page 3 of this memorandum. The Committee supports an approach that builds on the work done in 2008 by the Futures Committee, and that is coordinated with other committees to avoid duplication of effort and ensures effective utilization of existing resources and expertise.