The Law Society of British Columbia

Agenda

Benchers

Date: Friday, May 11, 2012

Time: **7:30 a.m.** Continental breakfast
8:30 a.m. Meeting begins

Location: Bencher Room, 9th Floor, Law Society Building

Recording: ***Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.***

OATH OF OFFICE: **At the next regular Benchers meeting attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office (in the form set out in Rule 1-1.2) before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher (new Vancouver Bencher at May meeting).**	
CONSENT AGENDA: The following matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. If any Bencher wishes to debate or have a separate vote on an item on the consent agenda, he or she may request that the item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.	
1 **Minutes of April 13, 2012 meeting** • Draft minutes of the regular session • Draft minutes of the in camera session (Benchers only)	pg. 1000
REGULAR AGENDA	
2 **President's Report** • Oral report to be presented at the meeting	
3 **CEO's Report** • Written report to be distributed electronically prior to meeting	

4	***Legal Profession Amendment Act, 2012* (Bill 40): Next Steps Planning** Mr. Hoskins to report • Memorandum from Mr. Hoskins	pg. 4000
5	**Federation of Law Societies of Canada: Council Report by the Law Society's Council Representative** Mr. Hume to report	
6	**Report on Outstanding Hearing & Review Reports** • Report to be distributed at the meeting	
2012 – 2014 STRATEGIC PLAN IMPLEMENTATION		
7	**Strategic Plan Implementation Update** Mr. LeRose and Mr. McGee to report	
OTHER MATTERS For discussion and/or decision		
8	**Ethics Committee: Review and Approval of BC Code Rule 5.01 and Professional Conduct Handbook (Paralegals)** Mr. Getz to report • Report from the Ethics Committee	pg. 8000
FOR INFORMATION ONLY		
9	**Letter from Leonard Krog, MLA (Nanaimo), Critic for the Attorney General, to Bruce LeRose, QC**	pg. 9000
10	**Equity Ombudsperson's Annual Report for 2011**	pg. 10000
IN CAMERA SESSION		
11	**Bencher Concerns**	

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, April 13, 2012

Present:

Bruce LeRose, QC, President
Art Vertlieb, QC, 1st Vice-President
Jan Lindsay, QC 2nd Vice-President
Rita Andreone, QC
Kathryn Berge, QC
David Crossin, QC
Thomas Fellhauer
Bill Maclagan
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Thelma O'Grady
Lee Ongman
Vincent Orchard, QC
Greg Petrisor
David Renwick, QC
Phil Riddell
Catherine Sas, QC
Herman Van Ommen
Ken Walker
Tony Wilson
Barry Zacharias
Haydn Acheson
Satwinder Bains
Stacy Kuiack
Peter Lloyd, FCA
Ben Meisner
Claude Richmond

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

Absent:

Leon Getz, QC
Richard Stewart, QC

Staff Present:

Tim McGee
Deborah Armour
Lance Cooke
Robyn Crisanti
Jeffrey Hoskins, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe
Rosalie Wilson

Guests: Dom Bautista, Executive Director, Law Courts Center
Johanne Blenkin, Executive Director, Courthouse Libraries BC
Maureen Cameron, Director of Membership, Volunteers and Public Affairs, CBABC
Anne Chopra, Equity Ombudsperson
Ron Friesen, CEO, CLEBC
Jamie Maclaren, Executive Director, Access Pro Bono
Kerry Simmons, Vice-President, CBABC
Wayne Robertson, QC, Executive Director, Law Foundation of BC
David Zacks, QC, Board Chair, Courthouse Libraries BC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on March 2, 2012 were approved as circulated.

The following resolutions were passed unanimously and by consent.

2. ARS: Amendment of Rule 5-9 (Hearing costs) and Addition of Schedule 4 (Tariff of costs for discipline hearings)

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

1. In Rule 5-9, by rescinding subrules (1) to (3) and substituting the following:

(1.1) Subject to subrule (1.2), the panel or the Benchers must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by a respondent or the Society in respect of a hearing on a citation or a review of a decision in a hearing on a citation.

(1.2) If, in the judgment of the panel or the Benchers, it is reasonable and appropriate for the Society or a respondent to recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4, the panel or the Benchers may so order.

(1.3) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.

(1.4) In the tariff in Schedule 4,

(a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and

(b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units applies.

(3) If no adverse finding is made against the applicant, the panel or the Benchers have the discretion to direct that the applicant be awarded costs.

(3.1) If the citation is dismissed or rescinded after the hearing has begun, the panel or the Benchers have the discretion to direct that the respondent be awarded costs in accordance with subrules (1.1) to (1.4).

2. ***By adding the following Schedule:***

SCHEDULE 4 – TARIFF FOR DISCIPLINE HEARING AND REVIEW COSTS

Item No.	Description	Number of Units
	Citation Hearing	
1.	Preparation/amendment of Citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the Citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 39 and Rule 4-17 and any application to rescind or vary an order under Rule 4-19, for each day of hearing	30
3.	Disclosure under Rule 4-25	Minimum 5 Maximum 20
4.	Application for particulars/ preparation of particulars under Rule 4-26	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-29 ➢ If made more than 14 days prior to the scheduled hearing date ➢ If made less than 14 days prior to the scheduled hearing date	 1 3
6.	Pre-Hearing Conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts	

	➢ If signed more than 21 days prior to hearing date ➢ If signed less than 21 days prior to hearing date ➢ Delivered to Respondent and not signed	Min. 5 to Max. 15 Min. 10 to Max. 20 Min. 10 to Max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
10.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
11.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
12.	Preparation for interlocutory or preliminary motion, per day of hearing	20
13.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
14.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15
	s. 47 Review	
15.	Giving or receiving notice under Rule 5-15, correspondence, conferences, instructions, investigations or negotiations after Review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
16.	Preparation and settlement of hearing record under Rule 5-17	Minimum 5 Maximum 10
17.	Pre-Review Conference	Minimum 1 Maximum 5

18.	Application to adjourn under Rule 5-19 ➢ If made more than 14 days prior to the scheduled hearing date ➢ If made less than 14 days prior to the scheduled hearing date	 1 3
19.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-19(2), per day of hearing	10
20.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
21.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
	Summary Hearings:	
22.	Each day of hearing	$2,000
	Hearings under Rule 4-22	
23.	Complete hearing, based on the following factors (a) complexity of matter; (b) number and nature of allegations; and (c) the time at which respondent elected to make conditional admission relative to scheduled hearing and amount of pre-hearing preparation required.	$1,000 to $3,500

Value of Units:

Scale A, for matters of ordinary difficulty: $100 per unit
Scale B, for matters of more than ordinary difficulty: $150 per unit

3. 2012 Law Society Scholarship: Credentials Committee Recommendation

BE IT RESOLVED to adopt the recommendation of the Credentials Committee, and to award the 2012 Law Society Scholarship to Jennifer Wai Yin Chan, and to designate Brian Duong as runner-up.

4. Discipline Committee: Approval of Proposed Discipline Committee Mandate

BE IT RESOLVED to approve the Mandate of the Discipline Committee, as finalized by the Committee at its January 26, 2012 meeting (Appendix 1 to these minutes).

REGULAR AGENDA – for Discussion and Decision

5. President's Report

Mr. LeRose briefed the Benchers on various Law Society matters to which he has attended since the last meeting, including 23 events and speaking engagements, highlighted by the annual Queen's Counsel Recipients' Reception hosted by the Law Society. Another highlight was his attendance in Terrace with Staff Lawyer Doug Munro to deliver a presentation to Prince Rupert County lawyers on the current work of the Access to Legal Services Advisory Committee, including an update on the BC Supreme Court Family Law Paralegal Pilot Project.

Other matters addressed:

a) Federation of Law Societies of Canada Semi-Annual Council Meeting and Conference: March 15-17, 2012, Yellowknife, NWT

The value of the national standards discussion and presentations on the the Conference topic, *New Directions in Legal Services Delivery*, was noted.

b) Law Society Legislative Amendments Package

The Law Society's package of proposed legislative amendments has undergone extensive review by senior Society staff and representatives of the Ministry of Attorney General and Minister of Justice, and has been submitted to the Legislative Policy Committee for approval. Passage of the proposed amendments by the end of May is possible. Mr. LeRose thanked the many Law Society staff members who have been involved in this major effort over much of the past two years – spearheaded by Jeff Hoskins, QC and with the leadership and support of Tim McGee, Adam Whitcombe and Michael Lucas.

Mr. LeRose also thanked the Benchers who took part in the March 28-29 series of meetings with members of the government and opposition caucuses in Victoria. He noted the value of those meetings to securing support for the amendments package, and to strengthening the Law Society's relationships with both sides of the house.

c) BC Supreme Court Family Law Paralegal Pilot Project

The Benchers were briefed regarding a recent meeting of the Pilot Project Working Group, and issues arising. Mr. LeRose noted that a key interest of the judiciary is verification of benefits to the public, including cost savings, which may be expected from provision of services by paralegals. The pilot project will run in the Judicial Districts of Kamloops, New Westminster and Prince George

d) Society of Notaries Public of BC (the Notaries) / Scope of Practice

Mr. LeRose briefed the Benchers on recent developments in the Notaries' bid to expand their permitted scope of practice via amendments to the *BC Notaries Act*.

e) Law Society Governance Review Task Force Update

Mr. LeRose advised that the document review and interview elements of the review process are well-advanced, with 60 of the 74 scheduled interviews completed to date. A major update will be provided at the Benchers' Retreat in mid-June.

6. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 2 to these minutes), including the following matters:

a. First Quarter Financial Results

b. 2013 Budgeting and Fee Recommendations – Process Update

c. 2012 Operational Priorities – Progress Report

    a. Continued Implementation and Assessment of our 2010 Regulatory Plan

    b. National Admission Standards – Federation Steering Committee

    c. Project Leo

d. Notaries – Proposed Expansion of Scope of Practice

e. BC Liberal and BC NDP Caucus Receptions

f. Governance Review Update

g. Communications Update

h. Bencher Retreat – Update re: Planning

7. Report on Outstanding Hearing & Review Reports

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

There was discussion of challenges to timely preparation and completion of written decisions, particularly in relation to the participation of non-lawyers on hearing panels. Mr. LeRose confirmed that every hearing panel is chaired by a Bencher, who is responsible for ensuring that the panel's written decision is completed on a timely basis. Mr. Hoskins noted the value of the Hearing Skills Workshops for hearing panelists.

It was agreed that the current 60-day threshold for inclusion of outstanding decisions in the monthly report to the Benchers should be changed to 45 days, for alignment with the current deadline of 45 days (from the last day of submissions) for delivery of draft reasons to the Hearing Administrator for review.

GUEST PRESENTATION

8. Courthouse Libraries BC Report

Life Bencher David Zacks, QC, Board Chair of Courthouse Libraries BC (CLBC), reported to the Benchers. Mr. Zacks outlined CLBC's mandate and strategic objectives for 2011- 2013, referring to the CLBC Operations Report at page 8000 of the meeting materials for details:

Our Mandate:

Provide legal information services and collections for the benefit of members of the public, members of the Law Society of British Columbia, and members of the Judiciary of the Province of British Columbia.

Assist public libraries to develop and improve public library staff knowledge of and skills in using legal information resources, and to assist in improving collections of legal information for the public.

Develop and operate educational resources and programs designed to improve the capability of users to access, manage and research legal information.

Engage in and promote the development of legal information resources.

Strategic Objectives – 2011- 2013

1. To reach clients where they are to enhance access to and effective use of legal information and tools.

2. To increase financial stability to create a sustainable organization.

3. To create opportunities for learning for staff to build capacity for innovation.

4. To continuously improve our internal practices and processes to provide exceptional service to our clients.

Mr. Zacks emphasized CLBC's operational focus on expanding and strengthening its use of electronic services and assets, noting the alignment of that focus with all four strategic objectives.

Mr. Zacks referred to the approval of a new governance structure, constitution and by-laws at a CLBC Members' Special Meeting in February 2012. He reported that under the new governance structure, CLBC's membership is being reduced from 10 to three (the Chief Justice of BC, the Attorney General of BC and the Law Society), the number of directors is being reduced from 12 to seven, and a Board Nominating Committee is being established.

Mr. Zacks noted that CLBC's finances have improved significantly in recent years. He also noted the valuable contributions made by CLBC Executive Director Johanne Blenkin and her dedicated staff.

STRATEGIC PLANNING AND PRIORITIES MATTERS – For Discussion and/or Decision

9. Strategic Plan Implementation Update

Mr. McGee updated the Benchers on early progress toward implementation of the various strategies and initiatives related to the three aspirational goals set out in the 2012-2014 Strategic Plan:

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.

Mr. McGee reported that of the sixteen initiatives laid out in the current plan, 11 are underway and five are pending. Pending are:

Initiative 1–1(c)

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

Initiative 1-3(b)

Improve uptake of Lawyer Wellness Programs.

Initiative 1–4(b)

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

Initiative 2–2(a)

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

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 [directed at understanding the economics of the market for legal services in British Columbia].

Mr. McGee noted that in his President's Report Mr. LeRose has already addressed the implementation status of two major initiatives:

Initiative 1–2(a)

Examine issues of governance of the Law Society generally including:

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

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.

More detailed briefings on the status of those two initiatives will be provided at the Benchers' Retreat in June.

OTHER MATTERS – For Discussion and/or Decision

10. Continuing Legal Education Society of BC (CLEBC) Update

Vancouver Bencher and CLEBC Director Thelma O'Grady updated the Benchers on recent developments at CLEBC. Ms. O'Grady highlighted three themes as underlying CLEBC's operational priorities and goals:

- commitment to providing authoritative resources
- commitment to innovation
- commitment to accessibility

Ms. O'Grady elaborated on those themes, referring to a set of PowerPoint slides for illustration and detail (appended as Appendix 3 to these minutes).

In the ensuing discussion the value of the face-to-face learning experience was noted, together with cost and topic selection as two key challenges to be overcome in providing face-to-face instruction in rural and small market settings. There was also discussion of the business model for daily news feeds in user-designated subject areas.

11. Progress Report on Professional Regulation Department Changes

Chief Legal Officer Deborah Armour provided a progress report on the implementation operational changes to the Professional Regulation department arising from the regulatory plan approved by the Benchers a year ago. Ms. Armour began by acknowledging the valuable contributions made by her management team: Maureen Boyd as Manager, Discipline; Andrea Brownstone as Manager, Investigations, Monitoring & Enforcement; Sherelle Goodwin as Manager, Custodianships; Jeff Hoskins, QC as Tribunal & Legislative Counsel; and Graeme Keirstead as Manager, Intake & Early Resolution and Unauthorized Practice.

Ms. Armour outlined the regulatory plan's three goals:

1. significantly reduce timelines;

2. improve working environment and morale; and

3. ensure highly effective investigations and disciplinary actions

Ms. Armour reviewed steps taken, progress made, and work still to be done in pursuit of each goal.

In the ensuing discussion the following points were raised:

- linkage between improved staff morale and job satisfaction on the one hand, and progress toward quantitative targets on the other
- progress made in closing a number of old files distorts aggregate timeliness results
- value of implementation of the Discipline Guidelines to improved orderliness, clarity and consistency of the Law Society's regulatory process
- value of improved quality and evidentiary focus of investigation work in strengthening Discipline staff recommendations to the Discipline Committee
- value of publication of Conduct Review summaries to public understanding and confidence

12. Law Society Indigenous Lawyer Mentoring Project

Mr. LeRose asked Rosalie Wilson to update the Benchers on the status of the Law Society Indigenous Lawyer Mentoring Project.

Ms. Wilson reported that her research confirms the limited availability of mentoring resources for BC's Indigenous lawyers. Yesterday she briefed the Equity and Diversity Advisory Committee on the results of her review of best practices in fostering mentoring resources and opportunities. That review did not reveal any initiative like the Law Society's current mentoring project for Indigenous lawyers being undertaken elsewhere in North America. Ms. Wilson advised that she has developed four models for fostering mentoring for review and comment by BC's Indigenous bar.

Ms. O'Grady (Chair of the Equity and Diversity Advisory Committee) confirmed the Committee's satisfaction with yesterday's report and with the project's progress to date.

IN CAMERA SESSION

The Benchers discussed other matters in camera.

WKM
2012-04-27

Mandate of the Discipline Committee

The Discipline Committee's mandate is to fulfill its obligations under the *Legal Profession Act* and the Law Society Rules by:

i. Reviewing and assessing complaints and determining the appropriate disposition in accordance with the *Conduct Assessment and Disposition Guidelines*, as set out in detail below;

ii. approving or rejecting proposed consent resolutions of citations; and

iii. determining various applications made under the Rules or referred by the President.

The Discipline Committee's mandate does not include policy making; all policy issues should be referred to the Executive Committee.

Review of Complaints

The primary function of the Discipline Committee is to review and assess complaints and initiate any disciplinary action, including authorizing discipline hearings which are adjudicated by hearing panels. The Committee reviews and assesses complaints referred to it by the Professional Conduct Department, the Trust Regulation Department, the Complainants' Review Committee, and the Practice Standards Committee. The term "complaint" is broadly defined in Rule 3-4 to mean "information received from any source that indicates a lawyer's conduct may constitute a discipline violation".

The Discipline Committee only reviews substantiated complaints which are serious enough to result in disciplinary action. Generally, staff has discretion to close files without a referral to the Committee under either of the following Rules:

- Rule 3-5(2), without an investigation, where the complaint is outside the Law Society's jurisdiction, is frivolous, vexatious or an abuse or process, or does not allege facts, which if proven, would constitute a discipline violation, or

- Rule 3-6(1), after an investigation, if the complaint is not valid or its validity cannot be proven, or it does not disclose conduct serious enough to warrant further action.

However, as a result of directions by past Committees, the following types of complaints are required to be reviewed by the Committee:

- any criminal conviction,
- impaired driving charges, even where resolved only on a lesser or related charge,
- breach of the no-cash rule under Rule 3-51.1 (except where the exception in subrule 3.1 applies), and
- breach of undertaking (except where the recipient of the undertaking has consented to or waived the breach).

The *Conduct Assessment and Disposition Guidelines* are intended to guide the Committee in the evaluation and disposition of complaints. It sets out the citation threshold and factors which may be considered in determining when a disciplinary outcome other than citation is appropriate.

Disciplinary Action

After reviewing and assessing a complaint, under Rule 4-4, the Discipline Committee may decide to:

- require further investigation of the complaint,
- take no further action on the complaint,
- authorize the Chair or other committee member to send a letter to the lawyer concerning his or her conduct,
- require the lawyer to attend a conduct meeting,
- require the lawyer to attend a conduct review, or
- direct the Executive Director to issue a citation to hold a hearing into the conduct or competence of the lawyer.

Other Matters Decided by the Committee

The Discipline Committee is also responsible for a number of other matters related to the discipline process, including:

- authorizing the rescission of a citation under Rule 4-13(2),
- authorizing allegations to be added to a citation under Rule 4-13(1.1),

- approving or rejecting a conditional admission and consent to disciplinary action made under Rule 4-22,
- approving or rejecting a conditional admission made under Rule 4-21,
- initiating a review of a facts and determination decision or a disciplinary action decision under s. 47 and Rule 5-13, and
- determining an application to extend time to pay a fine or fulfill a condition imposed in a disciplinary hearing, if referred to the Committee by the President under Rule 5-10.l.

As well, the Discipline Committee also is responsible for some matters related to financial responsibility of lawyers and trust reporting, as follows:

- suspending or imposing conditions and limitation on the practice of a lawyer under Rule 3-46 that it considers does not meet the standard of financial responsibility under section 32 of the *Legal Profession Act*,
- determining an application to delay the deadline on which suspension will take effect if a lawyer fails to file a trust report under Rule 3-74.1,
- waiving all or part of any late fee a lawyer is required to pay in respect of late filing of a trust report under Rule 3-74(4) or ordering a lawyer to pay the costs of the Law Society engaging a qualified accountant to prepare a trust report under Rule 3-74.1, or
- determining an application to delay the deadline on which a suspension will take effect if a lawyer fails to produce and permit copying of books, records and accounts under Rule 3-79.1

The Law Society of British Columbia

Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

April 13, 2011

Introduction

The first quarter of the year is traditionally a very busy time for the Law Society and, as my report this month suggests, this year is no exception. I have provided updates below on a number of our current priorities.

1. First Quarter Financial Results

As I write this report, the 2012 first quarter results are being finalized. Jeanette McPhee, Chief Financial Officer, will be reviewing the results shortly with the Chair of the Finance Committee and the results, including a report thereon, will be provided to the Benchers at the April 13 Benchers' meeting.

2. 2013 Budgeting and Fee Recommendations – Process Update

The budgeting process for all Law Society operations for 2013 is now underway under the leadership of Jeanette McPhee. All departmental managers are working on their budgetary projections for 2013 using a "zero based" approach to ensure that departmental needs are assessed afresh in each budget cycle. This is detailed, time-consuming work but it is necessary to support a robust budget assessment and fee recommendation process which the Finance Committee will undertake later in May. Four meetings of the Finance Committee have now been scheduled commencing on May 22, 2011. The timeline provides that formal recommendations to the Benchers on all mandatory fees (including all third party agencies and organizations we support) for 2013 will be made at the Bencher meeting in July.

3. 2012 Operational Priorities – Progress Report

In January I outlined for the Benchers the top five operational priorities for management in 2012. Throughout this year I will provide updates on progress in those areas. For this month, I am providing updates on the following three priorities:

(a) Continued Implementation and Assessment of our 2010 Regulatory Plan

At the meeting Deb Armour, Chief Legal Officer, will present an update on the implementation of the Regulatory Department Plan, which was introduced in 2010 and implemented throughout 2011. In her presentation, Deb will focus on the areas targeted for improvement in the plan and she will analyze the reasons for our successes and also where challenges remain.

(b) National Admission Standards – Federation Steering Committee

Together with Alan Treleaven, Director, Education and Practice, I am a member of the Federation of Law Societies of Canada's National Admission Standards Steering Committee. The Committee, which has been tasked with ensuring that admission standards are consistent across the country, has set an aggressive meeting schedule to ensure completion of its work by the end of 2012. There are three concurrent work tracks: first, the establishment of national competency standards, second, the establishments of a national standard for good character, and third, creation of a draft implementation plan for Law Societies to consider in anticipation of the adoption of the agreed upon standards in due course.

(c) Project Leo

The Leo Project Team has finalized the design phase of the project. This was a very important phase that involved consultation with all staff and compilation of the necessary requirements to complete the request for proposal (RFP) that will be sent to vendors of information management systems. Highlights from Phase 2 are:

- One-on-one meetings with all staff
- Updated business classification and taxonomy scheme (for organizing paper and electronic records)
- Review of business-focused information management needs, issues and requirements
- Review of information management policy framework including related draft policies, standards, processes and guidelines
- Creation of information program governance including structure, roles and responsibilities

The project team will be submitting the RFP to vendors early April and plan to have a vendor secured by June 30. If you'd like to learn more about this important initiative to improve how we manage and protect Law Society information, please contact Project Manager Robyn Crisanti.

4. Notaries – Proposed Expansion of Scope of Practice

The Society of Notaries Public is seeking amendments to their governing legislation to allow them an increased scope of practice in certain specific areas. President LeRose and I (along with our policy group) have been actively involved in consultations with the Attorney General's ministry regarding this proposal. As I write this report, we have been asked to participate in a stakeholder meeting on April 4. The meeting has been convened by the Justice Services Branch of the Ministry of Attorney General, who are seeking input about how these proposed changes might impact the provision of legal services in British Columbia, and, particularly in light of the Law Society's mandate, how the public interest can continue to be protected. The meeting will be attended by representatives of the CBABC, the Notaries and the Law Society. President LeRose and I will brief you on that meeting when we meet on April 13.

5. BC Liberal and BC NDP Caucus Receptions

As part of our ongoing government relations efforts, the Law Society hosted caucus receptions on March 28 for the BC Liberals and on March 29 for the BC NDP in Victoria, BC. We had an excellent turnout of MLAs, who were interested to learn more about the Law Society and the need for the legislative amendments which we are seeking. Special thanks is owed to Ben Meisner who spoke at the caucus receptions, giving his perspective as an appointed Bencher on the Law Society and the importance of our mandate.

6. Governance Review Update

Interviews being conducted as part of the Governance Review are nearing completion. Of the 74 interviewees listed as "should do" and "try to do", 42 interviews have been completed, 24 have been scheduled and 8 have yet to be scheduled.

Interviews	Benchers	Staff	Other	Total
Completed	19	11	12	42
Scheduled	10	n/a	14	24
Yet to be scheduled	2	n/a	6	8

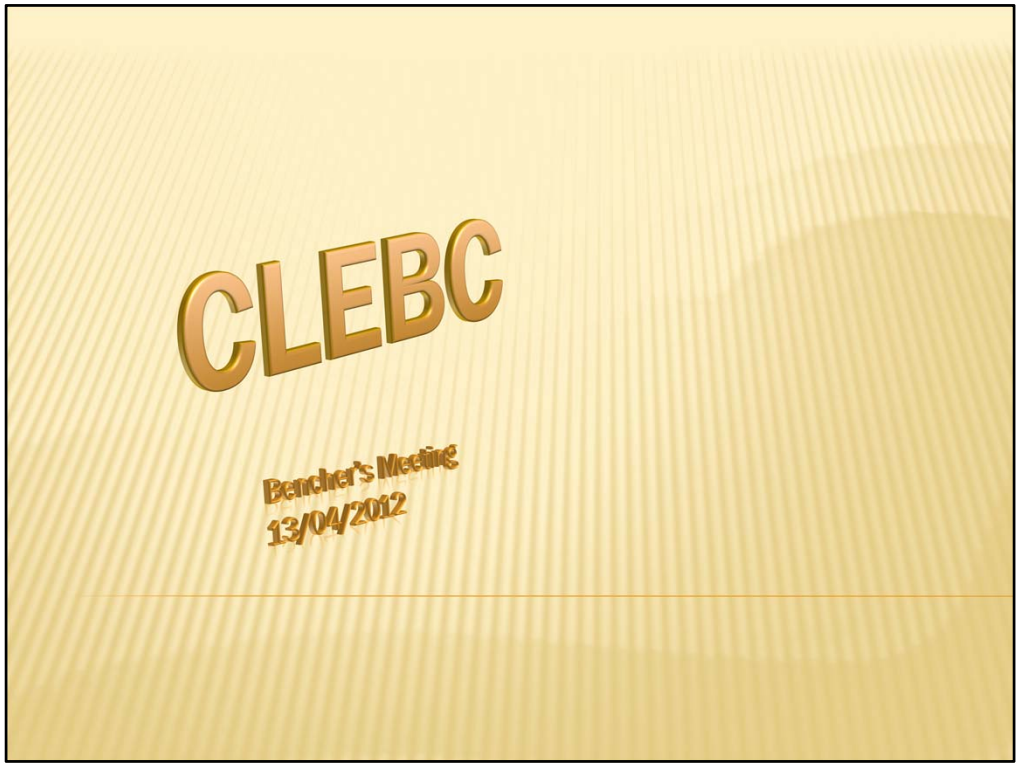
7. Communications Update

It has been one year since the Law Society launched its revamped website and put in place a new expanded approach to transparent and consistent communications with respect to media relations. Robyn Crisanti, Manager, Communications and Public Affairs, will be at the Benchers' meeting to provide a number of highlights with respect to both of these communications initiatives.

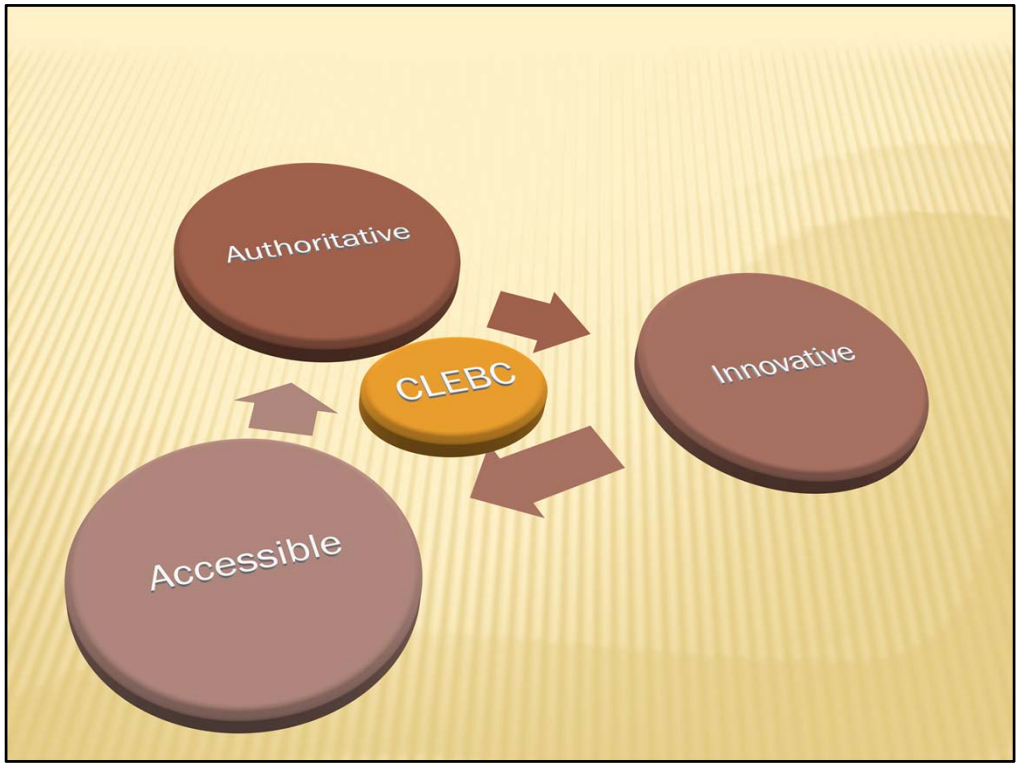
8. Bencher Retreat - Update re: Planning

Planning for the upcoming Bencher retreat at the Sparkling Hills Resort in Vernon, BC from June 14 - 17 is proceeding well. The theme for the Friday conference portion of the retreat is "Good Governance in the Public Interest". The retreat agenda will be finalized by the May 11 Benchers' meeting, and further details will be provided at that time.

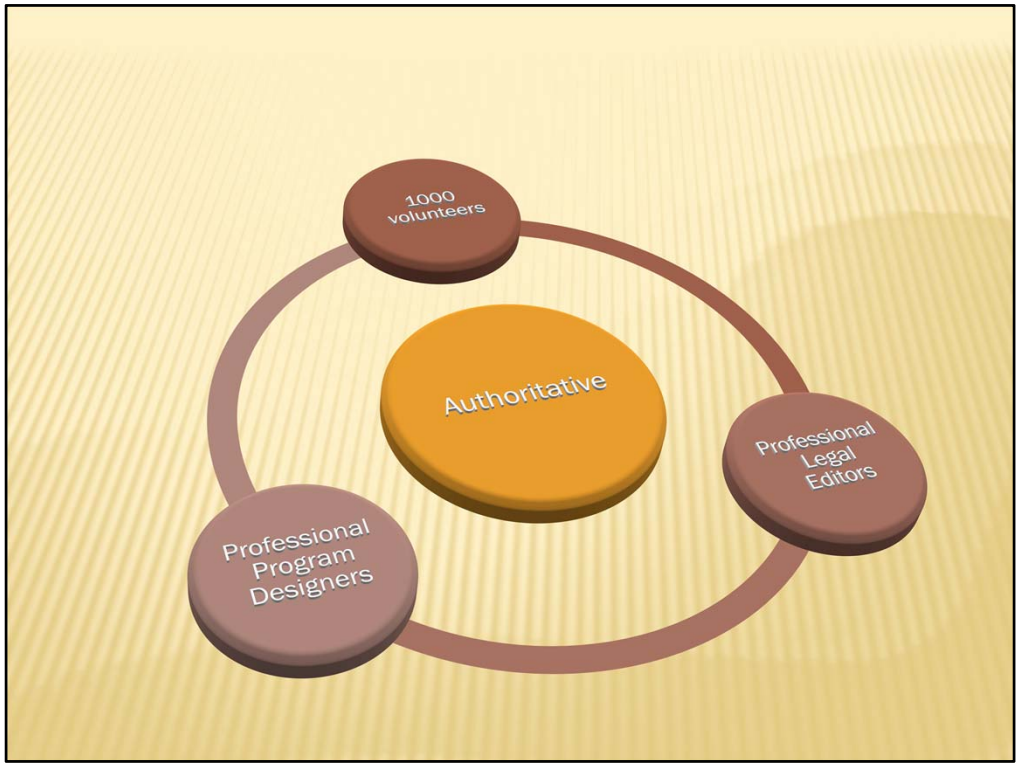
Timothy E. McGee
Chief Executive Officer



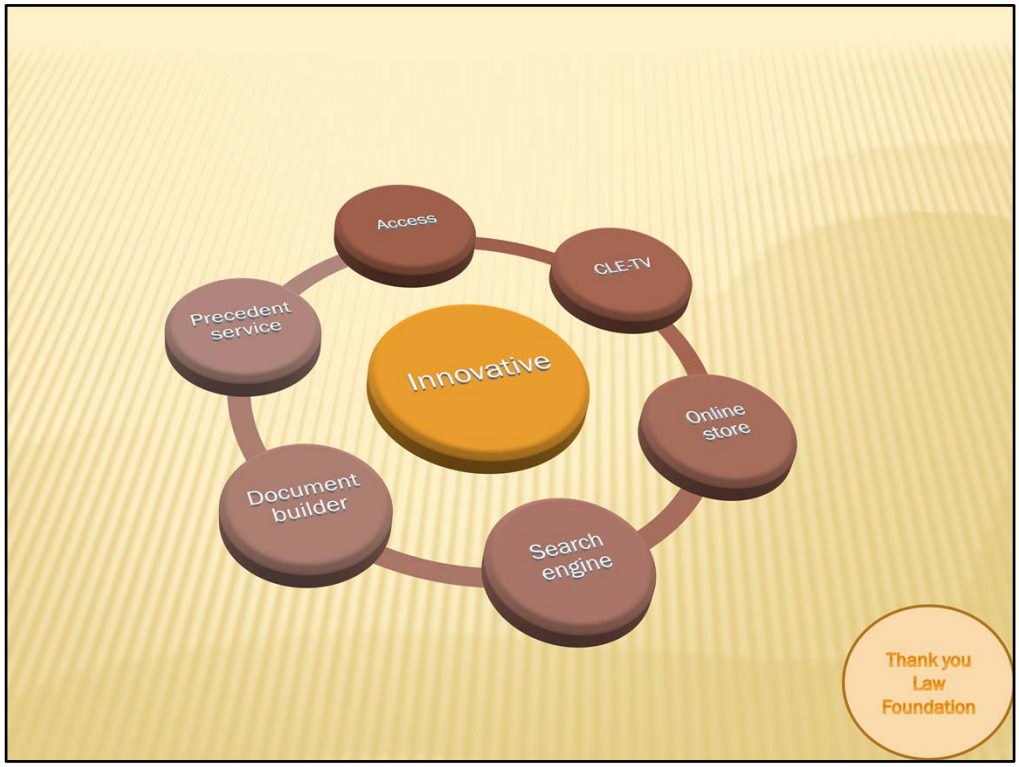
Thank you for giving us this opportunity to present at the Benchers meeting today.



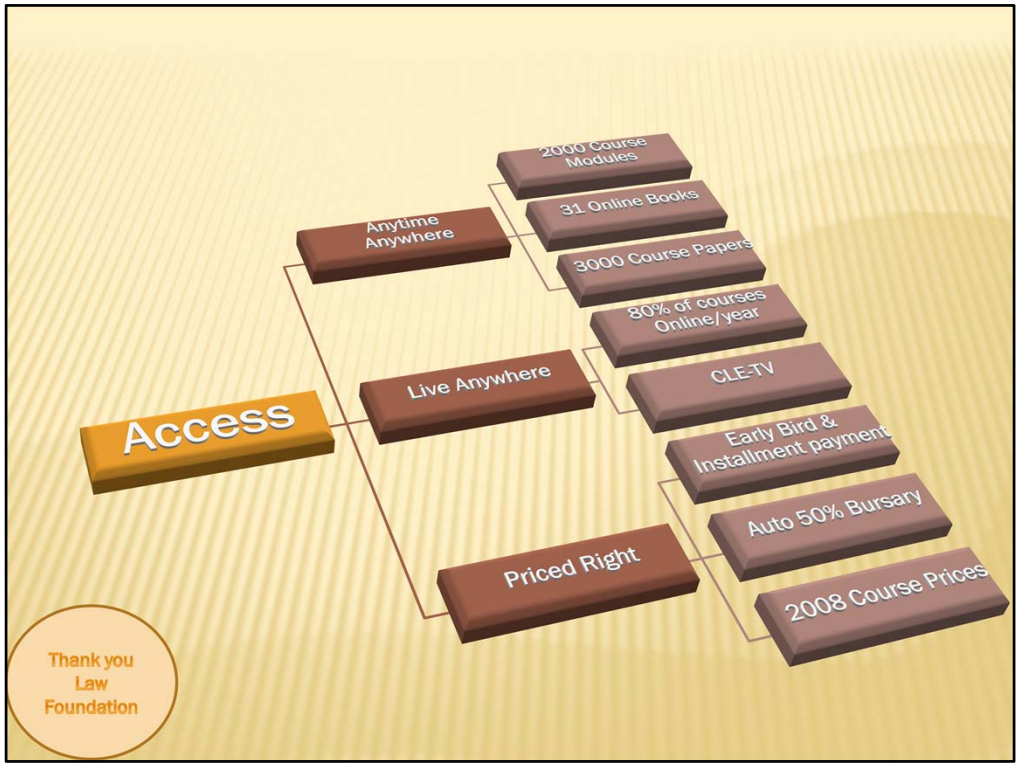
1. **CLEBC** works hard to be **authoritative**, **innovative** and **accessible**.



1. CLEBC takes pride in the **authoritative** nature of our resources
2. To make our resources authoritative, we work with over **1000 volunteers** every year. These include Board members, County Coordinators, editorial advisory board members for books, book and course materials authors, presenters and trainers. We couldn't do it without our outstanding volunteers.
3. We also have a team of **professional legal editors**, who work with our Book authors.
4. And a team of **professional program designers,** who work with our course faculty.



1. CLEBC has made a commitment to **innovation**. And in that regard we have been helped by the generous support of the Law Foundation
2. Access has been a major priority for innovation at CLEBC. I'll focus later in this presentation on our initiatives to make our products and services more accessible.
3. In order to meet the needs of lawyers who want training that is shorter in length, we developed our **CLETV** modules. This is not talking heads. CLETV is a like a television talk show, produced in our own studio. As part of the CLETV experience, you have the opportunity to chat with faculty, ask questions and engage in polls and quizzes.
4. We developed an **online store**, so customers can purchase products and services and manage their accounts efficiently. Of course, our customer service staff are always there to help out.
5. We received a tweet from a customer recently talking about our new **search engine**, he said, "First search on the new CLEBC search engine: Brilliant. Took me right to what I wanted."
6. We have just launched a new **Document Builder** service within our Family Law Agreements and Wills Precedents manuals. If you own these manuals, you can now create a document by clicking on the various clauses that you want and saving the resulting precedent to your computer.
7. And we're very excited about our new **Precedent service**, which we expect to launch in October 2012. We brought together all of the precedents from our books and many from our course materials to give every lawyer in the province their own precedent bank.

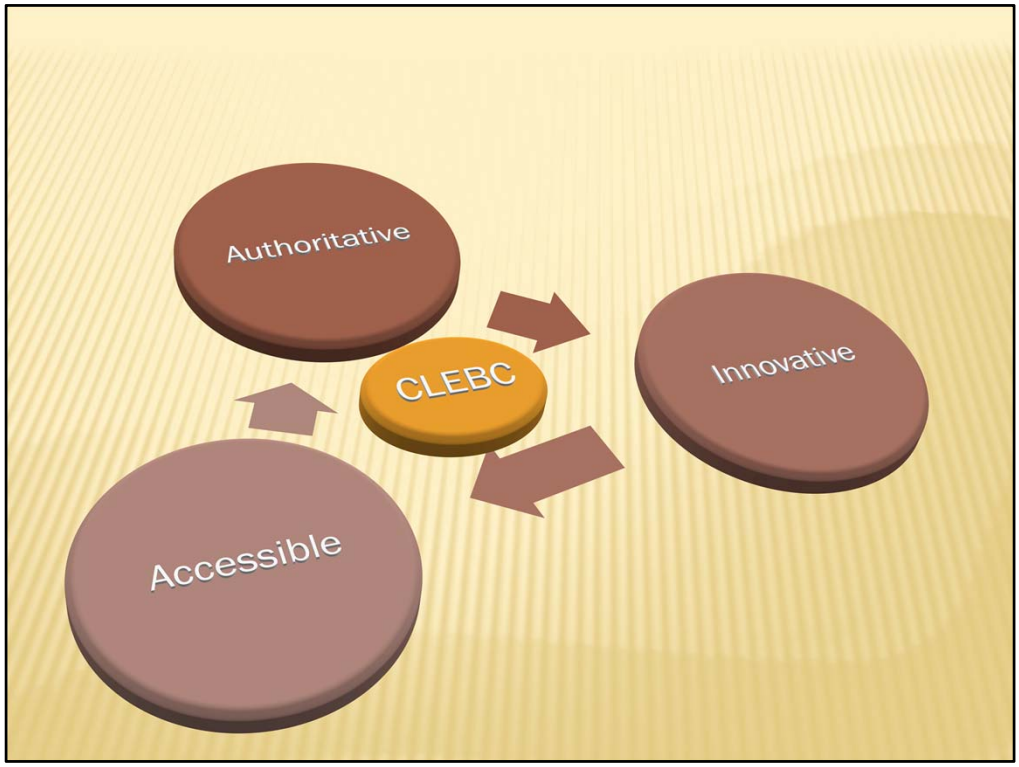


1. **Access** has always been a significant priority for Board and Staff. Our customers have told us that the major barriers to access are time out of office and, for those outside Vancouver, the cost of travel.
2. We are thrilled that many of our products are available **anytime and anywhere**
3. Almost all of **our live courses are available anywhere**.
4. And over the past 4 years, we have made a commitment to ensuring that our products are **priced right**.
5. In terms of anytime anywhere access, we have **2000 course modules** online in our Webinar Archive. Many lawyers are using these resources for study groups.
6. We have **31 of our 50 books available online**
7. And there are **3000 course papers** in our online course materials archive.
8. In terms of live anywhere access, we now offer **80% of our live courses province wide**. We started with PowerPoint slides and audio only. We now have video for all of our live webinars, which has dramatically enhanced the quality of the online experience. We're committed to making the online experience as good as the face to face experience. And given customer feedback, we're beginning to achieve that goal. In fact, many customers prefer the live webinar to the live face to face course because they save travel time and expense and reduce time out of office.
9. We have 23 episodes of **CLETV** available every year. These are scheduled on Tuesdays and one is available approximately every 2nd week.
10. In terms of getting our price right, we have an **early bird rate for our courses and an installment payment plan that allows you to pay for courses or publications over 4 months.**
11. We also have **an automatic 50% discount** for courses. Any lawyer or his or her support staff, who says they require financial assistance, automatically receives this discount. There is no means test. And we frequently provide greater discounts – up to 100%.
12. Finally and most important, **we haven't raised our course prices since 2008**. I want to emphasize that: We haven't raised our course prices since 2008. As well, over the past 2 years we have been working with pricing experts to develop our pricing strategy. Our priority has been to ensure that lawyers feel that the products they receive from CLEBC are worth more than the price they pay. Holding the line on course prices for the past 4 years has been a significant result of this strategy. We are currently working

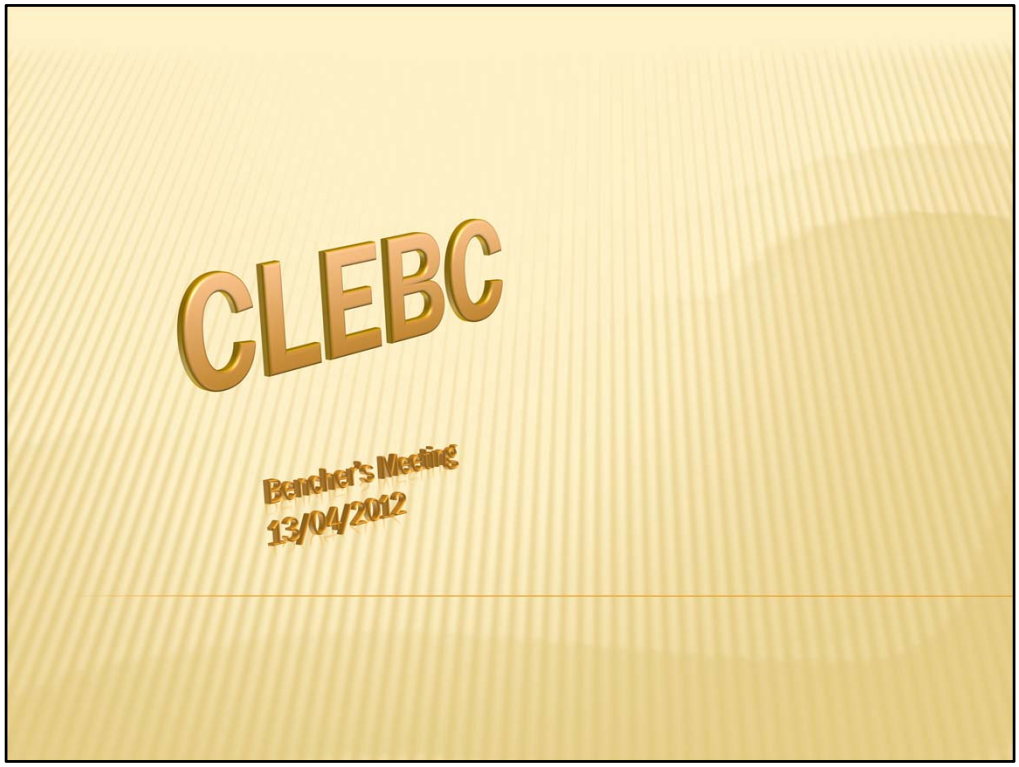
to price our products more effectively for solo and small firm lawyers. They are asking us if we can bundle our products so they can get access to a number of different products at a price that works for them. In the next few months, we will be surveying solo and small firm lawyers to get feedback on their needs.

1. CLEBC is committed to serving the profession and **working together** with other groups to do so. Some of the groups we work with include:
2. We worked with the **Law Society** to present a free CLETV session on succession planning. There were 400 participants.
3. We work with **CBABC** on the annual Real Estate and Wills Conferences and on the Solo and Small Firm Conference. We are a top level sponsor for Law Week and we sponsor a hole at the CBA Golf Tournament.
4. We work with **Access ProBono**
5. **Courthouse Libraries BC**
6. **Legal Services Society**
7. **BC Law Institute**
8. **Mediate BC**
9. **Justice Education Society**
10. **UVic and UBC** and
11. the **Judiciary**

Finally, the CLEBC Board is in the planning stages of a **governance review** to determine how we can serve lawyers more effectively in the future and how we can work more effectively with other groups that serve the legal profession. We will be working hand in hand with the CLEBC founding Members, which are the Law Society, the CBA, and the Faculties of Law at UBC and UVic.



1. **CLEBC** works hard to be **authoritative**, **innovative** and **accessible**. Over the next year, through our Governance Review, and working with our founding Members, we will be looking for new ways to serve the profession more effectively. By focusing on innovation and access, we have made it possible for every lawyer in the province to meet their cpd requirements and access CLEBC resources no matter where they live and no matter what their financial situation.



I'd be pleased to take any questions.

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: May 2, 2012
Subject: ***Legal Profession Amendment Act 2012***

As you are aware, Bill 40 has been introduced in the Legislature by the Minister of Justice. At the time of writing, it has received only first reading, but it is expected to proceed through the remaining stages and be enacted by the time the House rises, which is scheduled for May 31.

Many of the provisions of the new Act will take effect on Royal Assent, but many will require the Benchers to amend the Law Society Rules to take effect. Most of those will require the provincial Cabinet to proclaim sections of the amending Act.

I am working on a plan for making the appropriate Rule amendments over the next several months for an orderly transition to the new regulatory regime. I intend to report to the Benchers on that plan at the next meeting.

I attach for your reference a version of the *Legal Profession Act* showing redlined changes brought about by Bill 40. The changes that are highlighted in yellow are those that will require proclamation by Cabinet to be effective. Please note that I have included in the document only those provisions of the Act that will be changed or repealed. Those that are missing will remain in effect unchanged.

JGH
E:\POLICY\JEFF\ACT&RULE\LEGAL PROFESSION ACT 2011\memo to benchers on Bill 40 May 2012.docx

Attachments: *Legal Profession Act*, redlined with Bill 40 amendments

LEGAL PROFESSION ACT

S.B.C. 1998, C. 9

REDLINED WITH AMENDMENTS CONTAINED IN PROPOSED BILL 40

LEGAL PROFESSION AMENDMENT ACT, 2012

AMENDMENTS TO BE PROCLAIMED HIGHLIGHTED

ONLY PROVISIONS TO BE AMENDED ARE SHOWN

CONTENTS

Definitions

1 (1) In this Act:

"conduct unbecoming ~~a lawyer~~the profession" includes a matter, conduct or thing that is considered, in the judgment of the benchers, ~~or~~ a panel or a review board, [1(a), 1(b)]

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"law firm" means a legal entity or combination of legal entities carrying on the practice of law; [1(c)]

"practice of law" includes

(a) appearing as counsel or advocate,

(b) drawing, revising or settling

(i) a petition, memorandum or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,

(ii) a document for use in a proceeding, judicial or extrajudicial,

(iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person,

(iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or

(v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,

(c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,

(d) agreeing to place at the disposal of another person the services of a lawyer,

(e) giving legal advice,

(f) making an offer to do anything referred to in paragraphs (a) to (e), and

(g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

(h) any of those acts if ~~not~~ performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, [1(d)]

(i) the drawing, revising or settling of an instrument by a public officer in the course of the officer's duty,

(j) the lawful practice of a notary public,

(k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or

(l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

"review board" means a review board appointed in accordance with section 47; [1(e)]

PART 1 – ORGANIZATION

Division 1 – Law Society

Public interest paramountObject and duty of society

3 It is the object and duty of the society

(a) to uphold and protect the public interest in the administration of justice by

(ia) preserving and protecting the rights and freedoms of all persons,

(iib) ensuring the independence, integrity, and honour and competence of its memberslawyers, and

(iiic) establishing standards and programs for the education, professional responsibility and competence of its memberslawyers and of applicants for membershipcall and admission, and

(b) subject to paragraph (a),

(id) to regulateing the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law. [2]

(ii) to uphold and protect the interests of its members.

Meetings

6 (1) The benchers may make rules respecting meetings of the benchers~~, including rules providing for the practice and procedure of proceedings before the benchers~~. [3]

Division 2 – Committees

Law Society committees

9 (2) The benchers may authorize a committee to do any act or to exercise any jurisdiction that, by this Act, the benchers are authorized to do or to exercise, except the exercise of

~~(a)~~ rule-making authority~~, or~~ [4]

~~(b) jurisdiction under section 47 to review the decision of a panel.~~

Division 3 – Rules and Resolutions

Law Society rules

11 (1) The benchers may make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act. [5(a)]

(2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.

(3) The rules are binding on the society, lawyers, law firms, the benchers, articled students, applicants and persons referred to in section 16 (2) (a) or 17 (1) (a). [5(b)]

Rules requiring membership approval

12 (1) The benchers must make rules respecting the following:

(a) the offices of president, first vice-president or second vice-president;

(b) the term of office of benchers;

(c) the removal of the president, first vice-president, second vice-president or a bencher;

(d) the electoral districts for the election of benchers;

(e) the eligibility to be elected and to serve as a bencher;

(f) the filling of vacancies among elected benchers;

(g) the general meetings of the society, including the annual general meeting;

(h) the appointment, duties and powers of the auditor of the society;

(i) life benchers;

~~(j) the practising fee;~~ [6(a)]

(k) the qualifications to act as auditor of the society when an audit is required under this Act.

(3) The benchers may amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting at a general meeting or in a referendum respecting the proposed rule, or the amendment or rescission of a rule. [6(b)]

Implementing resolutions of general meeting

13 (2) A referendum of all members must be conducted on a resolution if

(a) it has not been substantially implemented by the benchers within ~~6~~ 12 months following the general meeting at which it was adopted, and [7(a)]

(b) the executive director receives a petition signed by at least ~~100~~ 5% of members in good standing of the society requesting a referendum on the resolution. [7(b)]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Authority to practise law

15 (1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except

(a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,

(b) as permitted by the *Court Agent Act*,

(c) an articled student, to the extent permitted by the benchers,

(d) an individual or articled student referred to in section 12 of the *Legal Services Society Act*, to the extent permitted under that Act,

(e) a lawyer of another jurisdiction permitted to practise law in British Columbia under section 16 (2) (a), to the extent permitted under that section, ~~and~~

(f) a practitioner of foreign law holding a permit under section 17 (1) (a), to the extent permitted under that section and

(g) a lawyer who is not a practising lawyer to the extent permitted under the rules. [8(a)]

(5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court~~, in the person's own name or in the name of another person~~. [8(b)]

Practitioners of foreign law

17 (1) The benchers may do any or all of the following:

(a) permit a person holding professional legal qualifications obtained in a country other than Canada to practise law in British Columbia; [9]

~~Non-resident partners~~Association with non-resident lawyers or law firms

18 The benchers may make rules concerning the ~~partnership~~ association of members of the society or law firms in British Columbia with lawyers or law firms in other jurisdictions. [10]

Division 2 – Admission and Reinstatement

Admission, reinstatement and requalification

21 (3) The benchers may impose conditions or limitations on the practice of a lawyer who, for a cumulative period of 3 years of the 5 years preceding the imposition of the conditions, has not engaged in the practice of law. [11]

Prohibition on resignation from membership

21.1 (1) A lawyer may not resign from membership in the society without the consent of the benchers if the lawyer is the subject of

(a) a citation or other discipline process under Part 4,

(b) an investigation under this Act, or

(c) a practice review under the rules.

(2) In granting consent under subsection (1), the benchers may impose conditions. [12]

Division 3 – Fees and Assessments

Annual fees and practising certificate

23 (1) A practising lawyer must pay to the society an annual fee consisting of

(a) a practice fee in an amount set by the benchers ~~a majority of the members voting on the resolution at a general meeting or in a referendum,~~

~~(b) a sum, set by the benchers, to be placed in the special compensation fund continued under section 31 (2)~~, and [13]

(c) an insurance fee set under section 30 (3) (a), unless exempted from payment of the insurance fee under section 30 (4) (b).

Fees and assessments

24 (1) The benchers may

(a) set fees, ~~other than the practice fee referred to in section 23 (1) (a),~~ and [14(a) and (b)]

(b) set special assessments to be paid by lawyers and applicants for the purposes of the society and set the date by which they must be paid, ~~and~~

~~(c) authorize the society to act as agent of the Canadian Bar Association for the purpose of collecting fees of that association from lawyers who are members of it.~~

~~(2) Fees collected under subsection (1) (c) form part of the practice fee referred to in section 23 (1) (a).~~ [14(c)]

PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

26 (1) A person who believes that

(a) a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming ~~a lawyer~~the profession or a breach of this Act or the rules, or

(b) a law firm has been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules

may make a complaint to the society. [15(a)]

(2) The benchers may make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received under subsection (1). [15(b)]

(3) For the purposes of subsection (4), the benchers may designate an employee of the society or appoint a practising lawyer or a person whose qualifications are satisfactory to the benchers.

(4) For the purposes of an investigation authorized by rules made under subsection (2), an employee designated or person appointed under subsection (3) may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electroinci means, before the designated employee or appointed person to answer questions on oath or affirmation, or in any other manner;

(b) produce for the designated employee or appointed person a record or thing in the person's possession or control.

(5) The society may apply to the Supreme Court of an order

(a) directing a person to comply with an order made under subsection (4), or

(b) directing an officer or governing member of a person to cause the person to comply with an order made udner subsection (4).

(6) The failure or refusal of a person subject to an order under subsection (4) to

(a) attend before the designated employee or appointed person,

(b) take an oath or make an affirmation,

(c) answer questions, or

(d) produce records or things in the person's possession or control

makes the person, on application to the Supreme Court by the society, liable to be committeed for contempt as if in breach of an order or judgment of the Supreme Court. [15(c)]

Suspension during investigation

26.01 (1) The benchers may make rules permitting 3 or more benchers to make the following orders during an investigation, if those benchers are satisfied it is necessary to prtoect the public:

(a) suspend a lawyer who is the subject of the investigation;

(b) impose conditions or limitations on the practice of a lawyer who is the subject of the investigation;

(c) suspend the enrollment of an articled student who is the subject of the investigation;

(d) impose conditions or limitations on the enrollment of an articled student who is the subject of the investigation.

(2) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made,

(b) set out the term of a suspension, condition or limitation, and

(c) provide for review of an order made under subsection (1) and for confirmation, variance or rescission of the order.

(3) Rules made under this section and section 26.02 may provide for practice and procedure for a matter referred to in subsection (2)(a) and (c) or section 26.02(3) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding. [16]

Medical examination

26.02 (1) The benchers may make rules permitting 3 or more benchers to make an order requiring a lawyer or an articled student to

(a) submit to an examination by a medical practitioner specified by the benchers, and

(b) instruct the medical practitioner to report to the benchers on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete his or her articles.

(2) Before making an order under subsection (1), the benchers making the order must be of the opinion that the order is likely necessary to protect the public.

(3) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made, and

(b) provide for review of an order under subsection (1) and for confirmation, variation or rescission of the order. [16]

Practice standards

27 (2) The benchers may make rules to do any of the following:

(e) permit the benchers to order that a lawyer, a former lawyer, an articled student or a law firm pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment; [17(a)]

(3) The amount of costs ordered to be paid by a ~~lawyer~~ person under the rules made under subsection (2) (e) may be recovered as a debt owing to the society and, when collected, the amount is the property of the society. [17(b)]

(3.1) For the purpose of recovering a debt under subsection (3), the executive director may

(a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(3.2) A certificate filed under subsection (3.1) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it. [17 (c)]

Specialization and restricted practice

29 The benchers may make rules to do any of the following:

(a) provide for the manner and extent to which lawyers or law firms may hold themselves out as engaging in restricted or preferred areas of practice; [18]

~~Professional liability i~~Insurance

30 (1) In this section, **"trust protection insurance"** means insurane for lawyers to compensate persons who suffer pecuniary loss as a result of dishones appropriation of money or other property entrusted to and received by a lawyer in his or her capacity as a barrister and solicitor. [19(a)]

(1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection insurance. [19(a)]

(2.1) The benchers

(a) must establish, administer, maintain and operate a trust protection insurance program and may use for that purpose fees set under this section,

(b) may establish conditions and qualifications for a claim against a lawyer under the trust protection insurance program, including time limitations for making a claim, and

(c) may place limitations on the amounts that may be paid out of the insurance fund established under subsection (6) in respect of a claim against a laywer under the trust protection insurance program. [19(b)]

(4) The benchers may make rules to do any of the following:

(b) establish classes of membership for insurance purposes and exempt a ~~lawyer or~~ class of lawyers from the requirement to maintain professional liability insurance or trust protection insurance or from payment of all or part of the insurance fee;

(c) designate classes of transactions for which the lawyer must pay a fee to fund the professional liability or trust protection insurance program. [19(c)]

(5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection insurance. [19(d)]

(6) The benchers must establish an insurance fund, ~~comprised of the insurance~~comprising fees set under this section and other income of the professional liability and trust protection insurance programs, and the fund [19(e)]

(a) must be accounted for separately from other funds, ~~and~~

(b) is not subject to any process of seizure or attachment by a creditor of the society, and

(c) is not subject to a trust in favour of a person who has sustained a loss. [19(f)]

(8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection insurance issued by the society, if

(a) the society has, ~~paid a deductible amount~~ on behalf of the lawyer,

(i) paid a deductible amount under the professional liability insurance program in respect of a claim or potential claim ~~against the lawyer,~~ under ~~a professional liability insurance~~ that program, ~~and~~or

(ii) made an indemnity payment under the trust protection insurance program in respect of a claim under that program, and

(b) the lawyer has not reimbursed the society, at the date that the insurance fee or an installment of that fee is due. [19(g)]

(9) The benchers may waive or extend the time

(b) to repay all or part of a deductible amount paid under the professional liability insurance program or an indemnity payment made under the trust protection program on behalf of a lawyer. [19(h)]

(11) A payment made from the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program

(a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and

(b) if collected, is the propoerty of the society and must be accounted for as part of the fund. [19(i)]

~~**Special compensation fund**~~

~~**31** (1) In this section, **"fund"** means the special compensation fund referred to in subsection (2).~~[repealed] [20]

~~(2) The benchers must continue the special compensation fund.~~

~~(3) The fund~~

~~(a) is the property of the society,~~

~~(b) must be accounted for separately from other funds of the society,~~

~~(c) is not subject to any process of seizure or attachment by a creditor of the society, and~~

~~(d) is not subject to a trust in favour of a person who claims to have sustained a loss.~~

(4) The benchers may pay compensation out of the fund only if they are satisfied that

(a) money or other property was entrusted to or was otherwise received by a lawyer in the lawyer's capacity as a barrister and solicitor,

(b) the lawyer misappropriated or wrongfully converted the money or other property, and

(c) a person sustained a pecuniary loss as a result of that misappropriation or wrongful conversion.

(5) The benchers must not make a payment out of the fund in any of the following circumstances:

(a) the misappropriation or wrongful conversion occurred before the fund was created;

(b) the claim for payment was made more than 2 years after the facts that gave rise to the claim were known to the person making it;

(c) the misappropriation or wrongful conversion was made by a person acting in the capacity of a member of the governing body of the legal profession of another province or a territory of Canada or a foreign jurisdiction.

(6) Subject to subsections (4) and (5), the benchers have a complete discretion in each case to

(a) make full or partial compensation out of the fund, subject to the terms they consider appropriate, or

(b) make no payment.

(7) The benchers may make rules to do any of the following:

(a) establish a special compensation fund committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;

(b) permit the benchers to review any decision of the special compensation fund committee;

(c) establish conditions and qualifications for the payment of compensation from the fund;

(d) provide for the administration of the fund;

(e) establish procedures for investigation and consideration of claims on the fund, including rules permitting a hearing;

(f) place general limitations on the amounts that may be paid out of the fund.

(8) A payment made from the fund

(a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and

~~(b) if collected, is the property of the society and must be accounted for as part of the fund.~~

~~(9) In any action to recover money under subsection (8), the lawyer, former lawyer or the estate may raise any defence against the society that could have been raised against the person to whom payment was made in respect of any action that could have been brought by that person for conduct that gave rise to that person's claim under this section, other than a defence under the *Limitation Act*.~~

~~(10) Despite section 17, a payment out of the fund may not be made in respect of a misappropriation or wrongful conversion by a person given permission under that section.~~

Financial responsibility

32 (1) The benchers may establish standards of financial responsibility relating to the integrity and financial viability of ~~a lawyer's~~ the professional practice of a lawyer or law firm. [21(a)]

(2) The benchers may make rules to do any of the following:

(a) provide for the examination of lawyers' books, records and accounts of lawyers and law firms and the answering of questions by lawyers and representatives of law firms to determine whether standards established under this section are being met; [21(b)]

(b) permit the suspension of a lawyer who does not meet the standards established under subsection (1);

(c) permit the imposition of conditions and limitations on a law firm that, or the practice of a lawyer who, does not meet the standards established under subsection (1). [21(c)]

(3) Rules made under subsection (2) (b) and (c) must not permit the suspension of a lawyer or imposition of conditions and limitations on the practice of a lawyer or the impositionof conditions and limitations on a law firm before the lawyer or law firm, as the case may be, has been notified of the reasons for the proposed action and given a reasonable opportunity to make representations respecting those reasons. [21(d)]

Trust accounts

33 (1) The benchers may require a lawyer or law firm to do any of the following: [22(a)]

(a) provide information or an annual report concerning the lawyer's or law firm's books and accounts;

(b) have all or part of the lawyer's or law firm's books and accounts audited or reviewed annually;

(c) provide the executive director with an accountant's report on the lawyer's or law firm's books and accounts. [22(b)]

(2) The benchers may

(a) exempt ~~all or part of~~ classes of lawyers or law firms from some or all of the requirements of subsection (1), and [22(c)]

(3) The benchers may make rules to do any of the following:

(a) establish standards of accounting for and management of funds held in trust by lawyers or law firms;

(b) designate savings institutions and classes of savings institutions in which lawyers or law firms may deposit money that they hold in trust; [22(d)]

(c) provide for precautions to be taken by lawyers and law firms for the care of funds or property held in trust by ~~lawyers~~them. [22(e)]

(5) The rules made under subsection (3) may be different for

(a) lawyers and law firms, or

(b) different classes of lawyers and law firms. [22(f)]

Unclaimed trust money

34 (1) A lawyer who or a law firm that has held money in trust on behalf of a person whom the lawyer or law form has been unable to locate for 2 years may pay the money to the society. [23(a) and (b)]

(2) On paying money to the society under subsection (1), the liability of the lawyer or law firm to pay that money to the person on whose behalf it was held or to that person's legal representative is extinguished. [23(b)]

(5) A person or the person's legal representative who, but for subsections (1) and (2), could have claimed money held by a lawyer or law firm may claim the money from the society. [23(c)]

PART 4 – DISCIPLINE

Discipline rules

36 The benchers may make rules to do any of the following:

(b) authorize an investigation of the books, records and accounts of a lawyer or law firm if there is reason to believe that the lawyer or law firm may have committed any misconduct, conduct unbecoming ~~a lawyer~~the profession, or a breach of this Act or the rules; [24(a)]

(c) authorize an examination of the books, records and accounts of a lawyer or law firm;

(d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request; [24(b)]

(e.1) require a representative of a law firm to appear before the benchers, a committee or other body to discuss the conduct of the firm; [24(c)]

(f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articled student, or the conduct of a law firm, by issuing a citation; [24(d)]

(h) permit the benchers to summarily suspend or disbar a lawyer convicted of an offence that was proceeded with by way of ~~may only be prosecuted on~~ indictment or convicted in another jurisdiction of an offence that, in the opinion of the benchers, is equivalent to an offence that may be proceeded with by way of indictment. [24(e)]

(i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of

(i) the books, records or accounts of a lawyer, an articled student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or

(ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37. [24(f)]

Search and seizure

37 (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer, ~~or~~ an articled student or a law firm be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer, ~~or~~ articled student or law firm may have committed or will commit ~~any~~

(a) any misconduct,

(b) conduct unbecoming ~~a lawyer~~the profession, or

(c) a breach of this Act or the rules. [25]

Personal records in investigation or seizure

37.1 In conducting an investigatoin or examination of books, records or accounts under section 26 or rules made under section 36(b) or in the seizure of files or other records in accordance with an order of the Supreme Court under section 37, the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under section 36(i),

(a) return that personal information if and as soon as practicable, or

(b) destroy the personal information. [26]

Discipline hearings

38 (4) After a hearing, a panel must do one of the following:

(b) determine that the respondent has committed one or more of the following:

(i) professional misconduct;

(ii) conduct unbecoming ~~a lawyer~~ the profession; [27(a)]

(iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

(v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming ~~a lawyer~~the profession, or a breach of this Act or the rules.~~;~~ [27(b)]

~~(c) make any other disposition of the citation that it considers proper.~~ [27(c)]

(5) If an adverse determination is made under subsection (4) against a respondent~~,~~ other than an articled student or a law firm, ~~under subsection (4),~~ the panel must do one or more of the following: [27(d)]

(b) fine the respondent an amount not exceeding $~~20~~ 50 000; [27(e)]

(c) impose conditions or limitations on the respondent's practice;

(d) suspend the respondent from the practice of law or from practice in one or more fields of law

(ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,

(iii) from a ~~specific~~ specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or

(iv) for a specific minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection; [27(f)]

(6) If an adverse determination is made under subsection (4) against an articled student ~~under subsection (4)~~, the panel may do one or more of the following: [27(g)]

(a) reprimand the articled student;

(b) fine the articled student an amount not exceeding $~~2~~ 5 000; [27(h)]

(c) extend the period that the articled student is required to serve under articles;

(d) set aside the enrollment of the articled student.

(6.1) If an adverse determination is made under subsection (4) against a law firm, the panel may do one or both of the following:

(a) reprimand the law firm;

(b) fine the law firm an amount not exceeding $50 000; [27(i)]

(7) In addition to its powers under subsections (5), ~~and~~ (6) and (6.1), a panel may make any other orders and declarations and impose any conditions or limitations it considers appropriate. [27(j)]

(9) For the purpose of recovering a debt under subsection (8), the executive director may

(a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it. [27 (k)]

Suspension

39 (1) The benchers may make rules permitting ~~the chair of the discipline committee or any~~ 3 ~~other~~ or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing: [28(a)]

(a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients; [28(b)]

(b) impose conditions or limitations on the practice of a respondent who is an individual; [28(c)]

(c) suspend the enrollment of a respondent who is an articled student;

(d) impose conditions or limitations on the enrollment of a respondent who is an articled student. [28(d)]

(2) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made,

(b) set out the term of a suspension, condition or limitation, and

(c) provide ~~a procedure~~ for ~~a panel to~~ review of an order made under subsection (1) and for confirmation, variation or rescission of the

order~~the suspension or the conditions imposed under that subsection~~. [28(e)]

(3) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2)(a) and (c) and may specify that some or all pracctices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

~~**Medical examination**~~

40 ~~The benchers may make rules permitting the chair of the discipline committee or any 3 other benchers to require a respondent to~~ [repealed]

~~(a) submit to an examination by a qualified medical practitioner specified by the benchers, and~~

~~(b) instruct the qualified medical practitioner to report to the benchers on the respondent's ability to practise law or, in the case of an articled student, the ability of the respondent to complete his or her articles.~~ [29]

PART 5 – HEARINGS AND APPEALS

Panels

41 (2) A panel may order an applicant or respondent, or a ~~shareholder, director, officer or employee of a respondent law corporation~~representative of a respondent law firm, to do either or both of the following: [30]

Failure to attend

42 (1) This section applies if an applicant, ~~or~~ a respondent or representative of a respondent law firm fails to attend or remain in attendance at [31(a)]

(c) a review by ~~the benchers~~ a review board under section 47. [31(b)]

(2) If satisfied that the applicant, ~~or~~ respondent or representative of the respondent law firm has been served with notice of the hearing or review, the panel or the ~~benchers~~ review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the review board~~benchers~~ could have made in the presence of the applicant or respondent. [31 (c) and (d)]

Right to counsel

43 (1) An applicant, ~~or~~a respondent or a person who is the subject of a proceeding may appear at any hearing with counsel. [32]

Witnesses

44 (1) In this section:

"party" means an applicant, a respondent or the society;

"tribunal" means the benchers, a review board or a panel, or a member of the benchers, a review board or a panel, as the context requires.

(2) For the purposes of a proceeding under Part 2, 3, ~~or~~ 4 or 5 of this Act, ~~sections 34(3), 48, 49 and 56 of the Administrative Tribunals Act apply to the benchers, a panel, the special compensation fund committee and a member of any of these~~a party may prepare and serve a summons, in a form established in the rules, requiring a person to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding.

(~~2~~3) ~~The society, an applicant or a respondent~~ A party may apply to the Supreme Court~~, without notice to anyone,~~ for an order directing~~that a subpoena in the form set out in the Supreme Court Civil Rules be issued to compel the attendance of a person as a witness at a hearing under Part 2, 3 or 4.~~

(a) a person to comply with a summons served by a party under subsection (2),

(b) any directors and officer of a person to cause the person to comply with a summons served by a party under subsection (2), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of the summons to ensure the person in custody attends the hearing.

~~(3) If the person who is required as a witness is in the custody of another person or the custodian of a penal institution, in addition to making an order under subsection (2), the court may make an order directing the person having custody to ensure the witness attends the hearing.~~

~~(4) The Supreme Court Civil Rules respecting the following apply to a person who is the subject of an order under subsection (2) or (3):~~

~~(a) the use of a subpoena to compel a person to attend at the trial of an action;~~

~~(b) failure to obey a subpoena or order of the court.~~

(4) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, a tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in the proceeding.

(5) A tribunal may apply to the Supreme Court for an order directing

(a) a person to comply with an order made by the tribunal under subsection (4),

(b) any directors and officer of a person to cause the person to comply with an order made by the tribunal under subsection (4), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of an order made by the tribunal under subsection (4) to ensure the person in custody attends the hearing.

(6) On an application under subsection (3) or (5), the Supreme Court may make the order requested or another order it considers appropriate. [33]

Application of *Administrative Tribunals Act*

44.1 (1) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, sections 48, 49 and 56 of the *Administrative Tribunals Act* apply, subject to the following:

(a) **"decision maker"** in section 56 means a member of the benchers, of a review board or of a panel;

(b) **"tribunal"** in those sections has the same meaning as in section 44(1).

(2) A tribunal may apply to the Supreme Court for an order directing a person to comply with an order referred to in section 48 of the *Administrative Tribunals Act*, and the court may make the order requested or another order it considers appropriate. [33]

~~Order for compliance~~

45 ~~(1) If it appears that a person has failed to comply with an order, summons or subpoena of a person or body referred to in section 44(1), a person or body referred to in section 44(1) may apply to the Supreme Court for an order directing the person to comply with the order, summons or subpoena.~~[repealed] [34]

~~(2) On an application under subsection (1), the court may make the order requested or another order it considers appropriate.~~

Costs

46 (1) The benchers may make rules governing the assessment of costs by a panel, ~~the benchers~~ a review board or a committee under this Act including [35(a)]

(4) For the purpose of recovering a debt under subsection (3), the executive director may

(a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(5) A certificate filed under subsection (4) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it. [35 (b)]

Review on the record

47 (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6), (6.1) or (7), the applicant or respondent may apply in writing ~~to the benchers~~ for a review on the record by a review board. [36(a) and (b)]

(2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter ~~to the benchers~~ for a review on the record by a review board. [36(a)]

(3) Within 30 days after the decision of a panel under section 38 (4), (5), (6), (6.1) or (7), the discipline committee may refer the matter ~~to the benchers~~ for a review on the record by a review board. [36(a) and (b)]

(3.1) Within 30 days after an order for costs assessed un a rule made under section 27(2)(e) or 46, an applicant, a respondent or a lawyer who is the subject of the order may apply in writing ofr a review on the record by a review board. [36(c)]

(3.2) Within 30 days after an order for costs assessed by a paenl under a rule made under section 46, the credentials or discipline committee may refer the matter for a review on the record by a review board. [36(c)]

(4) If, in the opinion of ~~the benchers~~a review board, there are special circumstances, the ~~benchers~~ review board may hear evidence that is not part of the record. [36(d)]

~~(4.1) Despite the requirement of section 6 (2) that at least 7 benchers be present at a meeting of the benchers, if~~

~~(a) a bencher who is hearing a review under this section is unable for any reason to complete the bencher's duties in respect of the review, and~~

~~(b) at least 5 benchers remain to hear the review,~~

~~the remaining benchers may continue to hear the review and make a final decision, and the vacancy does not invalidate the review.~~ [36(e)]

(5) After a hearing under this section, the ~~benchers~~ review board may [36(f)]

(a) confirm the decision of the panel, or

(b) substitute a decision the panel could have made under this Act.

(6) The benchers may make rules providing for one or more of the following:

(a) the appointment and composition of review boards;

(b) establishing procedures for an application for a review under this section~~.~~;

(c) the practice and procedure for proceedings before review boards. [36(g)]

Appeal

48 (1) ~~Any~~ Subject to subsection (2), any of the following persons who ~~is~~ are affected by a decision, determination or order of a panel or of ~~the benchers~~a review board may appeal the decision, determination or order to the Court of Appeal:

(d) the society.

(2) An appeal by the society under subsection (1) is limited to an appeal on a question of law. [37]

PART 7 – LAW FOUNDATION

Application of fund

61 (3) The foundation may employ or retain lawyers to advance the purposes of the foundation. [38(a)]

(4) The funds of the foundation consist of the following:

(a) all money remitted to the foundation by or on behalf of lawyers and law firms under section 62 (2) or held in trust under section 63 (12); [38(b)]

Interest on trust accounts

62 (1) A lawyer or law firm must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33 (3) (b). [39(a)]

(2) Subject to subsection (5), a lawyer or law firm who is credited by a savings institution with interest on money received or held in trust, [39(a)]

(3) The benchers may make rules

(a) permitting a lawyer or law firm to hold money in trust for more than one beneficiary in the same trust account, and [39(a)]

(b) respecting payment to the foundation of interest on trust accounts.

(4) A relationship between a lawyer or law firm and client or a trust relationship between a lawyer or law firm, as trustee, and the beneficiary of the trust does not make the lawyer or law firm liable to account to the client or beneficiary for interest received by the lawyer or law firm on money received or held in an account established under subsection (1). [39(a)]

(5) On instruction from ~~his or her~~ a client, a lawyer or law firm may place money held on behalf of the client in a separate trust account, in which case [39(a) and (b)]

(a) this section and the rules made under it do not apply, and

(b) interest paid on money in the account is the property of the client.

Security and investment of trust funds

63 (1) In this section:

"pooled trust funds" means money that has been received by a lawyer or law firm in trust and that is not the subject of instructions under section 62 (5); [40(a)]

(2) The benchers may make rules requiring that a lawyer or law firm do any or all of the following:

(b) tender the agreement, prepared and approved under paragraph (a), at a designated savings institution before the lawyer or law firm deposits pooled trust funds at that savings institution;

(c) report annually to any savings institution into which the lawyer or law firm has deposited pooled trust funds the information required under the *Canada Deposit Insurance Corporation Act*. [40(b)]

(3) The society may enter into an agreement with a savings institution with whom lawyers or law firms have deposited pooled trust funds, respecting the investment and security of pooled trust funds on deposit at all branches of that savings institution. [40(c)]

(4) Without limiting subsection (3), an agreement under that subsection may provide that

(b) the society obtain a line of credit, either secured or unsecured, from the savings institution for the purpose of ensuring that there is always sufficient money on deposit to guarantee that lawyers' and law firms' trust cheques on their pooled trust fund accounts will be honoured. [40(d)]

(7) Money earned on investments under subsection (6) may be used to

(a) purchase insurance in an amount that the society considers necessary to ensure that all lawyers' and law firms' trust cheques drawn on their pooled trust fund accounts will be honoured, and [40(d)]

(8) The society may pay money out of a society trust account to a person who has suffered a loss directly resulting from the inability or refusal of the savings institution to honour a lawyer's or law firm's trust cheque drawn on a pooled trust fund account, up to a maximum, in any year, set by the benchers. [40(e)]

(12) Subject to subsections (7), (8) and (11), all interest earned on money deposited into a society trust account is held in trust by the society for the benefit of the foundation, and the society is not liable to account to any client of any lawyer or law firm in respect of that interest.[40(b)]

(13) Despite any agreement between a lawyer or law firm and a savings institution, if the ~~lawyer's~~ pooled trust fund account of the lawyer or law firm is overdrawn by an amount exceeding $1 000, the savings institution must, as soon as practicable, inform the society of the particulars. [40(f)]

PART 8 – LAWYERS' FEES

Definitions and interpretation

64 (1) In this Part:

"agreement" means a written contract respecting the fees, charges and disbursements to be paid to a lawyer or law firm for services provided or to be provided and includes a contingent fee agreement; [41(a)]

~~**"law firm"** means a law corporation or a number of lawyers or a number of law corporations or any combination of lawyers and law corporations in a partnership or association for the practice of law;~~ [41(b)]

Contingent fee agreement

66 (2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:

(a) limit the amount that lawyers or law firms may charge for services provided under contingent fee agreements; [42]

Examination of an agreement

68 (2) A person who has entered into an agreement with a lawyer or law firm may apply to the registrar to have the agreement examined. [43]

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Law corporation rules

83 (1) The benchers may make rules as follows:

(c) authorizing the executive director to attach conditions or limitations to permits issued or renewed under this Part; [44(a)]

(2) The amount set by a rule made under subsection (1) (g) is in addition to any amount that must be carried by a lawyer under a rule made under section 30 (1.1), and the amount that may be set under this subsection may be different for different permit holders, at the discretion of the benchers. [44(b)]

PART 10 – GENERAL

Certain matters privileged

87 (1) In this section:

"proceeding" does not include a proceeding under Part 2, 3, ~~or~~ 4 or 5; [45(a)]

"report" includes any document, minute, note, correspondence or memorandum created or received by a person, committee, panel, review board or agent of the society in the course of an investigation, audit, inquiry or hearing, but does not include an original document that belongs to a complainant or respondent or to a person other than an employee or agent of the society. [45(b)]

(2) If a person has made a complaint to the society respecting a lawyer or law firm, neither the society nor the complainant can be required to disclose or produce the complaint and the complaint is not admissible in any proceeding, except with the written consent of the complainant. [45(c)]

(3) If a lawyer or law firm responds to the society in respect of a complaint or investigation, ~~neither~~ none of the lawyer, the law firm ~~n~~or the society can be required to disclose or produce the response or a copy or summary of it, and the response or a copy or summary of it is not admissible in any proceeding, except with the written consent of the lawyer or law form, even though the executive director may have delivered a copy or a summary of the response to the complainant. [45(d)]

(4) ~~If a person, committee or panel acting~~ A report made under the authority of this Act or a record concerning ~~makes a report or conducts~~ an investigation, an audit, an inquiry, ~~or~~a hearing or a review ~~into the conduct, competence~~

~~or credentials of a lawyer, that report~~ must not be required to be produced and is not admissible in any proceeding except with the written consent of the executive director. [45(d)]

(5) Except with the consent of the executive eirector,~~The~~ the society, ~~its~~ an employee~~s~~ or agent~~s~~ or former employee or agent of the society~~,~~ or ~~persons who are~~a member~~s~~ or former member of a committee~~s~~, ~~or~~ panel~~s~~ or review board established or authorized under this Act

(a) must not be compelled to ~~testify in any proceeding or to~~ disclose information that ~~they may have~~the person has acquired during the course of an investigation, an audit, an inquiry, a hearing or a review or in the exercise of other powers or the performance of other duties ~~authorized by~~under this Act ~~or the rules~~, and

(b) is not competent to testify in a proceeding if testifying in theat proceedin would result in the disclosure of information referred to in paragraph (a). [45(d)]

Non-disclosure of privileged and confidential information

88 ~~(1) A lawyer who, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential, or subject to a solicitor client privilege, is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records~~.[repealed] [46(a)]

(1.1) A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege, must do so, despite the confidentiality or privilege.

(1.2) Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Paret 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

(1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege, is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records. [46(b)]

(2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained. [46(c)]

~~**Confidential documents**~~

89 ~~(1) If a lawyer is served with an order made under section 37 (1) or (3) or 41 (2) (b), or required to provide access to information, files or records under section 27 (2) (c), and the lawyer objects to producing or providing access to a document on the grounds that the document is confidential and that a client objects to its disclosure, the document must be sealed without inspection or copying and placed into the custody of~~[repealed] [47]

~~(a) any member in good standing of the society acceptable to both the lawyer and the society, or~~

~~(b) a sheriff.~~

~~(2) If a document is sealed under subsection (1), the lawyer must provide the society with the name and address of the client whose document it is.~~

~~(3) The person who has custody of a sealed document must return the document to the lawyer unless within 30 days the society delivers to the person having custody~~

~~(a) a written waiver of confidentiality signed by the client, or~~

~~(b) the executive director's certification that the client has been contacted and has given an oral waiver of confidentiality.~~

~~(4) If subsection (3) (a) or (b) applies, the person who has custody must deliver the document to the executive director.~~

~~(5) A judge or master of the Supreme Court may, on application,~~

~~(a) extend the time period referred to in subsection (3),~~

~~(b) if the client cannot be located, order that the sealed document be delivered to the society on conditions as to notice or substitutional service that the judge or master considers appropriate, and~~

~~(c) examine the sealed document and any affidavit evidence that the judge or master considers relevant, and~~

~~(i) if the judge or master considers that the document should not be disclosed, ensure that it is resealed and order the person who has custody to return the document to the lawyer, or~~

~~(ii) if the judge or master considers that the document should be disclosed, order the person who has custody to deliver the document to the executive director, subject to any restrictions or conditions that the judge or master considers appropriate.~~

Legal archives

92 (1) The benchers may make rules permitting a lawyer or law firm to deposit records in the possession of the lawyer or law firm in an archives, library or records management office in Canada. [48]

(2) Rules made under this section may provide for

(b) the restrictions or limitations on public access that the lawyer or law firm may attach on depositing them, and [48]

(c) circumstances under which the lawyer or law firm cannot be liable for disclosure of confidential or privileged information arising out of the deposit. [48]

PART 11 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

~~**Transitional rules**~~

93 ~~(1) The benchers may make rules for the purpose of more effectively bringing into operation this Act and to obviate any transitional difficulties encountered in so doing.~~[repealed] [49]

~~(2) Unless earlier rescinded, a rule under subsection (1) is rescinded one year after it is made.~~

LEGAL PROFESSION AMENDMENT ACT, 2012

Transitional Provisions

Transition – special compensation fund

50 On repeal of section 31 of the *Legal Profession Act* by this Act, the benchers

(a) must promptly deposit any monies remaining in the "fund", as it was defined in section 31 (1) of the *Legal Profession Act* before its repeal by this Act, to the account of the insurance fund established under section 30 (6) of the *Legal Profession Act*, and

(b) may use the monies for the purposes of the insurance programs referred to in sections 30 (2) of the *Legal Profession Act* and 30 (2.1) of the *Legal Profession Act* as enacted by this Act.

Transition – power to make rules

51 (1) The benchers may make rules for the purpose of more effectively bringing into operation the amendments made to the *Legal Profession Act* by this Act and to obviate any transitional difficulties encountered in so doing.

(2) Unless earlier rescinded, a rule under subsection (1) is rescinded two years after it is made.

(3) A rule under subsection (1) may be made retroactive to a date on or after the date this section comes into force, and if made retroactive is deemed to have been made on the specified date.

(4) This section is repealed 2 years after it comes into force.

The Law Society of British Columbia

Delivery of Legal Services Task Force: Implementation of Recommendations Regarding Professional Conduct

April 23, 2012

Purpose of Report:	**Recommendation to Benchers to Adopt New Rules of Professional Conduct**
Prepared by:	**Ethics Committee**

Delivery of Legal Services Task Force: Implementation of Recommendations Regarding Professional Conduct

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Memo

The Law Society of British Columbia

To Benchers

From Ethics Committee

Date April 23, 2012

Subject **Delivery of Legal Services Task Force: Implementation of Recommendations Regarding Professional Conduct**

I. Background

In October 2010 the Law Society's Delivery of Legal Services Task Force Report recommended increasing the roles that paralegals and articled students can perform under the supervision of a lawyer to enhance the public's access to competent and affordable legal services. The Benchers endorsed those recommendations at the October 1, 2010 Bencher meeting.

In order to implement some of the Task Force's recommendations it is necessary to change the rules of professional conduct. This memo identifies the recommendations of the Task Force that, in our view, fall within the jurisdiction of the Ethics Committee and proposes rule changes to the BC Code to either give effect to the recommendation or to implement an alternative policy we believe is more appropriate.

II. Recommendations Within the Ethics Committee's Jurisdiction

In our view, Recommendation 2, Recommendation 3, items (a) and (d), and Recommendation 8 fall within our jurisdiction. We also make our own recommendation in Section III below with respect to Recommendation 4, which proposes that the number of paralegals a lawyer may supervise should be limited to two. We set out those recommendations below and describe the steps we have taken to deal with them in the attached changes we propose to Subrule 5.01 of the BC Code.

Recommendation 2:

> The Task Force recommends the following definition of paralegal:
>
> A paralegal is a trained professional who:
> - works under the supervision of a lawyer;

- possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
- possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
- carries out his or her work in a competent and ethical manner.

The Task Force further recommends that the following instructions supplement the definition, potentially by way of an annotation or footnote:

> A lawyer must not delegate work to a paralegal, nor may a lawyer hold someone out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training, experience, and good character to perform the tasks delegated by the lawyer in a competent and ethical manner. In arriving at this determination lawyers should be guided by [refer to guidelines]. Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

The definition of "paralegal," together with Subrule 5.01(3.2) and the following Commentary in the draft incorporate the criteria recommended by the Task Force. These provisions state:

> **"paralegal"** means a non-lawyer who is a trained professional working under the supervision of a lawyer.

(3.2) A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.

Commentary
A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer

in a competent and ethical manner.

In arriving at this determination, lawyers should be guided by Appendix E.

Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

Recommendation 3:

The Task Force recommends:

a) Paralegals should not be allowed to give or receive undertakings;
b) Paralegals should be allowed to give legal advice in matters the supervising lawyer has deemed the paralegal competent to provide advice.

Subrule 5.01(3)(c) of the BC Code which you have passed already permits non-lawyers to give or accept undertakings on behalf of a lawyer under strict conditions, including at the direction and under the supervision of a lawyer. It currently states:

5.01(3) A lawyer must not permit a non-lawyer to:

(c) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

We think the ability to act as the supervising lawyer's agent in giving or accepting undertakings is an important part of increasing the responsibilities that paralegals are able to fulfill. Increased potential of paralegals to assume responsibility for undertakings will increase the flexibility of the services a lawyer is able to offer and will ultimately benefit the public. However, we think the current language of Subrule 5.01(3)(c) is too wide and we propose to alter it to clarify that the undertaking given or accepted by a paralegal is not the paralegal's own undertaking, but that of the lawyer responsible for the matter. In our view, although this proposal is narrower than the current rule, it is a more reasonable limitation than that sought by the Task Force and more in keeping with the general purpose of expanding the range of functions non-lawyers can provide, while still ensuring the public is adequately protected.

The version of Rule 5.01(3)(c) that we propose now states:

5.01(3) A lawyer must not permit a non-lawyer to:

(c) give or accept undertakings or trust conditions, but a non-lawyer may give or accept undertakings on behalf of the lawyer responsible for a legal matter, at the direction of and under the supervision of that lawyer, provided that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

Subrule 3.2 permits paralegals to give legal advice and represent clients before a tribunal, where such representation is permitted by the tribunal.

Recommendation 8:

The Task Force recommends that the following be exempted from the application of this report:

1. Community advocates funded and designated by the Law Foundation of British Columbia;
2. Student legal advice programs or clinical law programs run by, associated with, or housed by a law school in British Columbia; and
3. Non-profit organizations providing free legal services, provided the organization is approved by the Executive Committee of the Law Society of British Columbia.

Subrule 3.1 incorporates Recommendation 8.

III. Limitation on number of paralegals a lawyer may supervise

Recommendation 4 states:

The Task Force recommends:

1. A lawyer can supervise a maximum of 2 paralegals performing enhanced functions;
2. There should be no limit to the number of legal assistants or paralegals performing *traditional* functions that a lawyer may supervise.
3. Law Society communications should make it clear that these changes are not intended to alter existing legal services delivery models in law firms; rather, they are intended to allow for lower cost, competent legal services to be delivered to the public in areas of unmet need.

"Enhanced functions" consist of giving legal advice and/or engaging in advocacy functions permitted by courts or tribunals.

We are of the view it is a mistake to limit the number of paralegals a lawyer may supervise. We understand the Task Force was divided on this issue, although it ultimately recommended a lawyer should not supervise more than two paralegals.

The number of paralegals it is realistic for a lawyer to supervise, in our view, will depend on the areas of law in which the lawyer and paralegal work, the paralegal's training and experience, the lawyer's experience and other factors unique to the working situation between the lawyer and the paralegal. Where a lawyer lacks sufficient time to oversee the work of a paralegal in the way required by the rules, or is too inexperienced in the work the paralegal is entrusted with to properly supervise that work, it may be unreasonable for a lawyer to attempt to supervise any paralegals at all. In other circumstances, where the lawyer has structured his or her practice to accommodate supervision responsibilities and is familiar with paralegals' areas of practice it may be reasonable for the lawyer to supervise more than two paralegals.

We think it is unlikely that paralegals will only be engaged in the enhanced functions—giving legal advice and appearing before tribunals—permitted by these new rules. More likely, they will instead will move from their traditional and usual work into the enhanced work and back again. In other words they will continue to do what they have always done but will add some enhanced functions to their traditional work. Because they will not be performing the enhanced functions exclusively, their new duties will not be a full time job. Restricting the number of paralegals a lawyer can supervise in these circumstances is unrealistic in our view, and has the potential to constrain lawyers from assigning enhanced work to existing staff in circumstances where the public would benefit from such a reassignment.

The attached draft attempts in the Commentary to Subrule 5.01(1) to recognize individual circumstances and impose a duty on lawyers not to attempt to supervise an unreasonable number of paralegals. You need to consider whether you agree with this recommendation. Should you not agree and wish to limit the number of paralegals one lawyer may supervise to two, we are of the view it would be more appropriate to have such a limitation in the *Law Society Rules*, rather than in the Code of Conduct.

IV. Best Practice Guidelines

Appendix E to BC Code Rule 5.01 consists of best practice guidelines based on a report prepared by former Benchers Ralston Alexander and Glen Ridgway and 2011 Ethics Committee member Christine Elliot. A memorandum from Messrs. Alexander and Ridgway and Ms. Elliot along with the guidelines is attached for your information.

V. Transition Provisions to BC Code

Because the revisions to the BC Code we propose cannot be operative until the Code comes into effect on January 1, 2013, we also attach a revised Chapter 12 of the *Professional Conduct Handbook* that amends Chapter 12 of the *Professional Conduct Handbook* to make the language of Chapter 12 as close as possible to the revised language we propose here to Rule 5.01 of the BC Code. The Chapter 12 language, of course, will come into effect immediately if you pass it and will be effective until it is replaced by the BC Code language on January 1, 2013.

Note that Chapter 12 continues in effect Rules 10, 11 and 12 of the current *Professional Conduct Handbook* dealing with real estate assistants (rules 10, 11 and 12 are not shown in the attached draft). These rules are not carried forward at this time into Rule 5.01 pending discussions with the Real Estate Association about whether a 2004 understanding between the Association and the Law Society concerning them may permit their transfer to the Law Society website from the Code of Conduct.

VI. Recommendations

We recommend you:

- Adopt amended Rule 5.01 and Appendix E of the BC Code, to be effective when the new Code is proclaimed on January 1, 2013, pursuant to the attached suggested resolutions.

- Adopt amended Chapter 12 of the *Professional Conduct Handbook* and Appendix 7 until the BC Code is in effect, pursuant to the attached suggested resolutions.

Attachments:

- Draft of revised Rule 5.01 of the BC Code with Appendix E.
- Draft of revised Chapter 12 of *Professional Conduct Handbook* with Appendix 7.
- Suggested resolutions in relation to the BC Code.
- Suggested resolutions in relation to the *Professional Conduct Handbook.*
- Delivery of Legal Services Report
- Memorandum from Messrs. Alexander and Ridgway and Ms. Elliot and Draft Best Practice Guidelines for Lawyers Supervising Paralegals.

CHAPTER 5 - RELATIONSHIP TO STUDENTS, EMPLOYEES, AND OTHERS

5.01 SUPERVISION

Direct Supervision Required

5.01 (1) A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

Definitions

5.01 (2) In this rule,

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

5.01 (3) A lawyer must not permit a non-lawyer to:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or trust conditions, but a non-lawyer may give or accept undertakings on behalf of the lawyer responsible for a legal matter, at the direction of and under the supervision of that lawyer, provided that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction*;*

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) issue statements of account.

Commentary
A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision. A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment. In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

(3.1) The limitations imposed by subrule (3) do not apply when a non-lawyer is

(a) a community advocate funded and designated by the Law Foundation;

(b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

(3.2) A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.

Commentary
A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner. In arriving at this determination, lawyers should be guided by Appendix E. Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

(3.3) Despite subrule (3), where a paralegal has the necessary skill and experience, a lawyer may permit the paralegal

(a) to give legal advice; or

(b) to represent clients before a tribunal, as permitted by the tribunal.

APPENDIX E

SUPERVISION OF PARALEGALS

Key concepts

Lawyers who use paralegals need to be aware of several key concepts:

1. The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;

2. Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;

3. The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;

4. A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person.

5. A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.

6. A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for Supervising Paralegals:

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

    a. Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

    b. Does the paralegal have relevant work experience and or education relating to the matter being delegated?

    c. How complex is the matter being delegated?

    d. What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

    a. Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

    b. Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

    c. Gradually increasing the paralegal's responsibilities;

    d. A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

        i. testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

        ii. engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

        iii. ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A Checklist for Assessing the Competence of Paralegals:

1. Does the paralegal have a legal education? If so, consider the following:

    a. What is the reputation of the institution?

    b. Review the paralegal's transcript;

    c. Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

    d. Ask the paralegal about the education experience.

2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:

    a. Preference/weight should be given to work experience with the supervising lawyer and/or firm;

    b. If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

    c. Does the paralegal have experience in the relevant area of law?

    d. What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

    a. How responsible, trustworthy and mature is the paralegal?

    b. Does the paralegal have good interpersonal and language skills?

c. Is the paralegal efficient and well organized?

d. Does the paralegal possess good interviewing and diagnostic skills?

e. Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

f. Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

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5.01 (1) A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

~~A lawyer who practises alone or operates a branch or part-time office should ensure that~~

~~(a) all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work; and~~

~~(b) no unauthorized persons give legal advice, whether in the lawyer's name or otherwise.~~

If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special

knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

Definitions ~~Application~~

5.01 (2) In this rule,

~~a~~ **"non-lawyer"** ~~does not include a~~ means an individual who is neither a lawyer nor an articled student ~~at law~~;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

5.01 (3) A lawyer must not permit a non-lawyer to:

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In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

(3.1) The limitations imposed by subrule (3) do not apply when a non-lawyer is

(a) a community advocate funded and designated by the Law Foundation;

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    b. Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

    c. Gradually increasing the paralegal's responsibilities;

    d. A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

        i. testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

        ii. engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

        iii. ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A Checklist for Assessing the Competence of Paralegals:

1. Does the paralegal have a legal education? If so, consider the following:

    a. What is the reputation of the institution?

    b. Review the paralegal's transcript;

    c. Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

    d. Ask the paralegal about the education experience.

2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:

    a. Preference/weight should be given to work experience with the supervising lawyer and/or firm;

    b. If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

    c. Does the paralegal have experience in the relevant area of law?

    d. What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

    a. How responsible, trustworthy and mature is the paralegal?

    b. Does the paralegal have good interpersonal and language skills?

c. Is the paralegal efficient and well organized?

d. Does the paralegal possess good interviewing and diagnostic skills?

e. Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

f. Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 12 -

SUPERVISION

Direct supervision required

1. A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.[1]

Definitions

2. In this Chapter,

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

3. A lawyer must not permit a non-lawyer to:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or trust conditions, but a non-lawyer may give or accept undertakings on behalf of the lawyer responsible for a legal matter, at the direction of and under the supervision of that lawyer, provided that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;[2]

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) issue statements of account.

4. The limitations imposed by subrule (3) do not apply when a non-lawyer is

(a) a community advocate funded and designated by the Law Foundation;

(b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

5. A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.[3]

6. Despite rule 3, where a paralegal has the necessary skill and experience, a lawyer may permit the paralegal

(a) to give legal advice; or

(b) to represent clients before a tribunal, as permitted by the tribunal.

FOOTNOTES:

1. A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

   If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

   A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

2. A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

   A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

   In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

3. A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

   In arriving at this determination, lawyers should be guided by Appendix 7.

   Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

APPENDIX 7

SUPERVISION OF PARALEGALS

[Chapter 12]

Key concepts

1. Lawyers who use paralegals need to be aware of several key concepts:

   (a) The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;

   (b) Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;

   (c) The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the Legal Profession Act or Law Society Rules committed by the paralegal;

   (d) A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person;

   (e) A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal;

   (f) A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for Supervising Paralegals:

2. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

   (a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

   (b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?

   (c) How complex is the matter being delegated?

   (d) What is the risk of harm to the client with respect to the matter being delegated?

3. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

   (a) Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

   (b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

   (c) Gradually increasing the paralegal's responsibilities;

   (d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

      (i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

      (ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

      (iii) ensuring the paralegal follows best practices regarding client communication and file management.

4. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

5. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

6. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

7. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

8. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

9. Facilitate continuing legal education for the paralegal.

10. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

11. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

12. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A Checklist for Assessing the Competence of Paralegals:

13. Does the paralegal have a legal education? If so, consider the following:

    (a) What is the reputation of the institution?

    (b) Review the paralegal's transcript;

    (c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

    (d) Ask the paralegal about the education experience.

14. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

15. What work experience does the paralegal have, with particular importance being placed on legal work experience:

    (a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;

    (b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

    (c) Does the paralegal have experience in the relevant area of law?

    (d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

16. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

    (a) How responsible, trustworthy and mature is the paralegal?

    (b) Does the paralegal have good interpersonal and language skills?

(c) Is the paralegal efficient and well organized?

(d) Does the paralegal possess good interviewing and diagnostic skills?

(e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

(f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

PARALEGALS

SUGGESTED RESOLUTION (CODE OF CONDUCT):

BE IT RESOLVED to amend Rule 5.01 of the Code of Professional Conduct

1. In subrule (1) by deleting the first two paragraphs of the Commentary and substituting the following:

A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

2. By deleting subrule (2) and substituting the following:

Definitions

5.01 (2) In this rule,

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

3. By deleting subrule (3)(a), (c) and (h) and substituting the following:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(c) give or accept undertakings or trust conditions, but a non-lawyer may give or accept undertakings on behalf of the lawyer responsible for a legal matter, at the direction of and under the supervision of that lawyer, provided that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

3. By adding the following subrules and commentary:

(3.1) The limitations imposed by subrule (3) do not apply when a non-lawyer is

(a) a community advocate funded and designated by the Law Foundation;

(b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

(3.2) A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.

Commentary
A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner. In arriving at this determination, lawyers should be guided by Appendix E. Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

(3.3) Despite subrule (3), where a paralegal has the necessary skill and experience, a lawyer may permit the paralegal

(a) to give legal advice; or

(b) to represent clients before a tribunal, as permitted by the tribunal.

4. By adding the following appendix:

APPENDIX E

SUPERVISION OF PARALEGALS

Key concepts

Lawyers who use paralegals need to be aware of several key concepts:

1. The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;

2. Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;

3. The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;

4. A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person.

5. A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.

6. A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for Supervising Paralegals:

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

    a. Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

    b. Does the paralegal have relevant work experience and or education relating to the matter being delegated?

    c. How complex is the matter being delegated?

d. What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

    a. Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

    b. Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

    c. Gradually increasing the paralegal's responsibilities;

    d. A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

        i. testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

        ii. engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

        iii. ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A Checklist for Assessing the Competence of Paralegals:

1. Does the paralegal have a legal education? If so, consider the following:

    a. What is the reputation of the institution?

    b. Review the paralegal's transcript;

    c. Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

    d. Ask the paralegal about the education experience.

2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:

    a. Preference/weight should be given to work experience with the supervising lawyer and/or firm;

    b. If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

    c. Does the paralegal have experience in the relevant area of law?

    d. What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

    a. How responsible, trustworthy and mature is the paralegal?

    b. Does the paralegal have good interpersonal and language skills?

    c. Is the paralegal efficient and well organized?

    d. Does the paralegal possess good interviewing and diagnostic skills?

    e. Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

    f. Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

REQUIRES SIMPLE MAJORITY OF BENCHERS VOTING

PARALEGALS

SUGGESTED RESOLUTION (HANDBOOK):

BE IT RESOLVED to amend the Professional Conduct Handbook

1. By deleting the title and rules 1 to 9 of chapter 12 and substituting the following:

CHAPTER 12 -

SUPERVISION

Direct supervision required

1. A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.[1]

Definitions

2. In this Chapter,

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

3. A lawyer must not permit a non-lawyer to:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or trust conditions, but a non-lawyer may give or accept undertakings on behalf of the lawyer responsible for a legal matter, at the direction of and under the supervision of that lawyer, provided that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer

is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;[2]

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) issue statements of account.

4. The limitations imposed by subrule (3) do not apply when a non-lawyer is

(a) a community advocate funded and designated by the Law Foundation;

(b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

5. A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.[3]

6. Despite rule 3, where a paralegal has the necessary skill and experience, a lawyer may permit the paralegal

(a) to give legal advice; or

(b) to represent clients before a tribunal, as permitted by the tribunal.

2. By deleting footnote 1 of chapter 12 and substituting the following:

1. A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

2. A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

3. A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

In arriving at this determination, lawyers should be guided by Appendix 7.

Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

3. By adding the following appendix:

APPENDIX 7

SUPERVISION OF PARALEGALS

[Chapter 12]

Key concepts

1. Lawyers who use paralegals need to be aware of several key concepts:

   (a) The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;

   (b) Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;

   (c) The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the Legal Profession Act or Law Society Rules committed by the paralegal;

   (d) A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person;

   (e) A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal;

   (f) A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for Supervising Paralegals:

2. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

   (a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

   (b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?

(c) How complex is the matter being delegated?

(d) What is the risk of harm to the client with respect to the matter being delegated?

3. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

(a) Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

(b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

(c) Gradually increasing the paralegal's responsibilities;

(d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

(i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

(ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

(iii) ensuring the paralegal follows best practices regarding client communication and file management.

4. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

5. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

6. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

7. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

8. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

9. Facilitate continuing legal education for the paralegal.

10. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

11. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

12. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A Checklist for Assessing the Competence of Paralegals:

13. Does the paralegal have a legal education? If so, consider the following:

    (a) What is the reputation of the institution?

    (b) Review the paralegal's transcript;

    (c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

    (d) Ask the paralegal about the education experience.

14. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

15. What work experience does the paralegal have, with particular importance being placed on legal work experience?

    (a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;

    (b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

(c) Does the paralegal have experience in the relevant area of law?

(d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

16. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

(a) How responsible, trustworthy and mature is the paralegal?

(b) Does the paralegal have good interpersonal and language skills?

(c) Is the paralegal efficient and well organized?

(d) Does the paralegal possess good interviewing and diagnostic skills?

(e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

(f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

REQUIRES SIMPLE MAJORITY OF BENCHERS VOTING

The Law Society of British Columbia

Delivery of Legal Services Task Force Final Report
For: The Benchers

Date: October 1, 2010

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Haydn Acheson
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Purpose of Report: **Discussion and Decision**

Prepared on behalf of: **Delivery of Legal Services Task Force**

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PREAMBLE

The purpose of this Report is to recommend changes to the model through which legal services are delivered in British Columbia in order to enhance the public's access to competent and affordable legal services. The approach focuses on incremental change, by increasing the roles that paralegals and articled students can perform under the supervision of a lawyer. The delivery of legal services and the history of the profession has never been static. The profession has through its history, attempted, as necessary, to evolve with the needs of the public it serves. This Report represents a further stage in that evolutionary history.

The Task Force makes a series of recommendations in this Report. The rationale for the recommendations is explained in the body of the Report under the various relevant headings, and a Summary of the recommendations is included at the end of the Report for ease of reference.

In working through its mandate and in making its recommendations, the Task Force has tried to find the balance through which the public's access to competent and affordable legal services will be enhanced without introducing an unacceptable level of harm to those who need such services. The Task Force believes, however, that these suggested reforms must be tested in the market place in order to determine whether it has found the right balance.

1. BACKGROUND

The Delivery of Legal Services Task Force was created to advance Strategy 1-1 of the 2009-2011 Strategic Plan:

> *Increase the public's access to legal services by developing a new regulatory paradigm that may broaden the range of persons permitted to provide certain legal services.*

The Task Force issued a preliminary report to the Benchers in December 2009, and an interim report at the Benchers' Retreat in June 2010. The detailed analysis contained in those reports is not duplicated here, but a brief synopsis follows.

The concept for strategy 1-1 had its genesis in the work of the Law Society of British Columbia Futures Committee. After a lengthy analysis, that Committee recognized the time had come to explore broadening the range of people able to provide legal services. The Committee recommended that additional research be performed to assess the best way forward. On the strength of that recommendation the Benchers created the Delivery of Legal Services Task Force. The Task Force's initial mandate involved collecting missing information to assess the need for change. In addition to reviewing numerous reports and surveys, the Law Society commissioned an Ipsos Reid survey to get a better sense of how British Columbians of low, middle, and high income resolved their serious

legal problems. Following its report to the Benchers in December 2010 the Task Force was given a mandate to analyze the substantive issues involved in expanding the range of persons permitted to provide legal services. This stage involved select consultations and additional research and analysis, leading to the report to the Benchers in June 2010.

As a result of its research, the Task Force confirmed that access to justice and to lawyers is a challenge being tackled around the world. There exists a growing body of research and discussion of this topic. In light of this reality the Task Force decided to take an incremental approach to reform, rather than attempt to find a universal solution. This decision led the Task Force to focus on three topics:

1. Expanded roles for paralegals;
2. Expanded roles for articled students;
3. Issues relating to Community Advocates.

The Benchers' discussion in June 2010 focused on paralegals and articled students. The majority of the Benchers concluded that both paralegals and articled students should be able to perform additional duties, but that further details, particularly with respect to paralegals, had to be worked out.

2. PURPOSE OF THIS REPORT

This report contains recommendations of the Task Force for moving forward with the goal of enhancing access to affordable, competent legal services, in light of the Benchers' discussion of the topic on June 11, 2010.

3. ARTICLED STUDENTS

The vast majority of the Benchers were of the view that articled students should be allowed to perform enhanced functions, including acting as Commissioners for Oaths.

The Task Force recommends that the Credentials Committee be directed to explore expanded duties for Articled Students. The referral of matters to the Credentials Committee should include the background material on Articled Students that the Task Force considered.

The Law Society, as part of its request for amendments to the *Legal Profession Act*, has also asked that s. 60 of the *Evidence Act* be amended to allow articled students to act as commissioners for oaths.

4. PARALEGALS

As a result of the discussion and directions given by the Benchers at the June 2010 Retreat the Task Force takes it that a consensus has been reached, and therefore recommends, that it is time to enhance the permitted duties of paralegals acting under the supervision of a lawyer.

Issues relating to the definition of paralegal, as well as the scope of enhanced duties and nature of supervision need to be worked out. This section of the report attempts to synthesize the views of the Benchers and suggest a way forward.

A. *Definition of Paralegal*

The Benchers have recognized that it is important to define "paralegal". Doing so will reduce the risk of public confusion concerning the roles of non-lawyers working at a law office. It will also allow lawyers to identify which employees lawyers can hold out as paralegals. This approach is consistent with earlier reports such as the *Proposal for a Law Society Paralegal Certification Scheme* (May 2003) (**Attachment 1**), although that report ultimately focused on credentialing.

"Legal Assistant" is the term the Law Society uses at present for the services that are permitted under the *Professional Conduct Handbook*. The Law Society does not define the term or set criteria for the application of that term however, so there is a wide range of people providing legal assistant services. In essence, lawyers have been left on their own to determine who is a legal assistant. The Task Force recommends keeping the term "legal assistant" for the category of existing functions in the *Handbook*, and creating a new category of "paralegal" that could perform the expanded functions proposed by the Task Force, as well as the current functions allowed for legal assistants. In order to distinguish between paralegals and legal assistants, at a minimum the term "paralegal" should be defined.

A relatively straightforward approach would be to modify the proposed credentialing criteria detailed in Attachment 1, turning the criteria into guidelines that a lawyer must consider in deciding whether to hold someone out as a paralegal.

The Paralegal Task Force also recognized in 2003 that a paralegal requires knowledge of not only substantive and procedural law but also practical and analytical skills. A definition based on these four pillars might look something like this:

> A paralegal is a trained professional who:
> - works under the supervision of a lawyer;
> - possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
> - possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

- carries out his or her work in a competent and ethical manner.

This definition might be supplemented by a rule and guidelines that state:

> A lawyer must not delegate work to a paralegal, nor may a lawyer hold someone out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training, experience, and good character to perform the tasks delegated by the lawyer in a competent and ethical manner. In arriving at this determination lawyers should be guided by [**refer to guidelines**]. Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

An alternative approach is to set (objective) criteria in the definition and then provide guidelines for the lawyer to make the subjective determination as to whether a staff member can be held out as a paralegal. Such an approach might look like this:

> A paralegal is a person who is qualified by virtue of education,[1] training and experience to provide services normally performed by a lawyer, provided those services are delivered under the supervision of a lawyer.[2]

The guidelines could then set out factors for a lawyer to take into account, such as the bulleted points above and the list of acceptable schools/education contained in the Paralegal Task Force report.

The Task Force discussed the "training" requirements for paralegals. The Task Force recognized that not all legal assistants have completed a paralegal training course. Many legal assistants will have developed their experience over a number of years working in a firm setting. The Task Force believes that education is an important part of training, but an allowance has to be made for people who have achieved adequate substantive and analytical skills through work experience. One possibility is to set education as a requirement moving forward, and to grandfather in experienced legal assistants as of a certain date. The Task Force considered whether a certain number of years experience should be required, but did not arrive at a conclusion. Ultimately, the Task Force believes the onus will lie on the supervising lawyer to ascertain whether the staff member possesses the requisite skills to function as a paralegal.

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[1] Education could be described in greater detail (e.g. with a degree or diploma in legal studies from a recognized university or college, etc.).
[2] Should "character" also be included?

I. Recommendations regarding definition of "paralegal"

The Task Force recommends that:

a) the term "paralegal", or a new coined term, be defined in the *Professional Conduct Handbook* to make it clear which staff can perform enhanced paralegal functions. Two options for definitions are set out above. Consideration should be given whether to set out criteria for the training of paralegals as well as whether to refer to them as "professionals";

b) a rule or guidelines similar to that set out above accompany the definition in order to assist lawyers in identifying which staff can be held out as paralegals, and to put lawyers on heightened notice of their professional obligations regarding supervising these paralegals.

The Task Force believes that option (b) is the better choice and should be coupled with the bulleted definition on page 4.

B. *What expanded duties should paralegals be allowed to perform?*

At present, the three main prohibitions contained in the *Professional Conduct Handbook* relate to giving undertakings, acting as an advocate, and providing legal advice.

I. *Undertakings*

The consensus view of the Benchers was that paralegals should not be allowed to provide undertakings. A concern relating to undertakings is that they are a personal obligation of the lawyer, and therefore might not easily transfer to the paralegal. Perhaps more significantly, undertakings are often related to monies in trust and that calls for a heightened degree of protection. Lastly, requiring lawyers to provide undertakings creates a mechanism to involve the lawyer in the file, thereby dovetailing with the object of properly supervising the paralegal.

II. *Advocacy*

With respect to advocacy, the Task Force is of the opinion that the extent to which a non-lawyer can appear in court depends on what the courts are prepared to allow. It does not make sense for the Law Society to create a list of permissible advocacy functions at this time only to risk having them rejected by the courts. As the Benchers are aware, the Task Force laid the ground work for future consultations with the British Columbia Supreme Court and the Provincial Court of British Columbia on this subject. The Task Force believes the Law Society should work with the courts to ascertain what advocacy

functions should be permitted, and that the Law Society should adopt the findings from that work.

It is important to realize that working with the courts will require an allocation of resources, and will require both Bencher and staff time, and that this needs to be reflected in the Law Society's Strategic Plan. The Task Force therefore recommends that the Strategic Plan be amended to include the following initiative in furtherance of Strategy 1-1:

> A working group or task force of Benchers and staff will work with the British Columbia Supreme Court and the Provincial Court of British Columbia to explore what advocacy roles supervised paralegals should be allowed to perform in accordance with the recommendations contained in the Report of the Delivery of Legal Services Task Force. The working group or task force will make recommendations to the Benchers with regard to any potential changes to the Law Society Rules and *Professional Conduct Handbook* that might be required as a result of the consultations with the courts.

III. *Giving legal advice*

When the Task Force discussed this topic it decided that the best approach is to allow the supervising lawyer to determine the circumstances under which it is appropriate for the paralegal to give legal advice. The reason for this conclusion is largely pragmatic. To attempt to chart out every conceivable circumstance for providing legal advice (taking into account such matters as the areas of law involved in the retainer, the seriousness of the matter, the complexity of the matter, the implications to the justice system, and the implications to the parties involved), would be to embark on an epic enterprise around which consensus would never be achieved. The more rigid the codification, the less ability there is for a lawyer to recognize the varied skill between individual paralegals. At present there are some lawyers who rely tremendously on the work of a paralegal in certain areas because the paralegal is the "go-to" source at the firm. A rigid codification would almost certainly stifle the level of existing functions being performed in those settings, and apparently being performed without great harm to the public.

Every additional administrative layer will act as a deterrent to the profession in using paralegals to perform enhanced functions. The rules will either be ignored (if they constrict existing practices), or not embraced (if they are perceived to be too cumbersome to learn and apply in practice). The Task Force remains of the opinion that protection of the public is better achieved through properly defining who can perform enhanced functions, providing rules and guidelines for supervision, and ensuring our regulatory process is robust enough to deal with complaints against lawyers about substandard paralegal work.

IV. *Recommendations regarding expanded duties for paralegals*

The Task Force recommends:

a) Paralegals should not be allowed to give or receive undertakings;
b) The Law Society should work with the courts to determine what forms of advocacy paralegals should be permitted to perform;
c) The Strategic Plan should be amended to include as follows: A working group or task force of Benchers and staff will work with the British Columbia Supreme Court and the Provincial Court of British Columbia to explore what advocacy roles supervised paralegals should be allowed to perform in accordance with the recommendations contained in the Report of the Delivery of Legal Services Task Force. The working group or task force will make recommendations to the Benchers with regard to any potential changes to the Law Society Rules and *Professional Conduct Handbook* that might be required as a result of the consultations with the courts.
d) Paralegals should be allowed to give legal advice in matters the supervising lawyer has deemed the paralegal competent to provide advice.

C. *Supervision of Paralegals*

Supervision is the critical part of expanding roles for paralegals. The key is to find a balance between rules for supervision, which create safeguards, and flexibility which increases the likelihood lawyers will use paralegals for enhanced roles, thereby enhancing access to justice. If the balance is cast too far in either direction we will either create reforms that will not be embraced and therefore accomplish nothing, or that are too unstructured and therefore introduce a level of risk to the public that is unacceptable. The Benchers considered a number of concepts that are central to the issue of supervision.

When the Task Force discussed supervision it considered a number of concepts that might fit within a general framework of supervision, including:

- A supervising lawyer should be aware of what functions staff are performing, what files are assigned to staff, etc;
- The supervising lawyer must establish effective communication with staff;
- The supervising lawyer should engage in file triage and to determine proper delegation to staff;
- The supervising lawyer should ensure staff are trained and competent to undertake assigned functions;
- The supervising lawyer should engage in periodic file review and debriefing sessions (scaled to the experience and qualifications of the staff being supervised and the nature of the files assigned to staff);
- The supervising lawyer should provide ongoing skills training for staff;
- The supervising lawyer would benefit by asking the clients to give feedback regarding the quality of services received;

- The supervising lawyer would benefit from creating written supervision policy & procedure document.

The Benchers may wish for any, or all, of these concepts to be expressed in guidelines for lawyers' supervision of paralegals.

In addition to these concepts, the Task Force explored whether there should be a limit on the number of paralegals a lawyer can supervise, and whether remote supervision should be permitted. These topics led to a variety of views expressed by the Benchers, and are analyzed in more detail in the following sections.

(i). *Should there be a limit on the number of paralegals a lawyer can supervise?*

When the Benchers discussed the idea of capping the number of paralegals a lawyer can supervise, approximately 60% were in favour of a cap for paralegals performing enhanced roles.

At both the Task Force level, and the Bencher level, the concept of capping the number of paralegals has presented challenges for achieving unanimity. A cap has merit because logic tells us that at some point supervision becomes fraught with risk as the ratio of staff to supervising lawyer grows. The challenge is that a hard cap is inflexible, and fails to recognize that effective supervision is about more than ratios. Some lawyers will be able to competently supervise many paralegals while others will struggle supervising one. Competency to supervise is not dictated by a cap. Recognizing this tension, the challenge becomes identifying the number, or whether to identify a number at all.

Although competency is not dictated by a cap, capacity to supervise is influenced by the number of staff a lawyer is responsible for. As a result there are insurance implications if the number is not capped. This is because for each additional staff providing legal services the risk profile of the lawyer increases without a commensurate increase in insurance fees. The opinion the Task Force received from the Lawyers Insurance Fund recognized that a cap would have a mitigating effect.

One perspective raised by the Benchers was that it is preferable not to institute a cap, and that the decision should be left to lawyers. It was noted that the key would be to make it clear to lawyers that they carried the responsibility for the work performed by the paralegal, and liability for the work performed. The argument is that properly instructed, lawyers will not take on the risk associated with supervising too many paralegals. This approach allows for a case-by-case flexibility.

One suggestion considered by the Task Force was to limit the number of supervised paralegals performing enhanced functions to two, similar to the number of articled students that a principal may supervise. When the Task Force discussed this concept it considered the similarities and differences between the principal/articled student relationship and the lawyer/paralegal relationship. If the theory behind a cap is that the public is at risk if a lawyer supervises too many paralegals, how do we deal with

situations where the lawyer also acts as a principal? If the paralegal cap was set at two, one could envision a situation where the lawyer is acting as principal for one student while supervising two paralegals. This would effectively mean the lawyer was supervising three people who are allowed to provide lawyer-like services. Is the public more at risk in this situation as compared to a lawyer supervising two paralegals? If not, then might we allow a lawyer to supervise three paralegals?

A possible way around this discrepancy would be to say that a lawyer can supervise up to four paralegals and articled students, provided no more than two are articled students. Another possibility is to allow a lawyer who has supervised the maximum number of paralegals for a set period of time without a founded complaint to be able to apply for an expansion of the cap. This would allow lawyers on a case-by-case basis to expand the delivery model, but with a safeguard based on past performance.

While the Task Force was alive to arguments both in favour of and opposed to capping, it ultimately concluded the insurance issues arising from not having a cap, together with the resulting adverse effect on the protection of the public interest, spoke in favour of a cap. The Benchers may wish to consider whether a process for applying for an exemption should be created.

I. Recommendation regarding capping the number of paralegals a lawyer can supervise

There are essentially three options the Task Force considered regarding a cap:

1. A lawyer can supervise a maximum of 2 paralegals performing enhanced functions;
2. There should be no limit to the number of paralegals performing enhanced functions a lawyer can supervise;
3. Absent obtaining permission from the Law Society, a lawyer can supervise a maximum of four paralegals performing enhanced functions and articled students, with no more than 2 being articled students.

The Task Force recommends:

1. A lawyer can supervise a maximum of 2 paralegals performing enhanced functions;
2. There should be no limit to the number of legal assistants or paralegals performing *traditional* functions that a lawyer may supervise.
3. Law Society communications should make it clear that these changes are not intended to alter existing legal services delivery models in law firms; rather, they are intended to allow for lower cost, competent legal services to be delivered to the public in areas of unmet need.

(ii). *Should remote supervision be permitted*?

Similar to the issue of capping, neither the Benchers nor the Task Force had unanimity regarding remote supervision. Approximately 56% of the Benchers favoured allowing remote supervisions.

In determining the best approach, it is worth considering the extent to which remote supervision occurs at present. If one considers the amount of communications where instructions are provided by way of phone and/or email to staff, it is clear that a measure of delegation and supervision is already occurring via telecommunication devices.

It is also important to be mindful that people are increasingly communicating through digital technologies. It is becoming the norm, and people are developing greater fluency with the technology.

When the Task Force discussed Community Advocates with Wayne Robertson, QC, Executive Director of the Law Foundation of British Columbia, he explained that there are some communities, such as Haida Gwaii, where the advocate is currently being supervised remotely by lawyers in Vancouver. This is because there are no lawyers in Haida Gwaii. This is similar to the observation, made by Pamela Shields at the Benchers' Retreat, that there are paralegals working in some aboriginal communities where there are no lawyers. An absolute restriction on the ability to remotely supervise paralegals would have a detrimental effect on these important services.

One concern raised by some Benchers is that if remote supervision was allowed, then large firms would set up paralegals in smaller communities, providing lower cost legal services that harm the viability of local lawyers. In determining the weight to be given to this concern, the Benchers need to be guided by the mandate to protect the public interest in the administration of justice. If the conclusion is that the remotely supervised paralegal cannot provide services competently, then the services should not be permitted. If the services can be provided competently, then the services should be allowed. If the Society is seen to be protecting the economic interest of lawyers over the access to justice needs of British Columbians it will create negative optics for the profession and the future of self-regulation.

Predicting the likelihood of harm to practices outside major urban centres is not a scientific enterprise. One may reasonably take the position that remote supervision of paralegals will harm legal practices in smaller communities, but one may equally take a contrary view. The decision to implement a cap would have a mitigating effect on the potential materialization of that risk, however. It is highly unlikely that a lawyer in Vancouver would use his or her limited cap space to seed remote communities with paralegals. The cost of operating the law practice from one office with four paralegals is less than operating five offices (one with the lawyer, and four remote offices). Profit margins would be seriously impacted, and it would not in most cases be a good business decision. Another consideration is that the retainer will continue to be between the lawyer and the client, and if the client lives in a remote community and wants to speak to

the lawyer, odds are they would prefer having the lawyer's office located within (or proximate) to the community where the client lives. The local firm's presence in, and connection to, the community gives it an advantage that the remotely supervised satellite office cannot likely match.

Recognizing, however, that a decision either way is speculative, one possibility is to place an additional cap on the number of remotely supervised offices a lawyer (or law firm) can have.

II. Recommendation regarding remote supervision of a paralegal

The Task Force Recommends that remote supervision of paralegals be permitted, but that the Benchers also consider capping the number of paralegals a lawyer or law firm can supervise through remote supervision.

D. *General issues*

If the Benchers adopt the approach recommended by the Task Force there are several factors to bear in mind:

1. It would be important to make it clear that lawyers remain responsible for the actions of non-paralegal staff. While the wording of Chapter 12, Rule 1 of the *Professional Conduct Handbook* covers this, it is a point worth emphasizing in communications about the changes.
2. The requirements for supervision should be set out in rules (the *Handbook*?), guidelines, or both.
3. The more a paralegal is a proxy for the lawyer, particularly in giving legal advice or appearing in court, the more important good character becomes. Without regulating paralegals directly, how can the good character of a paralegal be assured? One possibility is to require lawyers who use paralegals to require the paralegal to sign an oath or affirmation to subscribe to certain standards of conduct.
4. Because "paralegal" is already in common usage, the Benchers might want to consider whether a new term should be coined. The risk in using an existing term is that some firms will have multiple people using the term already, many of whom might not qualify as paralegals under the new scheme. Using adjectival descriptors might similarly cause problems. For example "Advanced Paralegal" or "Enhanced Paralegal" might have pejorative connotations for ordinary paralegals. Because we don't certify paralegals, "Certified Paralegal" is not an option. "Registered Paralegals" might also require a scheme. One possibility would be to call them "Professional Paralegals" to connote a higher standard.
5. An idea the Task Force approved of, but which was not debated by the Benchers, is the idea of requiring the supervising lawyer to submit a form to the Law Society that sets out important information about the supervision arrangement. If the form were automated through the member login portion of the website, it

would be easier to analyze information than if the form is a paper form. This will likely add administrative functions to the Law Society's operations, and at some point the cost and resource implications for Member Services needs to be considered. The form might include:

a. The names of the paralegals the lawyer is supervising;

b. The areas of law in which the lawyer is using the paralegals;

c. The types of enhanced services the paralegal will perform;

d. The education and experience of the paralegal;

e. A copy of the oath/affirmation of conduct;

f. The location of the office the lawyer & paralegals work in;

g. A description of the supervision model/plan the lawyer has in place to train and supervise the paralegals;

h. Whether any supervision occurs remotely, and if so a description of the steps the lawyer is taking to ensure adequate supervision occurs.

6. It is important to ensure that any changes to the roles of paralegals do not harm existing programs provided by the Legal Services Society or funded agencies, or the community advocate work funded by the Law Foundation. Poverty law services fill an important gap in the access to justice landscape, and it is important to avoid unintended consequences arising from the proposed changes.

I. Recommendations regarding general issues

a) The requirements and restrictions for lawyer supervision should be set out in either the Rules, the *Handbook*, or an appendix to the *Handbook*.

b) [Optional] The supervising lawyer should be required to submit a form to the Law Society electronically that includes:

i. The names of the paralegals the lawyer is supervising;

ii. The areas of law in which the lawyer is using the paralegals;

iii. The types of enhanced services the paralegal will perform;

iv. The education and experience of the paralegal;

v. A copy of the oath/affirmation of conduct;

vi. The location of the office the lawyer & paralegals work in;

vii. A description of the supervision model/plan the lawyer has in place to train and supervise the paralegals;

viii. Whether any supervision occurs remotely, and if so a description of the steps the lawyer is taking to ensure adequate supervision occurs.

The Task Force did not determine that the form was required. It is provided as an optional recommendation because the Benchers have not made a determination as to whether it is desirable.

E. *Regulatory Process*

In the past, an allegation of failure by a lawyer to supervise staff has never led to a disciplinary process more severe than a Conduct Review. As the Task Force observed in its June 11, 2010 report:

> If the supervised paralegal engages in activity that would lead to a suspension or disbarment if performed by a lawyer, but the result is never more severe than a conduct review for the supervising lawyer, we have arguably created a weaker regulatory function with respect to those services. (p. 17)

Either the rules (the *Handbook*?) or the guidelines should make it clear that if a paralegal performs a task incompetently the lawyer may be treated, for regulatory purposes, as if the lawyer performed the task incompetently. In other words, our regulatory process must not allow for a two-tiered model of regulation based on whether the services were provided by a lawyer or a paralegal. Such a result cannot be permitted because we have no means to directly sanction the paralegal. Serious errors by a paralegal must have the potential to carry serious consequences for the supervising lawyer. Public confidence in the regulatory system requires this safeguard and lawyers must be made to understand this necessity and the risk associated with it. The disciplinary process must be commensurate with the gravity of the complaint, and the process must be as transparent as possible in order to ensure the public has confidence in the regulatory model.

I. Recommendations regarding the regulatory process

The Task Force recommends that the Discipline Guidelines be amended to make it clear that failure to supervise a paralegal performing enhanced functions is by its nature more serious than a standard finding of failure to supervise, and the full range of discipline actions should be available. A sanction that should be added to the list is a prohibition against a lawyer being able to supervise paralegals performing enhanced functions in the future.

5. EXEMPTIONS

As noted, the intention of the proposed reforms is to enhance access to competent and affordable legal services. The object is not to harm the existing practices of lawyers and law firms, nor to harm important public interest work that is being performed. Because of this the Task Force considered whether exemptions should be permitted.

As the Task Force observed in its June 11, 2010 report, community advocates perform an important function in the access to justice landscape. In particular, they provide legal assistance to the poor and marginalized members of society who will rarely have access to a lawyer. While expanding the permissible duties of paralegals and articled students might allow for a marginal increase of legal services to the poor, the Task Force does not anticipate the recommendations contained in this report will have a meaningful impact on access to justice for the poor. In light of this, it is essential that any reforms do not hinder the important work that is being done by lawyer supervised community advocates.

The Law Foundation has been funding and developing programs for the training of community advocates. To date, the feedback on that work has been very positive. The reality of this niche legal service, however, is that it might not be possible to deliver existing community advocacy services under a model of heightened paralegal services unless the Benchers create exemptions for the community advocate services. The example of direct supervision by a lawyer and the situation in Haida Gwaii is one such example. Care has to be taken to ensure that in our efforts to improve access to legal services for people of moderate and middle-class means, we do not create a supervisory model that extinguishes much needed services for the poor.

In addition, there are clinical programs such as the Law Students' Legal Advice Program and the Aboriginal Law Clinic, that provide valuable legal services to the public. These programs should be exempted, and clinics should be able to apply to a committee as designated by the Benchers for consideration of an exemption. The key components will be that the non-lawyers providing services at the clinic are supervised by a lawyer and properly trained, and that the lawyer is satisfied the staff are able to provide services in a competent and ethical manner. These services must also comply with the restrictions on the practice of law as contained in the *Legal Profession Act.*

I. Recommendation regarding community advocates

The Task Force recommends that the following be exempted from the application of this report:

1. Community advocates funded and designated by the Law Foundation of British Columbia;
2. Student legal advice programs or clinical law programs run by, associated with, or housed by a law school in British Columbia; and
3. Non-profit organizations providing free legal services, provided the organization is approved by the Executive Committee of the Law Society of British Columbia.

6. CONCLUSION

Access to justice and legal services challenges are occupying governments, policy-makers, legal professionals and the public in jurisdictions around the world. For a variety of reasons, many people with serious legal problems are unable to secure the services of a

lawyer. For many people the cost of legal services present a barrier. Yet these people are dealing with legal issues that can impact adversely on their private lives as well as their ability to function in society. While the Benchers realize that in a perfect world these people would have recourse to the services of a lawyer, we know as a practical matter this is not always the case. It is therefore incumbent on the profession to examine its delivery model and ask how it can respond to the needs of the public in the 21st Century, while still ensuring that the safeguards of competency and proper regulation are met.

The recommendations in this report are incremental rather than revolutionary, and the Task Force does not purport to hold them out as a cure for all the challenges associated with access to justice. The Task Force does believe, however, that it is an important step in the right direction. The Law Society's mandate requires it to protect the public interest in the administration of justice. This mandate was the focal lens through which the Task Force examined its work. Once the profession embarks down this road the Law Society needs to monitor the changes to ensure the public is being well-served and that the regulatory mechanism is properly protecting the public from harm. This examination may involve an initial survey of the profession, and a follow-up survey of both the profession and the public down the road. It is important to receive feedback as to what is working and what is not with respect to these changes, in order that the Law Society can ensure the public is well served.

The object of these reforms is to enhance the public's access to competent and affordable legal services. The object is not to constrain existing practices. Similar to the Benchers' decision to provide guidelines for lawyers to provide limited scope legal services, the intention is to enable lawyers to modify their practices to meet the legal service needs of the public, while ensuring that safeguards exist to protect the public from harm. The Task Force believes the recommendations contained in this report are small but important steps the profession should take to better meet the legal needs of the public it serves.

SUMMARY OF RECOMMENDATIONS

Expanded Roles for Articled Students:

Recommendation 1:
The Task Force recommends that the Credentials Committee be directed to explore expanded duties for Articled Students. The referral of matters to the Credentials Committee should include the background material on Articled Students that the Task Force considered.

Expanded Roles for Paralegals:

Recommendation 2:
The Task Force recommends the following definition of paralegal:

> A paralegal is a trained professional who:
> - works under the supervision of a lawyer;
> - possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
> - possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
> - carries out his or her work in a competent and ethical manner.

The Task Force further recommends that the following instructions supplement the definition, potentially by way of an annotation or footnote:

> A lawyer must not delegate work to a paralegal, nor may a lawyer hold someone out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training, experience, and good character to perform the tasks delegated by the lawyer in a competent and ethical manner. In arriving at this determination lawyers should be guided by [**refer to guidelines**]. Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

Recommendation 3:
The Task Force recommends:

a) Paralegals should not be allowed to give or receive undertakings;
b) The Law Society should work with the courts to determine what forms of advocacy paralegals should be permitted to perform;
c) The Strategic Plan should be amended to include as follows: A working group or task force of Benchers and staff will work with the British Columbia Supreme

Court and the Provincial Court of British Columbia to explore what advocacy roles supervised paralegals should be allowed to perform in accordance with the recommendations contained in the Report of the Delivery of Legal Services Task Force. The working group or task force will make recommendations to the Benchers with regard to any potential changes to the Law Society Rules and *Professional Conduct Handbook* that might be required as a result of the consultations with the courts.

d) Paralegals should be allowed to give legal advice in matters the supervising lawyer has deemed the paralegal competent to provide advice.

Recommendation 4:
The Task Force recommends:

1. A lawyer can supervise a maximum of 2 paralegals performing enhanced functions;
2. There should be no limit to the number of legal assistants or paralegals performing *traditional* functions that a lawyer may supervise.
3. Law Society communications should make it clear that these changes are not intended to alter existing legal services delivery models in law firms; rather, they are intended to allow for lower cost, competent legal services to be delivered to the public in areas of unmet need.

"Enhanced functions" consist of giving legal advice and/or engaging in advocacy functions permitted by courts or tribunals.

Recommendation 5:
The Task Force Recommends that remote supervision of paralegals be permitted, but that the Benchers also consider capping the number of paralegals a lawyer or law firm can supervise through remote supervision.

Recommendation 6:

a) The requirements and restrictions for lawyer supervision should be set out in either the Rules, the *Handbook*, or an appendix to the *Handbook*.
b) **[Optional]** The supervising lawyer should be required to submit a form to the Law Society electronically that includes:
    i. The names of the paralegals the lawyer is supervising;
    ii. The areas of law in which the lawyer is using the paralegals;
    iii. The types of enhanced services the paralegal will perform;
    iv. The education and experience of the paralegal;
    v. A copy of the oath/affirmation of conduct;

vi. The location of the office the lawyer & paralegals work in;

vii. A description of the supervision model/plan the lawyer has in place to train and supervise the paralegals.

viii. Whether any supervision occurs remotely, and if so a description of the steps the lawyer is taking to ensure adequate supervision occurs

Recommendation 7:
The Task Force recommends that the Discipline Guidelines be amended to make it clear that failure to supervise a paralegal performing enhanced functions is by its nature more serious than a standard finding of failure to supervise, and the full range of discipline actions should be available. A sanction that should be added to the list is a prohibition against a lawyer being able to supervise paralegals performing enhanced functions in the future.

Recommendation 8:

The Task Force recommends that the following be exempted from the application of this report:

1. Community advocates funded and designated by the Law Foundation of British Columbia;
2. Student legal advice programs or clinical law programs run by, associated with, or housed by a law school in British Columbia; and
3. Non-profit organizations providing free legal services, provided the organization is approved by the Executive Committee of the Law Society of British Columbia.

ATTACHMENT 1

Proposal for a general certification scheme

The Paralegal Task Force has determined that the curricula of the Capilano College legal assistant diploma and certificate programs should serve as the benchmark for paralegal education in British Columbia. The Task Force anticipates that other colleges in the province will develop curricula to meet specific criteria the Paralegal Task Force expects to develop based on this benchmark.

Categories of applicants for general certification

Subject to the grandparenting certification scheme, the Task Force proposes that the following categories of applicants be eligible to apply for general certification:

- Graduates of Canadian law schools

Graduates of Canadian law schools may apply for certification, provided they have completed one year of legal or paralegal work experience in British Columbia in the preceding five years.

- Graduates of approved Canadian paralegal programs

Graduates of recognized Canadian paralegal programs that meet specified criteria may apply for certification, provided those graduates have completed one year of paralegal work experience in British Columbia in the preceding five years.

At present, the Task Force views the Capilano College Legal Assistant diploma and certicate programs as the benchmark for paralegal education in BC, and graduates of either of those programs who have completed one year of paralegal work experience in BC accordingly may apply for certification.

- Applicants who graduate from Canadian paralegal programs of recognized Canadian institutions but which programs do not meet specified criteria

Graduates of paralegal programs that do not meet specific criteria set by the Law Society may apply for certification provided they successfully pass a challenge exam and have completed one year of paralegal work experience in British Columbia in the preceding five years.

- Graduates of paralegal programs from other common law jurisdictions

Graduates of paralegal programs offered by recognized institutions in other common law countries may apply for certification provided they successfully pass a challenge exam and have completed one year of paralegal work experience in British Columbia in the preceding five years.

- Applicants holding an LL.B or equivalent degree from common law jurisdictions outside Canada

Applicants who hold an LL.B. or equivalent degree from a law school in a common law jurisdiction may apply for certification provided they:

- have completed one year of legal or paralegal work experience in British Columbia in the preceding five years; or
- have completed one year of legal or paralegal work experience outside British Columbia in the preceding five years and have successfully passed a challenge exam.

Proposal for a grandparenting certification scheme

The Paralegal Task Force recognizes that BC paralegals have diverse backgrounds, including those who have graduated from the Capilano College, Selkirk College, Vancouver Community College or other college legal assistant programs, those who have an LL.B from a common law jurisdiction and those who have legal work experience and no formal legal training.

The Paralegal Task Force identified four factors that must be considered when evaluating the different work and educational experience of paralegals for the purpose of certification. The Task Force considers of key importance an applicant's:

- knowledge of procedural law;
- knowledge of substantive law;
- practical skills; and
- analytical skills.

In recognition of the diversity of paralegal backgrounds, the Paralegal Task Force is proposing two categories of applicants who may apply for paralegal certification through special grandparenting provisions, provided they do so within five years of the commencement of a general paralegal certification program. After the five-year period, the grandparenting provisions would expire and applicants would have to meet general certification requirements.

Categories of applicants for certification through grandparenting

- Graduates of the Vancouver Community College or Selkirk College legal assistant programs

Graduates of the legal assistant programs of either Vancouver Community College or Selkirk College who have three years of paralegal work experience in British Columbia in the preceding five years may apply for certification.

- Paralegals with work experience only

Persons who have completed 10 years of legal work experience in British Columbia, including at least five years of paralegal work experience, in the preceding 15 years may apply for certification.

Memo

The Law Society of British Columbia

To Access to Legal Services Advisory Committee

From Solicitors Subgroup

Date May 2, 2011

Subject **Best Practice Guidelines for Lawyers Supervising Paralegals**

The Solicitors Subgroup consists of Ralston Alexander, QC, Christine Elliot and Glen Ridgway, QC. The subgroup was asked to draft best practice guidelines for lawyers supervising paralegals. The initial draft of the guidelines was provided to the Access to Legal Services Advisory Committee for its feedback. The attached draft reflects the suggestions for change. Because the best practice guidelines will have to be coordinated with the work of the Ethics Committee regarding changes to the *Professional Conduct Handbook*, the draft guidelines should be provided to that committee at the earliest opportunity.

While discussing the creation of the guidelines, the Subgroup explored the origins of the project that gave rise to the guidelines. This discussion took place, in part, because neither Ms. Elliot or Mr. Alexander had participated in the earlier policy work that resulted in the Delivery of Legal Services Task Force Report (October 2010). The discussion assisted the working group in situating the task before it, but also revealed that there are many ways one could approach the subject of improving access to low cost, competent legal services. The Subgroup developed the best practice guidelines in response to the recommendation of the Task Force, and as such did not re-examine the underlying research or assumptions that led to the recommendations contained in the Task Force's report. The Subgroup raises this for the purpose of providing context for the guidelines it is recommending.

DM

/Attachment

DRAFT BEST PRACTICE GUIDELINES

Statement of Purpose: This document contains best practice guidelines for lawyers supervising paralegals as well as a checklist for assessing the competence of paralegals. While a lawyer may choose to use this document for supervising legal assistants performing traditional functions, the purpose of the document is to assist lawyers in determining whether a paralegal is suited to performing enhanced paralegal duties, such as giving legal advice and appearing before a court or tribunal. The policy behind permitting supervised paralegals to perform enhanced functions is set out in the report of the Delivery of Legal Services Task Force (October 2010).

Lawyers who use paralegals to perform enhanced functions need to be aware of several key concepts:

- The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
- Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
- The Law Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the Act or Rules committed by the paralegal;
- A lawyer who fails to properly supervise a paralegal may be subject to the full range of disciplinary sanctions that exist under the Law Society Rules;
- A lawyer may not supervise more than two paralegals performing enhanced functions at a given time **[see Ethics Opinion?]**[1]
- A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.[2]
- A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for Supervising Paralegals:

[1] At this point we don't know how the Ethics Committee will define the expanded scope of practice, or for that matter define "paralegal". Some cross-referencing may be desirable.
[2] See core material Tab 4, p. 14 "Delegation and Qualifications of Paralegals" report.

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:[3]

    a. Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

    b. Does the paralegal have relevant work experience and or education relating to the matter being delegated?

    c. How complex is the matter being delegated?

    d. What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

    a. Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in enhanced functions;

    b. Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties lawyers have. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

    c. Gradually increasing the paralegal's responsibilities;

    d. A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

        i. Testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

        ii. Engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

        iii. Ensuring the paralegal follows best practices regarding client communication and file management.

[3] Should this include an understanding of ethical responsibilities? Has the lawyer had the opportunity to supervise the paralegal's conduct on similar matters?

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and also consider whether to alert the Lawyers Insurance Fund regarding a potential claim.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusting to the paralegal.

3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A Checklist for Assessing the Competence of Paralegals:

1. Does the paralegal have a legal education? If yes, consider the following:

    a. What is the reputation of the institution?

    b. Review the paralegal's transcript;

c. Review the courses the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

d. Ask the paralegal about the education experience.

2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

3. What work experience does the paralegal have, with particular importance being placed on legal work experience:

    a. Preference/weight should be given to work experience with the supervising lawyer and/or firm;

    b. If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

    c. Does the paralegal have experience in the relevant area of law?

    d. What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

    a. How responsible, trustworthy and mature is the paralegal?

    b. Does the paralegal have good interpersonal and language skills?

    c. Is the paralegal efficient and well organized?

    d. Does the paralegal possess good interviewing and diagnostic skills?

    e. Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

    f. Does the paralegal strive for continuous self-improvement, rise to challenges, etc.

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Province of
British Columbia
Legislative Assembly

Rec'd 4/17

→ Bill Becher FYI

Leonard Krog, MLA
(Nanaimo)

April 10, 2012

Mr. Bruce A. LeRose, QC
President
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear President LeRose:

I just wanted to express my very sincere thank you to you and to the Law Society, on behalf of myself and all my colleagues who had the opportunity to enjoy your wonderful breakfast on March 29 at the Union Club in Victoria. I thank you also for the generous gifts to all members who attended and, most especially, a thank you from me for the lovely clock which now adorns my desk in Victoria.

I assure you and the Benchers that the Official Opposition looks forward to working with the Law Society in helping to modernize the Legal Professions Act. I want to say also that as someone who enjoys the honour and privilege of being both a member of the Law Society and a Member of the Legislative Assembly, I take both roles very seriously and appreciate the excellent work of the Law Society.

Again, thank you so much, and please extend my gratitude to all the other Benchers who took time out of their busy lives to meet with us.

Yours very truly,

Leonard Krog, MLA
Critic for the Attorney General
Nanaimo

LK/sl

P.S. Thanks you also for your kind letter received after I was elected!

The Law Society of British Columbia

Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2011 to December 31, 2011

For: The Benchers
Date: April 17, 2012

Purpose of Report: For Information

Prepared by: Anne Bhanu Chopra, Equity Ombudsperson, LSBC
B. Comm., MIR, LL.B

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PREFACE

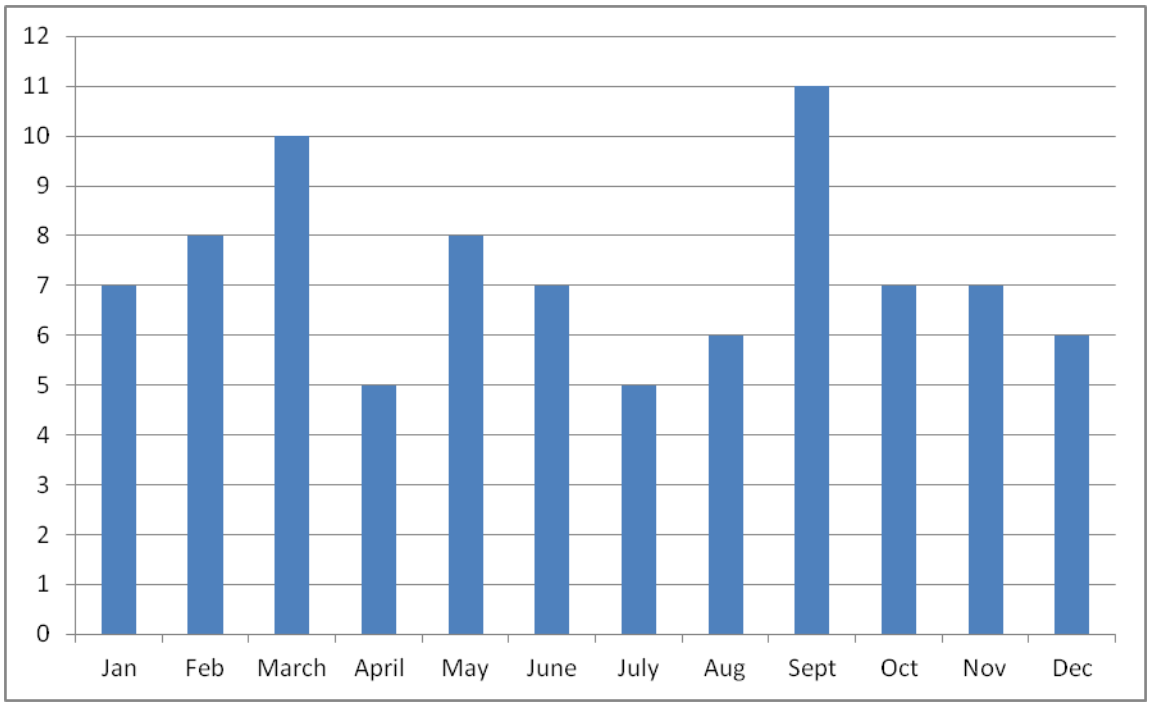
The following report is prepared by the Equity Ombudsperson on an annual basis and disseminated to the Law Society of British Columbia for information purpose. Should the reader have any questions about the report or comment contained in same, please feel free to email the Equity and Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the "Law Society") Equity Ombudsperson (the "EO") Program (the "EOP" or "Program") received 87 calls from individuals during the reporting period (January 1 to December 31, 2011). These were calls from individuals with a new matter. Of the 87 calls, 55 of these new contacts were within the Mandate (as defined below) of the Program. Further, each caller may have contacted the Program on the new matter, on a number of occasions. As a result, the total number of contacts made with the EOP during this period was 256 contacts. (See Table 2 and 3 for information on the total contacts made with the Program.)

2. The below Table 1, displays the distribution of the 87 new contacts made with the EOP, during the reporting period:

TABLE: 1



[1] Mandate = Calls from lawyers, articling students, staff dealing with issues arising from the prohibited grounds of discrimination, including workplace harassment.

3. The means of initial contact deployed by these callers is distributed as follows: 5 (5 %) made in person, 77 (92%) used the telephone to make their initial contact, 4 (5%) used email and 1 (1 %) used regular mail.

4. Further, of the 87 new contacts with the Program, 76 (87%) were made by women and 11 (13%) were made by men.

5. The following Table 2 notes the contacts made with the EOP since 2007 and the geographic distribution in British Columbia:

TABLE 2: CONTACTS : 2007 – 2011

GEOGRAPHIC DISTRIBUTION:

	2007	2008	2009	2010	2011
Total Contacts[1]:	297	275	258	260	256
Vancouver (Lower Mainland):	142	133	128	135	140
Victoria:	65	68	64	65	60
Outside (Lower Mainland /Victoria)	34	41	32	32	24
Outside the Mandate[2]:	56	33	34	28	32

NOTE:

[1]Contacts = All email, phone, in person, fax and mail contacts made with the EOP. Some contacts may have resulted in more than one issue.

[2]Outside Mandate= callers are from the public and/ or lawyers dealing with issues not within the Mandate of the EOP.

6. The following Table 3 identifies the profile of the caller (based on position, gender and size of firm) since 2007:

TABLE 3: PROFILE DISTRIBUTION OF CALLS IN MANDATE

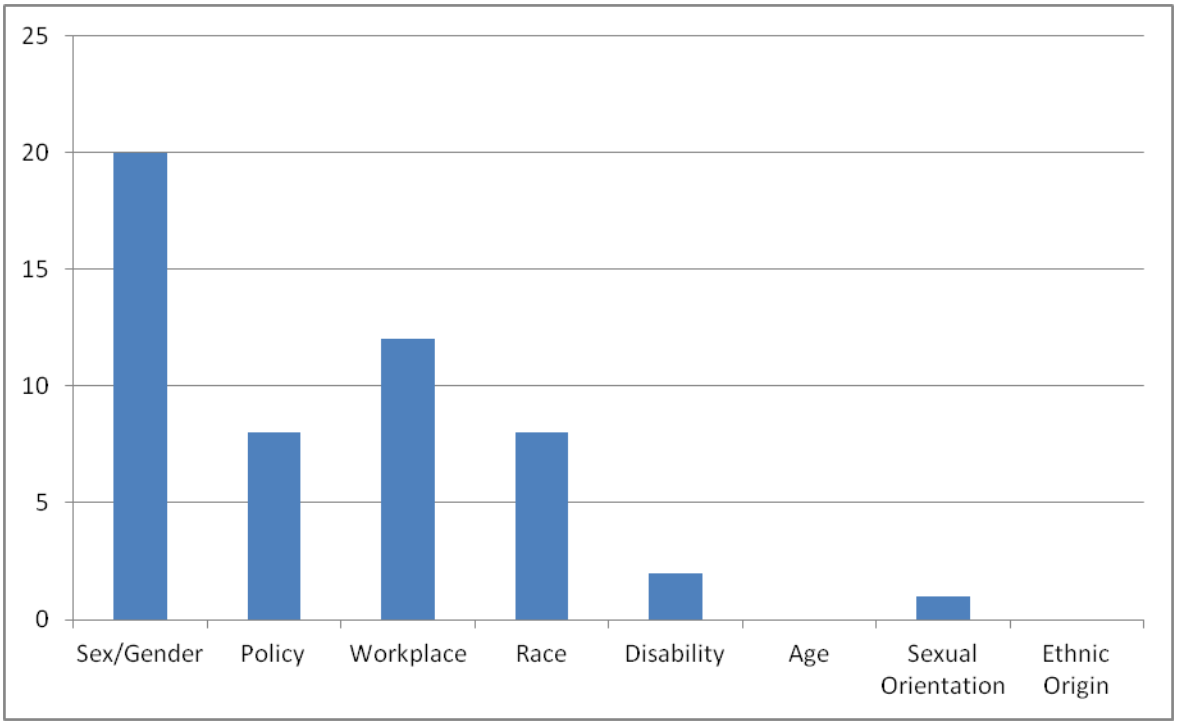
Profile Distribution:		**2007**	**2008**	**2009**	**2010**	**2011**
Associates		55	56	53	58	56
Partners		58	43	38	26	21
Students		8	13	11	16	19
Articling Students		49	51	50	58	52
Support Staff		71	79	72	74	76
Females		164	170	178	191	189
Males		77	72	46	41	35
SIZE OF FIRM IN (PERCENT %)						
Small	(1-10)	45%	39%	42%	51%	42%
Medium	(10-50)	29%	35%	32%	20%	28%
Large	(50 +)	26%	23%	24%	29%	30%

7. The writer notes that in 2011, there has been a 9 (%) percent decrease in calls from small firms and a 8 (%) percent increase in calls from medium sized firms. This is similar to the 2009 break down of calls, based on firm size distribution.

B. OBSERVATIONS AND NARRATIVE EXAMPLES OF THE CALLERS WITHIN THE MANDATE:

1. Table 4 below, displays the grounds of discrimination which were raised in the complaints from the callers: sex/gender, disability, race, religion, age, ethnic origin, sexual orientation, policy and workplace/personal harassment:

TABLE: 4



2. It is interesting to note the following observations:

- Of the 55 contacts, (89%) 49 individuals made human rights based discrimination or harassment and workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 20 % associates, 5% partners, 25 % articling students 14 % law students and 36 % support staff; and
- Seven (7) of the 49 complaints (14%) from within the legal profession were made by the complainant in reference to their employment or a job interview experience.
- The writer notes that firms are continuing to ask inappropriate questions during the interview process and in the workplace.

3. During this period, the EOP received a number of complaints, based on the above grounds. The following examples may assist the reader in appreciating the nature of complaints received by the EO:

<u>Based on sex/gender:</u>

- Three women complained that when they approached the law firm when dealing with their issue of maternity leave, it was difficult to get the leave. One lawyer

found she had no job to return to, upon completion of her mat-leave. Generally, there was difficulty in securing the leave for the time the formal policy permitted.

- One female lawyer complained that there was personal harassment and abuse, once the firm became aware that she was pregnant.

- Four female articling students were asked inappropriate questions during the articling process (with regards, to marital status, sexual preferences and whether they planned to have a family).

Based on disability:

- One lawyer complained that when she advised the law firm of her disability, there was no accommodation, and there was harassment. The complaint consisted of the firm not providing her with files and criticizing her work, when she completed her work. This was not the case prior to her discussing her disability.

- One student complained that when the law firm learned about her disability, they did not offer her a position.

Based on race:

- A male lawyer complained about various stereo type jokes and comments being made in the workplace.

- One female lawyer associate complained that she was asked inappropriate questions about her race and marital status during a job interview by a law firm.

Based on personal/workplace harassment:

- One female lawyer associate complained that she was verbally abused in front of junior staff and associates as to her skills. On various occasions, the senior lawyer humiliated her and did not give her any constructive feedback. He only spoke about her work in front of other staff and lawyers.

SERVICES PROVIDED TO CALLERS

Table 5 below, denotes the services provided to the caller. These services are advertised on the LSBC website and pamphlets are provided when the Equity Ombudsperson delivers presentations.

TABLE: 5	
CALLER:	**SERVICES PROVIDED:**
LAW FIRM	• Advise them of their obligations under the Human Rights Act and the Law Society Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training. • Provide information to firm on education seminars or training workshops
COMPLAINANT	• Listen to the complainant and provide safe haven for their story. • Assist in identifying the issues the complainant is dealing with. • Provide the complainant with their options, (internal complaints process in their firm, formal complaint process, mediation, litigation and the Human Rights Tribunal) including any costs, references for legal representation, remedies which may be available and time limits for the various avenues, as relevant. • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place. (Please note, the EOP was asked in this 2010 period to provide, on two occasions in-person/informal type of mediations). • Provide the complainant information on resources, such as Interlock and LAP, as relevant. • Direct them to relevant resource materials available from other organizations, including the Law Society and the BC Human Rights Tribunal.

GENERAL INQUIRES	Providing the inquirer with information about the: • EOP mandate • Services offered by the EOP • a information seminar • on the EOP • Reporting and statistics gathered by the EOP
CALLER (outside Mandate)	• All callers outside the mandate are re-directed. Minimum time is consumed by the caller. • The EOP has a detailed voice mail on the phone, to act as a screener of the calls. • The EOP does not assist these callers beyond the initial contact.

C. SUMMARY OF CALLERS

In summary, Table 6 notes the distribution of all the issues, as raised by a caller, within the Mandate, during this period:

TABLE 6: ISSUE DISTRIBUTION

Issues addressed	2007	2008	2009	2010	2011
1. Information direction or referral:					
a) General Information:	25	27	24	30	24
b) Office Policy Concerns:	16	13	14	16	15
2. Discussion/Request:					
a) Article, Training or Presentation	37	28	26	14	21
3. Discuss specific issue or concern:					
Discrimination:					
a) Gender	20	21	17	24	20
b) Racial	16	13	12	14	14
c) Disability	21	17	16	10	10
d) Sexual Orientation[1]	n/a	n/a	0	0	4
Harassment:					
a) Sexual harassment:	62	64	59	60	55
b) Workplace harassment:	43	40	37	38	37
Specific Policy Concern:					
a) Materinity leave policy:	21	17	18	15	13
b) Other policies:	6	2	1	2	1

Inappropriate questions asked in the interview process[2]:	6	9	10

1 New Category-2009

[2] New Category in 2010

MARKETING ACTIVITIES

1. The Equity Ombudsperson Program is included under the Law Society website under member support.

2. Articles and Information pieces are included in the Benchers Bulletin periodically, to promote the Program.

3. The EOP continues to makes contact with various organizations. The EOP has emphasized organizations, which have a high number of paralegal/legal assistants as these groups are in need of the Program and the EOP is continuing to consider options to enhance the awareness of the Program.

4. Continued dissemination of contact information about the Program is provided to the various organizations so that there is increased awareness and referrals to the Program. The types of organizations include: LEAF, Capilano College, LAP, WLF/CBA, Interlock, University of Victoria and University of British Columbia (law school).

D. EDUCATIONAL/TRAINING ACTIVITIES

1. The Program aims to provide ongoing support on education on respectful workplace issues. With that goal in mind, articles and speaking engagements are conducted, and an informational brochure is distributed at events and upon request.

2. The educational engagements at which the Program was discussed and brochures distributed:

- Benchers Bulletin Information Article;
- Brochures distributed at the LEAF Breakfast;
- Presented the Role of the Equity Ombudsperson for PLTC, Victoria;
- Presented the Role of the Equity Ombudsperson for PLTC, Vancouver;
- Disseminated Equity Ombudsperson brochures to women lawyers at the AGM of WLF/CBA, Mentoring Program Orientation/WLF, PLTC, UBC, and U of VIC; and
- Attended a number of the Benchers Meetings, so as to be available to meet with the Benchers, as requested

OBJECTIVES ACHIEVED DURING 2011

1. The following are the objectives achieved by the Equity Ombudsperson in 2011:

- To raise awareness of the Equity Ombudsperson Program;
- To provide general support/ education to the legal profession in British Columbia about respectful workplace issues;
- To receive and handle individual concerns and complaints about discrimination and harassment;
- To provide consultation on workplace policies and initiatives, as requested;
- To continue to disseminate the Equity Ombudsperson informational brochure;
- To follow-up on contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;
- To exchange information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;

- To closely work with Susanna Tam, Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Equity Ombudsperson and the Law Society.

- To serve as liaison/ resource for the Law Society's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information.

- To enhance the awareness of the EOP to new and existing Benchers of the LSBC.

E. OUTREACH AND TRAVEL OBJECTIVE:

The EO determined that she would attempt, in each calendar year to ensure that she expanded the physical presence of the Program throughout British Columbia, by travelling to different areas of B.C. During the term of this Report, travel outside the Lower Mainland consisted of only Victoria, Burnaby and Surrey. The EOP reports that the effort and time to attract sufficient attendees in geographic locations, outside of lower mainland have not been successful. The scheduling and availability of lawyers to attend is limited. Accordingly, the EO will be open to travelling to different geographic locations, as they present themselves, and if the budget permits. However, she shall not be actively making efforts to arrange events and opportunities.

Based on the above, the EO determined it was best to use her time and effort to undertake alternative methods of outreach. One initiative taken in 2011 was to focus on Benchers, as means to disseminate information and understanding of the EOP. As the Benchers represent various geographic locations, they could be vital in transmitting information on the EOP to a large group, members of the Bar in all of B.C. and articling students, during student interviews. Preliminary efforts have been made in this regard, and the EO, intends to continue the same in 2012. These outreach initiatives, to date, with the Benchers, in the opinion of the EOP are beneficial. In an informal environment, the EO is able to answer some challenging and uncomfortable questions that Benchers have and also make her more approachable to the Benchers. As the Benchers develop comfort and understanding of the EOP role, they are more able to assist the articling students, who are dealing with issues of discrimination and harassment.

F. COMMENT AND NEW GOAL FOR 2012

I am pleased to report that the EOP was included in the 2012 Bencher Orientation session. It is the EO's opinion that the brief opportunity, which was presented to the EO to speak to the Benchers, will result in greater awareness of the Program among the Benchers, if the same is presented to the EO, on a regular basis. Each Bencher is in contact with numerous lawyers and students, in various geographic locations. It has been the EO's experience, that the EOP has been receiving calls as a result of few of the Benchers, who are well aware of the mandate of the EOP. The EO has been able to assist these Benchers by being a resource to the individual that the Bencher has referred to the EOP. Further, the Bencher has been assisted, in

that he/she has had a resource which they could rely on, in a particular challenging situation. Effectively, the Bencher in question, has been effective in outreach for the EOP, among members of the bar and students, by advising them of the resource.

It is the EOP's objective to further increase this awareness of the EOP in 2012, by the following means: 1) attending various bencher meetings, dinner meetings and other occasions, so as to meet and speak to individual Benchers directly; 2) develop a roster of volunteer lawyers with diverse backgrounds of race, ethnicity, disability and sexual orientation, who would be willing to speak to lawyers, about their experience in constructive ways, to effectively deal with challenges/discrimination based on race/ethnicity /religion, sexual orientation and disability; and 3) work with CLE, to include information on the EOP in their programs and website.

I thank the Equity and Diversity Advisory Committee for their work and the individuals who have assisted the EO in the preparation of this Report, specifically, Susanna Tam, Staff Lawyer, Policy and Legal Services, Michael Lucas, Manager, Policy & Legal Services and Adam Whitcombe, Chief Information and Planning Officer.

Presented to the Board on January 2009

G. APPENDIX A

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;

2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;

3. Education: providing information and training to law firms about issues of harassment in the workplace;

4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and

5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting

B. A Panel of Independent Mediators would be responsible for: 2. Mediation

C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;

- provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;

- is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;

- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;

- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;

- liaises with the Law Society policy lawyer, Susanna Tam, in order to keep her informed of the issues and trends of the Program; and

- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office, which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.