The Law Society of British Columbia

Agenda

Benchers

Date: Friday, July 13, 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.***

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 June 16, 2012 meeting** • Draft minutes of the regular session • Draft minutes of the in camera session (Benchers only)	pg. 1000
2	**Act & Rules Subcommittee (Various Rules Amendments for Approval):** - **Proposed Rule 2-9.2: Supervision of Designated Paralegals** - **Rules to Implement Bill 40 Amendments to the *Legal Profession Act*:** ✓ **Rules 3-7.1 to 3-7.3 and 4-17 to 4-19 (Interim Suspensions and Medical Examinations)** ✓ **Rule 5-4 and Proposed Schedule 5 (Compelling Witnesses)** ✓ **Rule 2-77 (Failure to Pay Fine, Costs or Penalty)** ✓ **Numerous Rules (amended to conform to language of *Legal Profession Act* with respect to "conditions and limitations")** - **Rule 3-21 (Compulsory Liability Insurance)** - **Rule 4-6.2 (Conduct Meetings)** - **Rules 5-16 and 5-17 (Record of Credentials Hearing; Record of Discipline Hearing)** • Memorandum from Mr. Hoskins for the Act & Rules Subcommittee	pg. 2000

3	**Law Society Representation on the 2012 QC Appointments Advisory Committee** • Memorandum from the Executive Committee	pg. 3000
4	**2012 Law Society Award Recommendation** • *In Camera* Memorandum from Ms. Papove on behalf of the Selection Committee (Benchers Only)	pg. 4000
REGULAR AGENDA		
5	**President's Report** • Oral report to be presented at the meeting	
6	**CEO's Report** • Written report	pg. 6000
7	**Report on Outstanding Hearing & Review Reports** • Report to be distributed at the meeting	
OTHER MATTERS For discussion and decision		
8	**Temporary Mobility for Practitioners of Foreign Law** Mr. Walker to report • Memo from the Credentials Committee	pg. 8000
9	**Finance Committee: Approval of 2013 Fees** Mr. Vertlieb to report • Report from the Finance Committee	pg. 9000
10	**2012 Advisory Committees: Mid-year Updates** Mr. Stewart, Ms. O'Grady and Mr. Van Ommen to report • Reports from the Access to Legal Services, Equity and Diversity, Rule of Law and Lawyer Independence, and Lawyer Education Advisory Committees	pg. 10000
11	**Indigenous Lawyers Mentoring Program – Phase 1 Report** Ms. Wilson to report • Report on Indigenous Lawyers Mentoring Program	pg. 11000

12	**Modifying the Mandate of the Family Law Task Force** Ms. Hickman to report • Memorandum from the Family Law Task Force	pg. 12000
FOR INFORMATION ONLY		
13	**Washington Courts News Release: Supreme Court of Washington Limited Practice Rule for Limited License Legal Technicians**	pg. 13000
14	**Letter from the Honourable Robert J. Bauman, Chief Justice of the BC Supreme Court, to Bruce LeRose, QC regarding BC Courts Family Law Paralegals Pilot Project Proceedings** **Reply letter from Bruce LeRose, QC**	pg. 14000
15	**Federation of Law Societies of Canada President's Report, June 2012**	pg. 15000
IN CAMERA SESSION		
16	**Law Society of BC Litigation Report** Ms. Armour to report • Report on Law Society of BC Litigation Outstanding at June 30, 2012	pg. 16000
17	**Bencher Concerns**	

The Law Society of British Columbia

Minutes

Benchers

Date: Saturday, June 16, 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
Leon Getz, QC
Miriam Kresivo, QC
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
Richard Stewart, QC
Herman Van Ommen
Ken Walker
Tony Wilson
Barry Zacharias
Haydn Acheson
Satwinder Bains
Stacy Kuiack
Peter Lloyd, FCA
Ben Meisner
Claude Richmond

Absent:

Staff Present:

Tim McGee
Deborah Armour
Robyn Crisanti
Jeffrey Hoskins, QC
Su Forbes, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Alan Treleaven
Adam Whitcombe

Guests:

Jonathan Herman, CEO, Federation of Law Societies of Canada
John Hunter, QC, President, Federation of Law Societies of Canada
Gavin Hume, QC, the Law Society's Representative on the Council of the Federation of Law Societies of Canada

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Shelley Brown, FCA, Guest Speaker
Gordon Gibson, Guest Speaker
Carsten Jensen, QC, President-elect, Law Society of Alberta
Kit Krieger, Guest Speaker
Nancy McKinstry, Guest Speaker,
Ian Mulgrew, Guest Speaker
Stephen Raby, QC, President, Law Society of Alberta,
Don Thompson, QC, Executive Director, Law Society of Alberta
Elizabeth Watson, President, Watson Advisors Inc.

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on Friday, May 11 were approved as circulated.

The following resolution was passed unanimously and by consent.

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

1. In Rule 1 by adding the following definition:

"pro bono legal services" means the practice of law not performed for or in the expectation of a fee, gain or reward;***;***

2. In Rule 1-6:

(a) by rescinding subrule (5) and (7) and substituting the following:

(5) At least 60 days before an annual general meeting, the Executive Director must distribute to members of the Society by mail a notice of the date and time of the meeting.***;***

(b) by repealing subrule (8)(a)(ii) and substituting the following:

(ii) each resolution and amendment received in accordance with subrule (6), and***;***

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3. By rescinding Rule 2-2 and substituting the following:

Member in good standing

2-2 Subject to Rules 3-13(7) *[Practice review]* and 4-4.2(2) *[Continuation of membership under investigation or disciplinary proceedings]*, a member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.***;***

4. By adding the following Rules:

Pro bono legal services by non-practising and retired members

2-4.2 Despite an undertaking given under Rule 2-3(1)(a) or 2-4(2)(a), a non-practising or retired member may provide pro bono legal services.

Transition

2-4.3 A retired or non-practising member who has provided pro bono legal services between May 14, 2012 and June 16, 2012 is deemed not to be in breach of section 15 nor the undertaking given under Rule 2-3(1)(a) or 2-4(2)(a) for that reason alone.***;***

5. By rescinding Rule 2-48(1)(d)(iv);

6. By rescinding Rule 2-49.3(1)(e)(iv);

7. By rescinding Rule 2-52(3)(c);

8. By rescinding Rule 2-70 and substituting the following:

Annual practising fees

2-70(1) The annual practising fee and insurance fee are payable in respect of each calendar year.

(2) The date for payment of the annual practising fee and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.***;***

9. By rescinding Rule 2-74(1)(b);

10. In Rule 3-5, by adding the following subrule:

(1.1) For the purpose of conducting an investigation under this Division and section 26 of the Act, the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.***;***

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11. In Rule 3-13, by adding the following subrules:

(6) A lawyer who is the subject of a practice review may not resign from membership in the Society without the consent of the Practice Standards Committee.

(7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to practise law.

(8) A direction under subrule (7) may be made to continue in effect until stated conditions are fulfilled.

(9) When a direction under subrule (7) expires on the fulfillment of all stated conditions or if the Practice Standards Committee rescinds the direction

(a) the lawyer concerned ceases to be a member of the Society,

(b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.***;***

12. In Rule 3-25, by striking "the practice of law***" wherever it appears, and substituting "***the practice of law, other than pro bono legal services,***";***

13. By adding the following Rule:

Transition

3-25.1 A lawyer who has provided pro bono legal services between May 14, 2012 and June 16, 2012 does not lose the exemption under Rule 3-25(1) for that reason alone.***;***

14. By adding the following Rule:

Continuation of membership under investigation or disciplinary proceedings

4-4.2(1) In this Rule, "investigated lawyer" means a lawyer who is the subject of

(a) an investigation under Part 3, Division 1, or

(b) a decision of the Discipline Committee under Rule 4-4(1)(a.2) or (b).

(2) An investigated lawyer may not resign from membership in the Society without the consent of the Executive Director.

(3) A respondent may not resign from membership in the Society without the consent of the Discipline Committee.

(4) The Executive Director may direct that an investigated lawyer who would otherwise have ceased to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to engage in the practice of law.

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(5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to engage in the practice of law.

(6) A direction under subrule (4) or (5) may be made to continue in effect until stated conditions are fulfilled.

(7) When a direction under subrule (4) or (5) expires on the fulfillment of all stated conditions or is rescinded by the Executive Director or Discipline Committee

(a) the lawyer concerned ceases to be a member of the Society,

(b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.***;***

15. By rescinding Rule 4-35(2)(b) and substituting the following:

(b) fine the respondent an amount not exceeding $50,000;***;***

16. By rescinding Rule 4-40 and substituting the following:

Conviction

4-40(1.1) In this Rule, **"offence"** means

(a) an offence that was proceeded with by way of indictment, or

(b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.

(2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers under subrule (3).

(3) Without following the procedure provided for in the Act or these Rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.***;***

17. By rescinding Rule 5-11(1)(c);

18. In Schedule 1, by rescinding paragraphs A1 and 2 and substituting the following:

1. Practice fee (Rule 2-70) 1,840.41***;***

and

19. In Schedule 2, by deleting the column of prorated Special Compensation Fund fees.

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BE IT RESOLVED to amend Rule 5-6 of the Law Society Rules by adding the following subrule:

(5) When a panel makes an order under this Rule or declines to make an order on an application, the panel must give written reasons for its decision

REGULAR AGENDA – for Discussion and Decision

5. President's Report

Mr. LeRose briefed the Committee on various Law Society matters to which he had attended since the last meeting, including:

a) 2012 Law Society of Alberta Bencher Retreat

The workshop sessions were very worthwhile. Presentations by Samantha Barrass, Executive Director of Supervision, Risk and Standards for the Solicitors' Regulatory Authority of England and Wales were noteworthy. Ms. Barrass spoke on various regulatory topics, including alternate business structures, international and global practice, and outcomes-focused regulation. Attendance at the Retreat by First and Second Vice-Presidents Art Vertlieb, QC and Jan Lindsay, QC was valuable.

b) Bill 44 (the Civil Resolution Tribunal Act)

In recent meetings with the Honourable Minister Bond and her Deputies, the Law Society's concerns with a number of aspects of this new legislation (the *Civil Resolution Tribunal Act* received Royal Assent on May 31, 2012) were explained, particularly on the issue of absence of representation of stakeholders by counsel in the Tribunal process. Minister Bond expressed regret regarding the lack of prior consultation that has marked the bill's introduction, and noted that the Law Society's participation will be welcomed by the Ministry of Attorney General in the process of developing the policies and protocols for implementation of the new Act's civil dispute resolution regime over the next 18 to 24 months. The Law Society will participate actively in that implementation process, focusing on protection of the public interest in the administration of justice.

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6. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

a. 2013 Budget and Fees – Planning Process

b. 2012 -2014 Strategic Plan

c. Government Relations Update

d. Professional Responsibility – Thank You to Our Teachers

e. Governance Review Task Force Update

7. Federation of Law Societies of Canada (FLSC) Council Report

Gavin Hume, QC briefed the Benchers as the Law Society's representative at FLSC Council on recent Federation developments, including:

a. National Committee on Accreditation (NCA)

On May 28 the NCA met in Toronto. The Committee's current focus is the revision of equivalency standards to accord with the new Canadian common law degree requirements. NCA members include Don Thompson, QC, Executive Director of the Law Society of Alberta, Donna Greschner, Dean of Law at the University of Victoria and Alan Treleaven, the Law Society's Director of Education.

b. Federation Council Meeting

The Federation Council met in Ottawa on June 4. Topics discussed included:

- CanLII
  - with a new Chair and Board of Directors in place, CanLII is moving from strength to strength
- Federation participation in development of a new Code of Ethics for Mexican lawyers
- the Federation's strategic plan and governance process were reviewed informally
  - more complete discussions of both subjects are planned for the Council's September meeting in Vancouver

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c. Standing Committee on Model Code of Conduct

The Standing Committee met in Ottawa on June 5. Areas of active focus for the Committee include: supporting access to legal services, facilitating provision of unbundling legal services, and smoothing the process for transferring lawyers between provinces.

d. Common Law Degree Approval Committee

The Federation's Common Law Degree Approval Committee met June 7-8 in Toronto, to begin the process of accrediting Canadian common law degrees for law students graduating in 2015. Committee members include Mary Anne Bobinski, Dean of Law at the University of British Columbia, and Alan Treleaven.

e. National Admission Standards Steering Committee

The Steering Committee met on June 11 in Ottawa to move this important national project forward. Work is proceeding toward circulation of national admission standards document to the Federation's member law societies in the fall of 2012, for review and approval at the September Council meeting in Vancouver. The Steering Committee is chaired by Law Society of Alberta Executive Director Don Thompson, QC; other members are Federation President John Hunter, QC, Federation CEO Jonathan Herman, and the Law Society's Tim McGee and Alan Treleaven.

8. Report on Outstanding Hearing & Review Reports

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

GUEST PRESENTATION

9. Federation of Law Societies of Canada: Executive Update

Federation President John Hunter, QC provided the Benchers with a general briefing on Federation affairs. Mr. Hunter confirmed his view that the current Council is functioning well. He commented on an ongoing governance topic of discussion: determining the parameters of Council members' independent authority and voting mandate as representatives of their respective law societies. Mr. Hunter noted with pleasure that a report by the Law Society's Federation Council representative is a standing item on agendas for Law Society of BC Bencher meetings.

Mr. Hunter commented on parallels in governance issues addressed in yesterday's Bencher Retreat workshop, *Good Governance in the Public Interest*, and at last week's Law Society of

Alberta Retreat. He cited presentations by Samantha Barrass, Executive Director of the UK's Solicitors' Regulatory Authority, and Ian Mulgrew, columnist for the Vancouver Sun on legal affairs, and noted the importance of modern law societies' focus on delivery of effective, innovative regulation. Mr. Hunter suggested there is opportunity for Canadian law societies to reflect on delivery of effective legal regulation as a strategic key to maintaining their independence.

Federation CEO Jonathan Herman expressed appreciation for the Law Society's contribution of leadership and resources to the Federation.

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

10. Strategic Plan Implementation Update

a. Governance Review Task Force Update

Mr. LeRose confirmed that a first draft of WATSON Advisors' interim report is expected by the end of June. The task force has scheduled a 1.5 day workshop in early July for intensive review of the draft report. By late July the second draft will be circulated for the Benchers' review over the balance of the summer.

b. Mid-year Reports by the Advisory Committees

The Access to Legal Services, Equity & Diversity, Independence & Rule of Law, and Lawyer Education Advisory Committees will provide their mid-year reports to the Benchers at the July 13 meeting.

OTHER MATTERS – For Discussion and/or Decision

11. Paralegals Providing Enhanced Levels of Legal Services: Follow-up to May 11 Benchers Meeting

Mr. LeRose reminded the Benchers that at their May meeting they returned two policy issues to the Executive Committee for further review and recommendations: (a) whether the Law Society should restrict the number of paralegals performing enhanced functions that a lawyer may supervise; and (b) whether paralegals who perform enhanced legal functions should be able to give and receive undertakings. In October 2010 the Benchers approved in principle various measures to enhance the scope of legal services that may be provided by paralegals under the supervision of a lawyer. Mr. LeRose noted that resolution of the supervision and undertaking issues is essential to the implementation of those measures.

Mr. LeRose outlined the work done by staff and the Executive Committee on the two noted issues since the May Bencher meeting, referring to the Committee's memorandum at page 11000 of the meeting materials for discussion. He confirmed that the recommendation set out at pages 11008 and 110017 were endorsed unanimously by the Committee members.

(a) Should the Law Society restrict the number of paralegals performing enhanced functions that a lawyer may supervise?

Mr. LeRose confirmed that the recommendation set out at page 11008 was endorsed unanimously by the Committee members:

Recommendation of Executive Committee

The Executive Committee recommends Option 3.

> Option 3
> Lawyers may supervise no more than two paralegals able to perform enhanced legal services (defined as giving legal advice, appearing in court, and subject to the resolution of the undertaking issue, potentially giving or receiving undertakings). The limitation will be reviewed after a period of time to determine if it is necessary.

After debate at its meeting on May 29, the Committee reached a consensus that the novelty of the proposal put forward by the Delivery of Legal Services Task Force to expand the range of legal services that could be offered by a supervised paralegal warranted a cautious approach at the outset to ensure, as much as possible, that the public interest was properly protected. Setting an initial limit around the number of paralegals providing these services that a lawyer can supervise will, the Committee believes, allow the Law Society to better assess the efficacy of the proposal in a controlled manner, while being able to ensure other stakeholders in the justice system (including the Courts) that proper supervision by lawyers will be both expected and possible. The cap will need to be included in the Law Society Rules, rather than contained in the BC *Code.*

The recommendation, though, should be reviewed after a given period of because the Committee understands that, while constituting a prudent limitation at the outset of the program, a cap of two may be unnecessary in the long term. The Committee recommends reviewing the cap at the same time as the assessment is being done of the pilot project for paralegals appearing as counsel on certain family law matters that has recently been approved by the Court. Conducting a survey at that time concerning the efficacy of the proposal and seeking feedback from the profession and, perhaps, clients about whether the cap is necessary, would be advised.

The Committee also recognized that it is necessary to have a specific designation for the paralegals performing the enhanced services, especially if a cap on the number that a lawyer can supervise remains. The purpose of the proposal has never been to affect current business models of the use of "legal assistants" as defined by the *Handbook.* Rather, the proposal has been created to permit lawyers to identify paralegals who will be capable of performing the enhanced services and training and supervising them accordingly. It is expected that these paralegals will do more than just perform the enhanced services. They will in all likelihood also continue to spend much of their time performing the work that "legal assistants" currently undertake. Many of those people are called "paralegals" now, and it would be very difficult, if not impossible, to require them to stop using that designation.

If a cap is imposed at the outset, however, it will be necessary to find some way of identifying which of the "legal assistants"/paralegals under the supervision of a lawyer are allowed to provide the enhanced services. The Executive Committee recommends the use of the term **"**Designated Paralegal.**"** The use of this term would permit persons who are currently using the term "paralegal" to continue doing so while performing currently permissible functions. Lawyers will, however, each be able to "designate" up to two paralegals who, under their supervision, will be able to perform the "enhanced services" including giving legal advice and appearing in Court and (subject to the debate in the section below) perhaps giving and receiving undertakings.

(b) Should Paralegals be permitted to give or receive undertakings

Mr. LeRose confirmed that the recommendation set out at page 110017 was endorsed unanimously by the Committee members:

Recommendation of Executive Committee

The Executive Committee recommends Option 4, that no changes be made to Rule 5.01(3)(c) of the BC *Code.* After a considerable amount of discussion, the Committee was satisfied that the language of Rule 5.01(3)(c) of the BC *Code* would provide adequate protection to ensure that the important professional obligations that are created by undertakings remain in place. The Rule is a general prohibition on non-lawyers giving or accepting undertakings except where given or accepted under the direction of and supervision of a lawyer responsible for the particular matter. Moreover, the non-lawyer must disclose that he or she is not a lawyer, describe his or her capacity, and identify the lawyer who is responsible for the legal matter. The Committee was satisfied that with these conditions in place, a properly supervised non-lawyer could give or accept an undertaking because it would not be expected that the undertaking would be given or

accepted without consultation with the responsible lawyer. The Committee accepted that it mattered not whether the non-lawyer was a paralegal providing enhanced legal services or any other non-lawyer. A non-lawyer who was not authorized by a lawyer to give or accept undertakings would be effectively precluded from doing so by virtue of the conditions in Rule 5.01(3)(c) unless he or she were acting as a "rogue," and even the current rules do not preclude the possibility of a rogue non-lawyer giving or accepting undertakings under the name of the responsible lawyer.

The remaining changes recommended by the Ethics Committee to Rule 5.01 of the BC *Code* will need to be made. Following this Committee's recommendation in the Part above concerning the need to name the paralegals who are able to provide enhanced services, the name chosen will have to be incorporated into Rule 5.01(3.3) accordingly, or be added to the definition section in Rule 5.01(2).

Mr. Lucas presented the Benchers with two draft resolutions for adoption of the Executive Committee's recommendations. Resolution 1 (Appendix 2 to these minutes) proposes various amendments to the *Professional Conduct Handbook*; Resolution 2 (Appendix 3 to these minutes) proposes various amendments to the *BC* Code *of Conduct*.

Mr. Vertlieb moved (seconded by Mr. Walker), that the Benchers adopt Resolution 1 and Resolution 2 as set out in Appendices 2 and 3, respectively.

In the ensuing discussion the following points were addressed:

- The BC Supreme Court has approved a pilot project calling for the provision of enhanced services by designated family law paralegals (the BC Courts Family Law Paralegals Pilot Project), and for a review of the effectiveness of the pilot project following the conclusion of its term (as yet undetermined, but expected to be in the range of 10 to 14 months)
    - It would be desirable to align the review of the proposed limitation on the number of designated paralegals that a lawyer may supervise with the review of the family law paralegals pilot project
- It is important that the Law Society communicates effectively with the profession and the public regarding the meaning and use of the term "designated paralegal"
- It is important that the Law Society works effectively with all stakeholders, including the judiciary, the Ministry of Attorney General, educational service providers for paralegals, and the public, to ensure effective regulation of the provision of "enhanced services" by designated paralegals

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The motion was carried unanimously.

Mr. Vertlieb moved (seconded by Mr. Walker), that the Benchers adopt Option 3 (as set out on page 11008 of the meeting materials and page 6 of these minutes), with the understanding that the "period of time" referred to therein means the time of completion of the BC Courts Family Law Paralegals Pilot Project:

The motion was carried unanimously.

12. Selection of Benchers' Nominee for 2013 Second Vice-President

Mr. LeRose reported that Victoria Bencher Kathryn Berge, QC and Kamloops Kenneth Walker have declared their candidacy for election as the Benchers' nominee for 2013 Second Vice-President. After asking for further declarations and hearing none, Mr. LeRose confirmed that the Benchers will be asked to select by secret ballot Ms. Berge or Mr. Walker as their nominee as 2013 Second Vice-President for election at the 2012 Annual General Meeting, with the identity of the Benchers' nominee to be announced at their July meeting.

IN CAMERA SESSION

The Benchers discussed other matters in camera.

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The Law Society of British Columbia

Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

June 16, 2012

Introduction

My report to the Benchers this month is somewhat abridged because I will be delivering a comprehensive mid-year report to the Benchers in July. That report will provide updates on progress made under the 2012 – 2014 Strategic Plan and our 2012 Operational Priorities, interim results under our KPM's, as well the formal presentation of the 2013 Budget and Fees recommendation.

For this meeting, I am pleased to provide the following updates for your information.

1. 2013 Budget and Fees – Planning Process

The Finance Committee, chaired by Art Vertlieb, QC, met in May to review the proposed 2013 Law Society budgets and member fees. The meeting included a detailed review of the main expense items by category as well as an analysis of management's revenue assumptions and projections for 2013. The recommendations of the Finance Committee, which were reviewed by the Executive Committee at their May 29 meeting, will be brought to the Benchers for consideration at the July meeting.

2. 2012 – 2014 Strategic Plan

We are now halfway into the first year of the Law Society's 2012 – 2014 Strategic Plan.

Implementation of the Strategic Plan is progressing well and on schedule. There are a total of 19 implementation initiatives divided among the 3 overarching strategic goals in the plan. Work has begun on 11 of the 19 initiatives.

Of most immediate interest will be the advances made on the initiatives raised by recommendations from the Delivery of Legal Services Task Force report, and in particular the development of a pilot project to allow paralegals to appear as counsel on some family law matters in Supreme Court. Work continues in creating a similar pilot project with the Provincial Court.

Work has been proceeding as well on Phase 1 of the Indigenous Lawyers Mentoring Project. A draft report has been prepared, and it is expected that it will be before the Benchers in July. The Rule of Law and Lawyer Independence Committee has made a good start examining the relationship between the insurance and regulatory functions of the Law Society and, through the Lawyer Education Advisory Committee, work has been done with the Continuing Legal Education Society toward creating courses for lawyers, to be offered free of charge, on the BC Code of Conduct. A Task Force is being created to examine the issue of whether the Law Society should regulate lawyers or expand regulation to all legal service providers.

Other initiatives are underway or are in the stages of starting up. A more detailed progress report and commentary on the Strategic Plan will be prepared and presented to the Benchers for the July meeting that will inform as to the status of the various initiatives that are underway.

In the fall, the Benchers will undertake their annual review of the Strategic Plan. The annual review has two objectives: to confirm that the priorities set out in the current Strategic Plan continue to have the support of the Benchers, and secondly, to review the annual reports of the four Advisory Committees to identify and assess any emerging priorities for the current or subsequent plan.

3. Government Relations Update

a) Law Society of BC/Justice Services Branch Staff Meeting

On May 22, the Justice Services Branch, Ministry of Justice hosted a meeting among staff of the Law Society and the Justice Services Branch. At the half-day meeting we were briefed on recent changes to the Ministry of Justice, and on its justice reform and review initiatives. We also shared information on our respective organizational structures and staff roles and responsibilities.

The view of all participants was that the meeting was a success, opening lines of communication on common issues of interest and facilitating cooperation and collaboration where that would be in the public interest.

We agreed to make the plenary session a biannual event and to follow up on a one-on-one basis as topics or issues arise. Both our respective organizations can now put names to roles and faces to names, and this should auger well for the future.

Attending with me from the Law Society were:

- Adam Whitcombe, Chief Information and Planning Officer
- Jeff Hoskins, QC, Tribunal and Legislative Counsel
- Michael Lucas, Manager, Policy and Legal Services
- Doug Munro, Staff Lawyer, Policy and Legal Services
- Robyn Crisanti, Manager, Communications and Public Affairs

Representing the Justice Services Branch were:

- Jay Chalke, QC, Assistant Deputy Minister, Justice Services Branch
- Chris Beresford, Executive Director, Maintenance Enforcement and Locate Services
- Nancy Carter, Executive Director, Civil Policy and Legislation Office

- James Deitch, Executive Director, Criminal Justice and Legal Access Policy Division
- Cris Forrest, Director, Planning and Operational Support
- David Merner, Executive Director, Dispute Resolution Office
- Nancy Pearson, Manager, Stakeholder Relations
- Irene Robertson, Executive Provincial Director, Family Justice Services Division

b) Bill 44 - Civil Resolution Tribunal Act

On May 24, Bruce LeRose, Adam Whitcombe and I attended a briefing on Bill 44, *Civil Resolution Tribunal Act*. The briefing, organized by the Justice Services Branch and held at the Ministry of Justice offices in Victoria, was also attended by Sharon Matthews, President, CBABC and Caroline Nevin, Executive Director, CBABC.

At the briefing Jay Chalke, QC, Assistant Deputy Minister, David Merner, Executive Director, and Richard Rogers, Director, Strategic Projects, both of the Dispute Resolution Office, outlined the intent and scope of Bill 44 and provided us with the opportunity to seek clarification and to determine our role in future implementation.

Bill 44 passed third reading without amendment on May 30 and we have been invited to participate in an implementation working group to be established by the Ministry in the weeks ahead. We look forward to working with the Ministry and others in the legal community to ensure that the promise of an effective voluntary dispute resolution process is fulfilled.

4. Professional Responsibility – Thank You to Our Teachers

I would like to thank the following Benchers and Life Benchers who taught Professional Responsibility to PLTC students in May.

Vancouver class	**Victoria class**
Art E. Vertlieb, QC	Ralston S. Alexander, QC
David W. Mossop, QC	G. Glen Ridgway, QC
Anna K. Fung, QC	Richard S. Margetts, QC
Gordon Turriff, QC	
Karl F. Warner, QC	

We very much appreciate the time and effort that all Benchers and Life-Benchers contribute from time to time to this important topic of instruction.

Timothy E. McGee
Chief Executive Officer

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,

"designated paralegal" means an individual permitted under rule 6 to give legal advice and represent clients before a court or tribunal

"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 accept trust conditions;

(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.[2]

6. Despite rule 3 and subject to the Law Society Rules, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a) to give legal advice; or

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

PARALEGALS

SUGGESTED RESOLUTION (BC CODE OF CONDUCT):

BE IT RESOLVED to amend the Code of Professional Conduct

1. In Rule 5.01

(a) By deleting the first two paragraphs of the Commentary to subrule (1) 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.

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

Definitions

5.01 (2) In this rule,

"designated paralegal" means an individual permitted under subrule (3.3) to give legal advice and represent clients before a court or tribunal;.

"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.

(c) By deleting subrule (3)(a) 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;

(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;

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(d) 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 designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a) to give legal advice; or

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

Commentary
The Law Society Rules limit the number of designated paralegals performing the enhanced duties of giving legal advice and appearing in court or before a tribunal.

2. 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

The Law Society of British Columbia 2000

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for the Act and Rules Subcommittee
Date: June 24, 2012
Subject: **Proposed rule to implement cap of two designated paralegals**

The Act and Rules Subcommittee recommends the resolution below to implement the decision of the Benchers at the June 16 meeting to adopt a cap on the number of designated paralegals that can be supervised by one lawyer. The Subcommittee's objective was to keep the provision as simple as possible. The suggested location is in Part 2, Division 1, which deals with the authority to practise law. Adding it to the end of the division, after all the little-used variants (non-resident partners, MDPs, etc.), was rejected because the provision would not get the appropriate level of prominence. It is suggested instead to put it after members and before unauthorized practice.

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by enacting the following Rule:

Supervision of limited number of designated paralegals

2-9.2(1) In this Rule, **"designated paralegal"** means an individual permitted under chapter 12 of the *Professional Conduct Handbook* to give legal advice and represent clients before a court or tribunal.

(2) A lawyer must not supervise more than 2 designated paralegals at one time.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

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The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for the Act and Rules Subcommittee
Date: June 25, 2012
Subject: **Bill 40 – Rule amendments to implement; July 2012 instalment**

The Benchers adopted the first batch of Rule amendments recommended by the Act and Rules Subcommittee to implement the amendments in Bill 40 on June 16. As promised, the Subcommittee now brings you the next instalment.

Interim suspension and medical examinations

The *Legal Profession Act* now contains two provisions (sections 26.01 and 26.02) giving the Benchers authority to make rules that allow three or more Benchers to suspend a lawyer or student, to impose conditions on the practice of a lawyer or the articles of a student or to order a medical examination of a lawyer or student under investigation.

In addition, the Bill amends section 39, which has existed for some time allowing "any 3 Benchers or the Chair of the Discipline Committee" to suspend a lawyer or student under citation or impose conditions on the practice of a cited lawyer.

Subject to proclamation, section 40 is repealed. It allows the 3 Benchers to order a medical examination of a lawyer or student, but only after he or she has been cited.

Here are the relevant provisions for your reference, showing redlining only in the amended section. Italics indicate the section to be repealed by a provision not yet proclaimed:

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 protect 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.

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.

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:

(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;

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

(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.

(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~~.

(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 practices 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*

(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.

These sections will require a significant number of Rule amendments, so I attach clean and redlined versions of draft changes. Here are some drafting notes:

- Rule 3-7.1(1) is amended so that it states that an order can be made under that Rule with respect to a lawyer or student under investigation but not cited, rather than that the Rule only applies to those people. This makes it clear that an order made under the rule continues in effect even if a citation is issued.

- There is a new Rule 3-7.2 that applies to medical examinations, which were not previously dealt with in this part of the Rules.

- Most of the procedural provisions that were in 3-7.1 are moved to a new Rule 3-7.3 *[Procedure]*, which will apply to proceedings under both 3-7.1 and 3-7.2 to avoid repetition.

- For clarity, the new 3-7.3(3) provides that a proceeding under either 3-7.1 or 3-7.2 can be initiated by the Executive Director (staff) or either of Discipline Committee or Practice Standards Committee.

- Rule 3-7.3(11) is changed to allow a proceeding to be adjourned generally, which brings it into line with the general provision for adjournment of discipline provisions in Part 4.

- In Rule 4-17, it is now 3 or more Benchers, rather than any 3 Benchers. This conforms to section 39 as amended. The Benchers who may participate to those who are not members of the Discipline Committee, which is consistent with Rule 3-7.1 and with the current practice.

- Rule 4-17 also includes the same threshold in (1)(c) for the suspension of an articled student as for a lawyer. This was the proposal approved by the Benchers in 2010, but not enacted. The Benchers can adopt it in the Rules nonetheless.

- References to medical exams are eliminated in 4-17 and 4-19. Since the intention is to only use rules under s. 26.02 once they are in place, it does not seem necessary to make those changes effective on repeal of s. 40.

Compelling witnesses

The amendments to the *Legal Profession Act* include two virtually new provisions replacing the current sections 44 and 45, eliminating the current incorporation of section 34(3) of the *Administrative Tribunals Act* and clarifying the incorporation of sections 48, 49 and 56 by defining key terms. These changes remain unproclaimed, in part because of references to the review board, which has not yet been established. In addition, section 44(2) as amended requires a form of summons "established in the rules". Those are the only rule changes required in order to give effect to these new provisions.

Here are the relevant sections for your reference. Again, I have only redlined the amended section and italicized the provision to be repealed:

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 officers 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 officers 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.

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.

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.*

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

Establishing review boards will be a more involved undertaking to be implemented by amendments to be recommended to the Benchers probably in September. It is proposed to add a subrule to Rule 5-4 adopting a form of summons for a party to use in requiring witnesses to attend any Law Society hearing:

(4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5.

The Subcommittee also suggests a relatively simple form of summons. The following is proposed as a new Schedule to the Rules. It is based on the current document used by discipline counsel and occasionally others:

SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-4(4)]

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

_____

(As the case may be: a member of the Law Society of British Columbia/an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: _____

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: _____

Date: _____

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _____, this
_____ day of _____, 20__

_____
Party/Counsel

These changes would be effective on proclamation of section 33 of the *Legal Profession Amendment Act, 2012.*

Collection of fines and costs

Amendments to three sections of the *Legal Profession Act* (27, 38 and 46) allow the Law Society to file a certificate in the Supreme Court and execute on it as if it were a judgment of the court. These provisions relate to costs of practice reviews, disciplinary fines and costs of a Law Society hearing. The following is from section 46 *[Costs]*, but all three are essentially the same.

> (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.

Because the current rules refer to a number of certificates that must be approved as to form by the Executive Director, it may be wise to make provision for this new form for filing in the Court. The current rule on certificates is 2-5 *[Certificates and permits]*. It deals with practising certificates and the like and would not be the appropriate place to deal with this issue.

The Subcommittee recommends amending Rule 2-77 *[Failure to pay fine, costs or penalty]* to include reference to the certificate:

Failure to pay fine, costs or penalty

2-77(1)The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:

(a) a fine;

(b) costs;

(c) a penalty;

(d) a deductible amount paid under the Society's insurance program on behalf of the lawyer;

(e) reimbursement for payment made on behalf of the lawyer or former lawyer under Part B of the policy of professional liability insurance.

(2) If a lawyer fails to pay, by the time that it is required to be paid, any of the amounts referred to in subrule (1), the Credentials Committee may suspend the lawyer until the amount is paid.

(3) The Executive Director may approve the form of certificate to be filed in the Supreme Court under section 27, 38 or 46 of the Act.

It is not otherwise necessary to amend the Rules to implement these new provisions. Since the amended provisions in the Act are in force, the Rules may be amended effective immediately.

Mirror-imaging

Section 36 *[Discipline rules]* was amended and a new section 37.1 *[Personal records in investigation or seizure]* was added to give statutory effect to the changes adopted in 2010 to give effect to the recommendations of the Mirror-imaging working group. The Subcommittee does not see a need to amend the Rules in respect of these changes.

Conditions and limitations

In the course of drafting the amendments to the *Legal Profession Act*, it was discovered that the Act did not use consistent language in permitting the imposition of conditions (and limitations) on the practice of lawyers. Sometimes it was "conditions" and sometimes it was "conditions and limitations" and occasionally "limitations and conditions". Although the drafters intended exactly the same thing in each instance, it is a principle of statutory construction that the Legislature is taken to mean different things where different words are chosen.

It was decided that, since we were doing revisions anyway, we would fix up the discrepancy. It would be risky to delete "limitations" where it does appear, since it may lead to the conclusion that the Legislature intended to take away a power that had previously been conferred. So, it was decided to put in "limitations" where it did not appear. Several amendments resulted, most of which are now in effect.

The same problem exists in some places in the Law Society Rules. There is also another form of the problem with the phrase "restrictions and conditions". I attach a clean and redlined version of proposed amendments to make things right.

The Act and Rules Subcommittee recommends adoption of the attached Suggested Resolution.

JGH
E:\POLICY\JEFF\RULES\memo to Benchers on rule amendments under Bill 40 July 2012.docx

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Extraordinary action to protect public

3-7.1 (1) ~~This Rule applies~~An order may be made under this Rule with respect to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) suspend a lawyer,

(b) impose conditions or limitations on the practice of a lawyer, ~~or~~

(c) suspend the enrolment of an articled student~~.~~, or

(d) impose conditions or limitations on the enrolment of an articled student.

(3) An order made under this Rule or varied under Rule 3-7.3 *[Procedure]* is effective until the first of

(a) final disposition of any citation authorized under Part 4 arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-7.3.

Medical examination

3-7.2 (1) This Rule applies to a lawyer or articled student who is the subject of an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]* or the subject of a citation.

(2) If they are of the opinion that the order is likely necessary to protect the public, 3 or more Benchers may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by those Benchers, and

(b) instruct the medical practitioner to report to the Executive Director 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.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this Rule to the Discipline Committee or the Practice Standards Committee and may be used for any purpose consistent with the Act and these Rules.

(4) The report of a medical practitioner under this Rule is admissible in any hearing or proceeding under the Act and these Rules.

Procedure

3-7.3(~~3~~1) The Benchers referred to in ~~subrule (2)~~Rules 3-7.1 to 3-7.3 must not include a member of the Discipline Committee.

(~~4~~2) Before Benchers take action under ~~this~~ Rule 3-7.1 or 3-7.2, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.

(~~5~~3) The proceeding referred to in subrule (~~4~~2)

(a) may be initiated by the Discipline Committee, the Practice Standards Committee or the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied that notice would not be in the public interest.

(~~6~~4) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.

(~~7~~5) All proceedings under this Rule must be recorded by a court reporter.

(~~8~~6) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.

(~~9~~7) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(~~10~~8) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.

(~~11~~9) Rule 4-29 *[Adjournment]* applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(~~12~~10) Despite subrule (~~11~~9), the Executive Director is not required to notify a complainant of a request made under subrule (~~10~~8).

(~~13~~11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

LAW SOCIETY RULES

~~(14) An order made or varied under this Rule is effective until the first of~~

~~(a) final disposition of a citation, or~~

~~(b) rescission, variation or further variation under subrule (15).~~

(~~15~~12) An order made or varied under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articled student or discipline counsel.

(~~16~~13) On an application under subrule (~~15~~13) to vary or rescind an order,

(a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

(~~17~~14) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (~~15~~13), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

PART 4 – DISCIPLINE

Interim suspension~~,~~ or practice conditions ~~or medical examination~~

4-17(0.1) In Rules 4-17 to 4-18.1, **"proceeding"** means the proceeding required under subrule (1.11).

(1) If there has been a direction under Rule 4-13(1) *[Direction to issue, expand or rescind citation]* to issue a citation, ~~any~~ 3 or more Benchers may do one or more of the following:

(a) suspend the lawyer, if the ~~3~~ Benchers present consider, on the balance of probabilities, that the continued practice of the lawyer will be dangerous or harmful to the public or the lawyer's clients;

(b) in any case not referred to in paragraph (a), place conditions or limitations on the practice of the lawyer;

(c) suspend the enrolment of an articled student if the Benchers present consider, on the balance of probabilities, that the continuation of the student's articles will be dangerous or harmful to the public or a lawyer's clients;

~~(d) require the respondent to~~

LAW SOCIETY RULES

~~(i) submit to an examination by a qualified medical practitioner named by the 3 Benchers or to be named by the Chair of the Discipline Committee, and~~

~~(ii) instruct the qualified medical practitioner to report to the Discipline Committee on the respondent's ability to practise law or, in the case of an articled student, the respondent's ability to complete his or her articles.~~

(e) impose conditions or limitations on the enrolment of an articled student.

(1.1) The ~~3~~ Benchers referred to in subrule (1) must not include ~~the Chair~~a member of the Discipline Committee.

(1.11) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel must be present.

(1.111) The proceeding referred to in subrule (1.11) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.

(1.12) The respondent and respondent's counsel may be present at a proceeding.

(1.13) All proceedings under this Rule must be recorded by a court reporter.

(1.14) Subject to the Act and these Rules, the Benchers present may determine the practice and procedure to be followed at a proceeding.

(1.15) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(1.16) The respondent or discipline counsel may request an adjournment of a proceeding.

(1.17) Rule 4-29 *[Adjournment]* applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(1.18) Despite subrule (1.17), the Executive Director is not required to notify a complainant of a request made under subrule (1.16).

(1.19) After a proceeding has begun, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(2) An order made under subrule (1) or varied under subrule (3) is effective until the first of

(a) final disposition of the citation,

(a.1) variation or further variation under subrule (3), or

(b) a contrary order under Rule 4-19 *[Review of interim suspension or practice conditions]*.

(3) An order made under subrule (1)(b), ~~or~~ (d) or (e) may be varied by the ~~3~~ Benchers who made it, or a majority of them, on the application of the respondent or discipline counsel.

(4) On an application to vary an order under subrule (3),

(a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the ~~3~~ Benchers considering an application under subrule (3) may allow oral submissions if, in their discretion, it is appropriate to do so.

(c) if, for any reason, any of the Benchers who made the order is unable to participate in the decision, the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

Notification of respondent

4-18 When an order is made under Rule 4-17(1) *[Interim suspension or practice conditions]* without notice to the respondent, the Executive Director must immediately notify the respondent in writing, that

(a) the action has been taken,

(b) the respondent is entitled, on request, to a transcript of the proceeding under Rule 4-17(1), and

(c) the respondent may apply under Rule 4-19 *[Review of interim suspension, practice conditions or medical examination]* to have the order rescinded or varied.

Disclosure

4-18.1 (1) Unless an order has been made under Rule 4-17(1) *[Interim suspension or practice conditions]*, no one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:

(a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-17;

(b) the scheduling of a proceeding under Rule 4-17;

(c) the fact that a proceeding has taken place.

LAW SOCIETY RULES

(2) When an order has been made or refused under Rule 4-17(1) *[Interim suspension or practice conditions]*, the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

Review of interim suspension~~,~~ or practice conditions ~~or medical examination order~~

4-19 (1) If an order has been made under Rule 4-17(1) *[Review of interim suspension or practice conditions]*, the respondent may apply in writing to the President at any time for rescission or variation of the order.

(2) An application under subrule (1) must be heard as soon as practicable and, if the respondent has been suspended without notice, in any event not later than 7 days after the date on which it is received by the Society, unless the respondent consents to a longer time.

(3) [rescinded]

(4) When application is made under subrule (1), the President must appoint a new panel under Rule 4-28 *[Appointment of panel]*.

(5) A panel appointed under subrule (4) must not include a person who

(a) participated in the decision that authorized the issue of the citation,

(b) was one of the Benchers who made the order under review, or

(c) is part of a panel assigned to hear the citation.

(6) A hearing under this Rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.

(6.1) On application by anyone, the panel may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(7) All proceedings at a hearing under this Rule must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript of any part of the hearing that he or she was entitled to attend.

(8) The respondent and discipline counsel may call witnesses to testify who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) are subject to cross-examination.

(9) If the order under Rule 4-17(1) *[Interim suspension or practice conditions]* took effect without notice to the respondent, witnesses called by discipline counsel must testify first, followed by witnesses called by the respondent.

(10) If subrule (9) does not apply, witnesses called by the respondent must testify first, followed by witnesses called by discipline counsel.

(11) The panel may

(a) accept an agreed statement of facts, and

(b) admit any other evidence it considers appropriate.

(12) Following completion of the evidence, the panel must

(a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule 4-17(1) *[Interim suspension or practice conditions]* with notice to the respondent, the panel must, if cause is shown on the balance of probabilities by or on behalf of the respondent, rescind or vary the order.

(14) If an order has been made under Rule 4-17(1) *[Interim suspension or practice conditions]* without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

PART 5 – HEARINGS AND APPEALS

Disqualification

5-3 (1) The following persons must not participate in a panel hearing a citation:

(b) one of the Benchers who made an order under Rule 3-7.1 to 3-7.3, or 4-17 regarding the respondent;

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension~~,~~ or practice condition or ~~order for a medical examination~~limitation in respect of the respondent.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Extraordinary action to protect public

3-7.1 (1) An order may be made under this Rule with respect to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) suspend a lawyer,

(b) impose conditions or limitations on the practice of a lawyer,

(c) suspend the enrolment of an articled student, or

(d) impose conditions or limitations on the enrolment of an articled student.

(3) An order made under this Rule or varied under Rule 3-7.3 *[Procedure]* is effective until the first of

(a) final disposition of any citation authorized under Part 4 arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-7.3.

Medical examination

3-7.2 (1) This Rule applies to a lawyer or articled student who is the subject of an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]* or the subject of a citation.

(2) If they are of the opinion that the order is likely necessary to protect the public, 3 or more Benchers may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by those Benchers, and

(b) instruct the medical practitioner to report to the Executive Director 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.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this Rule to the Discipline Committee or the Practice Standards Committee and may be used for any purpose consistent with the Act and these Rules.

(4) The report of a medical practitioner under this Rule is admissible in any hearing or proceeding under the Act and these Rules.

Procedure

3-7.3 (1) The Benchers referred to in Rules 3-7.1 to 3-7.3 must not include a member of the Discipline Committee.

(2) Before Benchers take action under Rule 3-7.1 or 3-7.2, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.

(3) The proceeding referred to in subrule (2)

(a) may be initiated by the Discipline Committee, the Practice Standards Committee or the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied that notice would not be in the public interest.

(4) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.

(5) All proceedings under this Rule must be recorded by a court reporter.

(6) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.

(7) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(8) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.

(9) Rule 4-29 *[Adjournment]* applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).

(11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(12) An order made or varied under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articled student or discipline counsel.

(13) On an application under subrule (13) to vary or rescind an order,

(a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

(14) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (13), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

PART 4 – DISCIPLINE

Interim suspension or practice conditions

4-17(0.1) In Rules 4-17 to 4-18.1, **"proceeding"** means the proceeding required under subrule (1.11).

(1) If there has been a direction under Rule 4-13(1) *[Direction to issue, expand or rescind citation]* to issue a citation, 3 or more Benchers may do one or more of the following:

(a) suspend the lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the lawyer will be dangerous or harmful to the public or the lawyer's clients;

(b) in any case not referred to in paragraph (a), place conditions or limitations on the practice of the lawyer;

(c) suspend the enrolment of an articled student if the Benchers present consider, on the balance of probabilities, that the continuation of the student's articles will be dangerous or harmful to the public or a lawyer's clients;

(e) impose conditions or limitations on the enrolment of an articled student.

(1.1) The Benchers referred to in subrule (1) must not include a member of the Discipline Committee.

(1.11) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel must be present.

LAW SOCIETY RULES

(1.111) The proceeding referred to in subrule (1.11) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.

(1.12) The respondent and respondent's counsel may be present at a proceeding.

(1.13) All proceedings under this Rule must be recorded by a court reporter.

(1.14) Subject to the Act and these Rules, the Benchers present may determine the practice and procedure to be followed at a proceeding.

(1.15) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(1.16) The respondent or discipline counsel may request an adjournment of a proceeding.

(1.17) Rule 4-29 *[Adjournment]* applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(1.18) Despite subrule (1.17), the Executive Director is not required to notify a complainant of a request made under subrule (1.16).

(1.19) After a proceeding has begun, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(2) An order made under subrule (1) or varied under subrule (3) is effective until the first of

(a) final disposition of the citation,

(a.1) variation or further variation under subrule (3), or

(b) a contrary order under Rule 4-19 *[Review of interim suspension or practice conditions]*.

(3) An order made under subrule (1)(b), (d) or (e) may be varied by the Benchers who made it, or a majority of them, on the application of the respondent or discipline counsel.

(4) On an application to vary an order under subrule (3),

(a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers considering an application under subrule (3) may allow oral submissions if, in their discretion, it is appropriate to do so.

(c) if, for any reason, any of the Benchers who made the order is unable to participate in the decision, the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

Notification of respondent

4-18 When an order is made under Rule 4-17(1) *[Interim suspension or practice conditions]* without notice to the respondent, the Executive Director must immediately notify the respondent in writing, that

(a) the action has been taken,

(b) the respondent is entitled, on request, to a transcript of the proceeding under Rule 4-17(1), and

(c) the respondent may apply under Rule 4-19 *[Review of interim suspension, practice conditions or medical examination]* to have the order rescinded or varied.

Disclosure

4-18.1 (1) Unless an order has been made under Rule 4-17(1) *[Interim suspension or practice conditions]*, no one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:

(a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-17;

(b) the scheduling of a proceeding under Rule 4-17;

(c) the fact that a proceeding has taken place.

(2) When an order has been made or refused under Rule 4-17(1) *[Interim suspension or practice conditions]*, the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

Review of interim suspension or practice conditions

4-19 (1) If an order has been made under Rule 4-17(1) *[Review of interim suspension or practice conditions]*, the respondent may apply in writing to the President at any time for rescission or variation of the order.

(2) An application under subrule (1) must be heard as soon as practicable and, if the respondent has been suspended without notice, in any event not later than 7 days after the date on which it is received by the Society, unless the respondent consents to a longer time.

(3) [rescinded]

(4) When application is made under subrule (1), the President must appoint a new panel under Rule 4-28 *[Appointment of panel]*.

(5) A panel appointed under subrule (4) must not include a person who

(a) participated in the decision that authorized the issue of the citation,

(b) was one of the Benchers who made the order under review, or

(c) is part of a panel assigned to hear the citation.

(6) A hearing under this Rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.

(6.1) On application by anyone, the panel may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(7) All proceedings at a hearing under this Rule must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript of any part of the hearing that he or she was entitled to attend.

(8) The respondent and discipline counsel may call witnesses to testify who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) are subject to cross-examination.

(9) If the order under Rule 4-17(1) *[Interim suspension or practice conditions]* took effect without notice to the respondent, witnesses called by discipline counsel must testify first, followed by witnesses called by the respondent.

(10) If subrule (9) does not apply, witnesses called by the respondent must testify first, followed by witnesses called by discipline counsel.

(11) The panel may

(a) accept an agreed statement of facts, and

(b) admit any other evidence it considers appropriate.

(12) Following completion of the evidence, the panel must

(a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule 4-17(1) *[Interim suspension or practice conditions]* with notice to the respondent, the panel must, if cause is shown on the balance of probabilities by or on behalf of the respondent, rescind or vary the order.

(14) If an order has been made under Rule 4-17(1) *[Interim suspension or practice conditions]* without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

PART 5 – HEARINGS AND APPEALS

Disqualification

5-3 (1) The following persons must not participate in a panel hearing a citation:

(b) one of the Benchers who made an order under Rule 3-7.1 to 3-7.3, or 4-17 regarding the respondent;

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Inter-jurisdictional practice

Enforcement

2-15 (7) A visiting lawyer who is affected by subrule (6) may apply to the Credentials Committee for restoration of any or all rights lost under that subrule and the Committee may, in its discretion, grant the application, subject to any conditions or limitations it considers to be in the public interest.

Practitioners of foreign law

Practitioners of foreign law

2-18 (3) Subject to subrule (4), the Executive Director may attach conditions or limitations to a permit issued or renewed under this Rule.

(4) The Executive Director may only attach under subrule (3) conditions or limitations that are authorized by the Credentials Committee.

Multi-Disciplinary Practice

Consideration of application to engage in Multi-Disciplinary Practice

2-23.4 (3) If the lawyer applying for permission under Rule 2-23.3 agrees, the Executive Director may impose ~~restrictions or~~ conditions or limitations on permission granted under subrule (1).

(5) If an application is referred to the Credentials Committee under subrule (1)(c) or a review is requested under subrule (4), the Credentials Committee must direct the Executive Director to

(a) grant permission to practise law in an MDP, with or without ~~restrictions or~~ conditions or limitations, or

(b) reject the application.

(6) If an application is rejected or if ~~restrictions or~~ conditions or limitations are imposed, the Credentials Committee must, on the written request of the lawyer applying, give written reasons for the decision.

LAW SOCIETY RULES

Cancellation of permission to practise law in an MDP

2-23.6 (4) When a lawyer applies for a review under subrule (3), the Credentials Committee must consider all the information available to the Executive Director, as well as submissions from or on behalf of the lawyer applying and the Executive Director and must

(b) direct the Executive Director to reinstate the permission, with or without ~~restrictions or~~ conditions or limitations specified by the Credentials Committee, or

(9) When considering an application for a stay under subrule (8), the President must consider all the information available to the Executive Director, as well as submissions from or on behalf of the Executive Director and the lawyer concerned and must

(b) grant the stay, with or without ~~restrictions and~~ conditions or limitations.

Division 2 – Admission and Reinstatement

Application for enrolment, admission or reinstatement

Disclosure of information

2-26.1 (2) For the purpose of subrule (1)(a), the status of an application is its stage of progress in processing the application, including, but not limited to the following:

(b) granted, with or without ~~limitations and~~ conditions or limitations;

Admission program

Secondment of articles

2-38 (3) If permission is granted under subrule (2), the Executive Director may set conditions or limitations as appropriate.

Reinstatement

Reinstatement of former judge or master

2-54 (2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1)(a).

(3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.

Credentials hearings

Anonymous publication

2-69.2 (3) The panel may order that publication not identify the applicant if

(a) the application is approved without ~~limitation or~~ conditions or limitations on the practice or articles of the applicant, and

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Extraordinary action to protect public

3-7.1 (2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

(b) impose conditions or limitations on the practice of a lawyer, or

Division 2.1 – Education

Mentoring

3-18.31 (1) The Benchers may allow credit as a mentor, subject to any conditions or limitations that the Benchers consider appropriate.

(4) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:

(b) permit the lawyer to receive credit as a mentor subject to conditions or limitations;

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Interim suspension, practice conditions or medical examination

4-17 (1) If there has been a direction under Rule 4-13(1) to issue a citation, any 3 Benchers may do one or more of the following:

(b) in any case not referred to in paragraph (a), place conditions or limitations on the practice of the lawyer;

Disciplinary action

4-35 (2) Despite subrule (1)(b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(d) declare that, had the respondent been a member of the Society, the panel would have

(iii) imposed conditions or limitations on the practice of the respondent.

Disclosure of practice restrictions

4-38.2 (1) When, under this Part or Part 4 of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended from the practice of law in one or more fields of law, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

PART 5 – HEARINGS AND APPEALS

Disqualification

5-3 (1) The following persons must not participate in a panel hearing a citation:

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension, practice condition or limitation or order for a medical examination in respect of the respondent.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Inter-jurisdictional practice

Enforcement

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Practitioners of foreign law

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Multi-Disciplinary Practice

Consideration of application to engage in Multi-Disciplinary Practice

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(a) grant permission to practise law in an MDP, with or without conditions or limitations, or

(b) reject the application.

(6) If an application is rejected or if conditions or limitations are imposed, the Credentials Committee must, on the written request of the lawyer applying, give written reasons for the decision.

LAW SOCIETY RULES

Cancellation of permission to practise law in an MDP

2-23.6 (4) When a lawyer applies for a review under subrule (3), the Credentials Committee must consider all the information available to the Executive Director, as well as submissions from or on behalf of the lawyer applying and the Executive Director and must

(b) direct the Executive Director to reinstate the permission, with or without conditions or limitations specified by the Credentials Committee, or

(9) When considering an application for a stay under subrule (8), the President must consider all the information available to the Executive Director, as well as submissions from or on behalf of the Executive Director and the lawyer concerned and must

(b) grant the stay, with or without conditions or limitations.

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Application for enrolment, admission or reinstatement

Disclosure of information

2-26.1 (2) For the purpose of subrule (1)(a), the status of an application is its stage of progress in processing the application, including, but not limited to the following:

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Secondment of articles

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Reinstatement

Reinstatement of former judge or master

2-54 (2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1)(a).

(3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.

LAW SOCIETY RULES

Credentials hearings

Anonymous publication

2-69.2 (3) The panel may order that publication not identify the applicant if

(a) the application is approved without conditions or limitations on the practice or articles of the applicant, and

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Division 1 – Complaints

Extraordinary action to protect public

3-7.1 (2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

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Mentoring

3-18.31 (1) The Benchers may allow credit as a mentor, subject to any conditions or limitations that the Benchers consider appropriate.

(4) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:

(b) permit the lawyer to receive credit as a mentor subject to conditions or limitations;

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Interim suspension, practice conditions or medical examination

4-17 (1) If there has been a direction under Rule 4-13(1) to issue a citation, any 3 Benchers may do one or more of the following:

(b) in any case not referred to in paragraph (a), place conditions or limitations on the practice of the lawyer;

Disciplinary action

4-35 (2) Despite subrule (1)(b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(d) declare that, had the respondent been a member of the Society, the panel would have

(iii) imposed conditions or limitations on the practice of the respondent.

Disclosure of practice restrictions

4-38.2 (1) When, under this Part or Part 4 of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended from the practice of law in one or more fields of law, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

PART 5 – HEARINGS AND APPEALS

Disqualification

5-3 (1) The following persons must not participate in a panel hearing a citation:

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension, practice condition or limitation or order for a medical examination in respect of the respondent.

BILL 40 IMPLEMENTATION – JULY 2012

SUGGESTED RESOLUTION:

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

1. ***In Rule 2-15, by striking*** **"**subject to any conditions***" and substituting*** **"**subject to any conditions or limitations"***;***

2. ***In Rule 2-18***

(a) ***in subrule (3), by striking*** **"**may attach conditions***" and substituting*** **"**may attach conditions or limitations***", and***

(b) ***in subrule (4), by striking*** **"**conditions that are authorized***" and substituting*** **"**conditions or limitations that are authorized***";***

3. ***In Rule 2-23.4***

(a) ***in subrule (3), by striking*** **"**may impose restrictions or conditions***" and substituting*** **"**may impose conditions or limitations***",***

(b) ***in subrule (5)(a), by striking*** **"**with or without restrictions or conditions***" and substituting*** **"**with or without conditions or limitations***", and***

(c) ***in subrule (6), by striking*** **"**if restrictions or conditions are imposed***" and substituting*** **"**if conditions or limitations are imposed***";***

4. ***In Rule 2-23.6(4)(b) and (9)(b), by striking*** **"**with or without restrictions or conditions***" and substituting*** **"**with or without conditions or limitations***";***

5. ***In Rule 2-26.1(2)(b), by striking*** **"**with or without limitations and conditions***" and substituting*** **"**with or without conditions or limitations***";***

6. ***In Rule 2-36(3), by striking*** **"**may set conditions as appropriate***" and substituting*** **"**may set conditions or limitations as appropriate***";***

7. ***In Rule 2-54(2) and (3), by striking*** **"**may impose conditions***" and substituting*** **"**may impose conditions or limitations***";***

8. ***In Rule 2-69.2(3), by striking*** **"**without limitation or conditions***" and substituting*** **"**without conditions or limitations***";***

9. ***In Rule 2-77, by adding the following subrule:***

(3) The Executive Director may approve the form of certificate to be filed in the Supreme Court under section 27, 38 or 46 of the Act.***;***

10. By rescinding Rule 3-7.1 and substituting the following :

Extraordinary action to protect public

3-7.1(1) An order may be made under this Rule with respect to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) suspend a lawyer,

(b) impose conditions or limitations on the practice of a lawyer,

(c) suspend the enrolment of an articled student, or

(d) impose conditions or limitations on the enrolment of an articled student.

(3) An order made under this Rule or varied under Rule 3-7.3 *[Procedure]* is effective until the first of

(a) final disposition of any citation authorized under Part 4 arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-7.3.

Medical examination

3-7.2(1) This Rule applies to a lawyer or articled student who is the subject of an investigation or intended investigation under Rule 3-5 [Investigation of complaints] or the subject of a citation.

(2) If they are of the opinion that the order is likely necessary to protect the public, 3 or more Benchers may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by those Benchers, and

(b) instruct the medical practitioner to report to the Executive Director 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.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this Rule to the Discipline Committee or the Practice

Standards Committee and may be used for any purpose consistent with the Act and these Rules.

(4) The report of a medical practitioner under this Rule is admissible in any hearing or proceeding under the Act and these Rules.

Procedure

3-7.3(1) The Benchers referred to in Rules 3-7.1 to 3-7.3 must not include a member of the Discipline Committee.

(2) Before Benchers take action under Rule 3-7.1 or 3-7.2, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.

(3) The proceeding referred to in subrule (2)

(a) may be initiated by the Discipline Committee, the Practice Standards Committee or the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied that notice would not be in the public interest.

(4) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.

(5) All proceedings under this Rule must be recorded by a court reporter.

(6) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.

(7) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(8) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.

(9) Rule 4-29 *[Adjournment]* applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).

(11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(12) An order made or varied under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articled student or discipline counsel.

(13) On an application under subrule (13) to vary or rescind an order,

(a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

(14) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (13), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.***;***

11. In Rule 3-18.31(1), by striking "subject to any conditions***" and substituting "***subject to any conditions or limitations***";***

12. In Rule 4-17,

(a) by rescinding the heading and substituting the following:

Interim suspension or practice conditions*, and*

(b) by rescinding subrules (1), (1.1), (3) and (4) and substituting the following:

(1) If there has been a direction under Rule 4-13(1) *[Direction to issue, expand or rescind citation]* to issue a citation, 3 or more Benchers may do one or more of the following:

(a) suspend the lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the lawyer will be dangerous or harmful to the public or the lawyer's clients;

(b) in any case not referred to in paragraph (a), place conditions or limitations on the practice of the lawyer;

(c) suspend the enrolment of an articled student if the Benchers present consider, on the balance of probabilities, that the continuation of the student's articles will be dangerous or harmful to the public or a lawyer's clients;

(e) impose conditions or limitations on the enrolment of an articled student.

(1.1) The Benchers referred to in subrule (1) must not include a member of the Discipline Committee.

(3) An order made under subrule (1)(b), (d) or (e) may be varied by the Benchers who made it, or a majority of them, on the application of the respondent or discipline counsel.

(4) On an application to vary an order under subrule (3),

(a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers considering an application under subrule (3) may allow oral submissions if, in their discretion, it is appropriate to do so.

(c) if, for any reason, any of the Benchers who made the order is unable to participate in the decision, the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.***;***

13. In Rule 4-19, by rescinding the heading and substituting the following:

Review of interim suspension or practice conditions*;*

14. In Rule 4-35(2)(d)(iii), by striking "imposed conditions***" and substituting "***imposed conditions or limitations***";***

15. By rescinding Rule 4-38.2(1) and (3) and substituting the following:

(1) When, under this Part or Part 4 of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended from the practice of law in one or more fields of law, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.***;***

16. In Rule 5-3(1), by rescinding paragraphs (b) and (c) and substituting the following:

(b) one of the Benchers who made an order under Rule 3-7.1 to 3-7.3, or 4-17 regarding the respondent;

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.***;***

17. In Rule 5-4, by adding the following subrule, effective on proclamation of section 33 of the Legal Profession Amendment Act, 2012, SBC 2012, c. 16:

(4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5.***;***

18. By adding the following Schedule, effective on proclamation of section 33 of the Legal Profession Amendment Act, 2012:

SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-4(4)]

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

_____

(As the case may be: a member of the Law Society of British Columbia/an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: _____

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: _____

Date: _____

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _____, this
_____ day of _____, 20__

_____
Party/Counsel

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: June 25, 2012
Subject: **Rule 3-21 – Compulsory liability insurance**

The new *Code of Professional Conduct* will make some changes in relation to lawyers' obligations in relation to the insurance program. Margrett George, on behalf of the Lawyers Insurance Fund has requested a change to the Rules to ensure that lawyers are clear that they must continue to comply with the professional liability insurance policy, even though the *Code of Professional Conduct* will not use those words, as the current *Professional Conduct Handbook* does.

Chapter 4, rule 5 of the *Professional Conduct Handbook* provides:

> A lawyer must comply with the terms of each professional liability insurance policy.

The Handbook obligation is replaced in the new Code with requirements set out in 6.08(2) and (3) to give prompt notice of a claim and to cooperate with the insurer. The requirement for a lawyer to "comply with" the policy will only be part of the commentary referencing 6.08(2), rather than a standalone provision.

The following is part of the request from LIF to Act and Rules Subcommittee to consider a Rule amendment:

> Over the years, we've found the Handbook obligation useful when dealing with lawyers reluctant to meet their obligations as insureds under the policy. The Model Code provisions deal with two of the most critical, as we need lawyers to report and to cooperate with us so that we can deal with claims promptly. However, in order to fully evaluate the merits of a claim and resolve it appropriately, we may well need the insured to work with us in ways not specifically addressed in the new Code. For instance, a lawyer may argue that the contractual obligation to assist us in effecting a right of contribution, defending an unmeritorious claim or paying a deductible, falls outside the scope of the new Code.

We're hoping that a simple revision to the Rules to reintroduce the 'comply with' obligation can be made. This would preserve the existing professional obligation imposed on lawyers that isn't quite captured in the new Code. It will also close any potential gap between a lawyer's contractual and professional obligations.

This is the suggested amendment:

Compulsory liability insurance

3-21(1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-22, unless the lawyer is exempt or ineligible under Rule 3-25.

(2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).

The amendment would continue the effect of the current *Professional Conduct Handbook* rule that LIF has found to be helpful in the past. The change would make a failure to comply with the insurance policy a breach of the rules, which is in itself a discipline infraction. A breach of the rules or of the *Professional Conduct Handbook* may be professional misconduct if it meets the appropriate test established in the cases.

The Act and Rules Subcommittee recommends that the Benchers adopt this suggested resolution:

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-21(2) and substituting the following:

(2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

JGH
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The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: June 25, 2012
Subject: **Rule 4-6.2 – Conduct meeting**

While Rule 4-7 specifically charges the Discipline Committee or the chair of the Discipline Committee with the responsibility for appointing members of Conduct Review Subcommittees, there is no provision that determines who is to assign individuals to meet with lawyers with problems in a conduct meeting. That likely means that the power stays within the power of the Discipline Committee, which orders the meeting.

It would be more administratively efficient to also allow the Chair of the Discipline Committee approve the appointment away from the meeting of the Committee. This would allow for situations where there is no decision by the Committee for whatever reason, or where a person the Committee chooses is not available.

The Act and Rules Subcommittee recommends that the Benchers adopt the following suggested resolution:

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend Rule 4-6.2 by adding the following subrule:

(1.1) The Discipline Committee or the chair of the Discipline Committee may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer required to attend a conduct meeting under Rule 4-4(1)(a.2) *[Action on complaints]*.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

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The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: June 25, 2012
Subject: **Rules 5-16 and 5-17 – Record of hearing**

Rules 5-16 and 5-17 set out what amounts to the record of a hearing when there is a review on the record.

Record of credentials hearing

5-16 (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision consists of the following:

(a) the application;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) the panel's written reasons for any decision;

(e) the Notice of Review under Rule 5-15.

(2) If, in the opinion of the Benchers, there are special circumstances, the Benchers may admit evidence that is not part of the record.

[added 05/2002; (1) amended 07/2007; (1) amended 10/2007]

Record of discipline hearing

5-17 (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:

(a) the citation;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) the panel's written reasons for any decision;

(e) the Notice of Review under Rule 5-15.

(2) If, in the opinion of the Benchers, there are special circumstances, the Benchers may admit evidence that is not part of the record.

It is not uncommon for one or both counsel to submit a written argument or other written submissions to the panel, which the panel then considers in making its decision. It is appropriate for that to form part of the record of the hearing for consideration of the Benchers (or review board) reviewing the decision. That could only happen under the current rules if counsel agree, which is never a sure thing.

The Act and Rules Subcommittee recommends that the Benchers adopt the following suggested resolution:

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend Rules 5-16(1) and 5-17(1) by adding the following paragraph to each:

(c.1) any written arguments or submissions received by the panel;

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

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Memo

The Law Society of British Columbia

To: Benchers

From: Executive Committee

Date: June 26, 2012

Subject: Law Society Representation on the 2012 QC Appointments Advisory Committee

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QC Appointments Advisory Committee (Bencher Appointment)

Background

Each fall the President and another member of the Law Society appointed by the Benchers participate in an advisory committee that reviews all applications for appointment of Queen's Counsel, and recommends deserving candidates to the Attorney General. The Benchers' usual practice, on the recommendation of the Executive Committee, is to appoint the First Vice-President.

The other members of the QC Appointments Advisory Committee are the Chief Justices, the Chief Judge, the Deputy Attorney General and the CBABC President.

Recommendation

We recommend that the Benchers appoint First Vice-President Art Vertlieb, QC to join President Bruce LeRose, QC as the Law Society's representatives on the 2012 QC Appointments Advisory Committee.

The Law Society of British Columbia

Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

July 13, 2012

Introduction

As we are now at the mid-point of the year, my report this month will provide interim updates on a number of items, including our five Operational Priorities for 2012, the Key Performance Measures, and progress under the new 2012 – 2014 Strategic Plan. The mid-year meeting is also when the Benchers receive and consider the recommendations of the Finance Committee regarding the recommended fees and Budgets for the next year. A full presentation on the proposed 2013 Fees and Budgets is included in the Bencher meeting package and Art Vertlieb, QC, Chair of the Finance Committee, will lead a review of the recommendations at the meeting.

I am also including in this report the financial results and highlights for the first five months of 2012. Normally, we present financial results on a full quarter and year-to-date basis. However, because the quarterly results for the period ending June 30 will not be available until after the Bencher meeting next week and since there is no meeting in August, we thought it best to at least present you results through May rather than wait until September. As always, Jeanette McPhee, our Chief Financial Officer, and I will be available at the meeting to answer any questions you may have on the results to date.

1. Financial Results and Highlights for the Period Ending May 31, 2012

Highlights of the financial results to May 31, 2012 are attached to this report as Appendix 1. Jeanette McPhee and I will be available to answer any questions you may have on the results at Friday's meeting.

2. 2013 Budget and Fees – Recommendations from the Finance Committee

The Budget and Fees planning process, which commenced in April of this year with departmental reviews of budget requirements and resourcing priorities, has culminated in the Finance Committee report to the Benchers recommending the fees for 2013 and presenting the underlying operational budgets.

The approach that management has taken again this year is to present recommendations to the Finance Committee reflecting balanced budgets, no use of reserves and sufficient funding for the proper performance of our core regulatory responsibilities. The basic elements of our budgets vary little from year to year; however, each year we generally have an area that generates particular needs and requirements. Last year we focused on strengthening our professional conduct and discipline processes and this was reflected in increased budgetary allocations for 2012 in those areas. This year management determined that 2013 should be a year that we stay the course and deliver our current programs and services utilizing the investments which have been made to enhance those programs over the past two to three years.

You will see that this approach is reflected in the specific fees recommendations and the underlying operating budgets brought forward by the Finance Committee, which reflect minimal increases year on year.

Jeanette McPhee and the rest of the senior management team will be at the meeting to address any specific questions you may have and to provide additional details as requested.

3. 2012 – 2014 Strategic Plan

Please find attached as Appendix 2 a copy of the Law Society's current 2012 – 2014 Strategic Plan, which has been annotated in each section to update you on the progress of specific initiatives. I think the results are encouraging at this stage because, while most of the initiatives are "work in progress", we are laying the foundations in this first year of the plan for implementation of many of the initiatives in 2013 and 2014. In addition, the progress that is currently being made will be assessed and evaluated by the Benchers during the annual Strategic Plan review in the Fall.

4. Operational Priorities

(a) Project Leo

In May 9, 2012, Law Society staff was invited to go on a "Leo Information Management Safari". This innovative event showcased the various elements of a proposed new information management system, such as file plans, security, metadata and policies that have been developed over the past several months through an extensive process of consultation with staff user groups. As employees worked their way through the safari stations set up throughout our offices, they had the opportunity to follow the path of an information retrieval request under our current system and under the proposed new system. This virtual tour through the jungles of our current system highlighted the features and benefits of the new streamlined integrated system which is being proposed. The feedback gained from this event is now being used to help finalize the policies and procedures for managing all of our information creation, storage and retrieval needs at the Law Society.

The project team has now completed its review and assessment of vendor responses to our RFP for an information management system, and has selected the Open Text system to be implemented by Concerta Consulting Inc. A full description and analysis of the RFP process and the assessment of the various options and the recommendation were reviewed by the Executive Committee at its last meeting. The Executive Committee approved the specific allocation of funding (general funding for this project is already set out in the Law

Society's official capital plan) to complete contractual arrangements for the procurement of the new information management software platform. This is an important milestone in this project, which will not be complete until testing, training and full user implementation is achieved by the end of next year.

(b) Continued Implementation and Assessment of our 2011 Regulatory Plan

The new regulatory plan, which became effective in 2011, emphasized enhanced capabilities and improvements in three main areas: intake and triage, investigations, and reduction of timelines for handling of complaints. Improvements in staff morale and motivation were also a goal of the new plan.

Deb Armour, Chief Legal Officer, gave a detailed update on developments and progress in each of these three areas at the Benchers' meeting in April. As part of this mid-year report, two of the areas of focus in the plan warrant special mention as follows.

The new Intake group has brought significant improvements to the department allowing for:

- the handling of hundreds of general inquiries from the public;
- more timely closing of complaints where the Law Society does not have jurisdiction;
- on-the-spot resolutions of complaints;
- robust remediation where competency issues arise; and
- substantiation of complaints being investigated

The other fundamental change is the use of interviews. This has greatly enhanced the quality of our investigations by allowing for the gathering of reliable evidence that improves the assessment of our cases and the opinions going to Discipline Committee. In many cases, interviewing is also allowing for more timely completion of investigations. All of these changes have had the important additional benefit of improving the working environment and morale of our staff.

While there has been significant reduction in our timelines on the less serious files, we continue to have some challenges in reducing our timelines on the most serious files. We attribute this to having recently closed a number of the very old files and anticipate that we will see

steady improvement in the percentage closed within a year as we go forward.

(c) Review of Performance Management Process and How it Ties Into Recognition

One of management's most important responsibilities is to ensure that staff members are clear on their roles and responsibilities, that they receive feedback and assessment on their performance, and that the system of compensation and recognition supports the desired performance and behaviours.

We have spent a lot of effort this year in assessing whether our current rewards and recognition program for staff is indeed supporting a performance based culture and how it might be redesigned to better motivate staff and achieve related objectives such as retention and desired recruitment. We have looked extensively at different models for various types of organizations and we have considered the growing body of research in this area which shows meaningful differences among what motivates employees belonging to different generational groups, e.g. baby boomers and millennials.

To test some of our assumptions around potential improvements to our rewards and recognition program, we conducted an all staff Town Hall where we received very helpful and, in many instances, surprising feedback about not only what activities staff believes should be recognized and/or rewarded but also what type of rewards and recognition is most valuable to them. We followed this up with a short online survey to help drill down and gain better insight into certain aspects of the feedback. Most recently, all managers participated in a half day retreat to review our objectives, the data gained to date, and to consider a possible new remodeled employee rewards and recognition program better suited to our future needs as an organization.

We are on track to have this introduced to staff in the Fall and to have the new program in effect for 2013. I will update the Benchers in the Fall as this important work proceeds.

(d) Lawyer Advice and Support Assessment Project

Please find attached as Appendix 3 to this report a project update prepared by Alan Treleaven, Director of Education and Practice. As you will see, the project is well underway, and the working group plans to provide its recommendations to the Benchers at the December 2012 meeting. Alan will be available at the Bencher meeting in July to answer any questions.

(e) National Standards and the Federation Task Forces

One of the underlying premises of national lawyer mobility, which has been in place since 2003, is that standards for admission are reasonably similar from jurisdiction to jurisdiction. However, the reality is that significant differences exist in the admission standards and processes employed by each law society. Law societies have collectively recognized that these differences can no longer be reasonably justified.

Therefore, Canada's fourteen law societies, through the Federation of Law Societies' National Admission Standards Project, are developing proposals for consistent national standards for admission to the legal profession.

A national Steering Group is responsible for the overall project. Alan Treleaven and I are members of the Steering Group from BC, which also includes Federation President John Hunter, QC and others.

The national project work has three streams:

1. drafting and validating the national competencies profile;
2. drafting the national character and fitness standards; and
3. developing proposals for implementation mechanisms.

National Competencies Profile

The process of drafting and validating the national competencies profile is nearing completion. The process has involved the participation of a national working group, of which Lynn Burns, Deputy Director of the Professional Legal Training Course, has been a member. The detailed competencies fall into these categories: legal knowledge, transactional knowledge and know-how, lawyering skills, professional ethics, and practice management.

On completion of the project, the proposed new national competencies profile will be submitted to all law societies for adoption.

National Implementation of the Competencies Profile

Adoption of the competencies profile will be followed by development of proposals for implementation mechanisms. Options for consideration are being developed, and potentially could include any combination of

1. national testing, with:
    a. some local testing, or
    b. no local testing.

2. a national approach to training, with either:

a. local training courses developed by each law society, or
b. no local training courses.

3. law societies develop their own methods of implementation, with either:
    a. a national monitoring mechanism, or
    b. no national monitoring mechanism.

Although articling has not formally been a part of the project, law societies informally recognize that national admission standards should logically take articling into account.

National Character and Fitness Standards

The process of developing national character and fitness standards is also underway. The process has involved the participation of a national working group, of which Lesley Small, Manager of Member Services and Credentials, has been a member. Michael Lucas, Manager of Policy and Legal Services, has been working with his counterparts from other law societies to develop a legal policy foundation and analysis for the national character and fitness standards work.

Lawyer Education Advisory Committee Role

Pursuant to the Law Society's Strategic Plan, the Lawyer Education Advisory Committee's 2012 – 2014 strategic priorities include:

> *Ensure that Law Society of BC Admission processes are appropriate and relevant, and work on national admission standards while considering the rationale and purpose of the overall BC admission program.* (Law Society Strategic Initiative 1-4(a))

The Committee is monitoring the National Admission Standards project, including the articling developments in Ontario, and plans to begin its active admission program review in the fall of 2012, flowing from the national competencies profile, which the Federation expects to circulate in September.

The Committee is also monitoring the progress of the national character and fitness standards work, and will update the Credentials Committee, Executive Committee, and Benchers as the time draws nearer for the Law Society to respond and initiate next steps.

5. Key Performance Measures

The Key Performance Measures were adopted by the Benchers to provide a dashboard for monitoring the outcomes of our core regulatory functions. The annual KPM results are posted on the Law Society's website and are included in our annual Report on Performance. My report on the KPMs this month provides the Benchers with a snapshot of how results are trending so far this year. As you will see, while this is all still very much work in progress, we are on track so far this year towards meeting our goals.

(a) Professional Legal Training Course

As of the conclusion on the first of the three PLTC sessions in 2012, PLTC is on track to meet all of its KPMs in 2012, with the students having rated PLTC's value at an average of 3.5 or higher on a 5 point scale in the categories of having:

- prepared them for the practice of law;
- prepared them to recognize and deal with ethical issues and practice management;
- developed or enhanced their lawyering skills; and
- increased their knowledge of practice and procedure.

Articling principals are surveyed at the year-end.

(b) Practice Standards

By June 2012, ten Practice Standards referral files were completed and closed, with the success rate for each file meeting the prescribed KPM.

(c) Practice Advice and Support Resources

Although members are not surveyed on their assessment of Practice Advice and Lawyer Support Resources until the year-end, as of mid-year the volume of member requests for Practice Advice had grown by more than 300 over the equivalent period in 2011.

The online practice support courses are being updated, to reflect changes in the law, including the introduction of the new BC Code of Professional Conduct.

(d) Lawyers Insurance Fund (LIF)

LIF is on track to meet all of its KPMs in 2012. Specifically:

- our insurance policy, for the protection of lawyers and their clients, provides comparable coverage to other Canadian jurisdictions;
- our insurance fee is now 9th highest out of 14 jurisdictions - even ahead of last year;
- our insured lawyers still continue to rank the service they receive over 90% 4 or 5 on a 5 point scale - currently this stands at 96%;
- suits by Claimants as a result of LIF failing to compensate them for losses occasioned by a lawyer have not exceeded .5% of files closed; no Claimants have sued us; and
- Third-Party Claims Audit findings from last year stand as a testament to LIF's claims handling skills and achievements.

LIF continues to face higher claim costs resulting from recession-based insurance claims, and we expect that trend to continue for the balance of 2012 and into 2013.

(e) Custodianships

Custodianships is on track to meet all of its KPMs in 2012.

KPM 1: "The length of time required to complete a custodianship will decrease under the new program based on comparable historic averages".

	Historically	**2012**	**New Program**
Death/Disability	24 months	30.6 months	18.5 months
Discipline	48 months	44.6 months	32.4 months

We are meeting our KPM in keeping the average length of custodianships under the new program below that of the historical average.

KPM 2: "90% of clients whose former lawyer is subject to a custodianship are satisfied or somewhat satisfied with the way in which the designated custodian dealt with their client matter."

This was a new KPM put into place for the 2011 reporting year. The data for this KPM is gathered through survey letters sent to clients asking for feedback on a scale of 1-5. While the survey questions do not mesh with the KPM language, 94% of those who returned completed surveys rated the service at 3, 4 or 5. We will change the survey for 2013 to reflect the “satisfied or mostly satisfied” language of the KPM.

(f) Professional Conduct

Professional Conduct is on target to meet all of its KPMs in 2012.

Survey Results

So far this year, we have significantly exceeded our KPMs and the results from previous years in all areas but one and in that one, we met the KPM (complainants would recommend process).

- 85% of complainants were satisfied with the fairness of the process (goal is 65%);
- 90% of complainants expressed satisfaction with timeliness (goal is 75%);
- 96% of complainants expressed satisfaction with the courtesy extended to them (goal is 90%);
- 86% of complainants expressed satisfaction with thoroughness (goal is 65%); and
- 60% of complainants would recommend the complaint process to someone else (goal is 60%).

External Review of Processes

KPM: The Ombudsman, the Courts and the CRC do not find our process and procedures as lacking from the point of view of fairness and due process.

Between January and June 2012 the CRC reviewed 22 files and referred only one to the Discipline Committee.

In 2012 to date we have received 3 inquiries from the Ombudsperson, and all have been closed. There have been no court decisions about our complaints process and procedures.

(g) Trust Assurance

Trust Assurance is on track to meet all of its KPMs in 2012. Specifically:

- the number of financial suspensions is down compared to this time last year, with only two suspensions to date;

- the number of referrals made to the Professional Conduct department as a result of a compliance audit is currently at 5%, which is slightly below last year's final results - also, the overall number of referrals made to the Professional Conduct department is down compared to this time last year; and

- there appears to be sustained and consistent performance with key compliance questions on annual trust reports filed by law firms

6. Communications Strategic Plan

At the last Benchers' meeting, there was a discussion regarding the nature and extent of the Law Society's communications since the Communications Strategic Plan was introduced to the Benchers in 2010. There were a number of ideas and suggestions which we have taken away to consider. However, I thought it might also be helpful, especially for the benefit of our newer Benchers, to see a summary of the communications updates that Robyn Crisanti, Manager, Communications and Public Affairs, and I have provided to the Benchers since the plan was introduced. I have attached the summary to this report as Appendix 4. Please feel free to speak with Robyn or me at any time with ideas, comments or suggestions about the plan and our activities.

Timothy E. McGee
Chief Executive Officer

Appendix 1

CFO Quarterly Financial Report – YTD May 2012

Attached are the financial results and highlights for the first five months of 2012.

General Fund

General Fund (excluding capital and TAF)

General Fund operations resulted in a positive variance of $307,000 to the end of May 2012.

Revenue

Revenue is $8,050,000, $182,000 (2.3%) ahead of budget due to positive variances in PLTC revenues, electronic filing fees and miscellaneous revenues.

Operating Expenses

Operating expenses were close to budget, finishing at $7.6 million, a positive variance of $155,000 (2.0%).

2012 Forecast - General Fund (excluding capital and TAF)

Operating Revenue

Practicing membership is expected to be on budget this year, with 10,787 members. PLTC revenue will have a positive variance of $35,000, projected at 410 students for the year. We are also projecting an additional $165,000 in other revenues relating to electronic filing fees, fines, penalties and late payment charges.

Operating Expenses

There are a number of Bencher approved items after the 2012 budget was set, resulting in a $317,000 negative variance as follows:

- Governance review $115,000
- CBA REAL program $75,000
- Federation levy $40,000
- CBA conference sponsorship $25,000
- New aboriginal scholarship $12,000
- Privacy review $55,000

Offsetting this, we are projecting net operating expense savings of $25,000 at this time.

845/835 Building – net results

845/835 Cambie lease revenue is projected below budget. The Benchers approved the forgiveness of a portion of CLE rent, resulting in reduced lease revenue of $60,000. The projection also assumes that the vacant lease space will not be leased by year end, a revenue reduction of $380,000. Our leasing agent continues to actively market the space.

Building maintenance expense savings of $20,000 are projected to year end, relating to a negotiated reduction in property tax mill rates related to the 9th floor meeting space.

Forecast

The General Fund year end projection is a negative variance to budget of approximately $512,000 for the year.

TAF-related Revenue and Expenses

The first quarter TAF revenue was $480,000, slightly below budget. This was more than offset by operating expense savings to the end of May 2012.

TAF revenue is projected at $2.4 million, $100,000 below budget. TAF operating expenses are also projected to be below budget for the year, with savings in staff and travel costs.

Special Compensation Fund

There was little activity in the Fund during the first five months of 2012.

Lawyers Insurance Fund

LIF operating revenues were $5.95 million to date, $140,000 below budget. Insured membership numbers are trending slightly below budget.

LIF operating expenses were $2.4 million, $293,000 below budget. The positive variance is due to savings from staff vacancies and the timing of general office expenses.

The market value of the LIF long term investments was $95.4 million, an increase of $1.8 million on a year to date basis. The year to date investment return was 1.9%, compared to a benchmark of 1.3%.

The Law Society of British Columbia

Summary of Financial Highlights - May 2012
($000's)

2012 General Fund Results - YTD May 2012 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	6,129	6,105	24	0.4%
PLTC and enrolment fees	707	674	33	4.9%
Electronic filing revenue	357	340	17	5.0%
Interest income	149	170	(21)	-12.4%
Other revenue	708	579	129	22.3%
	8,050	7,868	182	2.3%
Expenses before 845 Cambie (excl. dep'n)	7,583	7,738	155	2.0%
	467	130	337	
845 Cambie St. - net results (excl. dep'n)	322	352	(30)	-8.5%
	789	482	307	

2012 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

Practice Fee Revenue	**Avg # of Members**
2008 Actual	10,035
2009 Actual	10,213
2010 Actual	10,368
2011 Actual	10,564
2012 Budget/Projection	10,787
2012 Actual YTD	**10,671**

	Actual Variance
Revenue	
PLTC	35
Electronic Filing	20
Late Payment Fees	25
Members' Manual / Benchers' Bulletin	35
Other Revenues	85
	200
Expenses	
FLS Contribution - rate increase *	(40)
Exec Comm - CBA Canadian legal conference sponsorship contribution *	(20)
CBA REAL Initiative *	(75)
Governance Review *	(115)
Aboriginal Scholarship*	(12)
Privacy Review*	(55)
Expense savings	25
	(292)
845 Cambie Building	
CLE Lease Forgiveness*	(60)
Lease vacancies	(380)
Other expense savings	20
	(420)
2012 General Fund Forecast Variance	(512)
2012 General Fund Budget	-
2012 General Fund Actual	(512)

* Bencher approved items

Trust Assurance Program Forecast

	2012 Forecast	2012 Budget	Variance	% Var
TAF Revenue	2,400	2,500	(100)	-4.0%
Trust Assurance Department	2,388	2,468	80	3.2%
Net Trust Assurance Program	12	32	(20)	

2012 Lawyers Insurance Fund Long Term Investments - YTD May 2012 *Before investment management fees*

Performance	1.9%
Benchmark Performance	1.3%

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2012
($000's)

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Membership fees **(1)**	8,007	7,963		
PLTC and enrolment fees	707	674		
Electronic filing revenue	357	340		
Interest income	149	170		
Other revenue	708	580		
Total Revenues	9,928	9,727	201	2.1%
Expenses				
Regulation	2,796	2,975		
Education and Practice	1,345	1,436		
Corporate Services	1,040	1,046		
Bencher Governance	856	729		
Communications and Information Services	849	803		
Policy and Legal Services	697	748		
Depreciation	122	166		
Total Expenses	7,705	7,903	198	2.5%
General Fund Results before 845 Cambie and TAP	2,223	1,824	399	
845 Cambie net results	104	92	12	
General Fund Results before TAP	**2,327**	**1,916**	**411**	
Trust Administration Program (TAP)				
TAF revenues	482	535	(53)	
TAP expenses	877	1,004	127	13%
TAP Results	**(395)**	**(469)**	**74**	
General Fund Results including TAP	**1,932**	**1,447**	**485**	

(1) Membership fees include capital allocation of $1.878m (YTD capital allocation budget = $1.859.5m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at May 31, 2012
($000's)

	May 31 2012	Dec 31 2011
Assets		
Current assets		
Cash and cash equivalents	86	279
Unclaimed trust funds	1,699	1,848
Accounts receivable and prepaid expenses	7,754	1,129
B.C. Courthouse Library Fund	1,628	678
Due from Lawyers Insurance Fund	3,795	19,331
	14,962	23,265
Property, plant and equipment		
Cambie Street property	11,578	11,739
Other - net	1,448	1,362
	27,988	36,366
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,271	4,040
Liability for unclaimed trust funds	1,699	1,848
Current portion of building loan payable	500	500
Deferred revenue	9,656	17,491
Deferred capital contributions	65	70
B.C. Courthouse Library Grant	1,628	678
Due to Lawyers Insurance Fund	-	-
Due to Special Compensation Fund	-	-
Deposits	25	27
	14,844	24,654
Building loan payable	4,100	4,600
	18,944	29,254
Net assets		
Capital Allocation	2,921	1,874
Unrestricted Net Assets	6,123	5,238
	9,044	7,112
	27,988	36,366

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 5 Months ended May 31, 2012
($000's)

	Invested in P,P & E net of associated debt	Unrestricted	Unrestricted Net Assets	Capital Allocation	2012 Total	2011 Total
	$	$		$	$	$
Net assets - December 31, 2011	8,010	(2,769)	5,238	1,874	7,112	6,691
Net (deficiency) excess of revenue over expense for the period	(405)	459	54	1,878	1,932	421
Repayment of building loan	500	-	500	(500)	-	-
Purchase of capital assets:						
LSBC Operations	89	-	89	(89)	-	-
845 Cambie	242	-	242	(242)	-	-
Net assets - May 31, 2012	8,436	(2,310)	6,123	2,921	9,044	7,112

The Law Society of British Columbia
Special Compensation Fund
Results for the 5 Months ended May 31, 2012
($000's)

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Annual assessment	4	5		
Recoveries	4	-		
Total Revenues	8	5	3	60.0%
Expenses				
Claims and costs, net of recoveries	3	3		
Administrative and general costs	6	19		
Loan interest expense	(11)	-		
Total Expenses	(2)	22	(24)	-109.1%
Special Compensation Fund Results	10	(17)	27	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at May 31, 2012
($000's)

	May 31 2012	Dec 31 2011
Assets		
Current assets		
Cash and cash equivalents	1	1
Due from Lawyers Insurance Fund	953	950
	954	951
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	6	8
Deferred revenue	6	11
	12	19
Net assets		
Unrestricted net assets	942	932
	942	932
	954	951

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
For the 5 Months ended May 31, 2012
($000's)

	2012 $	2011 $
Unrestricted Net assets - December 31, 2011	932	831
Net excess of revenue over expense for the period	10	101
Net assets - May 31, 2012	942	932

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 5 Months ended May 31, 2012
($000's)

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Annual assessment	5,860	6,051		
Investment income	1,751	2,456		
Other income	90	40		
Total Revenues	7,701	8,547	(846)	-9.9%
Expenses				
Insurance Expense				
Provision for settlement of claims	6,194	6,194		
Salaries and benefits	953	1,148		
Contribution to program and administrative costs of General Fund	658	654		
Office	326	426		
Actuaries, consultants and investment brokers' fees	109	114		
Allocated office rent	62	61		
Premium taxes	11	12		
Income taxes	-	-		
	8,313	8,609		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	286	283		
Total Expenses	8,599	8,892	293	3.3%
Lawyers Insurance Fund Results before 750 Cambie	(898)	(345)	(553)	
750 Cambie net results	124	127	(3)	
Lawyers Insurance Fund Results	**(774)**	**(218)**	**(556)**	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at May 31, 2012
($000's)

	May 31 2012	Dec 31 2011
Assets		
Cash and cash equivalents	9,815	23,719
Accounts receivable and prepaid expenses	534	654
Due from members	83	67
Due from General Fund	-	-
General Fund building loan	4,600	5,100
Investments	102,738	102,895
	117,770	132,435
Liabilities		
Accounts payable and accrued liabilities	975	1,609
Deferred revenue	7,846	6,813
Due to General Fund	3,796	19,331
Due to Special Compensation Fund	953	950
Provision for claims	54,095	52,876
Provision for ULAE	7,087	7,065
	74,752	88,644
Net assets		
Unrestricted net assets	25,518	26,291
Internally restricted net assets	17,500	17,500
	43,018	43,791
	117,770	132,435

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 5 Months ended May 31, 2012
($000's)

	Unrestricted	Internally Restricted	2012 Total	2011 Total
	$	$	$	$
Net assets - December 31, 2011	26,291	17,500	43,791	33,962
Net deficiency of revenue over expense for the period	(773)	-	(773)	9,827
Net assets - May 31, 2012	25,518	17,500	43,018	43,789

The Law Society of British Columbia

2012 – 2014 Strategic Plan

Status Update as at June 2012

For: **The Benchers**
Date: **July 13, 2012**

Purpose of Report: **Discussion**
Prepared on behalf of the Executive Committee

INTRODUCTION

Section 3 of the *Legal Profession Act* states that the mandate of the Law Society is to uphold and protect the public interest in the administration of justice by

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

(ii) ensuring the independence, integrity and honour of its members, and

(iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership.

To carry out its mandate effectively, the Law Society must keep in mind the interests and concerns of all parties that engage the justice system. This includes the public generally, users of the legal systems (both individual and corporate), courts, governments, and lawyers.

The Benchers have created a process to plan for and prioritize strategic policy development to properly meet the mandate of the Society and to optimize staff resources.

Through this process, the Benchers identified three principal goals and related strategies that the Law Society should pursue over the next three years. In identifying these goals, strategies and initiatives, the Benchers have been mindful not only of what the role of the Law Society is in relation to its mandate, but also of what may be achievable within that mandate.

The goals, strategies and initiatives set out in this strategic plan are in addition to the overall operations of the Law Society's core regulatory programs, such as discipline, credentials, and practice standards. These programs are fundamental to fulfilling the Law Society's mandate and will always be priorities for the Law Society.

The plan will be reviewed on an annual basis during its three year term to ensure that the strategies and initiatives remain appropriate and to address any additional strategies or initiatives that may be necessary in light of changing circumstances.

Law Society Goals

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.

GOAL 1: The Law Society will be a more innovative and effective professional regulatory body.

The Law Society recognizes that it is important to encourage innovation in all of its practices and processes in order to continue to be an effective professional regulatory body. The following strategies and initiatives will ensure that the Law Society continues to improve in delivering on its regulatory responsibilities.

Strategy 1 – 1

Regulate the provision of legal services effectively and in the public interest.

Initiative 1-1(a)

Consider ways to improve regulatory tools and examine whether the Law Society should regulate law firms.

Status – June 2012

It was anticipated that work on this Initiative would begin in 2013. In the meantime, the Legal Profession Act has been amended to permit the regulation of law firms. It is now anticipated that staff will begin some initial examination of this topic in the Fall of 2012 in anticipation of more detailed policy consideration by the Benchers in 2013.

Initiative 1-1(b)

Examine the relationship between the Law Society as the regulator of lawyers and the Law Society as the insurer of lawyers.

Status – June 2012

The Rule of Law and Lawyer Independence Advisory Committee has been meeting regularly and this topic has formed part of its agenda. It is anticipated the Committee will report later in 2012 on its deliberations with recommendations.

Initiative 1–1(c)

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

Status – June 2012

Each of the Rule of Law and Lawyer Independence and the Access to Legal Services Advisory Committees began deliberations on different aspects of this initiative in early 2012. In order to better co-ordinate the policy development and analysis, however, it has been determined to create a separate Task Force to address this initiative, and its further deliberations are expected to begin in the fall of 2012.

Strategy 1 - 2

Identify and develop processes to ensure continued good governance.

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.

Status – June 2012

This initiative has been divided into separate tasks. The Governance Task Force has taken the lead on a review of governance processes generally within the Law Society, and the work undertaken to date formed the substance of discussion at the recent Bencher retreat in Vernon. Work on the development of a model for the independent evaluation of Law Society processes has been undertaken by the Chief Executive Officer in consultation with the President and last year's President, following debated and recommendations on this topic by the Executive Committee in connection with the 2009 – 2011 Strategic Plan. A report will be forthcoming later in 2012.

Strategy 1–3

Ensure that programs are available to assist lawyers with regulatory and workplace changes.

Initiative 1-3(a)

Work with continued professional development providers to develop programs about the new Code of Conduct.

Status – June 2012

The Law Society and the Continuing Legal Education Society of BC have agreed to a joint endeavour to plan and deliver education on the new BC Code of Conduct, *which will be available to all BC lawyers free of charge using a variety of delivery methods. The Law Society will reimburse the CLE Society for its direct out of pocket expenses. The Law Society website will also feature an* Annotated BC Code of Conduct *as well as a guide to the* BC Code of Conduct *that will compare key features of the current Handbook to the new Code.*

Initiative 1-3(b)

Improve uptake of Lawyer Wellness Programs.

Status – June 2012

Development of this initiative has been undertaken in the Practice Standards Department and will be considered at the Practice Standards Committee meeting in July.

Strategy 1– 4

Ensure that admission processes are appropriate and relevant.

Initiative 1–4(a)

Work on national admission standards while considering the rationale and purpose of the overall admission program.

Status – June 2012

The Lawyer Education and Advisory Committee is keeping abreast of national developments on examining admission national standards and related procedures, which is underway under the auspices of the Federation of Law Societies of Canada. That work will result in a national competencies profile, the development of national standards for character and fitness, and proposals for implementation. The Advisory Committee will begin an active review of the

Law Society admission program in the fall of 2012 following the completion of the national competencies profile which is expected in September.

Initiative 1–4(b)

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

Status – June 2012

Work on this initiative is not expected to commence until 2013.

GOAL 2: The public will have better access to legal services.

The Law Society recognizes that one of the most significant challenges in any civil society is ensuring that the public has adequate access to legal advice and services. The Law Society has identified a number of strategies to respond to this challenge over the next three years and will continue to gather demographic data about lawyers to inform these strategies.

Strategy 2–1

Increase the availability of legal service providers.

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.

Status

Implementation of the recommendations of the Delivery of Legal Services Task Force continues. The Supreme Court of British Columbia has agreed in principle to a pilot project in Family Law. Meetings are still required to determine how to evaluate the project. A starting date for the project still needs to be determined, and a plan for creating training opportunities and communicating the project to the profession needs to be completed. The Provincial Court has indicated a willingness to discuss a similar pilot project and further meetings are expected with that court's working group to discuss how to proceed. The Benchers have approved the necessary changes to the Professional Conduct Handbook and are awaiting changes to the Law Society Rules.

The Access to Legal Services Advisory Committee is trying to get a better sense of what problem or problems exist in the access to justice and legal services landscape that require action by the Law Society. The Committee has had some preliminary discussions regarding how to increase participation in and the delivery of pro bono. It is likely that a greater examination of pro bono legal advice and services will occupy much of the Committee's focus in the second half of 2012, in addition to its regular monitoring function.

Initiative 2–1(b)

Support the retention of women lawyers by implementing the Justicia Project.

Status – June 2012

Work on Phase 1 on implementation of the Justicia project is underway, and will focus on national firms with offices in British Columbia.

Initiative 2–1(c)

Support the retention of Aboriginal lawyers by developing and implementing the Indigenous Lawyer Mentoring Program.

Status – June 2012

Phase 1 of the Indigenous Lawyer Mentoring Program has now been completed, and a report, to be presented to the Benchers on July 13, details best practice guidelines for mentoring Aboriginal lawyers. The report proposes a model on which a Mentoring Program can be developed that outlines a vision, goals and guiding principles.

Strategy 2–2

Improve access to justice in rural communities.

Initiative 2–2(a)

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

Status – June 2012

Work on this initiative is planned to commence in 2013.

Initiative 2–2(b)

Develop ways to improve articling opportunities in rural communities.

Status – June 2012

Work on this initiative is planned to commence in 2014 and will analyse the results from the REAL program.

Strategy 2–3

Understand the economics of the market for legal services in British Columbia.

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.

Status – June 2012

In the implementation plan for this initiative, the initial work was assigned to staff to determine what work on this subject other stakeholders in the legal community were developing. After discussions with the Law Foundation, which is undertaking an examination relating to economic analysis of certain aspects of the justice system in conjunction with the Legal Services Society, we've determined that the focus of their research is not focused on the market for legal services. We will stay abreast of the research and analysis being conducted by the Law Foundation and Legal Services Society. However, it appears that we will have to develop our own research initiative if we hope to understand the economics of the market for legal services in British Columbia. Staff will be looking into this further in the latter part of this year.

GOAL 3: The public has greater confidence in the administration of justice and the rule of law.

The rule of law, supported by an effective justice system, is essential to a civil society. This requires public confidence in both the rule of law and the administration of justice. The Law Society recognizes the importance of working with others to educate the public about the rule of law, the role of the Law Society in the justice system and the fundamental importance of the administration of justice.

Strategy 3–1

Develop broader and more meaningful relationships with stakeholders.

Initiative 3–1(a)

Identify, establish and build on relationships with the Ministry of Attorney General and other government ministries, the Courts, and non-governmental stakeholders.

Status – June 2012

Work has been undertaken at the Bencher and staff level and has resulted in meetings with the Minister of Justice and Attorney General and her senior staff on a number of occasions. A meeting in Victoria with policy staff in various government ministries together with the Chief Executive Officer and Law Society policy and communication staff has also taken place.

Strategy 3–2

Educate the public about the importance of the rule of law, the role of the Law Society and the role of lawyers.

Initiative 3–2(a)

Identify methods to communicate through media about the role of the Law Society, including its role in protecting the rule of law.

Status – June 2012

To increase awareness of the Law Society and the Rule of Law, a number of initiatives have been completed. A dedicated webpage has been created and is updated regularly. During Law Week, the Law Society's "Day-in-the-Life" Twitter campaign was run and promoted, resulting in media coverage that included an interview on the CBC Early Edition, the Lower Mainland's most popular morning program. Other proactive media relations efforts, such as the

news conference in Prince George to announce the Aboriginal scholarship and the Early Edition interview with Susanna Tam to discuss the upcoming report on diversity, have also resulted in coverage of the Law Society and the opportunity to profile the work of the organization to hundreds of thousands of British Columbians.

APPENDIX 3

LAWYER ADVICE AND PRACTICE SUPPORT PROJECT

Backgrounder and Update

Alan Treleaven, June 27, 2012

Project Background

The Law Society provides a wide range of law practice assistance and support to members and articling students, including

- telephone and email advice responding to questions relating to ethics, professional responsibility, practice management, and risk management,
- related web resources,
- articles in the *Benchers' Bulletin*, and in other publications, including those of the CLE Society, CBA and Trial Lawyers' Association,
- email alerts to the membership about frauds and scams,
- equity and diversity counseling and advice,
- presentations at continuing legal education programs for the CLE Society, CBA, Trial Lawyers' Association, and others,
- in-house trust compliance seminars, and
- online courses designed for the small firm practitioner.

The in-person advice is provided by Law Society staff and, very frequently, by Benchers who respond to member inquiries.

One of the three major strategic recommendations in the Core Process Review Report was the establishment of a cross-departmental staff working group to make a full assessment of the strengths and opportunities of the Law Society's current model for delivering lawyer advice and practice support services. The cross-departmental Working Group has been formed, with the following membership:

- Alan Treleaven, Chair (Education and Practice),
- Barbara Buchanan (Practice Advice),
- Felicia Ciolfitto (Trust Regulation),
- Margrett George (Lawyers Insurance Fund), and
- Kensi Gounden (Practice Standards).

Underlying this initiative is the realization that, while the Law Society is primarily a regulator, it is very much in the Law Society's public interest mandate to assist members to be aware of, understand, and comply with the Law Society's regulatory and ethical standards. An

effective and integrated program of member support and assistance is a key to excellence in the regulatory context because it benefits the regulator, the regulated, and the public.

Project Objectives

The Working Group plans to report and make recommendations, including options, in relation to the following issues.

1. What member advice and support should the Law Society provide, including priorities?

2. What are the resource implications and needs, including staff, IT and financial?

3. By what means should the advice and support be provided?

4. Who internally, and perhaps externally, including through possible partnerships, should provide the particular types advice and support?

As the Working Group continues its deliberations, consultations and research, the Working Group may expand on this statement of issues.

Summary of Current Challenges

The Working Group has identified the following challenges related to member advice and support.

1. The volume of requests for Practice Advice is steadily growing (from 6,253 inquiries in 2010, to 6,723 in 2011), and it is increasingly difficult to provide effective service and practice support resources within current staffing levels and systems.

2. The increasing volume of requests for Practice Advice means that the Practice Advisors are not always able to guarantee response times, although the response time is most frequently within the same business day, depending on the time of day of the inquiry.

3. The volume of requests for Practice Advice negatively impacts other Practice Advice functions, including

- creating and updating web resources,
- writing articles for

    - the Law Society, and
    - others, such as CLE Society and CBA,
- speaking engagements, such as at conferences, continuing legal education programs, local bar association meetings and law firms,
- organizing conferences and courses, and
- making law firm visits to advise on practice management systems.

4. There is a lack of clarity around Practice Advice mandate and priorities in relation to telephone and email advice and those matters listed in 3, above.

5. Member advice and support is not only provided by the Practice Advisors, but also across a number of Law Society departments and by the Benchers. Although the provision of advice and support appears to be effective, there is an increasing need for a coordinated or unified Law Society approach. Member advice and support is currently delivered primarily through these departments

- Practice Advice,
- Lawyers Insurance Fund,
- Trust Regulation,
- Custodianships,
- Practice Standards, and
- Communications,

as well as through

- the Benchers, directly and frequently,
- Member Services,
- PLTC,
- Policy, including Equity and Diversity, and
- the Equity Ombudsperson.

Working Group Ongoing Activity

The Working Group has prepared extensive inventories, detailing the member advice and practice support activities currently in place across Law Society departments, and has prioritized those activities for purposes of formulating options and recommendations.

The Working Group is also reviewing the 2007 Report of the former Small Firm Task Force, chaired by Bruce LeRose, to focus on

successes flowing from the implementation of its recommendations, and on areas that should be re-visited. Particular attention is being focused on the Task Force recommendation for technology support:

> *Recommendation #1: Provide technology support to assist sole and small firm practitioners.*
>
> *Recommendation #1 would be implemented by the planning and delivery of a technology support program, designed specifically to assist sole and small firm practitioners.*

The Working Group is consulting with Russel Horwitz of KWELA Leadership and Talent Management.

The Working Group will seek the input of the Benchers as its work progresses. Kathryn Berge and Ken Walker have volunteered to consult with the Working Group. Their ideas and input will be particularly helpful. It is already apparent that Benchers would be assisted in their provision of practice advice by a training package and, particularly for new Benchers, a training session.

Working Group Report

The Working Group plans to report with recommendations, including options and a related assessment of resource needs, by December 2012.

APPENDIX 4

Summary of Reporting re: Communications Strategic Plan/Activities to June 18, 2012

June 2010

From CEO's Report:

1. Communications Strategic Plan

One of Management's top operational priorities for the year as outlined at the Bencher meeting in January is the development and implementation of a strategic plan for all of our external and internal communications. This covers communications to all of the Law Society's key stakeholders including government, media, the public at large, members and employees. Our main objective is to strike an appropriate balance in two areas, proactive and responsive communications and content which our stakeholders need to know and content which they want to know. Since January we are very fortunate to have hired Robyn Crisanti as our Manager of Communications and Public Relations. Robyn will be presenting our new Communications strategic plan at the meeting for review and discussion, ably assisted by Kimanda Jarzebiak, our external Government and Public Relations advisor.

January 2011

From CEO's Report:

(c) Continue to Implement new LSBC Communications Plan

2010 was an important year for the Law Society on the communications front because we developed and adopted a comprehensive new plan for all aspects of Law Society communications both internally and externally. This plan was presented to and reviewed by the Benchers at the Bencher retreat in Parksville last June. We are fortunate that Robyn Crisanti joined us as Manager of Communications in 2010. Robyn is the principal author of the new communications plan and she has provided strong leadership to date in implementing its initiatives. We will focus in 2011 in continuing to implement all aspects of the plan, which is designed to make the Law Society more proactive, responsive and transparent in fulfilling our public interest mandate.

March 2011

From CEO's Report:

5. Public Education Program

The Communications team has developed a plan to foster public knowledge about the rule of law and importance of an independent and well-regulated legal profession. The plan will address gaps in the public legal education marketplace that are otherwise aptly filled by legal services organizations throughout the province and centralized via the Clicklaw website. Implementation of the plan will occur over the balance of 2011.

April 2011

From CEO's Report:

1. Communications Plan Initiatives

Communications re: Ombudsperson

A central part of Law Society's Communications Plan is to support our strategic objective of enhancing public confidence in our ability to effectively regulate the profession. In March the Benchers approved two initiatives with this in mind, the development of a proposal for independent oversight and enhanced communications regarding the role the BC Ombudsperson plays in reviewing the Law Society's handling of complaints against lawyers.

Work on an independent oversight model is underway and will be brought forward for consideration by the Benchers as part of the new strategic plan discussions in the fall. To address the direction given regarding the Ombudsperson, the Communications department is implementing a four-step plan as follows:

a. All information being sent to complainants is being reviewed for form and substance to ensure that the complainant review options are clear and easy to follow, including instructions on recourse to the Ombudsperson;

b. Information regarding the Ombudsperson on the Law Society's website is being expanded and located alongside other information about our complaints process and elsewhere as appropriate;

c. Statistical information regarding the number of Ombudsperson reviews, the outcomes and any explanatory information will be included in an annual media release as well as part of the Law Society's annual review; and

d. The Office of the Ombudsperson will be apprised of these initiatives.

New Law Society External Website

As reported at the last Bencher meeting, the Law Society's external website has recently been completely overhauled to make it more user-friendly, relevant and informative. Since the launch a month ago, the site has been visited 89,000 times by 37,600 unique visitors who viewed a total of 551,000 pages. For purposes of comparison, consider that in March of last year our site had 29,800 unique visitors, so the new site is generating much broader interest in an even shorter period of time. The launch was also picked up by several legal organizations who posted news of it through their own news media and our tweets have been re-tweeted by many. The most popular page is the Lawyer Lookup (41,000 page views) followed by Lawyer Login (16,000). Anecdotally, we have had a number of positive comments about the site, with ease of use and better overall look and feel being the most common. The Communications and IS/IT teams deserve recognition for their hard work and ingenuity in the redesign and relaunch of this key Law Society communications tool.

June 2011

From CEO's Report:

5. Communications and Media

The Law Society will host its annual Law and the Media workshop on June 22, 2011. This year's workshop will explore the legal implications of social media and other "new" media technology for journalism and will feature panelists that include Kim Bolan, Vancouver Sun reporter; media lawyers Dan Burnett and Robert Anderson, QC; the Honourable Mr. Justice Geoffrey Gaul, BC Supreme Court Judge; and Theresa Lalonde, social media trainer and CBC Radio and TV reporter. For the first time, we will offer the workshop at the Law Society in the Benchers Room and it will be offered to journalists throughout the province via teleconference.

We have been the beneficiaries of positive comments from a number of sources in recent weeks, including a national newspaper editorial,

comments from key media personalities and responses to our forays into alternative media (Twitter and RSS feeds). Of particular note is the following article by Mitch Kowalski:

> British Columbia's Law Society has always seemed to me to be the most progressive in terms of service to its members and its attitude of making the legal profession function better. Ontario has a great deal to learn from B.C. in this regard.
> Now LSBC is calling for non-lawyers to be part of disciplinary and other hearings. Currently in B.C., like other provinces, non-lawyers are appointed to the Law Society's governing body (called Benchers), so this new movement to having non-lawyer non-bencher appointments is quite radical and refreshing.
> Good luck B.C.! I look forward to watching the results of this experiment.
>
> Kowalski, Mitch. ""Non-lawyers to judge British Columbia lawyers" *Financial Post* 3 June 2011: n. page. Web.

In general, the Law Society has been acknowledged for being progressive, effective and working in the public interest. Some, but not all, of the comments were related to our invitation to the public to apply to our hearing panel pools. This sentiment was enhanced by Gavin Hume, QC's related interviews with CBC Radio, which were very well done.

The Law Society has been recognized for communications excellence by the International Association of Business Communicators for last June's Aboriginal networking event, Inspiring Stories Connecting Future Leaders. Specifically, the award has been given to Dana Bales, Communications Officer, and Susanna Tam, Staff Lawyer, Policy & Legal Services. Congratulations to Dana and Susanna!

September 2011

From CEO's Report:

2. Communications Updates

Public Education Program

Since the Public Education Program was presented to the Benchers in March 2011, the Communications team has developed a more detailed tactical plan and begun implementation of a number of those tactics, including obtaining broad media coverage around Law Week and developing the access to justice webpage. We expect that the majority

of the work will be completed this fall, including a public inquiry strategy, a public relations awareness campaign and additional educational materials on various Law Society policy initiatives. Robyn Crisanti, Manager, Communications and Public Affairs, will be at the meeting, should you have any questions about the Program.

Communicating New Student Rules

Our Communications department is implementing a comprehensive communications plan to advise lawyers and students of the new student rules, including:

- Article in Benchers' Bulletin (mid-September)
- E-Brief mention (mid-September)
- Letter and flyer sent to all students and principals
- New website copy for Articling section
- Home page of website (Highlights section) (mid September)
- Mention in Advocate article regarding PLTC survey (November)
- Notice to law school publications (late September)

Please let Robyn Crisanti know if you have any questions about the above.

BencherNet Replaced by Lawyer Login Page

BencherNet has now been retired in favour of a more robust Lawyer Login page, which provides access to all Bencher and committee materials as appropriate, based on user profile. If there is any information that Benchers would like to see added to the new Bencher Resources section, please feel free to share your ideas.

9. Advocate Article

I am attaching a copy of the Law Society's response, which was posted on the Law Society's website, to the recent Advocate article regarding the Western Law Societies Conveyancing Protocol, attached to this report as Appendix 2. I would be happy to discuss this in further detail at the meeting.

April 2012

From CEO's Report:

3. 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.

May 2012

From CEO's Report:

5. Law Week – "Day-in-the-Life" Twitter Campaign and Law Society Speakers Bureau

The Law Society recognized Law Week in two ways. The first was our "Day-in-the-Life" Twitter Campaign which involved many staff and resulted in a fascinating Twitter narrative that touched on a broad range of different activities that go on at the Law Society. The campaign attracted four media reports, over 100 new Twitter followers, drove 129 people to the Law Society website and exposed more than 60,000 people via Twitter to Law Society information throughout the day. We also launched our Speakers Bureau during Law Week, which is available to the public through our website and features at least 15 speakers from the Law Society who are available to speak to the public, including organizations, on a variety of topics.

Robyn Crisanti, Manager, Communications and Public Affairs, will be at the meeting to answer any questions or to provide further details on these innovative communications initiatives.

The Law Society of British Columbia

A Proposal to Permit Practitioners of Foreign Law to Practice Temporarily in British Columbia Without Obtaining A Permit (Temporary Mobility for Practitioners of Foreign Law)

For: The Benchers

Date: July 11, 2012

Purpose of Report;	**Discussion and Decision**
Prepared on behalf of:	**The Credentials Committee**
Staff Lawyer:	**Michael Lucas** **Manager, Policy and Legal Services** **604-443-5777**

Introduction

At its April 28, 2011 meeting, the Executive Committee considered a recommendation that the Benchers be asked to consider amending the rules concerning Practitioners of Foreign Law ("PFLs") to permit temporary practice of foreign law in British Columbia under a period of a certain number of days per calendar year (or 12 month period) without requiring the PFL to obtain a Permit.

The Executive Committee, after considering the issue, resolved to refer the subject to the Credentials Committee to consider options and to comment on the matter.

The Credentials Committee has considered and debated this issue on three occasions since the matter was referred to it.

Recommendation

The Credentials Committee recommends that the Benchers approve in principle amending the rules concerning Practitioners of Foreign Law ("PFLs") to permit temporary practice of foreign law in British Columbia under a period of a certain number of days per 12 month period without requiring the PFL to obtain a Permit. If the Benchers agree, the matter would be referred to the Act and Rules Subcommittee to prepare a draft rule.

The Committee discusses options by which the rules may be amended in this Report. The Committee recommends that a rule permitting temporary mobility be based on either Option 1 or Option 3 described below.

Introduction, Background, and Policy Objective

Rules 2-18 and 2-19 of the Law Society Rules address the practice of foreign law in British Columbia.

Rule 2-19 prohibits anyone from practising the law of a foreign jurisdiction in British Columbia without a permit issued by the Executive Director under Rule 2-18. Rule 2-18 sets out the conditions under which a permit may be issued. These Rules came into place in the late 1980s. There have never been very many PFLs in any given year. Currently, about 40 permits are issued.

Where a lawyer from another jurisdiction residing in British Columbia wants to practise the law of that foreign jurisdiction by offering legal advice services to residents of the province, it makes sense to ensure that a permit has been issued by the Law Society. The PFL has a presence in the province, and presumably holds him or herself out as an expert for those who need advice in matters involving foreign law. Requiring the PFL to obtain a permit from the Law Society ensures that the public is protected to some degree by

virtue of the requirements to obtain a permit – most particularly that the PFL carries professional liability insurance reasonably comparable to a BC lawyer. Moreover, while PFLs are not members of the Law Society, the *Legal Profession Act*, the Law Society Rules and the *Professional Conduct Handbook* apply to and bind the PFL. A member of the public in British Columbia dealing with such a person may well expect the Law Society to have taken certain steps to protect the public concerning the practice of the foreign lawyer in the province.

However, a lawyer who practices law in a foreign jurisdiction who comes to BC even briefly and advises on foreign law is, according to the current rules, also required to obtain a permit. This is so even if the client has retained the lawyer in the foreign jurisdiction – that is, the retainer did not arise in British Columbia. For example, a BC resident may be involved in a motor vehicle accident in Seattle, and retain a lawyer in Washington to assist in the legal issues that arise from the accident. If that lawyer comes to Vancouver and meets his client one afternoon to advise on the case, that lawyer should be obtaining a PFL permit. The rationale for this is harder to explain. For comparative purposes, lawyers in one Canadian province can practice law in another province temporarily without becoming a member of the host province's law society. Could some variant of that be created for PFLs?

Canada has been involved for some years in negotiations on the General Agreement in the Trade in Services (GATS) through the World Trade Organization. Much of the negotiations in relation to the trade in legal services have dealt with seeking to relax restrictions on PFLs. While the current state of GATS is moribund, now is a good time to consider the rules in case the negotiations were to gear up again. Canada and the European Union are also in the process of negotiating a trade agreement addressing, amongst other initiatives, the trade in services, so the topic remains alive at the international level.

Moreover, British Columbia and Washington State have entered their own "Framework Agreement" on a host of issues, including "minimizing impediments to a stronger regional economy through effective regulation." Through this head of the Agreement, BC and Washington agreed "to work with respective regulatory bodies to explore opportunities to expand reciprocal credential recognition to regulated trades and professions." The Law Society and the relevant government Ministry have, at the staff level, discussed this Framework Agreement and understand that, concerning legal services, it is aimed principally at PFLs. Ministry staff are interested to know whether any barriers can be addressed on the offering of legal advice by Washington lawyers in BC.

This therefore seems to be an opportune time to address the rules concerning PFLs with a view toward considering some "temporary mobility" provisions akin to temporary mobility provisions afforded to lawyers in Canada under the National Mobility Agreement.

The policy objective that would be served by such a consideration would be to enhance the ability for advice on foreign law to be given in British Columbia without unduly

limiting that ability through the current permit requirement where such advice is given in circumstances where the client would not reasonably expect the Law Society to be regulating its provision. This would meet some objectives of both the federal and provincial governments, and perhaps improve the delivery of legal services in British Columbia at least insofar as they relate to foreign legal advice.

Current Rules and Considerations

Currently, any foreign lawyer who wants to provide advice on foreign law in British Columbia over any time frame needs a PFL permit. This requires the applicant to satisfy the Executive Director that he or she

- is a member of the legal profession of the foreign jurisdiction
- is not suspended, disbarred, or otherwise ceased for disciplinary reasons to be a member of the governing body of the legal profession in the foreign jurisdiction
- is a person of good character and repute
- has practised law if the foreign jurisdiction for at least 3 of the previous 5 years
- carries professional liability insurance in a form and amount at least comparable to that required of lawyers in BC. It should be noted that insurance equivalent to "Part B" (Trust Protection) insurance is not required. However, PFLs are not permitted to deal with trust funds.

Once a permit is obtained, a PFL is bound by the *Legal Profession Act*, the Law Society Rules and the *Professional Conduct Handbook.*

These requirements are aimed at protecting the public interest in the administration of justice in British Columbia by ensuring that people who are offering legal services (who the public in BC would consider to be "lawyers") meet the general standards required of lawyers in BC. The public need not differentiate between domestic lawyers and foreign lawyers. Particularly where the foreign lawyer has established a nexus with British Columbia through residency or a relatively permanent office, a client might reasonably consider the provision of the lawyer's services to be regulated to some degree through the Law Society.

Where a foreign lawyer's presence in BC is temporary, however, one can legitimately question whether a client would expect that foreign lawyer necessarily to be regulated by the Law Society. In fact, such a possibility might come as a surprise, particularly where the client had actually retained the lawyer in the foreign jurisdiction. Would it be more reasonable to presume that the client would expect that lawyer to be regulated and governed in the lawyer's home jurisdiction? Would a foreign lawyer who was attending to a client matter while physically meeting a client in British Columbia necessarily expect

that he or she would need a permit to do so where no permanent nexus with the Province was established?

General Proposal

Some states in Australia have created what are loosely referred to as "fly-in-fly-out" (or temporary mobility) provisions for PFLs, through which a PFL is exempted from having to obtain a permit if he or she is providing foreign legal advice only temporarily in a host jurisdiction and has established no permanent connection to the jurisdiction. The proposal advanced by the Credentials Committee would be to emulate such a scheme in British Columbia.

Making such a change would significantly liberalize the rules concerning practitioners of foreign law, and could be justified on the basis that they accord with practices in other jurisdictions and are not inconsistent with the public interest. Provided the person providing the advice in the law of the foreign jurisdiction is regulated in his or her home jurisdiction, it may not be necessary for the Law Society to regulate that person as well if they are intending to provide the advice only on a periodic and temporary basis within the province. If, on the other hand, the person intends to establish a "nexus" in British Columbia, it makes more sense for the Law Society to have regard to the regulation of that person through the issuance of a PFL permit to ensure that the legal advice provided is provided in a manner that is not inconsistent with the obligations of lawyers in this province. Citizens of British Columbia dealing with someone residing in the province providing advice on foreign law ought to have the same protections as those receiving advice on domestic law. That argument may, however, be somewhat different if the person is dealing with someone who they recognize as having only a transitory connection to the province.

A temporary mobility scheme for PFLs would be loosely comparable to the temporary mobility provisions for lawyers under the National Mobility Agreement in Canada. The Law Society has accepted that a lawyer called in another province can provide legal services in BC for up to 100 business days each year without the requirement of becoming a member of the Law Society of British Columbia. The rationale for this is that a lawyer called in another province has met standards that should be recognized in BC and that the lawyer's "home" jurisdiction is regulating and insuring the provision of those services. A client of that lawyer in BC should reasonably look to the home jurisdiction if problems arise, not to the host jurisdiction – unless that lawyer establishes a permanent connection to BC.

The proposal for temporary practise of foreign law in BC obviously presents some differences from temporary mobility for lawyers within Canada. It is easier for the Law Society to accept the qualifications of lawyers from other common law provinces in Canada, but may be more difficult to do so without enquiry for some foreign jurisdictions. Lawyers in Canada are all required to be insured, but that may not always be the case for lawyers from foreign jurisdictions. There are, therefore, different ways to achieve the proposal.

Implications of the Proposal

Generally speaking, a proposal that addresses the PFL rules will have few implications on the organization as a whole because there are relatively few PFLs. The practice of foreign law in British Columbia is not a huge issue at the current time, and therefore the rules are rarely considered. That said, the issue has some importance and the following implications are worth noting.

1. Recognizing Current Realities – Governmental/Political Considerations

The legal profession is rapidly changing. It is, for good or ill, becoming much more globalised. Canada is in the midst of several international treaty negotiations involving the trade in services, with an expressed desire to increase the mobility of professional qualifications. England and Australia have been strong proponents of increased mobility within the legal profession from country to country. So far, Canada has focused negotiations on practitioners of foreign law rather than looking at ways to open up the practice of domestic law to foreign lawyers (although even here, by virtue of the Quebec/France agreement, French lawyers have the ability to practice in Quebec). BC and Washington State have entered into the "Framework Agreement" that is expected to look for ways to increase mobility of professionals across the border.

It could well be advantageous for the Law Society to be able to advise both levels of government that the organization recognizes the changing legal landscape and is searching for ways to reduce barriers while still protecting the public interest. Taking the step toward permitting temporary practice of foreign law by qualified individuals without requiring a permit is a modest advance that seems defensible. However, it could be expected to give comfort to the two levels of governments that British Columbia is addressing an issue of concern to them. Ms. Jarzebiak, our government relations advisor, has suggested that being able to show the government (particularly the provincial government) that the Law Society is actively doing something on this issue could pay considerable benefits for the organization.

The Law Society may have to take a harder line in the future if the question of increased mobility for foreign lawyers to practice *domestic* law were ever to be put on the table. Being able to show the government that the Law Society had voluntarily made improvements to reduce barriers to practice *foreign* law would be valuable. It would permit the organization to establish it had a reasoned position and was prepared to make changes where able.

2. Public Relations

It is doubtful that changing rules to permit temporary practice of foreign law will have much effect on or resonate with the public. However, for the reasons described under the heading above, talking a step that reduces barriers to temporary practise of foreign law may assist the Law Society's position with the public on future discussions about international mobility issues.

It is possible that a BC resident who has a concern about a "temporary" PFL may find that recourse must be had to the foreign regulator rather than through the Law Society, which may be less convenient. However, if the PFL's association to British Columbia is fleeting, the rationale for addressing the concern through the foreign regulator rather than through the Law Society should be relatively evident. An occasional, temporary attendance in BC by a foreign lawyer on a foreign matter should not necessarily be expected to involve the Law Society.

3. Member Relations

Increasing temporary mobility for PFLs should have few implications on members. It will not affect their practices, as PFLs cannot practice domestic law, and members of the Law Society cannot practice foreign law.

4. Financial Implications

It is possible that some of the PFLs who currently obtain permits will not need to obtain permits in the future if a temporary mobility scheme were implemented. Permits cost $600.00. They must be renewed every year. The cost for renewal is $125.00. Therefore, even if fewer permits or renewals are required, the financial implications will be slight.

Options

The Committee considered and debated three different options.

Option 1

Option 1 would provide that a permit would not be required where the foreign lawyer is properly registered to engage in legal practice in a foreign country by the relevant governing body for the legal profession in that country, as long as the foreign lawyer practises law in British Columbia for less than a certain number of days in any 12 month period, and does not establish an economic nexus in British Columbia;

The first option considered by the Credentials Committee was a broadly conceived proposal, and is closest to that created in Queensland and proposed under the National Regulatory Scheme under consideration in Australia.

Under this Option, a rule would persist preventing the practice of foreign law in British Columbia unless the person is registered or has a permit to do so.

However, a permit would not be required where the person is properly registered to engage in legal practice in a foreign country by the relevant governing body for the legal profession in that country and who:

- practises foreign law in BC for less than a certain number of days in any calendar year (or, perhaps, 12 month period); and

- does not establish an economic nexus in BC.

"Economic nexus" should parallel closely how that phrase applies to temporarily mobile lawyers within Canada, and would therefore include:

- providing legal services beyond the set number of days in a calendar year or 12 month period;

- opening an office in BC from which foreign legal services are offered or provided;

- becoming a partner of a law practice in BC;

- becoming a resident.

In addition to the "nexus" criteria described above, the Subcommittee believes "advertising the services of a PFL in British Columbia" should be added. Advertising in the province establishes a nexus to the province such that a resident who retains the services of a PFL based on the advertisement *might* expect the Law Society to have some role in regulating the PFL's conduct, even if the PFL only appeared in the province temporarily.

This option requires foreign lawyer to be properly registered in their "home" jurisdiction in order to take advantage of the temporary provisions to offer foreign legal services in British Columbia. It does not, however, give the Law Society the ability to verify that the PFL is in fact properly registered. It might however be expected that in most cases where the temporary provisions were exercised, the client will probably already have retained the PFL, as the PFL would simply be wanting to "fly in" to advise and "fly out" when the advice is given. In such cases, a prudent client would have already checked to make sure the PFL is qualified to advise.

Advantages of Option 1

- Would treat all foreign lawyers the same.

- Uses fewest resources

- Should be consistent with expectations of the public concerning regulatory reach. In other words, a member of the public who retains a lawyer who has no nexus to British Columbia to advise on the law of a foreign jurisdiction in which that lawyer is permitted to practise, may not reasonably be expecting British Columbia to regulate the provision of those legal services.

- Requires a permit if the foreign lawyer establishes a nexus to British Columbia, in which case the public may more reasonably expect the Law Society to regulate

the provision of those services – particularly if that foreign lawyer markets those services in the province.

- Bears some similarity to the current interprovincial mobility agreement, allowing the Law Society to take the position it does not unduly discriminate against lawyers based on jurisdiction.

Disadvantages of Option 1

- The Law Society would have to trust that lawyers are members in good standing and permitted to practise in their home jurisdiction, as no verification of their standing would be required.

- The Law Society would have to trust that individuals who are not permitted to practise law in a foreign jurisdiction do not do so here, (although that is really no different from any question of unauthorized practice where the Law Society must trust those who are not qualified to provide legal services do not do so. The remedies would be the same in either case).

- The Law Society would not be able to readily verify with the foreign lawyer's governing body that the foreign lawyer is eligible to visit, and would not have the advantage of the equivalent to the Federation of Law Societies' Interjurisdictional Database.

- Unlike Canadian lawyer mobility within Canada, there would be no form of agreement with a lawyer's home governing body, such as on the handling of complaints, discipline, insurance claims etc., and no agreement to share information.

Option 2

Option 2 would also permit the practice of foreign law in British Columbia temporarily without a permit, but would prescribe the jurisdictions from which the Law Society would accept a foreign lawyer for less than a certain number of days in any 12 month period. All others would be required to obtain a permit, even for the temporary practise of foreign law in British Columbia.

A "prescribed jurisdiction" could be one that the Law Society had pre-approved, or it could be a jurisdiction that reciprocated with British Columbia by accepting BC lawyers on as temporary PFLs without the need to obtain a permit.

The latter approach bears some similarity to the temporary mobility provisions for Canadian lawyers, which were only available to lawyers from reciprocating provinces whose law societies had signed the National Mobility Agreement.

The former approach would be aimed at protecting the public interest by ensuring that the Law Society was comfortable with the regulatory provisions of the foreign jurisdiction before permitting a lawyer to advise a client in BC even temporarily. However, such a process would be rather labour intensive. Moreover, it is more than is currently permitted even where a permit is sought. Under Rule 2-18 the Law Society must only satisfy itself that the PFL is a member of the legal profession, in good standing, in the foreign jurisdiction. "Vetting" that standard would be a departure from current practice.

Advantages of Option 2

- The Law Society would prescribe the jurisdictions whose lawyers it would allow to practice foreign law temporarily in the province without a permit.

- The public and foreign lawyers could access that information readily through the Law Society's website.

- The public interest would be protected safely in this manner because lawyers from non-prescribed jurisdictions would still be required to get a permit, which would allow the Law Society to satisfy itself as to their credentials.

Disadvantages of Option 2

- This option could require the use of a considerable amount of Law Society resources, which may not be warranted for the scope of the issue that is being addressed. Staff and perhaps Committee or Bencher time would have to be utilized to research and approve the prescribed jurisdictions. Criteria would have to be established to form the basis upon which to decide whether to prescribe a jurisdiction.

- The requirement to prescribe jurisdictions would have to be done on an on-going basis to ensure that the analysis of the foreign jurisdictions remains current. It would also have to be done for *all* jurisdictions – even though the Law Society rarely if ever receives applications for lawyers from some jurisdictions.

- The Law Society would still have to trust that lawyers are members in good standing in a prescribed jurisdiction, as no verification of their standing would be required.

- While it is likely that Commonwealth or Western European jurisdictions would be prescribed (thereby making it possible to permit temporary practice for PFLs from those jurisdictions), it may be more difficult to approve jurisdictions from other areas of the world and in particular some of the developing nations whose legal professions are not as well-entrenched or robustly regulated. Consequently, while

aimed at protecting the public interest, this outcome could be criticized by the federal government and/or parties seeking to liberalize the trade in services in legal advice in connection with international trade and services treaty negotiations, whether done under the auspices of the World Trade Organization or not.

- This option would create a more restrictive condition than already exists. Currently, before issuing a PFL permit, the Law Society only seeks confirmation that a foreign lawyer is a member in good standing by the regulatory body of the foreign jurisdiction. It does not "vet" the requirements of that regulatory body or the laws of the foreign jurisdiction through which the foreign lawyer has been qualified to practice.

- This option might be open to human rights concerns as well, as it would create a system that required individuals, based on their nationality (or place of origin) to go through different processes in order to receive a permit. These differences could amount to "adverse treatment" as defined in decisions under the *Human Rights Code* based on place of origin and raise a *prima facie* case of discrimination that would shift the burden to the Law Society to prove that there is no discrimination, or that there is a *bona fide* and reasonable justification for the discrimination. We have not yet sought a legal opinion in this regard, because a decision has not yet been made to prefer Option 2. Whether it is worthwhile, given the limited purpose that this proposal addresses, to raise the specter of human rights issues is something that is open to debate.

- The Law Society would not be able to readily verify with the foreign lawyer's governing body that the foreign lawyer is eligible to visit, and would not have the advantage of the equivalent to the Federation of Law Societies' Interjurisdictional Database.

- Unlike Canadian lawyer mobility within Canada, there would be no form of agreement with a foreign lawyer's home governing body, such as on the handling of complaints, discipline, insurance claims etc., and no agreement to share information.

Option 3

Option 3 would be a variant on Option 1, permitting the temporary practice of foreign law by a foreign lawyer under a series of conditions – such as a requirement that the lawyer be insured in his or her own jurisdiction and that the insurance extend to his or her provision of advice in a foreign jurisdiction. It would be left up to the lawyer to

determine whether or not he or she met those conditions, recognizing that if the conditions were not met, the foreign lawyer may be prosecuted for unauthorized practice.

Through implementing this option, the Law Society could permit temporary mobility under a series of conditions. This could be valuable to address foreign jurisdictions – such as most US states – where insurance is not required to practice law. In these cases, temporary mobility without a permit would only be permissible where, for example, a putative PFL carried insurance comparable to that required of a BC lawyer. Such a requirement is currently in place should such a PFL want a permit.

The weakness of this option, obviously, is that compliance with the requirement would be left to the PFL. The Law Society could not verify compliance, which could leave a BC resident seeking advice from a temporary PFL unprotected in the event of negligence. Would it be unreasonable, however, to expect a client of a temporarily mobile PFL in British Columbia to have conducted some due diligence to determine if the PFL is insured in his home jurisdiction and that the insurance covers his advice given in the province?

Advantages of Option 3

- Would permit temporary mobility only where the foreign lawyer could meet certain conditions that the Law Society had determined were necessary to protect the public interest, such as insurance.

Disadvantages of Option 3

- Whether the conditions are met is left to the foreign lawyer to determine.

- The Law Society could not verify that a foreign lawyer met the required conditions short of developing some monitoring criteria that one suspects may be difficult to create and enforce, or reverting to a process similar to the current permit process.

- The Law Society would not be able to readily verify with the foreign lawyer's governing body that the foreign lawyer is eligible to visit, and would not have the advantage of the equivalent to the Federation of Law Societies' Interjurisdictional Database.

- Unlike Canadian lawyer mobility within Canada, there would be no form of agreement with a visiting lawyer's home governing body, such as on the handling of complaints, discipline, insurance claims etc., and no agreement to share information.

Discussion and Analysis

In each of the options, the Law Society would not be verifying that the foreign lawyer is properly registered in his or her jurisdiction. However, for the purposes of *temporary* practice, that verification may be of considerably less importance, particularly where the foreign lawyer otherwise has no nexus to the province.

The rules contemplated by the proposal address the "fly-in-fly-out" practice of foreign law. The vast majority of the foreign lawyers who may be expected to benefit from such rules would have already been retained prior to their appearance in British Columbia. This contrasts with a lawyer who has established a nexus in British Columbia who may market his services, and be retained by clients, in the province. Clients in the latter situation may reasonably expect the Law Society to be regulating the provision of such services. Clients in the former may be surprised that the Law Society does so.

If that analysis is correct, then there would be no advantage to the Law Society pre-approving jurisdictions as contemplated in Option 2. Undertaking such an analysis would be a very labour-intensive exercise, and it would need continuous updating. The foreign jurisdiction cannot be vetted on an ad hoc basis because temporarily mobile foreign lawyers would need to know their jurisdiction is an approved jurisdiction *before* coming to the province. Moreover, as that option presents concerns under a human rights analysis, it would be necessary to establish a bona fide occupational requirement to justify the differentiation, and this would be difficult to achieve. Option 2 is therefore the least advantageous option through which to achieve the policy objective and the Committee therefore does not recommend that option.

Option 1, on the other hand, presents a reasonable method of achieving the policy objective. It treats foreign lawyers from all jurisdictions in the same manner, uses the fewest resources, and enhances the ability for the provision of advice on foreign law in a manner that is consistent with the Law Society's ability to protect the public interest. It is least likely to raise any human rights concerns. While the Law Society would not be able to verify that foreign lawyers utilising the rules were registered to practise in their "home" jurisdiction, such individuals would be engaging in the unauthorized practise of law were they to practise in British Columbia, and this would continue to be an offence. The public interest is adequately protected, as the vast majority of the foreign lawyers who would utilise the rules would have been retained outside of British Columbia, and clients ought to rely on the lawyer's home jurisdiction's requirements for licensing and practice.

Option 3 is also a reasonable method to achieve the policy objective. It may be thought of as an extension on Option 1. Option 3, like Option 1, would rely on the licensing of the lawyer by the home jurisdiction. It would add, however, certain requirements that the

Law Society considers necessary for practice in British Columbia that may or may not be required by the home jurisdiction. If Option 3 were used, temporary mobility would be permitted if the lawyer is allowed to practice in his or her home jurisdiction and can meet specified requirements set out by the Law Society regardless of whether they are required by the home jurisdiction. If met, temporary advice could be given without a permit. If the conditions could not be met, a permit would have to be requested. Failure to obtain a permit would result in the risk of a prosecution for unauthorized practise.

Option 3 may meet the policy objective more closely than Option 1. The Law Society has long considered that the public interest is best protected if lawyers are insured. However, not all jurisdictions require lawyers to be insured. Therefore, a foreign lawyer who meets all the requirements of his or her home jurisdiction may not be required to be insured. While relying on regulatory requirements of the home jurisdiction in order to permit temporary mobility for foreign lawyers to British Columbia makes sense, some protections that citizens in British Columbia may reasonably expect could still be required to permit such practice in British Columbia should Option 3 be chosen. On the other hand, as soon as that lawyer leaves the province, those protections would evaporate, so the protection may be illusory.

If Option 3 is chosen, it would be useful to consider what "additional requirements" should be included. The following are presented for discussion:

1. Insurance. The foreign lawyer must have professional liability insurance coverage from his or her home jurisdiction that covers the foreign lawyer's activities in British Columbia. Practitioners of foreign law are required to carry professional liability insurance, bond, indemnity or other security in a form and amount at least reasonably comparable to that required of lawyers in British Columbia. Such a requirement could be considered for temporary mobility, as well, although some thought should be given as to whether requiring the lawyer to be *more* insured than he or she is at home in order to engage in "fly-in-fly-out" mobility might be excessive.

2. "Entitled to Practice law" In other words, to engage in temporary mobility, the lawyer must not be prevented from practicing in his or her home jurisdiction.

3. Not be the subject to conditions or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings relating to discipline, competency or capacity.

4. Not be the subject of criminal or disciplinary proceedings in any jurisdiction.

5. Have no disciplinary record in any jurisdiction.

6. Not establish an economic nexus with British Columbia. An economic nexus could be defined as:

    a. Providing legal services beyond the time frame to be determined for "fly-in-fly out" temporary practice;

    b. Opening an office from which legal services are offered or provided to the public;

    c. Becoming resident;

    d. Holding out or allowing to be held out as willing or qualified to provide legal services, except on a fly-in-fly basis.

7. Experience. To obtain a PFL permit, a PFL must have practiced law of the foreign jurisdiction for 3 of the last 5 years (or undertake to practise under the supervision of a PFL who has practised for 3 of the last 5 years. Should this be required for temporary mobility? If a lawyer is duly qualified in his or her home jurisdiction, should it matter for the purposes of temporary mobility to British Columbia that the lawyer has practiced for 3 of the past 5 years? In cases where a lawyer with lesser experience may have already been retained by a resident of this province, is it sensible to prohibit that lawyer from coming to British Columbia on a fly-in-fly-out basis to provide advice or take instruction on a file?

While agreeing that Option 2 should not be recommended, the Committee did not have a preference between Options 1 and 3. Option 1 would require reliance solely on the licensing requirements of a foreign lawyer's home jurisdiction, but recognized that those requirements already governed the relationship between a foreign lawyer and a BC client where the work was done outside of the province. On the other hand, creating a requirement that temporarily mobile lawyers practicing without a permit in BC would still be required to meet some of the generally considered "essentials" that are considered to protect the public interest found favour with many of the members of the Committee. However, it was also questioned whether there was any point to creating conditions if the Law Society was not intending to verify that they were met. Would the existence of conditions create an expectation that the Law Society would verify that they were complied with proactively rather than reactively. Because no preference was expressed, the Committee resolved to send both Options 1 and 3 to the Benchers for debate.

Much of the discussion above is premised on the notion that "fly-in-fly-out" temporary legal practice addresses legal services provided by foreign lawyers that have been retained by someone in British Columbia to deal with a matter in a foreign jurisdiction, and that the lawyer was retained before ever coming to British Columbia. It recognizes

that the lawyer may on occasion need to come to British Columbia to advise the client, seek instructions, and perhaps engage in other activities that amount to the practice of law. It could also extend to any law firm that has offices in a foreign country with lawyers practising the law of that country who may be required to come to British Columbia to assist on a file by providing advice about the law of a foreign country. In these types of situations, the need for an extended stay in the province by the foreign lawyer is unlikely. Consequently, the length of the time that the foreign lawyer should be permitted to practise should reflect that fact. Queensland's legislation, for example, permits temporary practise that does not exceed an aggregate of 90 days in any 12 month period. That may be too long on the basis of the analysis set out above. After debate, the Committee agreed that a "30 day within 12 month period" would be more consistent with the rationale for the proposal, and therefore makes that recommendation.

Key Comparisons

No other law society in Canada currently permits temporary mobility for foreign lawyers. On the other hand, it is only very recently that some law societies have removed the local residency requirement for PFLs, so the question of temporary mobility would have been an uncontemplated consequence.

As mentioned above, Australia has legislation permitting temporary mobility for practitioners of foreign law.

Consultations

The Committee has not consulted with the profession or the public concerning this proposal.

If this proposal were adopted, it would be the first of its kind in Canada. Law Society Staff have advised staff at some of the other Canadian law societies and the Federation of Law Societies that the proposal may be under consideration. If the Subcommittee' recommendation is approved, it will be of interest to other law societies who may well find themselves in a position of having to adopt a similar rule. The rule would become known through the negotiations Canada is conducting internationally, and other jurisdictions would likely expect some degree of similarity on the issue amongst the internal jurisdictions within Canada.

If the proposal is accepted by the Benchers in principle, the Committee recommends consultations with operational staff in connection with preparing a rule, particularly, but not limited to, staff in the Member Services Department, which has primary responsibility for dealing with PFL Permits. Staff in the Unauthorized Practice Department should be consulted as well as it could be responsible for addressing unauthorized practice issues that would arise from the violation of any rule.

Conclusion

The Credentials Committee recommends that the Law Society rules be amended to permit a form of temporary mobility for PFLs, permitting the practice of foreign law without a permit where no nexus to British Columbia has been established.

MDL/al

The Law Society of British Columbia

2013 Fees and Budgets

Presentation to:
Benchers
July 13, 2012

2013 Overview

The Law Society of British Columbia

- The Finance Committee reviewed and considered budgets for General Fund, Special Compensation Fund and the Lawyers Insurance Fund in May 2012 and recommends the overall fee proposal
- Executive Committee reviewed the overall fee proposal at its June meeting
- Overall mandatory fee increase of 1.4%
- Law Society portion of General Fund Fee increased by $42 (2.8%)
- Finance Committee considered allowing credit card and/or installments for fee payments but does not recommend implementing these options
- Special Compensation Fund assessment reduced from $1 to $nil
- Lawyers Insurance Fund assessment remains at $1,750
- Trust Administration Fee remains at $10
- CanLII contribution increased from $34.71 to $35.37
- CLBC increased by $5 to $185
- Federation of Law Societies fees increased by $5 to $25
- No change in Lawyers Assistance Program or Advocate fees or Pro Bono percentage

2013 Fee Recommendations

The Law Society of British Columbia

	2013	2012	Difference	%
General Fund Fee - Law Society portion	$ 1,544.75	$ 1,503.17	$ 41.58	2.8%
Federation of Law Societies	$ 25.00	$ 20.00	$ 5.00	25.0%
CanLII	$ 35.37	$ 34.71	$ 0.66	1.9%
Pro Bono Contribution	$ 15.44	$ 15.02	$ 0.42	2.8%
Law Society Fee	$ 1,620.56	$ 1,572.90	$ 47.66	3.0%
CLBC Fee	$ 185.00	$ 180.00	$ 5.00	2.8%
LAP Fee	$ 60.00	$ 60.00	$ -	-
Advocate Subscription	$ 27.50	$ 27.50	$ -	-
Total Practice Fee	$ 1,893.06	$ 1,840.40	$ 52.66	2.9%
Special Fund Assessment	$ -	$ 1.00	$ (1.00)	
Total Practice Fee and Special Fund	$ 1,893.06	$ 1,841.40	$ 51.66	2.8%
Insurance Assessment	$ 1,750.00	$ 1,750.00	$ -	-
Total Mandatory Fee (excluding taxes)	$ 3,643.06	$ 3,591.40	$ 51.66	1.4%

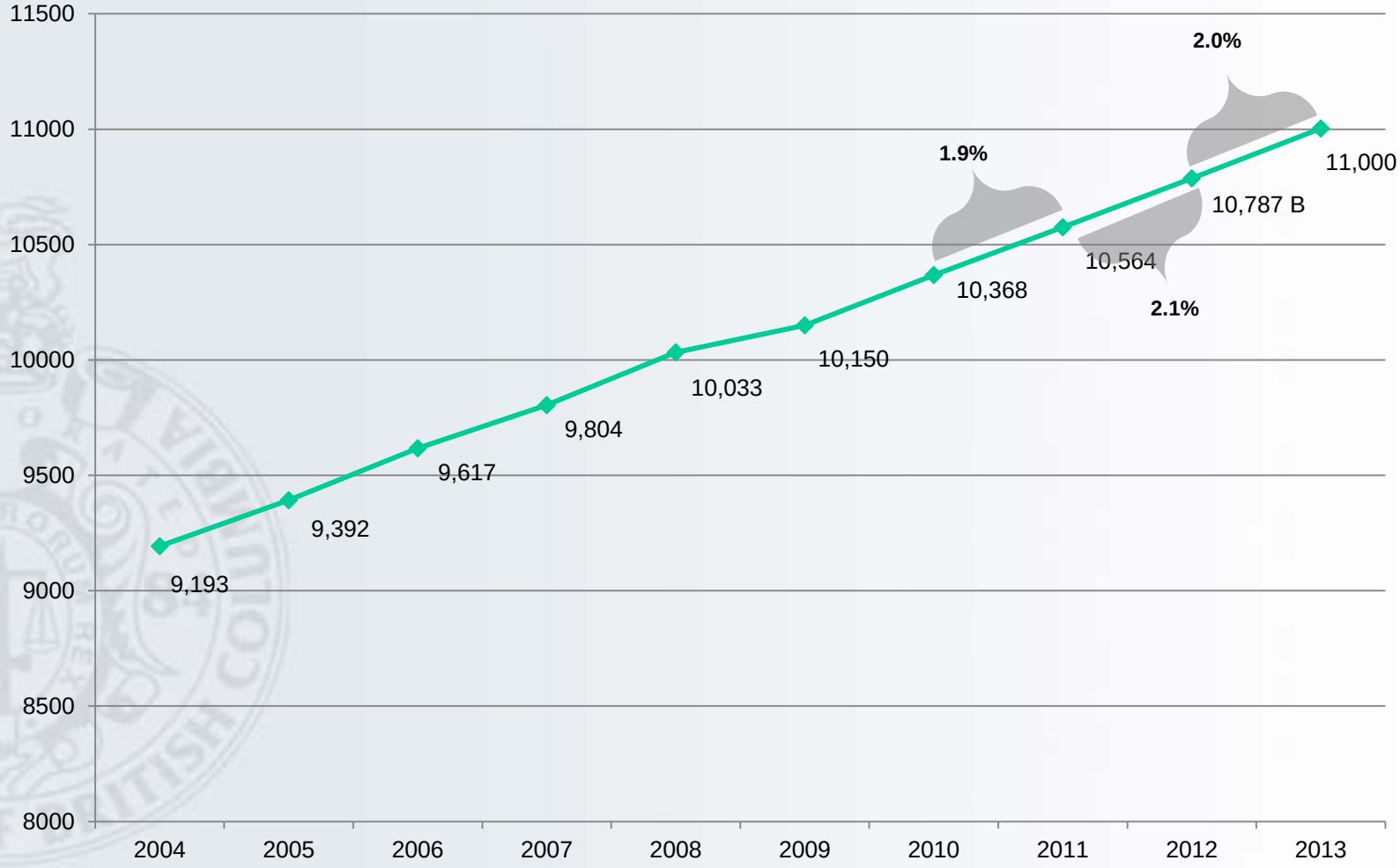
2013 General Fund Overview

The Law Society of British Columbia

- Zero based budgeting process, full management participation
- Deliver core regulatory programs and meet KPMs
- Continued support of Law Society Strategic Plan and Priorities, including $75,000 Bencher committee contingency budget
- Practicing membership increases by 2% from 2012 projection to 11,000 members
- Operating expense increase consists mainly of market based staff salary adjustments
- Overall net .5 FTE staffing increase due to increase in part-time hours offset by the reduction of one vacant position, no new staff positions
- Provide support for new governance structure
- Implementation of electronic document and records management system
- Assumed six months of external lease revenue for leasable space at 845/835 Cambie
- Balanced budget - maintain current reserve and cash operating levels

Practising Membership Projection

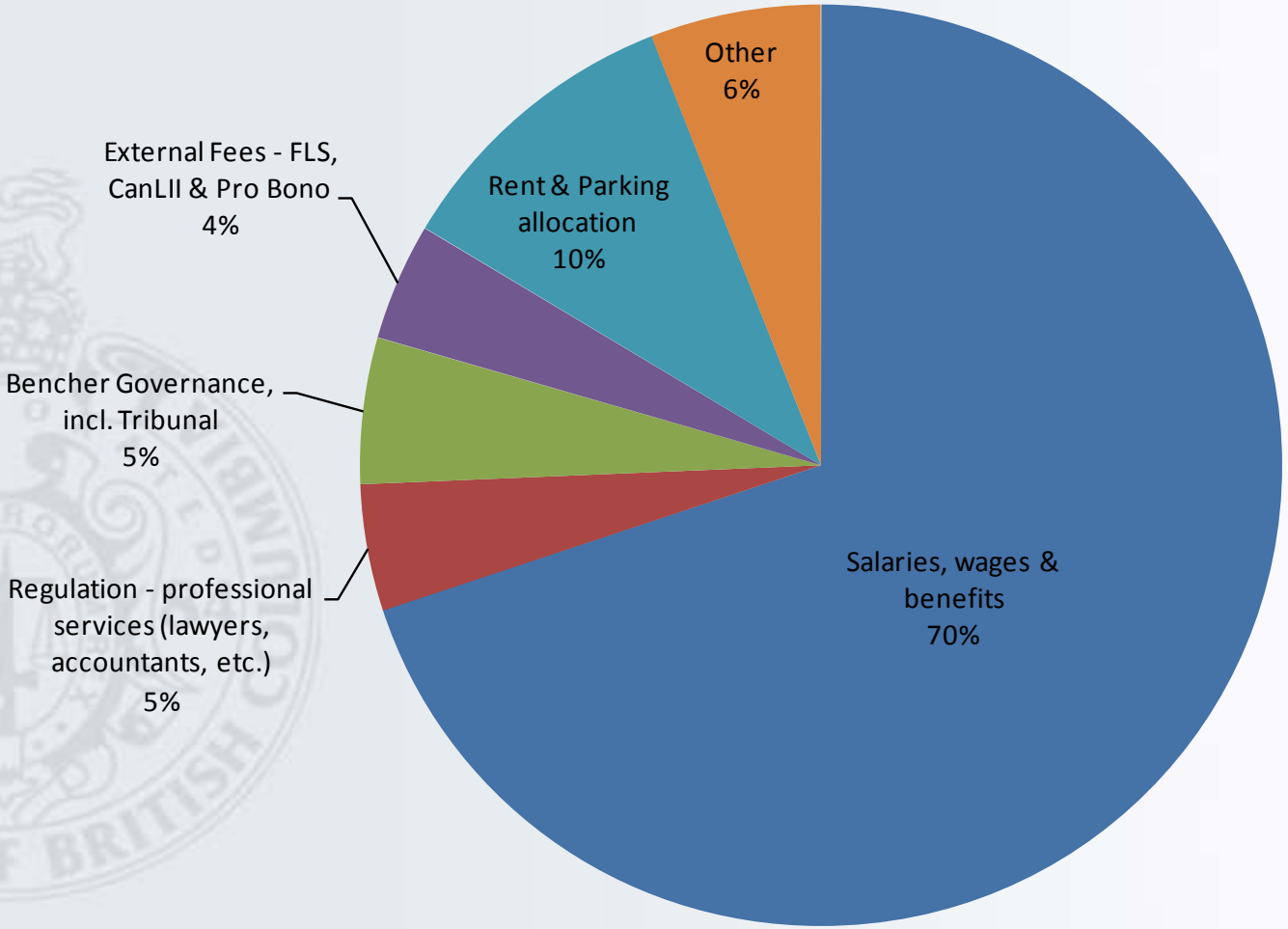
The Law Society of British Columbia



2013 average practising membership projected at 11,000

2013 Operating Expenses – composition by type

The Law Society of British Columbia



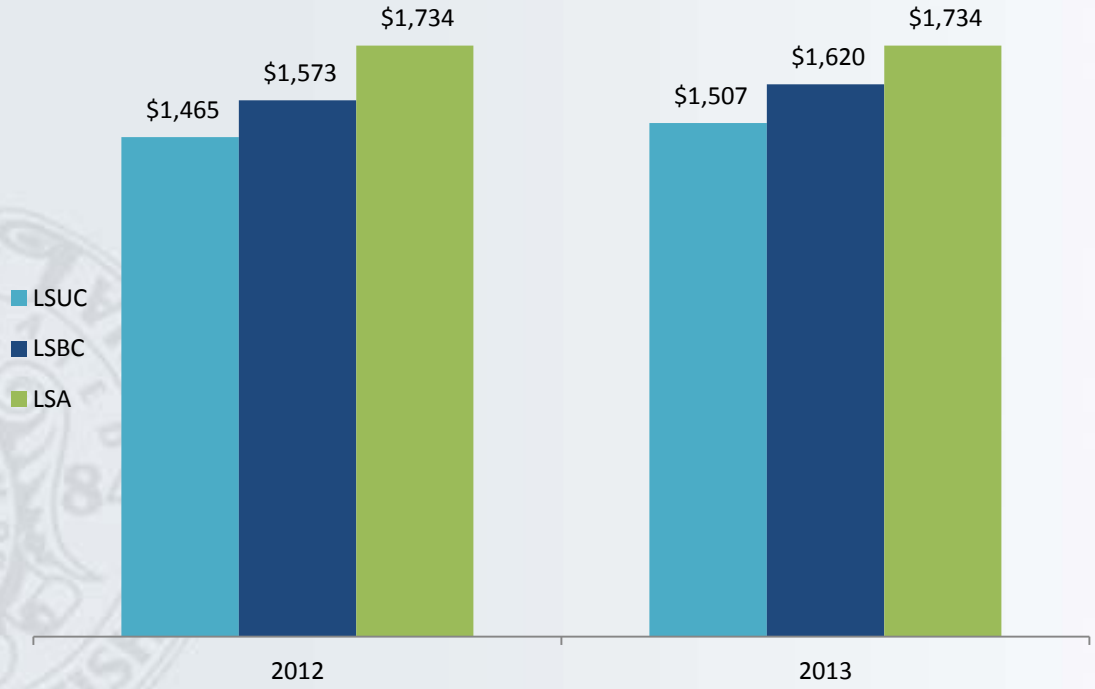
2013 Capital Expenditures

- 2013 capital expenditures part of the 10 year capital plan
- $176 capital allocation is included in the Practice Fee
  (includes 845 Cambie building loan repayment)
- No change required

Operations	Computer hardware, software and phone replacement	$186,000
	Equipment, furniture and fixtures replacement	$120,000
	Workspace Improvements – third floor	$605,000
	Workspace Improvements – other	$145,000
845 Cambie St.	Building maintenance – terraces, lighting and parking garage upgrades	$704,000
	Total	$1,760,000

The Law Society of British Columbia

Key Practice Fee Comparisons



- 2013 LSBC practice fee compared to 2012 LSUC and LSA practice fees, adjusted by 2% for comparison
- 2012 LSUC practice fee adjusted by $2.75 million to reflect contribution to operating costs from reserve ($76 per member)

TAF Budget and Projections

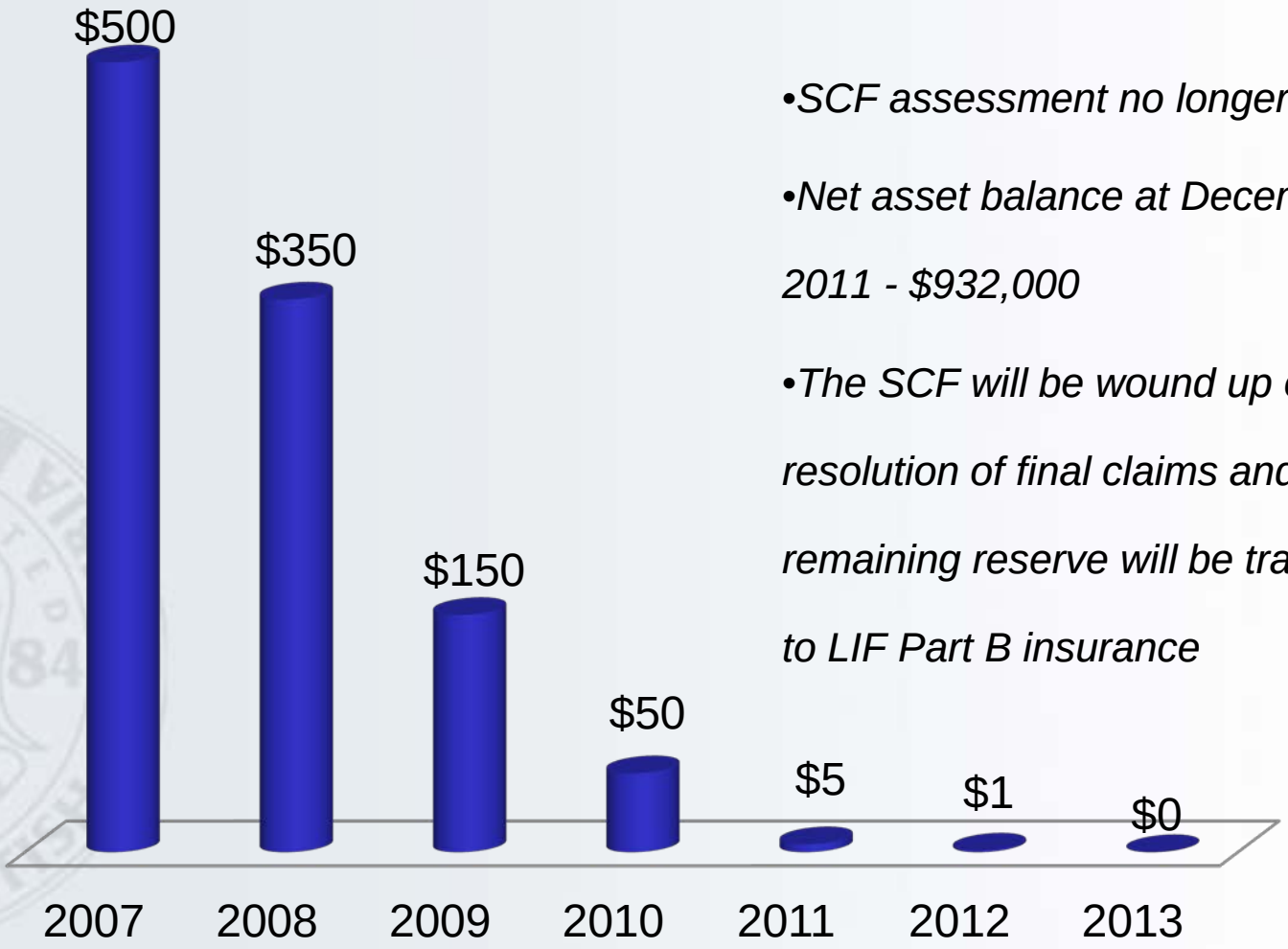
The Law Society of British Columbia

	Revenue			Total	Net	Cumulative
	Matters	Rate	Total	Expense	Inc (Def)	TAF Reserve
2011 Actual	231,557	$ 10.00	$ 2,315,568	$ 2,298,416	$ 17,152	$ 238,835
2012 Forecast	240,000	$ 10.00	$ 2,400,000	$ 2,400,000	$ -	$ 238.835
2013 Budget	**240,000**	**$ 10.00**	**$ 2,400,000**	**$ 2,388,684**	**$ 11,316**	**$ 250,151**

- Trust assurance program funded by $10 TAF
- TAF revenue currently $2.3 million
- Assume TAF transaction levels relatively stable
- Reduction of one vacant staff position in 2013
- TAF reserve at minimal levels but no use of TAF reserve expected in 2012 or 2013

2013 SCF Assessment

The Law Society of British Columbia



- *SCF assessment no longer required*
- *Net asset balance at December 2011 - $932,000*
- *The SCF will be wound up on resolution of final claims and any remaining reserve will be transferred to LIF Part B insurance*

2013 LIF Assumptions

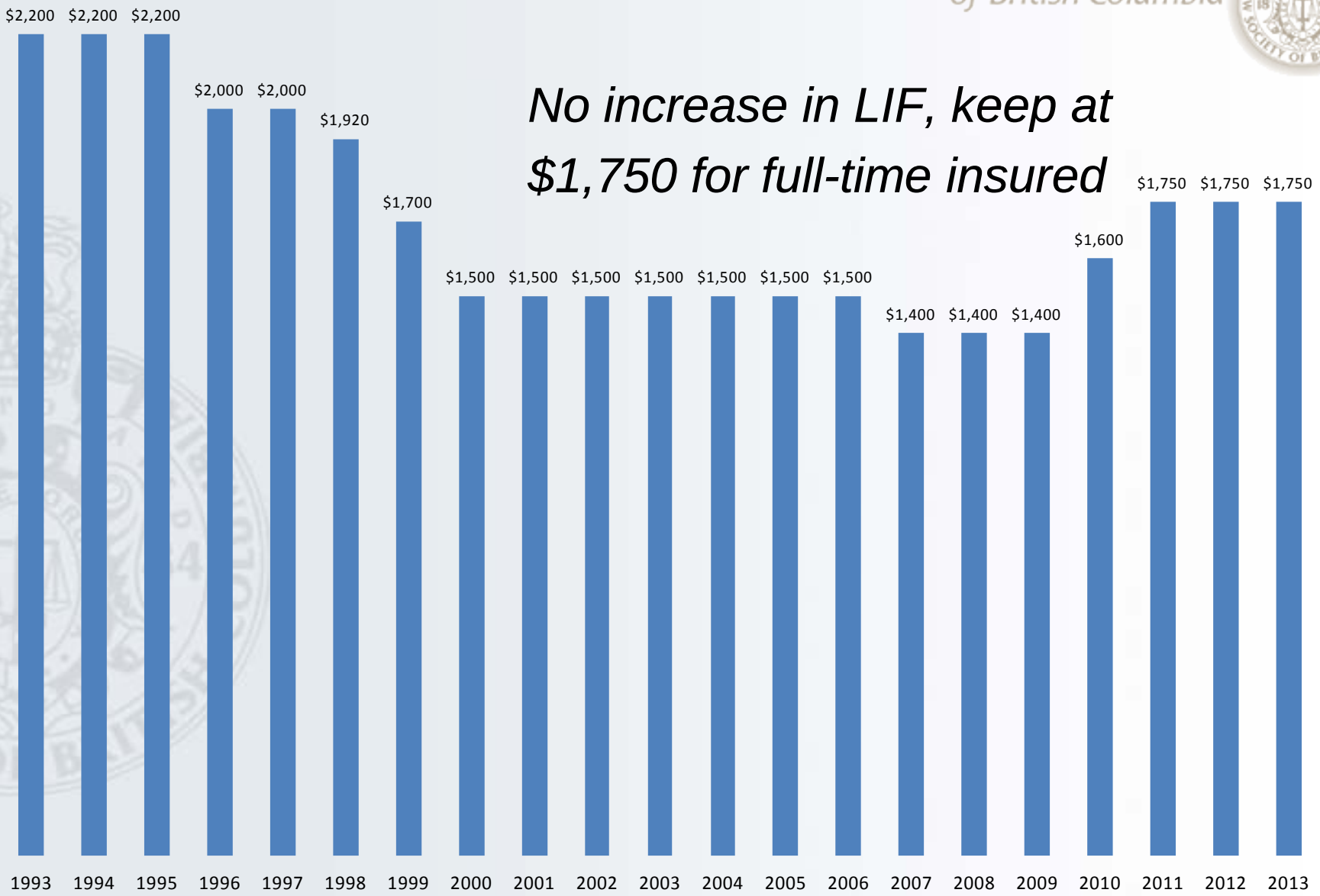
The Law Society of British Columbia

- Claims frequency in 2011 increased from 2008 by 17%. Frequency for 2012 is trending at pre-recession levels
- Annual payments increased from $11 m (10 year average) to $14.7 m in 2011 and are expected to remain in that range for 2012
- New *Limitation Act* expected to give rise to additional exposures for the fund
- Operating expenses include increased provision for “stop-loss” coverage
- At 1.3%, 2011 investment returns were lower than projected. Assume 4% return for 2013
- LIF reserve at December 31, 2011 is $44.3 m, including internally restricted reserve of $17.5 m for Part B
- Recommend no increase to insurance fee - remain at $1,750

2013 LIF assessment

The Law Society of British Columbia

No increase in LIF, keep at $1,750 for full-time insured



The Law Society of British Columbia

RESOLUTIONS

General Fund

The Law Society of British Columbia

Be it resolved that, commencing January 1, 2013, the practice fee be set at $1,893.06, pursuant to section 23(1)(a) of the Legal Profession Act, consisting of the following amounts:

General Fund	$1,544.75
Federation of Law Societies contribution	25.00
CanLII contribution	35.37
Pro Bono contribution	15.44
CLBC	185.00
LAP	60.00
Advocate	27.50
Practice Fee	$1,893.06

Lawyers Insurance Fund

The Law Society of British Columbia

Be it resolved that:

- the insurance fee for 2013 pursuant to section 30(3) of the Legal Profession Act be fixed at $1,750;
- the part-time insurance fee for 2013 pursuant to Rule 3-22(1) be fixed at $875; and
- the insurance surcharge for 2013 pursuant to Rule 3-26(2) be fixed at $1,000.

The Law Society of British Columbia

APPENDICES

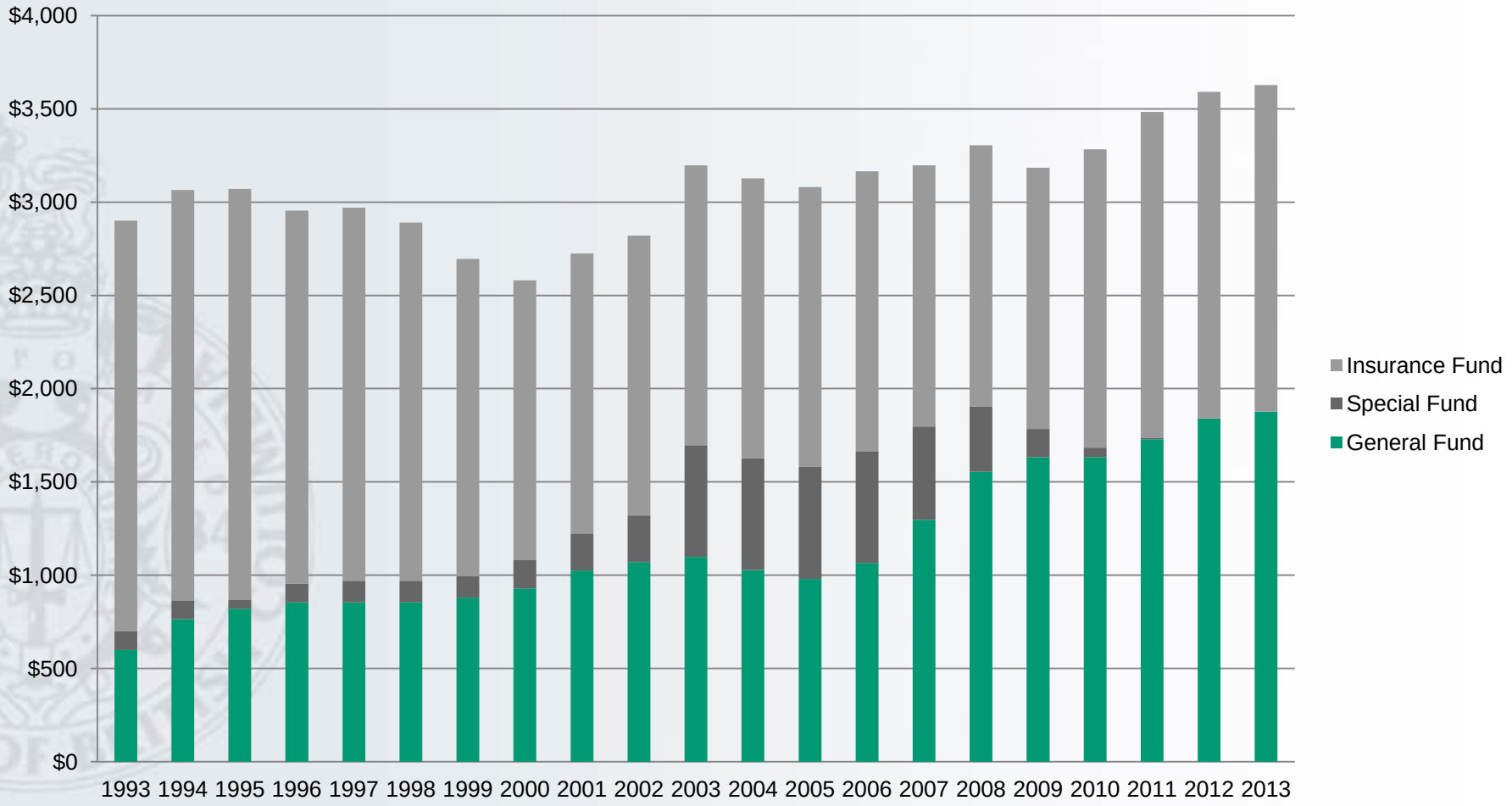
Mandatory Fee Comparison (Full Time Practising Insured Lawyer)

The Law Society of British Columbia

- 2013 LSBC practice fee compared to 2012 LSUC and LSA practice fees, adjusted by 2% for comparison
- 2012 LSUC practice fee adjusted by $2.75 million to reflect contribution to operating costs from reserve ($76 per member)

Total Fee Comparison Year Over Year

The Law Society of British Columbia



The Law Society of British Columbia

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2013
GENERAL FUND SUMMARY

	2013 Budget	2012 Budget	2011 Actual	2013B vs 2012B Variance	%	2013B vs 2011A Variance	%	2013 Budget FTEs	2012 Budget FTEs	FTE Change
GENERAL FUND REVENUES										
Membership fees	16,311,663	15,513,134	14,097,501							
PLTC and enrolment fees	1,002,250	1,002,250	965,542							
Electronic filing revenue	835,160	750,000	725,546							
Interest income	277,500	345,250	336,127							
Other revenue	1,187,385	1,245,518	1,236,796							
TOTAL GENERAL FUND REVENUES	**19,613,958**	**18,856,152**	**17,361,513**	**757,806**	**4.0%**	**2,252,445**	**13.0%**			
GENERAL FUND EXPENSES										
Benchers Governance	1,667,105	1,650,077	1,492,647					0.15	0.15	-
Corporate Services	3,098,105	2,941,720	2,919,615					22.90	22.50	0.40
Credentials & Practice	3,547,709	3,508,362	3,246,883					34.17	34.17	-
Executive Services	2,028,864	1,984,589	1,964,312					20.20	19.85	0.35
Policy and Legal Services	2,007,054	1,909,366	1,725,348					12.50	11.90	0.60
Regulation	7,732,746	7,735,471	7,557,311					58.20	57.80	0.40
Depreciation	-	-	-					-	-	-
TOTAL GENERAL FUND EXPENSES	**20,081,583**	**19,729,585**	**18,906,117**	**351,998**	**1.8%**	**1,175,466**	**6.2%**	**148.12**	**146.37**	**1.75**
GENERAL FUND NET CONTRIBUTION	**(467,625)**	**(873,433)**	**(1,544,604)**	**405,808**		**1,076,979**		**148.12**	**146.37**	**1.75**
Net Building (845 Cambie) Income (1)	**467,615**	**839,907**	**897,489**	**(372,292)**		**(429,874)**		**2.00**	**2.00**	**-**
GENERAL FUND NET CONTRIBUTION (Inc Bldg)	**(9)**	**(33,526)**	**(647,115)**	**33,516**		**647,106**		**150.12**	**148.37**	**1.75**
Trust Assurance Program										
Trust Administration Fee Revenue	2,400,000	2,500,000	2,315,568	(100,000)	-4.0%	84,432	3.6%			
Trust Administration Department	2,388,684	2,498,551	2,298,416	(109,867)	-4.4%	90,268	3.9%			
Net Trust Assurance Program	**11,316**	**1,449**	**17,152**	**9,867**		**(5,836)**		**16.60**	**17.60**	**(1.00)**
TOTAL NET GENERAL FUND & TAP CONTRIBUTION	**11,307**	**(32,076)**	**(629,963)**	**43,383**		**641,270**		**166.72**	**165.97**	**0.75**
								LIF FTE's	**23.00**	**23.25**	**(0.25)**
								TOTAL Law Society FTE's	**189.72**	**189.22**	**0.50**

Notes:

(1) This line represents the profit of operating the building at 845 Cambie.

The Law Society of British Columbia

The Law Society of British Columbia - Special Compensation Fund
Statement of Revenue and Expense
For the Year ended December 31, 2013

	2013 Budget	2012 Budget	2013B vs 2012B Variance
Revenue			
Annual assessment	-	10,787	
Recoveries	550,000	-	
	550,000	10,787	539,213
Expense			
Audit	9,000	9,000	
Claim and costs	71,000	538,000	
Counsel and forensic audit fees	40,000	40,000	
Miscellaneous	1,000	1,000	
	121,000	588,000	(467,000)
Net contribution	429,000	(577,213)	1,006,213
Net assets - Beginning of year	354,540	931,753	
Net assets - End of year	783,540	354,540	

The Law Society of British Columbia

The Law Society of British Columbia - Lawyers Insurance Fund
Consolidated Statement of Revenue and Expense
For the Year ended December 31, 2013

	2013 Budget	2012 Budget	2013/2012 Budget Variance	%	2013 Budget FTEs	2012 Budget FTEs	FTE Change
Revenue							
Annual assessment	13,725,200	13,601,650					
Investment income, 2012 includes FV adjustments	3,506,601	6,207,270					
Other income	50,000	62,000					
	17,281,801	19,870,920	(2,589,119)	-15.0%			
Insurance Expense							
Actuaries, consultants and investment brokers' fees	456,710	421,080					
Allocated office rent	147,395	147,395					
Contribution to program and administration costs of General Fund	1,608,731	1,568,901					
Legal	20,000	20,000					
Office	1,018,383	947,138					
Premium taxes	8,814	12,367					
Actuarial provision for claim payments	12,613,890	14,812,660					
Provision for ULAE	27,000	53,000					
Salaries, wages and benefits	2,797,190	2,755,440					
	18,698,113	20,737,981	(2,039,868)	-10.9%			
Loss Prevention Expense							
Contribution to co-sponsored program costs of General Fund	720,754	701,366					
Total Expense	19,418,867	21,439,347	(2,020,480)	-10.4%			
Net Contribution	(2,137,066)	(1,568,427)	(568,639)		23.00	23.25	(0.25)

Capital Costs – 10 year plan

The Law Society of British Columbia

	TOTAL	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
INFORMATION TECHNOLOGY											
Computer Hardware	1,817,975	144,040	118,265	136,190	279,940	139,540	200,000	200,000	200,000	200,000	200,000
Computer Software	1,293,975	31,075	147,475	91,475	163,475	110,475	150,000	150,000	150,000	150,000	150,000
System Upgrades	-	-	-	-	-	-	-	-	-	-	-
Phone System	387,000	10,500	10,500	10,500	292,500	10,500	10,500	10,500	10,500	10,500	10,500
Subtotal	3,498,950	185,615	276,240	238,165	735,915	260,515	360,500	360,500	360,500	360,500	360,500
OPERATIONS											
Equipment, Furniture & Fixtures	1,871,400	230,000	135,000	165,400	205,000	135,000	135,000	208,000	208,000	290,000	160,000
Subtotal	5,370,350	415,615	411,240	403,565	940,915	395,515	495,500	568,500	568,500	650,500	520,500
845 BUILDING											
Base Building/Tenant Improvements	5,099,806	704,364	849,158	215,289	206,354	423,784	447,319	573,538	600,000	540,000	540,000
LSBC Workspace Renovations	3,828,000	640,000	343,000	510,000	595,000	225,000	300,000	300,000	300,000	300,000	315,000
Subtotal	8,927,806	1,344,364	1,192,158	725,289	801,354	648,784	747,319	873,538	900,000	840,000	855,000
TOTAL CAPITAL PLAN - 845 Cambie	14,298,156	1,759,979	1,603,398	1,128,854	1,742,269	1,044,299	1,242,819	1,442,038	1,468,500	1,490,500	1,375,500

Number of members (FTEs)	11,000	11,100	11,150	11,200	11,250	11,300	11,350	11,400	11,450	11,500
Capital Fee Portion	176	176	176	176	176	176	176	176	176	176
Cumulative Over/Under funded C/F	(505,701)	(829,680)	(979,477)	(645,931)	(917,000)	(481,298)	(235,318)	(179,756)	(141,856)	(117,156)
Current Year Capital Fee Collection	1,936,000	1,953,600	1,962,400	1,971,200	1,980,000	1,988,800	1,997,600	2,006,400	2,015,200	2,024,000
Total Capital Fee Available	1,430,300	1,123,921	982,923	1,325,269	1,063,000	1,507,502	1,762,282	1,826,644	1,873,344	1,906,844
$500,000 building loan repayment	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(100,000)
Capital expenditures as above	(1,759,979)	(1,603,398)	(1,128,854)	(1,742,269)	(1,044,299)	(1,242,819)	(1,442,038)	(1,468,500)	(1,490,500)	(1,375,500)
Cumulative Over/(Under) funded *	(829,680)	(979,477)	(645,931)	(917,000)	(481,298)	(235,318)	(179,756)	(141,856)	(117,156)	431,344

*Capital loan of $1 million authorized

The Law Society of British Columbia

Report to Benchers

July 15, 2012

MID-YEAR REPORT

Access to Legal Services Advisory Committee:

Richard Stewart, Q.C, Chair

David Mossop, Q.C., Vice-Chair

Haydn Acheson

David Crossin, Q.C.

Tom Fellhauer

Carol Hickman, Q.C., Life-Bencher

Glen Ridgway, Q.C., Life-Bencher

Purpose of Report: Information

Prepared by Policy & Legal Services

Doug Munro 604-605-5313

PURPOSE OF REPORT

Pursuant to the strategic planning process, advisory committees are required to report to the Benchers twice a year. The mid-year report of the Access to Legal Services Advisory Committee ("Committee") briefly summarizes what the Committee has worked on for the first half of 2012, and sketches out what the Committee intends to pursue for the remainder of the year.

RESPONSIBILITIES

The Committee was assigned several responsibilities in 2012, and had some carry-over responsibilities as well.

The Committee carried the following responsibilities into 2012:

1) Monitoring matters related to access to justice and legal services

The Committee continued to fulfill its monitoring function through several main channels. Staff monitors issues related to access to justice, legal services, the rule of law, court rules and cost issues through a variety of print and online sources. The Committee supplements this research with information that comes to the attention of its members in their daily practice and also through discussions with guests.

The most notable issues that has arisen this year, and which the Benchers are aware, is the merger of the Ministry of the Attorney General and Solicitor General into the new Ministry of Justice and the justice review the Ministry of Justice has commissioned Geoff Cowper to perform.

2) Oversight of the implementation of the recommendations of the Delivery of Legal Services Task Force

The Committee continues to have the responsibility to ensure that the recommendations of the Delivery of Legal Services Task Force move forward through implementation. The oversight function consists largely of reviewing status updates from groups that are carrying out on the ground work. The Benchers are aware of the referral to the Ethics Committee, as discussed at the May and June Benchers' meetings. A brief update of the discussions with the courts about paralegal pilot projects follows.

The Paralegal Pilot Project Working Group consists of Bruce LeRose, Q.C. and Art Vertlieb, Q.C. as co-chairs, Carol Hickman, Q.C., David Mossop, Q.C. and Richard Stewart, Q.C. The Working Group has been liaising with the British Columbia Supreme Court and Provincial Court of British Columbia about the viability of pilot projects in family law. The family law pilots were designed based on input from the Family Law Task Force. Discussions with each court are ongoing.

We have heard from the British Columbia Supreme Court that they have approved the pilot project in principle. The discussions that remain relate to establishing an evaluation methodology and then exploring issues around communications and the launch of the pilot.

Discussions with the Provincial Court are at an earlier stage, but are progressing favourably. It is expected that meetings with the Court will take place over the summer and hopefully the project will be closer being finalized in the fall.

3) The President assigned the Committee the following responsibilities in 2012:

A) Consider the issue of who the Law Society should regulate, from an access to legal services perspective

The question arising from the 2011 Benchers' retreat of whether the Law Society should regulate lawyers or all legal service providers was assigned to the Rule of Law and Lawyer Independence Advisory Committee and the Committee by President LeRose. The Committee's focus was to explore the issue from an access to legal services perspective. While the Committee held an initial discussion of this topic in February, it was later determined that the better vehicle for exploring this issue is through a Task Force.[1] Accordingly, the Committee has shifted its focus to other areas.

B) Consider concepts pursuant to Initiative 2-1(a) of the 2012-2014 Strategic Plan

Initiative 2-1(a) of the Strategic Plan states *Consider ways to improve the affordability of legal services: identify and consider new initiatives for improved access to legal services.* The area the Committee is focusing its attention on is pro bono.

In January, May and June the Committee engaged in an analysis of what problem it thinks is most pressing. This led to a range of concepts being identified, including: the need to get lawyers into rural communities (either in person or connected via technology); arriving at a better understanding of the services solicitors provide to the public as part of the access to legal services landscape; consider how to provide law students office ready skills (the Committee recognizes that this issue likely better resides with other groups); how to improve participation in and the delivery of pro bono.

The Committee decided after its big picture discussion that it was important to focus on a discrete topic and decided that pro bono was worth exploring in greater detail.

At its most recent meeting the Committee established framework for its analysis. It started by asking what is the problem it is seeking to address. The Committee considered the issue of people who wish to avail themselves of the services of a lawyer but are unable to afford to do so. In working through the discussion the Committee attempted to narrow the scope of its inquiry in an effort to arrive at a practical area of focus. The Committee made certain assumptions based on consideration of existing legal needs surveys and also based on the intuition of Committee members arising from their personal experience.

[1] Mr. LeRose indicated as much during his President's Report at the May Benchers meeting.

The Committee considered whether it made sense for it to engage in an analysis of what it costs firms of various sizes and in various locations to operate their practice. The Committee concluded that while this would be useful information for better understanding the economics of practice it would also be incredibly time consuming and the Committee might get mired in what turned out to be an academic enterprise. The Committee also observes that the Law Foundation of British Columbia and the Legal Services Society have commenced preliminary research into economic aspects of the justice system and there is a possibility those findings might shed light on the issue of operating costs of running a law practice.

The Committee next reviewed the most common areas of legal problems in British Columbia. The data was based on a review of the IPSOS Reid survey for the Legal Services Society of British Columbia (December 2009), but the discussion included consideration of other legal needs surveys and mapping projects. The Committee went through a prioritization of the types of legal problems people experience in order to identify if there is either a discrete area of law or discrete type of legal process that merits focused consideration. The Committee concluded that a further analysis of family law is important. The Committee arrived at this conclusion for a number of reasons including that family law is the most litigated area of civil law, the challenges that self-representation present in family law, the intersection of various aspects of law in family law disputes, and the disruptive nature of family law disputes.

The Committee also considered whether its analysis of pro bono should be limited to the area of family law or be broader. Various legal needs surveys suggest there are a range of areas of legal need and a many people do not receive the assistance of a lawyer due to cost considerations. The Committee determined that pro bono merited further consideration as a discrete subject.

Unless instructed otherwise by the Benchers, the Committee intends to continue its consideration of what the Law Society can do to foster greater participation in pro bono activities where the need is great, the outcome is important and cost of representation is a significant barrier, and in particular to also consider how better to assist people engaged in family law disputes who want access to a lawyer but are unable to afford one.

4) Meetings with Guests

In addition to the above, the Committee held several meetings with guests.

At the March meeting the Committee met with Mark Benton, Q.C., Executive Director of the Legal Services Society, Johanne Blenkin, Executive Director of the BC Courthouse Library Society, and Wayne Robertson, Q.C., Executive Director of the Law Foundation of British Columbia. The purpose of the meeting was to receive some input early in the year from other key organizations interested in the administration of justice and the public access to legal services. Key themes that were identified include: collaborating with other justice system stakeholders, continue working on expanding the scope of legal services non-lawyers can provide, consider how to ensure the supply of lawyers outside the Lower Mainland and Victoria, and generally consider how to improve access for people who have some resources but not enough for full service of a lawyer.

At the October 2011 Benchers meeting, then Deputy Attorney General Loukidelis expressed an

interest on the part of the Ministry to discuss with the Law Society what might be done to increase and improve usage of the Justice Access Centres (JACs). Past President Hume indicated that the Committee would liaise with the Ministry. As a result, at the April meeting the Committee met with Jay Chalke, Q.C. Assistant Deputy Minister and Irene Robertson from the Ministry of Justice as well as Jamie Maclaren, Executive Director of Access Pro Bono.

The Ministry of Justice supports JACs in Vancouver and Nanaimo and is looking to increase participation in the JACs and expand them out into other communities. The Ministry faces challenges with respect to the money to broaden the reach of the JACs, and is also looking to find ways to encourage lawyers and paralegals to provide pro bono at the JACs. The Ministry works closely with Access Pro Bono and indicated that Access Pro Bono is critical to the JACs success.

As the Committee continues to discuss pro bono in 2012 it will also consider the issues arising from the April meeting with Ministry of Justice staff. To the extent technology and pro bono are moving to the forefront of the Ministry's considerations about the JACs, it is worth recalling a few of the observations the Law Society made in its May 2007 response to the Civil Justice Reform report with respect to "Hubs" (now known as JACs):

> The concept of an information Hub is a valuable idea for effecting civil justice reform. To the extent that the Hub will make legal information more readily available and accessible, it will dovetail with the object of making the public more knowledgeable about the civil justice system. As discussed, increased knowledge and understanding of the system is an important aspect of public confidence in the administration of justice.
>
> As the Hub is to exist in both physical locations, and be accessible through electronic means such as by phone and the Internet, technology will play a critical role in the success of the Hub. The Law Society recognizes that the authors of the Report have identified technology as a future issue for consideration. The research and dialogue about technology will have to occur prior to any viable model for the Hub being established.
>
> …
>
> To a certain extent, the viability of the Hub seems predicated on the assumption that once conflicts of interest and unbundling issues have been resolved, lawyers will provide *pro bono* assistance. The authors of the Report write:
>
> > We believe that, consistent with the altruistic reasons many lawyers had for deciding to enter law school, most lawyers want to volunteer and mandatory requirements are therefore not necessary at this time. If the conflict and unbundling issues can be resolved, it will be a matter of encouraging them to volunteer (at the firm or professional level), and rewarding them for doing so. (p. 9)
>
> This observation created some concern when discussed by the Law Society's Access to Justice Committee. First, to what extent is the success of the proposed

> Hub contingent on the prophecy of *pro bono* participation? The government should carefully consider how it intends to fund both legal and non-legal services through the Hub in the absence of the requisite number of volunteers. If the prediction regarding *pro bono* participation does not bear out, and the information Hub fails to fulfill its promise, public confidence in the administration of justice may be adversely affected. Even if there is increased *pro bono* participation, we must be alive to the possibility that people will give their time when they can, and that coverage gaps will exist – to operate to its potential, the Hub will require effective administration to ensure people who access the Hub are not being provided an unequal level of services.
>
> In addition to determining the amount of funding required to operate the Hub, the government might wish to consider what other models could encourage lawyers to volunteer because we do not believe the government can *require* lawyers to provide *pro bono* services as a condition of being a lawyer. For example: providing interest-free status and/or tax rebates on student loans for volunteer participation in the Hub might encourage newly called lawyers (and social workers) to participate. Such an initiative would require coordination with other governments, but it recognizes that lawyers, like all members of society, have financial obligations that influence their decisions.
>
> We also note that the organization that is responsible for implementing and operating the Hub faces the danger of creating a perception that the information, advice and assistance provided through the Hub may further the operator's own ends, rather than the user's ends. This danger is particularly relevant if the government is the operator of the Hub, because many people who access the Hub's services will find themselves in a position of adverse interest with the government.
>
> The Law Society encourages the government to consider providing funding for a certain number of full time, paid lawyers to work at the Hub. These issues should be resolved prior to, or concurrent with, the Hub's infrastructure being established, and adequate funding should be in place to guard against the risk that the projected *pro bono* participation does not occur.

The value in recalling this information does not lie in reminding the government that we raised caution about technology and the limitations of pro bono in the JACs/Hubs; rather, it is important to recall the assessment of the Benchers of the day now that the current Benchers are being called upon to consider the issues of pro bono and technology at the JACs. This may particularly be so with respect to the value of JACs and concerns about pro bono participation, as the views of the Benchers reflect a policy statements, whereas the views about technology reflect a practical concern regarding the architecture of the JACs. The Committee will be considering JACs further as part of its ongoing consideration of pro bono. This may include consideration of other clinic models that could effectively serve the public.

/DM

The Law Society of British Columbia

Report to Benchers
July 2012

EQUITY AND DIVERSITY ADVISORY COMMITTEE: MID-YEAR REPORT

Thelma O'Grady, Chair
Satwinder Bains, Vice-Chair
Maria Morellato, QC
Suzette Narbonne
Barry Zacharias
Elizabeth Hunt
Amyn Lalji

Purpose of Report: Information

Prepared by Policy & Legal Services
Michael Lucas, Manager
604-443-5777

Equity & Diversity Advisory Committee: Mid-Year Report

I. Introduction

The Equity & Diversity Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.

From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and maybe asked to develop the recommendations or policy alternatives regarding such initiatives.

The mandate is to:

- monitor and develop effective equity and diversity in the legal profession and the justice system in British Columbia;
- report to the Benchers on a semi-annual basis on those developments;
- advise the Benchers annually on priority planning in respect of issues affecting equity and diversity in the legal profession and the justice system in British Columbia; and
- attend to such other matters as the Benchers or Executive Committee [] may refer to the advisory committee from time to time.

II. Topics of Discussion: January to July 2012

The Committee met on January 26, April 12, and May 10, 2012. The following items have been addressed by the Committee between January to July 2012.

1. Indigenous Lawyers

(a) Indigenous Lawyer Mentoring Program

Phase 1 of this project has been commenced, which involves research and engagement in connection with best practices for mentoring programs. A draft report has been prepared and is expected to be ready for the July Benchers meeting.

(b) Supporting the Canadian Bar Association (British Columbia Branch) Aboriginal Lawyers Forum Retreat

On the recommendation of the Committee, the Law Society has continued to sponsor this retreat.

(c) Supporting the Canadian Bar Association (British Columbia Branch) Aboriginal Law Students Scholarship Trust Reception

On the recommendation of the Committee, the Law Society has contributed $2,500 to this function in the past to assist in the presentation of a reception. This year, the Law Society's contribution has been able to be used entirely for building a trust itself, as the CBA has been able to secure other funders.

(d) Aboriginal Graduate Scholarship

On the recommendation of the Committee, the Benchers approved the creation of a scholarship for aboriginal law students intending to pursue graduate legal studies.

2. Women Lawyers

(a) Justicia Project

The Committee has continued to pursue the feasibility of implementing the Justicia project. The first phase, through which the Justicia program is implemented through national firms with offices in British Columbia is hoped to begin shortly.

(b) Panel on Women in the Profession for UBC Law

Ms. Morellato and Ms. Tam recently spoke on a panel at the UBC Faculty of Law with respect to the retention of women in the legal profession. The panel discussion was reported to have been very good, with a large group of energetic and interested students seeking information and advice. The students asked very good questions about how to find out about diversity programs and initiatives at law firms.

3. Diversity

(a) Demographic Report and Diversity Report

Staff have completed the demographic report and the diversity report and, in conjunction with the communications department, have made considerable progress on the development and communications strategy for releasing the report and information to the profession and public generally. Ms. Tam was interviewed on the CBC morning program in the recent past to this end as well.

(b) Enhanced Demographic Question

On the recommendation of the Committee, the Executive Committee has agreed to amend that the Annual Practice Declaration in order to include a question that seeks further information on the demographic make-up of the legal profession.

(c) Law Societies' Equity Network

Ms. Tam chaired the Law Society's Equity Network conference recently hosted by the Federation of Law Societies of Canada in Ottawa. The theme of the conference was "measuring progress" with a focus on how to measure and demonstrate results with respect to initiatives being undertaken. One of the collaborative projects being undertaken by the network is to compile the demographic data from various jurisdictions across Canada in order to create a national equity profile.

The Law Society of British Columbia

Report to Benchers
July 2012

RULE OF LAW AND LAWYER INDEPENDENCE ADVISORY COMMITTEE: MID-YEAR REPORT

Kathryn Berge, QC, Chair
Herman Van Ommen, Vice-Chair
Richard Stewart, QC
Jan Lindsay, QC
Leon Getz, QC
Claude Richmond
Craig Dennis
Cam Mowatt

Purpose of Report: Information

Prepared by Policy & Legal Services
Michael Lucas, Manager
604-443-5777

Rule of Law and Lawyer Independence Advisory Committee: Mid-Year Report

I. Introduction

The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

The mandate of the Committee is:

- to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure

  - its processes and activities preserve and promote the preservation of the Rule of Law and effective self governance of lawyers;

  - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and

- to monitor issues (including current or proposed legislation) that affect or might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues.

The Committee has met on January 25, February 29, April 11, May 9, and June 13, 2012.

This is the mid-year report of the Committee, prepared to update the Benchers on the deliberations by the Committee to date in 2012.

II. Overview

As this Committee states at each opportunity, lawyer independence is a fundamental right of importance to the citizens of British Columbia and Canada. It is not a right that is well understood and, the Committee suspects, neither are the consequences of it being diluted or lost. Canadians are generally fortunate to live in a society that recognizes the importance of the Rule of Law.

The Rule of Law is, the Committee has concluded, best protected by lawyers who operate and are regulated independent of government. Self governance must therefore be vigilantly monitored to ensure that the obligation of self governance is not lost.

III. Topics of Discussion: January to July 2012

(a) Name Change

At the December 2011 Benchers meeting, the Committee presented a memorandum recommending a change of name and a modification to the mandate of the Committee. In part, the recommendation was premised on the ability for the Law Society to be able to better communicate with the public in order to make the connection between lawyer independence (a term that is often misunderstood by the public as a right of lawyers rather than a public right) and the Rule of Law. The Benchers, having recognized that the composition of the Committee could change in 2012, deferred consideration of the Committee's request for a name change until a later meeting.

The Committee discussed the advisability of a name change at its January meeting and agreed that the new name as proposed (The Rule of Law and Lawyer Independence Advisory Committee) better reflected what the work of the Committee was. It would also have the added benefit of permitting the Law Society to better communicate with the public in order to make the connection between lawyer independence and the Rule of Law. The Committee also agreed that a revision to its mandate would need some consideration. The name change and revised mandate (both of which are reflected above in this report) were approved by the Benchers at their March 2, 2012 meeting.

(b) Strategic Plan Initiatives as Assigned to the Committee

At the beginning of the year, the Committee was assigned two specific initiatives from the Strategic Plan for the purposes of debate and recommendation:

(i) Initiative 1-1(b) (to examine the relationship between the Law Society as the regulator of lawyers and the Law Society as insurer of lawyers); and

(ii) Initiative 1-1(c) (to examine whether the Law Society should regulate just lawyers or whether it should regulate all legal services providers).

The Committee devoted a portion of its time at each of its meetings to date concerning these two items.

(i) Initiative 1-1(b): the relationship between the Law Society as the regulator of lawyers and the Law Society as insurer of lawyers

The Committee was asked to give to the Benchers some clear guidance on the issue of the relationship between the Law Society as a regulator of lawyers and the Law Society as an

insurer of lawyers. The Committee has in the past, in its mid-year and end of year reports, stated that it believed that examining whether the divergent interest of the Law Society as a whole and the Law Society operating through its insurance department posed any concern to the promotion and preservation of lawyer independence and effective self-governance of lawyers. The debate has never been about any concern that the Committee had about the operation of the insurance program as a stand-alone program. Rather, the issue of debate has always concerned the diverging interests and duties of the Law Society as a whole and the Law Society acting as an insurer of lawyers, having noted in particular that the incursion on lawyer independence and self governance in other jurisdictions arose, at least in part, due to an apparent loss of public confidence that the regulating body was acting first and foremost in the public interest.

Now that the issue has found its way on to the Strategic Plan and the Committee has been asked to give specific consideration to the topic for the purposes of making recommendations, the Committee undertook an examination of the history of the relationship between the insurance program and the Law Society. To that end, it has reviewed the pre-existing structures through which insurance was provided to lawyers, and has received detailed information from the Director of Insurance about the operation of the current program. The Director of Insurance and the Chief Financial Officer have also attended at meetings of the Committee to assist in its understanding of the relationship and the reasons underlying the structure of the current relationship. Details on that structure have been provided and considered.

The Committee has now considered and has a fairly thorough understanding of the rationale for the current structure. It next proposes to identify the operational considerations that result from integrating the insurance department with the rest of the Law Society, and what consequences would exist were there a different structure.

The Committee expects that it will be able to make some recommendations in the fall or early winter.

The Committee will also consider, arising out of the debate it has had on this issue, whether the Law Society should consider implementing a policy concerning Benchers acting for plaintiffs where the defendant is a lawyer in a matter in which the Lawyer's Insurance Fund is acting for, or has appointed counsel for, the lawyer.

(ii) Initiative 1-1(c): whether the Law Society should regulate just lawyers or whether it should regulate all legal services providers.

The Committee spent some time considering how it would analyze this issue from the perspective of lawyer independence and self regulation. The Committee was cognizant, however, that the issue was also being examined from the access to justice perspective.

Ultimately, the Committee understands that a change of direction in the analysis of this initiative has been worked out, and that one task force is to be created to analyze the issue rather than having the issues bifurcated through the Rule of Law and Lawyer

Independence Advisory Committee and the Access to Legal Services Advisory Committee. Consequently, the Committee has taken this issue off its agenda, although it expects it will review the report of the Task Force when it is completed.

(c) Alternate Business Structures ("ABSs")

This Committee completed its report to the Benchers on ABSs in October 2011. The Benchers asked the Committee to continue monitoring the development of ABSs in the United Kingdom and the United States of America. The Committee agreed to devote some time throughout the year to such analysis. It has been monitoring various media information on the development of the debate in the United States, and the effect of the introduction of ABSs in England and Wales. The Committee hopes to make some report on its considerations of ABSs in the fall.

(d) Initiative 3-2(a): methods to communicate through the media about the role of the Law Society, including its role in protecting the Rule of Law

The Committee has also identified that Initiative 3-2(a) of the Strategic Plan resonates with the mandate of the Committee. That initiative is to identify methods to communicate, through the media, about the role of the Law Society, including its role in protecting the Rule of Law.

The Committee has agreed to seek opportunities to liaise with the Communications Department on topics for lawyer independence and the Rule of Law, but concluded that it did not need to develop programs for such education at this time. The Committee hopes to invite the Manager of Communications to a future meeting to discuss communication issues.

(e) *Civil Resolution Tribunal Act* – Formerly Bill 44

The Committee has examined and debated the provisions of the *Civil Resolution Tribunal Act* and identified that there are matters in it that raise issues concerning the rule of law and lawyer independence. Of particular note is the section prohibiting the ability of a participant in the process from being represented before the Tribunal by anyone, including a lawyer, except in particular circumstances, but there are other issues as well. The Committee understands that the Law Society will, with other participants in the justice system, be participating in a consultation with the government concerning the implementation of the Act, and the Committee has offered its assistance in that regard.

The Law Society of British Columbia

2012 Mid-year Report, from the Lawyer Education Advisory Committee

To: The Benchers

Date: July 13, 2012

Committee members

Thelma O'Grady, Chair
Nancy Merrill, Vice-Chair
Johanne Blenkin
Vincent Orchard, QC
David Renwick, QC
Phil Riddell
Catherine Sas, QC
Ken Walker
Tony Wilson

Purpose of Report: for information and discussion

INTRODUCTION

This is the Lawyer Education Advisory Committee's mid-year report, summarizing the Committee's activities for the first half of 2012.

The Committee's mandate is to

(a) monitor developments affecting the education of lawyers in BC,
(b) report to the Benchers on a semi-annual basis on those developments,
(c) advise the Benchers annually on priority planning and respective issues affecting the education of lawyers in BC, and
(d) attend to such other matters as the Benchers or the Executive Committee may refer to the advisory committee from time to time.

COMMITTEE ACTIVITY SUMMARY FOR 2012

Pursuant to the Law Society Strategic Plan, the Committee's 2012 - 2014 strategic priorities are to

(a) ensure that Law Society of BC admission processes are appropriate and relevant, and work on national admission standards while considering the rationale and purpose of the overall BC admission program;

(b) work with continuing professional development providers to develop programs about the new *Code of Conduct*.

a) Admission Program Review (Law Society Strategic Initiative 1-4(a))

The Committee is currently monitoring the Federation of Law Societies' National Admission Standards project, pursuant to which Canada's fourteen law societies, through the Federation, are developing proposals for national admission standards and related procedures.

One of the underlying premises of national lawyer mobility, which has been in place since 2003, is that standards for admission are reasonably similar from jurisdiction to jurisdiction. However, the reality is that significant differences exist in the admission standards and processes employed by each law society. Law societies have collectively recognized that these differences can no longer be reasonably justified, and so through the National Admission Standards project are developing proposals for consistent standards.

A Federation Steering Group is responsible for the overall project. Federation President John Hunter, Tim McGee and Alan Treleaven are members of the Steering Group.

The national project work has three streams:

1. drafting and validating the national competencies profile,
2. drafting the national character and fitness standards, and
3. developing proposals for implementation mechanisms.

National Competencies Profile

The process of drafting and validating the national competencies profile is nearing completion. It has involved the participation of a national working group, of which Lynn Burns, Deputy Director of the Professional Legal Training Course, has been a member. The detailed competencies fall into these categories: legal knowledge, transactional knowledge and know-how, lawyering skills, professional ethics, and practice management.

On completion of this phase of the project, the proposed new national competencies profile will be submitted to all law societies for adoption.

National Implementation of the Competencies Profile

Adoption of the competencies profile will be followed by development of proposals for implementation mechanisms. Possible options for consideration could include any combination of

1. national testing, with
    a. some local testing, or
    b. no local testing,

2. a national approach to training, with either
    a. local training courses developed by each law society, or
    b. no local training courses,

3. law societies develop their own methods of implementation, with either
    a. a national monitoring mechanism, or
    b. no national monitoring mechanism.

Although articling has not formally been a part of the project, law societies informally recognize that national admission standards should logically take articling into account, and so the Federation and the Lawyer Education Advisory Committee are monitoring the Law society of Upper Canada's articling review project.

National Character and Fitness Standards

The process of developing national character and fitness standards is underway. It has involved the participation of a national working group, of which Lesley Small, Manager of Member Services and Credentials, has been a member. Michael Lucas, Manager of Policy and Legal Services, has been working with his counterparts from other law societies to develop a legal policy foundation and analysis for the national character and fitness standards work.

Lawyer Education Advisory Committee Role

The Committee plans to begin its active admission program review in the fall of 2012, flowing from the national competencies profile, which the Federation expects to circulate to law societies in September.

The Committee also continues to monitor the progress of the Federation's national character and fitness standards work, and will update the Credentials Committee, Executive Committee, and Benchers as the time draws nearer for the Law Society to respond and initiate next steps relating to this aspect of the admission program review.

b) BC Code of Conduct Education (Law Society Strategic Initiative 1-3(b))

Law Society Strategic Initiative 1-3(b) is to work with continuing professional development providers to develop programs about the new Code of Conduct.

The new *BC Code of Professional Conduct*, largely based on the Federation's *Model Code of Conduct*, was approved by the Benchers on March 2, 2012 for implementation on January 1, 2013.

The Law Society and CLE Society of BC have initiated a joint project to plan and deliver *Code of Professional Conduct* education, which will be available to all BC lawyers free of charge, using a variety of delivery methods, including the CLE Society's "CLE TV" program methodology. The CLE Society will ask the Law Society only for reimbursement of its direct, out-of-pocket expenses. The Committee endorses this important initiative.

The Committee discussed whether *Code* education should be mandatory or voluntary, and decided against recommending a mandatory approach. The voluntary approach will include accessible, free education, available throughout BC.

The Law Society website will also feature two *Code of Professional Conduct* resources:

1. the *Annotated BC Code of Professional Conduct*, an adaptation and updating of the current *Annotated Professional Conduct Handbook*,

2. the guide to the *Code of Professional Conduct*, including a comparison of key features in the *Professional Conduct Handbook* and the new *Code*.

Updated references to the new *Code* will be incorporated into in the Law Society's free online courses, including the Small Firm Practice Course, the Practice Refresher Course, and the Communication Toolkit, and there will be updates to the Professional Responsibility section of the PLTC *Practice Materials*.

c) Other Committee Activities and Monitoring

(i) CPD Program

This is the fourth year of the CPD requirement, and the Committee continues to monitor the program.

In past, the Committee has overseen the development and modification of mandatory CPD standards, subject to Bencher approval.

In 2011 the Committee surveyed BC lawyers on their assessment of the CPD program. Of the 1,419 lawyers who responded to the survey, 78% agreed that continuing education should be mandatory for lawyers, with more than half agreeing that the annual CPD requirement would likely strengthen the quality of legal services that BC lawyers provide their clients. The results demonstrated that the overall assessment of the CPD program has been positive.

In 2011, the Committee also completed a comprehensive review of the CPD program, with a report and recommendations that were considered by the Benchers in September 2011. The Benchers adopted the Committee's recommendations, and the changes were put into place effective January 1, 2012.

The Benchers have not directed the Committee to conduct a CPD review in 2012, although the Committee will, in its 2012 year-end report to the Benchers, recommend timing for the next CPD review. Such a recommendation could be impacted by the Federation of Law Societies if the Federation Council decides to initiate a national CPD standards project.

(ii) Mentoring

The Committee is monitoring and promoting uptake on the CPD accredited mentoring initiative, in consultation with the Law Society Communications Department.

(iii) Federation Common Law Degree Approval Committee

The Committee is monitoring the work of the Federation Common Law Degree Approval Committee, which is currently engaged with the accreditation of Canadian common law degrees. The new accreditation system will have its first impact on 2015 law school graduates. UBC Faculty of Law Dean Mary Anne Bobinski and Alan Treleaven are members of the Approval Committee.

(iv) Other Monitoring

The Committee has discussed initiatives underway in BC and some other provinces to

1. encourage law students and lawyers to provide legal services outside of major urban centres, such as the Law Society of Manitoba's special student fee forgiveness program, and

2. facilitate access of foreign trained lawyers to admission in Canada through educational programs, including

a) UBC's LL.M. in Canadian law, developed to support and enable graduates of non-Canadian law schools to satisfy the requirements of the National Committee on Accreditation, the first step to being admitted to the practice of law in Canada, and

b) the University of Toronto's Faculty of Law Internationally Trained Lawyers Program, funded by the Ontario government, tuition fees, and the University of Toronto, which has as its aim to assist lawyers qualified outside of Canada to prepare for the National Committee on Accreditation examinations. The program also provides three-month internships at firms and networking assistance.

The Law Society of British Columbia

Phase One Report

Indigenous Lawyers Mentoring Program
May 2012

Prepared for: Law Society of B.C. Benchers

Prepared by: Rosalie Wilson, Program Developer

I. Introduction

Indigenous lawyers are significantly underrepresented in the legal profession in British Columbia, and this underrepresentation has important implications regarding access to culturally appropriate legal services. The Law Society of British Columbia therefore determined to undertake a consultation process to develop and promote a collaborative mentoring program to support Indigenous lawyers in BC (the "Initiative"). The Initiative is aimed at:

- enhancing the retention of Indigenous lawyers in BC,
- improving access to legal services for Indigenous peoples, and
- increasing diversity within the legal profession.

The Initiative was designed to be examined in two phases. Phase 1 was to engage in research and consultation to assess the range of mentoring needs of Indigenous lawyers in BC and to begin to build necessary partnerships and collaborations with Indigenous and legal organizations. From this research and consultation would be created a set of recommendations related to a range of mentoring options and models, including best practices. With the support of the Law Foundation, the Law Society engaged a program developer and lawyer from the Indigenous bar to engage in research and consultation and to make recommendations. The work done and recommendations made are contained in this Report.

Phase 2 of the Initiative is to focus on project development, implementation and evaluation.

II. Executive Summary

The Law Society of BC began its initial phase of program development by establishing the Indigenous Lawyers Mentoring Program in November 2011. The program development began with research conducted on mentoring program best practices. The program development phase also included cultural-appropriateness criteria to ensure that the mentoring program would meet the unique and diverse needs of Indigenous lawyers in BC.

Currently in Canada, there are no existing Indigenous lawyers mentoring program. Therefore, developing a mentoring program that meets the unique and diverse needs of Indigenous lawyers was particularly important.

From the best practices research, four potential mentoring program models were developed. These models were developed with five key considerations that included: approach, benefits, challenges, administration and cultural components. The four potential mentoring program models were then taken into the first stage of engagement with lawyers through the use of a Focus Group. The Focus Group was comprised of a broad cross-section of lawyers who indicated a strong interest in the mentoring program.

This early engagement also ensured that lawyers were involved from a very early stage in program development.

The Focus Group provided considerable feedback and commentary, which included their personal successes in mentoring and how mentoring had impacted their own professional development. The Focus Group indicated that the mentoring model ought to be a combined approach between Social Network Events and formal one-on-one mentoring. The Focus Group felt that it was necessary to provide the opportunity for informal mentoring relationships to develop through events that could take place in conjunction with other events, such as CBA section meetings and conferences. There was a particular emphasis placed on the importance of a formal mentoring program that matched mentees with mentors in a structured approach. Part of the structured approach will also include training components for mentees and mentors to ensure successful mentoring experiences for both participants.

Strong support was also expressed for a cultural competency component to the training components. This cultural competency component would focus on developing effective communication approaches between mentee and mentor with a particular emphasis on communication based upon mutual respect.

The next stage of program development included taking all of the feedback and commentary back for further analysis and developing a model that incorporated all of the valuable insight provided during the initial engagement. A mentoring program model was developed that incorporated cultural competency aspects together with a series of guiding principles. Further, the mentoring program model was also developed ensuring an appropriate amount of flexibility to meet the diverse needs of Indigenous lawyers in BC, including lawyers that may be practicing in geographically-isolated communities. A particular emphasis was also placed on utilizing technology such as teleconferencing and video conferencing to make mentoring more accessible for Indigenous lawyers in these locations.

After the mentoring program model was further revised in order to reflect the initial engagement comments and feedback, it was then presented for more extensive engagement. The mentoring model was summarized and presented to Indigenous lawyers in BC, and there was significant support for the proposed model.

From the research and consultation conducted in this Phase of the Initiative, the need for a flexible mentoring model that incorporates both one-on-one mentoring and social network events emerged as the preferred direction for a mentoring model. A proposed model on which a Mentoring Program can be developed that outlines a vision, goals and guiding principles is described in this Report.

III. Approaches to Mentoring

a) General Comments

Mentoring is widely regarded as an effective approach to learning and career development for many professions. Mentorships and apprenticeships have, over the years, provided effective and time-honoured approaches of supporting the transition of young people into more experienced roles, while also instilling traditional practices, values and cultural norms within any given profession.

Despite mentorship's long history, there are many definitions and levels of interaction to describe mentoring relationships. In a traditional approach, mentorship tends to focus on a hierarchal relationship where the mentor is "a trusted and experienced supervisor or advisor, who by mutual consent, takes an active interest in the development and education of a younger, less experienced individual[1]". In this traditional approach to mentorship, there is more of a focus on the role of the mentor as a guide, teacher and advocate to the "mentee", with much of the relationship being defined as the mentor sees fit.

However, more contemporary approaches to mentorship identify several factors that can make the mentorship relationship a more meaningful experience for both the mentor and mentee. Some of these factors can include mentee autonomy, less- structured approaches designed to facilitate easier discussions, or organizational approaches within law firms to develop or enhance their junior lawyers as a means of meeting future human resource needs of the firm.

There are many instances where mentorship programs have been established to assist young lawyers to develop their skills in the legal profession in Canada. Many law societies and bar associations have recognized the benefit of mentorship to newly-called lawyers.

Identifying Best Practices section allows the development of a proper methodology to assess mentoring program options based upon best practices research. The mentoring program options outlined in the Best Practices section will serve as the foundational starting point to begin a deeper engagement process with Indigenous lawyers in BC. Based upon the feedback received by Indigenous lawyers, the Law Society of BC will be able to better create a mentoring program that is tailored to meet the needs of Indigenous lawyers and will result in a culturally-appropriate mentoring program for Indigenous lawyers in British Columbia.

[1] Mertz, N.T. (2004) What's a Mentor, Anyway? Educational Administration Quarterly, 40(4), 541-560 (at 13th page)

b) Benefits

There are numerous benefits that culminate from the mentoring relationship. Both mentee and mentor experience the obvious benefits, but the legal profession as a whole can also benefit from the time and resources invested into mentoring programs. Some of the key benefits are as follows:

Benefits to Legal Profession

- increased productivity and client service delivery as the mentee lawyer increases competence in his or her chosen or preferred area of legal practice; and
- improved communication and support networks within the legal profession.

Benefits to the Mentee

- acquisition of increased legal skills and knowledge;
- increased access to other lawyers, particularly through the mentor's networks;
- development of confidence in professional capacity; and
- improved communication skills.

Benefits to the Mentor

- satisfaction gained from contributing to the skill set and confidence of younger lawyers;
- enhanced self-esteem and sense of contribution to the future of the legal profession;
- improved ability to share experience and knowledge outside of the law firm setting;
- opportunities to engage in discussions with mentee lawyers with different perspectives on legal topics; and
- enhanced communication and leadership skills.

c) Concerns

In order to ensure a successful mentorship program, some of the best practices research also discusses concerns or pitfalls to consider when establishing a new mentoring program.

One particular concern, identified in several sources in the research, is that of a lack of awareness at a practical level of the planning and support systems necessary to ensure that the mentorship is a voluntary, effective and sustained learning experience. The informal and interpersonal nature of mentoring, in addition to busy schedules of lawyers and competing priorities, can result in the lack of mutually accepted goals, clear

expectations and structured monitoring and assessment strategies which can detract from the overall effectiveness of the mentoring relationship.

IV. Best Practices

The nature and scope of mentoring programs will vary greatly, depending on a number of factors such as cultural-appropriateness, individual needs of mentees and mentors, and how the relationship evolves between both parties. However, there are consistent roles and responsibilities for mentees, mentors and the mentoring program in the development of successful mentoring relationships. Some of these roles and responsibilities are as follow[2]:

Roles and Responsibilities

- *Mentors: The mentor plays a significant role and provides contributions to the mentee's knowledge, skills and confidence. In achieving these objectives, the mentor should consider the following points in their mentoring role:*

  - Provide information, guidance, feedback and constructive comments;
  - Support and encourage the mentee, as well as identifying challenges to desired performance;
  - Maintain confidentiality and respect;
  - Invest the time and effort required to maintain a positive and constructive relationship;
  - Maintain regular contact and communication;
  - Foster the mentee's confidence, autonomy and motivation;

- *Mentees: The mentee is the primary beneficiary in a mentoring relationship and it is crucial that the mentee assumes significant responsibility in the development and maintenance of the mentoring relationship. The following factors should be considered by the mentee to ensure that the mentoring relationship develops into a positive and productive learning experience:*

  - identify professional and personal developmental needs and goals;
  - formulate an action plan to achieve goals;
  - accept responsibility for personal decisions & actions;
  - maintain confidentiality;
  - maintain regular, constructive and respectful contact with the mentor; and
  - be receptive to constructive feedback and coaching.

[2] Canadian Heritage, British Columbia Museums Association, *Mentoring Programs: Best Practices* (Victoria: Canadian Heritage, 2007).

- *Mentoring Program: The Mentoring Program itself will play an important role in defining, establishing and supporting mentoring activities amongst mentees and mentors. To ensure the success of a mentoring relationship within the legal profession, the Mentoring Program staff should work with the program participants with the following points in mind:*

    - clarify the goals, expectations, mutual benefits and concerns that arise from the mentoring relationships;
    - ensure that the mentee and mentor are appropriately matched, based upon an appropriate assessment method;
    - provide strong moral and organizational support to participants;
    - provide resources to support regular and constructive learning interactions;
    - develop appropriate policies to ensure that the mentor is appropriately protected from advice given to a mentee and the mentee agrees that any legal advice provided upon discussions with the mentor does not substitute for the mentee lawyer's responsibility to ensure to provide appropriate legal advice to a client; and
    - develop an evaluation process.

While these points may assist in defining the roles and responsibilities of the mentee, mentor and mentoring program, it is also important to note that every mentorship is a unique relationship based upon the strengths and skill set of both mentee and mentor that will continue to be shaped by the context of continual interactions with one another.

V. Matching

In any formal mentoring program, the most important step in establishing effective relationships is creating an appropriate match between the mentee and mentor. In some instances, the mentee and mentor will develop a foundation for further mentoring to occur that is independent of the mentoring program. Regardless of how the mentoring relationship develops, whether it is established through a formal mentoring selection process within the profession or in a more informal manner, the following points summarize characteristics in the mentee and mentor that can create a productive and successful mentoring experience for both parties[3]:

Mentee:

- identify professional and personal developmental needs and goals;
- formulate an action plan to achieve goals;
- seek regular guidance and advice on effective approaches to practice;

[3] *Ibid* at p. 7

- accept responsibility for personal decisions and actions and maintain confidentiality;
- maintain regular and constructive contact with mentor; and
- be receptive to feedback and coaching.

Mentor:

- make assessments based on mentee's professional experience and provide appropriate mentoring guidance based upon this information;
- evaluate the mentee's professional plans and decisions;
- provide information, guidance, feedback and constructive comments;
- support and encourage, as well as identifying areas for improvement in a constructive manner;
- maintain confidentiality and respect;
- invest time and effort needed to maintain a positive and constructive relationship;
- maintain regular contact and communication; and
- foster the mentee's confidence, autonomy and motivation.

In this report, four different approaches to mentoring are discussed as potential options for consideration in the creation of an Indigenous Mentoring Program. The following approaches are described below with four points (*benefits*, *challenges*, *administration*, and *cultural components*) described in each option. These approaches are developed from a review of mentoring models found in the best practices research that was conducted to develop this program. While the best practices research provides a methodology for developing the program, the core values will be developed from the engagement process with Indigenous lawyers.

VI. Mentorship Models[4]

a) Individual (One-to-One mentorship)

This mentoring model is probably the most traditional and most recognized approach to mentorship. It can range from having the nature of the mentoring relationship being largely defined by the mentee and mentor. On the one hand to being a highly-structured approach with the goals, expectations and outcomes being defined by the program through a prescribed approach where the mentee and mentor receive training on how the relationship ought to be carried out on the other. In some instances, a formal process can

[4] The four proposed mentoring models have been developed from approaches described in Jerry Sherk, *Best Practices for Mentoring Programs*, online: Evaluation Management Training Associates Inc. < http://emt.org/userfiles/BestPractices.pdf>, and further tailored to incorporate culturally-appropriate mentoring mechanisms.

include a mentoring agreement where the mentee and mentor commit to a process on how the mentoring relationship ought to be carried out.

Some of the benefits to this approach are:

- matching may be easier to conduct in the Lower Mainland because of the close proximity of lawyers (85% of practising lawyers in British Columbia reside in the Lower Mainland);
- mentee lawyers may hesitate to discuss professional issues within their law firms due to concerns that senior lawyers may view their issues as professional incompetency. The ability to access a senior lawyer without concerns around questioning a mentee's professionalism can be an invaluable resource for a newly called lawyer;
- allowing for the mentoring program to be structured according to the needs of Indigenous lawyers, including prescribed activities or how the relationship ought to be carried out (i.e. one hour per month for mentee and mentor to meet for a six-month commitment to the mentoring relationship); and
- producing a long-lasting relationship between the mentee and mentor that may outlive the formal mentoring relationship. This can be particularly important in the legal profession, where continual interactions with professional peers can be highly beneficial in developing strong competencies and skill sets in lawyers.

Some of the challenges with this approach can include:

- matching may be difficult in geographically isolated areas, or alternatively, volunteer mentors may be more difficult access if large distances exist between mentee and mentor. (This is particularly important to Indigenous lawyers who may choose to return to their home communities to establish their law practice);
- recruiting mentors may be challenging, given a considerable time commitment may be required for one-on-one mentoring and lawyers tend to have demands on their time;
- as well, mentees may have similar time constraints, given the traditional work expectations that firms place on their associates.

Some of the administrative considerations for developing a one-on-one mentoring approach should include:

- developing a prescribed time commitment requirement to ensure that the mentoring relationship does not fall by the wayside to scheduling issues between the mentee and mentor;
- prescribing a length of time for the formalized mentoring relationship (i.e. 6 month or 1 year commitment); and
- developing mentoring guidelines for mentoring relationship expectations, goals, and meeting requirements.

The manner or degree of how culturally-appropriate methods are integrated into the Mentoring Program will have a direct correlation with its success. Since this approach will place a heavy requirement on communication between mentor and mentee. It is particularly important that the parties can communicate in a positive and respectful manner. Some potential methods for ensuring cultural relevancy into this mentoring approach should include:

- developing a cultural awareness component in the mentor training workshop; and
- involving prominent First Nations leadership with connections to the legal community (e.g. Grand Chief Ed John, Life Bencher Patrick Kelly or Lieutenant-Governor Stephen Point) in addressing mentors in Indigenous-specific issues.

b) Social Network Events (social events intended to connect mentors and mentees/facilitate informal mentoring connections amongst those who want to participate in mentoring practices)

This approach focuses primarily on utilizing existing forums to enhance the opportunities for mentoring relationships to be further developed. This approach would place a primary focus on creating the space at legal or social events for mentoring relationships to develop between mentees and mentors who have an interest in developing these relationships. This approach would focus on providing additional resources to existing bodies, such as the Canadian Bar Association's Aboriginal Lawyer Forum or Indigenous Bar Association, to enable mentoring events to take place in conjunction with other events being held for Indigenous lawyers.

There are numerous benefits to this mentoring approach:

- there are organizations such as the Aboriginal Lawyers Forum or Indigenous Bar Association that have an established membership with a high degree of participation from Indigenous lawyers;
- it can bring a flexible and adaptable approach to the mentoring program, in that it can be developed upon continual feedback from its participants;
- mentees and mentors can be brought together in a series of events, such as issue-specific workshops;
- there is a high degree of interaction amongst lawyers;
- it can be time efficient for lawyers with demanding schedules;
- it can incorporate both professional and social elements, thereby attracting larger groups of participants;
- specific workshops can be developed in response to the needs of Indigenous lawyers; and
- these established organizations have boards comprised of active Indigenous lawyers who are committed to assisting Indigenous lawyers on a variety of issues.

Some of the challenges that should be considered in adopting this approach include:

- this approach could require significant financial resourcing to hold events outside of the Lower Mainland, or alternatively, to allow geographically isolated lawyers to participate in events that take place in the Lower Mainland;
- however, smaller events could be organized in different regions to enable geographically isolated lawyers to participate in events closer to their places of practice; and
- the areas of law that mentors practice in may be limited, due to the nature of an organization's membership (predominantly in Aboriginal law). However, work can be done to identify appropriate mentors who practise in broader areas of law.

Some of the administrative considerations relating to this model should include:

- potential for cost savings of developing separate capacity within the Law Society where an existing administrative infrastructure already exists within organizations such as the CBA's Aboriginal Lawyers Forum or Indigenous Bar Association;
- ability to add resources for the purposes of capacity-building within an existing body led by Indigenous lawyers; and
- alternatively, LSBC could designate an employee to work together in conjunction with an organization to provide additional capacity in organizing events. Such "LSBC mentoring coordinator" could ensure that the mentoring program's objectives are consistently addressed while they work in partnership with external organizations.

In this approach to developing mentoring relationships, the model would require virtually no cultural component development, because it is led by Indigenous lawyers and participation is almost exclusively Indigenous lawyers and lawyers who practice in Aboriginal law. In short, this may be the most appropriate approach with respect to culturally-appropriate approaches.

c) Mentor Network – range of different mentors, depending on the need of the mentee

This mentoring program approach is developed based upon Alberta's mentoring program to meet the needs of its newly-called members. In this mentoring approach, newly-called lawyers can access more senior counsel or mentors in specific areas of law. The mentoring program's primary focus is to connect lawyers with one another based upon issue-specific mentoring practices.

Benefits to this approach are:

- building a large pool of mentors could be relatively easy if there is a strong interest from senior lawyers who practice in different areas of law;
- a minimal matching time between mentee and mentor, due to a database of mentors could be accessed easily, depending on their areas of legal expertise;

- lawyers may take an interest in the mentoring program, in that the time commitments could be minimal. Lawyers would not be required to commit to a regular and on-going mentoring relationship. Rather, they could be accessed on an as-needed basis;
- mentors can bring a strong level of legal expertise in their area of law;
- this approach could be easily measured for the purposes of developing success indicators; and
- strong emphasis on strengthening the legal knowledge of Indigenous lawyers.

Some of the potential challenges that should be considered in adopting this mentoring approach include:

- may not be the most suitable mentoring approach to long-term enhancement and retention of Indigenous lawyers in the legal profession in BC;
- this approach is primarily focused on meeting the immediate needs of Indigenous lawyers, but may be too similar to the role of the Law Society's Practice Advisors to be a practical approach to the Program's long-term objectives;
- minimal face-to-face interactions between mentees and mentors; and
- limited opportunity for longer mentoring relationships to develop.

Some of the administrative considerations to adopting this mentoring approach include:

- considerable administrative coordination would be required for a successful Mentoring Program. The coordinator would have to respond to each individual request for a mentor; and
- continual contact with mentees and mentors would have to occur regularly.

In order to ensure that this mentoring approach is culturally-appropriate for Indigenous lawyers, the following points ought to be considered:

- indigenous training component in a mentors training workshop. However, a general overview may be sufficient, since the mentoring relationship is for a time limited period and interactions between mentee and mentor focus primarily on practice-related issues; and
- since interactions may be minimal, year-end gatherings should be considered to celebrate and acknowledge mentoring program participants. This practice is consistent with many Indigenous practices in British Columbia.

d) Peer mentoring

This mentoring approach may be useful in circumstances where mentor availability is limited (such as geographically-isolated regions). This approach could be adapted to meet the needs of mentees and to fill the gap while mentor recruitment efforts take place in a specific region. It would allow for peer-to-peer mentoring relationships to be developed that are mutually beneficial to both mentee and mentor lawyers. This mentoring approach

would be an informal approach, but may provide valuable support to mentee lawyers. It could also be utilized as an interim measure while mentor recruitment processes are undertaken.

Some of the benefits to this approach include:

- filling a gap when mentors are not readily available;
- building one-on-one relationships amongst peer lawyers in geographically-isolated locations;
- relationships may be primarily focused on personal experience, as opposed to solely legal expertise;
- participants are already established peers, so the ability to offer and receive input in a constructive manner may be easier than if it were received from a senior lawyer; and
- can be an interim measure while recruitments efforts are strengthened in geographically-isolated locations of BC.

Some of the challenges that may arise in adopting this mentoring approach may include:

- the ability to discuss specific areas of law may be limited, depending on the legal knowledge and skill set of participants in the mentoring relationship; and
- may meet the personal needs of mentee lawyers, but may limit the ability to meet the long-term objectives of the Mentoring Program.

Some of the administrative considerations associated with this mentoring approach include:

- this approach does not require significant administrative support, because matching criteria is based solely upon the participants' interest to participate in a mentoring relationship; and
- a separate training component should be designed for peer-to-peer mentoring to occur. A mentoring coordinator could administer this training component.

The need to adapt this mentoring approach to make it culturally-appropriate is minimal, as the participants will be Indigenous lawyers. The only culturally-appropriate measures that would need to be taken is to ensure that the mentoring coordinator has a thorough knowledge and understanding of the unique challenges that Indigenous lawyers experience in their practice areas of law.

VII. Engagement Process – Focus Group

The engagement process began with presenting the described mentoring models to the Focus Group. The purpose of the Focus Group was to gain their insight and feedback on the mentoring models, to incorporate that feedback into the mentoring models, and then

to present the mentoring program models for more extensive engagement with Indigenous lawyers in BC.

The Focus Group was comprised of the following members of the Law Society of BC:

- Maria Morellato, Bencher – Mandell Pinder
- Jennifer Duncan, Barrister & Solicitor – McDonald & Company
- Katrina Harry, Barrister & Solicitor – Harry Law
- Celeste Haldane, Commissioner – BC Treaty Commission
- Christina Cook, Barrister & Solicitor – Bilkey Law Corporation
- Pamela Shields – Legal Services Society

Each of the Focus Group is a lawyer who has indicated a strong interest and support for this initiative. The purpose of the Focus Group was to provide review and feedback on culturally-appropriate mentoring models for the Mentoring Program.

The initial engagement process began with introductory letters that were sent to each lawyer requesting their participation in the Focus Group. The Focus Group lawyers were selected based upon their expressed interest or their involvement with either the Law Society of BC or the Indigenous Bar. The Focus Group canvassed approximately 10 lawyers to ensure that a broad range of lawyers would be available for feedback.

To launch the initial engagement, the Focus Group was sent a Mentoring Program Options summary for their review. The Mentoring Program Options Summary provided four Mentoring Models based upon the Mentoring Program Best Practices Research conducted earlier in the program development. The mentoring options were chosen from a variety of mentoring program models.

During the course of the best practices research, it became clear that no culturally-appropriate mentoring program that focuses on serving the needs of Indigenous lawyers currently exists in North America. Therefore, the scope of the research was expanded in order to examine Indigenous mentoring programs to develop culturally-appropriate approaches on developing a mentoring program that met the potential needs of Indigenous lawyers in BC. Each of these models was developed with a focus on ensuring that culturally-appropriate measures were incorporated into the models.

The Mentoring Program Models included the four detailed earlier in this Report:

1) individual (One-to-One Mentorship) – classic mentoring program with high level of structure and interaction;
2) social network events – events to create space for mentoring relationships to develop;
3) mentor network – range of mentors available for legal-specific needs; and
4) peer mentoring – one-on-one mentoring where senior mentors are unavailable.

The mentoring models summary also identified *benefits, challenges, administrative considerations* and *culturally-appropriate measures* that could be incorporated into each model. The Focus Group members had an opportunity to review this document prior to their interviews so there was adequate time to develop meaningful feedback.

The Focus Group members were asked to identify 1-2 preferences from the mentoring program options provided. The results are as follows:

1) One-to-One Mentoring (4)
2) Social Network Events (4)
3) Mentor Network (1)
4) Peer Mentoring (0)

A majority of the Focus Group feedback identified a strong preference for combining One-on-One Mentoring as part of a more formal process to be administered by the Law Society of BC and Social Network Events to allow for more informal mentoring relationships to develop amongst lawyers. Rather than selecting one mentoring approach over another, the Focus Group members indicated that a combination of these two models would best serve Indigenous lawyers in BC, as it provided the ability to address diverse needs amongst the Indigenous legal community.

As the initial engagements took place, it became apparent that mentoring relationships have played a role in each of Focus Group member's professional development as a lawyer. The feedback and comments provided by the participants were valuable in that the participants could draw upon their own personal experiences to discuss mentoring relationships that worked for them. In many of the discussions, the participants were also able to identify the challenges that arose in the context of mentoring relationships and how these challenges could be addressed by a formal mentoring program. The feedback and commentary provided focused primarily on ensuring that potential challenges could be avoided while being accessible by a broad range of Indigenous lawyers.

Consultation with and feedback from the Focus Group resulted in the development of a hybrid model incorporating one-on-one mentoring with social network events.

The feedback and commentary from the Focus Group were characterized as Guiding Principles. These principles are particularly important, as they express the values that are important to Indigenous lawyers. They will also set the parameters for further program development. Creation of Guiding Principles is an established approach to developing mechanisms, such as a program, that will identify the unique cultural needs of Indigenous peoples. The Guiding Principles approach has been adapted from the approach used by the BC First Nations Leadership Council's provincial work plans. This unique approach allows for the incorporation of culturally-appropriate values to be captured and interwoven into the development of a work plan.

VIII. Guiding Principles for an Indigenous Lawyer Mentoring Program

Accessibility – Accessibility must be a priority for establishing the mentoring program. It will not be enough to focus on meeting the needs of Indigenous lawyers in the Lower Mainland, as these lawyers will have access to a range of resources. The inclusion of Indigenous lawyers outside of the Lower Mainland must be a key focus and priority. This value will also include adequate resourcing and time given to developing mentoring options to Indigenous lawyers located outside of the Lower Mainland. Mentoring program events should take place outside of the Lower Mainland to ensure that the events are accessible to geographically-isolated lawyers.

Building Upon Successes - This includes providing additional resources to existing mechanisms that are currently used by Indigenous lawyers such as the Canadian Bar Association's Aboriginal Lawyers' Forum and the Indigenous Bar Association. These two organizations host events on a regular basis and the Law Society of B.C. can develop partnerships with these organizations to further enhance these events. The feedback and commentary identified a strong desire to utilize existing organizational bodies that Indigenous lawyers already access.

Creating Space – This principle is based upon the identified need for mentoring relationships to develop on their own. The Focus Group members were in strong support of the ability for Indigenous lawyers to have the opportunity for more informal mentoring relationships to develop.[5] Creating the space for mentoring relationships to develop will provide greater flexibility to meet the unique mentoring needs of Indigenous lawyers. A mentoring program will need to provide enough flexibility to meet the broad range of needs of Indigenous lawyers (*e.g.* professional guidance, personal/career guidance, etc.). One mentoring approach may work for one lawyer, but may not necessarily fit the needs of another, depending on the lawyer's circumstances. Therefore, if Indigenous lawyers are given the opportunity to access potential mentors, then the mentoring program can enhance its effectiveness and adapt its practices accordingly to meet the needs of Indigenous lawyers once those needs are identified.

Cultural Competency – This principle comes from feedback from the Focus Group that the mentoring relationship must be based upon mutual respect and communication. Indigenous lawyers' experiences may differ significantly from other lawyers and therefore, cultural competency training will be an important aspect of establishing the Mentoring Program. Cultural competency, at its most basic, is the developed ability for effective interaction between two people that respects cultural differences and experiences. A focused approach on developing lawyers' abilities to interact in a manner

[5] A strong emphasis was put upon the importance of Relationships to a mentoring program. In the words of one Focus Group member, "Relationships must be nurtured and opportunities to have relationships to develop are important. Above all, relationships must come first."

that is respectful of diversity will serve to enhance both professional and personal capacity of lawyers.

Commitment – One of the concerns that were voiced by the Focus Group was ensuring that both the mentor and mentee were committed to making the mentoring relationship work. Due to the busy nature of the legal profession, the Focus Group supported the concept of incentives to ensure a continual effort was made by both parties to maintain the relationship. One potential method of encouraging a commitment to the mentoring relationship could be providing continuing professional development(CPD) credits. One example provided during the Focus Group engagement provided an example that may encourage lawyers to participate: providing 2 CPD hours per workshop, or 1 CPD hour for a one-hour meeting between the mentor and mentee. Another potential usage of CPD credits could be for a mentor training workshop, where the workshops could provide 2 CPD hours that fulfills the requirement of professional responsibility and ethics, client care and relations, or practice management.

Diversity – The Focus Group emphasized a particular importance on acknowledging the diversity amongst Indigenous lawyers in the province. This diversity will stem from geographical location of the lawyer's practice, ability to access mentors and the mentoring program, and the various stages of the lawyer's professional development and career. The mentoring program should provide enough structure to develop and encourage the mentoring relationship, but the program will need to provide enough flexibility in its approach to address the needs and challenges of Indigenous lawyers.

Accountability – Accountability was an important aspect of the feedback and commentary provided in the initial engagements. Most of the Focus Group felt it was important that the coordination and administrative function remained with the Law Society of BC to ensure accountability and on-going reporting. The reporting and accountability issue was particularly important because it allows for the ability to developing success indicators for the Mentoring Program. By ensuring that the Law Society has continuous access to measuring the success of the Mentoring Program, the Law Society can develop short-term and long-term success indicators that will provide valuable data to the Law Society. It also allows the Mentoring Program a greater degree of flexibility to meet the needs of Indigenous lawyers, as the program further develops.

Awareness of systemic issues – While this principle does not directly impact the design of the Mentoring Program, the Focus Group members felt it was important that the mentoring program coordinator was aware of additional challenges and barriers to Indigenous lawyers that exist outside the scope of the Mentoring Program. In order to address a broad issue such as retention of Indigenous lawyers within the legal profession, a need for an understanding and appreciation that larger systemic issues exist that contribute to the current underrepresentation of Indigenous peoples within the legal profession.

A proposed mentoring model, suitable for Indigenous lawyers in BC that focused on a hybrid model of one-on-one mentoring and social networking events and that

incorporated the Guiding Principles was developed after receiving feedback and commentary from the first engagement process.

IX. Broader Engagement

Following the development of the hybrid model, a broader engagement was undertaken with Indigenous lawyers at the Canadian Bar Association's Aboriginal Lawyers Forum ("CBA-ALF") Retreat.

This retreat took place at Quaaout Lodge & Talking Rock Golf Resort during May 4-6, 2012 in Chase, BC. The conference had 28 delegates that included first year law students, practising lawyers and a judge. The conference delegates also included representation from the three distinct Aboriginal groups: First Nations, Métis and Inuit. This broad spectrum of feedback provided valuable insight and commentary to the mentoring program.

The CBA-ALF's Executive was kind enough to allow the Law Society's Mentoring Program time on the agenda to present a PowerPoint presentation at the conference. The presentation included an overview of the mentoring program's development based upon its Best Practices Research, Focus Group engagement process that led to the Proposed Mentoring Program Model that was introduced at this conference.

The conference delegates provided valuable insight and feedback through the use of a questionnaire. The questionnaires provided an opportunity for the conference delegates to indicate whether they felt that the proposed mentoring program model was suited to the needs of Indigenous lawyers and articled students in a culturally-appropriate manner. A majority of those present at the retreat indicated a positive response.

However, the questionnaires also provided an opportunity for the conference delegates to share their insights. While their feedback did not directly address the suitability of the mentoring program, it does shed light on some larger issues that are of concern to the Indigenous bar and students.

Some of the feedback included a desire to address larger systemic issues within the profession and increased accessibility to mentoring opportunities for law students. It also included suggestions for incorporating the use of technology, such as Skype as a potential solution for geographically-isolated lawyers to enable them to more easily access a mentor that may not be in their immediate vicinity.

There was another suggestion that a Professional Legal Training Course component be added to the Mentoring Program's activities to enable support for articling students during their articling period.

The need for diversity and flexibility was also an emerging theme gained from the feedback on the proposed mentoring program model. The conference delegates acknowledged that no one approach alone will meet their needs, and emphasized the need

for the mentoring program to be adaptable to meet the challenges Indigenous lawyers may face.

To ensure that any mentoring program succeeds, those consulted at the CBA-ALF Retreat recommended that the Law Society identify the necessary financial and human resources to appoint a Mentoring Program Co-ordinator.

X. Proposed Mentoring Model for an Indigenous Lawyer Mentoring Program

With the feedback and guidance received through consultation through the Focus Group and through Indigenous lawyers present at the CBA-ALF Retreat, a flexible mentoring model that incorporates both one-on-one mentoring and social network events emerged as the preferred direction for a mentoring model. While the purpose of this Report is to identify, through research and consultation, the best practices for a culturally appropriate mentoring program and to make recommendations concerning models, some conclusions on a proposed model seem to be appropriate. Such recommendations will, it is hoped, provide some direction and guidance as the Law Society moves to Phase 2 of the Project, in which a detailed mentoring program with clear goals and objectives will be developed.

(a) Vision:

To develop, establish, and implement a culturally-appropriate mentoring program for Indigenous lawyers that aims to increase diversity within the legal profession as the public is best served by a more representative and inclusive profession.

(b) Goals:

Short-Term:

- to provide opportunities for Indigenous lawyers to develop mentoring relationships either *formally* (mentor matching) or *informally* (providing space through established events for relationships to develop on their own); and
- to implement a formal mentor matching system that meets the unique needs of Indigenous lawyers.

Long-Term

- to enhance the retention of Indigenous lawyers in the legal profession; and
- to provide access to culturally-appropriate legal services by increasing the retention of Indigenous lawyers in the legal profession.

(c) Guiding Principles:

Accessibility – Mentoring Program must be equally accessible to lawyers practicing in geographically-isolated locations (outside of Lower Mainland). May include developing mentoring options (*e.g.* peer-to-peer mentoring or group mentoring). Mentoring program events take place outside of Lower Mainland to ensure accessibility.

Building Upon Successes – Using established forums to further enhance opportunities for mentoring relationships to develop. This may include providing additional resources to forums already used by Indigenous lawyers. This principle includes relationship-building with other organizations to create space for lawyers to connect on an informal basis.

Creating Space – Ability for lawyers to develop mentoring relationships on their own. This principle would bring both mentor and mentee lawyers together at a social gathering. This principle allows a more flexible approach in addressing a broader range of mentoring to take place (e.g. legal issue-specific, professional development or career/personal issues).

Cultural Competency – this principle focuses on developing the ability for effective interaction between two people that respects cultural differences and experiences. This may include a cultural competency component for the mentoring program participants.

Commitment – ensuring commitment from both mentor and mentee to the mentoring relationship. Due to the demanding nature of the legal profession, time commitments can sometimes be difficult to make. Therefore, incentive to ensure continual commitment to the relationship could be developed, such as *Continuing Professional Development* credits. For example, 1 CPD hour for a one-hour monthly meeting or mentoring program training workshop that fulfills the requirement of professional and ethics, client care and relations or practice management.

Diversity – there is diversity among the Indigenous lawyers in B.C., including different stages of professional development, geographical location, and ability to access mentors. The mentoring program should be structured enough to promote and facilitate the development of mentoring relationships, but also be flexible in its approach to adapt in order to address diverse needs and challenges.

Accountability – Administrative and coordination function to remain with the Law Society to ensure accountability and on-going reporting. This allows for the development of short-term and long-term success indicators and to also monitor whether the program is meeting the needs of Indigenous lawyers in BC. Also allows the mentoring program to adapt its approach as the program further develops.

XI Next Steps

Phase 1 of the Initiative was to engage in a consultation to assess the range of mentoring needs of Indigenous lawyers in BC and to begin a process that would engage the Indigenous bar in the development and ultimate delivery of the initiative. Phase 1 was to result in a set of recommendations related to a range of mentoring options and models, including best practices, and that is what this Report has directed itself too.

The comments, feedback, Guiding Principles and proposed model identified in this report will inform Phase 2 of the Initiative, which will focus on project development, implementation and evaluation. From the material contained in this report, work will be done in Phase 2 to design a collaborative mentoring model based upon the vision, goals and guiding principles described above. It is anticipated that the identification and collaboration with possible delivery partners will also be a focus of Phase 2, as supporting Indigenous lawyers will require the support and active participation of the Indigenous legal organizations and the broader profession.

If the Phase 1 Report is accepted by the Benchers, work will begin as soon as possible on creating a process to undertake the work required for development and implementation of an Indigenous Lawyer Mentoring Program.

The Law Society of British Columbia

Memo

To: Benchers
From: Family Law Task Force
Date: July 13, 2012
Subject: Modifying the Mandate of the Family Law Task Force

The Family Law Task Force has had several modifications to its mandate since its inception in order to address emerging issues in the area of family law. The Task Force's current mandate is to develop for recommendation to the Benchers practice standards for lawyers acting as family law arbitrators. During the course of its research it has become clear to the Task Force that practice standards for family law mediators and parenting coordinators also need to be considered. The reason for this is that the *Family Law Act* will come into force March 18, 2013. That Act allows for regulations that establish practice standards for people engaged in family law arbitration, mediation, and parenting coordination. In order to develop appropriate standards for lawyers prior to the coming into force of the *Family Law Act*, it is necessary that the Task Force have its mandate expanded to consider practice standards for lawyers acting as family law mediators and/or parenting coordinators.

The Task Force seeks to have its mandate modified to read:

> The mandate of the Family Law Task Force is to develop for recommendation to the Benchers practice standards for lawyers who are acting as family law arbitrators, family law mediators, and/or parenting coordinators.

[Requires a simple majority of votes to pass]

/DM

Washington Courts: News and Information

Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters

June 15, 2012

Olympia, WA June 15--With a goal of making legal help more accessible to the public, the Washington Supreme Court has adopted **APR 28, entitled "Limited Practice Rule for Limited License Technicians".** The rule will allow non-lawyers with certain levels of training to provide technical help on simple legal matters effective September 1, 2012.

The rule was approved by a majority of the Court, with Justices Charles W. Johnson, Susan J. Owens and Mary E. Fairhurst dissenting. A copy of both the final order can be found online by **clicking here** together with the text of the new rule.

"This new rule serves as an important first step to assist the thousands of unrepresented individuals seeking to resolve important civil legal matters each day in our courts," said Chief Justice Barbara Madsen of the new rule. "With our civil legal aid system overtaxed and underfunded, this is one strategy the Court believes can help assist those who find themselves in court, yet are unable to afford an attorney."

The rule was recommended by the Practice of Law Board, created by the Supreme Court in 2001 to investigate unauthorized practice of law complaints, issue advisory opinions and recommend ways to the Court in which non-lawyers can improve access to law-related services. The proposal was first submitted to the Court in 2008 and revised in 2012.

Under the new rule, persons who are trained and authorized by a newly-established Limited License Legal Technician Board will be able to provide technical help to the public on civil cases.

The type of assistance the legal technician will be able to provide include, but are not limited to:

- Selecting and completing court forms;
- Informing clients of applicable procedures and timelines;
- Reviewing and explaining pleadings and;
- Identifying additional documents that may be needed in a court proceeding.

Under the rule, limited license legal technicians will not be able to represent clients in court, or contact and negotiate with opposing parties on a client's behalf.

The rule also requires continuing education requirements, annual proof of financial responsibility and an annual license fee to be established by the Practice of Law Board and approved by the Supreme Court.

# # #

CONTACT: Nan Sullins, Legal Services Manager, Administrative Office of the Courts, 360.357.2129 **nan.sullins@courts.wa.gov**; or Nicholas Berning, Practice of Law Board Chair, 360.933.1612 or **nickb@tdknowles.com**

14000

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THE SUPREME COURT
OF BRITISH COLUMBIA

THE LAW COURTS
800 SMITHE STREET
VANCOUVER, B. C.
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6/14

13 June 2012

Bruce A. LeRose, Q.C.
President
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. LeRose:

RE: Pilot Project- Paralegals in Supreme Court Family Law Proceedings

I am writing to advise that at our recent *en banc* meeting of 25 May 2012, the Court endorsed the proposed pilot project for paralegals to have a limited right of audience on certain matters in family law proceedings.

I understand that the Law Society has some further work to do before the pilot project can be launched. As well, the evaluation process has yet to be finalized. Once this further work has been completed, the Court is committed to undertaking the pilot project for a period of two years in the Vancouver, New Westminster, and Kamloops registries.

The members of the Law Society's Paralegal Pilot Project Working Group and the Committee of the Court chaired by Madam Justice Bruce are to be commended for their hard work to date in moving this initiative forward.

Yours very truly,

Robert J. Bauman
Chief Justice

RJB:gew
cc: Madam Justice Bruce & Committee Members

The Law Society
of British Columbia

Reply to: Bruce LeRose, QC

June 22, 2012

The Honourable Robert J. Bauman
Chief Justice
The Supreme Court of British Columbia
800 Smithe Street
Vancouver, BC V6Z 2E1

Dear Chief Justice Bauman:

Re: Pilot Project – Paralegals in Supreme Court Family Law Proceedings

I am writing in response to your letter of June 13, 2012. Personally, and on behalf of my fellow Benchers, I wish to express our gratitude to you and the Court for your willingness to discuss, and ultimately support, this important initiative. As noted in your letter there are some remaining matters to discuss and the Law Society has some concepts to resolve. I will briefly set out what we have recently accomplished and our next steps.

At the June 16th Benchers' meeting, the Benchers approved the necessary amendments to the *Professional Conduct Handbook* as well as to the BC *Code of Professional Conduct* which will come into effect on January 1, 2013 in order to give effect to expanding roles for paralegals. On July 13th the Act and Rules Subcommittee will present a new rule to the Benchers relating to supervising paralegals performing the enhanced functions of giving legal advice and appearing in court. At that point the Law Society will have completed the rules and professional conduct amendments necessary to implement the pilot project. What remains to be discussed, as you observe in your letter, is the evaluation process. We also believe it is worthwhile discussing the best way to communicate the pilot project to the public and the profession, as well as establishing a starting date for the pilot project.

It is my intention to convene the Law Society's working group to discuss next steps, at which time I will share your letter with them and discuss the concepts contained in this letter. We will then be in touch with the Committee chaired by Madam Justice Bruce to further explore the issue of evaluation and communications.

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Let me conclude by reiterating my appreciation for the Court's willingness to engage in this innovative pilot project. If you have any questions or if I can be of assistance with respect to any issues relating to the project please do not hesitate to contact me.

Yours truly,

Bruce LeRose, QC
President

President's Report to the Law Societies

June 2012

From: **John J. L. Hunter, Q.C., President**
Federation of Law Societies of Canada

To: **All Law Societies**

Date: **June 19, 2012**

On June 4, 2012, the Council of the Federation met in Ottawa for one of its quarterly meetings. As you may know, the Federation Council consists of representatives from each of Canada's 14 law societies, together with the President, the President-elect and the Past-President. Reports from the President after such meetings are an important way to keep Canada's law societies informed about the Federation's ongoing work so I am pleased to do so again with the hope that this information will be shared among your volunteer leaders and within your organizations.

COUNCIL MEETING

Strategic Planning and Priorities

1. In consultation with member law societies, the Federation Council is taking a fresh look at our strategic plan for the next few years. Our current focus is on the development of national standards of regulation of the legal profession, as well as tackling how law societies can play a role in improving access to legal services by the public. At our meeting, Council urged the Federation to press forward in these areas. In September, we will be discussing the specific priorities for our organization for the coming year.

National Standards Initiatives

2. **Admission Standards.** Law societies have been hearing about the Federation's national admissions standards project more frequently in recent months and there is more to come as local engagement becomes an essential ingredient to the project's success. The Council has been briefed on Phase 1 of the project which is the development of a national competency and good character standard. A few weeks ago, over 7,000 members of the legal profession were surveyed for their views about the entry level competencies which should be required of new practitioners. By September, the Federation will submit a draft competency standard to law societies for approval. With national mobility already a reality, the ultimate goal will be to arrive at a national approach which ensures that all new members of the bar meet the standard. The Federation also continues to be engaged in discussions with the Law Society of Upper Canada as the shortage of articling positions in Ontario raises important issues which are relevant to all law societies.

3. **Law School Common Law Program Approvals.** Earlier this year, Council formally established an Approval Committee to monitor compliance by Canada's law schools with the national requirement for law degree programs adopted by Canada's law societies. The work of the Committee is now well underway. The Council heard that the Committee expects to receive a request for approval of a new law school at Trinity Western University in Langley, BC.

4. **National Committee on Accreditation.** Council was informed that over 1,200 exams were written during the May exam session and that the NCA expects to issue almost 700 Certificates of Qualification for the 12 month period ending June 30, 2012. The work of the NCA continues to be a central and growing activity for the Federation's head office. At this meeting, the Council appointed Malcolm Mercer, a bencher with the Law Society of Upper Canada, to the NCA in replacement of Don Thompson, the Executive Director of the Law Society of Alberta. Mr. Thompson had indicated his intention to step down from the NCA after 13 years of service.

5. **Model Code of Professional Conduct.** The Federation's Model Code is increasingly seen as the authoritative standard on the regulation of legal ethics in Canada and as such, harmonized adoption of the Model Code by Canada's law societies is an important objective. That process continues to work its way through law societies with the assistance of the Federation's Standing Committee on the Model Code. The Model Code has been adopted or is in the process of being adopted in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and New Brunswick. In addition to studying refinements which may arise from the adoption process in law societies, the Standing Committee is considering a range of issues including rules which would permit unbundling of legal services. In connection with the leading role the Federation plays in matters of legal ethics, the Council also explored the possibility of sponsoring an award to encourage scholarship in the teaching of legal ethics at law school.

Access to Legal Services

6. The Federation plays a leading role within the National Action Committee on Access to Justice in Civil and Family Matters which is led by Justice Thomas Cromwell of the Supreme Court of Canada. The Federation's Standing Committee on Access to Legal Services is now considering a draft report of a working group of the Action Committee dealing with the delivery of legal services. Matters relating to legal expense insurance and pre-paid legal service plans are also on the Standing Committee's upcoming agenda.

CanLII

7. In June, CanLII Board member Martin Felsky assumed the Chair of the CanLII Board and Brian McLaughlin was welcomed as a new member. Mr. McLaughlin brings substantial information technology experience to the position. At the Council meeting, Mr. Felsky presented a report on behalf of the CanLII Board about its strategic priorities and the Council also heard from CanLII's President and Chief Executive Officer, Colin Lachance, who reported on some of the exciting new features available on CanLII including the first integration of secondary materials in labour law through a partnership with Lancaster House.

External Relations, Governance and Administration

8. **Assistance to Mexico.** The Council was informed that the second phase of a project to assist the Mexican legal profession to develop its own Code of Professional Conduct was completed in April. This initiative, led by Darrel Pink of the Nova Scotia Barristers' Society with assistance from other senior staff and volunteers, was undertaken by the Federation at the request of the Federal Department of Justice and the Department of Foreign Affairs and International Trade and is indicative of the high level of expertise which resides within the Federation on such matters.

9. **Anti-Money Laundering Advocacy.** In April, I appeared on behalf of the Federation before the Senate Banking Committee which is undertaking a review of the Proceeds of Crime (Money Laundering and Terrorist Financing) Act. Our submissions highlighted the fact that Canada's law societies' "No-Cash Rule" and client identification and verification rules are effective tools in the fight against money-laundering.

10. **Law Society Communications.** Being present at law society meetings and reporting on the work of the Federation are an important part of my Presidential activities. This June, I have or will be attending meetings of the Law Society of Alberta, the Law Society of British Columbia, the Law Society of Saskatchewan, the Law Society of Upper Canada and the Barreau du Québec . In July, I will attend the annual meeting of the Law Society of New Brunswick. Meetings with other law societies are in the works.

11. **External Relations.** I reported to Council that the Executive Committee met with counterparts at the Canadian Bar Association in May in keeping with our annual tradition to discuss issues of mutual interest. For the first time, the President of the Federation and the CEO were invited to attend the CBA Board's annual dinner with the Supreme Court of Canada and we were very well received. At the end of June I will be meeting with the Chief Justice of Canada for what has now become part of our regular calendar. In May the Executive met with the Minister and Deputy Minister of Justice and other senior government officials. At the end of that month, I also travelled with Jonathan Herman to The Hague to attend the IBA's Bar Leaders Conference and Council meetings.

12. **Governance.** One of the roles of Council is to review and approve policies relating to the good governance of the Federation. The draft governance policy, together with all existing policies, such as those which deal with court interventions and when certain decisions must be made with the unanimous consent of all law societies, will be reviewed in light of the new Canada Not-For-Profit Corporations Act. The Executive will also be bringing forward the current presidential rotation policy for discussion.

13. **Administration.** The Federation is on target to meet its budget for 2011-2012. Modifications have been made to the head office to accommodate the hiring of additional staff over the next number of months.