The Law Society of British Columbia

Agenda

Benchers

Date: Friday, September 7, 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 July 13, 2012 meeting** • Draft minutes of the regular session • Draft minutes of the in camera session (Benchers only)	pg. 1000
2	**Executive Committee Recommendation: Benchers' Appointment to Justice Education Society Board of Directors** • Memorandum from the Executive Committee	pg. 2000
3	**Rules to Implement Bill 40 Amendments to the Legal Profession Act:** a. Rules 3-7.1 to 3-7.3 and 4-17 to 4-19 (Interim Suspensions and Medical Examinations) b. Rules 5-12.1, 5-22 and others (Review Board and Appeals to Court of Appeal) • Memorandums from Mr. Hoskins for the Act & Rules Subcommittee	pg. 3000 pg. 3025

REGULAR AGENDA		
4	**President's Report** • Oral report to be presented at the meeting	
5	**CEO's Report** • Written report	pg. 5000
6	**Federation of Law Societies of Canada: Council Report by the Law Society's Council Representative** Mr. Hume to report	
7	**Report on Outstanding Hearing & Review Reports** • Report to be distributed at the meeting	
2012 – 2014 STRATEGIC PLAN IMPLEMENTATION		
8	**Strategic Plan Implementation Update** Mr. LeRose and Mr. McGee to report	
OTHER MATTERS For discussion and/or decision		
9	**Final Report of the Family Law Task Force** Ms. Hickman to report as Chair • Final Report of the Family Law Task Force: Qualifications for Lawyers Acting as Arbitrators, Mediators, and/or Parenting Coordinators in Family Law Matters	pg. 9000
FOR INFORMATION ONLY		
10	**Report on CBA National Conference and Council Meeting** Ms. Berge to report	pg. 10000
11	**CBABC Rural Education and Access to Lawyers (REAL) Initiative Update** • REAL Initiative Mid-Year Report	pg. 11000
12	**Attendance of Law Society Staff at Disciplinary Hearings** • Memorandum from Ms. Armour	pg. 12000

13	**Law Society of BC Gold Medal Prize for 2012** • Thank you letter from Ms. Mila Shah	pg. 13000
14	**2012 Benchers Group Photo** Benchers will be directed to the Atrium of the Law Society Building for the photo-shoot as the last item of business before the morning break	
IN CAMERA SESSION		
15	**Bencher Concerns**	

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, July 13, 2012

Present:
Bruce LeRose, QC, President
Art Vertlieb, QC, 1st Vice-President
Jan Lindsay, QC 2nd Vice-President
Rita Andreone, 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
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
Peter Lloyd, FCA
Ben Meisner

Richard Fyfe, QC, Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General

Absent:
Kathryn Berge, QC
Stacy Kuiack
Vincent Orchard, QC
Claude Richmond

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

Guests:
Chris Axworthy, QC, Dean, Faculty of Law, Thompson Rivers University
Dom Bautista, Executive Director, Law Courts Center
Erin Berger, Secretary, Trial Lawyers Association of BC

Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC
Kari Boyle, Executive Director, Mediate BC Society
Ron Friesen, CEO, Continuing Legal Education Society of BC
Donna Greschner, Dean, Faculty of Law, University of Victoria
Carol Hickman, QC, Life Bencher
Derek LaCroix, QC, PhD, Lawyers Assistance Program of British Columbia
Jamie Maclaren, Executive Director, Access Pro Bono
Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Jeremy Schmidt, Executive Co-ordinator, Faculty of Law, University of BC
Kerry Simmons, Vice-President, Canadian Bar Association, BC Branch

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on June 16, 2012 were approved as circulated

The following resolutions were passed unanimously and by consent.

2. Act & Rules Subcommittee (Various Rules Amendments for Approval)

a. Proposed Rule 2-9.2: Supervision of Designated Paralegals

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.

b. Bill 40 (*Legal Profession Amendment Act, 2012*) Implementation: various amendments

Mr. Crossin raised a number of concerns with Paragraphs 10, 12, 13 and 16 below. The Benchers agreed to refer those paragraphs to the Act and Rules Subcommittee to address the issues raised by Mr. Crossin.

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. (Referred to the Act and Rules Subcommittee)

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

12. (Referred to the Act and Rules Subcommittee)

13. (Referred to the Act and Rules Subcommittee)

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. (Referred to the Act and Rules Subcommittee)

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

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).

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]*.

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;

3. Law Society Representation on the 2012 QC Appointments Advisory Committee

BE IT RESOLVED *that the Benchers appoint President Bruce LeRose, QC and First Vice-President Art Vertlieb, QC as the Law Society's representatives on the 2012 QC Appointments Advisory Committee.*

4. 2012 Law Society Award

BE IT RESOLVED *that the Benchers name Marvin Storrow, QC as the recipient of the 2012 Law Society Award.*

REGULAR AGENDA – for Discussion and Decision

5. President's Report

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

a) Bill 44 (*Civil Resolution Tribunal Act*) Implementation Working Group

The CBA, BC Branch, the BC Trial Lawyers Association and the Law Society have all committed to join this working group. 2012 Second Vice-President Jan Lindsay, QC will represent the Law Society, assisted by Michael Lucas, Manager of the Policy & Legal Services department. The implementation process is expected to run 18 to 24 months.

b) BC Notaries Scope of Practice

Mr. LeRose and Mr. McGee met recently with the Honourable Shirley Bond, Attorney General of BC, and Richard Fyfe, QC, Deputy Attorney General, to discuss various issues of public protection and access to legal services raised by the proposed expansion of BC notaries' scope of practice. Mr. LeRose and Mr. McGee also met recently with the President and CEO of the Society of Notaries Public of BC to discuss the Law Society's plans

- to permit the provision of enhanced legal services by designated paralegals under supervision
- to form a task force to consider and report to the Benchers, with recommendations, on whether it is in the public interest that non-lawyer legal service providers be regulated, and if so, whether it is in the public interest that the Law Society be that regulator

c) Governance Review Task Force Update

The Governance Review Task Force met for two days earlier this week for detailed review and revision of the task force's draft interim report. The final version of the interim report will be distributed to the Benchers before the end of July, for their review and comment. Bencher feedback will be collated and circulated to the Benchers to support their debate of the task force report and its recommendations on Saturday, October 27. It is anticipated that the Benchers' conclusions will form the basis of the Law Society's 'governance roadmap', hopefully to be in place by the end of the year.

d) Access to Legal Services

The BC Supreme Court has endorsed the BC Family Law Paralegals Pilot Project, to be implemented for a trial period of two years in the Vancouver, New Westminster and Kamloops registries upon completion of certain preparatory work and an evaluation process by the Law Society.

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

b) 2013 Budget and Fees – Recommendations from the Finance Committee

c) 2012 – 2014 Strategic Plan

d) Operational Priorities

- **i. Project LEO**
- **ii. Continued Implementation and Assessment of our 2011 Regulatory Plan**
- **iii. Review of Performance Management Process and How it Ties into Recognition**
- **iv. Lawyer Advice and Support Assessment Project**
- **v. National Standards and the Federation Task Forces**

e) Key Performance Measures

- **i. Professional Legal Training Course**
- **ii. Practice Standards**
- **iii. Practice Advice and Support Resources**
- **iv. Lawyers Insurance Fund (LIF)**
- **v. Custodianships**
- **vi. Professional Conduct**

vii. Trust Assurance

f) Communications Strategic Plan

7. Report on Outstanding Hearing & Review Reports

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

OTHER MATTERS – For Discussion and/or Decision

8. Temporary Mobility for Practitioners of Foreign Law

Mr. Walker briefed the Benchers as Chair of the Credentials Committee. He noted that at the request of the Executive Committee, the Credentials Committee has considered amending the Law Society Rules to permit practitioners of foreign law ("PFLs") to practise law in BC for a certain number of days per year, without requiring the PFL to obtain a Law Society permit.

After debating the issue on three separate occasions, the Credentials Committee agreed on the recommendation set out in the Committee's report to the Benchers (at page 8001 of the meeting materials):

> 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.

Mr. Walker noted that the Credentials Committee considered and debated three options, which are spelled out and analyzed in the Committee's report:

> **Option 1** (page 8006)
>
> 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.

Option 2 (page 8008)

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.

Option 3 (page 8010)

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.

Mr. Walker moved (seconded by Mr. Maclagan) that the Benchers adopt Option 1.

In the ensuing discussion the following points were made:

- the issues raised in the Committee's report do not affect a significant number of individuals
- under the current Act and Rules, PFLs are required to obtain a Law Society permit to practise under the circumstances covered by Options 1 and 3
    - it is likely that the Law Society's current PFL requirements are often disregarded in practice
- the intention of the Committee's recommendations and of Options 1 and 3 is to encourage and support alignment of appropriate prescribed procedure and actual practice
- several US immigration consultants are already doing business in BC in compliance with the current Act and Rules

The motion was defeated.

Ms. Sas moved (seconded by Mr. Stewart) that the Benchers adopt Option 3.

The motion was carried.

The matter was referred to the Unauthorized Practice Committee and staff for consideration and recommendations. Following that review, the Act and Rules Subcommittee will be asked to prepare appropriate Rules for the Benchers' approval.

9. Finance Committee: Approval of 2013 Fees

Mr. Vertlieb briefed the Benchers as chair of the 2012 Finance Committee on the Committee's recommendations for 2013 Law Society fees (set out in the presentation at Tab 9 of the meeting materials). In May 2012 the Finance Committee reviewed the proposed budgets for the General Fund, the Special Compensation Fund and the Lawyers Insurance Fund (LIF). The Executive Committee has reviewed and approved the overall 2013 Law Society fee proposal. The proposed total mandatory fee for 2013 includes an increase of 1.4% over 2012, with market-based adjustments of staffing costs being the main factor underlying the increase. Mr. Vertlieb also noted that the proposed LIF assessment of $1,750 is unchanged from 2012 and 2011, the proposed Trust Administration Fee (TAF) remains at $10, and the Special Compensation Fund assessment has been reduced from $1 to $nil for 2013.

Mr. Vertlieb advised that the Finance Committee recommends adoption of the proposed 2013 practice fee and insurance fee.

Mr. Vertlieb moved (seconded by Mr. Renwick) moved that Benchers adopt resolutions to set the Law Society's 2013 practice fee and 2013 insurance fee, as set out in the meeting materials at pages 9002 – 9003 (Appendices 2 and 3 to these minutes, respectively).

In the ensuing discussion it was noted that Access Pro Bono[1] is in financial difficulty, and that review of the current pro bono levy of 1% of the annual practice fee may be warranted. Law Foundation Executive Director Wayne Robertson, QC briefed the Benchers on the background and current status of the Law Foundation's funding of pro bono legal services in BC, including the Foundation's management of the Law Society's annual contribution to pro bono funding on behalf of BC's practising lawyers (i.e. the 1% levy). Mr. Robertson noted that the Law Foundation continues to suffer from the current low interest rate environment, and expects to draw down its reserve by $6 to $7 million to meet 2012 funding commitments.

Mr. Mossop moved (seconded by Mr. Crossin) that the Pro Bono Contribution portion of the 2013 practice fee be increased to $27.50 from the currently budgeted $15.44.

In the ensuing discussion it was noted that:

- the 2012 Access to Legal Services Advisory Committee is already considering various measures for supporting and enhancing the provision of pro bono legal services in BC

[1] Access Pro Bono supports and coordinates the provision of pro bono legal services by lawyers in BC

- the Law Society's responsibilities as a regulatory authority require careful examination of any proposed adjustment of the annual practice fee

- it would be possible to consider funding any increased Law Society support for provision of pro bono services by BC lawyers that might be recommended by the current Access to Legal Services Advisory Committee from the General Fund reserve for 2013

    - the 2014 practice fee would then need to be increased to provide for any continued funding'

The supplemental motion (to revise the Pro Bono Contribution portion of the 2013 practice fee) was defeated.

The main motion (to adopt the 2013 General Fund and Lawyers Insurance Fund resolutions) was carried.

10. 2012 Advisory Committees: Mid-year Updates

Mr. LeRose requested the chairs of the 2012 advisory committees to deliver their respective committees' mid-year reports. He noted that the committees' written reports are at Tab 10 of the meeting materials.

Mr. Stewart reported as Chair of the Access to Legal Services Advisory Committee. Ms. O'Grady reported as Chair of the Equity and Diversity Advisory Committee; Ms. Berge sent her regrets as Chair and Mr. Van Ommen reported as Vice-Chair of the Independence and Rule of Law Advisory Committee; and Ms. O'Grady reported again as Chair of the Lawyer Education Advisory Committee.

11. Indigenous Lawyers Mentoring Program – Phase 1 Report

Mr. Lucas briefed the Benchers on behalf of Ms. Rosalie Wilson, developer of the Law Society's Indigenous Lawyers Mentoring Program, and author of the report at page 11000 of the meeting materials. Ms. Wilson sent her regrets at being unable to attend to present her report in person.

Mr. Lucas referred to the Phase 1 Report's introduction (page 11001) for an outline of the program's history and current status:

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.

Mr. Lucas noted that this program is grounded in Initiative 2-1(c) of the 2012-2014 Strategic Plan:

> Initiative 2–1(c)
>
> Support the retention of Aboriginal lawyers by developing and implementing the Indigenous Lawyer Mentoring Program.

Mr. Lucas confirmed that Phase 1 of the program is complete. Phase 2 is planned to be undertaken in the fall of 2012, and to be implemented by the summer of 2013.

12. Other Matters: Proposed Legal Service Provider Task Force

Mr. LeRose updated the Benchers regarding the formation of a task force to undertake the examination called for by the current Strategic Plan's Initiative 1-1(c): whether the Law Society should regulate only lawyers or all providers of legal services in BC.

Mr. LeRose confirmed that earlier this year the Executive Committee approved the preparation of draft terms of reference for such a task force. He referred to a briefing note circulated at the meeting (Appendix 4 to these minutes):

> The proposed terms of reference provide that the task force is to consider whether the Law Society ought to regulate only lawyers in British Columbia or whether it should regulate other legal service providers. In particular, the task force should:

1. consider previous work at the Law Society on the regulation of non-lawyers;

2. consider and report on legal service regulatory regimes in other jurisdictions where the regulation extends to non-lawyers;

3. consider and report on implications for the Law Society operation on regulating non-lawyers;

4. consider and report on whether it is in the public interest that non-lawyer legal service providers be regulated and if so, whether it is in the public interest that the Law Society should be that regulator;

5. consider and report on whether the recognition and regulation of non-lawyer legal service providers would improve access to law-related services for the public;

6. make a recommendation to the Benchers about whether the Law Society should continue to regulate only lawyers in British Columbia or whether it should take steps to implement the regulation of other legal service providers.

Mr. Stewart moved (seconded by Mr. Van Ommen) that the Benchers strike the Legal Service Provider Task Force and approve the Terms of Reference as proposed in the staff briefing note circulated at the meeting (Appendix 4).

The motion was carried.

Mr. LeRose confirmed that the task force will commence its work in the fall of 2012.

13. Modifying the Mandate of the Family Law Task Force

Mr. LeRose welcomed Life Bencher Carol Hickman, QC to report to the Benchers as Chair of the Family Law Task Force. Mr. LeRose confirmed that he has appointed Cariboo Bencher Lee Ongman to join Ms. Berge, Ms. Merrill, Mr. Petrisor and Mr. Stewart as members of the task force.

Ms. Hickman briefed the Benchers on the current mandate and work of the Family Law Task Force. She referred to the task force's memorandum at page 12000 of the meeting materials for background and a statement of the proposed modification of the task force's mandate:

> 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.

Ms. Hickman advised that the new *Family Law Act* will come into force on March 18, 2013. Regulations for family dispute resolution professionals will be in place at that date. The Task Force will work through the summer to develop qualifications for lawyers acting as family law arbitrators, family law mediators and/or parenting coordinators.

Ms. Merrill moved (seconded by Ms. Lindsay) that the mandate of the Family Law Task Force be modified as proposed, as follows:

> 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.

The motion was carried.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM
2012-08-19

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.

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.

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

1060

	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%

Proposed Legal Service Provider Task Force

At the outset of this year, our Strategic Initiative 1–1(c), which provided for an examination of whether we should regulate just lawyers or all legal service providers, was tasked to both the Access to Legal Services Advisory Committee and the Rule of Law and Lawyer Independence Advisory Committee. Both Advisory Committees have noted that the scope of work for this initiative is likely to extend beyond the current year and would be more efficiently undertaken by a dedicated task force.

The creation of such a dedicated task force seems now even more appropriate in light of events that have occurred since the initial assignment of strategic initiatives to the two Advisory Committees. In particular, this spring we raised with the government an argument that the notaries' desire for a greater scope of practice makes a unified regulatory regime for legal service providers very much in the public interest, an argument that is supported by the Canadian Bar Association. The Washington State courts have recently recognized limited license Legal Technicians authorized to help civil litigants with process and pleadings, which will permit non-lawyers to assist in improving access to law-related services. Our own paralegal pilot project with the Supreme and Provincial Courts provides another reason to look at whether we should be regulating only lawyers or looking more broadly at all legal service providers. And the report on the five year review of the Law Society of Upper Canada's paralegal program delivered in late June has concluded that "implementation of the regulation of paralegals in Ontario has been a success, and has provided consumer protection while maintaining access to justice."

As I reported at the May Bencher meeting, the Executive Committee approved the preparation of draft terms of reference for presentation to the Benchers, along with a request to strike such a task force.

The proposed terms of reference provide that the task force is to consider whether the Law Society ought to regulate only lawyers in British Columbia or whether it should regulate other - legal service providers. In particular, the task force should:

1. consider previous work at the Law Society on the regulation of non-lawyers;

2. consider and report on legal service regulatory regimes in other jurisdictions where the regulation extends to non-lawyers;

3. consider and report on the implications for Law Society operations on regulating non-lawyers;

4. consider and report on whether it is in the public interest that non-lawyer legal service providers be regulated and if so, whether it is in the public interest that the Law Society should be that regulator;

5. consider and report on whether the recognition and regulation of non-lawyer legal service providers would improve access to law-related services for the public;

6. make a recommendation to the Benchers about whether the Law Society should continue to regulate only lawyers in British Columbia or whether it should take steps to implement the regulation of other legal service providers.

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The Law Society of British Columbia 2000

Memo

To: The Benchers

From: The Executive Committee

Date: August 23, 2012

Subject: Appointment Recommendation: Benchers' Nomination of a Member of the Justice Education Society and Its Board of Directors

1. Justice Education Society (Member and Director)

Person appointed by: Benchers

Current Appointment	Term Allowance	Date First Appointed	Expiry Date
Leon Getz, QC	2 years, maximum of 3 terms	9/1/2010	8/31/2012

a. Background

The by-laws of the Justice Education Society (JES) authorize the Law Society to nominate a person to be a JES member and director. Eligibility for membership is automatic upon nomination by a designated nominating authority. JES membership nominations fall within "Category 1a" in the Law Society Appointments Guidebook: "membership/directorship appointments or nominations to bodies whose purposes and objects are aligned with the Law Society's mandate." Article 2 of the JES Constitution provides, "The purposes of the Society are to organize and carry on educational programs on the court system and the legal system for the benefit of the community as a whole."

The following extract from the Appointments Guidebook confirms the importance of Category 1a appointments and nominations:

> Category 1a appointments and nominations command the highest level of responsibility: for the Law Society in carrying out its appointment process and supporting good governance; for both the Society and its appointees or nominees in meeting the communication expectations set out in the Law Society Appointments Policy; and for the appointees or nominees in honouring their duties of loyalty and care to the bodies they have been appointed to serve.

Category 1a appointments entail the following qualities, responsibilities and duties:

- the body's objects are related to the Law Society's mandate
- the appointee or nominee is a member of the body's central policy-making body
    - with governance responsibilities including creation and amendment of the body's by-laws
    - with directorship responsibilities, including the fiduciary duties
        - to exercise independent judgment in supporting and promoting the body's best interests
        - to respect and protect the absolute priority of the body's best interests over their personal interests or other parties' interests

JES's Executive Director has confirmed that the renewal of Mr. Getz's JES membership for a second two-year would be welcomed by JES. Mr. Getz has confirmed his readiness to continue to serve as a member and director of the Justice Education Society.

b. Recommendation

We recommend that the Benchers nominate Leon Getz, QC for re-appointment as a member and director of the Justice Education Society for a second two-year term, effective September 1, 2012.

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: August 27, 2012
Subject: **Rules on interim suspension, practice conditions and medical examinations**

At the July 13, 2012 Benchers meeting, the Subcommittee recommended Rule changes to implement the relevant amendments to the *Legal Profession Act*. The relevant part of the memorandum, without attachments, that was before the Benchers at that time is attached for your reference.

Mr. Crossin, QC, raised issues with respect to the some of the proposed amendments, with the result that they were referred back to the Subcommittee for further consideration. The Subcommittee has now considered those issues and made changes in some areas and recommend no change in one or two others.

This memorandum considers each of the issues in the order in which they were raised. I attach a further draft in three versions: one showing proposed amendments, a clean version and one showing changes from the last draft submitted to the Benchers. Note that some provisions where no change is proposed have been removed to conserve space. In addition, there is a suggested resolution to implement the changes recommended by the Subcommittee.

Rule 3-7.1 and 3-7.2 — different thresholds

Mr. Crossin pointed out that the standard for three or more Benchers to act with respect to a lawyer or articled student in the course of an investigation was different when suspending or imposing conditions of practice (Rule 3-7.1) than it was when they were ordering a medical examination (Rule 3-7.2).

The thresholds in the two provisions reflect differences in the requirements of the legislative provisions that enable the Benchers to make those Rules. The legislative differences were established deliberately for purposes that I attempt to explain below.

This is the relevant part of the current Rule 3-7.1(2), which empowers three or more Benchers to suspend a lawyer or impose conditions of practice during a Law Society investigation:

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

This is the language adopted by the Benchers when Rule 3-7.1 was first adopted in 2010. It was the result of considerable debate and consideration at the Act and Rules Subcommittee. I believe that it was considered to be similar to, but simpler than, the requirement in section 39 that a lawyer under citation can only be suspended if the lawyer's "continued practice would be dangerous to the public or the respondent's clients."

That threshold was adopted in the legislation when the recent amendments were made. This is the relevant provision in the new section 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*: …

The proposed Rule 3-7.2(2) would allow three or more Benchers to order a medical examination of a lawyer or articled student under investigation. This is the part of the draft provision that sets out the threshold for that event to take place:

> (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 …

In the current section 40, which permits any three Benchers to order a medical examination of a lawyer who is the subject of a citation, and the Rules made under it, there is no threshold at all.

In the request that the Benchers made in 2010 to amend the legislation, it was merely requested that the ability to suspend, impose conditions and order medical exams be extended to be available where they were needed in the course of an investigation and not be limited to the period after a citation has been issued. It was thought that it was not appropriate to extend that power without some form of threshold since the threshold of issuing a citation would not have been reached.

It was also considered that an order for a medical exam was not so intrusive in the life of a lawyer or student as is a suspension and, likely, practice restrictions. The threshold of being of the opinion that the order was likely necessary to protect the public was considered appropriate in this case, rather than being satisfied of the necessity.

This is the relevant provision in section 26.02, which permits the Benchers to make rules for an order of a medical examination.

> (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.*

While there is some merit in consistency between the provisions, the Subcommittee concluded that there is greater value in tracking the language of the enabling legislative provisions in each case. The Subcommittee recommends no change in that regard.

Rule 3-7.1 and 3-7.2 — reasonable grounds

Mr. Crossin also proposed that both provisions should include language that required that there be "a reasonable basis to believe that the order is necessary." There may be some value in indicating in the Rule itself that the thresholds, although different, must in each case be assessed on reasonable grounds. The Subcommittee recommends inserting "on reasonable grounds" in both Rule 3-7.1(2) and Rule 3-7.2(2). That would still track the language of the statute and only place on it a gloss that the Legislature might reasonably be assumed to have intended.

Ex parte order under Rule 3-7.3

Mr. Crossin also observed that the language in the current Rule 3-7.1(5), which it is proposed to change to 3-7.3(3)(b), "is a bit vague and uncertain." Again, he suggests adding language requiring that the Benchers be satisfied on reasonable grounds. This is the current provision:

> (5) The proceeding referred to in subrule (4) 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.

Again, the Subcommittee recommends adding "on reasonable grounds" after "are satisfied" in the revised version of this provision.

Order of provisions

Mr. Crossin suggested a re-ordering of the provisions under Rule 4-17 so that the possibility of conditions and limitations on the practice of a lawyer appears before the possibility of an interim suspension. The rationale is that the Benchers should consider the possibility of practice conditions and limitations being adequate to protect the public interest. Only if that is not possible should an interim suspension be considered.

The same logic would apply to an order under Rule 3-7.1 and in relation to an articled student under both Rules. The Subcommittee recommends re-ordering accordingly. The Subcommittee also suggests combining provisions applying to lawyers and articled students where possible, for economy of language.

Dangerous or harmful

The current Rule 4-17(1) sets the threshold for an interim suspension pending the outcome of a citation that has been issued as follows:

> (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;

Mr. Crossin suggested that "the use of the words 'dangerous or harmful' seems a bit redundant. He suggested just using one word, "harmful", since he did not know what "dangerous" adds to that.

Section 39, which authorizes the Rule, reads as follows:

> (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;

As you can see, the statute uses only the one word "dangerous". If there is no difference in effect, and one word is preferable to two with the same meaning, the Subcommittee recommends using "dangerous" rather than "harmful" in order to track the language of the *Legal Profession Act*.

JGH
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Attachments: July memorandum, part
draft rules
suggested resolution

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.

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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, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) [rescinded] ~~(a) suspend a lawyer,~~

(b) impose conditions or limitations on the practice of a lawyer~~,~~ or on the enrolment of an articled student, or

(c) suspend a lawyer or the enrolment of an articled student.

(14) An order made under this Rule or varied under ~~this~~ 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 ~~subrule (15)~~Rule 3-7.3.

Medical examination

3-7.2 (1) This Rule applies to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4.

(2) If they are of the opinion, on reasonable grounds, 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

LAW SOCIETY RULES

(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.

(4) The report of a medical practitioner under this Rule

(a) may be used for any purpose consistent with the Act and these Rules, and

(b) 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) must 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, on reasonable grounds, 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.

(~~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~~12) 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~~12), 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~~any of the following:

(a) [rescinded] ~~suspend the lawyer, if the 3 Benchers 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~~b.1), ~~place~~ impose conditions or limitations on the practice of ~~the lawyer~~a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;

(b.1) suspend a respondent who is a lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the respondent will be dangerous to the public or the respondent's clients;

LAW SOCIETY RULES

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

~~(d) require the respondent to~~

~~(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.~~

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

(3) An order made under subrule (1)~~(b) or (d)~~ 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, and~~.~~

(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.

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) *[Interim suspension or practice conditions]*, the respondent may apply in writing to the President at any time for rescission or variation of the order.

LAW SOCIETY RULES

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 Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent;

(c) a member of a panel that heard an application under Rule 4-19 *[Review of interim suspension or practice conditions]* 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, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) [rescinded]

(b) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(c) suspend a lawyer or the enrolment of an articled student.

(14) 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

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4.

(2) If they are of the opinion, on reasonable grounds, 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

LAW SOCIETY RULES

(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.

(4) The report of a medical practitioner under this Rule

(a) may be used for any purpose consistent with the Act and these Rules, and

(b) 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) must 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, on reasonable grounds, 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).

LAW SOCIETY RULES

(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 (12) 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 (12), 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 any of the following:

(a) [rescinded]

(b) in any case not referred to in paragraph (b.1), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;

(b.1) suspend a respondent who is a lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the respondent will be dangerous to the public or the respondent's clients;

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

LAW SOCIETY RULES

(d) [rescinded]

(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) 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,

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

(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.

Review of interim suspension or practice conditions

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

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 Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent;

(c) a member of a panel that heard an application under Rule 4-19 *[Review of interim suspension or practice conditions]* to rescind or vary an interim suspension or practice condition or 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, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) ~~suspend a lawyer,~~[rescinded]

(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~~ or on the enrolment of an articled student, or

(c) suspend a lawyer or the enrolment of an articled student.

(~~3~~14) 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.~~

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4.

(2) If they are of the opinion, on reasonable grounds, 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

(a) may be used for any purpose consistent with the Act and these Rules, and

(b) 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~~must 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, on reasonable grounds, 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.

LAW SOCIETY RULES

(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~~12) 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~~12), 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~~any of the following:

(a) [rescinded]

(b) in any case not referred to in paragraph (b.1), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;

(b.1) suspend ~~the~~a respondent who is a lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the ~~lawyer~~respondent will be dangerous ~~or harmful~~ to the public or the ~~lawyer's~~respondent'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 a respondent who is 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~~;~~.

~~(c) 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) 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~~.~~, and

(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.

Review of interim suspension or practice conditions

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

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~~Rules 3-7.1 to 3-7.3~~,~~ or Rule 4-17 regarding the respondent;

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

INTERIM SUSPENSION AND MEDICAL EXAMINATIONS

SUGGESTED RESOLUTION:

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

1. 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, on reasonable grounds, 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 on the enrolment of an articled student, or

(c) suspend a lawyer or the enrolment of an articled student.

(14) 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

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4.

(2) If they are of the opinion, on reasonable grounds, 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.

(4) The report of a medical practitioner under this Rule

(a) may be used for any purpose consistent with the Act and these Rules, and

(b) 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) must 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, on reasonable grounds, 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 (12) 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 (12), 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.

2. 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 any of the following:

(b) in any case not referred to in paragraph (b.1), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;

(b.1) suspend a respondent who is a lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the respondent will be dangerous to the public or the respondent's clients;

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

(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) 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,

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

(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.

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

Review of interim suspension or practice conditions*;*

4. 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 Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent;

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

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for the Act and Rules Subcommittee
Date: August 28, 2012
Subject: **Bill 40 -- Review board and appeals amendments**

The Act and Rules Subcommittee recommends adoption of new and amended rules, effective on proclamation of the relevant amendments to the *Legal Profession Act*. The provisions concerned are sections 47 and 48 of the *Legal Profession Act*, which will be amended to provide for review boards to review hearing panel decisions in place of the Benchers as a whole, and for the Law Society to appeal on questions of law to the Court of Appeal for British Columbia from decisions of hearing panels and review boards.

Here are the amendments to sections 47 and 48 of the *Legal Profession Act*, which we have requested be proclaimed in force January 1, 2013:

Review on the record

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

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

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

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

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

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

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

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

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

~~the remaining benchers may continue to hear the review and make a final decision, and the vacancy does not invalidate the review.~~

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

(a) confirm the decision of the panel, or

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

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

(a) the appointment and composition of review boards;

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

(c) the practice and procedure for proceedings before review boards.

Appeal

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

(a) an applicant;

(b) a respondent;

(c) a lawyer who is suspended or disbarred under this Act~~.~~;

(d) the society.

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

Amendments to section 47 will replace Bencher reviews of hearing panel decisions with review by a review board to be established in the Rules. They also allow expressly for reviews by the review board of orders for costs, including orders by the Practice Standards Committee.

Amendments to section 48 will allow the Law Society, through the appropriate committee to appeal decisions of hearing panels or review boards directly to the Court of Appeal on questions of law.

The attached draft Rule amendments are intended to give effect to the legislative amendments by establishing the review boards and putting them in place of the Bencher review where the Rules

refer to that. They also provide some process for initiating a review of an order for costs, including prescribing the "record" for a review on the record of an order of the Practice Standards Committee for costs. Finally, they provide a process for the initiation of an appeal to the Court of Appeal by a Law Society Committee.

Here are some drafting notes:

- In the definition of "professional conduct record", reference to the Benchers (on review of a hearing decision) is replaced with reference to a review board. However, there is also an added item (paragraph (t)) to preserve review decisions made by the Benchers before the amendments take effect as part of the professional conduct records of the lawyers concerned.

- In Rules 2-63 *[Law Society counsel]* and 4-20 *[Appointment of discipline counsel]*, "applicant" and "respondent or suspended lawyer", respectively, are changed to "person" to allow for the Law Society initiating an appeal to the Court of Appeal. The Law Society is listed in section 48 as one of the "persons" who can initiate an appeal.

- In the existing Rule 5-2(8) *[Hearing panels]* and in the proposed Rule 5-12.1(6) *[Review boards]*, which applies the same provision to the review boards, the requirement for the President to seek the consent of the Executive Committee to terminate the appointment of an individual to a hearing panel or review board is removed. The President is given complete discretion otherwise to appoint panels, and presumably would have the same power with respect to review boards. The Benchers have adopted policies for panel appointments, but they remain advisory to the President. There does not seem to be any reason to formally constrain his or her authority with respect to removals only. That generally happens only when there is a compelling reason, and the consent of the Executive Committee would be redundant.

- In proposed Rule 5-12.1 *[Review boards]* the Rules establishing the review boards are modelled after the Rules establishing hearing panels. So, as is the case with hearing panels:

    - there must be an odd number of members, to avoid tie vote situations;

    - the review board must be chaired by a lawyer Bencher;

    - virtually anyone is eligible under the Rules;

    - other mechanical provisions apply.

- Rather than prescribe a number of members for each review board, the Subcommittee suggests that the Rules only require that the number of members of the review board be

greater than that of the panel whose decision it is reviewing. That is generally the case for internal reviews within tribunals and appeals in the courts.

Since both must comprise an odd number of members, that means that the usual would be at least five members of a review board. Since there are provisions for one-Bencher panels, a review board of three would also be possible.

In the future, the Benchers may want to consider adopting a policy directive for the President as to the size and composition of review boards.

- The time limitation for initiating a review is expressed as 30 days *after* the decision to conform to the language of the *Legal Profession Act*. Also, technically *within* 30 days includes before the decision, which does not make sense in this context.

- There is a proposed new Rule 5-22 that would allow the Discipline, Credentials or Practice Standards Committee to initiate an appeal to the Court of Appeal on a question of law by adopting the appropriate resolution.

I attach a draft of the proposed amendments in clean and redlined versions, as well as a suggested resolution to effect the changes.

JGH
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Attachments: draft amendments.
suggested resolution

LAW SOCIETY RULES

Definitions

1 In these Rules, unless the context indicates otherwise:

"conduct unbecoming a lawyer" includes any matter, conduct or thing that is considered, in the judgment of the Benchers, ~~or~~ a panel or a review board,

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

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

"professional conduct record" means a record of all or some of the following information respecting a lawyer:

(c) a decision by a panel or ~~the Benchers~~a review board to reject an application for enrolment, call and admission or reinstatement;

(l) an action taken by ~~the Benchers~~ a review board under section 47 of the Act;

(r) the outcome of an appeal ~~taken by the lawyer~~ under section 48 of the Act;

(t) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-13(1) *[Direction to issue, expand or rescind citation]*, or

(b) under review by ~~the Benchers~~ a review board under section 47 of the Act;

"review board" means a review board established in accordance with Part 5;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Multi-Disciplinary Practice

Cancellation of permission to practise law in an MDP

2-23.6 (5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by ~~the Benchers~~a review board on the record of a decision under subrule (4) by delivering to the President and the other party a Notice of Review.

(8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of ~~the Benchers on~~ the review board.

LAW SOCIETY RULES

Division 2 – Admission and Reinstatement

Powers of the Credentials Committee

2-26 (3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations made under this Division or imposed ~~by the Benchers~~ on a review initiated under Rule 5-13(1) or (2) *[Initiating a review]*.

Call and admission

First call and admission

2-48 (4) When the Credentials Committee has initiated a review under Rule 5-13 *[Initiating a review]* of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the ~~Benchers have~~review board has issued a final decision on the review or the review is withdrawn by the Credentials Committee.

Reinstatement

Subsequent application for reinstatement

2-53 A person whose application for reinstatement is rejected under section 22(3) of the Act may not make a new application for reinstatement until the earlier of the following:

(a) 2 years after the date on which the application was rejected;

(b) the date set by the panel when the application was rejected or by the ~~Benchers~~ review board on a review under Part 5.

Credentials hearing

Law Society counsel

2-63 The Executive Director must appoint an employee of the Society or retain another lawyer to represent the Society when

(a.1) a review is initiated under section 47 of the Act,

(b) a~~n applicant~~ person appeals a decision to the Court of Appeal under section 48 of the Act, or

LAW SOCIETY RULES

Anonymous publication

2-69.2 (7) If, on a review of a panel decision rejecting an application, the ~~Benchers~~ review board ~~approve~~ approves the application, the applicant may apply to the ~~Benchers~~ review board under subrule (4), and subrules (3) to (6) apply as if the ~~Benchers~~ review board were a panel.

PART 4 – DISCIPLINE

Appointment of discipline counsel

4-20 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a.1) a review is initiated under section 47 of the Act,

(b) a person ~~respondent or a suspended lawyer~~ appeals a decision to the Court of Appeal under section 48 of the Act, or

Publication of disciplinary action

4-38 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

(b) at the conclusion of a hearing before ~~the Benchers~~ a review board under section 47 of the Act,

(3) When a publication is required under subrule (1), the Executive Director may also publish generally

(b) all or part of the report of the hearing panel or review board, or

PART 5 – HEARINGS AND APPEALS

Application of Part

5-1 This Part applies to

(c) unless the context indicates otherwise, a review by ~~the Benchers~~ a review board of a hearing decision.

Hearing panels

5-2 (8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel ~~and, on the advice of the Executive Committee, may~~ or terminate an appointment to a panel.

LAW SOCIETY RULES

Disqualification

5-3 (3) ~~A Bencher who is disqualified from participation in a hearing panel under this Rule must not sit on a review by the Benchers under section 47 of the Act.~~ **[rescinded]**

Costs of hearings

5-9 (0.2) ~~The Benchers~~A review board may order that an applicant or respondent pay the costs of a review under section 47 of the Act, and may set a time for payment.

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

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

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

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

Time to pay a fine or costs, or to fulfil a practice condition

5-10 (4) An applicant or respondent must do the following by the date set by the hearing panel or ~~the Benchers~~review board or extended under this Rule:

(a) pay in full a fine or the amount owing under Rule 5-9;

(b) fulfill a practice condition as established under section 21, 22, 27, 32 or 38 of the Act or accepted under section 19 of the Act, or varied under subrule (3)(c).

Reviews and appeals

Review by ~~Benchers~~ review board

5-12 (1) In Rules 5-12 to 5-21, **"review"** means a review of a hearing panel decision by ~~the Benchers~~ a review board under section 47 of the Act.

(2) Subject to the Act and these Rules, ~~the Benchers~~a review board may determine the practice and procedure to be followed at a review.

LAW SOCIETY RULES

Review boards

5-12.1 (1) A review board must consist of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a Bencher may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

Disqualification

5-12.2 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-3 *[Disqualification]* from participation in the hearing panel.

Initiating a review

5-13 (2) Within 30 days ~~of~~ after a decision of the panel in a credentials hearing, the Credentials Committee may, ~~adopt a~~ by resolution ~~to~~, refer the decision ~~to the Benchers~~ for a review on the record by a review board.

(3) Within 30 days ~~of~~ after a decision of the panel in a hearing on a citation, the Discipline Committee may, ~~resolve~~ by resolution, ~~to~~ refer the decision ~~to the Benchers~~ for a review on the record by a review board.

(5) Within 30 days after the order of the Practice Standards Committee under Rule 3-18(1) *[Costs]*, the lawyer concerned may deliver a notice of review under Rule 5-15 *[Notice of review]* to the Executive Director.

LAW SOCIETY RULES

Stay of order pending review

5-14 (1) When a review is initiated under Rule 5-13 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

Notice of review

5-15 A ~~Notice~~ notice of ~~Review~~ review must contain the following in summary form:

(a) a clear indication of the decision to be reviewed by the ~~Benchers~~review board;

Record of credentials hearing

5-16 (2) If, in the opinion of the ~~Benchers~~review board, there are special circumstances, the review board~~Benchers~~ may admit evidence that is not part of the record.

Record of discipline hearing

5-17 (2) If, in the opinion of the review board~~Benchers~~, there are special circumstances, the review board~~Benchers~~ may admit evidence that is not part of the record.

Record of an order for costs by the Practice Standards Committee

5-17.1 (1) Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-18 *[Costs]* consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(e) the notice of review under Rule 5-15 *[Notice of review]*.

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

Adjournment

5-19 (5) After a hearing has commenced, the ~~President or other Bencher presiding~~chair of the review board may adjourn the hearing, with or without conditions, to a specified date, time and place.

Decision on review

5-20 (1) The decision of the ~~Benchers~~ review board on a review is made by majority vote.

(2) The ~~Benchers~~ review board must prepare written reasons for ~~their~~ its decision on a review.

(3) [rescinded] ~~On request, the Executive Director must disclose the Benchers' written reasons for their decision, subject to the protection of solicitor and client privilege and confidentiality.~~

(4) When the ~~Benchers give~~ review board gives written reasons for ~~their~~ its decision, ~~they~~ it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(5) The Executive Director must promptly deliver a copy of the ~~Benchers'~~ review board's written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.

(6) On request, the Executive Director must disclose the review board's written reasons for its decision.

Appeal to Court of Appeal

5-22 (1) The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a discipline hearing.

(2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a credentials hearing.

(3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a review board with respect to an order for costs under Rule 3-18 *[Costs]*.

LAW SOCIETY RULES

Definitions

1 In these Rules, unless the context indicates otherwise:

"conduct unbecoming a lawyer" includes any matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

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

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

"professional conduct record" means a record of all or some of the following information respecting a lawyer:

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(l) an action taken by a review board under section 47 of the Act;

(r) the outcome of an appeal under section 48 of the Act;

(t) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-13(1) *[Direction to issue, expand or rescind citation]*, or

(b) under review by a review board under section 47 of the Act;

"review board" means a review board established in accordance with Part 5;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Multi-Disciplinary Practice

Cancellation of permission to practise law in an MDP

2-23.6 (5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by a review board on the record of a decision under subrule (4) by delivering to the President and the other party a Notice of Review.

(8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the review board.

LAW SOCIETY RULES

Division 2 – Admission and Reinstatement

Powers of the Credentials Committee

2-26 (3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations made under this Division or imposed on a review initiated under Rule 5-13(1) or (2) *[Initiating a review]*.

Call and admission

First call and admission

2-48 (4) When the Credentials Committee has initiated a review under Rule 5-13 *[Initiating a review]* of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the review board has issued a final decision on the review or the review is withdrawn by the Credentials Committee.

Reinstatement

Subsequent application for reinstatement

2-53 A person whose application for reinstatement is rejected under section 22(3) of the Act may not make a new application for reinstatement until the earlier of the following:

(a) 2 years after the date on which the application was rejected;

(b) the date set by the panel when the application was rejected or by the review board on a review under Part 5.

Credentials hearing

Law Society counsel

2-63 The Executive Director must appoint an employee of the Society or retain another lawyer to represent the Society when

(a.1) a review is initiated under section 47 of the Act,

(b) a person appeals a decision to the Court of Appeal under section 48 of the Act, or

Anonymous publication

2-69.2 (7) If, on a review of a panel decision rejecting an application, the review board approves the application, the applicant may apply to the review board under subrule (4), and subrules (3) to (6) apply as if the review board were a panel.

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Appointment of discipline counsel

4-20 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a.1) a review is initiated under section 47 of the Act,

(b) a person appeals a decision to the Court of Appeal under section 48 of the Act, or

Publication of disciplinary action

4-38 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

(b) at the conclusion of a hearing before a review board under section 47 of the Act,

(3) When a publication is required under subrule (1), the Executive Director may also publish generally

(b) all or part of the report of the hearing panel or review board, or

PART 5 – HEARINGS AND APPEALS

Application of Part

5-1 This Part applies to

(c) unless the context indicates otherwise, a review by a review board of a hearing decision.

Hearing panels

5-2 (8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

Disqualification

5-3 (3) **[rescinded]**

Costs of hearings

5-9 (0.2) A review board may order that an applicant or respondent pay the costs of a review under section 47 of the Act, and may set a time for payment.

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

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

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

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

Time to pay a fine or costs, or to fulfil a practice condition

5-10 (4) An applicant or respondent must do the following by the date set by the hearing panel or review board or extended under this Rule:

(a) pay in full a fine or the amount owing under Rule 5-9;

(b) fulfill a practice condition as established under section 21, 22, 27, 32 or 38 of the Act or accepted under section 19 of the Act, or varied under subrule (3)(c).

Reviews and appeals

Review by review board

5-12 (1) In Rules 5-12 to 5-21, **"review"** means a review of a hearing panel decision by a review board under section 47 of the Act.

(2) Subject to the Act and these Rules, a review board may determine the practice and procedure to be followed at a review.

Review boards

5-12.1 (1) A review board must consist of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a Bencher may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

Disqualification

5-12.2 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-3 *[Disqualification]* from participation in the hearing panel.

Initiating a review

5-13 (2) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may, by resolution, refer the decision for a review on the record by a review board.

(3) Within 30 days after a decision of the panel in a hearing on a citation, the Discipline Committee may, by resolution, refer the decision for a review on the record by a review board.

(5) Within 30 days after the order of the Practice Standards Committee under Rule 3-18(1) *[Costs]*, the lawyer concerned may deliver a notice of review under Rule 5-15 *[Notice of review]* to the Executive Director.

Stay of order pending review

5-14 (1) When a review is initiated under Rule 5-13 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

Notice of review

5-15 A notice of review must contain the following in summary form:

(a) a clear indication of the decision to be reviewed by the review board;

LAW SOCIETY RULES

Record of credentials hearing

5-16 (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of discipline hearing

5-17 (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of an order for costs by the Practice Standards Committee

5-17.1 (1) Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-18 *[Costs]* consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(e) the notice of review under Rule 5-15 *[Notice of review]*.

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

Adjournment

5-19 (5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, to a specified date, time and place.

Decision on review

5-20 (1) The decision of the review board on a review is made by majority vote.

(2) The review board must prepare written reasons for its decision on a review.

(3) [rescinded] (4) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(5) The Executive Director must promptly deliver a copy of the review board's written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.

(6) On request, the Executive Director must disclose the review board's written reasons for its decision.

LAW SOCIETY RULES

Appeal to Court of Appeal

5-22 (1) The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a discipline hearing.

(2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a credentials hearing.

(3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a review board with respect to an order for costs under Rule 3-18 *[Costs]*.

REVIEW BOARDS AND APPEALS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules as follows, effective on proclamation of sections 36(a) and (c) to (g) and 37 of the Legal Profession Amendment Act, 2012:

1. In Rule 1:

(a) By rescinding the definitions of "conduct unbecoming a lawyer" and "respondent" and substituting the following:

"conduct unbecoming a lawyer" includes any matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

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

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

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-13(1) *[Direction to issue, expand or rescind citation]*, or

(b) under review by a review board under section 47 of the Act;***;***

(b) By rescinding paragraphs (c), (l) and (r) of the definition of "professional conduct record" and substituting the following:

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(l) an action taken by a review board under section 47 of the Act;

(r) the outcome of an appeal under section 48 of the Act;

(t) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;***; and***

(c) By adding the following definition:

"review board" means a review board established in accordance with Part 5;**.**

2. In Rule 2-23.6, by rescinding subrules (5) and (8) and substituting the following:

(5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by a review board on the record of a decision under subrule (4) by delivering to the President and the other party a notice of review.

(8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the review board**..**

3. In Rule 2-26, by rescinding subrule (3) and substituting the following:

(3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations made under this Division or imposed on a review initiated under Rule 5-13(1) or (2) *[Initiating a review]***..**

4. In Rule 2-48, by rescinding subrule (4) and substituting the following:

(4) When the Credentials Committee has initiated a review under Rule 5-13 *[Initiating a review]* of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the review board has issued a final decision on the review or the review is withdrawn by the Credentials Committee**..**

5. In Rule 2-53(b), by striking "by the Benchers***" and substituting "***by the review board***".***

6. In Rule 2-63, by rescinding paragraph (b) and substituting the following:

(a.1) a review is initiated under section 47 of the Act,

(b) a person appeals a decision to the Court of Appeal under section 48 of the Act, or

7. In Rule 2-69.2, by rescinding subrule (7) and substituting the following:

(7) If, on a review of a panel decision rejecting an application, the review board approves the application, the applicant may apply to the review board under subrule (4), and subrules (3) to (6) apply as if the review board were a panel**..**

8. In Rule 4-20, by rescinding paragraph (b) and substituting the following:

(a.1) a review is initiated under section 47 of the Act,

(b) a person appeals a decision to the Court of Appeal under section 48 of the Act, or**.**

9. In Rule 4-38, by:

(a) rescinding subrule (1)(b) and substituting the following:

(b) at the conclusion of a hearing before a review board under section 47 of the Act,***; and***

(b) by rescinding subrule (3)(b) and substituting the following:

(b) all or part of the report of the hearing panel or review board, or**.**

10. In Rule 5-1(c), by striking "by the Benchers***" and substituting "***by a review board***".***

11. In Rule 5-2, by rescinding subrule (8) and substituting the following:

(8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

12. In Rule 5-3, by rescinding subrule (3).

13. In Rule 5-9, by

(a) striking "The Benchers may***" in subrule (0.2) and substituting "***A review board may***";***

(b) striking "or the Benchers***" wherever it appears in subrules (1.1) and (1.2) and substituting "***or review board***"; and***

(c) striking "the panel or the Benchers have the discretion***" in subrules (3) and (3.1) and substituting "***the panel or review board has the discretion***".***

14. In Rule 5-10(4), by striking out "by the hearing panel or the Benchers***" and substituting "***by the hearing panel or review board***".***

15. By rescinding Rule 5-12 and substituting the following:

Review by review board

5-12(1) In Rules 5-12 to 5-21, **"review"** means a review of a hearing panel decision by a review board under section 47 of the Act.

(2) Subject to the Act and these Rules, a review board may determine the practice and procedure to be followed at a review.

(3) Delivery of documents to a respondent or applicant under Rules 5-12 to 5-21 may be effected by delivery to counsel representing the respondent or the applicant.

Review boards

5-12.1(1) A review board must consist of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a Bencher may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board and may terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

Disqualification

5-12.2 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-3 *[Disqualification]* from participation in the hearing panel.

16. By rescinding Rule 5-13(2) and (3) and substituting the following:

(2) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may, by resolution, refer the decision for a review on the record by a review board.

(3) Within 30 days after a decision of the panel in a hearing on a citation, the Discipline Committee may, by resolution, refer the decision for a review on the record by a review board.

(5) Within 30 days after the order of the Practice Standards Committee under Rule 3-18(1) *[Costs]*, the lawyer concerned may deliver a notice of review under Rule 5-15 *[Notice of review]* to the Executive Director.

17. By rescinding Rule 5-14(1) and substituting the following:

(1) When a review is initiated under Rule 5-13 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

18. ***In Rules 5-15(a), 5-16(2) and 5-17(2), by striking "***the Benchers***" wherever it occurs and substituting "***the review board***".***

19. ***By adding the following Rule:***

Record of an order for costs by the Practice Standards Committee

5-17.1(1) Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-18 [Costs] consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(e) the notice of review under Rule 5-15 *[Notice of review]*.

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

20. ***In Rule 5-19, by rescinding subrule (5) and substituting the following:***

(5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, to a specified date, time and place.

21. ***By rescinding Rule 5-20 and substituting the following:***

Decision on review

5-20(1) The decision of the review board on a review is made by majority vote.

(2) The review board must prepare written reasons for its decision on a review.

(4) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(5) The Executive Director must promptly deliver a copy of the review board's written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.

(6) On request, the Executive Director must disclose the review board's written reasons for its decision.

22. By adding the following Rule:

Appeal to Court of Appeal

5-22(1) The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a discipline hearing.

(2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a credentials hearing.

(3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a review board with respect to an order for costs under Rule 3-18 *[Costs]*.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

September 7, 2012

Introduction

My report this month will be somewhat briefer than usual, as it follows my comprehensive mid-year report to the Benchers at the meeting in July. The items I would like to highlight for you are as follows.

1. Paralegal Pilot Project – Communications Plan

The initial focus of the expanded role that the Benchers have recently approved for paralegals and articling students (as part of the Law Society's strategic plan to enhance access to affordable legal services) will be on the paralegal pilot project in family law. However, the scope of the changes affecting paralegals goes beyond the family law area and extends to all legal advice and any court appearances permitted by the courts. These changes, which are currently anchored to the requirement for lawyer supervision over no more than two "designated" paralegals, have opened the door to a new model for the provision of legal services.

The Benchers have been clear that one of the key success factors for these changes will be the willingness of lawyers to take on the supervisory role and the extent to which they do so across the province. In other words, we should not assume that just because the rules have been changed that take-up will necessarily follow. Accordingly, we believe that a well-designed, multi-faceted plan to communicate the changes, the goals and the potential benefits of this new business model for legal services to the profession and the public should be undertaken. This is not a standard activity for the Law Society, but it is an excellent example of why we need to be able to adapt and respond to changing needs and circumstances where that is critical to achieving a strategic goal.

At the meeting we will review with the Benchers the initial outline of a proposed communications plan for the paralegal initiative. We will be seeking your feedback, input and suggestions on the plan. If at any time you have questions or ideas on this topic, please do not hesitate to contact Robyn Crisanti, Manager, Communications and Public Affairs, or me.

2. Request of Minister of Justice and Attorney General for Recommendation for Regulatory Reform involving Law Society and Society of Notaries

Following on meetings that President LeRose and I had with Minister of Justice and Attorney General Shirley Bond in the spring and early summer regarding how best to approach regulatory reform in connection with the role of the Law Society and the Society of Notaries Public of BC, our respective organizations received a request from Minister Bond to work together to

develop options for her consideration.

Bruce and I subsequently met with the President and CEO of the Society of Notaries to determine whether there was common ground for jointly pursuing Minister Bond's request. I am pleased to report that our meeting was very productive. We have now provided a joint response to Minister Bond outlining that we propose to approach the challenge she has put to us through the auspices of the Law Society's Legal Services Task Force, which will be chaired by Bruce LeRose, QC, and will be empanelled in the fall.

Bruce and I will provide additional details on this positive development and respond to any questions at the meeting.

3. 2012 Employee Survey

We will soon be conducting our annual employee survey. The annual survey provides staff with an opportunity to provide feedback on how we can improve job satisfaction and our effectiveness as an organization. Each year management designs an action plan around one or two of the most important findings from the survey. We will review the results of the survey and our action plan with the Benchers early in the New Year.

4. Review of Targets in the Key Performance Measures

The Key Performance Measures (KPMs) are the dashboard which the Benchers use to monitor the effectiveness of our core regulatory operations. They were designed and adopted by the Benchers five years ago and now form an important part of our accountability and transparency as an organization. The Law Society is the only law regulator in Canada (and one of only a few regulators) that publishes and reports annually on performance measures for all of its regulatory functions.

While the Audit Committee is charged with reviewing the results of the KPMs with management each year prior to their review by the Benchers and posting on our website, the Benchers have directed that the actual setting of the targets comprising the KPMs be delegated to the Executive Committee to oversee. At the last Executive Committee meeting in August, I reviewed this with the Committee and indicated that management will be preparing a report for the Committee's meeting in November setting out background and possible options for re-setting the KPM targets for their consideration. Our goal will be to bring any changes to the Benchers for consideration and adoption early in 2013.

5. International Institute of Law Association Chief Executives – Annual Conference

I am a member and currently on the Executive Committee of an international organization called the International Institute of Law Association Chief Executives (IILACE). IILACE brings together the CEOs of law regulatory and association bodies from around the world. The main focus for IILACE is the annual conference, which I attend and which is typically scheduled over four days in the fall. The 2010 conference was held here in Vancouver. This year's conference is in Hong Kong in October.

The program for this year's conference touches on the most pressing issues facing the legal profession and those involved in its regulation and advocacy today. The heads of the regulatory bodies from the UK, Australia, Canada, Germany, Scandinavia and several US and African jurisdictions attend. This year we have CEOs from Japan, China and India for the first time. The real advantage I find with IILACE is that the group is relatively small, approximately 30 – 40 CEOs, but with representation from all the most engaged jurisdictions around the world. The formula of a small group of senior leaders over four consecutive days with extensive participation is a good one. I will be reporting back to the Benchers on IILACE 2012 at our meeting in November.

Timothy E. McGee
Chief Executive Officer

The Law Society of British Columbia

QUALIFICATIONS FOR LAWYERS ACTING AS ARBITRATORS, MEDIATORS, AND/OR PARENTING COORDINATORS IN FAMILY LAW MATTERS

September 7, 2012

Family Law Task Force

Carol Hickman, Q.C., Chair
Kathryn Berge, Q.C.
Nancy Merrill
Lee Ongman
Gregory Petrisor
Richard Stewart, Q.C.

Prepared for: Benchers

Prepared by: Family Law Task Force / Doug Munro

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TASK FORCE PROCESS

The Family Law Task Force was formed in 2006 with a mandate to develop best practice guidelines for lawyers practicing family law. While discharging its work on the original mandate, the Task Force was charged with a series of additional responsibilities, including developing qualifications for lawyers acting as family law arbitrators.

The Ministry of Justice[1] approached the Law Society about whether it would be prepared to establish qualifications for lawyers acting as family law arbitrators. The reason for this request stemmed from the Ministry's efforts to modernize the *Family Relations Act.* Bill 16, the *Family Law Act*[2] embodies several principles, including a culture shift to try and resolve more family disputes out of the court system when appropriate. In order to ensure the public is properly protected, the issue of qualifications for family law arbitrators needed to be addressed.

As its work progressed the Task Force realized it also needed to consider qualifications for lawyers acting as family law mediators and/or parenting coordinators (qualifications for lawyers acting as family law arbitrators, family law mediators, and parenting coordinators are collectively referred to as "Family Law ADR Qualifications"). At the July 13, 2012 meeting the benchers approved the following, amended, mandate for the Task Force:

> *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.*[3]

In addition to consultations with staff at the Ministry of Justice, the Task Force sought input from other Law Societies in Canada to ascertain the approach in each province of regulating lawyers acting as family dispute resolution professionals.

The Task Force consulted with the following external organizations and individuals: Glen Bell (of

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[1] At that time it was the Ministry of the Attorney General.
[2] The *Act* comes into force March 18, 2013.
[3] Although the mandate used the language "practice standards" what was meant is minimum entry level requirements for a lawyer to engage in family law arbitration, family law mediation, and/or parenting coordination. It does not refer to best practice guidelines or rules necessary for performing the work on a day to day basis.

the British Columbia Arbitration and Mediation Institute), Trudi Brown, Q.C., Lawrence Kahn, Q.C.; Peter Altridge and Renee Collins Goult (of Mediate BC); John-Paul Boyd, Craig Neville and Stephanie Fabbro (of BC Parenting Coordinators' Roster Society); Phillip Epstein, Q.C. and Lorne Wolfson.

The Task Force also consulted with various Law Society staff, committees and task forces, including: Ralston Alexander, Q.C. (Chair), John Hunter, Q.C., Jerry McHale, Q.C. and Jeff Hoskins, Q.C. (in their capacity as members and staff of the ADR Task Force); Jan Lindsay, Q.C. (Chair), Kensi Gounden and John Nalleweg (in their capacity as Chair and staff supporting the Practice Standards Committee); Thelma O'Grady, Q.C. (Chair) and Alan Treleaven (in their capacity as Chair and staff supporting the Lawyer Education Advisory Committee); Andrea Brownstone, Manager, Investigations, Monitoring and Enforcement; Michael Lucas, Manager of Policy and Legal Services; and Lesley Small, Manger Credentials and Licensing.

From the inception of this project the Task Force has enjoyed very helpful discussions with staff at the Ministry of Justice, including Nancy Carter, Darryl Hrenyk and Jodi Roach. The family law reforms that the government has undertaken are the product of many years of hard work and throughout this process the policy group at the Ministry of Justice has engaged in comprehensive and meaningful consultation. The Task Force commends them for their efforts and their openness to input along the way.

The constituency of the Family Law Task Force has changed since its inception. The Task Force gratefully acknowledges the participation of former bencher, The Honourable Judge Patricia Bond,[4] and life-bencher Patricia Schmit, Q.C. for their contributions to the development of this topic.

EXECUTIVE SUMMMARY

In 2009 the Law Society was approached by the Ministry of the Attorney General to determine whether the Law Society would create Family Law ADR Qualifications.[5] The request formed part

[4] Judge Bond's contributions pre-date her appointment to the Provincial Court of British Columbia.

of the government's reform of the family law system in British Columbia, which included modernizing the *Family Relations Act* with Bill 16, the *Family Law Act.* The *Family Law Act* will allow for regulations to be established for family dispute resolution professionals.

This report provides an analysis of what the appropriate Family Law ADR Qualifications are, in light of the government reform in the area of family law. The report recommends that before lawyers are permitted to act as family law arbitrators, family law mediators and/or parenting coordinators they satisfy certain criteria. The criteria in each area include specific alternative dispute resolution skills training, training in recognizing and dealing with family violence, and targeted continuing professional development. In addition, the report recommends experience requirements for family law arbitrators and parenting coordinators, while eliminating the existing three year experience requirement for family law mediators under Law Society Rules, rule 3-20. The report recommends that the oversight function of Family Law ADR Qualifications be moved from the Practice Standards Committee to the Credentials Committee, and that rule 3-20 be amended to reflect that change. In addition it is recommended that Law Society Rules, rule 3-20, be expanded to include family law arbitration and parenting coordination.

[5] While the initial request related to family law arbitration, the topic expanded to include mediation and parenting coordination.

RECOMMENDATIONS

Recommendation 1: Lawyers acting as family law arbitrators must meet the following qualifications:

1. 10 years of current practice experience, or experience as a judge or master;

2. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the arbitral function in a fair and competent manner;

3. A minimum of 40 hours approved training in how to conduct an arbitration. Course work should include:

    a. Theory and skills training;

    b. Drafting;

    c. How to conduct an arbitration;

    d. The statutory framework of arbitration;

    e. Family dynamics;

    f. Administrative law principles governing arbitrations.

4. A minimum of 14 hours of approved training in family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process;

5. Relevant courses taken to meet the current rule 3-20 requirement and any relevant courses taken since qualifying count towards these requirements

Recommendation 2.1: The Task Force recommends that the current approved course requirements for lawyers acting as family law mediators be amended to require the following:

1. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the mediatory function in a fair and competent manner;

2. A minimum of 80 hours of approved mediation skills training. Course work should include:

    a. Theory and skills training;

    b. Drafting;

    c. How to conduct a mediation;

    d. The statutory framework of mediation;

    e. Family dynamics;

    f. A minimum of 10 hours of role playing scenarios.

3. A minimum of 14 hours of approved training in screening for family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process.

Recommendation 2.2: Abolish the Law Society Rules, rule 3-20(1)(a) requiring three years of legal practice to qualify as a family law mediator.

Recommendation 2.3: The Task Force recommends the following approach to grand parenting existing family law mediators:

1. Lawyers who, as of the date the new rule 3-20 is approved, meet the family law mediator requirements under the current rule 3-20 will have until January 1, 2014 to ensure they meet the training requirements for family law mediators recommended in this report;

2. Courses taken to meet the current rule 3-20 requirement and any courses taken since qualifying count towards these requirements;

3. As of the adoption of this report, all lawyers who wish to qualify in the first instance to act as family law mediators must meet the requirements contained in this report;

4. Staff will determine how to implement the reporting requirement and the Law Society will provide notice to the profession regarding the required standards and how to report compliance.

Recommendation 3: The Task Force recommends that lawyers acting as parenting coordinators must meet the following qualifications:

1. 10 years of current practice experience, or experience as a judge or master;

2. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the parenting coordination function in a fair and competent manner. This family law experience must include considerable experience dealing with high conflict families with children;

3. A minimum of 40 hours of approved parenting coordination training, which must include:

    a. Parenting coordination skills training and theory;

    b. Dealing with high conflict families and individuals;

    c. Child development, interviewing children, and the effects of separation and divorce on children;

    d. The effects of separation and divorce on adults.

4. The minimum approved training qualifications of a family law arbitrator, which include:

    a. A minimum of 40 hours training in how to conduct an arbitration. Course work should include:

        i. Theory and skills training;

        ii. Drafting;

iii. How to conduct an arbitration;

iv. The statutory framework of arbitration;

v. Family dynamics;

vi. Administrative law principles governing arbitrations.

5. The minimum approved training qualifications of a family law mediator, which include:

    a. A minimum of 80 hours of mediation skills training. Course work should include:

        i. Theory and skills training;

        ii. Drafting;

        iii. How to conduct a mediation;

        iv. The statutory framework of mediation;

        v. Family dynamics;

        vi. A minimum of 10 hours of role playing scenarios.

6. A minimum of 14 hours of approved training in screening for family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process;

7. Relevant courses taken to meet the current rule 3-20 requirement and any relevant courses taken since qualifying count towards these requirements

Recommendation 4: The Credentials Committee can set criteria for approved courses for lawyers acting as family law arbitrators, family law mediators, or parenting coordinators. In exercising its authority to assess courses the Credentials Committee should be guided by the substantive minimum requirements set out above.

Recommendation 5: The Task Force recommends that the Law Society should alert lawyers of

the obligation in s. 8 of the Family Law Act to screen for family violence. Lawyers who will be "advising a party in relation to a family law dispute" should be strongly encouraged to take courses in screening for family violence.

Recommendation 6: The Task Force recommends that lawyers acting as family law arbitrators, family law mediators, and/or parenting coordinators be required to record a minimum of six hours of continuing professional development per year in dispute resolution skills training and/or theory.

Recommendation 7: The Task Force recommends that the Act and Rules Subcommittee assist the benchers in seeking a consequential amendment to the Legal Profession Act to make it clear that the Law Society may make rules for the governing of lawyers acting as alternative dispute resolution professionals.

Recommendation 8: The Task Force recommends that the Ethics Committee be asked to develop for inclusion in the BC Code the requirements for written agreements for lawyers acting as family law arbitrators, mediators and/or parenting coordinators. These provisions will include the present protections regarding avoidance of conflicts of interest, recommendations regarding the need for independent legal advice, and the requirement for a written agreement as are now set out in Appendix 2 in relation to lawyers acting as mediators.

An additional point to be added to this new provision is that if a lawyer's role changes from one where the lawyer acts as a facilitator of consensual resolution to one where the lawyer acts as a decision maker, the lawyer must clearly specify in writing the nature of the change in function and when the lawyer will begin to exercise the change. The written agreement between the lawyer and the parties must confirm that such changes in function will be specified in writing. For example: a lawyer may conduct a process designed to be a mediation-arbitration. When the mediation portion of the process fails, the lawyer puts on the arbitrator hat and the lawyer should confirm that shift in role in writing.

The Ethics Committee should attempt to have the amendments to the BC Code in place by March 18, 2013.

BACKGROUND AND FORMAT OF THIS REPORT

The Law Society has a history of developing policy with respect to alternative dispute resolution. In 1984 the benchers established a series of rules for lawyers acting as family law mediators. Those rules are embodied in Law Society Rules, rule 3-20. Over the years the Practice Standards Committee, with the assistance of the Family Law Mediation Subgroup, has reviewed applications of lawyers seeking standing as family law mediators, making rulings on the approved course of studies and assessing equivalencies. More recently, the Alternative Dispute Resolution Task Force produced a consultation paper in May 2007 that contains 38 recommendations regarding ADR.[6]

In this report the Family Law Task Force analyzes and makes recommendations regarding Family Law ADR Qualifications. The report starts with a general overview of criteria used by the Task Force and then explores in separate sections the question of the appropriate qualifications for family law arbitration, family law mediation and parenting coordination.

THE ISSUE

The government of British Columbia is in the process of reforming the family law justice system. The reforms include modernizing the *Family Relations Act* with the new *Family Law Act*, which comes into force March 18, 2013. The reforms embody a policy shift designed, amongst other things, to diffuse the adversarial nature of family law disputes and to see more family law disputes resolved out of court. The *Family Law Act* allows the government to set education and training requirements for family dispute resolution professionals by way of regulation.[7] The government will establish qualifications for non-lawyer family dispute resolution professionals.

As part of the object of fostering greater use of alternative dispute resolution, the Ministry of the Attorney General requested that the Law Society consider developing qualifications for lawyers acting as family law arbitrators. As noted, the scope of the project grew to include consideration of family law mediation and parenting coordination. The issue considered in this report is whether the Law Society should create Family Law ADR Qualifications, and if qualifications are to be

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[6] Available at http://www.lawsociety.bc.ca/page.cfm?cid=99&t=Committee-and-Task-Force-Reports ("ADR Task Force Report").
[7] Section 245(1)(c).

created, what they should be.

EVALUATION CRITERIA

In evaluating the merit of implementing Family Law ADR Qualifications there are a range of factors the benchers should consider. This section of the report details evaluation criteria considered by the Task Force.

Public Interest

The main question the Task Force considered is whether Family Law ADR Qualifications are in the public interest.

In some respects, family law arbitration and parenting coordination are still in their infancy in British Columbia. This provides an opportunity to consider qualifications from the view of what should be built, rather than what needs to be fixed, in order to protect the public interest in the administration of justice. With respect to family law mediation, in 1984 the Law Society was the first law society to establish rules relating to family law mediation. Family law mediation has evolved considerably over the past 28 years, and in light of the impending legislative change and general reform in family law, it is time to review the Law Society's qualifications and consider whether they remain appropriate.

When the public retains a professional they expect several things including that the professional is competent to provide the services that are offered. Lawyers are trained through law school, admission programs, and articles, to develop base line competencies to practice law. Generally, this training does not teach one how to perform ADR functions, however. So while experience in practicing law can be important, it is an insufficient criteria on which to ensure a lawyer possesses certain essential information to conduct family law arbitrations or mediations or to act as a parenting coordinator. The public interest suggests that additional, targeted training is necessary.

When the benchers adopted qualifications for lawyers acting as family law mediators they recognized that mediation differs from the traditional practice of law, and that family law

mediation in particular requires discrete qualifications in order to protect the public. Although arbitration and parenting coordination differ from mediation, there is value in being consistent with respect to the need for qualifications to better protect the public.

Although the focus of the Task Force was to consider Family Law ADR Qualifications for lawyers, it believes it is important to make some observations about qualifications for non-lawyer family law arbitrators.

The Task Force understands that the government will consider what education and training requirements non-lawyer family law dispute resolution professionals must possess. The Task Force views this as important. The public interest factors that justify the need for standards for lawyers acting as family law arbitrators apply as much, if not more so, to non-lawyers. Non-lawyer dispute resolution professionals are not uniformly regulated[8] or covered by mandatory insurance. While some individuals will possess backgrounds that are relevant to matters that can arise in family disputes, others will not. As such, it is critically important that non-lawyer dispute resolution professionals are subject to rigorous education and training requirements. The government may also wish to consider what dispute resolution processes are available to people who are not pleased with the competence of their non-lawyer dispute resolution professional, including requiring membership in certain organizations.

The Task Force also understands that the British Columbia government may be precluded, to some degree, by the Agreement on Internal Trade ("AIT"), to impose such restrictions on non-lawyer arbitrators when similar restrictions do not exist in other provinces. It encourages the government to resolve any ambiguity regarding application of the AIT with its other signatories prior to March 18, 2013.

Cost and Benefit

Because the Law Society will investigate complaints against lawyers acting as dispute resolution

[8] While family law arbitrators in Ontario are required to meet the Ministry of the Attorney General standards, there is not a dedicated regulatory body for which mandatory membership is required. It is also possible to obtain membership in organizations such as Mediate BC and Mediation Canada, which would require compliance with membership standards of those organizations.

professionals, the presence of qualifications should not increase operational costs of the Law Society. The analysis of complaints may vary in the presence of a set of rules that establish qualifications (e.g. if a lawyer was acting as a family law mediator without having met the requirements), but the extent to which that would affect budgeting (if at all) is difficult to quantify.

Whereas the issue of potential costs is ambiguous, the Task Force is of the view that the benefits that flow from qualifications are more tangible and therefore more determinative of the value of adopting qualifications. The Task Force raised the general issue of regulatory oversight of lawyers performing ADR roles and understands that staff in the Professional Regulation and the Policy and Legal Services Departments will review the issue. That topic lies outside the Task Force's general mandate, however, so it is raised but not explored in this report.

Public Relations

The Task Force is of the view that establishing Family Law ADR Qualifications will have positive public relations implications. This is somewhat speculative, as it may be the case that the public assumes the Law Society already sets such requirements. It is also possible that as family law ADR continues to develop, particularly where there are both lawyers and non-lawyers occupying the field, the public will expect lawyers to be held to entry requirements that are as high (if not higher) than the entry requirements of non-lawyer family dispute resolution professionals. The Task Force is of the view that positive public relations is a potential benefit, but the more important question is whether it is in the public interest to set Family Law ADR Qualifications.

Government Relations

The Task Force anticipates adopting Family Law ADR Qualifications will result in positive government relations. The government has invested considerable time and resources in developing reforms in the area of family law, and has identified the need for entry level qualifications. The benchers have identified the importance of finding ways to work with government, when and as appropriate, to address matters of shared concern. The Task Force is of the view that the recommendations in this report are responsive to a government need and are consistent with Initiative 3-1(a) of the 2012-2014 Strategic Plan: *Identify, establish and build on relationships with the Ministry of the Attorney General and other government ministries, the Courts, and non-*

governmental stakeholders.

Program Impacts

Developing Family Law ADR Qualifications will impact existing departments and programs. The most likely impact is on the Credentials Department. This is predicated on the benchers accepting that the oversight of Law Society Rules, rule 3-20 more properly rests with the Credentials Committee than the Practice Standards Committee (as discussed later in this report). Staff will have to develop systems and processes to implement these changes. As with any such systems changes the impact will likely be greater at the beginning of the implementation process and eventually become the normal part of operations.

It was recognized that if the Practice Standards Committee's jurisdiction to consider applications for standing as a family law mediator were expanded to include lawyers acting as family law arbitrators and parenting coordinators that the Practice Standards Committee would see an increased workload. At present the Practice Standards Committee receives assistance from the Family Law Mediation Subcommittee regarding applications for an exemption to the entrance requirements under rule 3-20. If family law arbitration and parenting coordination are included, then it would be necessary to either reconstitute the Family Law Mediation Subcommittee to ensure it also had expertise in the areas of family law arbitration and parenting coordination, or to create additional subgroups. An alternative is that the Credentials Committee might establish the general criteria and leave the operational application to staff to administer, similar to the CPD process. This would require the Act and Rules Subcommittee to structure a revised rule 3-20 to authorize such an approach.

During this discussion consideration was also given to the feasibility of requiring family law experience as a qualification for acting as a family law arbitrator and/or parenting coordinator. The Task Force considered a range of options, including a certain amount of hours per year or a percentage of practice requirement (discussed in more detail later). A concern about the practical application of such a requirement arose and it was strongly suggested that it would be administratively impractical to review applications and determine how much family law experience was enough (both qualitatively and quantitatively). The preferred approaches are set

out in the sections on arbitration and parenting coordination.

The consultation ultimately led to a wider discussion amongst staff and managers about shifting the administration function from the Practice Standards Committee to the Credentials Committee because the qualifications are entry level requirements and not "practice standards" *per se.*

Legality

In analyzing the issue of Family Law ADR Qualifications, the legal issue the Task Force identified is the potential application of the AIT to the establishment of standards.

The AIT is an agreement signed by the provinces and the federal government to eliminate barriers to the free flow of goods and services and people throughout Canada. The AIT limits the ability to impose "material additional training, experience, examinations or assessments as part of the certification process." In order to impose such requirements, a party would have to have evidence that an individual who is certified in another province "lacks a critical skill, area of knowledge or ability required to perform" those services in British Columbia.[9]

The Task Force was concerned about proceeding to develop Family Law ADR Qualifications that differ materially from standards in other provinces, without first getting a sense of how the Ministry of the Attorney General views the application of the AIT to the issue of qualifications for lawyers acting as family law arbitrators.

The feedback the Task Force received was that it should not be a problem for the Law Society to establish Family Law ADR Qualifications that varied materially from requirements in other provinces.

Equity and Diversity

The Task Force does not believe the creation of Family Law ADR Qualifications directly implicate the Law Society's Equity and Diversity initiatives. That having been said, the Law Society should remain mindful of whether the qualifications have the unintended consequence of creating

[9] See, AIT Article 708.

systemic barriers to equal participation by lawyers based on prohibited grounds of discrimination. In particular it is important that the qualifications do not create barriers to equal participation by women lawyers, members of minority cultural groups and Aboriginal lawyers.

The Task Force consulted with Susanna Tam (former Equity and Diversity staff lawyer). With respect to education in family dynamics and domestic violence, Ms. Tam noted the importance of ensuring such training was also sensitive to cultural factors, in particular at the intersection of culture and domestic violence. Education service providers should be mindful to ensure their training includes current thinking regarding minority groups and Aboriginals with respect to family dynamics and domestic violence.

Transparency and Disclosure

The proposed Family Law ADR Qualifications are not expected to affect the Law Society's approach to transparency and disclosure.

OPTIONS

There are two main options available to the benchers:

1. Adopt the recommended qualifications in this report;

2. Suggest alternative qualifications for adoption;

ANALYSIS OF THE ISSUE AND OPTIONS: FAMILY LAW ARBITRATION

The Task Force makes the following recommendations regarding lawyers acting as family law arbitrators:

Recommendation 1: Lawyers acting as family law arbitrators must meet the following

qualifications:

1. 10 years of current practice experience, or experience as a judge or master;

2. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the arbitral function in a fair and competent manner;

3. A minimum of 40 hours approved training in how to conduct an arbitration. Course work should include:

    a. Theory and skills training;

    b. Drafting;

    c. How to conduct an arbitration;

    d. The statutory framework of arbitration;

    e. Family dynamics;

    f. Administrative law principles governing arbitrations.

4. A minimum of 14 hours of approved training in family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process;

5. Relevant courses taken to meet the current rule 3-20 requirement and any relevant courses taken since qualifying count towards these requirements

An overview of family law arbitration

There are several ways to view the issue of entry level qualifications for lawyers acting as family law arbitrators.

The Task Force started considering this issue by acknowledging that it was the intention of the government to modernize the *Family Relations Act.* It was understood that a likely consequence of the legislative reform is that a regulatory framework for individuals acting as family dispute

resolution professionals would be developed. Because the Law Society regulates an independent legal profession, the initial analysis led the Task Force to the conclusion that the Law Society is the appropriate organization to determine whether Family Law ADR Qualifications are required and, if they are necessary, to set those qualifications.

The practice of family law arbitration is largely unregulated. By this the Task Force means that there is not a dedicated regulatory body that oversees and sets qualifications for family law arbitrators. In the absence of such a body, there is no regulated baseline that establishes the *indicia* of competency, nor is there a mandatory insurance program. The cost and the risks associated with picking the wrong arbitrator are borne solely by the public and in the case of family law disputes, often by people who are facing considerable emotional and economic hardship. Consequently, members of the public cannot turn to a single source to resolve problems with their arbitrator.

The courts have jurisdiction to review arbitral decisions. Theoretically, the market (if operating efficiently) can lead to competent arbitrators getting work while weeding out less competent arbitrators.[10] Organizations that set requirements for *certified* arbitrators can establish coursework and criteria for people who wish to hold themselves out as *certified* and meet a higher standard. The development of voluntary certification requirements has the potential to influence market forces and over time become the *de facto* requirements.

The issue of regulatory oversight is complicated by the fact that the Law Society will regulate lawyers acting as family law arbitrators, whereas non-lawyer family law arbitrators are not necessarily regulated. There are a range of potential consequences to this.

If the Law Society establishes qualifications for lawyers acting as family law arbitrators, such qualifications will provide guidelines for the profession to assist them in discharging their arbitral function in a competent manner. This will be beneficial to both the public and the legal profession.

Qualifications will allow the public to ensure lawyer-arbitrators they choose for family disputes

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[10] If the resolution of family disputes is eventually going to play out with greater frequency outside the court room, however, the Task Force suggests that greater certainty of public protection is desirable.

have met criteria designed to establish entrance level competency. Qualifications will also allow the public to better compare the services of non-lawyer arbitrators and lawyer-arbitrators. The presence of qualifications also reduces the chance of confusion because the Law Society sets requirements for lawyers acting as family law mediators; the absence of requirements for lawyers acting as family law arbitrators might appear inconsistent.

Family law is a somewhat unique area of law, in which several areas of law intersect. Family law disputes can involve issues of property, family dynamics and violence, and require consideration of the best interests of children. Family law disputes are often emotionally charged. Having specialized training can assist lawyers to ensure they have the proper tools to act as arbitrators of family disputes. In addition, not all lawyers will come to family law arbitration with the same background, so having a level of uniform training would ensure that all lawyers acting as family law arbitrators have been exposed to certain concepts.

The presence of qualifications also assists government in developing qualifications for non-lawyer arbitrators. This has several potential benefits. It may facilitate positive government relations by assisting the government in developing policy in an important area of public need. It can also have a positive impact on the public perception of the administration of justice, which is a matter of importance to government and the Law Society.

If family law arbitration is to function as an alternative to court proceedings, it needs to deliver on more than the promise of lower cost – it must also be delivered by competent professionals who are accountable for the quality of their services. The public will not necessarily distinguish the discrete area of family law arbitration from the broader justice system context. As such, public confidence in the system as a whole can be positively or negatively affected by the public perception of family law arbitrators.

As a starting point the Task Force explored the requirements for lawyers acting as family law mediators.[11] Before a lawyer can practice as a family law mediator he or she must meet the

[11] Law Society Rules, rule 3-20. The analysis of family law mediation is set out in greater detail in the next section of the report.

education and experience requirements of rule 3-20. The Task Force viewed this rule as informative but not binding on the approach to take with respect to arbitration. Instead the Task Force asked the following questions:

1. Should there be an experience requirement for lawyers wishing to act as family law arbitrators? If yes, how much and why?

2. Should there be an educational requirement for lawyers wishing to act as family law arbitrators? If yes, what and why?

A. Should there be an experience requirement for lawyers wishing to act as family law arbitrators? If yes, how much and why?

Determining whether to apply an experience requirement was a difficult part of the Task Force's analysis. Although there is a 3 year practice requirement for lawyers acting as family law mediators, there have been calls in the mediation community for the elimination of that requirement.[12] Some will argue that one develops competency as a mediator or arbitrator through carrying out mediations and arbitrations. It is suggested that engaging in the regular practice of law does not, through the mere passage of time, imbue a lawyer with the necessary competencies of a mediator or arbitrator. Others will argue that the experience of practicing law will provide a lawyer a greater understanding of procedural and substantive law that may be relevant to taking on an arbitral role. There is an analytic discipline that takes time to develop and, given arbitrators' responsibilities, experience provides an additional safeguard for protecting the public.

The Task Force observes that other Law Societies do not set special qualification requirements for lawyers acting as family law arbitrators. The Task Force consulted with the discipline administrators at other Law Societies and was advised that complaints against lawyers acting as arbitrators would likely be dealt with through the lens of conduct unbecoming a lawyer and that

[12] Including the Law Society's ADR Task Force. This is discussed in more detail in the section on family law mediators.

there were not special requirements.

The absence of qualifications in other Law Societies is not determinative of whether qualifications are appropriate in British Columbia. In some instances, such as unbundling of legal services, the Law Society of British Columbia has led the call for reform. In other instances the Law Society has embraced approaches taken in other provinces.

The arguments in favour of an experience requirement include:

1. Arbitration requires skills similar to acting as a judicial officer. Judges require 10 years of experience as a lawyer before being able to sit as a judge.[13] If family law arbitration is to function as a viable alternative to court, arbitrators should face similar requirements;

2. An experience requirement allows time for a lawyer to develop legal skills;

3. Specific family law experience is also desirable, given the complex issues that can arise in family law disputes as well as the high value society places on protection of children;

4. With experience comes a heightened understanding of professional ethics and judgment.

The arguments against an experience requirement include:

1. Just because a lawyer has practiced for a certain number of years it does not mean the lawyer has developed competencies relevant to family law or administrative law. A lawyer who spends five years solely practicing family law may be better suited from an experience perspective to act as a family law arbitrator than a lawyer with 10 years experience who merely dabbles in family law.

2. An experience requirement restricts the pool of available lawyer arbitrators. The restricted pool may have several unintended consequences, including:

   a. The potential to drive up the cost of the services;

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[13] *Judges Act*, R.S.C. 1985, c. J-1, s. 4.

b. The potential to make the pool of available family law arbitrators less diverse (to the extent women and lawyers from minority groups might leave the profession before their 10th year of practice in greater numbers);

c. The restriction may create distortions between the market for lawyers acting as family law arbitrators and non-lawyers. A non-lawyer arbitrator cannot have an experience requirement, unless non-lawyer arbitrators are limited to defined categories of professionals. A potential consequence is that a much larger pool of non-lawyer arbitrators could exist, and it would be more difficult for lawyer arbitrators to offer competitive services with non-lawyer arbitrators, thereby limiting the public's choice of services.

3. The AIT might restrict the Law Society's ability to impose an experience requirement because an experience requirement leaves a lawyer with no proactive steps to develop competence as an arbitrator other than waiting for time to pass.[14]

4. Some lawyers who have practiced for less than 10 years may already be providing family law arbitration services, and the imposition of this requirement would adversely affect their practice.

5. With respect to requiring lawyers to have family law specific experience, if the requirement was set too high it could prevent lawyers who operate a general practice from participating. This might have unintended consequences, particularly in smaller communities where lawyers tend to have more diverse practices than their counterparts in large urban centres.

The Task Force considered recommending specific experience in family law and explored how such experience might be defined and measured. The Task Force considered recommending an hour requirement in family law spread out over five of the past seven years in order to provide flexibility to lawyers who were on parental leave and/or subject to a disability that prevented them from working full time. An alternative was to require a certain percentage of time dedicated to the

[14] Conversations with Ministry of Justice staff led to the conclusion that this was not likely a problem.

practice of family law. The more the Task Force discussed these concepts, the more concerned it became about the practical application of such measures. A real concern arose that the application and vetting process would get mired in an analysis of how much of a lawyer's practice was dedicated to the type of family law that would have likely exposed the lawyer to the relevant issues. Ultimately the Task Force preferred an approach similar to Chapter 3, Rule 1 of the *Professional Conduct Handbook* which requires:

> 1. With respect to each area of law in which a lawyer practices, he or she must acquire and maintain adequate:
>
>   a. Knowledge of the substantive law;
>
>   b. Knowledge of the practices and procedures by which that substantive law can be effectively applied.[15]

The Task Force recommends that family law experience be required but the mechanism for assessing it should be left to the individual lawyer to determine whether he or she possesses the adequate skills, knowledge and experience in family law to arbitrate disputes in a fair and competent manner.

On balance, the Task Force recommends an experience requirement for the following reasons:

1. Acting as an arbitrator should require similar experience requirements as acting as a judge;

2. To the extent an object of the new *Family Law Act* is to direct family disputes to settlement through processes outside the court, and arbitration is encouraged, it becomes important to ensure the quality of arbitrators is comparable to the quality of judges;

3. The public is unlikely to distinguish a lawyer as arbitrator from a lawyer as lawyer, and therefore incompetent lawyer arbitrators can reflect poorly on the legal profession as a whole and have an adverse impact on the public confidence in the administration of justice;

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[15] 1(c) refers to "skills to represent the client's interests effectively"

4. A lawyer acting as a family law arbitrator must be satisfied he or she has acquired sufficient knowledge, skills and experience relevant to family law to carry out the arbitral function in a fair and competent manner;

5. Public protection – on balance, decisions will be more skillful, balanced and of greater benefit to the public.

B. Should there be an educational requirement for lawyers wishing to act as family law arbitrators? If yes, what should the requirement be and why?

The Law Society does not set any special education requirements for lawyers acting as arbitrators. So the question of whether lawyers acting as family law arbitrators need special education required the Task Force to ask whether family law arbitration should be treated differently from commercial arbitration.

As a general proposition, once lawyers are called to the Bar the Law Society does not restrict areas of practice. The *Professional Conduct Handbook* flags the professional obligation of lawyers to be satisfied of their competence to take on matters, but no specialized training is required. There are some notable exceptions:

1. The small firm practice course. Lawyers who are entering a firm of four or fewer lawyers are required to take the small firm practice course.[16] The course is designed to assist small firm practitioners in setting up their practices in a manner that better serves the public. The course serves the dual purpose of protecting the public through targeted training, while helping lawyers identify the pitfalls and challenges that are prevalent in operating a small firm or sole practice;

[16] See Law Society Rules, rules 3-18.1 and 3-18.2.

2. Continuing professional development. The continuing professional development program requires each lawyer to take at least 12 hours of professional development each year, including at least 2 hours of ethics and professional responsibility;

3. Lawyers wishing to act as family law mediators are subject to the following course requirements:

1.Completion of the five-day Family Law Mediation course of the Continuing Legal Education Society of BC (prior to 2009); or

2.Completion of the Family Mediation Level I and Family Mediation Level II courses of the Continuing Legal Education Society of BC (starting 2009); or

3.Completion of the following:

(a) Mediation Level I at the Justice Institute, and

(b) any one of the following Family Dynamics courses held at the Justice Institute:

(i) CORR 605: Family Violence

(ii) FAM 103: Effects of Separation and Divorce on Adults

(iii) FAM 104: Effects of Separation and Divorce on Children,

and

(c) Day V of the Family Law Mediation Course (prior to 2009), or the Law Society requirements day of Family Mediation Level II (starting 2009), each provided by the Continuing Legal Education Society of BC.[17]

The Practice Standards Committee may allow a lawyer with special qualifications or experience to act as a family law mediator without the practice experience requirement.

[17] Courses approved by the Practice Standards Committee April 2, 2009.

In the case of qualifications for lawyers acting as family law arbitrators, the Task Force believes qualifications are going to be developed so the real question is who should develop the requirements and what they should be. There are three main reasons the Task Force has come to this conclusion:

1. The Ministry of Justice asked the Law Society to consider developing qualifications for lawyers acting as family law arbitrators. The Ministry has expressed an intention to establish requirements for dispute resolution professionals. The Ministry has indicated it expects the Law Society to establish requirements that are consistent with the requirements that will be developed for non-lawyers.

2. In Ontario the Ministry of the Attorney General sets qualifications for family law arbitrators. The Ontario qualifications include a requirement that lawyers acting as arbitrators take 14 hours of training in screening for domestic violence and power imbalances.[18] Apart from the issue of whether the requirements in Ontario are adequate, the fact is that the government set the requirements for lawyers, rather than the Law Society of Upper Canada. As noted above, the Task Force is of the view the Law Society of British Columbia should set qualifications for lawyer arbitrators. While the benchers may reject the recommendation of the Task Force that such qualifications are desirable, it is possible the government would then feel obligated to set requirements. In light of this, the Task Force does not believe the option of maintaining the *status quo* is desirable.

3. Family law dispute resolution presents challenges that are either unique to family law or more prevalent and which require special sensitivities. These include: the heightened emotional nature of family disputes; the potential presence of children and the attendant concerns that arise in such circumstances; the potential existence of domestic violence and power dynamics in a family that can affect the proper resolution of a dispute. For much the same reason as the Law Society recognized special rules for family law

[18] See http://www.attorneygeneral.jus.gov.on.ca/english/family/arbitration/training.asp. Non-lawyer family arbitrators must also complete 30 hours of training in Ontario family law.

> mediation are justified, the Task Force believes that qualifications for family law arbitration are justified.

With respect to screening for domestic violence it is important to note that Bill 16 (the *Family Law Act*) establishes the following requirements for family dispute resolution professionals:

> 8 (1) A family dispute resolution professional consulted by a party to a family law dispute must assess, in accordance with the regulations, whether family violence may be present, and if it appears to the family dispute resolution professional that family violence is present, the extent to which the family violence may adversely affect
>
> (a) the safety of the party or a family member of that party, and
>
> (b) the ability of the party to negotiate a fair agreement.
>
> (2) Having regard to the assessment made under subsection (1), a family dispute resolution professional consulted by a party to a family law dispute must
>
> (a) discuss with the party the advisability of using various types of family dispute resolution to resolve the matter, and
>
> (b) inform the party of the facilities and other resources, known to the family dispute resolution professional, that may be available to assist in resolving the dispute.

The definition of "family dispute resolution professional" includes:

> (a) a family justice counselor;
>
> (b) a parenting coordinator;
>
> (c) a lawyer advising a party in relation to a family law dispute;
>
> (d) a mediator conducting a mediation in relation to a family law dispute, if the mediator meets the requirements set out in the regulations;
>
> (e) an arbitrator conducting an arbitration in relation to a family law dispute, if the

arbitrator meets the requirements set out in the regulations;

(f) a person within a class of prescribed persons;

Section 8 of the *Family Law Act* required the Task Force to consider the necessity of training in family violence for lawyers acting in any of the capacities listed above. With respect to lawyers acting as family law arbitrators, mediators or parenting coordinators, the issue of training in domestic violence is addressed in each section of the report. With respect to lawyers practicing family law in general, domestic violence training is addressed in the section "Other Matters". The Task Force did not discuss training for family justice counselors as they are employees of government and as such may be subject to additional training requirements by their employer.

Recognizing that the *Family Law Act* requires screening for family violence the Task Force considered whether the present level of coverage under Rule 3-20 is sufficient. While the Task Force is of the view that the 21 hour CORR 605 Family Violence course would be adequate it does not believe that the approximately 5 hours of family violence training obtained through the Continuing Legal Education BC Family Law Mediation I and II are sufficient in length. The Task Force understands, however, that Continuing Legal Education BC will be exploring a longer training session that addresses issues of family violence.

After much consideration the Task Force concluded that 14 hours of training in family violence should be required. The Credentials Committee should have the discretion to identify other acceptable service providers and courses. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process. As noted, in Ontario lawyers acting as family law arbitrators are required to take 14 hours of training in screening for domestic violence and power imbalances. Requiring British Columbia lawyers acting as family law arbitrators to take 14 hours of training in family violence is consistent with that requirement.

ANALYSIS OF THE ISSUE AND OPTIONS: FAMILY LAW MEDIATION

The Task Force makes the following recommendations with respect to lawyers acting as family law mediators:

Recommendation 2.1: The Task Force recommends that the current approved course requirements for lawyers acting as family law mediators be amended to require the following:

1. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the mediatory function in a fair and competent manner;

2. A minimum of 80 hours of approved mediation skills training. Course work should include:

    a. Theory and skills training;

    b. Drafting;

    c. How to conduct a mediation;

    d. The statutory framework of mediation;

    e. Family dynamics;

    f. A minimum of 10 hours of role playing scenarios.

3. A minimum of 14 hours of approved training in screening for family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process.

Recommendation 2.2: Abolish the Law Society Rules, rule 3-20(1)(a) requiring three years of legal practice to qualify as a family law mediator.

Recommendation 2.3: The Task Force recommends the following approach to grand parenting existing family law mediators:

1. Lawyers who, as of the date the new rule 3-20 is approved, meet the family law mediator requirements under rule 3-20 will have until January 1, 2014 to ensure they meet the training requirements for family law mediators recommended in this report;

2. Courses taken to meet the current rule 3-20 requirement and any courses taken since qualifying count towards these requirements;

3. As of the adoption of this report, all lawyers who wish to qualify in the first instance to act as family law mediators must meet the requirements contained in this report;

4. Staff will determine how to implement the reporting requirement and the Law Society will provide notice to the profession regarding the required standards and how to report compliance.

In 1984 the Law Society adopted rules for lawyers acting as family law mediators. Those rules reflected what were held to be acceptable minimal standards at the time, taking into account the fact that family law mediation was a fledgling field of practice. In the years that followed, family law mediation has developed considerably: much more mediation is occurring; its value as part of a network of solutions for family law disputes is better understood and accepted and the sort of training that is available has grown. Along the way there have been the additional developments, such as the founding of organizations dedicated to the training and certification of family mediators.[19]

For its part, the Law Society struck an ADR Task Force in 1998. The ADR Task Force produced a consultation paper in 2007 that identified 38 recommendations in the area of ADR, with particular focus on the area of mediation. The ADR Task Force also made recommendations regarding relationship mediation. While the Task Force recognizes that the report has not been adopted by the benchers, it gave full consideration to the depth of research, consultation and thought that went into the drafting of the report. The Task Force considered the history of family law mediation and its evolution since 1984 and asked whether the requirements set out in Law

[19] Such as Family Mediation Canada (1985) and Mediate BC Family Roster (2002).

Society Rules, rule 3-20 are sufficient or if they need to be changed to better reflect the prevailing standards.

An important distinction to bear in mind when comparing the Law Society's requirements for lawyers acting as family law mediators and the standards of Family Mediation Canada or the Mediate BC Family Roster is that the Law Society requirements reflect minimum qualifications for lawyers to engage in family law mediation, whereas the requirements of the other organizations reflect minimum entrance requirements to rosters or certified rosters. In addition, Family Mediation Canada and Mediate BC also have non-lawyer mediators as part of their rosters. This provides ground for distinguishing between the standards of the three organizations as the qualifications serve different functions.

An example of the distinction between qualifications can be found in the entrance requirements for the Mediate BC Family Roster, which can be achieved through one of two streams.[20] Applicants to the Roster who are certified by Family Mediation Canada can gain admittance through the first stream. Other applicants require a mix of training and experience. The experience requirement is 200 hours of mediation over 20 or more family mediations in the past five years (as a mediator, co-mediator, or co-mediator in an approved practicum). What this means is that one has to have mediated family disputes before one can become a roster member. The Law Society Rules, rule 3-20 does not require lawyers to have mediated family disputes. In fact, rule 3-20 is the prerequisite to be able to perform family mediations in the first place.[21]

Despite the different functions of the requirements of the Law Society and Family Mediation Canada and the Mediate BC Family Roster, the Task Force analyzed the requirements of each organization to consider what the appropriate qualifications are for British Columbia lawyers. In doing so, the Task Force considered a range of factors including:

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[20] See http://www.mediatebc.com/Resources-for-Mediators/About-the-Rosters/Family-Roster-Admission.aspx.

[21] The Task Force alerted staff at the Ministry of Justice to the paradox that would be created by making membership in the Mediate BC Family Roster a qualification to acting as a family law mediator when membership in that roster can require as a qualification completion of 200 hours of acting as a mediator in at least 20 family law mediations. A similar paradox is created with respect to Family Mediation Canada which requires either completion of an approved mediation practicum or completion of at least 10 fee paid private family mediations or 10 family mediations in an approved structure (see, Family Mediation Canada, "Practice Certification and Training Standards" section 5.3(c)(i) and (ii)). This is a matter Mediate BC, Family Mediation Canada, and the Ministry of Justice may wish to discuss.

1. What is the appropriate level of training to establish minimum practical knowledge to conduct a family mediation?

2. Should training in assessing domestic violence be required?

3. What experience requirement, if any, should apply (either as a practicing lawyer or as a mediator of non-family disputes)?

4. Should targeted continuing professional development in mediation be required?

5. If the Law Society changes its existing requirements for family law mediators, how should the issue of grand parenting existing family law mediators be dealt with?

Throughout the discussion the Task Force considered what is the proper balance between fostering access to mediators while reducing the risk of harm to the public? The Task Force was concerned with maximizing access to justice while ensuring the quality of the dispute resolution process was not compromised.

1. *What is the appropriate level of training to establish minimum practical knowledge to conduct a family mediation?*

When the Law Society initially explored qualifications for family law mediation, 40 hours of ADR mediation training was considered an acceptable standard. In its consultation report the ADR Task Force observed that an increase in the 40 hour (approximate) training requirement in family mediation appears to be rising. Rather than make a recommendation the ADR Task Force left it to the benchers with input from the Family Law Mediation Subcommittee to determine the appropriate standard. The Family Law Task Force is of the view that the prevailing minimum requirement has continued to evolve since the ADR Task Force completed its research and that a minimum of 80 hours of mediation skills training better reflects the minimum requirement.

The Task Force considered a number of factors in arriving at the 80 hour qualification, including input from representatives of the Mediate BC Family Roster and members of the ADR Task Force. The feedback was that the current approved courses fall short of the acceptable requirement. As the field of family mediation has developed, training programs have evolved and expanded. Part

of the value in increasing the training requirement to 80 hours is that it provides greater opportunity to engage in family mediation role playing scenarios. The Task Force was advised that role playing provides critical exposure to essential skill development and the current training program approved under rule 3-20 falls short in this regard. The Task Force considered that training in role playing can function as an alternative to the experience requirement in mediation training.

The Task Force discussed how much of the training should be required to be in role playing and the feedback it received was that a minimum of 10 hour was desirable. In order not to reduce the current content of the minimum course requirements, adding a minimum role playing content further supports the need to increase the approximately 50 hours of course work.

The Mediate BC Family Roster requires a minimum of 80 hours of mediation skills training. Family Mediation Canada requires considerably more training. Membership in each organization reflects having attained a more specialized requirement and it is recognized that historically people have carried out family mediations without necessarily having achieved those requirements. It is justifiable for the Law Society to set alternative qualifications for lawyers acting as family law mediators. Both Family Mediation Canada and the Mediate BC Family Roster require experience conducting family mediations as a condition of admission. Eighty hours of mediation training is a more modest requirement, yet the Task Force believes an appropriate one for acquiring a minimum level of knowledge in the basics of acting as a family law mediator (the necessity of family violence training is set out below).

2. *Should training in assessing domestic violence be required?*

The course of study approved by the Practice Standards Committee[22] for lawyers acting as family law mediators provides two paths of qualification. In path one a lawyer will have taken approximately five hours of training in domestic violence. In path two, if the lawyer chooses the

[22] Practice Standards Committee meeting, April 2, 2009.

optional course CORR 605 Family Violence the lawyer will have received 21 hours of training in domestic violence. It is possible in path two to receive no training in family violence screening.

As noted in the analysis of family law arbitration, section 8 of the *Family Law Act* imposes obligations on family law dispute resolution professionals to assess whether family violence is present and the potential consequences to the safety of a party or family member and the fairness of the dispute resolution process.

For the same reasons as articulated with respect to lawyers acting as family law arbitrators the Task Force is of the view that a minimum of 14 hours of training in screening for family violence is a necessary pre-requisite for lawyers to act as family law mediators. The training should be taken through courses of study approved by the Credentials Committee.

3. *What experience requirement, if any, should apply (either as a practicing lawyer or as a mediator of non-family disputes)*

At present, Law Society Rules, rule 3-20(1)(a) requires three years full-time practice (or part-time equivalents) for lawyers wishing to act as family law mediators. The experience requirement has been the subject of much criticism. The ADR Task Force consultation report includes the recommendation that the Law Society "Abolish the rule requiring three years of legal practice to qualify as a family law mediator" (Recommendation 30). The Task Force discussed the experience requirement with representatives of the ADR Task Force and the Mediate BC Family Roster.

The main argument against the general experience requirement is that the necessary experience requirement for acting as a mediator is developed through the practice of conducting mediations. While one might acquire relevant knowledge through the practice of law one does not develop the necessary skills to act as a mediator. Therefore the experience requirement is viewed as a false equivalency. The Task Force discussed whether it would make any difference for the experience to be targeted to family law experience, but the same issue arises. While lawyers who deal with family law disputes would have a better grounding in procedural and substantive family law issues they would not, by virtue of that experience, acquire experiential knowledge of how to conduct mediations in a competent manner.

The Task Force then considered whether one should have some general experience as a mediator before being able to conduct family law mediations. While this has some more appeal than viewing general legal experience as a suitable pre-requisite it presents certain problems. A main concern with this is that the realities of many practices is that lawyers who conduct commercial mediations, labour mediations, etc. are not necessarily going to transition to family mediations. Nor, for that matter, are lawyers who deal in family law disputes necessarily going to structure their practices to conduct a series of mediations outside the area of family law in order to reach a threshold level of mediation experience required to conduct family mediations.

Ultimately the Task Force was persuaded by the Recommendation 30 of the ADR Task Force consultation report that the three year experience requirement in rule 3-20(1)(a) be abolished.

4. *If the Law Society changes its existing standards for family law mediators, how should the issue of grand parenting existing family law mediators be dealt with?*

As part of its analysis the Task Force considered how the Law Society should deal with lawyers who have met the existing requirements under rule 3-20. If the benchers approve the recommendations in this report the basic training requirements for lawyers to qualify as a family law mediator will increase approximately 44 hours, depending on the course of study.[23]

The Task Force considered several things in assessing how to deal with grand parenting existing family law mediators. First and foremost the Task Force was guided by asking what training is necessary to protect the public interest in the administration of justice. A secondary consideration was to establish a transitional process that is both fair and practical. The Task Force acknowledges that no single approach is perfect. Some lawyers will have been conducting family law mediations for years, whereas others will have little or no experience. Similarly, the courses lawyers will have taken will vary. The solution needs to be administratively feasible.

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[23] The Task Force is recommending 80 hours of ADR training in mediation skills and 14 hours of training in family violence. The current approved course of study is approximately 50 hours, which can include anything from 0-21 hours in family violence training depending on the courses the lawyer-mediator took to qualify.

Any grand parenting process therefore needs to take into account the risk to the public, the administrative feasibility of the Law Society implementing the requirement, and whether the requirements constitute unnecessary hardship on lawyers who qualify under the present rule.

While there is a gap between the existing requirements and the qualifications proposed in this report, the Task Force does not view this as a hardship because many family law mediators will have continued to take courses related to family law mediations (including, perhaps, courses on family violence). As such, many lawyers will have already met the proposed requirements. For those who have yet to meet the new requirements, the Task Force does not view the requirement to catch-up to the new standard as onerous. To the extent the new qualifications better reflects current best practices, it is in the public interest to require family law mediators to meet the requirement.

The Task Force preferred requiring lawyers who are family law mediators to indicate to the Law Society by January 1, 2014 that they meet the education and training requirements for family law mediators contained in this report. The Task Force leaves it to staff to determine how best to create a system that facilitates such reporting by lawyers.

ANALYSIS OF THE ISSUE AND OPTIONS: PARENTING COORDINATION

The Task Force makes the following recommendations with respect to lawyers acting as parenting coordinators.

Recommendation 3: The Task Force recommends that lawyers acting as parenting coordinators must meet the following qualifications:

1. 10 years of current practice experience, or experience as a judge or master;

2. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the parenting coordination function in a fair and competent manner. This family law experience must include considerable experience dealing with high conflict families with children;

3. A minimum of 40 hours of approved parenting coordination training, which must include:

    a. Parenting coordination skills training and theory;

    b. Dealing with high conflict families and individuals;

    c. Child development, interviewing children, and the effects of separation and divorce on children;

    d. The effects of separation and divorce on adults.

4. The minimum approved training qualifications of a family law arbitrator, which include:

    a. A minimum of 40 hours training in how to conduct an arbitration. Course work should include:

        i. Theory and skills training;

        ii. Drafting;

        iii. How to conduct an arbitration;

        iv. The statutory framework of arbitration;

        v. Family dynamics;

        vi. Administrative law principles governing arbitrations.

5. The minimum approved training qualifications of a family law mediator, which include:

    a. A minimum of 80 hours of mediation skills training. Course work should include:

i. Theory and skills training;

ii. Drafting;

iii. How to conduct a mediation;

iv. The statutory framework of mediation;

v. Family dynamics;

vi. A minimum of 10 hours of role playing scenarios.

6. A minimum of 14 hours of approved training in screening for family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process;

7. Relevant courses taken to meet the current rule 3-20 requirement and any relevant courses taken since qualifying count towards these requirements.

The third category of family dispute resolution professional the Task Force considered is parenting coordinators. The BC Parenting Coordinators' Roster Society defines parenting coordination as:

> … a child-focused dispute resolution process for separated families. Parenting coordinators are experienced family law lawyers, counselors, social workers and psychologists who have special training in mediating and arbitrating parenting disputes, and in helping separated parents recognize the needs of their children.[24]

Because parenting coordinators are often dealing with high conflict individuals they require specialized skills and training.

Parenting coordination is a relatively new field of practice in Canada. Parenting coordinators can be selected by agreement of the former couple or appointed by the court. Because of the potential

[24] See http://www.bcparentingcoordinators.com/ (last accessed August 8, 2012).

for parenting coordinators to be appointed by the court there are additional considerations. First, it is possible that neither of the people required to use the parenting coordinator will be pleased with that decision. Second, it is essential that the court is able to rely on the professionalism and skills of the parenting coordinators. Third, and perhaps most importantly, parenting coordination by definition involves children and the model is focused on child-centric solutions. While it is possible to mediate and arbitrate family disputes that do not involve children, it is impossible to act as a parenting coordinator regarding disputes that do not involve children.

The three factors set out above each speak to the requirement that parenting coordinators possess both a high degree of specialized training but also significant experience.

Parenting coordinators are often dealing with individuals who are unable to reach agreement on a wide range of daily matters. To the outside observer the disagreements will range from real issues of concern, such as which school within a district a child should attend, to matters that a rational observer would see as trivial (such as arguing over the need/ability to pick up the child 10 minutes before the scheduled time). Unfortunately, some high conflict individuals will fight over most everything. In light of this, parenting coordinators play an invaluable role in keeping high conflict individuals from flooding the courts with arguments over the interpretation of a court order. These high conflict individuals are also often the people who run through the money for counsel and then become serial self-represented litigants.

Parenting coordinators assist high conflict individuals in resolving disputes regarding court orders or agreements made between the former couple. In circumstances where the parenting coordinator is unable to lead the former couple to a consensual resolution of the dispute, the parenting coordinator can shift roles and become a decision maker, imposing a resolution on the former couple.

By their nature, parenting coordinator appointments are usually long term, often one to two years. The duration of the agreement can influence the relationship dynamic between the former couple and between the former couple and the parenting coordinator. Sometimes the parenting coordinator will resolve matters in one side's favour whereas other matters will be resolved the other way. This relationship dynamic requires that parenting coordinators have nuanced skills and

training to deal with high conflict individuals over time in order to continue to ensure disputes are resolved with the best interests of the children. In an optimal case a parenting coordinator can begin to shift how the former couple views the purpose of resolving disputes to the child-oriented focus.

In light of the information received during discussions with the government and representatives of the Parenting Coordinator Roster Society, the Task Force concluded that lawyers acting as parenting coordinators require the training of both family law arbitrators and mediators, as well as some discrete training on parenting coordination and dealing with high conflict individuals and families. In addition, an experience requirement comparable to arbitrators is required and experience in family law, including experience dealing with high conflict families and individuals is a desirable qualification. The Task Force recognizes that it is setting the bar of entry high. The Task Force engaged in lengthy discussion about the need to increase access to legal services while ensuring proper protection of the public. The Task Force erred on the side of greater training and experience mainly because of the presence of children in high conflict disputes and the particular vulnerability of children. Lawyers taking on dispute resolution functions that are expressly targeted at children should meet a high standard of skills training and experience. In addition, the need for the court to rely on lawyers acting as parenting coordinators speaks to a higher standard.

Although the Task Force believes more stringent qualifications are appropriate for parenting coordinators, it is concerned about the potential for the cost of these services to get out of reach of the ordinary British Columbian. An unintended but likely consequence of requiring 10 years practice experience and a considerable amount of dispute resolution training is that the cost of services of the parenting coordinator will go up. Because the parenting coordinators are dealing with high conflict individuals, this can exacerbate the cost. The Task Force was concerned that parenting coordination might become a dispute resolution service reserved for the wealthy.

To the extent the government intends to move more family law disputes out of court, particularly the types of disputes that parenting coordinators deal with, serious thought needs to be given to providing funding for these services. Whether that funding occurs through the Legal Services Society with a sum ear-marked for parenting coordination, or through funding family justice counselors or through another model all together is a matter for the government to consider.

Government should be encouraged to start those deliberations before the *Family Law Act* comes into force.

OTHER MATTERS

1) Which committee should have oversight of the qualification requirements?

At present, the Practice Standards Committee has oversight of qualifications for family law mediators, pursuant to Law Society Rules, rule 3-20. The review of qualifications for family law dispute resolution professionals provided an opportunity to consider whether the Practice Standards Committee is the proper home for such oversight.

The conclusion was that the qualifications recommended in this report are not practice standards; they are entry level qualifications. This provided an opportunity to consider whether the Credentials Committee is the more logical home for this. At the staff and managerial level a discussion took place which led to the conclusion that the Credentials Committee is the more logical home for this function. In addition to requiring a change to rule 3-20 it would also require shifting the Family Law Mediation Subcommittee to operate under the Credentials Committee. Consideration would also have to be given by the Credentials Committee whether to reconstitute that subcommittee so it had some expertise on family law arbitration and parenting coordination, or if additional subcommittees need to be constructed.

Recommendation 4: The Credentials Committee can set criteria for approved courses for lawyers acting as family law arbitrators, family law mediators, or parenting coordinators. In exercising its authority to assess courses the Credentials Committee should be guided by the substantive minimum requirements set out above.

2). *Family violence training for lawyers advising a party in relation to a family law dispute*

As noted above, the *Family Law Act* includes in its definition of dispute resolution professionals "lawyer advising a party in relation to a family law dispute." What this means is that come March

18, 2013 any lawyer who advises a party in relation to a family law dispute will have to adhere to the family violence screening provisions in s. 8 of the *Family Law Act.* The Task Force considered whether this should require a mandatory 14 hours of training in family violence screening or if lawyers should be alerted to the existence of the requirement in s. 8 of the *Family Law Act* and be strongly encouraged to take a course in family violence screening in order to ensure they possess the necessary skills to screen for family violence.

The Task Force concluded that rather than requiring lawyers acting in the traditional role of counsel to take courses in family violence screening, the Law Society should alert lawyers to the obligation under s. 8 of the *Family Law Act* and in very strong terms encourage lawyers to ensure they possess the required skills, knowledge and training to properly discharge their obligation under the Act. Lawyers should be trusted to take this obligation seriously, as they would any statutory obligation. If, over time, the regulatory process of the Law Society demonstrates lawyers are not properly screening for domestic violence and managing family law disputes with an acceptable understanding and sensitivity to family violence, the benchers should revisit this decision to determine whether mandatory family violence training is required.

The Task Force recognizes that some might argue that, with respect to screening for family violence, the *Family Law Act* does not distinguish between lawyers acting as alternate dispute resolution professionals and lawyers acting in their traditional capacity advising clients. In many respects the decision to treat family violence training in traditional lawyer-client relationships as a strongly recommended best practice and not a requirement is based on the pragmatic challenge of trying to impose mandatory training on all lawyers who do any amount of family law.

The Task Force was concerned that introducing mandatory violence training for all family dispute resolution professionals would place considerable strain on limited resources. The Task Force preferred integrating the requirement into the three areas of family law ADR discussed in this report and make a strong suggestion to all other lawyers engaged in family law matters to take such training as well. The hope is that over time a sufficient degree of knowledge and sensitivity to issues of family violence would develop, such that the policy objectives underlying the *Family Law Act* would be met. Given the particular vulnerability of people in families where domestic violence is present, however, the Task Force recommends that the Law Society remain vigilant to

ensure lawyers are adequately discharging their duties under the Act.

Recommendation 5: The Task Force recommends that the Law Society should alert lawyers of the obligation in s. 8 of the Family Law Act to screen for family violence. Lawyers who will be "advising a party in relation to a family law dispute" should be strongly encouraged to take courses in screening for family violence.

3. *Continuing Professional Development*

During its consultations the Task Force also asked whether continuing professional development targeted at ADR was desirable for lawyers acting as family law arbitrators, mediators and/or parenting coordinators. The consistent feedback was that targeted continuing professional development is important. Family law ADR is a continuously evolving field and the Task Force expects best practices will continue to evolve following the coming into force of the *Family Law Act*.

The Task Force recognized that family law has several aspects that can make it unlike other forms of ADR. The relationship between parties to a family law dispute is highly personal, emotional, and even after a relationship has ended the parties to the dispute may need to have continuing contact with each other. The potential involvement of children also necessitates special considerations to ensure the best interests of children are being protected. Children can be particularly vulnerable, and to the extent ADR creates a more private form of dispute resolution it is essential that the dispute resolution professionals are alive to the justice system's evolving understanding of the needs of children.

The *Family Law Act* codifies a policy shift in the area of family law that reflects an evolving understanding of how family disputes are best handled. The Task Force was also guided by the requirement in Ontario that family law arbitrators need to take 10 hours of ongoing training over any two year period, of which 50% must involve training in domestic violence or power imbalance issues. It is incumbent, therefore, on lawyers engaged in family law dispute resolution to keep current with best practices through their continuing professional development.

In discussing CPD the Task Force was cognizant that the minimum CPD requirement of the Law Society is 12 hours a year with a minimum of 2 hours in matters pertaining to professional responsibility and ethics. The Task Force considered whether it should recommend increasing the minimum CPD hour requirement but concluded that is a matter better dealt with by the Lawyer Education Advisory Committee as part of its periodic consideration of the CPD program. Instead the Task Force concluded it should consider whether a minimum amount of family law dispute resolution CPD should be required and if so how much. In light of its consultations and for the reasons set out above the Task Force concluded that lawyers acting as family law arbitrators, family law mediators, or parenting coordinators should be required to record a minimum of 6 hours of approved CPD in alternative dispute resolution.

The Task Force sought input from Ms. O'Grady in her capacity as Chair of the Lawyer Education Advisory Committee and from Alan Treleaven, Director of Education and Practice. The Task Force acknowledges that due to the very tight timeframe required to generate this report, much of the consultation period fell over the course of the summer when various Law Society Committees do not meet. As such, if there is sufficient concern from members of the Lawyer Education Advisory Committee that targeted CPD for lawyers acting as family law arbitrators, family law mediators, and/or parenting coordinators is something that Committee wishes to discuss the benchers may wish to refer the question to the Advisory Committee. If that decision is made the referral should require the Lawyer Education Advisory Committee to report to the benchers with a recommendation before March 18, 2013 in order for the benchers to resolve the policy position in advance of the *Family Law Act* coming into force.

Recommendation 6: The Task Force recommends that lawyers acting as family law arbitrators, family law mediators, and/or parenting coordinators be required to record a minimum of six hours of continuing professional development per year in dispute resolution skills training and/or theory.

4. *Amending the Legal Profession Act*

The approach the government will take to family law dispute resolution professionals is to identify which organizations a person must be a member of in order to act as a family law arbitrator, family

law mediator and/or a parenting coordinator. This will require each of the organizations to be capable of investigating complaints about members.

Section 29(d) of the *Legal Profession Act* authorizes the benchers to make rules that "establish qualifications for and conditions under which practicing lawyers may practice as mediators." As alternative dispute resolution becomes more common, particularly if government policy continues to encourage its greater use, it is important to ensure there is no ambiguity in the *Legal Profession Act* with respect to the Law Society's authority to set standards for lawyers acting as alternative dispute resolution professionals.

Section 11(1) and (2) of the *Legal Profession Act* states:

> 11(1) The benchers may make rules for the governing of the society, lawyers, law firms, articled students and applicants, for the carrying out of this Act.
>
> (2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.

An argument exists that s. 11 is broad enough for the benchers to make rules for lawyers acting as arbitrators and parenting coordinators and that s. 29 should not be read to limit that authority to making rules for lawyers acting as mediators. In addition, the regulations to the *Family Law Act* will indicate the Law Society can establish qualifications for lawyers acting as dispute resolution professionals. However, room for argument remains despite the relatively clear language of s. 11(2) and the Task Force is of the view that any ambiguity should be removed.

Recommendation 7: The Task Force recommends that the Act and Rules Subcommittee assist the benchers in seeking a consequential amendment to the Legal Profession Act to make it clear that the Law Society may make rules for the governing of lawyers acting as alternative dispute resolution professionals.

5. The Need for Written Agreements

During its discussions of qualifications the Task Force attempted to consider the broader context of how family law dispute resolution services are delivered, while remaining mindful of the scope of

its mandate. One issue that the Task Force identified during discussions with staff at the Ministry of Justice, and which does not constitute qualifications *per se*, is the desirability of family law arbitrators, family law mediators, and parenting coordinators being required to have written agreements that set out the terms of the ADR process. Appendix 2, Rule 5 of the *Professional Conduct Handbook* establishes the requirements for an agreement to act as a family law mediators. The Task Force is of the view that similar provisions should be created for lawyers acting as family law arbitrators and parenting coordinators.

Recommendation 8: The Task Force recommends that the Ethics Committee be asked to develop for inclusion in the BC Code the requirements for written agreements for lawyers acting as family law arbitrators, mediators and/or parenting coordinators. These provisions will include the present protections regarding avoidance of conflicts of interest, recommendations regarding the need for independent legal advice, and the requirement for a written agreement as are now set out in Appendix 2 in relation to lawyers acting as mediators.

An additional point to be added to this new provision is that if a lawyer's role changes from one where the lawyer acts as a facilitator of consensual resolution to one where the lawyer acts as a decision maker, the lawyer must clearly specify in writing the nature of the change in function and when the lawyer will begin to exercise the change. The written agreement between the lawyer and the parties must confirm that such changes in function will be specified in writing. For example: a lawyer may conduct a process designed to be a mediation-arbitration. When the mediation portion of the process fails, the lawyer puts on the arbitrator hat and the lawyer should confirm that shift in role in writing.

The Ethics Committee should attempt to have the amendments to the BC Code in place by March 18, 2013.

SUBSEQUENT STEPS

There are several subsequent steps that need to be taken following consideration of this report.

1. Following the benchers' discussion of the report on September 7, 2012, the Law Society should write to the Ministry of Justice indicating that the Law Society will create and implement Family Law ADR Qualifications by March 18, 2013.

2. The Act and Rules Subcommittee will have to draft rules to give the Credentials Committee the authority to identify acceptable courses of study and consider applications for lawyers engaged in family law ADR. These rules will need to be in place by March 18, 2013. This work should include consideration of whether s. 29 of the Act needs to be amended to provide a rule making authority for dispute resolution in general and not merely mediation.

3. The Ethics Committee will have to draft provisions for the *BC Code* that set out the requirement for lawyers acting as family law arbitrators and/or parenting coordinators to put their agreement in writing and identify the required elements of such agreements (to be consistent with the requirements for family law mediators).

4. Staff in the Policy and Legal Services Department, with input from the Professional Regulation Department, should assess the sufficiency of the Law Society's current regulatory process for dealing with complaints against lawyers performing ADR functions. If new policies are required, staff should alert the benchers to the issues and options.

5. The Family Law Task Force should remain operational until the December 2013 benchers' meeting. Members of the Task Force should attend family law section meetings to speak to the recommendations in the report and to alert lawyers to the family violence training obligations contained in s. 8 of the *Family Law Act.* If during those presentations serious concerns as to the appropriateness of the recommendations in this report arise, the Task Force should report back to the benchers to determine whether adjustments to the recommendations in this report are required. It is possible matters may arise subsequent to the *Family Law Act* coming into force on March 18, 2013 and keeping the Task Force

operative to deal with any such matters would be prudent. The Task Force does not anticipate any material expenses to result from this as it would likely not need to continue with its regular monthly meetings during this time.

REPORT TO BENCHERS – KATHRYN BERGE, BENCHER REPRESENTATIVE

AUGUST 11 – 14 CBA CANADIAN LEGAL CONFERENCE VANCOUVER

Saturday, August 11 – Attended at National Council Meeting Day 1
(Note the perhaps-not-surprising abundance of lead roles played by BC notables)

- Chief Justice Beverly McLaughlin
    - focus of address was Access to Justice as the justice system's 'most pressing problem'
    - feels her Committee on Civil and Family Matters is making concrete progress, enabled in part by a major grant received; very encouraged that practical solutions will arise from their work

- Resolutions
    - WFL and Equality Committee: directing CBA to support and promote government policies to provide free childcare for children 2-5 as a means of ensuring greater retention of women in the profession
    - Criminal Law Section – two resolutions:
        - criminal legal aid review urged upon the federal government
        - resolution expressing opposition to the federal government's Harm Reduction Drug Policy
    - Membership Fee Review – major debate on a new tiered system for membership breaking members down into three tiers: firms of 100+; 50+; -50; larger firms to receive volume discounts and greater services to reflect the value of achieving and maintaining a high level of membership; special reduced fees for part-time lawyers, non-practicing, and several other categories
    - Equality in CBA leadership – resolution to support efforts to be extended to support a greater range of ethnocultural communities and equality-seeking groups who are disproportionately underrepresented in membership

- Lawyers Professional Assistance Conference (LPAC) – Derek Lacroix, QC presentation regarding national LPAC activities

- CBIA Report – by John Waddell, QC gave a state of the insurance nation report, revealing the sobering statistic that a lawyer has a 4/10 chance of suffering a major disability of more than 3 months during his or her career

- John Hunter, QC, in his starring role as Federation President, appeared on the silver screen by video from Halifax, giving his report in both official languages about the work of the Federation.

- Evening Event – attended a wonderful at-home dinner at the home of Barry Fraser of Clark Wilson where, amazingly to me, they managed to find three guests (out of a total of 10) from Montreal, Edmonton and Ottawa that I have direct connections to but have never met, underlining what a small profession (and country) we indeed are in.

Sunday, August 12 – Attended at National Council Day 2

- Major Presentation: Access to Justice, led by national Access to Justice (ATJ) Chair, Melina Buckley of Vancouver. Three new major CBA initiatives are to be the focus of the CBA's leadership activities this year:

    1. Envisioning Access to Justice – major study to move beyond definition of the problem towards practical future-focused change
        - 47% of population at any time has a legal problem with potentially negative consequences

- 50% of family law litigants now unrepresented
- Disproportionate number of unrepresented accused are being sentenced to prison terms
- ACJ is the 'orphan sister' of the social safety net
- Uncoordinated approaches have led to no measurable tests; shortfall of information and dearth of practical ideas for improvement
- System for addressing ATJ has become increasingly dependent upon volunteer efforts of lawyers
- Questions to be studied - how to:
    - actually increase public support
    - increase government engagement
    - develop an effective definition of ATJ so that the problem can be discussed with a common understanding of the problem?
- Goals: creation of a measurable standard for ATJ, greater coordination between players, building equality of access back into the AJT agenda
- CBA sees itself as the only national organization available to engage in this through its specific responsibility vis a vis public and private access to legal services.

2. Envisioning Practice in 2020 and beyond – a major effort to study and prepare Canadian lawyers in practice to prepare for expected change, including market changes.

    - Goals: create tools for lawyers to plan for 2020,
        - engage in comprehensive analysis (now missing), legal profession is the goal
        - a vibrant legal profession is the goal
        - training of the next generation of lawyers
        - evidence-based review and broad consultation with profession and its clients
        - demographic analysis/forms for legal service
    - Comprehensive analysis now missing
    - Profession must respond to changes in society and needs; others will play our role
    - Dr. Richard Suskin will serve as a special advisor to the enquiry
    - designed to be a fundamental and ground-breaking enquiry

3. On-Line Guide for Measuring Diversity – expensive and hopefully easy to use to allow firms to track participation and change in organizational diversity – Goals are:

    - Assist firms in best practices in order to ensure that they retain and promote lawyers, support a diverse profession and meet client demand that they be able to demonstrate a diversity in their firm
    - Instruct firms on how to do an effective survey, assure a significant participation rate, communications to prepare for an effective survey, communications to follow-up afterwards
    - Need for credible leadership in the firm and how to promote knowledge of this in order to create credibility that the survey results will be given weight and will effect change if needed

- Report from Canadian Forum on Civil Justice – now located at York University

- Robert Brun, QC, incoming National President Address
    - Introductory speech - born in the Yukon; demonstrating the fruits of his year of intensive study of French-
    - His focus for the year: leadership, membership, and advocacy
    - Emphasized the importance of the independence of the Bar – in doing this he highlighted his experience as a Bencher and expressed his intention to draw upon this to create a heightened awareness of this issue within the profession and amongst stakeholders; reflects its importance to the rule of law; intends to make communicating about it and defending it a theme of his presidency.
    - He closed with a quote from his experience as a Scout Akela (cub leader): 'Let us Together Do our Best'; and another from Voltaire: "We are each guilty of the good that we do not do".

- Resolution passed by Council: encouraging development of legal expense insurance

- Opening Ceremonies: Keynote speaker Wikipedia founder, Jimmy Weeks
    - His mission: make all human knowledge available to all

- Evening Event – Grouse Mountain dinner

Monday August 13 First Day of CLE Programming

Attended:

- CLE run by WLF (BC Branch): Having Difficult Conversations – suitable I thought for a Bencher; excellent training run by Diane Ross of Lantzville

- WLF reception, other section receptions and evening Superior Courts and Law Firm reception

Tuesday, August 14 Second Day of CLE Programming

Attended:

- Alison Redford – Breakfast speaker

- Attended two CLEs which had prominent signage as sponsored by the Law Society of BC – interestingly, both CLEs seemed to be the favourite CLEs of JAG top brass, including their Colonel

    - First CLE: IS CANADA A SECULAR STATE? Exploring the tension between Charter protections of freedom of speech in relation to other Charter protections such as freedom of speech, expression, and association, equality rights and security of the person. Conclusion: open, support for limited support for religious expression; resistance in Canadian state to extreme forms of secularization and religious expression

    - Second CLE: REMEDIAL POWERS OF THE CHARTER – lessons learned from the exercise by the Courts of remedial powers vis a vis equality and language rights.

    - National Equality Committee Reception – Touchstone Awards provided to two CBA BC members:
        - Judge Gary Cohen – BC Provincial Court (National SOGIC Hero Award for his support of gay and lesbian lawyers and judges)

  - Valli Chettiar, QC – Touchstone Award for her leadership work on equality issues – her acceptance speech drew significantly on her early experiences on the Law Society's Equity and Diversity Committee

- Evening Event: Gala Dinner.

Conclusion: Major success for the CBA and particularly the BC Branch and the local organizing committee chaired by James Bond, QC

REAL
RURAL EDUCATION & ACCESS TO LAWYERS

August 2012 - Mid-Year Report

Rural Education and Access to Lawyers Initiative

The joint contributions of the Law Society of BC and the Canadian Bar Association, BC Branch allowed the Rural Education and Access to Lawyers (REAL) initiative to successfully fund 13 summer student placements in Campbell River, Dawson Creek, Fernie, Invermere, Lumby, Nelson, 100 Mile House, Penticton, Prince George, Smithers (two), Squamish and Trail.

In July, a survey of BC lawyers in rural and small communities clearly indicated that the REAL initiative is having an impact on addressing the shortage of lawyers in those markets. The stats include:

- More than ½ of all rural law firms in BC have recently hired new staff; of which ¼ were articled students and 27% were newly-called lawyers;
- approximately ½ of all rural lawyers expect to hire within the next five years, with 24% of those new hires being articling students and a another 29% newly-called lawyers;
- awareness of REAL is higher than expected with eight of every ten lawyers responding to the survey indicate they know of the initiative; and of those, 20% (or 1 in 10) have participated in the program.

Two practical guidebooks were also produced this summer – one for students and one for lawyers. The guidebooks are available both online and on campus. The printed REAL guidebooks are meant as hands-on tips and tools for ensuring successful recruitment and hires of summer students in law firms in small communities. Quick facts, FAQs, tips for success and real-life resources for both the law firms and the summer students are provided in an easy to read booklet.

In August, the Regional Legal Career Officer embarked on an 18-day tour of the province visiting with the second year summer students in the 13 markets. Feedback from the participating firms and students this year has been overwhelmingly positive and the visits were extremely rewarding. Students and law firms are increasingly engaging in building an online community and are contributing video, photographs and comments for our REAL Facebook page (www.facebook.com/realcbabc) and our website (www.realbc.org).

The increased interest in REAL has been noticed at a national level as well. In August, during the Canadian Legal Conference, the subject of the REAL initiative was a topic for the National Board of Directors and it was noted that British Columbia is a leader in this type of outreach and support of the profession.

The promotion for applications from rural practitioners interested in the 2013 summer student placements is already underway. The end of September is the deadline for interested firms as the goal is to present these opportunities to students in the fall, so REAL careers are a competitive option for students. The Regional Legal Careers Officer will continue to liaise with the Law Schools in all the Western provinces, showcasing the opportunities in BC, throughout the Fall months.

The Law Society of British Columbia

Memo

To Benchers
From Deb Armour
Date August 23, 2012
Subject Staff Attendance at Disciplinary Hearings

Background

Law Society hearings are open to the public with the ability of panels to exclude some or all members of the public in circumstances they consider appropriate. This is rarely done. Typically, few members of the public attend hearings. Likewise, to date, attendance at hearings by staff has been infrequent. On some occasions where staff have attended, questions have been raised or comments made by panel members or respondents' counsel. Those questions and comments have tended to discourage staff attendance even where there are good reasons for doing so. The purpose of this memo is to outline those reasons and thereby dispel any concern about staff attendance at hearings in the future. This memo addresses attendance at disciplinary hearings only and does not consider staff attendance at credentials hearings.

Reasons for Attendance

The following list is not meant to be exhaustive but outlines the primary reasons why staff might attend disciplinary hearings.

1. **Effective investigations and disciplinary actions –** this is one of the three key goals of the 2011 Regulatory Plan. To that end, staff of the Professional Conduct and Discipline departments now work closely together on matters that are likely to go to a hearing. The ability of Prof Con lawyers and other investigatory staff to conduct effective investigations is enhanced by periodic attendance at hearings on which they have worked. Understanding the role that is played by the evidence they have gathered is important to that education. In addition, there is sometimes a need to do further work as issues arise in the course of a hearing. Having the Prof Con lawyer who conducted the investigation near at hand addresses that need. It is also beneficial to support staff to attend at least part of one hearing to understand the final result of their work product.

2. **Management oversight –** In order to ensure that there is strong representation by both internal and external counsel for the Law Society, that feedback is given where appropriate and that the goal in the above paragraph is being met, it is important that the Manager, Discipline and Chief Legal Officer attend hearings from time to time. Likewise, the Manager, Investigations, Monitoring and Enforcement might attend to view firsthand the outcome of her department's work. As the person ultimately responsible for staff and operations of the Law Society, it is also appropriate and should be expected that the Chief Executive Officer will attend on occasion.

3. **Preparation for inquiries from the media or public –** It would be helpful for members of our Communications Department to attend hearings from time to time to gain an understanding generally of our processes and in specific cases to prepare key messages.

4. **Security –** In certain circumstances it is prudent to have our former RCMP investigators attend hearings for security reason.

Going Forward

For the reasons outlined above, it can be expected that attendance by staff at disciplinary hearings will be more frequent. Lest there be a concern that staff are neglecting other pressing matters to attend, careful thought will be given by managers to ensure that the time taken by staff attendance is justified and in accordance with those reasons. Given other priorities, it can also be expected that those attending might not stay for the entirety of a hearing and may also come and go throughout the course of a hearing while being cognizant of the need to avoid being disruptive.

I am happy to answer questions at any time relating to the above.

→ Banker info

Mila Shah
15588 Victoria Ave.
White Rock, BC
V4B 1H7

Dear Mr. Tim McGee,

RE: Law Society Gold Medal Prize

I am honoured to be the recipient of the Law Society Gold Medal Prize and I would like to express my gratitude for your support and recognition.

This award signifies the hard work and good times I had at the University of Victoria, Faculty of Law. It is an amazing program and I am sad to be leaving it. However, I am also extremely excited to begin my law career. This year, I am clerking at the British Columbia Court of Appeal for Madam Justice Saunders. Next year, I will clerk at the Supreme Court of Canada for Chief Justice McLachlin. My future plans include a career in litigation and involvement in social justice organizations.

Thank you again for this amazing honour.

Sincerely,

Mila Shah