The Law Society of British Columbia

Agenda

Benchers

Date: Friday, December 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 October 26, 2012 Meeting** • Draft minutes of the regular session	pg. 1000
2	**Minute of Bencher Decision at October 27, 2012 Governance Retreat** • Draft minute of decision to form Governance Committee	pg. 2000
3	**Act & Rules Subcommittee: Amendment to Rule 5-6 (Public Hearing)** • Memorandum from Mr. Hoskins on behalf of the Act & Rules Subcommittee	pg. 3000
4	**Act & Rules Subcommittee: Amendment to Rule 5-10 (Time to Pay)** • Memorandum from Mr. Hoskins on behalf of the Act & Rules Subcommittee	pg. 4000
5	**Act & Rules Subcommittee: Rescission of Rules Concerning the Special Compensation Fund** • Memorandum from Mr. Hoskins on behalf of the Act & Rules Subcommittee	pg. 5000

6	**Act & Rules Subcommittee: Amendments to various Rules Referencing the *Professional Conduct Handbook*** • Memorandum from Mr. Hoskins	pg. 6000
REGULAR AGENDA		
7	**President's Report** • Oral report to be presented at the meeting	
8	**CEO's Report** • Written report to be distributed electronically prior to meeting	
9	**Report on Outstanding Hearing & Review Reports** • Written report to be distributed at the meeting	
GUEST PRESENTATION		
10	**Presentation by Legal Services Society Board Chair, David Crossin, QC**	
2012 – 2014 STRATEGIC PLAN IMPLEMENTATION		
11	**Strategic Plan Implementation Update** Mr. LeRose and Mr. McGee to report • Report prepared on behalf of the Executive Committee	pg. 11000
12	**Governance Review Task Force Final Report** Mr. LeRose and Mr. McGee to report • Report from the Governance Review Task Force	pg. 12000
13	**Year-end Reports from the 2012 Advisory Committees** Updates from the Chairs of the 2012 Advisory Committees • Report from the Access to Legal Services Advisory Committee • Report from the Equity and Diversity Advisory Committee • Report from the Rule of Law and Lawyer Independence Advisory Committee • Report from the Lawyer Education Advisory Committee	pg. 13000

OTHER MATTERS For discussion and/or decision		
14	**Recommendation to Benchers to Adopt Changes to BC Code prior to Implementation on January 1, 2013** Mr. Getz to report • Report from the Ethics Committee	pg. 14000
15	**Proposal to Re-number the BC Code** Mr. Getz to report • Memorandum from Mr. Olsen and Mr. Hoskins	pg. 15000
16	**White Paper on Justice Reform: Considering the Law Society's Response** Mr. LeRose to report • Memorandum from Mr. Lucas and Mr. Munro	pg. 16000
17	**Law Corporation Name Format: Unlimited Liability Companies ("ULCs")** Mr. Cooke to report • Memorandum from the Executive Committee	pg. 17000
18	**Law Society Privacy Review Report: Bencher Considerations** Mr. LeRose, Mr. McGee and Mr. Hoskins to report • Memorandum from Mr. McGee / Executive Committee (*in camera*) • Memorandum from Mr. Hoskins (*in camera*)	pg. 18000
19	**Election of an Appointed Bencher to the 2013 Executive Committee**	
FOR INFORMATION ONLY		
20	**Report from the Chief Legal Officer**	pg. 20000
21	**Thank-you Letter from Access ProBono**	pg. 21000
22	**Thank-you Letter from Trial Lawyers Association of BC**	pg. 22000

23	**Memorandum from the Complainant's Review Committee**	pg. 23000
24	**Federation of Law Societies of Canada: Inventory of Access to Legal Services Initiatives of Canada's Law Societies**	pg. 24000
25	**Order In Council No. 787: Proclaiming Provisions of the *Legal Profession Amendment Act, 2012***	pg. 25000
IN CAMERA SESSION		
26	**Review and Approval of an Offer to Lease – Access Pro Bono** Mr. LeRose to report • Memorandum from the Executive Committee	pg. 26000
27	**Bencher Concerns**	

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, October 26, 2012

Present:

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

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

Absent: Thomas Fellhauer, Catherine Sas, QC

Staff Present:

Tim McGee
Lynn Burns
Robyn Crisanti
Jeffrey Hoskins, QC
Su Forbes, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe

Guests:

Chris Axworthy, QC, Dean, Faculty of Law, Thompson Rivers University
Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Kari Boyle, Executive Director, Mediate BC Society
Simon Chester, Heenan Blaikie, LLP
Anne Chopra, Equity Ombudsperson
Ron Friesen, CEO, Continuing Legal Education Society of BC
Donna Greschner, Dean, Faculty of Law, University of Victoria
Jeremy Hainsworth, Reporter, Lawyers Weekly
Gavin Hume, QC, the Law Society's Representative on the Council of the Federation of Law Societies of Canada
Drew Jackson, Director of Client Services and Associate Executive Director, Courthouse Libraries British Columbia
Carmen Marolla, Director, Sponsorship and Advertising, BC Paralegal Association
Christine Mayer, NCA Examinations Manager, Federation of Law Societies of Canada, National Committee on Accreditation (NCA)
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Jeremy Schmidt, Executive Coordinator, Faculty of Law, University of British Columbia
Kerry Simmons, Vice-President, Canadian Bar Association, BC Branch
Jennifer Weber, Director Professional Development and Sections, Canadian Bar Association, BC Branch
Deborah Wolfe, Managing Director, Federation of Law Societies of Canada, National Committee on Accreditation (NCA)

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on September 7, 2012 were approved as circulated.

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2013, as follows:

1. In Schedule 1, by striking "$1,840.41***" at the end of item A1 and substituting "***$1,893.06***";***

2. In Schedule 2, by revising the prorated figures in each column accordingly; and

3. In the headings of schedules 1, 2, and 3, by striking the year "2012" and substituting "2013".

BE IT RESOLVED to amend the Law Society Rules by rescinding paragraph (j) of the definition of "professional conduct record" and substituting the following:

(j) a decision made under section 38(4)(b) of the Act;

BE IT RESOLVED to amend Recommendation 3 of the Family Law Task Force Report to the Benchers dated September 7, 2012[1] to include:

3(8) lawyers who, as of the date the new Rule 3-20 is approved, are acting in the capacity of a parenting coordinator under an existing parenting coordinator agreement or order of the Court, will have until January 1, 2014 to meet the training requirements of parenting coordinators recommended in this report.

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) Kootenay Bar Assoc Meeting

Mr. LeRose and Mr. McGee attended the September meeting of the Kootenay Bar Association. Mr. McGee's remarks at the business meeting were well-received.

b) Federation Council Meeting and Conference (Vancouver)

National Competency Standards was a key topic on the Council meeting agenda, and *Strengthening Competency* was the theme of the two-day Conference to follow. Other topics on the Council meeting agenda were

- Mobility for Quebec lawyers

[1] For the rest of Recommendation 3, see: *QUALIFICATIONS FOR LAWYERS ACTING AS ARBITRATORS, MEDIATORS, AND/OR PARENTING COORDINATORS IN FAMILY LAW MATTERS*, Report of the Family Law Task Force to the Benchers, September 7, 2012, pages 9-10. The report can be downloaded from the Law Society website (http://www.lawsociety.bc.ca/page.cfm?cid=99&t=Committee-and-Task-Force-Reports) under "FAMILY LAW"

- Strategic planning and priorities, with emphasis on developing national standards for regulation and enhancing access to legal services

- 2013 Budget

    - no levy increase proposed for the coming year

Mr. LeRose expressed his appreciation regarding the attendance of fourteen Benchers at the Federation Conference dinner hosted by the Law Society.

c) 2012 Annual General Meeting

The 2012 AGM was successful, with PricewaterhouseCoopers approved as the Law Society's auditors for 2012, with Mr. Walker elected as Second Vice-President for 2013, and without any major technical difficulties. A minor issue with quality of audio transmission from the Nanaimo venue is being investigated.

The following member resolution passed by the margin of 85 for and 75 against:

> *BE IT RESOLVED* that the Law Society membership direct the Law Society to research the feasibility of creating a class of membership for non-profit lawyers with a reduced rate of practice fees, and to present to the membership within six months information about the feasibility of such a class of membership.

The Executive Committee will consider staff advice regarding implementation of the resolution.

d) 2012 International Bar Association (IBA) Annual Conference in Dublin, Ireland

The two dominant themes of the 2012 IBA Annual Conference were the distressed economic circumstances of the European Union and European law firms, and consideration of the use and regulation of alternative business structures (ABS). The lack of unanimity on ABS was apparent, as was the wisdom of the "wait and see" approach recommended by the Independence & Self-Governance Advisory Committee in its October 2011 report to the Benchers.

e) BC Court of Appeal Practice Issue

The Law Society has been invited to participate in a BC Court of Appeal working group to consider incompetence of counsel as a ground for appeal. The working group has been created for the purpose of consultation in advance of any Practice Directive by the Court. Michael Lucas, Manager of Policy and Legal Services, will represent the Law Society.

6. CEO's Report

Mr. McGee reported orally on several matters, including:

a) International Institute of Law Association Chief Executives (IILACE) Annual Conference, Hong Kong, October 17-20, 2012

Chief executives of more than 70 law bodies, regulating or representing about 1.8 million lawyers, attended the IILACE 2012 Annual Conference. Enhancing access to legal services was the overriding issue of concern, with broad focus on expanding provision of legal services beyond lawyers. International standards of regulation and alternate business structures were also major discussion topics.

b) Access to Legal Services Course at UBC's Faculty of Law

Earlier this week Mr. Vertlieb and Mr. McGee attended a UBC Faculty of Law course on enhancing access to legal services. A number of different delivery and service models are being considered; the discussion was vigorous and interesting. A delegation of law students from the course will attend an upcoming meeting of the Access to Legal Services Advisory Committee.

c) Law Society of Upper Canada (LSUC) Articling Task Force

LSUC's Articling Task Force has issued its report for the Benchers' debate at their November Convocation. The debate will be open to the public by webcast.

d) Benchers' Seminar on the BC Code of Professional Conduct (the BC Code)

Past-President Gavin Hume, QC will conduct a 90-minute seminar on the BC Code for Law Society Benchers following their December 7 meeting. The BC Code comes into force on January 1, 2013, replacing the current Professional Conduct Handbook. Mr. Hume is the Law Society's representative to the Council of the Federation of Law Societies of Canada, and is Chair of the Federation's Standing Committee on the Model Code of Professional Conduct.

e) Quarterly Financial Update

Finance Committee Art Vertlieb, QC reported that the Law Society's finances are in good order through the third quarter of 2012. Chief Financial Officer and Director of Trust Regulation Jeanette McPhee provided highlights of the Law Society's financial status through September 30, 2012, referring to her Quarterly Financial Report (page 6000 of the meeting materials and Appendix 1 to these minutes) for details.

7. Federation of Law Societies of Canada: Council Report by the Law Society's Council Representative

Gavin Hume, QC reported to the Benchers as the Law Society's Federation Council representative. He provided highlights of the Federation Council Meeting and Law Conference held in Vancouver (September 20-22), referring to the October 2012 President's Report to the Law Societies by John Hunter, QC (page 7000 of the meeting materials) for details. Mr. Hume described the development of national admission standards and a consistent approach to their implementation as the focus of both the Council meeting and the Conference.

Important topics covered at the Council meeting included:

a) Strategic Planning and Priorities

The Federation's Strategic Plan for 2012-2015 was approved by the Council earlier this year, maintaining the 2010-2012 plan's focus on national standards of regulation and access to legal services.

b) Mobility

The Council approved as a Federation priority the development of a simplified mobility regime between Quebec and the common law provinces. The Quebec Mobility Agreement Review Committee has been formed, to be chaired by Catherine Walker, QC, Council representative for the Nova Scotia Barristers Society, with Jeff Hoskins, QC, Tribunal and Legislative Counsel, and Alan Treleaven, Director of Education, representing the Law Society. The committee will work to enhance mobility from the foundation principle of encouraging lawyers to restrict their practices to their areas of competence.

c) National Admission Standards

Following an intensive two-year effort, the Federation Council approved a national competency profile as the basis for admission to the Canadian legal profession, subject to the member societies' approval. The Federation's focus has turned to the implementation phase, with emphasis on the development of a national standard of good character.

d) Federation Litigation Update

Mr. Hume updated the Benchers on various Federation litigation matters.

e) Model Code of Professional Conduct Implementation Update

Six Canadian law societies have now adopted the Model Code—or, as in BC's case, a provincial adaptation, and other societies are actively working toward implementation.

The Federation's Standing Committee on the Model Code (chaired by Mr. Hume) is continuing its work to support the provision of unbundled legal services, and to simplify the rules governing Canadian lawyers who wish to transfer between provinces.

8. Report on Outstanding Hearing & Review Reports

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

GUEST PRESENTATIONS

9. Update on the FLSC National Committee on Accreditation

Deborah Wolfe, Managing Director of the Federation of Law Societies of Canada's National Committee on Accreditation (NCA), provided a 2012 update on the NCA. Ms. Wolfe's PowerPoint presentation was provided to the Benchers in advance (Tab 9 of meeting materials and Appendix 2 to these minutes).

10. The Challenge of Innovations in Legal Practice for Legal Regulators

Simon Chester, a partner with Heenan Blaikie LLP, presented to the Benchers on the regulatory challenges raised by new organizational structures and arrangements for providing legal services. A PDF version of his presentation is attached as Appendix 3 to these minutes.

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

11. Strategic Plan Implementation Update

Mr. LeRose updated the Benchers on a number of matters related to implementation of the 2012 – 2014 Strategic Plan, including:

a) Governance Review Task Force

The purpose and structure of tomorrow's Law Society Governance Retreat was outlined. The Benchers were thanked for their enthusiastic participation in the review of Law Society governance launched in January, including thoughtful feedback to the task force's interim report, provided in written submissions and interviews. Benchers' input provided in tomorrow's retreat will be applied in preparation of the final report of the Governance Review Task Force, for review and approval at the December Bencher meeting.

b) BC Courts Family Law Paralegals Pilot Project Update

The Honourable Chief Judge Thomas Crabtree has written to the Law Society to confirm the BC Provincial Court's support for the two-year pilot project. The Law Society has prepared project evaluation criteria for the Court's review.

c) Legal Service Provider Task Force Update

The Legal Service Provider Task Force was created by the Benchers at their July meeting. The terms of reference approved at that meeting 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.

The members of the Legal Service Provider Task Force are: Godfrey Archbold, CEO, Land Title & Survey Authority of BC (non-legal representative), Satwinder Bains, Appointed Bencher, Law Society of BC, John Eastwood, President, Society of Notaries Public of BC, Bruce LeRose, QC, 2012 President, Law Society of BC (Chair), Carmen Marolla, Director (Sponsorship and Advertising), BC Paralegal Association, Kerry Simmons, President, CBABC, and Ken Walker, 2013 Second Vice-President, Law Society of BC (Vice-Chair).

The task force will hold its initial meeting in early December 2012, with the goal of submitting its report and recommendations to the Benchers by the end of 2013.

d) The Justicia Project

Mr. Lucas reported on the Justicia Project, a volunteer program approved by the Benchers in 2011 to promote and support women's participation in the legal profession. He noted that the Justicia Project is included in the current strategic plan as Initiative 2-1(b): to "support the retention of women lawyers by implementing the Justicia Project." Participating law firms are asked to sign a commitment to support the program by developing and sharing resources and best practices. Started in Ontario by the Law Society of Upper Canada, the Justicia Project is now underway in Manitoba, Alberta and BC as well. Phase 1 of BC's project will be launched on November 20 with a kick-off luncheon for the managing partners of national and large regional firms, to be hosted by the Vancouver office of Gowling Lafleur Henderson LLP.

e) Annual Review of Strategic Plan Implementation

Mr. McGee advised that a detailed review of progress toward implementation of the 2012-2014 Strategic Plan will be presented at the December Bencher meeting.

OTHER BUSINESS (White Paper on Justice Reform)

Deputy Attorney General Richard Fyfe, QC briefed the Benchers on Part 1 of the BC government's White Paper on Justice Reform. *A Modern, Transparent Justice System*. Mr. Fyfe advised that the White Paper addresses the three themes raised by Geoffrey Cowper, QC in his February 2012 report, *Modernizing BC's Justice System*: timeliness, transparency and proportionality. Part 1 focuses largely on transparency, with some attention to timeliness. Part 2 is expected to concentrate on proportionality, and to address policing issues raised by the Honourable Wally Oppal, QC in the pending report of the Missing Women Commission of Inquiry.

Mr. Fyfe noted that Part 1 contains 10 action items, and provides a table of concordance (in Appendix 1) to recommendations contained in the Cowper Report. He highlighted some of the action items, notably the creation of the Justice and Public Safety Council, publication of an annual Justice and Public Safety Plan, and holding a regular Justice Summit meeting to promote meaningful engagement between key justice system participants. Mr. Fyfe also noted that the government welcomes input from the Law Society, the profession and the public.

Mr. LeRose advised that the Law Society will provide feedback to the White Paper. He confirmed that the Law Society supports the government's aim to modernize our justice system by consulting with stakeholders, setting clear strategic direction, ensuring reform is coordinated, and evaluating effectiveness through performance measurement.

WKM
2012-11-26

The Law Society of British Columbia

Quarterly Financial Report

September 30, 2012

Prepared for: Benchers

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation
October 17, 2012

CFO Quarterly Financial Report – YTD September 2012

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

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a $767,000 positive variance to the end of September 2012. The positive variance is due to the timing of operating expenses which are expected to occur in the fourth quarter.

Revenue

Revenue was $14,405,000, $90,000 (0.6%) ahead of budget due to slightly higher PLTC and electronic filing revenues.

Operating Expenses

Operating expenses were less than budget, finishing the third quarter at $13.4 million, $906,000 (6.3%) under budget. As mentioned above, this positive variance is due to the timing of operating expenses which are expected to occur in the fourth quarter.

2012 Forecast - General Fund (excluding capital and TAF)

Operating Revenue

Practicing membership is expected to be very close to budget, projected at 10,751 members compared to a budget of 10,787. There will be 410 PLTC students for the year, 10 students ahead of budget. Other revenues are expected to be slightly over budget by year end. Total operating revenue is projected to finish the year with an $80,000 positive variance.

Operating Expenses

Operating expenses are projected to finish the year with a $340,000 positive variance, due to the following:

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

- Governance review - $115,000
- CBA REAL program - $75,000
- Federation levy - $40,000
- CBA conference sponsorship - $20,000
- Privacy review - $55,000

- New aboriginal scholarship - $12,000

Offsetting this, we are projecting other operating expense savings of $657,000 to year end mainly due to:

- Savings in external counsel fees and forensic accounting fees related to the number of files over the year - $275,000
- Staff salary savings due to vacancies and other savings - $280,000
- Lower hearing panel travel and training costs - $70,000

845/835 Building – net results

The 845/835 Cambie lease revenue is projected below budget. The Benchers agreed to forgive $60,000 in rent for CLE, and the projection assumes that the vacant lease space is not rented by year end, resulting in a revenue reduction of $380,000. Our agent continues to actively market the space.

Building maintenance expenses are projected to be on budget for the year.

Forecast

With the above mentioned results, we are projecting the General Fund operating results to be very close to budget by year end.

TAF-related Revenue and Expenses

The first two quarters of TAF revenue were $1,117,000, $138,000 below budget. This shortfall is more than offset by operating expense savings to the end of September 2012.

For the year, TAF revenue is projected at $2.2 million, $280,000 below budget. TAF operating expenses are projected to be below budget for the year, which is expected to offset this shortfall.

Special Compensation Fund

During the third quarter, the Fund received a $514,000 recovery of funds relating to a older claim. This recovery is budgeted in the 2013 fiscal year but was received earlier than expected.

Lawyers Insurance Fund

LIF operating revenues were $10.3 million to date, which is at budget. LIF operating expenses were $3.8 million, $600,000 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 $96 million at the end of September 2012, an increase of $5.9 million on a year to date basis. The year to date investment return was 6.3%, compared to a benchmark of 5.5%.

The Law Society of British Columbia

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

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

	Actual	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	11,446	11,442	4	0.0%
PLTC and enrolment fees	1,007	979	28	2.9%
Electronic filing revenue	653	598	55	9.2%
Interest income	217	285	(68)	-23.9%
Other revenue	1,082	1,011	71	7.0%
	14,405	14,315	90	0.6%
Expenses before 845 Cambie (excl. dep'n)	13,397	14,303	906	6.3%
	1,008	12	996	
845 Cambie St. - net results (excl. dep'n)	452	681	(229)	-33.6%
	1,460	693	767	

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 Projection	10,751
2012 Budget	10,787
2012 Actual YTD	**10,742**

	Actual Variance
Revenue	
Membership Revenue - 36 members less than budget	(50)
PLTC - 10 students more than budget	25
Electronic Filing	55
Late Payment Fees	25
Members' Manual / Benchers' Bulletin	20
Miscellaneous	5
	80
Expenses	
Professional Services - external counsel fees - regulation	80
- external counsel fees - other departments	75
- forensic accounting fees	120
Staff salaries	280
Hearing Panel - travel & training	70
Governance Review consulting fees*	(115)
CBA REAL Initiative contribution*	(75)
Privacy Review consulting fees*	(55)
FLS Contribution - rate increase *	(40)
Exec Comm - CBA Canadian legal conference sponsorship contribution *	(20)
Aboriginal Scholarship*	(12)
Miscellaneous	32
	340
845 Cambie Building	
CLE Lease Forgiveness*	(60)
Lease revenue	(380)
Expense savings	20
	(420)
2012 General Fund Forecast Variance	-
2012 General Fund Budget	-
2012 General Fund Actual	-

* Bencher approved items after budget set

Trust Assurance Program Forecast

	2012 Forecast	2012 Budget	Variance	% Var
TAF Revenue	2,223	2,500	(277)	-11.1%
Trust Assurance Department	2,198	2,468	270	10.9%
Net Trust Assurance Program	25	32	(7)	

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

Performance	6.3%
Benchmark Performance	5.5%

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2012
($000's)

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Membership fees **(1)**	13,337	13,340		
PLTC and enrolment fees	1,007	979		
Electronic filing revenue	653	598		
Interest income	217	285		
Other revenue	1,082	1,011		
Total Revenues	16,296	16,213	83	0.5%
Expenses				
Regulation	4,987	5,574		
Education and Practice	2,549	2,659		
Corporate Services	1,897	2,065		
Bencher Governance	1,323	1,197		
Communications and Information Services	1,444	1,437		
Policy and Legal Services	1,198	1,372		
Depreciation	222	299		
Total Expenses	13,620	14,603	983	6.7%
General Fund Results before 845 Cambie and TAP	2,676	1,610	1,066	
845 Cambie net results	37	131	(94)	
General Fund Results before TAP	**2,713**	**1,741**	**972**	
Trust Administration Program (TAP)				
TAF revenues	1,117	1,255	(138)	
TAP expenses	1,675	1,842	167	9%
TAP Results	**(558)**	**(587)**	**29**	
General Fund Results including TAP	**2,155**	**1,154**	**1,001**	

(1) Membership fees include capital allocation of $1.891m (YTD capital allocation budget = $1.898m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2012
($000's)

	Sept 30 2012	Dec 31 2011
Assets		
Current assets		
Cash and cash equivalents	132	279
Unclaimed trust funds	1,670	1,848
Accounts receivable and prepaid expenses	821	1,129
B.C. Courthouse Library Fund	1,115	678
Due from Lawyers Insurance Fund	5,329	19,331
	9,067	23,265
Property, plant and equipment		
Cambie Street property	11,518	11,739
Other - net	1,633	1,362
	22,218	36,366
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,044	4,040
Liability for unclaimed trust funds	1,670	1,848
Current portion of building loan payable	500	500
Deferred revenue	4,428	17,491
Deferred capital contributions	61	70
B.C. Courthouse Library Grant	1,115	678
Deposits	33	27
	8,851	24,654
Building loan payable	4,100	4,600
	12,951	29,254
Net assets		
Capital Allocation	2,477	1,874
Unrestricted Net Assets	6,790	5,238
	9,267	7,112
	22,218	36,366

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 9 Months ended September 30, 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	(685)	949	264	1,891	2,155	421
Repayment of building loan	500	-	500	(500)	-	-
Purchase of capital assets:						
LSBC Operations	235	-	235	(235)	-	-
845 Cambie	553	-	553	(553)	-	-
Net assets - September 30, 2012	8,613	(1,820)	6,790	2,477	9,267	7,112

The Law Society of British Columbia
Special Compensation Fund
Results for the 9 Months ended September 30, 2012
($000's)

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Annual assessment	8	8		
Recoveries	514	-		
Total Revenues	522	8	514	6425.0%
Expenses				
Claims and costs, net of recoveries	-	538		
Administrative and general costs	35	40		
Loan interest expense	(20)	-		
Total Expenses	15	578	(563)	-97.4%
Special Compensation Fund Results	507	(570)	1,077	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at September 30, 2012
($000's)

	Sept 30 2012	Dec 31 2011
Assets		
Current assets		
Cash and cash equivalents	1	1
Due from Lawyers Insurance Fund	1,447	950
	1,448	951
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	6	8
Deferred revenue	3	11
	9	19
Net assets		
Unrestricted net assets	1,439	932
	1,439	932
	1,448	951

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
For the 9 Months ended September 30, 2012
($000's)

	2012 $	2011 $
Unrestricted Net assets - December 31, 2011	932	831
Net excess of revenue over expense for the period	507	101
Net assets - September 30, 2012	1,439	932

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 9 Months ended September 30, 2012
($000's)

	2012 Actual	2012 Budget	$ Var	% Var
Revenue				
Annual assessment	10,299	10,294		
Investment income	5,801	4,420		
Other income	90	62		
Total Revenues	16,190	14,776	1,414	9.6%
Expenses				
Insurance Expense				
Provision for settlement of claims	11,149	11,148		
Salaries and benefits	1,694	2,067		
Contribution to program and administrative costs of General Fund	1,130	1,177		
Office	570	736		
Actuaries, consultants and investment brokers' fees	293	316		
Allocated office rent	111	111		
Premium taxes	14	13		
	14,961	15,568		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	538	531		
Total Expenses	15,499	16,099	600	3.7%
Lawyers Insurance Fund Results before 750 Cambie	691	(1,323)	2,014	
750 Cambie net results	275	234	41	
Lawyers Insurance Fund Results	**966**	**(1,089)**	**2,055**	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at September 30, 2012
($000's)

	Sept 30 2012	Dec 31 2011
Assets		
Cash and cash equivalents	4,807	23,719
Accounts receivable and prepaid expenses	930	654
Due from members	64	67
General Fund building loan	4,600	5,100
Investments	105,798	102,895
	116,199	132,435
Liabilities		
Accounts payable and accrued liabilities	364	1,609
Deferred revenue	3,421	6,813
Due to General Fund	5,330	19,331
Due to Special Compensation Fund	1,447	950
Provision for claims	53,775	52,876
Provision for ULAE	7,105	7,065
	71,442	88,644
Net assets		
Unrestricted net assets	27,257	26,291
Internally restricted net assets	17,500	17,500
	44,757	43,791
	116,199	132,435

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 9 Months ended September 30, 2012
($000's)

	Unrestricted	Internally Restricted	2012 Total	2011 Total
	$	$	$	$
Net assets - December 31, 2011	26,291	17,500	43,791	33,962
Net excess of revenue over expense for the period	966	-	966	9,827
Net assets - September 30, 2012	27,257	17,500	44,757	43,789

The National Committee on Accreditation

Deborah Wolfe, P.Eng.
Managing Director
National Committee on Accreditation

Today's Presentation

- Introduction to the NCA
- History of the NCA
- How the NCA works

“The Federation of Law Societies of Canada is the national coordinating body of the 14 law societies which are mandated by provincial and territorial law to regulate Canada’s 100,000 lawyers and Quebec’s 4,000 notaries in the public interest.”

The mandate of the NCA is to assess the qualifications of individuals with legal education and professional experience obtained outside of Canada, or in a Canadian civil law program, who wish to be admitted to a common law bar in Canada.

The NCA's History

- Until 1977, each law society evaluated foreign trained applicants independently
- The Federation and the Deans created The Joint Committee on Accreditation in 1977
- Initially all common law, law societies used the JCA except Alberta
- LSA joined the NCA in 2001

The NCA's History, cont'd

- Assessments determined what credit, or advanced standing, should be given to the applicant's education
- Initially, all applicants were required to complete at least some law school

The NCA's History, cont'd

- In 1995, the LSUC commissioned a study on the NCA. The MacKenzie report, 1997, laid out 11 recommendations including that the LSUC continue to use the NCA.
- The Federation established a committee to consider the MacKenzie report. The Wallace Report was issued in 1998, and led to changes in the NCA's policies and operations.

The NCA's History, cont'd

- The Wallace recommendations, most implemented over the next decade, included:
  - Standards of assessment
  - Delegation
  - Assessment decisions
  - Competency based assessment
- The report also specified the composition of the NCA

The NCA's History, cont'd

- Discussions on NCA competencies continued, culminating in a major assessment policy change in 2009 and further revisions in 2011
- Over the same timeframe, the Federation developed new policies, the "National Requirement", for the approval of Canadian common law degree programs
- The NCA's next policy task is to bring the NCA's policies into compliance with the National Requirement

NCA Members - 2012

- **Graeme Mitchell, Q.C.**, Chair
- **Donna Greschner,** Dean, UVictoria
- **Mayo Moran**, Dean, UToronto
- **Malcolm Mercer,** McCarthy's, Toronto
- **Alan Treleaven,** Senior Staff, LSBC
- **Miriam Carey, PhD**, lay member, LSA

- Managing Director: **Deborah Wolfe, P.Eng.**

NCA Staff

- **Deborah Wolfe, P.Eng.,** Managing Director
- **Lynn Allenby**, Administrative Assistant
- **Aislinn Walsh**, Assessment Clerk
- **Christine Mayer**, Examination Manager
- **Fred Tang**, Examination Clerk

Statistics
July 1, 2009 - June 30, 2010

More than 1,000 applications
(42% increase from previous year)

392 Certificates issued
(51% increase from previous year)

More than 3,000 examinations
(6 countries, more than 25 different sites)

Statistics
July 1, 2010 - June 30, 2011

More than 1,000 applications
(3% increase from previous year)

466 Certificates issued
(19% increase from previous year)
(2,000 common law degrees granted annually in Canada)

Almost 4,000 examinations
(between 18 and 21 sites per session, New Delhi now a permanent site)

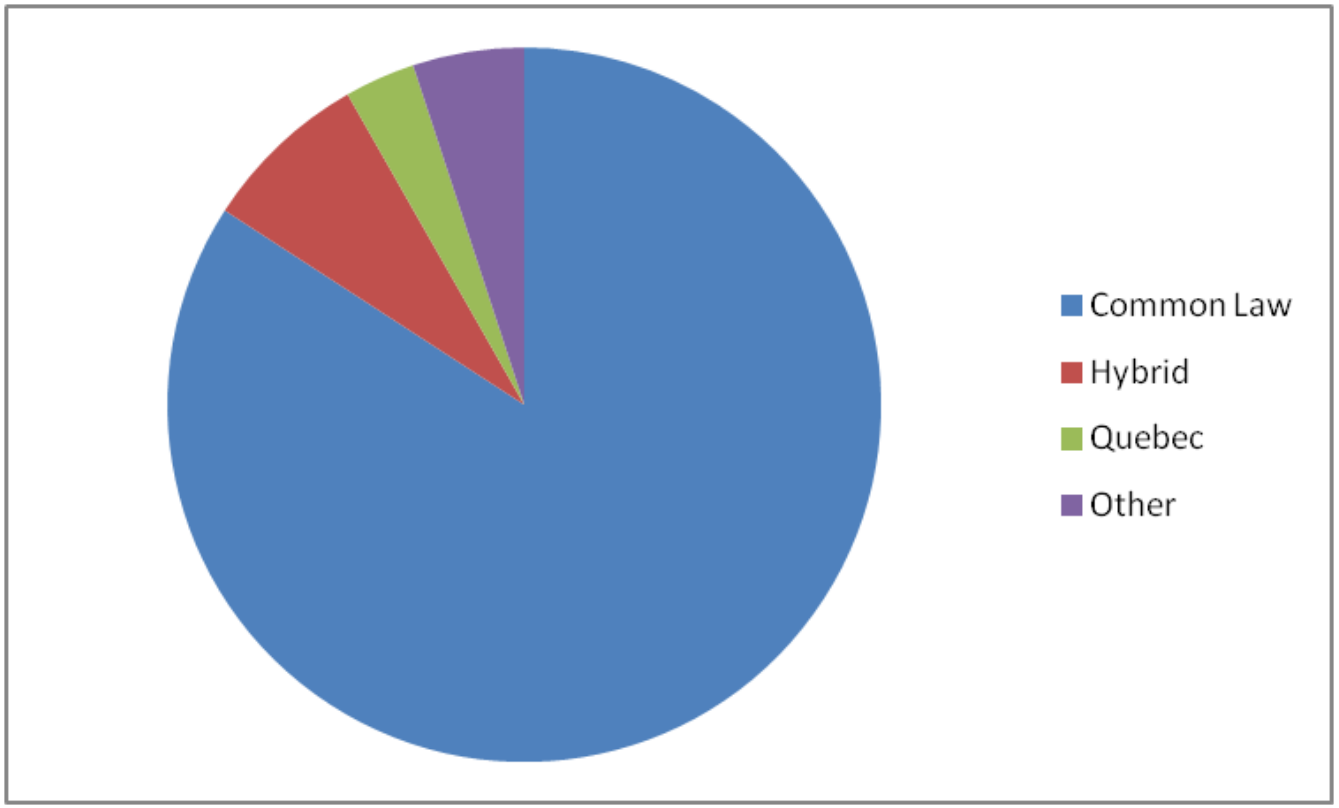
Statistics
July 1, 2011 - June 30, 2012

Almost 1,250 applications
(14% increase from previous year)

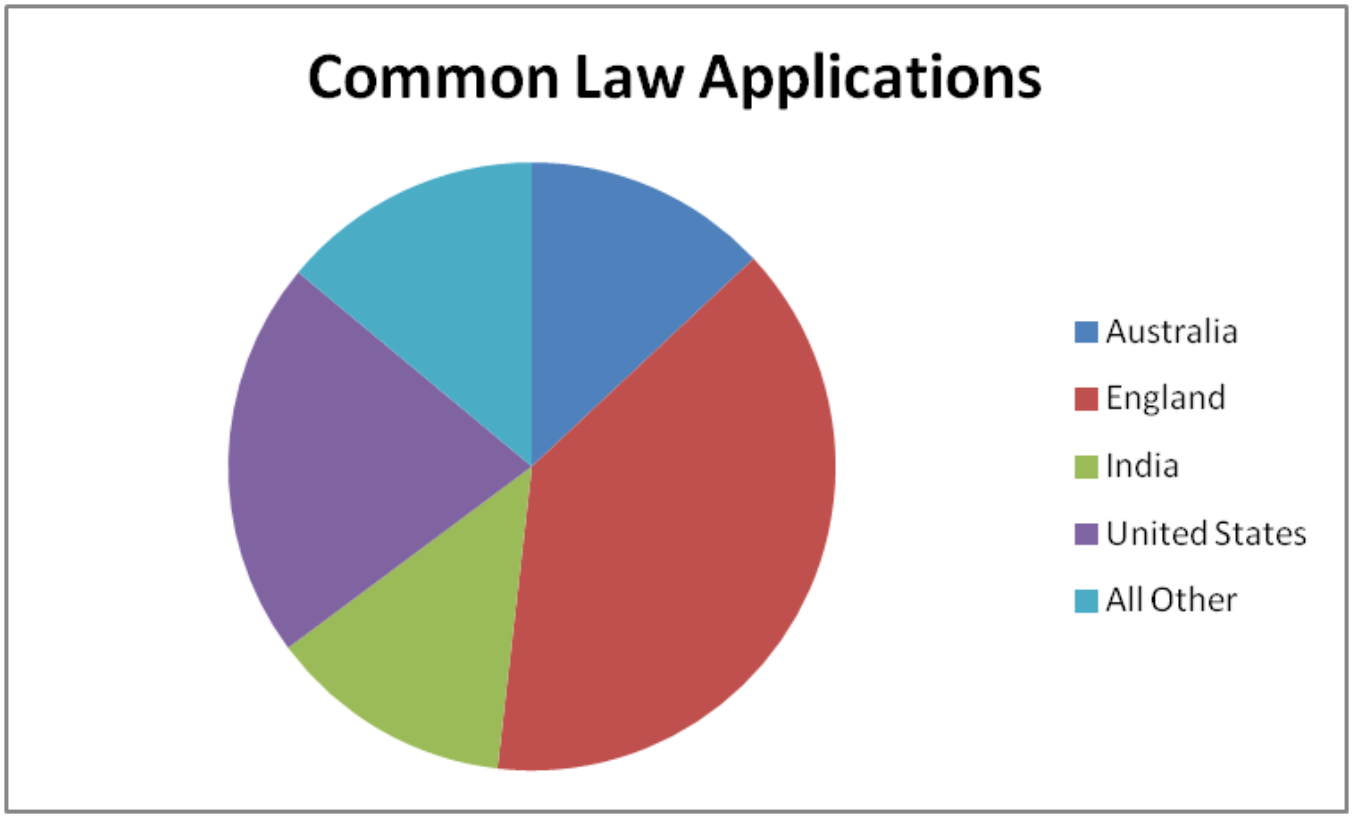
709 Certificates issued
(52% increase from previous year)
(2,000 common law degrees granted annually in Canada)

Over 5,000 examinations
(between 18 and 21 sites per session, New Delhi now a permanent site)

Legal Tradition of Applicants – 2011/2012



Country of Education of Common Law Applicants - 2011/2012



Composition of Applicants

- Almost 85% of applicants obtained their education in a common law jurisdiction
- 768 of the 1,249 applicants in 2011/2012 were educated in England, U.S. and Australia
- Many of the applicants from these three countries, but not all, are Canadians going overseas for their law degrees

Steps in the NCA Process:

1. Application
2. Assessment
3. Completion of Requirements
4. Issue Certificate of Qualification
5. Certificate accepted by law societies in common law Canada

Step 1 - Application

- All forms and instructions posted on website (www.flsc.ca)
- Transcripts and Certificates of Membership must be sent directly from issuing institution
- Applicants may apply from anywhere in the world, and do not need to be Canadian citizens or permanent residents
- Cost: $450
- Timeline: Assessment completed within three months of receipt of all material

Step 2 - Assessment

- Depending on qualifications, applicants are required to complete examinations and/or law school courses, or refused any recognition
- Criteria for assessment:
  - Legal tradition (common law, civil law, mixed jurisdiction)
  - Mode of study (in class, distance)
  - Law school recognition
  - Courses taken as compared to the NCA core competencies, academic performance
  - Licensure and professional experience

Sample Assessment - 1

- Common Law Applicant – England
  - Qualifying Law Degree approved by the Solicitors Regulation Authority?
  - Three year degree or two year degree (graduate entry or senior status)?
  - Classification of Degree (First class, etc.)?
  - Courses taken from the NCA core competency list?
  - Academic performance on core courses?
  - Attended Bar School? Licensed? Professional experience in a common law jurisdiction?
  - Typical assessment is 5-7 exams unless licensed then normally 4 exams

Sample Assessment - 2

- Common Law Applicant – Distance Education
  - Degree approved by relevant legal authority? If not, no recognition.
  - Classification of Degree (First class, etc.)? If third class or pass class in England, no recognition.
  - Attended Bar School? Licensed? If Bar School was in class, then do not treat as distance ed
  - Professional experience in a common law jurisdiction?
  - LL.M.? If LL.M. was in class, then do not treat as distance ed
  - Typical assessment is 6 exams plus one year in law school

Sample Assessment - 3

- Common Law Applicant – U.S.
  - ABA approved degree?
  - Courses taken from the NCA core competency list?
  - Academic performance on core courses?
  - Completed Bar Exam? Licensed? Professional experience in a common law jurisdiction?
  - Typical assessment is 4-6 exams unless licensed then normally 4 exams

Sample Assessment - 4

- Common Law Applicant – Bond University
  - GPA?
  - Courses taken from the NCA core competency list?
  - NCA mandatory Canadian courses taken?
  - Academic performance on core and mandatory courses?
  - Attended Bar School? Licensed? Professional experience in a common law jurisdiction?
  - Typical assessment is 0-4 exams
  - Some applicants with poor to very poor academic performance: 5-10 exams (before implementation of new GPA policy)

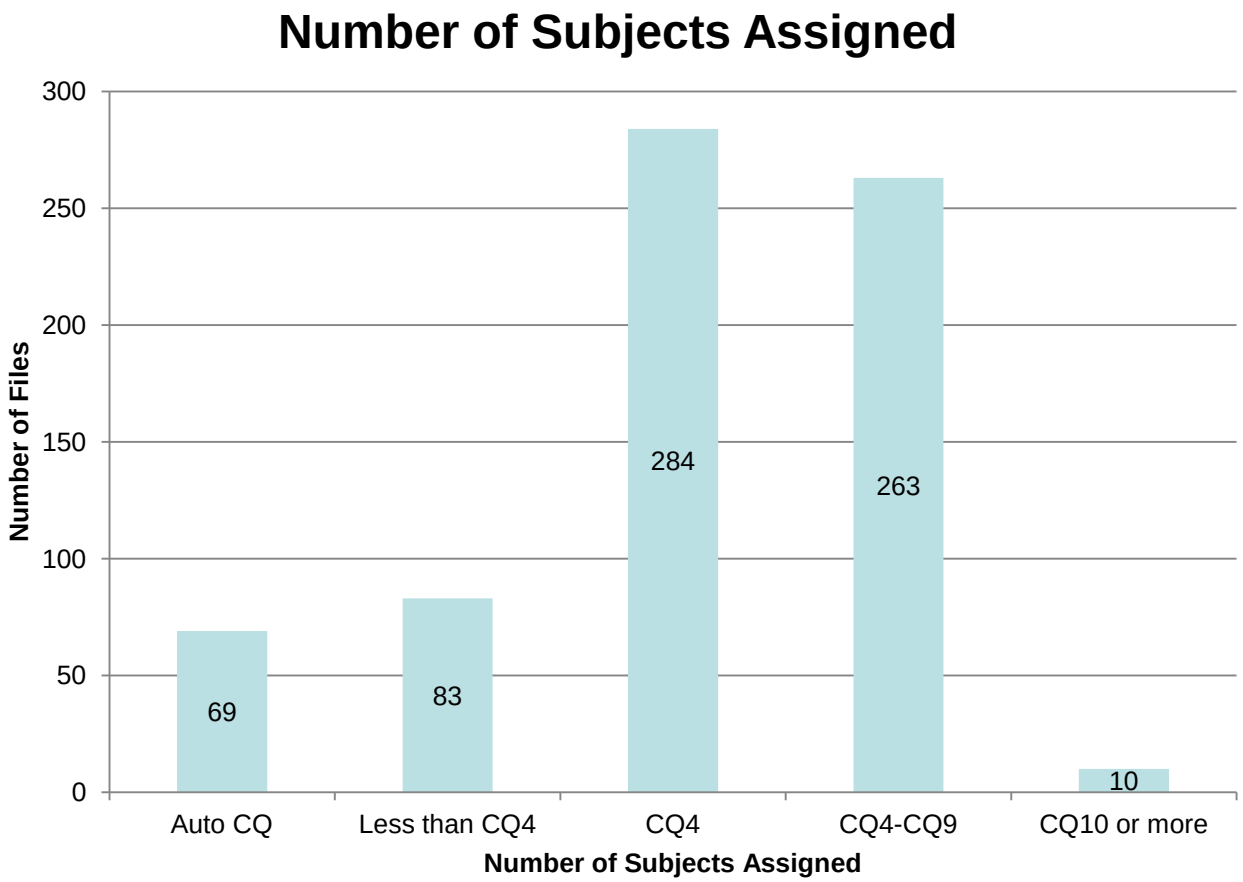
Sample Assessment - 5

- Hybrid Applicant (mixed legal tradition with some common law content)
  - Degree approved by relevant authority?
  - Classification of Degree (First class, etc.)?
  - Contracts, Torts, Property and Evidence assigned unless taught as common law
  - Corporate Law and Professional Responsibility taken? Academic Performance?
  - Attended Bar School? Licensed?
  - Education, licensure and/or professional work experience in a common law jurisdiction?
  - Typical assessment is 8-10 exams

Sample Assessment - 6

- Canadian Civil Law Applicant
  - LL.L. or BCL degree
  - Licensed in Quebec or completed Professional Responsibility course?
  - Typical assessment is 7 exams
  - Completed a DESS at Université de Montréal or Université de Sherbrooke? Then, issue CQ.
  - Practised and/or licensed in a common law jurisdiction? Assess on case by case basis.

Certificates Issued - 2011/2012



Step 3 – Completion of Requirements

- NCA examinations:
  - ✓ Four times a year
  - ✓ Four standard locations, others arranged on request
  - ✓ New standard location in New Delhi
  - ✓ Cost: $350/exam (as of Jan. 2013)
- Law School:
  - ✓ Applicants responsible for admission
  - ✓ Over 85% of applicants given the option to do examinations only

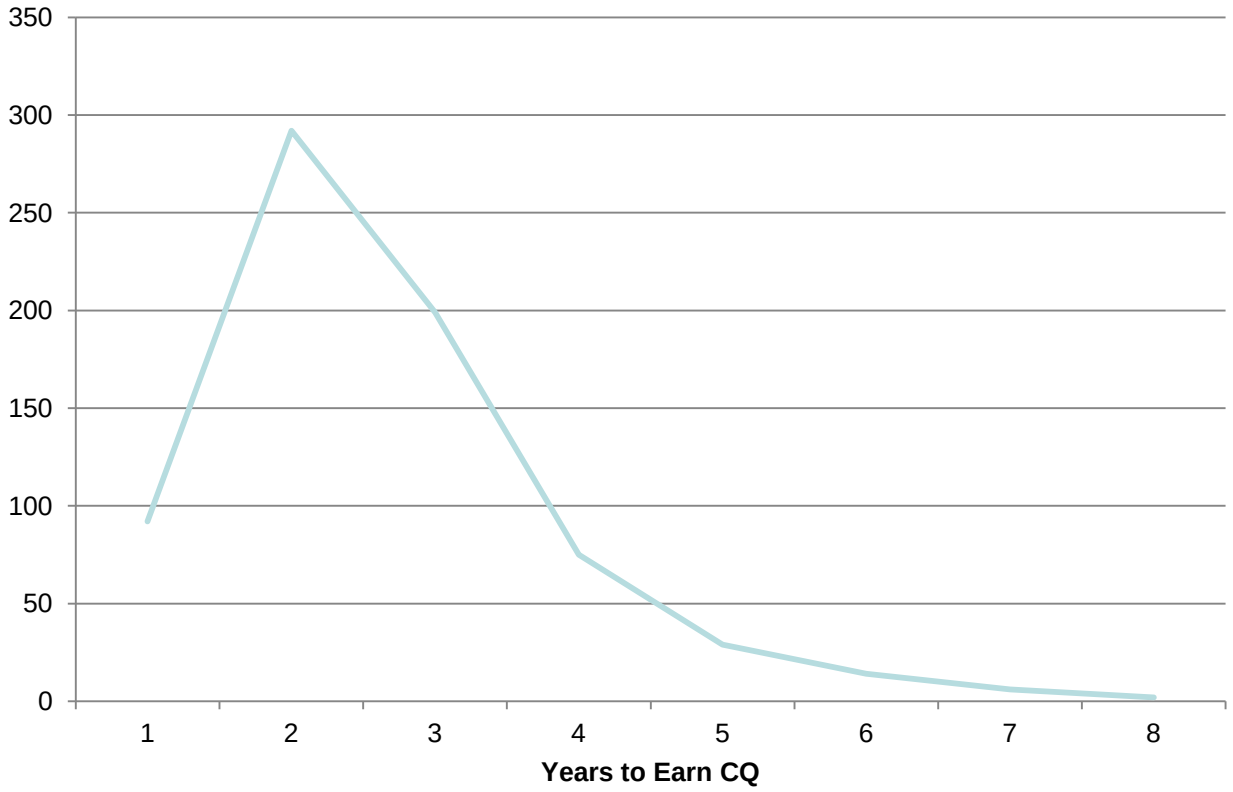
Canadian Law School Initiatives

- University of Toronto – Internationally Trained Lawyers Program
- Osgoode Hall Law School – tutoring program
- University of British Columbia – Common Law LL.M.

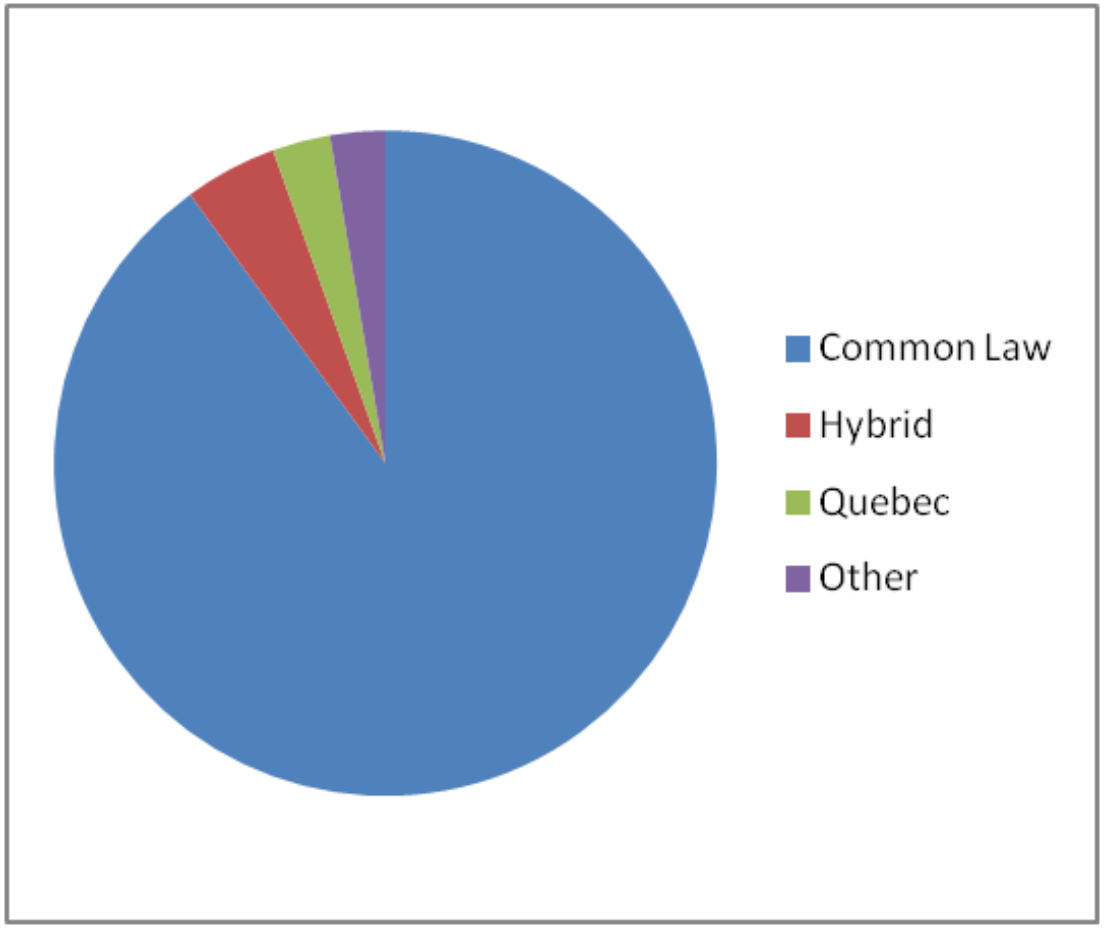
Steps 4 & 5

- Once all requirements are completed, the applicant receives a Certificate of Qualification
- Certificate accepted by common law, law societies as equivalent to graduation from a Canadian law school
- Certificants then complete the licensing process (bar admissions)
- Some qualify for article abridgement

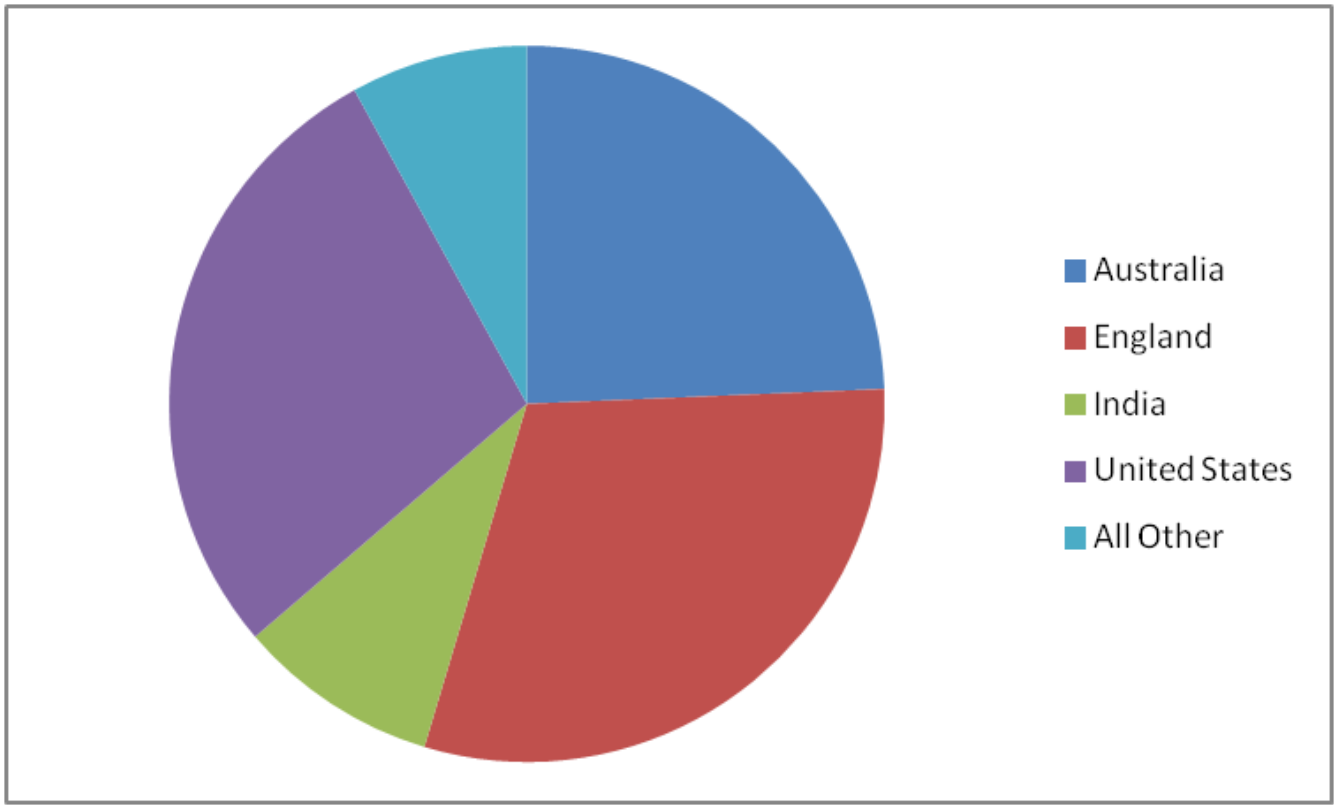
Number of Certificates issued by Years to Complete Requirements – 2011/2012



Certificates issued by Legal Tradition – 2011/2012



Country of Education of Common Law Certificants – 2011/2012



Appeals

- The NCA approved an appeal policy in August 2011, updated in July 2012
- Applicants may appeal their assessments within the bounds of the approved policy
- Discussions on appeal process be held at each NCA meeting

Communications

- Website (information available on demand, all policies posted)
- RSS feed
- Phone calls, emails
- Twitter?
- Facebook?

Internal Factors

- Federation's new 'National Requirement' for content of a Canadian common law degree will need to be incorporated into NCA policies
- Legal education and qualification processes in other similar countries (U.S., England, Australia) monitored for changes

External Influences

- Provincial credentialing agencies developed “General Guiding Principles for Good Practice in the Assessment of Foreign Credentials”
- UNESCO’s Lisbon Convention on the recognition of higher education
- Fairness Commissioners

Federation of Law Societies of Canada

www.flsc.ca

National Committee on Accreditation

http://www.flsc.ca/en/nca/

613-236-1700

nca@flsc.ca

The Challenge of Innovations in Legal Practice for Legal Regulators

Est-ce que l'Angleterre a perdu sa tête?

Simon Chester

What's happening?

Why?

Why does it matter to us?

The Law Society of British Columbia

Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations

For: The Benchers
Date: October 21, 2011

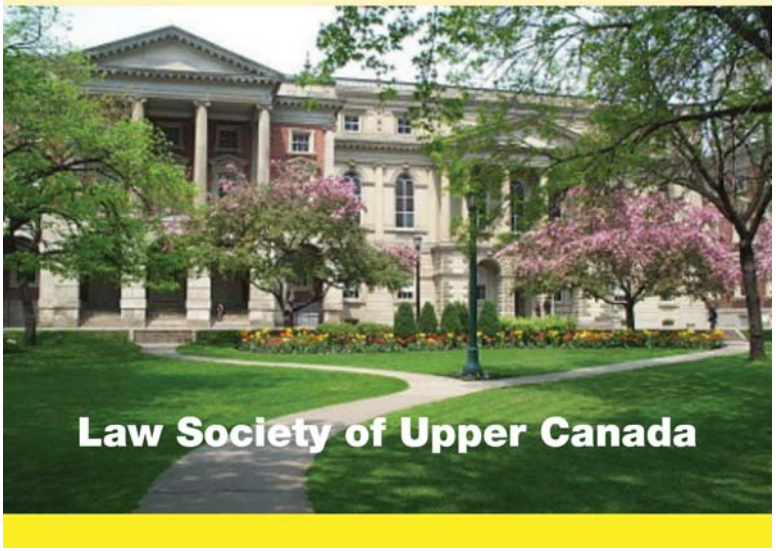
Business development strategies have to adapt to legal principles rather than the other way around.
R v. Neil, [2002] 2 S.C.R. 631 per Binnie J.

Main concerns

- Core values of the legal profession
- Conflicts of duty
- Quality of services

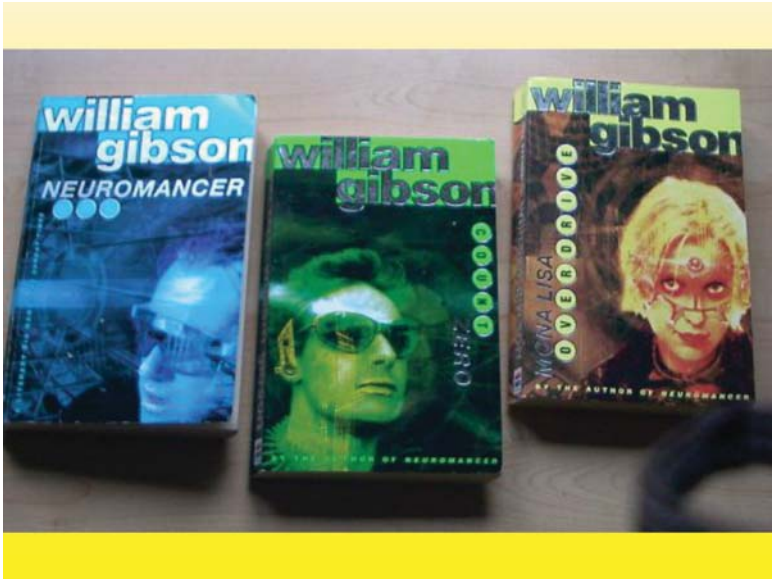
My perspective

Heenan Blaikie



Where is the legal profession going?

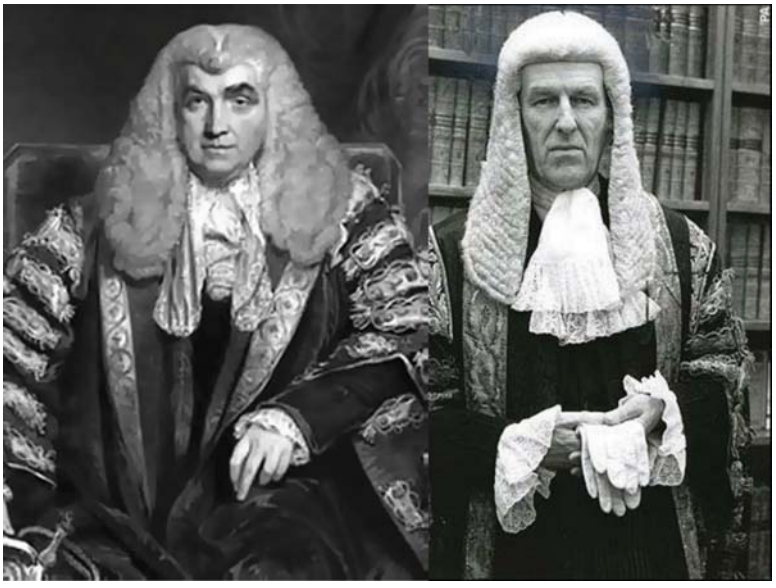
More questions than answers



Innovation

Professionalism

Are you kidding me?



Precedent

Tradition

Glories of the common law

"Blow apart the established conventions of legal practice"
-Eversheds

ELIZABETH II

Legal Services Act 2007

2007 CHAPTER 29

New forms of legal practice

- The Legal Services Board was created by the Legal Services Act 2007 as an independent regulator with oversight responsibility for the regulation of the legal services sector.

Our role is clear: to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales.

We will continue to press for the removal of barriers to new business models to ensure that market innovations deliver services and access to justice in ways that are innovative and offer best value for money to all.

Manifesto for Reform

May 2009

Legal Services Board's consultation paper

"Wider Access, Better Value, Strong Protection Discussion paper on developing a regulatory regime for alternative business structures"

For centuries, legislation and professional regulatory rules have tightly restricted the management, ownership and financing of organizations that are permitted to offer legal services.

Although the UK's legal services sector is internationally competitive and highly regarded, these regulatory restrictions have stopped it from realising its full potential.

Regulation has limited innovation and competition in the way that legal services are delivered.

It has constrained consumer choice and restrained

the way that legal services are delivered.

It has constrained consumer choice and restrained normal market pressures on law practices to deliver their services efficiently and effectively.

Regulation has gone beyond what is rightly necessary to protect citizens from the unethical practices of a tiny minority to a framework which has restricted businesses and consumers alike.

London is the legal capital of the world

Thursday, 15 Sep 2011

UK 'a global centre for legal excellence'

The legal industry came together at an event organised by TheCityUK on Wednesday to discuss the importance of promoting the UK as a global centre of legal expertise, and ways in which to ensure this remains the case in the future.

The Right Honourable Kenneth Clarke, Lord Chancellor and Secretary of State for Justice, revealed steps the Government is taking to enhance Britain's reputation as a legal services provider, as outlined in the Ministry for Justice's Plan for Growth as it attempts to remain one step ahead of the competition.

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September 14, 2011 2:34 pm

Clarke backs UK as 'the world's lawyer'

By Caroline Binham, Legal Correspondent

Ken Clarke, justice secretary, on Wednesday pledged to take on the European Commission and target the Indian legal market as part of his effort to promote UK legal services.

Mr Clarke rubbished a Commission effort to introduce a Europe-wide contract law, which aims to break down barriers to free trade. Warning that it could be "unnecessary, disproportionate and damaging", he said the wrong type of contract law could lead to "years of litigation".

Ken Clarke: law and lawyers among the UK's "greatest exports"

14 September 2011 | By Vanessa Wozniak

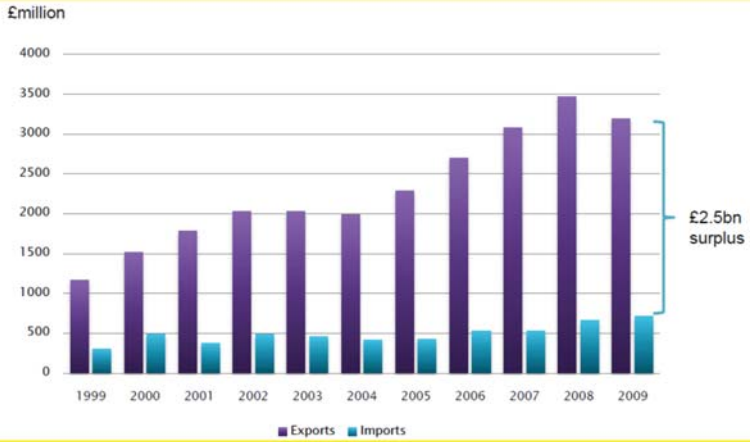
Print | Email | Share | Comments (9) | Save

Justice secretary Kenneth Clarke has launched the Legal Services Action plan aimed at promoting London as the legal capital of the world.

Kenneth Clarke

Justice secretary Kenneth Clarke has launched the Legal Services Action plan aimed at promoting London as the legal capital of the world.

In a speech, which took place at Clifford Chance's offices today, Justice Secretary Kenneth Clarke underlined the Government's commitment to promoting the UK legal industry abroad and called for a need to modernise the UK's 'old-fashioned' and 'bureaucratic' civil and criminal justice system.



Justice secretary Ken Clarke pledges 'Big Bang' for UK legal sector

19 September 2011

SHARE

As proportion of total UK revenue generated by legal services rises, senior Cabinet member sets out measures to promote competition and consumer choice

WEBNEWS

Big Bang?

Ministry of Justice

New dawn in legal sector will give boost to UK business and customers

06 October 2011

The public are set to benefit from modern, joined-up legal services after Justice Minister Jonathan Djanogly announced the start of radical changes to the sector today.

Mr Djanogly heralded a new era for legal services with the launch of Alternative Business Structures, which for the first time will enable law firms to secure outside investment to work in partnership with professionals from other industries, such as retailers, to offer a competitive service to customers.

In the future customers will find legal services more accessible as businesses like high street shops, supermarkets and internet firms will be able to offer a joined-up legal service alongside their other products.

Mr Djanogly said:

'This is a landmark day for the UK legal industry.

Alternative Business Structure

ABS

What is an ABS?

- Ownership options
- Non-lawyer participation
- Lawyer responsibility for professionalism
- = Head of Legal Practice

Subject to fit and proper person test

Advantages?

More competition

Better services

Consumer choice

Many forms of ABS

Lawyer owned:

- Marketing umbrellas
- Full franchises
- Virtual firms

Externally owned:

- Private equity investments
- Law Firm IPOs
- Integrated legal networks
- Multi-discipline conglomerates

3 January 2012

Solicitors Regulation Authority

29 licenses to date

Has your firm changed its management strategy as a result of the introduction of Alternative Business Structures (ABSs) under the Legal Services Act (LSA) 2007?

	Response Percent	Response Count
Yes	39.0%	39
No	50.0%	50
Not sure	5.0%	5
No answer	6.0%	6

Are you aware of your business rivals considering, or applying, to become an ABS?

	Response Percent	Response Count
Yes	50.0%	50
No	31.0%	31
Not sure	7.0%	7
No answer	12.0%	12

How confident are you of the SRA's ability to successfully manage the ABS application process for applicants?

	Response Percent	Response Count
Very confident	1.0%	1
Confident	10.0%	10
Fairly confident	22.0%	22
Not confident	49.0%	49
Not sure	9.0%	9
No answer	9.0%	9

Channel 4 News

CATCH UP Programme at 1900 weekdays, weekend timings see listings

'Tesco law' shake-up for legal services

Thursday 06 October 2011

High street retailers will be able to offer legal services to their customers, under the new Legal Services Act.

From today, non-lawyers will be able to invest in and own legal businesses for the first time, allowing banks and supermarkets to offer the services of a lawyer alongside groceries and other items.

The government said that the new Legal Services Act would provide more choice for the public, and Justice Minister Jonathan Djanogly said it was "a landmark day" for the UK legal industry.

"Our legal services are already rated among the best in the world, used by millions of people around the globe as well as in the UK, and these changes will set them up to move to new heights. They will enable firms to set up multi-disciplinary practices and provide opportunities for growth," he said.

Supermarket 'law shops' to sell legal services

Banks and supermarkets are to be able to sell consumer legal services in England and Wales for the first time following a change in law.

The government says the new Legal Services Act will offer more choice and better value for the public.

It says it also means law firms will benefit from investment and allow them to explore new markets.

Under the plans consumers will be able to buy law services in supermarkets

The co-operative
good for everyone

a a a | accessibility | help | site map | home

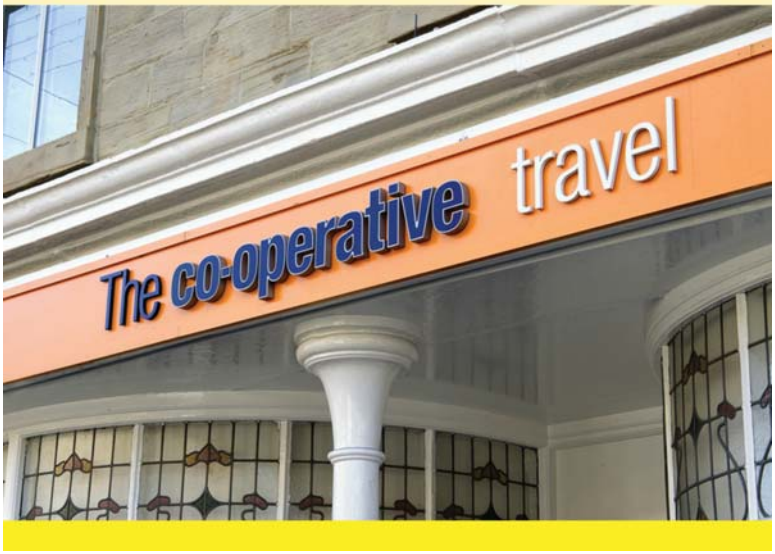
search go

electrical | food | bank | travel | pharmacy | funeralcare | insurance | legal services | motors

top products | 3D televisions


The co-operative bank


The co-operative pharmacy


The co-operative travel


The co-operative funeralcare

Who we are

The Co-operative Group is the UK's largest consumer co-operative, offering a wide range of services including food, financial services, pharmacy, funerals, legal services, life planning, motor vehicles and electrical goods. We also operate commercial activities in security and clothing and have established a joint venture with Thomas Cook, which constitutes the UK's largest travel agency. The Group generates an annual turnover of £13.3bn, employs more than 102,000 people and operates over 5,000 retail trading outlets serving more than 21 million customers per week.

Legal Services

The Co-operative Legal Services was founded six years ago and has gone from strength to strength, growing from four colleagues to nearly 500, with an exciting plan for future growth. Results for 2011 have been very positive with operating results up 15.5% from £3.9m to £4.5m.

Co-op ABS plans to create thousands of legal jobs

24 May 2012 | By Katy Dowell

Print | Email | Share | Comments (11) | Save

The Co-operative Group has unveiled plans to create 3,000 jobs in the legal sector as it aims to revolutionise how legal services are delivered on the high street.

The SRA approved the group's plans to convert Cooperative Legal Services (CLS) to an alternative business structure in March (28 March 2012).

Today, the company said it would radically increase its staff base from 450 to 3,000 as it expands over the next five years, building five regional hubs around the country.

Co-op pledges "no nasty surprises" as it launches fixed-fee family law operation

20 September 2012 | By Sam Chadderton

Print | Email | Share | Comments (1) | Save

Co-operative Legal Services (CLS) has launched its family law operation offering fixed fees for services such as divorce, child protection, mediation and financial issues.

The team of 22 solicitors will be based in London offering "jargon-free" advice over the phone as the major consumer brand begins its push into the legal profession on the back of the Legal Services Act.

The Co-operative Group's legal arm CLS was amongst the first to be granted alternative business structure (ABS) in March and it aims to revolutionise how legal services are accessed on the high street by creating 3,000 jobs in the sector (28 March 2012).

Latest ABS to be owned by property management firm

NEWS | 14 August 2012

Crabtree Law could expand into commercial property and conveyancing

The latest ABS to be licensed, niche property litigation firm Crabtree Law, will be owned by a large property management firm when its licence becomes effective next month.

Crabtree Property Management specialises in running blocks of flats, but also manages shops and offices, and currently has 17,000 units in its portfolio, mainly in London and the south of England.

James Naylor, currently the company solicitor, will become sole partner in Crabtree Law LLP and joined by a non-lawyer assistant.

"Nothing has happened yet, but it is all set up and, as soon the licence is effective, we will start operating".

He said the ABS would specialise in property litigation, including landlord and tenant and commercial leases.

Naylor said Crabtree Property Management had "a lot of clients and contacts" and the idea was to provide a "low cost base" to service them.

9 October 2012

Oh yes – Direct Line set for ABS as it reveals £110m solicitor referral fee income since 2009

The Direct Line Group will shortly make an application to become an alternative business structure (ABS), with the referral fee ban set to choke off a source of income that has raised £110m over the past three and a half years, it has emerged.

In the prospectus for its upcoming stock market float, the company – whose brands include Direct Line, Churchill and Privilege – said: "The group is currently considering participating in an alternative business structure as a potential measure to improve efficiencies relating to legal expenses, and currently expects to make the relevant application under the Legal Services Act in the second half of 2012 as part of this process."

No loophole for fee-ban dodgers, SRA warns

Tuesday 23 October 2012 by **John Hyde**

The Solicitors Regulation Authority has warned it may not grant licences to alternative business structures set up solely to get round the referral fee ban.

The organisation today promised to look carefully at ABS applicants' proposed referral arrangements and block business models not truly operating as one entity.

In a consultation paper published ahead of next April's ban, the SRA said there were concerns about law firms and claims management companies coming together under the umbrella of an ABS.

The paper said: 'Models which suggest an intention to continue as more than one business, with referrals being made between them, may not be licensed, if we believe the referral arrangements will be unlawful.'

The paper has also revealed that the final details of the ban will not be approved until just weeks before it is due to come into force. Breaches of the referral fee ban will not be a criminal matter, but will be dealt with by the regulator with action that will be 'fair, targeted, proportionate and transparent'.

Law firms that do breach the ban can be fined up to £2,000, or £250m for ABSs. Their authorisation or licence may also be revoked in certain circumstances. Individuals or entity can also be referred to the Solicitors Disciplinary Tribunal, which has the power to issue an unlimited fine or strike them from the roll.

News

- Call for clients to have a say on fitness to practise
- Urgent action call over child deaths in custody
- Don't force accident victims to be speculators - APIL
- Green light for deferred prosecution agreements
- Cameron's rehab scheme 'empty rhetoric' says Labour
- Super regulator goes shopping for legal panel
- No place for private equity in law firms, say finance chiefs
- Cut oral hearings, says Slaughter and May's Boardman
- McKinnon solicitor is Legal Personality of the Year

Investment

Selling Pieces of Law Firms to Investors

Mikko Takkunen for The New York Times

Erin Sula of Quality Solicitors promotes her company's legal services at the West London store of the retailer WHSmith.

By JOHN ELIGON
Published: October 28, 2011

"Traditionally the public have been apprehensive about approaching solicitors due to perceived issues of cost and what reception they may get.

Now we will have dedicated staff in the WH Smith stores whose remit is to offer a friendly introduction to what we do and how we may be able to help with any legal issues.

Members of the public can either take information away with them, book a telephone or face to face appointment with someone back at base or where appropriate instruct us there and then on certain things.

It has been designed to make things as easy as possible for the public which should work well for both them and us."

The sales staff will not provide legal advice and we are sure most people would not wish to discuss their legal matters in the middle of WH Smith in any event!

New investment

- Irwin Mitchell
- Top 20 firm
- £50 million warchest
- Wants investment to increase commoditised personal injury work

Irwin Mitchell to seek external investment

Thursday 21 April 2011 by **John Hyde**

National firm Irwin Mitchell has become one of the first law firms to give notice that it will seek external investment as it embraces the opportunities presented by the Legal Services Act.

The firm, which has nine offices in the UK, will seek external investment to raise extra capital and will restructure itself as an Alternative Business Structure (ABS).

10 May 2012

ABS-in-waiting unveils £120m contract with top insurance intermediary

A leading insurance intermediary has agreed a £120m contract with the proposed alternative business structure (ABS) being put together by Quindell Portfolio.

Motor claims: essential for companies to offer ABSs

Quindell is awaiting Solicitors Regulation Authority approval for its acquisition of Liverpool law firm Silverbeck Rymer as part of an end-to-end motor claims outsourcing proposition for insurers.

It announced yesterday that it has won a contract with one of the UK's largest, albeit unnamed, insurance intermediaries, to provide a broad range of services to policyholders of more than half of the top ten UK insurers. They include legal services, medical reporting, rehabilitation, accident management, credit hire, replacement vehicles and credit repair.

Parabis secures licence to become first private equity-backed ABS

Finance
Tags: ABS, SRA

Posted: **22 August 2012** by **Rachel Davies** Share:

Parabis Group has received its alternative business structure (ABS) licence from the Solicitors Regulation Authority (SRA), making it the first private-equity backed organisation to take up the business model.

legalweek.com

The licence approval has rubberstamped a deal agreed late last year which saw private equity house Duke Street take a majority stake of just over 50% in Parabis, the parent company of insurance litigation firms Plexus Law and Cogent Law.

The investment by Duke Street values Parabis at between £150m and £200m, with the financial backing understood to be earmarked for a programme of growth and acquisitions.

Parabis, which last year saw revenues climb by 8% to £108m, has ambitious plans for further expansion, and is already in talks with several law firms with revenues of between £10m-£30m about possible acquisitions, with at least one deal expected to close this year.

No place for private equity in law firms, say finance chiefs

Monday 22 October 2012 by **John Hyde**

More than three-quarters of finance directors at leading commercial law firms believe private equity investment is inappropriate.

In a survey of directors at 25 of the top 100 firms, 77% were unhappy with law firms attracting capital through private equity investors. An even greater number - 88% - felt listing on the stock exchange was inappropriate.

Both options are available to law practices under the terms of the Legal Services Act, but as yet the profession has shown little interest in pursuing them. Parabis is the so far only firm to have announced backing from private equity investors, having secured around £200m from Duke Street as part of its conversion to an alternative business structure (ABS).

No domestic firms are listed on the stock exchange, although personal injury specialist Russell Jones & Walker has been acquired by listed Australian firm Slater & Gordon.

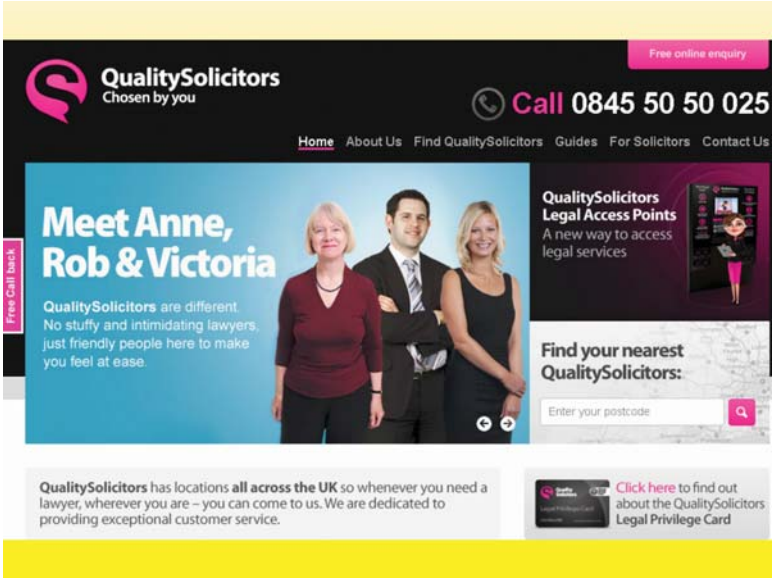
Teri Hawksworth, managing director of Thomson Reuters Sweet & Maxwell, which conducted the poll, said private equity financiers were keen to explore an uncharted investment opportunity.

'They think that the management processes they will bring to the law firm will make them more profitable,' she said.

News

- Call for clients to have a say on fitness to practise
- Urgent action call over child deaths in custody
- Don't force accident victims to be speculators - APIL
- No loophole for fee-ban dodgers, SRA warns
- Green light for deferred prosecution agreements
- Cameron's rehab scheme 'empty rhetoric' says Labour
- Super regulator goes shopping for legal panel
- Cut oral hearings, says Slaughter and May's Boardman
- McKinnon solicitor is Legal Personality of the Year
- Brace yourself for unprecedented change, says master of rolls

Franchising



October 21, 2011 4:44 pm

Palamon Capital invests in Quality Solicitors

By Jane Croft, Law Courts Correspondent

A private equity firm has bought a majority stake in Quality Solicitors, a network of high street law firms, in what is thought to be the first investment following the deregulation of the legal profession – dubbed Tesco law – which will allow external investment and flotations by law firms for the first time.

Palamon Capital Partners, which owns stakes in Towry, the financial adviser, and Cambridge Education Group, is thought to have invested upwards of £10m ($16m) into Quality Solicitors although exact details of the transaction have not been disclosed.

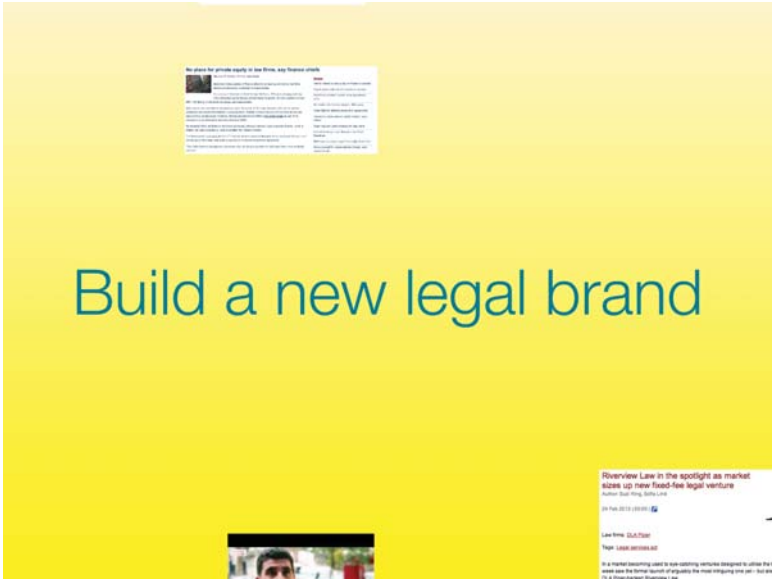

UK's first chain of 'high street lawyers' is set to revolutionise legal services

Rapid growth of QualitySolicitors network, which announced 100 new branches last month, is shaking up the industry

Jon Robins
The Observer, Sunday 3 April 2011

X Factor singer Stacey Solomon sings at the opening of the QualitySolicitors branch in Beverley, Yorkshire. Photograph: Craig Holt

Shoppers on the high streets of England and Wales may have spotted the tentative signs of a revolution in legal services: the emergence of the first national chain of law firms.



Riverview Law in the spotlight as market sizes up new fixed-fee legal venture

Author: Suzi Ring, Sofia Lind

24 Feb 2012 | 00:00 |

Law firms: DLA Piper

Tags: Legal services act

In a market becoming used to eye-catching ventures designed to utilise the Legal Services Act (LSA), this week saw the formal launch of arguably the most intriguing one yet – but also the hardest to assess: the DLA Piper-backed Riverview Law.

The self-styled 'market-disrupting service delivery model' targeted at small and medium-sized businesses will work through two arms, Riverview Solicitors and Riverview Chambers, owned by parent company LawVest. The key aim is to target small business clients through fixed fees *(see below)*.

Interview with Karl Chapman CEO of Riverview Law

October 17, 2012 Mike Ames 10 comments

Riverview LAW

Riverview is one of the new breed of legal businesses created to deliver corporate legal work in a new way based upon the belief that the law is just another business service. One of the key people behind the company is Karl Chapman who recently agreed to speak with me about the inner workings of his company.

How would you best describe Riverview Law?

Riverview is a legal advisory outsourcing business that offers a range of legal services to the corporate world.

At the bottom end of the legal value curve is Legal Process Outsourcing which covers fairly transactional non-advisory tasks that can be done by non-lawyers, junior lawyers or can even be outsourced. At the top end you have international M&A work carried out by the magic and silver circles. We're focused on all the legal advice in between.

So how are you different from traditional law firms?

Well it's probably easier to say how we're the same: we employ lawyers and we deliver a legal advice. Seriously though I think we are different in the many ways, from our culture to our business structure, and in particular:-

- We use a fixed pricing model.
- We understand the power of technology and management information.
- Our people do what they do best. Our lawyers do what they like most and are best at, which is the law of course. We hire managers to manage and sales people to sell which is what they do best. I hope!

OK Karl one final question. What would you say to people who think this model isn't sustainable?

Quite simple really. It's based upon sound business principles, proven technology and processes and a belief that the client comes first. We have successfully used the same model in AdviserPlus for 11 years and we have a 100% contract renewal rate for our large corporate clients. Maybe the real question should be, is the partnership model really sustainable?

A solid investment?

RJW wins SRA backing for ABS conversion

RJW wins SRA backing for ABS conversion

27 April 2012 | By Katy Dowell

Print | Email | Share | Comment | Save

Russell Jones & Walker has been authorised by the SRA to convert to an alternative business structure (ABS) and will list on the Australian Securities Exchange (ASE) as part of its planned merger with Slater & Gordon.

Neil Kinsella

Slater & Gordon unveiled the £53.8m takeover of RJW in January, handing over a cash consideration of £36.4m for the firm, of which £8.8m was deferred subject to performance targets and £10.3m used to repay outstanding bank debts. In addition, the Australian firm said it will issue £17.4m Slater & Gordon shares, subject to restraints on sale for four years (30 January 2012).

SRA chief executive Antony Townsend said of the SRA endorsement for the ABS conversion: "It's a further example of the kind of innovation which ABSs are bringing to the legal services market."

The Australian experience

Slater & Gordon Lawyers

No challenge too great.

For divorce, separation and property settlement

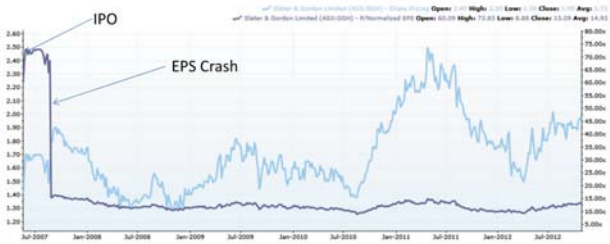
Impossible Dream

The Impossible Dream

Case Study

- Slater & Gordon Limited (ASX: SGH)
- Integrated Legal Holdings Ltd. (ASX: IAW)
  - Reviewed the last five years of financial data
  - Source: S&P Capital IQ
  - $AUD in 1000s (i.e. Millions)

Share Price vs. Earnings per Share SGH



- Volatile Share Price
  - High: $2.50
  - Avg: 1.70
  - Low: 1.26
- EPS was almost 75X after IPO
- Currently trading 13X earnings

Income Statement: SGH

Income Statement

For the Fiscal Period Ending	12 months Jun-30-2007	12 months Jun-30-2008	Reclassified 12 months Jun-30-2009	12 months Jun-30-2010	12 months Jun-30-2011	12 months Jun-30-2012
Currency	*AUD*	*AUD*	*AUD*	*AUD*	*AUD*	*AUD*
Revenue	62.9	79.7	101.0	122.2	178.0	213.8
Other Revenue	-	-	1.0	1.1	2.4	2.5
Total Revenue	**62.9**	**79.7**	**102.0**	**123.3**	**180.5**	**216.4**
Dividends per Share	0.04	0.05	0.04	0.05	0.06	0.06
Payout Ratio %	19.7%	26.1%	25.2%	29.2%	27.6%	35.2%
Normalized Net Income	9.6	13.6	15.4	18.5	26.9	23.7

- Retained earnings are being distributed to shareholders at an aggressive rate (35% for the last twelve months up from 19% in 2007)

Cash Flow Statement: SGH

Cash Flow

For the Fiscal Period Ending	12 months Jun-30-2007	12 months Jun-30-2008	12 months Jun-30-2009	12 months Jun-30-2010	12 months Jun-30-2011	12 months Jun-30-2012
Currency	*AUD*	*AUD*	*AUD*	*AUD*	*AUD*	*AUD*
Net Income	**10.7**	**15.1**	**17.0**	**19.8**	**27.9**	**25.0**
Cash Acquisitions	(3.8)	(14.0)	(7.5)	(12.7)	(63.5)	(66.1)
Percentage of Net Income to Acquisition	0.3566401	0.9269068	0.4399601	0.6414141	2.2753332	2.6457991

Premise #1: Modest Increase in Net Income over 5 last years
Premise #2: Large increase in Cash Acquisitions over last 5 years

= Acquisitions in the last twelve months equals 2.64X net income

Question: Is this trend sustainable?

Share price vs. Return on Capital SGH

- Investors Return on Capital (ROC) declining
  - Measures the efficiency of investments i.e. how well is the company using its money to generate returns
  - Measured by: (net income – dividends / total capital)

Share Price vs. Earnings Per Share IAW

- Penny Stock
  - High $0.40
  - Avg $0.14
  - Low $0.09
- Currently trading above 10X earnings

Income Statement: IAW

Income Statement

For the Fiscal Period Ending	Restated 12 months Jun-30-2007	Reclassified 12 months Jun-30-2008	12 months Jun-30-2009	12 months Jun-30-2010	Reclassified 12 months Jun-30-2011	12 months Jun-30-2012
Currency	*AUD*	*AUD*	*AUD*	*AUD*	*AUD*	*AUD*
Revenue	-	10.176	16.389	23.823	28.313	31.69
Other Revenue	-	0.002	0.147	0.013	0.009	0.044
Total Revenue	**-**	**10.178**	**16.536**	**23.836**	**28.322**	**31.734**
Net Income	**(17.368)**	**1.544**	**0.594**	**0.853**	**1.287**	**1.116**
Normalized Basic EPS	(0.12)	0.03	0.01	0.01	0.01	0.01
Dividends per Share	NA	0.02	NA	0.01	0.01	0.01
Payout Ratio %	NA	NA	237.60%	15.36%	34.32%	40.21%

- Extreme version of SGH
- Very high payout ratios of earnings to shareholders
- Very low net income

Share Price vs. Return on Capital IAW

- Declining ROC
- Very weak share price

Slater & Gordon Limited: Shares not for the faint hearted

By Peter Phan - Wednesday, February 15th, 2012

Slater & Gordon Limited (ASX: SGH) is one of two listed law firms on the ASX, the other being **Integrated Legal Holdings Limited** (ASX: IAW). This writer has long been very sceptical of SGH's business model. This caution continues with the release of SGH's half yearly report on 14 February 2012.

Even though revenues were up 17.3% to $99.4m, net profit dropped by 11.3% to $11.8m. Management explained that the acquisition of Keddies "proved slower to bring up to speed than anticipated" and "revenue is down approximately $4m in H1 FY12".

The law firm Keddies was the subject of billing controversies prior to its acquisition by SGH. Management explained that the poor half yearly result was also affected by acquisition costs for the UK business, and significant investments in Family Law and Conveyancing. In other words, money is being spent upfront to generate growth.

Slater & Gordon's largest shareholder is Canadian

Mawer Investment takes up Slater & Gordon placement, diluted to 11%

Published 2:24 PM, 17 Aug 2010

+1 Tweet Share

Source: News Bites

Mawer Investment Management Ltd bought 4,124,812 Slater & Gordon Ltd placement shares on August 12, 2010, but was diluted from 11,328,084 shares (8.79%) to 15,452,896 shares (10.76%).

STOCK DASHBOARD: August 17, 2010

THE GLOBE AND MAIL

One Good Idea

Mawer small-cap manager shares his best pick

Dianne Maley
Special to Globe and Mail Update
Published Wednesday, Mar. 24, 2010 10:16AM EDT
Last updated Monday, Mar. 29, 2010 4:53PM EDT

The Source
Paul Moroz, portfolio manager, Mawer Global Small Cap Fund.

The Idea
Buy shares of Slater & Gordon Ltd. SGH-AX .

Australia's Slater & Gordon is the world's only publicly listed law firm.

APPOINTMENTS NOTICES

Mawer Investment Management Ltd.: Michael Mezei, President

Wednesday, June 25, 2008

From The Globe and Mail

Michael Mezei

Mawer Investment Management Ltd. is pleased to announce the appointment of Michael Mezei as President. Mr. Mezei will be responsible for leading the strategic growth and management of the business.

Mr. Mezei has been an investment industry executive since 1994, with senior roles at Franklin Templeton Investments in Toronto and ATB Investor Services in Calgary from 2002. Michael started his career practicing corporate law in Toronto from 1987 to 1994. Michael will be joining Mawer on July 3rd, 2008.

Professionalism

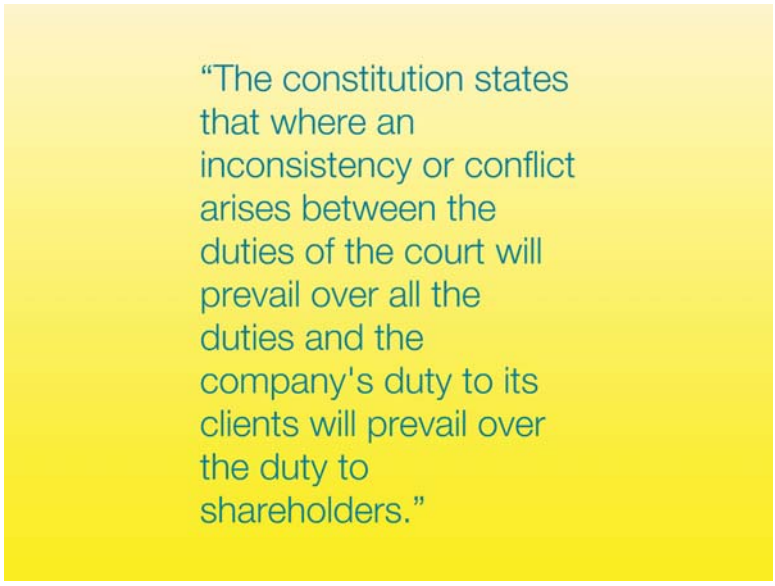
Compromising professional duties?

A Hierarchy of Duties?


To the client
To the court


To the client


to the investors


"The constitution states that where an inconsistency or conflict arises between the duties of the court will prevail over all the duties and the company's duty to its clients will prevail over the duty to shareholders."

11 May 2012

Edmonds tells lawyers to get off their high horse about non-lawyers' impact on their ethics

Edmonds: there have always been rogues in any profession

It is "demeaning" to suggest that non-lawyers becoming involved in alternative business structures (ABSs) are less likely to be ethical, the chairman of the Legal Services Board (LSB) claimed last night.

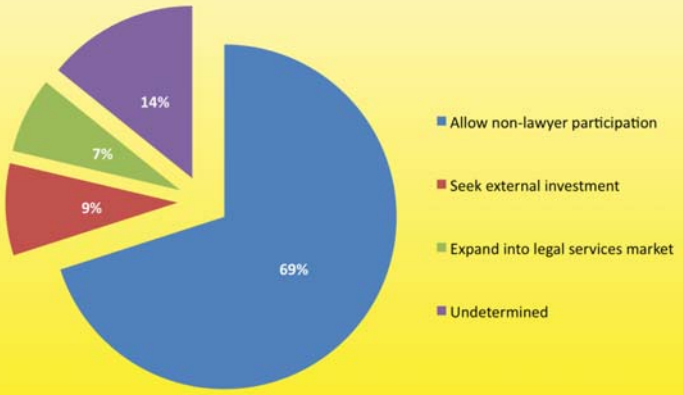
David Edmonds also pointed to a string of scandals involving lawyers, including that of miners compensation, saying that "I wager the title solicitor isn't a good predictor" of whether someone will act honestly or ethically.

Speaking on 'quality and standards in a liberalised market' at an event hosted by London law firm Russell-Cooke, Mr Edmonds said he wanted "to refute the notion that we cannot trust other professions to behave in an ethical manner, or that businesses ignore the rule of law...

"There have always been rogues in any profession but I remain firmly of the view that it is demeaning in this debate to imply that non-lawyers are inclined to be less ethical than any other group running a business."

Little Whimper?

Reasons for seeking ABS designation



Recognition

21 September 2012

Top PI practice becomes latest ABS

A leading personal injury practice has become the latest law firm to obtain an alternative business structure (ABS) licence as part of its preparations for the impact of the Jackson reforms.

It brings the total number of ABS licences granted by the Solicitors Regulation Authority (SRA) so far to 30.

David Bott (centre): ABS enables colleagues to be "genuine equals" – Paul Hinchcliffe is pictured left and Gary Froggatt right

David Bott & Co in Wilmslow took the step in order to promote two key non-lawyer members to positions of equity partner. Practice manager Paul Hinchcliffe and finance manager Gary Froggat co-founded the firm in 2001 with David Bott – who until April was president of the Association of Personal Injury Lawyers.

Mr Bott told *Legal Futures* that the firm applied for a licence as soon as ABSs went live in January, primarily in order to enable his colleagues to be "treated as genuine equals". He welcomed the fact that ABSs now made it possible to elevate members of the firm according to their abilities, "where previously merit was assessed only subject to the question of whether you are a solicitor".

He said the firm had no plans to seek external investment but if in future talks with third parties over possible expansion took place, having an ABS licence was "an indication that you have a certain way of thinking and that you are approaching your business in a modern way – and not caught up with the idea that all of the world's knowledge is in a lawyer's head".

8 August 2012

Plymouth firm becomes first criminal law ABS

A firm in Plymouth has become the first criminal law practice to become an alternative business structure (ABS) as the pace of new licences from the Solicitors Regulation Authority continues to step up.

Boyle Leonard Willden – formed as a limited company – will be the new name of Baker Solicitors, run by sole practitioner Jodie Leonard (formerly Baker).


Boyle and Leonard: co-owners at last

She is joined in the company by solicitor William Willden and police station representative Tony Boyle. Ms Leonard told *Legal Futures* that the sole purpose of becoming an ABS was to allow Mr Boyle to become an owner-manager. "He's a better lawyer than some solicitors I know. It's only right and proper that someone like Tony should be an owner-manager and it's nice that he gets the recognition he deserves."

28 June 2012

County court advocacy specialists become latest ABS

A law firm that specialises in providing advocacy services in every county court across the country yesterday became the Solicitors Regulation Authority's eighth alternative business structure (ABS).

NAS Legal Ltd, which is based in Stockton on Tees, largely acts for other law firms, banks and building societies and focuses in particular on housing and debt-related matters.

Solicitor Christopher Stannard is its head of legal practice and once the licence becomes effective on 1 August, there will be one solicitor director and two non-lawyer directors. The licence covers all the usual areas of reserved legal activities and has no conditions or waivers.

County court: NAS covers the whole country

Business development manager Helen Burgess said the firm was "delighted" to receive its ABS licence, which would allow it to "broaden our horizons", including extending ownership of the business to her and one other non-lawyer member of staff. Otherwise, however, Ms Burgess indicated that there are no plans to take further advantage of ABS status. "We will continue at present with what we're doing," she said.

29 August 2012

Liverpool firm becomes first family law ABS

A Liverpool-based practice has become the first specialist family law firm to become an alternative business structure (ABS).

Tracey Miller Family Law will use its new status to allow business development manager Anthony Hool – who is married to Ms Miller – to take a minority stake in the firm.

Mr Hool is the head of finance and administration, while chartered legal executive Sarah McCarthy is the head of legal practice. The firm claims to be the only one in the north-west to offer a 'mobile' service, promising to visit clients seven days a week.

Miller: need to recognise role of non-solicitors

Ms Miller said: "Our objective remains that of building a bespoke niche privately funded family law practice, providing first-class advice to individuals and families in the north-west. However, we believe that in order to achieve this objective we need to recognise the role of lawyers who are not solicitors and of business people whose expertise is in practice development.

Practical benefits

Forget the gold rush – it's the ABS rush, with three more granted licences

Posted By Legal Futures On August 3, 2012 @ 12:05 am In Alternative business structures,Latest news,Market monitor | No Comments

The Solicitors Regulation Authority (SRA) should develop a fast track for legal disciplinary practices (LDPs) seeking approval to operate as alternative business structures (ABSs), according to the largest of three firms granted their ABS licences yesterday.

Two of the firms complained about the bureaucratic nature of the application process, while praising the professionalism of the SRA case handlers they dealt with.

The three firms were 40-partner Winckworth Sherwood, which has offices in London, Oxford and Manchester; high street boutique personal injury practice Mulderrigs; and 19-partner Swansea-based JCP Solicitors.

Paul Mulderrig, managing director of Mulderrigs, a limited company which employs five lawyers, said his principal reason for applying to become an ABS was to "safeguard a family asset" by enabling him to put shares in the business in his wife's name.

[1]

Vesey: LDPs should be passported

Tom Vesey, an accountant and non-lawyer partner at Winckworths, who is the firm's head of finance and administration, said the firm's ABS application was simply to comply with the rules requiring LDPs to convert. But he called for the process to be simplified to enable LDPs to "passport" to ABS rather than having to undergo essentially the same process as for a non-LDP applicant.

The application involved filling in numerous forms and was "very bureaucratic", Mr Vesey said. "Because we were an LDP, it's the same business but under a new label. What [the SRA needs] to do is to actually recognise the information they already have and not simply ask for the same thing all over again, which is really what they've been doing."

He said the SRA was "a bit process driven and if they had the opportunity to step back a bit and had the freedom to put more intellectual input into what they are doing, [the application process] would be a lot slicker".

Mr Mulderrig complained at the amount of duplication of information involved in the application process. He said the application forms had "every appearance of having been drafted by an office junior".

He said he had built up his business over 20 years. He planned immediately to transfer 40% of the shares in the firm to his wife, to ensure that "if I was to drop dead", she would have "an asset she can market at her leisure". He said he was surprised other small firms hadn't "seized the opportunity" to do the same thing.

He continued: "Up and down the country there are two and three-partner firms, for example, where if one key partner is no longer able to work, their interest in a business which has been remarkably valuable to them essentially has to be given away because the person to whom it would fall – such as a wife or partner – is not a lawyer. From the high street perspective, becoming an ABS means protecting a family asset."

Forget the gold rush – it's the ABS rush, with three more granted licences

Posted By Legal Futures On August 3, 2012 @ 12:05 am In Alternative business structures,Latest news,Market

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The application involved filling in numerous forms and was "very bureaucratic", Mr Vesey said. "Because we were an LDP, it's the same business but under a new label. What [the SRA needs] to do is to actually recognise the information they already have and not simply ask for the same thing all over again, which is really what they've been doing."

He said the SRA was "a bit process driven and if they had the opportunity to step back a bit and had the freedom to put more intellectual input into what they are doing, [the application process] would be a lot slicker".

Mr Mulderrig complained at the amount of duplication of information involved in the application process. He said the application forms had "every appearance of having been drafted by an office junior".

He said he had built up his business over 20 years. He planned immediately to transfer 40% of the shares in the firm to his wife, to ensure that "if I was to drop dead", she would have "an asset she can market at her leisure". He said he was surprised other small firms hadn't "seized the opportunity" to do the same thing.

He continued: "Up and down the country there are two and three-partner firms, for example, where if one key partner is no longer able to work, their interest in a business which has been remarkably valuable to them essentially has to be given away because the person to whom it would fall – such as a wife or partner – is not a lawyer. From the high street perspective, becoming an ABS means protecting a family asset."

6 September 2012

Conveyancers and PI firm named latest ABSs

The residential conveyancing department of a Leicester law practice has left the firm to become an alternative business structure (ABS) that will market its conveyancing services via the Internet.

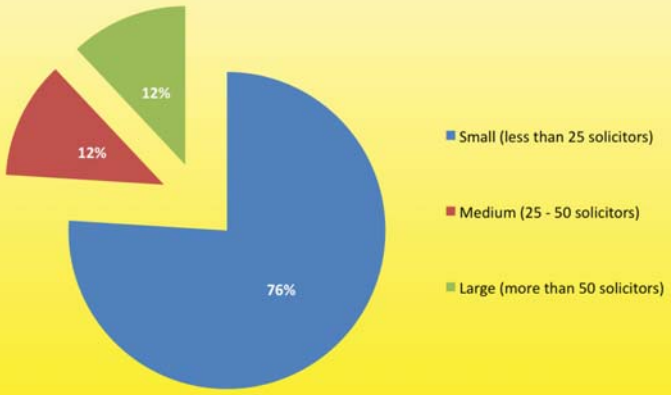
Phillips: huge impact on the firm

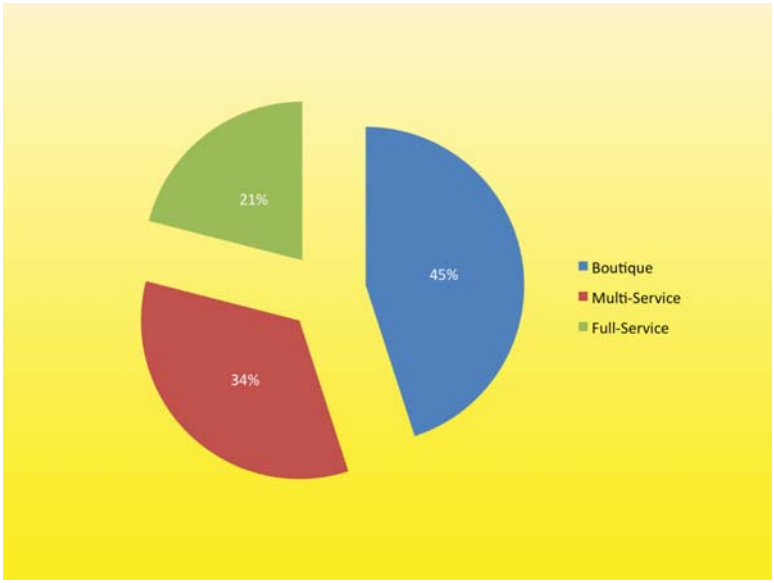
In a separate conveyancing-related development, solicitor Nicola Phillips has obtained an ABS licence to enable her to enter partnership with her non-lawyer mother – mainly to overcome the obstacles faced by sole practitioners in joining lenders' panels.

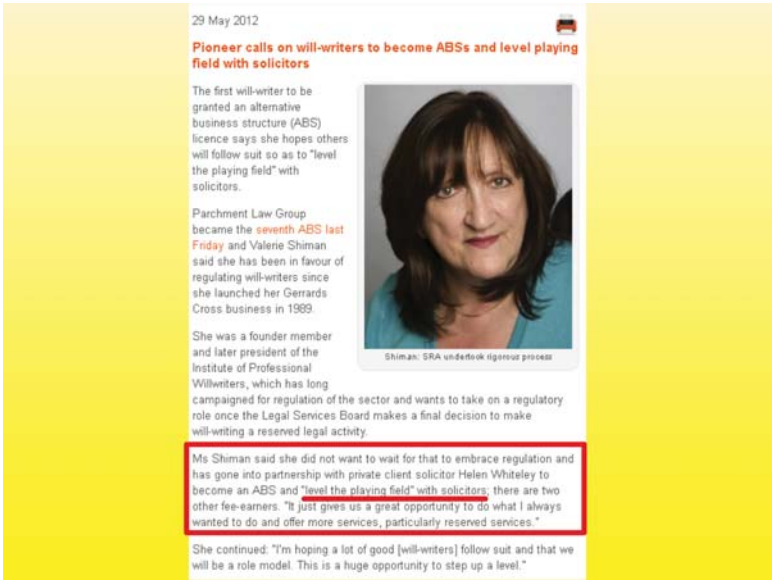
The newest ABS, meanwhile, is a small personal injury practice bringing a key work-generator into ownership.

Level playing field?

ABS Profiles






29 May 2012

Pioneer calls on will-writers to become ABSs and level playing field with solicitors

The first will-writer to be granted an alternative business structure (ABS) licence says she hopes others will follow suit so as to "level the playing field" with solicitors.

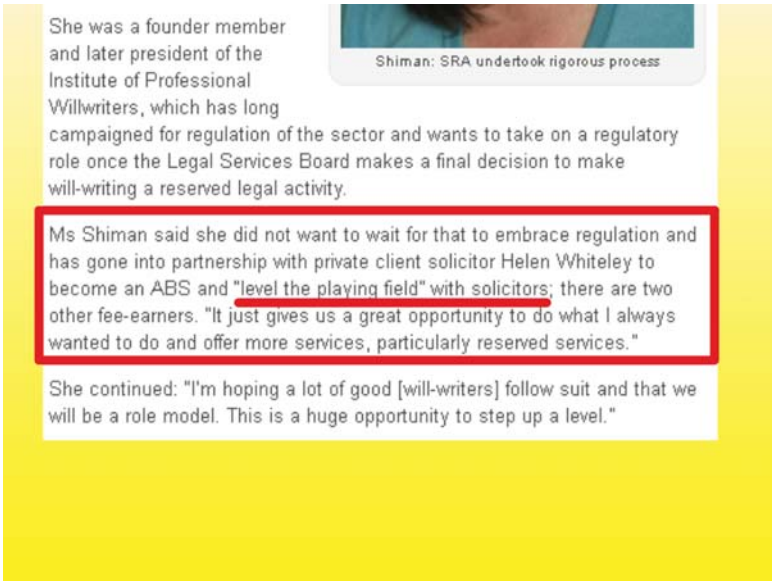
Parchment Law Group became the seventh ABS last Friday and Valerie Shiman said she has been in favour of regulating will-writers since she launched her Gerrards Cross business in 1989.

Shiman: SRA undertook rigorous process

She was a founder member and later president of the Institute of Professional Willwriters, which has long campaigned for regulation of the sector and wants to take on a regulatory role once the Legal Services Board makes a final decision to make will-writing a reserved legal activity.

Ms Shiman said she did not want to wait for that to embrace regulation and has gone into partnership with private client solicitor Helen Whiteley to become an ABS and "level the playing field" with solicitors; there are two other fee-earners. "It just gives us a great opportunity to do what I always wanted to do and offer more services, particularly reserved services."

She continued: "I'm hoping a lot of good [will-writers] follow suit and that we will be a role model. This is a huge opportunity to step up a level."



Barreau
"In the wake of major social changes innovation is essential"

Barreau
"Lawyers must adapt if they wish to reap the many benefits of IT and communications"

Barreau
"Globalization is an opportunity to be seized not a threat"

Why does it matter to us?

A New Agenda?

Questions for Regulators

Regulating firms rather than lawyers? A new regulatory set of tools

Should we worry if a firm is managed elsewhere? Or by non-lawyers?

The Law Gazette

Italian firm applies to become an ABS

by **John Hyde**
Created 02/05/2012 - 10:26

A leading Italian law firm has joined the race to become an alternative business structure as the number of advanced applications approaches 100.

COMMITTEE ON PROFESSIONAL ETHICS

Opinion 911 (3/14/12)

Topic: Sharing legal fees and undertaking employment with an out-of-state entity that includes non-lawyer owners and managers

Digest: A New York lawyer may not practice law principally in New York as an employee of an out-of-state entity that has non-lawyer owners or managers.

Rules: 5.4(a) & (d); 8.5(b)

QUESTION

[1] Lawyers admitted to practice in New York ask whether they may enter into a business relationship with a United Kingdom ("UK") entity under the following circumstances. The UK entity would be formed as an Alternative Business Structure under the UK's Legal Services Act, which permits entities with non-lawyer supervisors and owners to render legal services. The entity would include UK non-lawyers in supervisory and ownership positions, raise capital in private equity financing, and have a professional management team. The New York lawyers would establish a New York office, where they would represent New York clients. They would be employees of the UK entity and would hold stock options and, in some cases, vested shares in the UK entity. Lawyers in the New York office would adhere to confidentiality rules and would not share confidences with UK non-lawyer managers. The entity would adhere to UK rules as well.

A New York lawyer may not practice law principally in New York as an employee of an out-of-state entity that has non-lawyer owners or managers.

out-of-state entity that has non-lawyer owners or managers.

New York Bar association to review block on non-lawyer ownership of law firms

Author: Sofia Lind

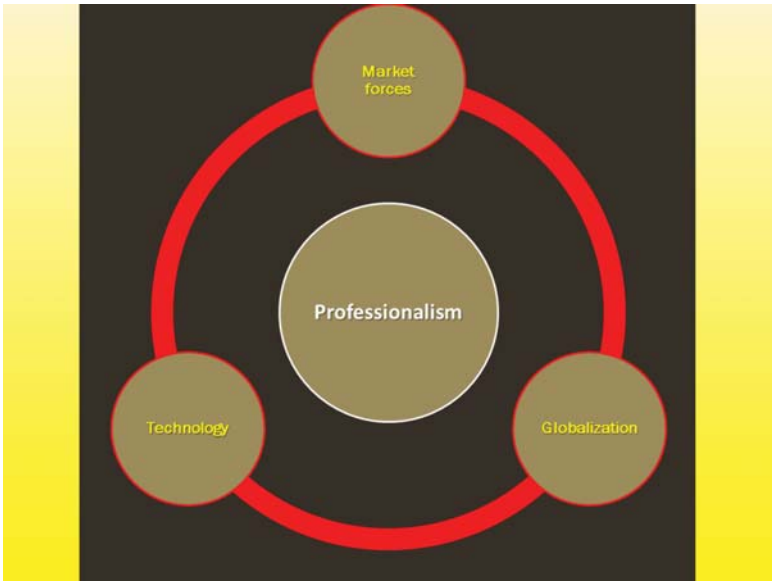
22 Mar 2012 | 13:48

Tags: Legal services act

The New York State Bar Association (NYSBA) is set to review the issue of outside ownership of law firms, but has confirmed that at present lawyers practising in New York cannot be part of a foreign firm in which non-lawyers hold a stake.

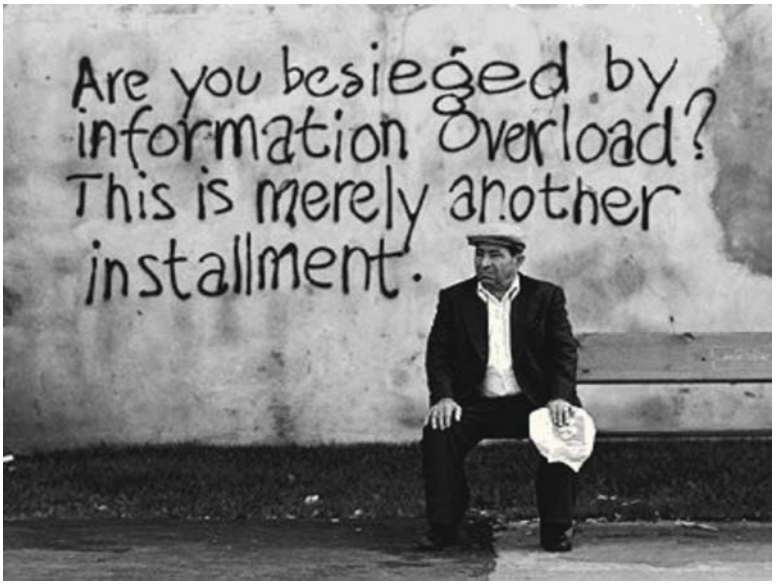
Can innovation solve access to justice inequalities?

Is self-regulation at risk?



More questions than answers

Therefore, the Committee recommends that the Law Society give serious consideration to ABSs. However, before more work is done, the Committee recommends waiting to see if the case for improving access to legal services through ABSs can be more clearly demonstrated. The Law Society should await the outcome of the debate currently underway through the American Bar Association, should follow what happens in England and Wales once ABSs come into being, and should continue to monitor the situation in Australia. In many ways, England could provide some direct evidence about whether access to legal services can be improved through ABSs as well as giving an indication about whether they can be effectively regulated.



The Law Society of British Columbia

Minute of Benchers' Decision

Benchers' Governance Retreat

Date: Saturday, October 27, 2012
Time: **8:30 a.m.**
Location: Pan Pacific Vancouver Hotel
Oceanview Suite 7 – 8

Present:	Bruce LeRose, QC, President	Vincent Orchard, QC
	Art Vertlieb, QC, 1st Vice-President	Greg Petrisor
	Jan Lindsay, QC 2nd Vice-President	David Renwick, QC
	Rita Andreone, QC	Phil Riddell
	Kathryn Berge, QC	Richard Stewart, QC
	Thomas Fellhauer	Herman Van Ommen
	Leon Getz, QC	Ken Walker
	Miriam Kresivo, QC	Tony Wilson
	Bill Maclagan	Barry Zacharias
	Nancy Merrill	Haydn Acheson
	Maria Morellato, QC	Satwinder Bains
	David Mossop, QC	Stacy Kuiack
	Thelma O'Grady	Peter Lloyd, FCA
	Lee Ongman	Ben Meisner
Absent:	David Crossin, QC	Claude Richmond
	Catherine Sas, QC	
Staff Present:	Tim McGee	Bill McIntosh
	Adam Whitcombe	Taryn Mohajeri

AGENDA TOPICS

8:30 – 8:50	Introduction	Bruce LeRose, QC
8:50 – 9:00	Outline of the day	Bruce LeRose, QC
9:00 – 9:15	Review and consensus on green coded recommendations	Benchers
9:15 – 9:30	Review and consensus on red-coded recommendations	Benchers
9:30 – 10:30	Workshop Issue #1 – Executive Committee	Breakouts (45 min) Feedback (15 min)
10:30 – 10:45	Break	
10:45 – 11:45	Workshop Issue #2 – Election and Appointment of Benchers	Breakouts (45 min) Feedback (15 min)
11:45 – 12:30	Workshop Issue #3 – Committee and Officer Appointments	Breakouts (30 min) Feedback (15 min)
12:30 – 1:00	Lunch	
1:00 – 1:45	Workshop Issue #4 – Trusted Advisor Roles	Breakouts (30 min) Feedback (15 min)
1:45 – 2:30	Workshop Issue #5 – Disclosure and Transparency	Breakouts (30 min) Feedback (15 min)
2:30 – 2:45	Break	
2:45 – 3:30	Workshop Issue #6 – Framework for Bencher Functioning	Breakouts (30 min) Feedback (15 min)
3:30 – 3:45	Establishing the Governance Committee	Benchers

Mr. LeRose confirmed that one of the recommendations of the Governance Review Task Force is that the Benchers form a Governance Committee "to ensure the Benchers' activities continue to adhere to the ever-changing public interest standards and expectations …" (Recommendation 8.1)

Mr. Stewart moved (seconded by Mr. Walker) that the Benchers resolve to form a Governance Committee. During the ensuing discussion Mr. Stewart accepted a friendly amendment by Mr. Van Ommen: that within three months of its composition, the Governance Committee report to the Benchers with a proposed mandate and work plan.

The motion was carried unanimously.

3:45 – 4:00	Summary and Wrap Up	Bruce LeRose, QC & Art Vertlieb, QC

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: November 28, 2012
Subject: **Rule 5-6 – public hearings**

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1. Rule 5-1, as amended effective on proclamation of the review board provisions in the *Legal Profession Amendment Act, 2012*, applies Part 5 *[Hearings and Appeals]* of the Law Society Rules to a review by a review board or a hearing decision, "unless the context indicates otherwise". Nonetheless, there have been questions as to the application of Rule 5-6 *[Public hearing]* to review board proceedings.

2. Since reviews of hearing panel decisions came into existence in 1988, Bencher review hearings have be treated the same as hearing panel hearings, at least with respect to access of the public to the proceedings. There is no reason that that should not continue with the advent of review boards in 2013.

3. To make it more apparent, the Act and Rules Subcommittee recommends substituting for just hearing panel in Rule 5-6, "hearing panel or review board".

4. At the same time, the Subcommittee suggests, also for further clarity, adding to Rule 5-12 *[Review by review board]* a specific provision that applies the rules governing the hearing of evidence by a hearing panel to a review board, should it decide to hear evidence, as permitted in section 47 *[Review on the record]* of the *Legal Profession Act*, when there are special circumstances.

5. I attach a draft amendment to the appropriate rules, and a suggested resolution, which is recommended by the Act and Rules Subcommittee, to effect the change. Since the relevant amendments to the *Legal Profession Act* have now been proclaimed in effect as of January 1, 2013, the resolution is stated to amend the Rules effective that date.

JGH
E:\POLICY\JEFF\RULES\memo to ARS on public hearing Oct 12.docx
Attachments: drafts
suggested resolution

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Public hearing

5-6 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

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

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

(3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.

(4) Except as required under Rule 5-7, when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

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

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.

(4) If the review board finds that there are special circumstances and hears evidence under section 47(4) of the Act, the Rules that apply to the hearing of evidence before a hearing panel apply.

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Public hearing

5-6 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

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

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

(3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.

(4) Except as required under Rule 5-7, when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

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

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.

(4) If the review board finds that there are special circumstances and hears evidence under section 47(4) of the Act, the Rules that apply to the hearing of evidence before a hearing panel apply.

PUBLIC HEARING

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules effective January 1, 2013 as follows:

1. In Rule 5-6, by rescinding subrules (1), (2), (4) and (5) and substituting the following:

(1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

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

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

(4) Except as required under Rule 5-7 *[Transcript and exhibits]*, when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

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

2. In Rule 5-12, by adding the following subrule:

(4) If the review board finds that there are special circumstances and hears evidence under section 47(4) of Act, the Rules that apply to the hearing of evidence before a hearing panel apply.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: November 7, 2012
Subject: **Rule 5-10 -- Time to pay a fine or costs, or to fulfil a practice condition**

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1. The current heading of this Rule is misleading and unhelpful in that it refers to only two of the three functions of the Rule. The Rule allows applications for

   - the extension of time to pay a fine or costs,
   - the extension of time to fulfil a practice condition or
   - a variation of a practice condition imposed on admission or enrolment.

2. The heading or marginal note refers only to the first two. This makes it hard to locate the provision governing the third issue.

3. Here is the full text of the rule:

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

5-10 (1) An applicant or respondent may apply for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-9, or

(ii) to fulfill a condition imposed under section 21, 22, 27, 32 or 38 of the Act or accepted under section 19 of the Act, or

(b) a variation of a condition referred to in paragraph (a) (ii).

(2) An application under subrule (1) must be made to the President who must refer the application to one of the following, as may in the President's discretion appear appropriate:

(a) the same panel that made the order;

(b) a new panel;

(c) the Discipline Committee;

(d) the Credentials Committee.

(3) The panel or Committee that hears an application under subrule (1) must

(a) dismiss it,

(b) extend to a specified date the time for payment, or

(c) vary the conditions imposed, or extend to a specified date the fulfilment of the conditions.

(4) An applicant or respondent must do the following by the date set by the hearing panel or the Benchers 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).

(5) If, on December 31, an applicant or respondent is in breach of subrule (4), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

4. The Act and Rules Subcommittee recommends changing the heading to this:

Extension of time or variation of condition

5. Since the heading of a rule is not part of the rule itself, amending the heading does not amount to a special rule under section 12 of the *Legal Profession Act*. As a result, a simple majority vote in favour is all that is required to make the change.

JGH
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The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: November 13, 2012
Subject: **Rescission of Rules concerning Special Compensation Fund**

I understand that all of the business of the Special Compensation Fund will be concluded by the end of this calendar year. In the very unlikely event that some business were to arise after the end of the year, the rules in place when the claim or issue arose would apply, notwithstanding that they would be formally rescinded.

The Act and Rules Subcommittee recommends that, effective with proclamation of section 20 of the *Legal Profession Amendment Act, 2012*, Division 5 of Part 3 of the Law Society Rules be rescinded. We have requested that the appropriate section of the amendment act be proclaimed effective January 1, 2013, but that has not yet been confirmed.

There is also a reference to the SCF fee in Rule 2-49, which also should be rescinded effective immediately.

I attach a draft of the change and a suggested resolution.

JGH
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Attachments: draft amendment
suggested resolution

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Call and admission

Transfer from another Canadian jurisdiction

2-49 (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:

(f) the following fees:

(iv) **[rescinded]** ~~the prorated Special Compensation Fund assessment specified in Schedule 2;~~

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Special Compensation Fund [rescinded]

~~**Definitions and interpretation**~~

~~**3-28** (1) In this Division, unless the context indicates otherwise,~~

~~**"claim"** means a claim for compensation made under Rule 3-30;~~

~~**"claimant"** means the person who has made a claim for compensation under Rule 3-30;~~

~~**"subcommittee"** means a subcommittee of the Committee established under Rule 3-34.~~

~~(2) Money or property entrusted to or received by a lawyer as trustee is not entrusted to or received by the lawyer in the lawyer's capacity as a member of the Society if the lawyer has no responsibility in the lawyer's capacity as a barrister or solicitor in connection with the money or property entrusted to the lawyer.~~

~~(3) This Division is subject to the provisions of the Protocol regarding claims for compensation for misappropriation involving inter-jurisdictional practice.~~

~~[(3) amended 06/2001]~~

LAW SOCIETY RULES

Special Compensation Fund Committee

3-29 (1) For each calendar year, the President must appoint a Special Compensation Fund Committee, including a chair and vice-chair, both of whom must be Benchers.

(2) The President may remove any person appointed under subrule (1).

(3) At any time, the President may appoint a person to the Special Compensation Fund Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

(4) Despite subrules (1) to (3), the President must appoint members to the Special Compensation Fund Committee so that the majority of the Committee consists of Benchers at all times.

(5) The Special Compensation Fund Committee may invest the Fund and the proceeds from it in any securities and in the manner the Committee sees fit.

Claim for compensation

3-30 (1) A claimant may make a claim for compensation by delivering it to the Executive Director in the form approved by the Special Compensation Fund Committee.

(2) A claimant must provide the Executive Director with information and documents relating to the claim that the Executive Director reasonably requires.

Investigation of claim

3-31 (1) The Executive Director may conduct or authorize an investigation of a claim as the Executive Director considers necessary or advisable and consider any available relevant information, documents or other evidence.

(2) The Executive Director must refer all claims made in accordance with Rule 3-30 to the Special Compensation Fund Committee for consideration and report on any investigation made under subrule (1).

(3) The Special Compensation Fund Committee may direct the Executive Director to conduct or authorize further investigations as it considers necessary.

(4) The Executive Director must give notice in writing to any lawyer the claimant alleges misappropriated or converted funds as soon as practicable and, in any event, before the Special Compensation Fund Committee makes any decision under Rule 3-32.

(5) The Executive Director may give notice to a lawyer under subrule (4) by mailing it by registered mail to the last known address of the lawyer.

LAW SOCIETY RULES

(6) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the claim, the Executive Director may delay notification of the lawyer.

Committee decision

3-32 (1) The Special Compensation Fund Committee may exercise the authority and discretion of the Benchers under section 31 of the Act with respect to any claim.

(2) Subject to the Act and these Rules, the Special Compensation Fund Committee may determine the practice and procedure to be followed at a hearing.

(3) After its consideration under Rule 3-31, the Special Compensation Fund Committee may

(a) authorize payment of all or part of the claim, subject to any conditions the Committee considers desirable,

(b) determine that no payment be made on the claim, or

(c) order an oral hearing before

(i) the Committee, or

(ii) a subcommittee established under Rule 3-34.

(4) Following an oral hearing, the Special Compensation Fund Committee must do one of the following:

(a) authorize payment of all or part of the claim, subject to any conditions the Committee considers desirable;

(b) determine that no payment be made on the claim.

(5) When an oral hearing has been conducted before a subcommittee, the Special Compensation Fund Committee must consider the report of the subcommittee before making a decision under subrule (4) and may, in its discretion, consider further evidence or submissions.

(6) The Special Compensation Fund Committee must provide written reasons for its decision under subrule (3)(a) or (b) or (4) that includes all relevant findings of fact and, if the hearing is conducted by a subcommittee, the subcommittee's recommendation as to the Committee's decision under Rule 3-32(4).

(7) The Special Compensation Fund Committee makes any decision by a majority, and the decision of the majority is the decision of the Committee.

(8) Despite subrules (3) and (4) and Rule 3-31, the Special Compensation Fund Committee, or the subcommittee with the consent of the Committee, may decline to commence or continue with an oral hearing, or may adjourn its findings of fact and its decision or recommendation until the conclusion of other proceedings, including

(a) final disposition of any disciplinary action, including review by the Benchers, judicial review or an appeal, taken against or by the lawyer or former lawyer in respect of whom the claim is made,

(b) final disposition of any criminal prosecution, including appeal, taken against or by the lawyer or former lawyer in respect of whom the claim is made, or

(c) the claimant obtaining, and assigning to the Society, part or all of a civil judgment or *Criminal Code* compensation order made against the lawyer or former lawyer respecting the money or other property claimed by the claimant.

Limit on payments from the Fund

3-33 Despite Rules 3-31 and 3-32, the Special Compensation Fund Committee, or the subcommittee with the consent of the Committee, must not authorize a payment from the Special Compensation Fund in respect of a claim made on or after May 1, 2004 unless

(a) the claimant has made a claim under Part B of the policy of professional liability insurance and the claim has been denied in whole because

(i) the limit of liability described in the policy as the Profession-Wide Aggregate Limit has been exhausted, or

(ii) a lawyer or the claimant knew or reasonably ought to have known of circumstances that could form or did form the basis of a claim for compensation prior to May 1, 2004, or

(b) prior to May 1, 2004, the Society had notice of the possibility of claims to the Special Compensation Fund involving the lawyer against whom the claimant has made the claim.

[rescinded 09/2002; added 03/2005; amended 10/2005; 07/2005]

LAW SOCIETY RULES

Subcommittees

3-34 (1) The Special Compensation Fund Committee may establish one or more subcommittees and, on matters referred to a subcommittee by the Committee, the subcommittee has the power and authority of the Committee except the power and authority delegated to the Committee under Rule 3-32 to make the final determination on a claim.

(2) Two or more subcommittees may proceed with separate matters at the same time.

(3) The Special Compensation Fund Committee may refer a matter that is before it to a subcommittee or a matter that is before a subcommittee to the Committee or to another subcommittee.

(4) A subcommittee must consist of an odd number of persons and may consist of one person.

(5) A subcommittee must be chaired by a Bencher who is a lawyer.

(6) All persons are eligible to be appointed to a subcommittee.

(7) The Special Compensation Fund Committee may terminate an appointment to a subcommittee and may fill a vacancy on a subcommittee.

(8) A subcommittee makes any decision by a majority, and the decision of the majority is the decision of the subcommittee.

[(6) amended 06/2011]

Oral hearings

3-35 (1) Rules 3-35 to 3-38 apply only to oral hearings ordered under Rule 3-32(3)(c).

(2) The Special Compensation Fund Committee must give reasonable notice in writing of the date, time and place of the oral hearing to

(a) the claimant, and

(b) any lawyer the claimant alleges misappropriated or converted funds.

(3) The notice referred to in subrule (2) may be served by mailing it by registered mail to the last known address of the claimant or lawyer.

Public hearing

3-36 (1) Every oral hearing is open to the public, but the Special Compensation Fund Committee may exclude some or all members of the public in any circumstances it considers appropriate.

(2) To protect the interests of any person, the Special Compensation Fund Committee may order that

(a) specific information not be disclosed, and

(b) the hearing be conducted so as to implement that order.

(3) Despite the exclusion of members of the public under subrule (2), the following may remain in attendance, with or without counsel, during the hearing with the Special Compensation Fund Committee's consent:

(a) the claimant;

(b) any lawyer the claimant alleges misappropriated or converted funds.

(4) When the claimant is permitted to remain in attendance at a hearing under subrule (3), the Special Compensation Fund Committee may also permit one other person of the claimant's choice to remain.

Transcript

3-37 Subject to Rule 3-36(2), all proceedings at a hearing must be recorded by a court reporter, and the claimant and any other person approved by the Special Compensation Fund Committee may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.

Evidence and submissions

3-38 (1) The claimant, any lawyer alleged to have misappropriated or wrongfully converted funds, if present, and the Special Compensation Fund Committee may call a witness to testify who

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

(b) is subject to cross-examination.

(2) Following completion of the evidence, the Special Compensation Fund Committee must invite the claimant and the lawyer to make submissions.

Disclosure of decisions

3-39 (1) Unless the Special Compensation Fund Committee directs otherwise, the Executive Director may

(a) disclose the contents of the Committee's written reasons prepared under Rule 3-32(6), and

(b) publish and circulate to the profession a summary of the written reasons for any decision of the Committee.

LAW SOCIETY RULES

(2) A publication under subrule (1)(b) must not identify any of the following persons, by name or otherwise, without the written consent of that person:

(a) the claimant;

(b) the lawyer, unless the Special Compensation Fund Committee finds that the lawyer has misappropriated or wrongfully converted funds.

3-40 [rescinded 03/2005]

Payment of claims

3-41 The Executive Director must make a payment authorized by the Special Compensation Fund Committee when he or she is satisfied that any conditions on the payment are fulfilled.

[(1) amended, (2) rescinded 03/2005]

Recovery of payment made

3-42 (1) If the Special Compensation Fund Committee authorizes money paid out of the Fund, it may

(a) order that the lawyer, on account of whose misappropriation or wrongful conversion the money is paid out, repay to the Society all or part of that amount, and

(b) set the date by which the lawyer must complete repayment.

(2) A lawyer who has not repaid the full amount ordered paid under subrule (1)(a) by the date set or extended by the Special Compensation Fund Committee is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Call and admission

Transfer from another Canadian jurisdiction

2-49 (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:

(f) the following fees:

(iv) **[rescinded]**

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Special Compensation Fund [rescinded]

SPECIAL COMPENSATION FUND RESCISSION

SUGGESTED RESOLUTION:

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

1. ***In Rule 2-49, by rescinding subrule (1) (f) (iv);***

2. ***By rescinding Rules 3-28 to 3-42 effective on proclamation of section 20 of the Legal Profession Amendment Act, 2012.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers

From: Jeffrey G. Hoskins, QC

Date: November 13, 2012

Subject: **Amendments to Law Society Rules to accommodate *Code of Professional Conduct***

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1. As you know, the BC version of the Federation's Model Code of Conduct comes into effect on January 1, 2013 under the name of the *Code of Professional Conduct* for British Columbia.

2. In the current Law Society Rules there are 21 specific references to the *Professional Conduct Handbook*, some with specific rule cites. The Act and Rules Subcommittee recommends the amendments shown in the attached clean and redlined documents to replace the references to the *Professional Conduct Handbook* with references to the *Code of Professional Conduct.* The changes would only come into effect as of January 1 when the Code itself becomes effective.

3. As you have seen elsewhere in the agenda materials, the numbering of the Model Code, and therefore the BC Code, are in a state of transition. Where there is reference to a specific numbered rule in the BC Code, I have put the rule number in square brackets. The Benchers may decide to allow a revision of the rule numbers to correspond with the final version of the BC Code.

4. A suggested resolution is attached.

JGH
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Attachments: draft amendments
suggested resolution

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Benchers

Oath of office

1-1.2 (1) At the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:

I, [name] do swear or solemnly affirm that:

I will abide by the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct* ~~*Handbook*~~, and I will faithfully discharge the duties of [a Bencher/President/
First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.

Division 3 – Law Society Rules

Act, Rules and Handbook

1-50 The Executive Director must provide each lawyer and each articled student with a copy of the *Legal Profession Act*, all Rules made by the Benchers, and the *Code of Professional Conduct* ~~*Handbook*~~.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Member information

Supervision of limited number of designated paralegals

2-9.2 (1) In this Rule, **"designated paralegal"** means an individual permitted under ~~Chapter 12~~rule [5.01] *[Supervision]* of the *Code of Professional Conduct* ~~*Handbook*~~ to give legal advice and represent clients before a court or tribunal.

Inter-jurisdictional practice

Responsibilities of visiting lawyer

2-14.1 (1) The Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~ apply to and bind a visiting lawyer providing legal services.

Enforcement

2-15 (4) A lawyer who practises law in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and *Code of Professional Conduct* ~~*Handbook*~~ of that jurisdiction.

Practitioners of foreign law

Restrictions and limitations

2-19 (4) The Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~ apply to and bind a practitioner of foreign law.

Marketing of legal services by practitioners of foreign law

2-21 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct* ~~*Handbook*, Chapter 14, Rule 2~~, rule [3.02] *[Marketing]*:

LAW SOCIETY RULES

Canadian legal advisors

Requirements

2-22.2 (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~.

Multi-Disciplinary Practice

Conditions for Multi-Disciplinary Practice

2-23.2 (1) A lawyer must not practise law in an MDP unless

(a) the lawyer and all members of the MDP are in compliance with Rules 2-23.1 to 2-23.12 and the *Code of Professional Conduct* ~~*Handbook*~~,

(d) all members of the MDP agree in writing

(ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer's

(A) obligation to comply with the Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~, and

(iii) to comply with the Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~, and

(2) For the purposes of this Rule, a lawyer has actual control over the delivery of legal services of the MDP if, despite any partnership agreement or other contract, the lawyer is able, in all cases and without any further agreement of any member of the MDP, to

(b) take any action necessary to ensure that the lawyer complies with the Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~.

Lawyer's professional duties

2-23.7 (1) Except as provided in Rules 2-23.1 to 2-23.12, the Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~ apply to lawyers who practise in an MDP.

(2) A lawyer practising law in the MDP must take all steps reasonable in the circumstances to ensure that the non-lawyer members of the MDP

(b) comply with the Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~, and

(c) provide no services to the public except

(ii) under the supervision of a practising lawyer, as required under ~~Chapter 12 of~~ the *Code of Professional Conduct* ~~*Handbook*~~, rule [5.01] *[Supervision]*.

(3) A lawyer practising in an MDP must not permit any member or employee of the MDP to direct or control the professional judgement of the lawyer or to cause the lawyer or other members of the MDP to compromise their duties under the Act, these Rules or the *Code of Professional Conduct* ~~*Handbook*~~.

Conflicts of interest

2-23.9 (1) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the other members of the MDP will comply with the provisions of the Act, these Rules and the *Code of Professional Conduct* ~~*Handbook*~~ respecting conflicts of interest as they apply to lawyers.

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Specialization and Restricted Practice

Advertising

3-19 A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct* ~~*Handbook*~~, ~~Chapter~~ rule [3.03] *[Advertising nature of practice]* ~~14, Rules 16 to 18~~.

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name

9-1 A corporation must not use a name

(c) contrary to ~~Chapter 14, Rule 4(c) of~~ the *Code of Professional Conduct* ~~*Handbook*~~, rule [3.02] ~~("~~*[Marketing]* ~~of Legal Services~~").

LAW SOCIETY RULES

LLP name

9-14 A limited liability partnership must not use a name contrary to ~~Chapter 14, Rule 4(e) of~~ the *Code of Professional Conduct* ~~*Handbook*~~, rule 3.02 ~~("~~*[Marketing]*~~ of Legal Services")~~.

LAW SOCIETY RULES

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Oath of office

1-1.2 (1) At the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:

I, [name] do swear or solemnly affirm that:

I will abide by the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct*, and I will faithfully discharge the duties of [a Bencher/President/ First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.

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Act, Rules and Handbook

1-50 The Executive Director must provide each lawyer and each articled student with a copy of the *Legal Profession Act*, all Rules made by the Benchers, and the *Code of Professional Conduct*.

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Member information

Supervision of limited number of designated paralegals

2-9.2 (1) In this Rule, **"designated paralegal"** means an individual permitted under rule [5.01] *[Supervision]* of the *Code of Professional Conduct* to give legal advice and represent clients before a court or tribunal.

LAW SOCIETY RULES

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Restrictions and limitations

2-19 (4) The Act, these Rules and the *Code of Professional Conduct* apply to and bind a practitioner of foreign law.

Marketing of legal services by practitioners of foreign law

2-21 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct*, rule [3.02] *[Marketing]*:

Canadian legal advisors

Requirements

2-22.2 (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Code of Professional Conduct*.

Multi-Disciplinary Practice

Conditions for Multi-Disciplinary Practice

2-23.2 (1) A lawyer must not practise law in an MDP unless

(a) the lawyer and all members of the MDP are in compliance with Rules 2-23.1 to 2-23.12 and the *Code of Professional Conduct*,

LAW SOCIETY RULES

(d) all members of the MDP agree in writing

(ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer's

(A) obligation to comply with the Act, these Rules and the *Code of Professional Conduct*, and

(iii) to comply with the Act, these Rules and the *Code of Professional Conduct*, and

(2) For the purposes of this Rule, a lawyer has actual control over the delivery of legal services of the MDP if, despite any partnership agreement or other contract, the lawyer is able, in all cases and without any further agreement of any member of the MDP, to

(b) take any action necessary to ensure that the lawyer complies with the Act, these Rules and the *Code of Professional Conduct*.

Lawyer's professional duties

2-23.7 (1) Except as provided in Rules 2-23.1 to 2-23.12, the Act, these Rules and the *Code of Professional Conduct* apply to lawyers who practise in an MDP.

(2) A lawyer practising law in the MDP must take all steps reasonable in the circumstances to ensure that the non-lawyer members of the MDP

(b) comply with the Act, these Rules and the *Code of Professional Conduct*, and

(c) provide no services to the public except

(ii) under the supervision of a practising lawyer, as required under the *Code of Professional Conduct*, rule [5.01] *[Supervision]*.

(3) A lawyer practising in an MDP must not permit any member or employee of the MDP to direct or control the professional judgement of the lawyer or to cause the lawyer or other members of the MDP to compromise their duties under the Act, these Rules or the *Code of Professional Conduct*.

Conflicts of interest

2-23.9 (1) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the other members of the MDP will comply with the provisions of the Act, these Rules and the *Code of Professional Conduct* respecting conflicts of interest as they apply to lawyers.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Specialization and Restricted Practice

Advertising

3-19 A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct*, rule [3.03] *[Advertising nature of practice]*.

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name

9-1 A corporation must not use a name

(c) contrary to the *Code of Professional Conduct*, rule [3.02] *[Marketing]*").

LLP name

9-14 A limited liability partnership must not use a name contrary to the *Code of Professional Conduct*, rule 3.02 *[Marketing]*.

PROFESSIONAL CONDUCT HANDBOOK AMENDMENTS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules effective January 1, 2013 as follows:

1. ***In Rules 1-1.2 (1), 1-50, 2-14.1 (1), 2-19 (4), 2-22.2 (1), 2-23.2 (1) and (2), 2-23.7 (1) and (2) and 2-23.9 (1), by striking "***and the *Professional Conduct Handbook*" ***wherever it appears and substituting "***and the *Code of Professional Conduct*"***;***

2. ***In Rule 2-9.2, by rescinding subrule (1) and substituting the following:***

(1) In this Rule, **"designated paralegal"** means an individual permitted under rule 5.01 *[Supervision]* of the *Code of Professional Conduct* to give legal advice and represent clients before a court or tribunal.***;***

3. ***In Rule 2-15(4) by striking "***and *Professional Conduct Handbook*" ***and substituting "***and *Code of Professional Conduct*"***;***

4. ***By rescinding the preamble to Rule 2-21 and substituting the following:***

2-21 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct,* rule 3.02 *[Marketing]*:***;***

5. ***In Rule 2-23.7,***

(a) ***by rescinding subrule (2) (c) (ii) and substituting the following:***

(ii) under the supervision of a practising lawyer, as required under the *Code of Professional Conduct,* rule 5.01 *[Supervision]*.***; and***

(b) ***in subrule (3) by striking "***or the *Professional Conduct Handbook****" and substituting "***or the *Code of Professional Conduct****";***

6. ***By rescinding Rule 3-19 and substituting the following:***

3-19 A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct,* rule 3.03 *[Advertising nature of practice]*.***;***

7. ***By rescinding Rule 9-1 (c) and substituting the following:***

(c) contrary to the *Code of Professional Conduct,* rule 3.02 *[Marketing]*".***;***

8. By rescinding Rule 9-14 and substituting the following:

9-14 A limited liability partnership must not use a name contrary to the *Code of Professional Conduct*, rule 3.02 *[Marketing]*.***;***

AND BE IT FURTHER RESOLVED, should the numbering of the Code of Professional Conduct be changed, to change the numbers of provisions of the Code of Professional Conduct referred to in this resolution accordingly.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

2012 – 2014 Strategic Plan

Status Update as at December 2012

For: The Benchers
Date: December 7, 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 – December 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 – December 2012

The Rule of Law and Lawyer Independence Advisory Committee has been meeting regularly and this topic has been the focus its agenda. The committee is nearing the end of its examination of this topic, and it is anticipated that it will present its report, with a description of options, in early 2013.

Initiative 1–1(c)

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

Status – December 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. However, in order to better co-ordinate the policy development and analysis, the benchers resolved at their July meeting to create a separate Task Force to address this initiative. Appointments have been made to the Task Force and it held its first meeting on December 4, 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 – December 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 its report is being represented at the December Benchers meeting;*
- *the issue of Bencher diversity was actively considered at the Bencher governance retreat and will be considered further by the Governance Committee as it works through the recommendations and implementation of the governance review;*
- *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 debate and recommendations on this topic by the Executive Committee in connection with the 2009 – 2011 Strategic Plan. Further*

work was put in abeyance pending the report of the Governance Review Task Force in December 2012.

Strategy 1–3

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

Initiative 1-3(a)

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

Status – December 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 – December 2012

Development of this initiative has been undertaken in the Practice Standards Department . The Committee has created a Working Group under Catherine Sas' leadership, and recommendations will be presented to the Committee at a later date. A report from the Committee to the Benchers will follow.

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 – December 2012

The Lawyer Education 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 has result in a national competencies profile which is now being reviewed by a working group made up of members of the Credentials and the Lawyer Education Advisory Committees. The Federation is also developing national standards for character and fitness, and proposals for implementation, which will be presented to and considered by the law societies at a later date.

The Advisory Committee will begin an active review of the Law Society admission program following the consideration by the Benchers of the national competencies profile.

Initiative 1–4(b)

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

Status – December 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 – December 2012

Implementation of the recommendations of the Delivery of Legal Services Task Force continues. The Supreme and Provincial Courts of British Columbia have agreed to the pilot project in Family Law proposed to them (to commence January 1, 2013), and an evaluation process has been developed. The Benchers approved the necessary changes to the Professional Conduct Handbook.

The Access to Legal Services Advisory Committee continues to examine the issues concerning access to justice and legal services that require action by the Law Society, with a particular focus on Justice Access Centres and Pro Bono Delivery Clinics.

Initiative 2–1(b)

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

Status – December 2012

Work on Phase 1 on implementation of the Justicia project has begun, with a Managing Partners Summit national firms with offices in British Columbia and larger regional firms having been held at the Vancouver offices of Gowlings on November 20.

Initiative 2–1(c)

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

Status – December 2012

Phase 1 of the Indigenous Lawyer Mentoring Program was completed, and a report was presented to the Benchers on July 13 detailing best practice guidelines for mentoring Aboriginal lawyers. The report proposed a model on which a Mentoring Program can be developed that outlines a vision, goals and guiding principles. Phase 2 has been delayed due to staffing issues, but is to begin as soon as staffing is in place.

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 – December 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 – December 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 – December 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, it has been determined that the focus of their research is not focused on the market for legal services.

A staff group has therefore met to discuss what sort of research and issues could be examined in order to gather information to create a better understanding of the economics of operating a law practice and the market for legal services. A report will be presented at a later date to determine the feasibility of continuing with this initiative as drafted. It is also anticipated that market analysis will be part of the research that the Legal Services Provider Task Force will be looking for when addressing the mandate it has been given by the Benchers.

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 – December 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. Future meetings are being arranged to keep the lines of communication relevant and open.

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 – December 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. Other proactive media relations efforts, such as a news conference in Prince George and appearances on the

CBC's Early Edition to discuss events or Law Society initiatives 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. Staff are currently working with Courthouse Libraries to add content and links from the Law Society to Clicklaw and additional exposure is expected with the January rollout of the paralegals initiative. The infrastructure to support the new Speakers' Bureau is almost complete with the next step being to incorporate willing Benchers into the roster of available speakers.

Report to the Benchers

November 28, 2012

Final Report of the Governance Review Task Force

Recommendations and Results

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ACKNOWLEDGMENTS

This report and all of the work of the Governance Review Task Force would not have been possible without the assistance of Watson Advisors Inc. (WATSON), particularly Liz Watson and Katie Armitage, who provided essential assistance in conducting the initial interviews and invaluable advice about best practices in corporate governance, and also in respect of the process for reaching the conclusions set out in this report.

In addition, the Task Force would like to acknowledge the support and assistance of Tim McGee, Adam Whitcombe and Bill McIntosh who worked with the Task Force throughout.

EXECUTIVE SUMMARY

Since 1993, the Benchers have given consideration to their governance structure on three separate occasions.

In July 1993 the Benchers held a two-day meeting during which Dr. John Carver led a discussion on the roles of the Benchers, the Chief Executive Officer (CEO) and Law Society staff. The Carver policy governance model was developed by Dr. Carver "to empower boards of directors to fulfill their obligation of accountability for the organizations they govern." Over the next few years, the Benchers adopted and implemented a Carver policy board model.

However, by 2007, it had become apparent that the Carver model was no longer being applied at the Law Society. To address this, the Executive Committee established a steering committee to investigate options for improving the Law Society's governance and strategic planning. The results of this investigation were reported to the Benchers in December 2007, recommending a restructuring of Bencher committees and task forces and the development of an annual planning cycle.

Finally, in the fall of 2011, the Benchers included in the Law Society Strategic Plan the objective of identifying and developing processes to ensure continued good governance. To implement this objective, the Benchers established the Governance Review Task Force. The objective of the Task Force was to assess the Law Society's current governance structure and practices against leading edge governance practices for professional regulatory bodies and identify any areas where improvements could be made. To assist the Task Force, the governance consulting firm of Watson Advisors Inc. (WATSON) was retained to help assess the Law Society's current governance structure and practices against evolving best practices in governance.

This report is the final result of the Task Force's work.

The Task Force is of the view that governance, and particularly good governance, matters. Bad governance is likely to have a significant trickle-down effect on any organization beset by it. As Law Society's governors, the Benchers must give their attention to certain key governance responsibilities, such as providing input into the strategic plan, planning for the succession of the Law Society's chief executive, and financial and risk oversight. And, while there was no immediate threat to the self-regulation of the legal profession in British Columbia, the Task Force believes that in order to maintain that privilege, the Benchers must ensure the public interest always comes first and this requires the best possible governance framework.

The Governance Review Task Force first met on January 17, 2012 and held seven further meetings during the year, including a two - day retreat in July to review and consider the advice and recommendations provided by WATSON.

During the early part of the year, WATSON conducted a comprehensive document review of the Law Society's governing legislation, rules, existing governance policies, and other documents relevant to the review. WATSON also conducted interviews with over 80 individuals interested or involved with the Law Society and the justice system in British Columbia.

The Task Force met for two days in mid-July to review a draft Interim Report prepared by WATSON and at the end of July, the Task Force provided its Interim Report to all the Benchers. At the same time as the Interim Report was distributed, the Task Force also determined that a separate discussion by the Benchers about the recommendations was necessary to seek the extended input of the Benchers. The governance retreat on October 27 provided the final opportunity for the Task Force to hear the thoughts and comments of the Benchers on the recommendations set out in the Interim Report before preparing this final report.

In addition to the advice the Task Force received during its review, the Task Review was also mindful that in April 2011, the Executive Committee established a working group to look at several governance issues. The working group consisted of Brian Wallace, QC, as chair, along with Patricia Schmit, QC and Patrick Kelly, both Life Benchers. The Task Force received a draft of the working group's report and met with Brian Wallace, QC on August 17th. At that time, the Task Force was of the view that it was sufficiently far along in the development of its own recommendations to the Benchers that the proposals from the working group should be referred to the Governance Committee for consideration in conjunction with the other recommendations in this report.

In the course of its work, the Task Force observed that governance is about the structures, processes and relationships that are used in making decisions and proposed the following foundational principles for sound governance:

- The Benchers need to be competent and committed;
- The Benchers should be aligned among themselves and with management on strategic direction;
- All parties involved in the governance process should have clear roles and responsibilities;
- There should be formal mechanisms that guide the execution of key governance responsibilities and meeting effectiveness;
- Decision making should be responsible and ethical; and

- The Law Society should be transparent and accountable to the public, lawyers and government.

At the October 27 retreat, the 70 recommendations from the Interim Report were considered in three categories. The first category consisted of recommendations which were not controversial and which were referred to the Governance Committee for development and subsequent Bencher approval. The second category consisted of recommendations which would not be considered further. The third category involved recommendations which the Task Force thought required further consideration by Benchers at the retreat. This three-level classification is the basis for the balance of this report.

As a result of the discussion at the retreat, the Task Force is now able to report on the next steps for the recommendations identified in the Interim Report. Overall, the Benchers were in favour of either implementing most of the recommendations made in the Interim Report or at least having the Governance Committee consider them and bring them back to the Benchers for further discussion. Only eleven of the recommendations were not accepted by the Benchers, including recommendations to amend the Rules to provide for a certain number of Benchers to be elected on an "at large" basis and making a structural change that would create a smaller and more effective governing body.

All of the recommendations and their dispositions are contained in this report.

This final report of the Task Force reflects the work that the Task Force undertook during the course of 2012, with the able assistance of the Benchers, WATSON and senior Law Society staff. The Task Force now expects that the Governance Committee, working with senior staff, will oversee the steps necessary to further consider and implement the recommendations as directed and bring them back to the Bencher for approval or further consideration.

BACKGROUND

1993 GOVERNANCE REVIEW

In July 1993 the Benchers of the day held a two-day meeting during which Dr. John Carver led a discussion on the roles of the Benchers, the Chief Executive Officer (CEO) and Law Society staff.

The Carver policy governance model was developed by Dr. Carver "to empower boards of directors to fulfill their obligation of accountability for the organizations they govern." His model had boards govern through policies that established organizational aims, which Dr. Carver labeled "ends" and which give to the CEO the broad discretion to determine the "means" to achieve those "ends." As Dr. Carver saw it, the biggest challenge to non-profit volunteer boards was the temptation to micro-manage operations and his model provided for a clear separation of powers between the board and staff, assigning to the board the responsibility of defining the goals or "ends" and providing the discretion to the CEO to accomplish those "ends," subject to any "executive limitations" the board thought necessary.

At the conclusion of the July 1993 meeting, the Benchers resolved to explore the implementation of the Carver governance model and asked Dr. Carver to assist in that process. The result was the development of the Mission, Ends and Executive Limitations set out in the current Bencher Governance Policies. The final aspect of the Carver model, monitoring indicators, was developed by the Audit Committee over a period of about three years starting in 1999.

As noted in the Task Force's Interim Report, while the Carver model gained wide adoption in the 1990s, over time it became evident to many organizations that a strict application of the model created problems. The model made it awkward for boards to have sufficient oversight of the organization's operations and it sometimes required boards to spend an inordinate amount of time creating and reviewing complex policies written in an unfamiliar and often awkward language. As a result, the original enthusiasm for the Carver model began to wane in the early 2000s.

2007 GOVERNANCE REVIEW

By 2007, it had become apparent that the Carver model was no longer being applied at the Law Society. It had also become apparent that the absence of an effective long - term planning document led to a fragmented approach to initiatives and policy

development. There was also a general consensus that committees and task forces were not necessarily looking at issues which were most important to the Benchers. As a result, the Executive Committee established a steering committee, comprising Anna Fung, QC, John Hunter, QC, Gordon Turriff, QC, Leon Getz, QC, Ken Dobell and CEO Tim McGee. The Steering Committee was charged with investigating options for improving the Law Society's governance and strategic planning.

The Executive Committee reported to the Benchers in December 2007, recommending a restructuring of Bencher committees and task forces and the development of an annual planning cycle. The three recommended reforms were:

1. Direct the cycle of Bencher meetings during the year toward development and consideration of strategic priorities and plans, and the resources necessary to support those plans.
2. Reform the content of Bencher meetings to permit the Benchers to focus on what is most important, and to ensure that individual Benchers are sufficiently informed so they can meaningfully participate in knowledge-based decision-making.
3. Ensure that the relationship between the Benchers and the various committees, task forces and working groups supports the strategic priorities and plans, while also ensuring that the regulatory work of the Law Society is done.

Under the proposed model, the Executive Committee was to focus primarily on setting priorities for strategic issues and overseeing the pre-board work necessary to bring those priorities to the Benchers for consideration. The Benchers were to begin each year by selecting the matters that are most important to fulfilling the Law Society's mandate in the ensuing three years. Those matters would provide the focus for the Benchers policy-making function. The Executive Committee, Finance Committee, and Audit Committee would continue to provide necessary oversight while the Regulatory committees would continue their existing functions. Four Advisory committees were to be formed: Access to Justice, Equity and Diversity, Lawyer Education, and Independence and Self-governance. The other committees, task forces and working groups were to be wound up in early 2008.

2012 GOVERNANCE REVIEW

In the fall of 2011, the Benchers developed and approved a new strategic plan for 2012 – 2014, following on the results of the 2009 – 2011 strategic plan. A number of initiatives and goals were identified by the Advisory Committees and by the Executive Committee during that process. One of the goals was that the Law Society would be a

more innovative and effective professional regulatory body. One of the strategies for achieving that goal was to identify and develop processes to ensure continued good governance. In particular, the 2012-2014 Strategic Plan contained an initiative calling for identification of ways to enhance Bencher diversity and creation of a mechanism for effective evaluation of Bencher performance and feedback.

In January 2012 the Law Society struck the Governance Review Task Force, comprising Bruce LeRose, QC, Art Vertlieb, QC, Rita Andreone, QC, Stacy Kuiack, Jan Lindsay, QC and Peter Lloyd, FCA. Haydn Acheson joined the Task Force in July 2012. To assist the Task Force, the governance consulting firm of Watson Advisors Inc. (WATSON) was retained to help assess the Law Society's current governance structure and practices against evolving best practices in governance. The formal objective of the Task Force was to assess the Law Society's current governance structure and practices against leading edge governance practices for professional regulatory bodies and identify any areas where improvements could be made. The overarching objective was to ensure that the Law Society continues to be effective in conducting its work, in keeping with its principal aim that the public is well-served by a competent, honourable and independent legal profession.

WHY GOVERNANCE MATTERS

The Task Force is of the view that governance, and particularly good governance, matters for several reasons.

The first, and perhaps most obvious reason, is that bad governance is likely to have a significant trickle-down effect on any organization beset by it. Without a meaningful vision, a clear and well-understood mission and sound policies covering responsibilities, decision-making and oversight, any organization will have no means to react when confronted with Yogi Berra's advice "When you come to a fork in the road, take it."

The second reason is that, as noted in the Interim Report, the Task Force's review revealed that there is a perception that certain aspects of the Benchers' responsibilities as the Law Society's governors are not getting sufficient attention. The Task Force heard some concern that the Benchers' focus on the regulatory functions of the Law Society was limiting their attention to certain key governance responsibilities, such as providing input into the strategic plan, planning for the succession of the Law Society's chief executive, and financial and risk oversight.

The third reason, also noted in the Interim Report, is that while there was no immediate threat to the self-regulation of the legal profession in British Columbia, challenges to

self-governance in other jurisdictions from perceived failures in governance could give rise to government attention here, if not addressed. As the Law Society's governors, the Benchers are the guardians of self-regulation of the legal profession. The Task Force believes that in order to maintain that privilege, the Benchers must ensure the public interest always comes first and this requires the best possible governance framework.

GOVERNANCE REVIEW PROCESS

The Governance Review Task Force first met on January 17, 2012 and held seven further meetings during the year, including a two - day retreat in July to review and consider the advice and recommendations provided by WATSON.

On the instructions of the Task Force, WATSON conducted a comprehensive document review of the Law Society's governing legislation, rules, existing governance policies, Bencher meeting agendas and minutes, the most recent strategic plan and the orientation material provided to new Benchers. WATSON also conducted a scan of governance structures and processes of other relevant organizations, including other Canadian law societies and BC regulators.

WATSON also conducted interviews with over 80 individuals interested or involved with the Law Society and the justice system in British Columbia. Interviewees included the current Benchers, Past Presidents and Life Benchers, members of the Law Society's senior leadership team and many stakeholders within the provincial legal community. WATSON also obtained feedback from individuals at other Canadian law societies and other professional regulatory bodies about certain aspects of their governance practices and structures. The interviews were conducted between February and May, 2012.

Based on this work, Liz Watson of WATSON presented some preliminary observations at the Bencher Retreat in June 2012. The feedback from the Retreat provided the Task Force with the opportunity to adjust some of its recommendations to better address a number of issues and concerns that were identified during the interviews and background research.

The Task Force met for two days in mid-July to review a draft Interim Report prepared by WATSON. The draft provided over 70 recommendations ranging from simple matters such as creating a template for Committee reports to complex proposals such as implementing a structural change that would create a smaller and more effective governing body. Each of the recommendations provided for in the draft Interim Report was considered and discussed by the members of the Task Force during the two days. In general, the Task Force was inclined to seek the views of the Benchers on all of the

recommendations, although in a few cases, the Task Force suggested some changes to the content or wording of WATSON's proposed recommendations.

On July 31, 2012, the Task Force provided its Interim Report to all the Benchers. The Task Force indicated it hoped to get input in writing from the Benchers by September 15. This would enable the responses to be compiled and provided to all the Benchers and also to ensure that the Task Force was able to collectively consider all the feedback provided before finalizing its recommendations for the Benchers' deliberation.

In total, over 70% of the Benchers not on the Task Force took the time to review and comment on the Interim Report. This feedback turned out to be invaluable in identifying those recommendations on which there was a general consensus, either in favour of adopting them or deferring for further consideration. It also allowed the Task Force to identify a number of recommendations where there did not appear to be a consensus about whether they should be adopted.

In addition to the advice the Task Force received during its review, the Task Review was also mindful that in April 2011, the Executive Committee asked the Benchers to consider a number of governance issues most of which the Benchers referred back to the Executive Committee for further action. The issues ranged from the appointment of non-lawyers to Law Society committees to the system for electing Benchers and the term of office for which they are elected. Three issues were referred to a working group for further consideration and development. They were:

1. Whether Bencher turnover can or should be addressed by staggering elections.
2. Whether the length of the Bencher term of office should be changed.
3. Whether Bencher electoral districts should be revised for more equitable numerical representation or better grouping of like communities in the same district.

The working group was chaired by Brian Wallace, QC, a former President of the Law Society and Patricia Schmit, QC and Patrick Kelly, both Life Benchers. In August, the Task Force received a draft of the working group's report and met with Brian Wallace, QC on August 17th. While the issues and proposals for change were germane to work of the Task Force, the Task Force was of the view that it was sufficiently far along in the development of its own recommendations to the Benchers that the proposals from the working group should be referred to a governance committee for consideration in conjunction with the other work of that the Task Force expected would be referred to a governance committee.

At the same time as the Interim Report was distributed, the Task Force also determined that a separate discussion by the Benchers about the recommendations was necessary. The Task Force identified Saturday October 27 as the best date to seek the extended input of the Benchers before completing and presenting a final report to the Benchers by the end of the year.

To gather further information about what was most important to the Benchers and what they might want to achieve at the governance retreat, each of the Task Force members was asked to interview several Benchers to determine their highest priority concerns about governance, along with an indication of what they hoped could be achieved at the October 27 meeting. The results of the interviews were compiled and provided as further guidance to the Task Force in identifying those issues and recommendations that could most benefit from discussion at the retreat.

The governance retreat on October 27 provided the final opportunity for the Task Force to hear the thoughts and comments of the Benchers on the recommendations set out in the Interim Report before preparing this final report. The objective of the day was to finally identify all of the recommendations that would be referred to a governance group for further development and presentation to the Benchers for approval at subsequent Bencher meetings during 2013. The day-long retreat resulted in a general consensus about the advisability of referring 35 of the recommendations to the governance group for development without further discussion by the Benchers, a direction that several recommendations required no further consideration and that the remaining recommendations needed further discussion by the Benchers at the retreat. As a result of that further discussion, a number of the remaining recommendations were referred to the governance group for further development in light of the discussion and comments developed during the retreat. In addition to considering each of the recommendations in the Interim Report, the Benchers throughout the governance retreat also provided a number of ideas and suggestions on governance. These additional contributions have been compiled by the Task Force in Appendix A and will be reviewed and developed by the Governance Committee for future consideration by the Benchers.

The final result of the governance retreat was the creation of a Governance Committee. Expected to be in place for 2013, the Governance Committee was charged with developing terms of reference within 90 days of its appointment for the Benchers' consideration.

Overall, the Task Force believes that the process behind the development of the results contained in this final report provided an opportunity for a wide variety of stakeholders to express their views on our governance process, provided the Benchers with several

formal opportunities and a number of informal opportunities to comment and finally, presented the Benchers with a structured method during the retreat for having their views heard and considered by their colleagues and by the Task Force.

The Task Force hopes that all the Benchers feel they have had the opportunity to be heard, that their views have informed the result of the governance review and that the resulting recommendations will ensure that our governance policies will be enhanced by the time and effort they have committed to this process.

GOVERNANCE PRINCIPLES

FOUNDATIONAL GOVERNANCE PRINCIPLES

In the Interim Report, the Task Force determined that governance is about the structures, processes and relationships that are used in making decisions. The Task Force believes the following are foundational principles for sound governance:

- The Benchers need to be competent and committed;
- The Benchers should be aligned among themselves and with management on strategic direction;
- All parties involved in the governance process should have clear roles and responsibilities;
- There should be formal mechanisms that guide the execution of key governance responsibilities and meeting effectiveness;
- Decision making should be responsible and ethical; and
- The Law Society should be transparent and accountable to the public, lawyers and government.

RECOMMENDATIONS

OVERVIEW

As noted above in the discussion of the process by which this review was conducted, the Benchers had the opportunity at the October 27 retreat to consider a classification of more than 70 recommendations from the Interim Report into three categories. The first category was recommendations coded as green items which were not controversial and were referred to the Governance Committee for development and subsequent Bencher approval. The second category was recommendations that were coded as red items and

would not be considered further. The third category was recommendations that were coded as yellow items and which the Task Force thought required further consideration by Benchers at the retreat. This three-level classification is the basis for the balance of this report.

What follows is a brief review of the background to the recommendations in the Interim Report and the commentary received in writing and at the retreat, followed by the recommendations in order of the topics initially identified in the Interim Report and their disposition by the Benchers at the governance review retreat. The Task Force expects that the Governance Committee, working with senior Law Society staff, will oversee the steps necessary to further consider and implement the recommendations as directed and bring them back to the Bencher for approval or further consideration.

STRONG MANDATE, VISION AND STRATEGIC GOALS

Background

As noted in the interim report, WATSON noted two themes arising from the interviews on this topic.

The first theme was a sense that the mandate can be interpreted very broadly. A better articulation of what was and was not within the mandate of the Law Society was thought to be useful. In particular, some felt that it would be useful to consider the breadth and scope of the public interest in the administration of justice so as to better focus the strategies that would be adopted to pursue that mandate.

The second theme was that the broad array of "key performance measures" (KPMs) currently in place could be more useful from a governance perspective (i.e., supporting the Benchers' oversight role) if they were linked to a specific vision or goals that the Law Society is striving to achieve.

Written responses suggested that recommendations on these topics were generally viewed favourably. There was some support for expanding on the meaning of the "public interest" but it was not unanimous. There was no consensus at the governance retreat discussion about whether the annual Bencher retreat should be used as a strategic planning session. Several groups indicated that the annual Bencher retreat should not be used for strategic planning, while others indicated that it could involve strategic planning but that the focus on a specific topic should be retained.

Recommendations

1.1 Clarify the Law Society's interpretation of its legislative mandate as set out in s. 3 of the Act to ensure a shared understanding among Benchers, staff and the public of the Law Society's mission and key focus. This is particularly important with respect to s. 3(a). | *Governance Committee to consider and bring back to the Benchers for further discussion*

1.2 Articulate a vision for the Law Society that sets out the Benchers' vision of what the Law Society strives to be. | *Governance Committee to consider and bring back to the Benchers for further discussion*

1.3 Consider developing "Guiding Principles" that provide guidance for Law Society actions and activities. | *Governance Committee to consider and bring back to the Benchers for further discussion*

1.4 When the Law Society next reviews its strategic plan, review current goals and initiatives, and revise as necessary, to ensure they support the Law Society's vision. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

1.5 Use the annual Bencher retreat as a strategic planning retreat. | *Governance Committee to consider and bring back to the Benchers for further discussion*

1.6 Clarify the role of Benchers, staff and Advisory Committees in the strategic planning process. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

1.7 Use the Advisory Committees to inform the Benchers on key issues within their area of study and develop recommendations consistent with the priority areas identified by the Benchers by their vision and strategic goals. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

ORGANIZATIONAL OVERSIGHT

Background

Feedback collected by WATSON during the interview process suggested that the Benchers have a preference for engagement with the regulatory responsibilities of their positions, such as discipline and lawyer conduct. However, some interviewees saw this focus on regulatory responsibilities as limiting the Benchers' attention on oversight of the Law Society.

The Act requires the Benchers to "*govern*" the affairs of the Law Society and there can be no question that the Benchers are indeed the Law Society's governors or directors. In order to ensure that their governance responsibilities are addressed, the Task Force was advised that boards often find it useful to create a board calendar which identifies all recurring topics and responsibilities that a board must consider and identifies which will be addressed at each board meeting over the course of the year. The Task Force also noted that while the current orientation program is particularly strong in training Benchers in how to conduct hearings and write judgments, not all Benchers come to the Bencher table with prior board experience, and so the orientation could be enhanced in terms of governance fundamentals.

Written responses to the Interim Report indicated general agreement with all of these recommendations, although there was some concern that the Benchers are more than just directors in the technical sense. The recommendation that the orientation given to new Benchers provide more on governance fundamentals and the Benchers' specific governance responsibilities was accepted by several respondents. One written suggestion, repeated at the governance retreat, was that an orientation briefing on governance fundamentals and specific responsibilities should be provided on video so that it could be viewed and re-viewed during a particular Bencher's term.

Recommendations

2.1 The Benchers should develop a comprehensive "Bencher Charter" that details the Benchers' governance roles and responsibilities, including their responsibilities relating to corporate oversight. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

2.2 The Benchers should develop an annual Bencher Calendar. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

2.3 The orientation given to new Benchers should be enhanced in terms of governance fundamentals and the Benchers' specific governance responsibilities. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

BENCHER STRUCTURE AND ELECTION PROCESS

Background

In the Interim Report, we noted that the Benchers are a large group. WATSON heard from some interviewees that the current size of the Bencher table is problematic, while others believe that a large number is necessary given the broad scope of the Benchers' current roles and responsibilities. The other common observation from the interviews was that the Bencher table does not reflect the diversity of the legal profession in terms of gender, age, ethnic heritage and type of practice. Finally, the Task Force noted in the Interim Report that while the current regional election model has a long history, many external stakeholders observed that the geographic election model suggests that Benchers represent the interests of a constituency, rather than the public interest.

The written responses to the Interim Report generally agreed with the recommendations concerning the Bencher Position Description and the Bencher Charter, and particularly the benefits of prospective Benchers knowing more about the scope and responsibilities of the position before seeking election as a Bencher.

The consensus at the governance retreat was that the recommendations to elect some Benchers on an "at large" basis and to create a smaller Bencher table were not to be adopted or referred to the Governance Committee. The Benchers also determined that a Bencher Charter and an Individual Bencher Description should be referred to the Governance Committee for development and implementation.

The recommendations concerning mandatory pre-election information sessions, the use of a diversity matrix, a more proactive and targeted awareness campaign around the diversity gaps identified and using a skills matrix to identify the skills gaps at the Bencher table were all discussed at some length at the governance retreat. The consensus was that we should enhance pre-election information about the role of the Benchers using the website and possibly a video so that both the public and potential Benchers have a better understanding of the role and responsibilities of Benchers. While there was no consensus about the use of a diversity or skills matrix in relation to Bencher elections, there was a consensus that we should enhance the pre-election information about the role of the Benchers so both the public and potential Benchers know more about what's involved in being a Bencher.

Recommendations

3.1 Create an Individual Bencher Position Description that includes reference to the Benchers' fiduciary duty and duty of care, their role and responsibilities as part of

the governing body, Committees and individually, expectations in respect of preparation and time commitment and how Benchers are expected to contribute in Bencher meetings. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

3.2 Publish the Bencher Charter and Individual Bencher Description online and distribute them to interested candidates along with the Bencher Nomination Form. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

3.3 Hold mandatory pre-election information sessions to educate interested candidates (and the membership at large) about the role of a Bencher. | *Governance Committee to consider and bring back to the Benchers for further discussion*

3.4 Use a "Diversity Matrix" to identify the diversity "gaps" identified at the Bencher level. | *Governance Committee to consider and bring back to the Benchers for further discussion*

3.5 Prior to elections, hold a more proactive and targeted "awareness campaign" around the gaps identified. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

3.6 Consider amending the Rules to provide for a certain number of Benchers to be elected on an "at large" basis. | *Not adopted*

3.7. In the longer term, consider implementing structural change that would create a smaller and more effective governing body. | *Not adopted*

3.8. Depending on the Bencher structure and election process ultimately established, consider using a "Skills Matrix" to identify the skills "gaps" identified at the Bencher level. | *Governance Committee to consider and bring back to the Benchers for further discussion*

APPOINTMENT PROCESS

Background

The Interim Report noted that the appointed Benchers play an extremely valuable role by bringing a public perspective to the Bencher table. Their presence and input provide a constant reminder of the need to act in the public interest. However, despite the importance of these positions, the Law Society has been reluctant to participate actively in their appointment. This reluctance has stemmed for a desire to maintain the

necessary independence between the Law Society as regulator of the legal profession and the government of the day.

WATSON observed during their interviews that a number of Benchers, staff and other stakeholders believed that it was appropriate for the Law Society to identify to government the desired skills, knowledge, experience and diversity of appointed Benchers. In fact, the appointment process was seen by many as a way of providing the Law Society with an opportunity to diversify the Bencher table.

The written responses to the Interim Report suggested general agreement with the two recommendations and recognized the opportunity we have with the appointed Benchers to identify skills, knowledge and experience that could benefit the Bencher table. It was seen, in particular, as an opportunity to enhance diversity. However, there was also recognition that the government of the day will appoint whom they wish and that our requests for particular skills, experience or diversity in appointments, may not be considered.

At the governance retreat there was considerable discussion about the two recommendations. The consensus was that our current practice of providing some limited feedback is fine but that the Law Society should not indicate whether we are satisfied or dissatisfied with the performance of the appointed Benchers.

Recommendations

4.1 Proactively identify the skills, experience and background desired in appointed Benchers and communicate the same to BRDO. | *Governance Committee to consider and bring back to the Benchers for further discussion*

4.2 When an appointed Bencher is eligible for reappointment, provide meaningful feedback to BRDO on the appointed Bencher's contribution. | *Governance Committee to consider and bring back to the Benchers for further discussion*

LAW SOCIETY COMMITTEES

Background

In the Interim Report, the Task Force observed that the Law Society has a variety of committees engaged in distinctly different activities. Some committees are principally regulatory in function, such as the Discipline and Credentials Committees. Other committees are there to assist the Benchers with advice about specific areas which are of interest to the Law Society, such as the Access to Legal Services or Equity and

Diversity Advisory Committees. Finally, there are several committees whose functions are principally involved with governance and oversight, such as the Executive, Audit and Finance Committees.

The Interim Report noted that in general, committees could be defined by whether they are board committees, which report to an organization's board of directors, or organizational committees, which support the work of the organization. WATSON suggested that greater clarity in the roles and responsibilities of the various committees would be beneficial and that the Benchers should clarify in writing for each committee its purpose, composition and quorum, accountability, duties and responsibilities; meeting practices, reporting requirements and staff support.

The interim report also noted that the current Bencher Governance Policies set out some guidance for the President regarding the appointment of well-qualified persons and ensuring an appropriate mix of Benchers, non-Bencher lawyers and laypersons on Law Society Committees, to ensure both connection to the Benchers and accountability to the membership of the Law Society and the general public. The Task Force therefore recommended that the Benchers should develop a policy that provides a framework for Committee composition and a transparent, skills-based application and appointment process for non-Bencher Committee membership.

Written responses to the recommendations regarding committee composition and functions were generally positive. There was a general consensus that there should be a transparent, skills-based process for non-Bencher Committee membership. There was also a general consensus that there should be a nominating committee with the objective of making recommendations to the President. A majority of Benchers thought the nominating committee should be a subcommittee of the Executive Committee. It was not expected that the subcommittee would be engaged throughout the year. There was no consensus on whether there should be a two-year term for Committee appointments, but some interest was expressed while noting that there are a number of considerations for and against the idea.

Recommendations

5.1. The Benchers should adopt a framework that clearly delineates the types of Committees in place at the Law Society (e.g., Advisory, Regulatory and Oversight). | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

5.2. For each Advisory and Regulatory Committee, the Benchers should establish written terms of reference that address: purpose; composition and quorum;

accountability; duties and responsibilities; meeting practices; reporting requirements and staff support. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

5.3. The Benchers should periodically review the current Advisory Committee structure and ensure that they are satisfied that the Committees in place are the "right" ones (i.e. that they are aligned with the Law Society's revised statutory mandate and strategic priorities.) | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

5.4. The Benchers should develop a policy that provides a framework for Committee composition – specifically addressing the approach to Bencher/non-Bencher composition. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

5.5. The Benchers should establish a transparent, skills-based application and appointment process for non-Bencher Committee membership. | *Governance Committee to consider and bring back to the Benchers for further discussion*

5.6. A nominating committee should recommend Committee appointments to the President for approval. | *Governance Committee to consider and bring back to the Benchers for further discussion*

5.7. Committee members should be appointed annually with the expectation that members will serve a minimum of two years. Membership on Committees should be staggered. | *Governance Committee to consider and bring back to the Benchers for further discussion*

5.8. Committee chairs and members should receive orientation and training around their role and their Committee's role. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

PRESIDENT SELECTION PROCESS AND ROLE

Background

In the Interim Report, WATSON noted that the Benchers' feedback on the President selection process was consistent: although the process is not transparent, it has nonetheless led to the selection of strong leaders. Additional comments gathered during the interview process suggested implementation of a process whereby the Benchers articulate the desirable attributes of a President, to be used as a guide in the election process. A number of Benchers noted that the President's current one-year term is too short.

The Task Force observed in the Interim Report that as the Chair, the President plays a key role in governance effectiveness and the chairperson functions are important to the Benchers' success. And, although the current Bencher Governance Policies contain a description of the President's role, it is very brief. WATSON suggested that boards today often create a comprehensive position description for the board chair that identifies the various roles performed by, as well as desirable personal attributes for, the chair.

WATSON reported that many interviewees expressed the view that the election process for 2nd Vice-President was opaque and "clubby." As a result, WATSON suggested there should be a formal, transparent process to elect the 2nd Vice-President.

Finally, WATSON noted that although modern governance practices indicate that a two-year term for the President improves governance continuity, a two-year term would have to be carefully considered given the increased time commitment and possible narrowing of the pool of willing candidates. As such, it was noted in the Interim Report that the move to a two-year term might be a longer term goal for the Benchers, once some of the more straightforward recommendations had been implemented.

Written responses to the Interim Report expressed general support for development of a more comprehensive position description for the President, to form the basis for the election of the 2nd Vice-President. There were, however, a number of responses that suggested we should not extend the Presidential term to two years and that a succession policy was unnecessary. The discussion at the retreat focused on the concept of a succession plan and while some Benchers were firmly of the view that nothing needed to be done about the 2nd Vice-President selection process, others felt that they didn't have enough information to comment.

Recommendations

6.1. The Benchers should establish a fulsome President Position Description that sets out the President's role, duties and responsibilities and desirable attributes. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

6.2. The President Position Description should form the basis for the election for the Second Vice-President. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

6.3. The Benchers should create a President Succession Planning Policy that would govern the process for nominating the Second Vice-President. The Policy could provide that the Governance Committee leads this process. | *Governance Committee to consider and bring back to the Benchers for further discussion.*

6.4. Media and other relevant training should commence for a Bencher as soon as he/she is elected onto the ladder. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

6.5 In the longer term, consider changing the length of the President's term to two years. | *Not adopted*

EXECUTIVE COMMITTEE

Background

In the Interim Report, the Task Force noted that some of the Benchers see the Executive Committee as creating a two-tier Bencher table or "super board" and others saw it as a necessary structure given the size of the Bencher table. And while the Executive Committee is formally given the responsibility of assisting the President and CEO in establishing the agenda for Bencher meetings, there was some sense that the Bencher agenda does not receive the attention or focus it requires from the Committee. Finally, the Task Force noted that staff rely heavily on the Executive Committee to act as a sounding board and source of advice. However, this means that generally all members of senior staff attend each Executive Committee meeting and results in meetings that are larger and more formal than some members of the Executive Committee would prefer.

Written responses to the Interim Report suggested general agreement with the recommendations but made suggestions for further improvement. Specifically, respondents noted that the Executive Committee should report to the Benchers on a regular basis about discussions and decisions it has made, and that there should be a clear process for Benchers to add items to the Bencher agenda.

Because the Act mandates that the Benchers have an Executive Committee, and because the Benchers comprise a large group, the Task Force remains of the view that it is important that the Benchers maintain an Executive Committee. And in general, there was a consensus that all of the recommendations regarding the Executive Committee should be referred to the Governance Committee for follow up. However, because of the role and importance of the Executive Committee, the Task Force thought that the Benchers should have an opportunity to discuss the recommendations at the governance retreat. As a result, there was a consensus developed that other than the CEO and the Manager, Executive Support, attendance of staff at Executive Committee meetings should be by invitation only. There was also a consensus that the minutes of the Executive Committee meetings should be available to all Benchers. There was also a general concern that the consent agenda is over-used, both at Executive and Bencher

meetings, and that a clear process for Benchers to make additions to the Bencher meeting agenda is lacking.

Recommendations

7.1. The Benchers should come to consensus as to the appropriate role that the Executive Committee should play in the Law Society's governance framework, including delineating more specifically what should be delegated entirely by the Benchers to the Executive Committee (e.g., CEO evaluation, CEO succession planning, approving Committee appointments, etc.) | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

7.2. The Benchers should establish written terms of reference for the Executive Committee (and the Litigation and External Appointments sub-Committees) that address: purpose; composition and quorum; accountability; duties and responsibilities; meetings; reporting requirements and staff support. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

7.3. The Executive Committee should consider inviting members of the management team to participate in portions of Executive Committee meetings as required rather than sitting through meetings in their entirety. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

7.4. The Executive Committee should ensure that adequate time is devoted at its meetings to the preparation and approval of the agenda for the upcoming Bencher meeting. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

OVERSIGHT COMMITTEES

Background

The Bencher Governance Policies charge the Finance Committee with: reviewing the preliminary budget prepared by staff for the upcoming year; providing to the Benchers a due diligence and oversight report on the proposed budget and annual fees and periodically reviewing the financial results during the year. The composition of the Finance Committee is also mandated by the Bencher Governance Policies and proscribes that members of the Finance Committee shall be the First Vice-President and Second Vice-President; two Benchers nominated by the Benchers, at least one of whom is not a member of the Executive Committee; the Chair of the Audit Committee; and one Appointed Bencher. In the Interim Report, WATSON reported that the trend in

governance is away from strict rules around committee membership based on position, with a preference instead for members whose skills and experience align best with the committee's mandate.

The Audit Committee assists the Benchers in determining that the financial affairs of the Society are properly managed by Law Society staff, reviewing with the Law Society auditors the approach and scope of their audit, and reviewing the audit results and approving the audited statements on behalf of the Benchers. WATSON noted in the Interim Report that sometimes organizations will combine their finance and audit committees, and there are different points of view as to whether it is better to combine finance and audit or separate them. The Task Force was advised that while audit committee members must be independent of management and at least one member should have a recognized financial designation, where all members of the finance committee are independent and do not participate with management in setting policy, it is acceptable governance practice to combine the two committees.

In the Interim Report, WATSON noted that it is increasingly common for boards to create governance committees, and that it would be helpful for the Benchers to have a dedicated committee to assist them with the implementation of any revisions to current governance processes and policies. As a result, the Task Force recommended the Benchers establish a Governance Committee.

Written responses to the Interim Report suggested that there was some disagreement about combining the Finance and Audit committees, and this disagreement extended to the discussion at the governance retreat. Some thought that the committees should not be combined, while others thought there was insufficient information available to make a wise decision about this recommendation. There was, however, a fairly clear consensus that appointments to committees should be skills-based.

Recommendations

8.1. Establish a Governance Committee to ensure the Benchers' activities continue to adhere to the ever-changing public interest standards and expectations. Include responsibility for the nominations processes referenced above.| *decided by the Benchers at the retreat, and referred directly to the Governance Committee for follow up and reporting to the Benchers with a proposed mandate and work plan, within 90 days of the Committee's composition*

8.2. Combine the Finance and Audit Committees. | *Governance Committee to consider and bring back to the Benchers for further discussion*

8.3. For each Oversight Committee, establish written terms of reference that address: purpose; composition and quorum; accountability; duties and responsibilities; meeting practices; reporting requirements and staff support. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

8.4. Choose Committee members and chairs on the basis of skills and experience as opposed to title/position | *Governance Committee to develop and bring back to the Benchers for approval and implementation.*

8.5. Provide Committees and their members with the necessary support or education on areas that fall within their areas of responsibility. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

8.6. Oversight Committee members should be appointed annually with the expectation that members will serve a minimum of two years. Membership on Committees should be staggered. | *Governance Committee to consider and bring back to the Benchers for further discussion.*

THE BENCHER AS "TRUSTED ADVISOR"

Background

The Task Force recognized that Benchers fulfill two roles that are not part of the normal responsibilities of most directors or governors: fielding calls from lawyers with ethical questions; and interviewing articled students. The Task Force also recognized that many Benchers feel strongly committed to these aspects of their role. However, as WATSON noted, in their interviews, many stakeholders questioned the propriety and usefulness of both of these duties.

The Task Force was advised that the Law Society appears to be the only law society in Canada that actively encourages lawyers to contact Benchers for ethical advice. By all accounts, the Benchers handle this responsibility with care and diligence. They take notes of the advice they give and recuse themselves from matters when necessary. However, the Task Force recognized that the practice does inevitably create the potential for the Benchers to be setting the standards for professional practice, advising individual members about those standards and also sitting in judgment on whether those standards have been met in individual cases. While the Benchers may be careful to avoid actual conflicts, the practice invariably involves a blending of roles.

With respect to the Bencher role in student interviews, the Act provides that no person may be called to the BC Bar unless the Benchers "are satisfied that the person is of good

character and repute and is fit to become a barrister and a solicitor of the Supreme Court." In addition to other means, the Benchers have historically required that a Bencher personally interview each articled student. The Task Force was well aware that many current and former Benchers consider the articled student interviews an important tradition. However, WATSON suggested that there were other ways that Benchers could be satisfied about the statutory requirement without Benchers personally conducting the interviews. WATSON also noted that as far as they were aware, no other profession engages in this type of admission procedure involving individual members of the governing body.

The written responses to this portion of the Interim Report were almost all in favour of the Benchers' continued involvement in giving advice and conducting student interviews. At the governance retreat, the consensus was that Benchers should continue in the role of trusted advisor and continue to do student interviews. There was, however, an acknowledgement that the Benchers need to develop a protocol and some guidelines around these functions to ensure consistency. There was also some thought that we ought to survey the articled students on their view of the value of the Bencher-student interviews.

Recommendations

9.1 The Benchers should consider whether the Law Society should continue to encourage lawyers to contact individual Benchers for ethical guidance. | *Not adopted*

9.2 If the "ethical guidance" responsibility is to continue, the Benchers should create a formal protocol covering such matters as whether the communication is privileged, if and how the communication is reported to the Law Society how the Bencher recuses him or herself from further involvement in the matter. | *Governance Committee to consider and bring back to the Benchers for further discussion.*

9.3 The Benchers should consider whether they should continue to conduct articled student interviews. Feedback from students on their impressions of the interview process should be considered as part of the Benchers' deliberations. | *Not adopted except with respect to gathering feedback from students for further consideration*

9.4 The Benchers should consider whether a separate Committee composed of non-Benchers could be struck to conduct articled student interviews and answer lawyers' ethical questions. The Committee could be composed of, for example, Life Benchers and/or seasoned lawyers who are not Benchers. | *Not adopted*

CONFLICTS

Background

The current Bencher Governance Policies provide a Bencher code of conduct that sets out a protocol for avoiding even the appearance of conflicts of interest. However, past experience suggested to the Task Force that guidance on the Code of Conduct could be clearer.

WATSON noted that it is common for boards to establish detailed processes that set out how conflicts will be handled. A good policy, in their view, will set out the kinds of conflicts that can occur and a clear process for dealing with conflicts. Given the regulatory function of the Law Society, it was suggested to the Task Force that there be appropriate policies internally to ensure that conflicts are identified and managed. WATSON also recommended that the Law Society initiate a process whereby Benchers declare any interests that may potentially conflict with the interests of the Law Society or his or her responsibilities.

The written responses indicated general agreement with the Interim Report's recommendations in this area. The consensus at the governance retreat was that the conflict declaration is already being done but could be better and that the Governance Committee should develop a more substantial Bencher code of conduct as part of its work.

Recommendations

10.1. The Benchers should enhance the Bencher Code of Conduct to address with greater clarity and specificity the types of conflicts that can arise at the Bencher table and how they will be handled. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

10.2. Require each Bencher to complete an annual Conflict Declaration so that all Benchers are aware of areas of potential conflict. Include any interests the Bencher may have in respect of employment, current or recent board appointments, current or recent community and civic activities, membership in professional organizations, publications, close family links and any other relevant interests. Publish Declarations on the Law Society website. | *Governance Committee to consider and bring back to the Benchers for further discussion.*

10.3. Review the Law Society's internal conflict of interest policies to ensure they are in keeping with public interest standards and expectations. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

POLICY DEVELOPMENT

Background

In the Interim Report, the Task Force observed that there is not an overall framework for policy development that has been approved by the Benchers. WATSON reported that interviewees thought that potential policy issues could be brought forward for deliberation at times on an *ad hoc* basis through various channels, such as individual Benchers, Committees, staff, or the President.

In the Task Force's view, it would be helpful if there were an overarching framework that outlines how policy is developed, from the germ of an idea to the approval of a formal policy.

The Task Force also noted in the Interim Report that currently the Law Society has four standing Advisory Committees. While many organizations handle their policy development in this manner, the Task Force was advised that it is more common today to develop working committees on an *ad hoc* basis, as and when required, to deal with important issues as they arise. In this way, committees stay relevant to the key priority areas and typically are more energized to deal with current, pressing issues.

The written responses indicated general agreement with the recommendations in this area, while observing that the periodic review of committee structures is necessary but that the present Advisory Committees are responsible for policy concerns that simply are not likely to "go away" in the foreseeable future.

Recommendations

11.1. The Benchers should establish a clear framework that outlines how policy at the Law Society is developed and approved. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

11.2. The Benchers should review the Advisory Committees and consider whether they continue to be the priority Committees and/or whether any standing Committees should be replaced with *ad hoc* Committees. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

BENCHER MEETINGS

Background

In the Interim Report, the Task Force noted that the Benchers face two significant challenges when it comes to meeting effectiveness: the number of Benchers; and the public nature of Bencher meetings. Despite those challenges, the Task Force was of the view that the Law Society has done an admirable job of taking steps to ensure that Bencher meetings are as productive as possible. However, it was felt that some discussion about meeting effectiveness was appropriate in light of some of the commentary WATSON reported from the interview process.

WATSON observed that Bencher meetings usually finish by the early afternoon, with the result that there is no time on the agenda for the Benchers to engage in robust debate or discussion around high-level, future-focused strategic issues. WATSON suggested that the time and frequency of Bencher meetings should be determined by the demands of the Bencher's governance responsibilities.

The written responses to the Interim Report reflected a general sense that Bencher meetings could be more effective and that while responses were mixed on some of the recommendations, most recognized that there were some opportunities for improvement. There was a general consensus at the governance retreat that there was work for the Governance Committee to do in enabling the Benchers to function better as a group, and consequently that the Governance Committee should develop the Interim Report's recommendations further for the Benchers' consideration.

Recommendations

12.1. Consider holding fewer Bencher meetings of longer duration (e.g., six times per year for a full day each). | *Not adopted*

12.2. Plan each meeting around issues that must be discussed or decided in relation to the Law Society's' strategic goals, policy, the Benchers' key governance responsibilities and regulatory oversight. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

12.3. Allocate time for each item on the agenda, appropriate to the importance of the issue and length of expected discussion. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

12.4. Ensure that all presentations and reports are sent out sufficiently in advance (e.g., seven days). | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

12.5. Ensure presentations at meetings are short and serve only to highlight key points, not repeat the pre-read information. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

12.6. Create a template for Committee reports. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

12.7. Focus the annual Bencher retreat on strategic planning and policy development (with one full day spent on each). | *Governance Committee to consider and bring back to the Benchers for further discussion*

BENCHER CULTURE

Background

As the Task Force noted in its Interim Report, WATSON reported that the feedback around the Benchers' culture can be broadly classified under two main themes. First, Benchers tend to become very close to one another, which can at times cause a reticence to challenge others' viewpoints or ideas at meetings. Second, the way in which issues are debated sometimes suggests that the goal is not to build consensus, but simply to get a point across.

While the culture at Bencher meetings is collegial, the Task Force's view, as expressed in the Interim Report, was that a culture of engagement could be enhanced if there were in place: a more focused vision for the Law Society; a set of governance policies that set out more clearly roles and responsibilities and the processes followed by the Benchers; and meeting agendas focused on high-level topics related to key strategies, regulatory oversight and governance responsibilities.

One issue raised in the written feedback to the Interim Report was the tendency for Benchers to vote on issues, rather than work towards consensus-based decisions. In WATSON's experience, if a group focuses on positions and voting rather than on tackling an issue together with the goal of arriving at a consensus decision, the debate can fail to bring out the important points of view for consideration. Although consensus is not always possible, it is often identified by boards as an aspirational goal.

Written responses to the Interim Report focused on the suggestion that the Benchers should work towards achieving a consensus. There was some skepticism about whether

this was a desirable goal, since trying to achieve it was felt to be counterproductive to reaching a conclusion. There was no support for changing the name of the Law Society.

Recommendations

13.1 Develop a more fulsome set of governance policies that articulate roles and responsibilities, key governance processes, and conflict guidelines. | *Governance Committee to consider and bring back to the Benchers for further discussion*

13.2 Lead a discussion at the Bencher table on the expectations of Bencher functioning. Incorporate the feedback into the Bencher Meeting Guidelines and ensure culture is reviewed as part of the annual Bencher evaluation process. | *Governance Committee to consider and bring back to the Benchers for further discussion*

13.3 Articulate as part of the President's role the need to gauge the culture in the boardroom and take steps as required to ensure inclusive debate, full participation, and the sharing of diverse points of view. | *Governance Committee to consider and bring back to the Benchers for further discussion*

13.4 The President should attempt to manage the meeting discussion in a way so that whenever possible, the Benchers reach general consensus on issues. | *Governance Committee to consider and bring back to the Benchers for further discussion*

13.5 In the longer term, the Benchers may wish to consider changing the name of the Law Society and its governing body to names that more closely align with the regulatory mandate in the public interest rather than the profession. | *Not adopted*

BENCHER EVALUATION

Background

In the Interim Report, WATSON reported that it was widely acknowledged in the interviews that the Benchers have not in the past conducted formal or in-depth evaluations of their performance. Interviewees expressed both an understanding that regular evaluation is important and a desire to implement a more rigorous process for evaluation of the Bencher table.

The Task Force was advised that virtually all effective boards engage in a formal evaluation process on an annual basis. It is typically the job of a board's governance committee to recommend to the board the form of evaluation and to lead the process, sometimes with external support. If a peer evaluation process is put in place, it is important that individuals are measured against clear and consistent criteria that have

been communicated to each individual in advance. Those criteria would typically be set out in a position description that is agreed upon by all board members.

The written responses to the Interim Report expressed some agreement with the recommendations, but also some reservations about whether the performance feedback would be helpful.

Recommendations

14.1 The Benchers should ensure there is a process in place for an annual evaluation of the Benchers as a whole, the Oversight Committees and the three officers. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

14.2 Once the evaluation processes recommended above have been implemented, the Benchers should consider implementing a peer review process for individual Benchers. The evaluation should be based on expectations of individual Benchers set out in the Bencher Position Description. | *Not adopted*

LAWYERS INSURANCE FUND

Background

In the Interim Report, the Task Force noted that while interviewees were of the view that the Lawyers Insurance Fund ("LIF") is very well -run with well-regarded leadership, some thought that the ownership and operation of an insurance fund for lawyers could conflict with the Law Society's public interest mandate. However, other interviewees felt that the operation of an in-house insurance program is better for the public, arguing that LIF is more sensitive and responsive to the public interest than an independent private insurer would be.

As the Benchers have referred to the Rule of Law and Independence Advisory Committee the issue of whether the operation of LIF is in conflict with the regulatory functions of the Law Society, the Task Force concluded that nothing further needed to be done until such time as that Advisory Committee has reported to the Benchers on this issue. However, if the Advisory Committee recommends and Benchers determine that LIF should remain part of the Law Society, then some further consideration need to be given to oversight of LIF.

WATSON advised the Task Force, based on their experience, that an important governance consideration is whether the Benchers have the skills and expertise to properly oversee LIF. At present, the Bencher Governance Policies provide that the one

member of the Audit Committee is responsible for monitoring material developments and changes to the Insurance program. Members of the Audit Committee have indicated that they do not feel well-equipped as a group to provide the necessary governance oversight for this entity, citing a lack of insurance and investment expertise. As a result, the Task Force recommended that some consideration be given to how the expertise to properly oversee LIF could be provided within the context of the Benchers overall governance structure.

The consensus at the governance retreat was that the Benchers would not make any decisions about the oversight of LIF until after receipt of the report from the Rule of Law and Independence Advisory Committee.

Recommendation

15.1 If the Benchers determine to continue the in-house insurance scheme, a separate independent insurance advisory board should be formed to oversee LIF, made up of non-Benchers who have the required skills and experience (e.g., insurance, investment, etc.). | *deferred pending receipt of the report from the Rule of Law and Independence Advisory Committee regarding LIF and the Law Society*

DISCLOSURE

Background

In the Interim Report, the Task Force noted that the Law Society discloses total Bencher Governance Expenses as a line item in its annual Financial Statements but there is no detail provided beyond the line item. The Task Force also noted that Bencher attendance records are not disclosed.

WATSON observed that in light of the growing expectations of transparency, boards across all sectors are becoming more proactive about disclosure. Two frequently disclosed items are director attendance and director expense reimbursement. WATSON noted that while no major concern was raised in the interview process about these items, the Benchers should consider whether such information ought to be disclosed on an annual basis, in light of the Benchers' commitment to transparency and accountability.

Written responses to the Interim Report indicated some agreement with the recommendations, but specific responses also questioned the utility of disclosing expense reimbursement, since expenses would vary considerably depending on whether the Bencher was from outside Vancouver. One respondent noted that Bencher

attendance records are already disclosed in the Minutes of the Bencher meetings, which are published on the Law Society website.

The consensus at the Bencher retreat was that individual Bencher expenses need not be disclosed, although there was some discussion about providing more granular information in the income statement about what is spent on activities such as the Bencher retreat. The President noted that the CFO and her staff were working on guidelines for Bencher expenses that would be coming to the Benchers for review and approval in the near future. There was also consensus that disclosure of attendance in the Bencher Minutes published on the Law Society website was sufficiently transparent.

Recommendations

16.1 Consider whether individual Bencher expense reimbursement should be disclosed. | *Not adopted*

16.2 Disclose Bencher attendance records. | *Not adopted as already done through publication of the minutes of Bencher meetings*

GOVERNANCE POLICIES

Background

In the Interim Report, the Task Force noted that the current Bencher Governance Policies do not reflect current practice at the Law Society and would need to be amended to accommodate the work of the Governance Review Task Force when adopted by the Benchers. Accordingly, the Task Force recommended that the Bencher Governance Policies and the Rules be revised as necessary to reflect the decisions eventually made.

Both the written responses to the Interim Report and the consensus at the governance retreat reflected recognition that once the Governance Committee had proposed and the Benchers had adopted governance policies and practices, they should be documented in the Bencher Governance Policies.

Recommendations

17.1 Establish a new written governance framework for the Benchers reflecting the policies and practices ultimately adopted by the Benchers. | *Governance Committee to consider and bring back to the Benchers for further discussion*

17.2 The Benchers should revise the Rules to reflect all necessary revisions required based on decisions flowing from this governance review. | *Governance Committee to develop and bring back to the Benchers for approval and implementation*

APPENDIX A

Additional Ideas and Suggestions on Governance

Executive Committee

- Consider appointing outside members to the Executive Committee
- Executive Committee to report to Benchers
- Reinstitute availability of Executive Committee minutes on BENCHER RESOURCES and in the Bencher meeting materials
- Publish Executive agenda in advance to all Benchers

Consent Agenda

- Non-controversial matters only
- Clarify how to remove an item from the consent agenda
- More transparent process for items that get on the consent agenda

Bencher agenda

- Clarify how items get on the Bencher agenda
- Provide process for Benchers to add items to the agenda

Communicating Bencher Role

- Cameras and webcasting of Bencher meetings
- Video available on the website showing potential Benchers what being a Bencher is about
- Provide more information about Benchers duties and responsibilities generally

Committee Participation

- Benchers should rotate through all committees over time

Student Interviews

- Group interview for Vancouver students

Bencher Meetings Outside Vancouver

- In addition to the retreat, consider holding one other Bencher meeting outside of Vancouver

The Law Society of British Columbia

Year End Report

Access to Legal Services Advisory Committee

December 6, 2012

Richard Stewart, QC (Chair)
David Mossop, QC (Vice-Chair)
Haydn Acheson
David Crossin, QC
Tom Fellhauer
Bill Maclagan
Carol Hickman, QC (Life Bencher)
Glen Ridgway, QC (Life Bencher)

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee / Doug Munro

Purpose of Report

As part of the Strategic Plan process, advisory committees are required to report to the Benchers twice a year. In this report the Access to Legal Services Advisory Committee ("Committee") reports out on the work it has engaged in since July 2012. In this report the Committee makes a series of recommendations seeking direction from the Benchers with respect to topics to be explored in greater detail in 2013.

Committee Meetings

Since completing its mid-year report, the Committee met July 12, September 6, October 25, and November 15. As indicated in its mid-year report, the Committee focused on two main topics in 2012: how to improve access to family law services and how to facilitate participation in and the delivery of pro bono.

Pro Bono

The Committee discussed how to facilitate the delivery of and participation in pro bono at each of its meetings. The Committee considered the following issues with respect to pro bono:

1. How should the Law Society define pro bono?
2. Should pro bono participation be mandatory?
3. Should the funding for pro bono be increased?
4. How can participation in pro bono be improved?

1. How should the Law Society Define Pro Bono?

The Committee considered the definition of "pro bono" in the Annual Practice Declaration (APD) and as contained in the Law Society Rules:

> Law Society Rules: "pro bono legal services" means the practice of law not performed for or in the expectation of a fee, gain or reward."
>
> APD definition: "pro bono legal advice or services" means legal advice to or services provided without expectation of fee to persons of limited means or non-profit organizations."

The definition in the Rules does not link pro bono to the nature of the recipient, whereas the definition in the APD links pro bono to persons of limited means or non-profit organizations. This is because the Rules' definition serves a different purpose (bringing "pro bono" within the practice of law). There is the potential for confusion in having different definitions, so communications from the Law Society regarding pro bono need to be clear.

The reason the Committee considered the definition of pro bono is that before one can decide what needs to be done to improve the participation in and delivery of pro bono, one needs to be clear about what one means by "pro bono".

The Committee concluded that while all forms of pro bono are meritorious, the particular types of pro bono the Law Society should focus on improving are free legal services provided to *people* of limited means. While the Law Society might continue to define pro bono to include services to non-profit organizations, our efforts should focus on trying to get lawyers to provide pro bono assistance to people of limited means. The Committee concluded that a potential definition of the type of pro bono the Law Society ought to encourage is: "pro bono means providing legal advice or legal services to individuals of limited financial means without expectation of a fee or reward." The Committee recognizes, however, that there may be other options with respect to identifying how much pro bono legal advice or legal services lawyers are providing to people of limited means and how to encourage such pro bono. Some further analysis of the pros and cons of various approaches is required, and the recommend to the 2013 Committee intends to further develop this work and report to the Executive Committee in 2013 with its findings.[1]

2. Should Pro Bono Participation be Mandatory?

Having determined the type of pro bono that the Law Society should encourage lawyers to engage in, the Committee next discussed whether participation in pro bono should be mandatory. The Committee considered a range of possibilities from a pure mandatory model, to models where lawyers could opt to pay or provide pro bono, to models where lawyers could trade pro bono participation obligations.

The Committee concluded that the Law Society should not require lawyers to perform pro bono, but should encourage lawyers to do so, particularly to provide pro bono to people of limited financial means. As part of its deliberations the Committee discussed the commitment British Columbia lawyers show to improving access to justice through the thousands of hours of pro bono legal services they provide, but also through the economic support they provide to the delivery of pro bono services as part of their Law Society fees.[2]

The reasons the Committee does not favour mandatory pro bono include:

[1] The Executive Committee has jurisdiction over changes to the Annual Practice Declaration.
[2] The 1% general fund contribution to pro bono is discussed in more detail later in this report.

- Making pro bono mandatory alters the essential nature of pro bono; lawyers who provide free legal services to people of limited means should do so out of a belief it is the right thing to do rather than as a requirement imposed by the regulator;
- If pro bono was mandatory, the Law Society would have to enforce the rule and determine how to sanction lawyers who do not provide pro bono. In addition to being administratively impractical, this could have unintended consequences that are ultimately harmful to pro bono;
- Mandatory pro bono might be seen as taking something that is a governmental responsibility and making it the responsibility of lawyers. This could have adverse consequences to the government's commitment to legal aid.

3. Should the funding for pro bono be increased?

During the Benchers' discussion of the 2013 budget, David Crossin, QC raised the issue of the Law Society's funding of pro bono, and whether the current allocation is sufficient or should be increased. The question of whether the current allocation to pro bono is sufficient was referred to the Committee for discussion. The Committee has engaged in preliminary analysis of this topic, but much work remains to be done. If the Benchers wish for the topic to be explored in 2013, the Committee recommends that the Benchers task the 2013 Committee with developing a position for consideration by the Benchers as part of the 2014 budget process.

The Committee makes the following preliminary observations about the topic as an aid to any future consideration of this topic. The Committee has not reached any conclusions as to the adequacy of the current funding amount or approach to supporting pro bono.

At present, the Law Society directs 1% of the general fund fee to the Law Foundation of British Columbia for distribution to promote pro bono in British Columbia. This decision was made at the November 10, 2006 Benchers' meeting. The current model also removes the Benchers from receiving a large volume of petitions asking for funding. The theory is that the Law Foundation, which is well equipped to assess the merits of funding organizations and projects, was a logical body to distribute the 1% of fees. While there are logical benefits to this approach it has the consequence of removing the Law Society from directing where the money is allocated.

Further analysis of this topic requires considering a range of factors. Part of the problem of comparing the 1% pro bono levy to other items in the annual practicing fee is that the other items are set as dollar amounts. The problem with that is a decision to increase the pro bono levy from 1% to 2% does not increase the fee, it merely reallocates the fee to different needs. The advantage of the percentage fee is that as the general fee increases, the allocation to pro bono increases. The problem is that it divorces the levy from an assessment of what is needed.

A good example for contrasting the difference between a percentage versus dollar approach is the increase in funding to the Federation of Law Societies over the past five years. In 2008 the Federation

allocation was $15 and it has been increased three times since then and is now $25 (a 66% increase). This was done because of the value of the Federation and a recognition that the previous fee was insufficient for it to carry out its functions. The Federation is not purely analogous, however, as it is a single organization whereas the Law Society levy on pro bono goes to the Law Foundation to facilitate pro bono as that organization sees fit. The Committee recognizes that it may also be that a consideration of whether to increase funding also requires considering how much of the funding is intended to go to particular organizations.

If the Benchers direct the Committee to further explore the concept of increasing the funding to pro bono, the Committee might want to determine what sort of information is required in order to decide whether to increase funding. Examples include:

- Hearing from the Law Foundation of British Columbia to see how pro bono has been funded since the 1% levy was put into effect, including where the funds were directed and what additional funds the Law Foundations directs to pro bono and how many projects requested funding but do not receive it;
- Hearing from organizations that receive funding from that 1% to get a better understanding of their current and projected needs, the types of services that are being provided, and how additional funding would be spent.

Before making a decision regarding the sufficiency of the current 1% allocation, consideration should be given to what kind of pro bono the Law Society wishes to encourage, how much of the existing funding is being directed to that type of pro bono, how the funding is being used, and an assessment of future needs. While it is perfectly acceptable to engage in a "values-based" discussion of whether the Law Society should provide more money to pro bono than The Advocate, the ultimate decision regarding the sufficiency of pro bono funding should be directed at identifying on a "needs-basis" the appropriate level of funding for pro bono. The Committee's consideration of improving delivery of pro bono at Justice Access Centres ("JACs") (see next section) is an example of a needs-based topic that can influence the discussion of what funding is appropriate.

The Committee recognizes that the potential need for free legal services dwarfs the capacity of the profession to meet. In addition, the question of whether funding pro bono is an obligation of the profession or amounts to a values-based donation has not been discussed. The Committee is not suggesting that "need" should dictate the amount of funding, but it should *inform* any determination of what amount is appropriate.

Any discussion of whether to increase funding to pro bono should also involve input from Jeanette McPhee, CFO for options on how to approach things from an accounting/budgeting perspective. It is important, however, to have the needs-based discussion first and then supplement that analysis with an accounting perspective before arriving at conclusions. Ultimately the Finance Committee would be responsible for determining how best to implement any policy decision the Benchers make with respect to whether the current funding approach to pro bono should be modified.

4. How can participation in pro bono be improved?

The Committee discussed a range of concepts for improving participation in pro bono. The discussions led to consideration of two approaches: how to encourage participation in pro bono at clinics and how to support and encourage the delivery of pro bono by law firms?

Encouraging Pro Bono Participation at Clinics

The Committee discussed how pro bono can be facilitated at legal clinics in general, and in particular at JACs.

The Committee had several meetings in 2012 where it met with government representatives regarding what, if anything, the Law Society might do to encourage lawyers and paralegals to engage in pro bono work at JACs.

On a number of occasions the Benchers have had presentations regarding JACs, so the Committee will not detail these programs. The Ministry of Justice has information on the Vancouver and Nanaimo JACs on its website and a JAC in Victoria is currently under development.

On October 25th the Committee held a meeting at the Vancouver JAC and was given a ground-level walkthrough. This meeting was very useful and reinforced the benefit JACs provide to members of the public. The Vancouver JAC co-locates several services, including the former British Columbia Supreme Court Self-help information centre, family law counsel services supported by Legal Services Society, pro bono services supported by Access Pro Bono, and the Amici Curiae pro bono program (which operates on Wednesday evenings). The JACs allow for diagnosing of people's problems and methods to stream them to the needed resources. It can also facilitate mediation services in family law. What the Committee was told from the Ministry of Justice representatives, however, is that there is a real need to expand the civil law services. The government has the capacity to act as a "landlord" and provide some infrastructure, but needs partners like Legal Services Society and Access Pro Bono to make the JACs work. They hope that the Law Society can work with the Ministry to see how the JACs' civil services can be expanded.

The discussions were wide-ranging, including considering whether the Law Society should encourage lawyers to provide pro bono at JACs, how the services of JACs might be brought to remote communities through innovative usage of technology and establishing a template for clinics that communities could follow.

The Committee suggests the following reasons for the Law Society to encourage lawyers to participate pro bono at JACs**:**

- JACs provide an important service in the access to justice landscape in British Columbia. JACs provide this service in a time of considerable fiscal pressure on both government and citizens. Despite this pressure, government has committed to opening an additional JAC in Victoria. As long as JACs are not diverting funding from legal aid or the courts, there is value in supporting the future growth of the model;
- JACs, much like other clinic models, leverage resources to magnify the access to justice benefit any one individual can create. While the Committee recognizes and values the individual pro bono contributions of lawyers, and believes pro bono at the law firm level is to be encouraged, it also recognizes that when an individual lawyer is networked into a clinic dedicated to providing improved access to justice, the lawyer's time can be more efficiently directed to providing needed services to the public. At the clinic the lawyer does not have to deal with running a business;
- Partnering opportunities allow the JAC to collocate legal information and legal advice services. What this means in practical terms is that an individual who sets aside time to visit the JAC can have a more efficient use of time than an individual who attends a lawyer's office for 30 minutes and is then directed off to find other resources (assuming the services are essentially unbundled in nature);
- JACs (as well as other clinics) are better equipped to provide training and support for lawyers and paralegals to get them up to speed in areas of law for which there is great public need. In other words, lawyers who feel they might not be suited to provide poverty law services have a better chance to receive training through clinic supported environments than going it alone.

In addition to the benefits outlined above, there is value in the Law Society and the profession supporting the development of JACs because the government approached the Benchers at the November 2011 meeting and openly requested the Law Society's assistance. Part of the Strategic Plan involves working to develop a strong relationship with the Ministry of Justice (Initiative 3-1(a)). This recognizes that when the government and the Law Society can work collaboratively to improve the public's access to justice, in a manner consistent with s. 3 of the Legal Profession Act, there is merit in doing so.

The Committee recommends that the Benchers direct the 2013 Committee to further develop and report back on the topic of how to facilitate lawyer participation at JACs and to consider what steps, if any, the Law Society can take to facilitate greater access to JACs throughout British Columbia.

Supporting and encouraging the delivery of pro bono by law firms

The Committee recognizes that lawyers provide a considerable amount of pro bono and that it is important to both acknowledge and support these efforts. While much of this report focuses on funding issues, and how to support participation of pro bono in clinics, it is not the intention of the Committee to diminish the value of pro bono provided by lawyers outside a clinic setting. When it comes to

engaging the profession in smaller communities, care has to be given to recognize that a clinic model that works well in Vancouver might need a different approach and a different set of community partners.

The Committee spent a little bit of time discussing how the Law Society might support lawyers and firms to provide pro bono. The Committee is of the view that many lawyers and firms would benefit from assistance in setting up a plan for engaging in pro bono. The concept is to identify what type of practice support lawyers could use to make it easier to provide pro bono but also to get lawyers over the hurdles that stand between their practice and a practice that includes pro bono. This might include profiling efforts of firms of various sizes with robust pro bono practices, both to tell their pro bono story and share best practices for how to integrate pro bono into a law firm's culture.

The Committee has not developed this further, but if the Benchers wish the Committee can develop this concept in greater detail in 2013.

Family Law

As indicated in its mid-year report, in addition to discussing pro bono, the Committee explored ways to improve access to family law legal advice. As the Committee explored the topic at greater length it was struck by the considerable number of organized family law resources that are available in British Columbia, be it through government funded services, initiatives supported by pro bono services, the Legal Services Society or organizations funded by the Law Foundation of British Columbia. In the realm of public legal information, ClickLaw is an excellent resource. When one adds to this the services of lawyers, a picture develops of a fairly vast array of services. From the Committee's perspective the greater challenge with access to family law services might be less an issue of the existence of services and more an issue of integrating services and making a true network of legal services available to the public in a clear and easy to navigate fashion.

When the Committee met with representatives of the Ministry of Justice to discuss JACs, it was made clear that where help is needed is expanding the delivery of civil law services through JACs and that the family law services were in relatively good order. In a circuitous manner this led the Committee back to the issue of family law and the disconnected array of services and reinforced the notion that clinic models like the JACs, which can collocate many family services, are a model worth supporting. If JACs can be brought to more communities throughout British Columbia it will have a benefit to the overall delivery of family law services in the Province, because at present family law services are what JACs do best.

Monitoring Function: The Ministry of Justice "White Paper on Justice Reform"

At the October 25th meeting the Benchers received a copy of the Ministry of Justice White Paper, *A Modern, Transparent Justice System*. The Committee understands that the Benchers will have a discussion about the White Paper at their December meeting. A brief summary of the Committee's discussion of the White Paper follows.

In addition to a general discussion of the White Paper the Committee considered the following questions:

1. Should the Law Society be supportive of the general vision/plan set out the in the White Paper?

2. Should the Law Society offer to participate in the process going forward, including at the justice summit and if possible as part of the Justice and Public Safety Council?

3. Should the Law Society recommend that the Justice and Public Safety Council consist of participants beyond merely government?

1) Should the Law Society be supportive of the general vision/plan set out the in the White Paper?

The Committee believes the Law Society should be supportive of the effort to make the justice system more effective, cost-efficient, accessible and comprehensible to the public. The White Paper proposes a method for accomplishing these objectives and it is worth exploring the concepts set out in the White Paper in greater detail to see how the justice system might be improved.

2) Should the Law Society offer to participate in the process going forward, including at the justice summit and if possible as part of the Justice and Public Safety Council?

The Committee believes the Law Society should participate in the discussion of the reforms. At a minimum this would include participating at the proposed justice summit and at the advisory level, but the Committee also believes it is worth exploring whether the Law Society might participate as a member of the Justice and Public Safety Council. Before requesting whether the Law Society can participate as part of the Justice and Public Safety Council the Benchers may wish to seek clarification as to what that Council's exact role is. If the Council is merely an administrative group within government that brings together various ministries and departments in order to coordinate resources and better determine operational matters, then it would not be appropriate to seek to participate in that body. If, on the other hand, it sets a *vision* for the justice system, then it would be appropriate to participate. It makes sense to clarify this before taking a final position on whether our participation in that body is required.

Part of the ambiguity arises from how the Council is described and the reason non-governmental stakeholders are excluded. The White Paper suggests "the independence of key actors in the system precludes them from being part of the Council" (p. 10) and that these voices will be captured through justice summits and other engagements. The Committee does not believe the Law Society's independence is compromised by participating in a council that has the mandate of setting the strategic direction and vision for the justice system. It is not clear how such participation would compromise self-regulation or the independence of the legal profession.

At some point in the discussions of how to reform the justice system the question of proper funding of the system will arise. When this occurs, it is important for the Law Society to advocate for proper funding of the justice system. It is also important to ensure that the proposed reforms and associated infrastructure do not take money out of an already stressed system, shifting the funding from existing services to pay for justice summits, business analyses and an associated bureaucracy. But it is also important to recognize that "proper" funding also requires understanding the objects of the justice system and also the means by which those objects are achieved. It requires understanding what needs to be improved and what needs to be preserved and then marshalling the factual evidence for more funding. For good or ill, the justice system must compete for funding with other essential services in society, some of which are more able to demonstrate how the funding of certain programs leads to a variety of benefits to society (including cost benefits). The absence of empirical data within the justice system as to how it operates will make these discussions difficult, but also speak to the importance of developing models by which this data can be better collected. Simply calling for more funding without first trying to address these issues will at best fall on deaf ears and at worst affect the Law Society's credibility.

While participating in the Justice Summit is important, it is also important to be able to articulate a vision for the justice system so we are able to state in clear terms why we are taking the positions we take when issues are discussed at the Justice Summit. This may require the Benchers to spend some time considering what perspectives the Law Society intends to bring to the Justice Summit in advance of it taking place.

3) Should the Law Society recommend that the Justice and Public Safety Council consist of participants beyond merely government?

Because the Justice and Public Safety Council will "be responsible for setting the strategic direction and vision for the justice system" (p. 10) it is important for the Law Society and other stakeholders to be involved. Involvement at the council level is preferable to involvement through periodic consultations. This is contingent on what we discover under #2 (above) regarding clarifying the purpose of the Council. Much of what is suggested in the White Paper relates to trying to develop business metrics for determining efficiencies, particularly cost efficiencies within the justice system. A *vision* for the justice system requires additional considerations and it is important for those considerations to be brought to bear in the deliberations of the Justice and Public Safety Council. At the same time, the Law Society has

experience in developing its regulatory systems reviews and the Committee believes the Law Society can add value to the systems discussion the Council will undertake.

The Committee is also of the view that if the Justice and Public Safety Council is developing a vision for the justice system, rather than merely coordinating government efforts regarding the justice system, the Council needs expertise outside government and the legal profession to help develop a model for measuring outcomes in the justice system. Government, the judiciary and the legal profession can articulate the essential values and requirements of the justice system, but collectively may lack the expertise to translate those values into a delivery model that achieves the objects of fairness,[3] timeliness and cost-effectiveness.

Synthesis of discussions in 2012 and Recommendations

The majority of the Committee's focus in 2012 was on how to advance participation in and the delivery of pro bono. Other concepts were explored but those discussions often led back to the topic of pro bono. The Committee believes this work merits more detailed discussion and development in 2013. In order that the work of the Committee is carried forward in 2013, the Committee seeks instruction from the Benchers in the form of the following recommendations.

Recommendation 1: In 2013 the Access to Legal Services Advisory Committee will continue to consider whether the current 1% allocation of general fees to support pro bono is appropriate and report to the Benchers in time for the Benchers to make a policy decision prior to the Finance Committee completing its budgeting process for the 2014 budget.

Recommendation 2: In 2013 the Access to Legal Services Advisory Committee will continue to consider how to improve participation in and delivery of pro bono, with particular focus on how to expand the delivery of civil legal services through Justice Access Centres, including what steps the Law Society might take to facilitate greater access to JACs throughout British Columbia.

[3] Lawyers and the judiciary will likely be better able to address matters of fairness than timeliness and cost-effectiveness and the external experts will likely be better able to address system efficiencies than concepts like fairness. If lawyers are to shape the future of the justice system, we as a profession must also ask what we can do better to deliver more timely and cost-effective access to justice.

The Law Society of British Columbia

Report to Benchers
December 2012

EQUITY AND DIVERSITY ADVISORY COMMITTEE: YEAR END REPORT

Committee Members:

Thelma O'Grady, Chair
Satwinder Bains, Vice-Chair
Maria Morellato, QC
Suzette Narbonne
Barry Zacharias
Elizabeth Hunt
Amyn Lalji

Purpose of Report: Information

Prepared by Policy & Legal Services Department
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Equity & Diversity Advisory Committee: Year End Report

I. Introduction

The Equity & Diversity Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.

From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

The mandate is to:

- monitor and develop effective equity and diversity in the legal profession and the justice system in British Columbia;
- report to the Benchers on a semi-annual basis on those developments;
- advise the Benchers annually on priority planning in respect of issues affecting equity and diversity in the legal profession and the justice system in British Columbia; and
- attend to such other matters as the Benchers or Executive Committee may refer to the advisory committee from time to time.

II. Topics of Discussion: January to December 2012

The Committee met on January 26, April 12, May 10, July 12, October 25 and December 5, 2012. In addition, the Committee arranged a meeting on September 6 with Ellen Schlesinger, to which it invited interested benchers and lawyers. The following items have been addressed by the Committee between January and December 2012.

1. Indigenous Lawyers

(a) Indigenous Lawyer Mentoring Program

Phase 1 of this Program, which involves research and engagement in connection with best practices for mentoring programs, has been completed and a Report was presented to the Benchers at their July meeting. The report was well-received. The report laid the ground work for moving into Phase 2 of the Program, which is to develop, from the work done in Phase 1, a detailed collaborative mentoring model. It was anticipated that this

work could begin by mid-November with the hiring of new policy staff. Because the position, however, has yet to be filled, this time line has consequently had to be delayed.

(b) Supporting the Canadian Bar Association (British Columbia Branch) Aboriginal Lawyers Forum Retreat

On the recommendation of the Committee, the Law Society has continued to sponsor this retreat.

(c) Supporting the Canadian Bar Association (British Columbia Branch) Aboriginal Law Students Scholarship Trust Reception

On the recommendation of the Committee, the Law Society has contributed $2,500 to this function in the past to assist in the presentation of a reception. This year, the Law Society's contribution has been able to be used entirely for building a trust itself, as the CBA has been able to secure other funders.

(d) Aboriginal Graduate Scholarship

On the recommendation of the Committee, the Benchers approved the creation of a scholarship for aboriginal law students intending to pursue graduate legal studies. The Scholarship will be available in 2013.

2. Women Lawyers

(a) *Justicia* Project

The Committee has continued to pursue the feasibility of implementing the *Justicia* project.

The first phase, through which the *Justicia* project will be implemented through national firms with offices in British Columbia as well as through the larger regional BC–based firms, was launched at a Managing Partners Summit that was held on November 20 at the Vancouver offices of Gowlings. Approximately twenty firms were represented at the Summit. Two firms committed to the project on November 20, and several others expressed an intention to do so shortly. It is hoped that all firms represented at the Summit will make a commitment to the project, and that meetings of the Diversity Officers nominated by the firms will begin early in 2013.

The *Justicia* project is also being implemented in Ontario (which began the project in 2008) as well as in Quebec, Alberta and Manitoba. The Committee will monitor progress of the project in those jurisdictions, and will expect to receive reports on any national issues through staff attendance in conjunction with the Federation of Law Societies Law Societies Equity Network.

The launch of the *Justicia* project was well covered in the media. Ms. O'Grady was interviewed by CBC Radio in Victoria, and is being interviewed by the Lawyers' Weekly. The initiative was also presented in the Kamloops media, and an article was written about it in the *Vancouver Sun.*

(b) Panel on Women in the Profession for UBC Law

Ms. Morellato and Ms. Tam spoke on a panel at the UBC Faculty of Law early in 2012 with respect to the retention of women in the legal profession. The panel discussion was reported to have been very good, with a large group of energetic and interested students seeking information and advice. The students asked very good questions about how to find out about diversity programs and initiatives at law firms.

(c) September 6 Presentation by Ellen Schlesinger

The Committee hosted a meeting on September 6, 2012 at which Ellen Schlesinger, who has recently completed research for a thesis for post-graduate study at the Adler School of Professional Psychology, presented findings relating to career transitions of female lawyers, including themes behind the reason women left the practice, how they were feeling at the time they decided to leave, and the characteristics of their current careers.

The meeting was opened to attendance by Benchers and members of the legal profession as well, and was very well attended.

Ms. Schlesinger was featured in the Fall 2011 edition of *Benchers Bulletin*.

(d) Maternity Leave Benefit Loan Program

The Committee considered this program that was approved by the Benchers in 2010. When the program was approved, the Benchers resolved that the terms of the loan would be determined by the Executive Director. The Committee noted that the program has only been utilised 5 times by 4 lawyers since being introduced, and is therefore in the process of making a recommendation to the Executive Director to consider a minor alteration to the terms of the program that would allow lawyers to retain practising membership status in order to be able to maintain their practices for when they are able to return after the loan period terminates. Further consideration will be given to the program in the new year. The Committee, through its monitoring function, has noted that the Ontario Maternity Grant program is being reconsidered.

3. Diversity

(a) *Towards a More Diverse Legal Profession: Better Practices, Better Workplaces, Better Results*

Staff completed the demographic and diversity report entitled *Towards a More Diverse Legal Profession: Better Practices, Better Workplaces, Better Results* and, in conjunction with the Communications Department, considerable progress has been made on the development and communications strategy for releasing the report and information to the profession and public generally. Ms. Tam was interviewed on the CBC morning program earlier in the year to this end as well. The report has been well-received.

(b) Enhanced Demographic Question

On the recommendation of the Committee, the Executive Committee has agreed to amend that the Annual Practice Declaration in order to include a question that seeks further information on the demographic make-up of the legal profession. The question approved by the executive Committee was:

> LAWYER DEMOGRAPHICS
>
> *The Law Society is committed to enhancing equity and diversity in the legal profession in BC. The purpose of this question is to understand more about the demographics of the legal profession to help identify any arbitrary barriers to entry and advancement. Answers to this question will be kept confidential and are collected for statistical purposes only.*
>
> Please check any of the characteristics with which you identify. Please select all that apply.
>
> Aboriginal/Indigenous – First Nations, Metis, Inuit
> Visible Minority/Racialized/Person of Colour
> Person with a Disability
> Lesbian/Gay/Bisexual/Transgender
> I do not identify with any of these characteristics
> I choose not to answer this question

The revised Declaration will be ready for January 1, 2013, which will ensure that the majority of lawyers whose year-end is December 31 will be using the revised form.

(c) Law Societies' Equity Network

Ms. Tam chaired the Law Society's Equity Network conference hosted by the Federation of Law Societies of Canada in Ottawa in May. The theme of the conference was "measuring progress" with a focus on how to measure and demonstrate results with respect to initiatives being undertaken. One of the collaborative projects being

undertaken by the network is to compile the demographic data from various jurisdictions across Canada in order to create a national equity profile.

(d) Bencher Diversity

This topic is part of Initiative 1-2(a) of the current strategic plan. The issue was actively considered at the Bencher governance retreat and will be considered further by the Governance Committee as it works through the recommendations and implementation of the governance review. The Committee will ensure it monitors progress of the initiative, and will lend its support and assistance as required.

(e) Diversity on the Provincial Court

The Law Society received correspondence from the Judicial Council of British Columbia seeking any assistance that the Law Society and the Canadian Bar Association (BC Branch) may offer to encourage all members of the legal profession to consider applying as judicial candidates. The Judicial Council particularly noted the Committees report entitled *Towards a More Diverse Legal Profession: Better Practices, Better Workplaces, Better Results*.

The Committee has had some preliminary discussion to address the issue, and will liaise with Canadian Bar Association on the topic.

The Law Society of British Columbia

Report to Benchers
December 2012

RULE OF LAW AND LAWYER INDEPENDENCE ADVISORY COMMITTEE: YEAR-END REPORT

Committee Members

Kathryn Berge, QC, Chair
Herman Van Ommen, Vice-Chair
Richard Stewart, QC
Jan Lindsay, QC
Leon Getz, QC
Claude Richmond
Craig Dennis
Cam Mowatt

Purpose of Report: Information

Prepared by Policy & Legal Services Department
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Rule of Law and Lawyer Independence Advisory Committee: Year-End Report

I. Introduction

The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

The mandate of the Committee is:

- to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure

  - its processes and activities preserve and promote the preservation of the Rule of Law and effective self governance of lawyers;

  - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and

- to monitor issues (including current or proposed legislation) that affect or might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues.

The Committee has met on January 25, February 29, April 11, May 9, and June 13, July 11, September 5, October 4, October 24, and December 5, 2012.

This is the year-end report of the Committee, prepared to update the Benchers on the deliberations by the Committee in 2012.

II. Overview

The purpose of the Advisory Committee arises from the object and duty of the Law Society as set out in section 3 of the *Legal Profession Act.* The object and duty of the Law Society is to uphold and protect the public interest in the administration of justice in a number of specific ways. The first is to preserve and protect the rights and freedoms of all persons, and the second is to ensure, amongst other things, the independence of lawyers.

The rule of law is a fundamental principle underlying Canadian democracy. The preamble of the *Charter of Rights and Freedoms* states that the rule of law is one of the principles upon which Canada is founded. The rule of law is a fundamental postulate of Canada's constitutional structure.[1]

The rule of law is required, amongst other things, to provide for impartial control of the use of the power of the state. This requires a judiciary that is independent of the legislative and executive branches of government, as well as a strong, independent, properly qualified legal profession to support it. Lawyers play a fundamentally important role in the administration of justice, and in the absence of a skilled and qualified independent legal profession, the whole legal system would be in a parlous state.[2]

Lawyer independence is the fundamental right guaranteeing citizens that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government, subject only to the lawyer's professional responsibilities as prescribed by the Law Society, and the lawyer's general duty as a citizen to obey the law. It is not a right that is well understood and, the Committee suspects, neither are the consequences of it being diluted or lost. Canadians are generally fortunate to live in a society that recognizes the importance of the rule of law.

The rule of law is, the Committee has concluded, best protected by lawyers who operate and are regulated independent of government. Preserving and protecting the right of self-governance, however, requires that the confidence of both the public and those who are being governed is maintained. The exercise of the right must therefore be carefully monitored to ensure that the right is not lost.

Upholding and protecting each of the rule of law and lawyer independence is therefore an important task in the discharge of the Law Society's mandate.

The Committee, and its predecessors, has addressed its work at monitoring issues relating to incursions of lawyer independence and the rule of law both abroad and also in Canada. The need to understand what is happening in Canada is relatively self-evident. Knowing what is happening in other countries can be instructive of trends that may find their way to Canada in the future. Understanding those trends allows the Law Society to be prepared to address them.

From time to time, the Committee has focused its analysis on particular issues, sometimes as they happen elsewhere in the world (for example, changes to regulatory structures of the legal profession in England and Australia, or the development of Alternate Business Structures), and sometimes as they arise within the operations of the Law Society itself in order to ensure the Law Society is in the best position it can be to retain public confidence in its role and function within society (such as examining whether to separate the adjudicate and investigative functions of Law Society operations). The Committee has provided its reports over the years on various matters to the

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[1] *Roncarelli v. Duplessis* [1959] S.C.R. 121 at p 142, per Rand J.
[2] *Andrews v. Law Society of British Columbia* [1989] 1 S.C.R. 143, per McIntyre J.

Benchers. These reports have informed Bencher policy discussion on important topics so that the Benchers can ensure that Law Society processes and activities preserve and promote the preservation of the rule of law and effective self governance of independent lawyers.

III. Work of the Committee: January to December 2012

The Committee's work this year has been heavily focused on the Strategic Plan initiatives that were assigned to it by the Benchers. Other work that remained from past reports or items of importance concerning the Rule of Law and lawyer independence were kept on the agenda to varying degrees.

1. Strategic Plan Initiatives Assigned to the Committee

At the beginning of the year, the Benchers assigned to the Committee two specific initiatives from the Strategic Plan for the purposes of debate and recommendation:

(a) Initiative 1-1(b) (to examine the relationship between the Law Society as the regulator of lawyers and the Law Society as insurer of lawyers); and

(b) Initiative 1-1(c) (to examine whether the Law Society should regulate just lawyers or whether it should regulate all legal services providers).

The Committee devoted a portion of its time at each of its meetings to addressing these two items. The debate on the relationship between the Law Society as regulator of lawyers and the Law Society as insurer of lawyers has occupied most of the available meeting time in the latter half of this year. Indeed, the Committee scheduled an extra meeting, and extended the length of its regular meetings, in order to address this subject.

(a) Initiative 1-1(b): the relationship between the Law Society as the regulator of lawyers and the Law Society as insurer of lawyers.

The Committee was asked to give to the Benchers some clear guidance on the issue of the relationship between the Law Society as a regulator of lawyers and the Law Society as an insurer of lawyers. The Committee has in the past, in its mid-year and end of year reports, stated that it believed that examining whether the divergent interest of the Law Society as a whole and the Law Society operating through its insurance department posed any concern to the promotion and preservation of lawyer independence and effective self-governance of lawyers.

The debate has never been about the operation of the insurance program as a stand-alone program. Rather, the discussion has always concerned the diverging interests and duties of the Law Society acting as a regulator and the Law Society acting as an insurer of lawyers, having noted in particular that the incursion on lawyer independence and self

governance in other jurisdictions arose, at least in part, due to an apparent loss of public confidence that the regulating body was acting first and foremost in the public interest.

Now that the issue has found its way on to the Strategic Plan and the Committee has been asked to give specific consideration to the topic for the purposes of making recommendations, the Committee undertook an examination of the history, strengths and weaknesses of the existing relationship between the insurance program and the rest Law Society.

To that end, the Committee has reviewed the structures that pre-existed the current program through which insurance was provided to lawyers, and has received detailed information from the Director of Insurance about the operation of the current program. The Director of Insurance and the Chief Financial Officer have also attended meetings of the Committee to assist in its understanding of the current relationship between the insurance program and the Law Society and the reasons underlying the structure of that relationship. Details on that structure have been provided and considered. The Chief Executive Officer has attended a Committee meeting to discuss operational considerations arising from the operation of both programs by the Law Society, and to identify some operational consequences that may arise from a separation of the two programs. The Chief Legal Officer and the Manager of Investigation, Monitoring and Enforcement have also attended meetings to discuss the relationship between insurance and regulation from the point of view of the regulating authority. The Committee has also reviewed a range of possible models for such self-insurance programs and their likely advantages and disadvantages for the Law Society. In doing this, it has been clear that some models would not offer the Law Society any substantial overall advantages, while others would be worth considering.

The Committee has now considered and has a fairly thorough understanding of the rationale for the current structure. It has discussed the operational considerations that result from integrating the insurance department with the rest of the Law Society, and what consequences would flow from a different structure. It has spent a considerable amount of time debating the public interest issues that arise. The public interest requires an efficient program of insurance. The public interest also requires the public to be be confident that, despite the fact that the Law Society may defend or appoint lawyers to defend a lawyer facing a claim relating to an alleged error, the Law Society can still properly investigate alleged misconduct conduct of that lawyer, and, if necessary, sanction the lawyer effectively – even where the conduct giving rise to the claim and the investigation is based on the same facts or event.

As a result of its examination of this topic, the Committee recognizes that there is an issue that the Law Society should address, and that a clear articulation of the issue is necessary when determining what options should be considered by the Benchers. The Committee has begun writing its report, and needs to continue its debate on how to frame the issue and finalize the advice to be given to the Benchers. The Committee expects to report to the Benchers on the results of its examination of the issue, together with options to address solutions, in the first part of 2013.

The Committee will also consider, arising out of the debate it has had on this issue, whether the Law Society should consider implementing a policy concerning Benchers acting for plaintiffs where the defendant is a lawyer in a matter on which the Lawyer's Insurance Fund is acting for, or has appointed counsel for, the lawyer.

(b) Initiative 1-1(c): whether the Law Society should regulate just lawyers or whether it should regulate all legal services providers.

The Committee spent some time earlier in the year considering how it would analyze this issue from the perspective of lawyer independence and self regulation. The Committee was cognizant, however, that the issue was also being examined from the access to justice perspective.

Ultimately, the Committee agreed that rather than bifurcating the study of this issue through the Rule of Law and Lawyer Independence Advisory Committee and the Access to Legal Services Advisory Committee, it would be advisable to create one task force to analyze the issue. That Task Force (the Legal Services Provider Task Force) was created by the Benchers in July, and consequently the Committee has taken this issue off its agenda, although it expects it will review the report of the Task Force when it is completed.

2. Other Work of the Committee

(a) Name Change

At the December 2011 Benchers meeting, the Committee presented a memorandum recommending a change of name and a modification to the mandate of the Committee. In part, the recommendation was premised on the ability for the Law Society to be able to better communicate with the public in order to make the connection between lawyer independence (a term that is often misunderstood by the public as a right of lawyers rather than a public right) and the Rule of Law. The Benchers, having recognized that the composition of the Committee could change in 2012, deferred consideration of the Committee's request for a name change until a later meeting.

The Committee discussed the advisability of a name change at its January meeting and agreed that the new name as proposed (The Rule of Law and Lawyer Independence Advisory Committee) better reflected what the work of the Committee was. It would also have the added benefit of permitting the Law Society to better communicate with the public in order to make the connection between lawyer independence and the Rule of Law. The Committee also agreed that a revision to its mandate would need some consideration. The name change and revised mandate (both of which are reflected above in this report) were both approved by the Benchers at their March 2, 2012 meeting.

(b) Alternate Business Structures ("ABSs")

The Committee completed its report to the Benchers on ABSs in October 2011. The Benchers asked the Committee to continue monitoring the development of ABSs in the United Kingdom and the United States. The Committee agreed to devote some time throughout the year to this subject. It has been monitoring various media information on the development of the debate in the United States, and the effect of the introduction of ABSs in England and Wales.

The Committee provided a brief report updating the development of the debate surrounding ABSs in the United Kingdom, the United States, and Europe at the October Benchers meeting.

(c) Initiative 3-2(a): methods to communicate through the media about the role of the Law Society, including its role in protecting the Rule of Law

The Committee identified that Initiative 3-2(a) of the Strategic Plan resonates with the mandate of the Committee. That initiative is to identify methods to communicate, through the media, about the role of the Law Society, including its role in protecting the Rule of Law.

The Committee has had a report from the Communications Department on activities undertaken to explain and promote lawyer independence and the Rule of Law, and concluded that it did not need to develop separate programs for such education at this time. However, the topic remains one of importance to the Committee and the Law Society in general, as reflected by the fact that it forms one of the Society's current strategic initiatives. Given the statutory mandate of the Law Society, it is very important to ensure that the public is well-informed about the role of the Law Society in protecting the rule of law. The Committee will expect to address this topic further in 2013 and will continue to liaise with the Communications Department to that end.

(d) *Civil Resolution Tribunal Act*

The Committee has examined and debated the provisions of the *Civil Resolution Tribunal Act* and identified that there are matters in it that raise issues concerning the rule of law and lawyer independence. Of particular note is the section prohibiting the ability of a participant in the process from being represented before the Tribunal by anyone, including a lawyer, except in particular circumstances, but there are other concerns in the legislation that may adversely affect the public interest in the administration of justice as well, which the Committee has helped to identify.

The Committee supported the Law Society's participation, together with other participants in the justice system, in a government working group concerning the implementation of the Act, and the Committee has offered its assistance in that regard. Jan Lindsay, QC, a member of the Committee, has been appointed as the Law Society's representative to the working group.

The Law Society of British Columbia

Report to Benchers
December 7, 2012

Lawyer Education Advisory Committee: Year-End Report

Committee Members

Thelma O'Grady, Chair
Nancy Merrill, Vice-Chair
Vincent Orchard, QC
David Renwick, QC
Phil Riddell
Catherine Sas, QC
Ken Walker
Tony Wilson
Johanne Blenkin

Purpose of Report: Information

Prepared on behalf of the Lawyer Education Advisory Committee
Alan Treleaven, Director, Education & Practice
604-604-5354

INTRODUCTION

This is the Lawyer Education Advisory Committee's year-end report, summarizing the Committee's activities for the second half of 2012.

The Committee's mandate is to

(a) monitor developments affecting the education of lawyers in BC,

(b) report to the Benchers on a semi-annual basis on those developments,

(c) advise the Benchers annually on priority planning and respective issues affecting the education of lawyers in BC, and

(d) attend to such other matters as the Benchers or the Executive Committee may refer to the advisory committee from time to time.

COMMITTEE ACTIVITY SUMMARY FOR 2012

Pursuant to the Law Society Strategic Plan, the Committee's 2012 - 2014 strategic priorities are to

(a) ensure that Law Society of BC admission processes are appropriate and relevant, and work on national admission standards while considering the rationale and purpose of the overall BC admission program;

(b) work with continuing professional development providers to develop programs about the new *Code of Conduct*.

a) Admission Program Review (Law Society Strategic Initiative 1-4(a))

The Committee has been monitoring the Federation of Law Societies' National Admission Standards project, pursuant to which Canada's fourteen law societies, through the Federation, are developing proposals for national admission standards and related procedures.

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

A Federation Steering Committee is responsible for the project. Federation Past President John Hunter, Q.C., Tim McGee and Alan Treleaven are Steering Committee members.

The national project work has three streams:

1. drafting and validating the national entrance to practice competency profile,
2. drafting the national character and fitness standards, and
3. developing proposals for implementation mechanisms.

National Entry to Practice Competency Profile

The Federation of Law Societies' process of drafting and validating the proposed national entrance to practice competency profile is complete. The proposed competency profile has been submitted to all law societies for adoption.

This process has involved the participation of a national technical working group, of which Lynn Burns, Deputy Director of the Professional Legal Training Course, has been a member. The competencies fall into these categories: substantive legal knowledge, skills, and tasks.

The Lawyer Education Advisory Committee and the Credentials Committee are reviewing the competency profile, and plan to report to the Benchers in January with recommendations.

National Implementation of the Competency Profile

National adoption of the competency profile is to be followed by development of proposals for national implementation mechanisms. Possible options for consideration could include any combination of

1. model competencies: law societies agree to the model competencies and work toward implementation, but do so at such time and to the extent they see fit (similar to Model Code of Conduct process);
2. competencies agreement: law societies agree to implement, but the "how" is up to each law society
    a. with a Federation monitoring committee, or
    b. no monitoring mechanism;
3. national bar examinations
    a. full coverage, or
    b. selected subjects (i.e. Model Code), or
    c. individual law societies opt in or out, in whole or part (U.S. model), or
    d. accompanied by local bar examinations (U.S. model);
4. national skills assessments (oral and written)
    a. full coverage, or
    b. selected subjects (i.e. Model Code), or
    c. individual law societies opt in or out, in whole or part (U.S. model), or
    d. accompanied by local skills assessment;
5. pilot project(s), such as a Model Code examination
6. incremental implementation
    a. begin with written examinations,
    b. then written assessments,
    c. then oral performance assessments (i.e. advocacy);
7. national training program (goal is to train, not just to prep for testing)
    a. full coverage, or
    b. selected subjects (i.e. Model Code), or
    c. individual law societies opt in or out, in whole or part,
    d. accompanied by local training programs,
    e. in person and/or online;

8. national preparation courses for national testing (potentially pre-empting for-profit US type programs);
9. national standards for articling and /or alternative experiential learning, including whether / how measured;
10. National monitoring body.

Although articling was not initially a part of the project, law societies now informally appear to agree that national admission standards must logically take articling into account. So, for example, the Federation and law societies have been paying particular heed to the Law Society of Upper Canada's articling changes.

National Character and Fitness Standards

The process of developing national character and fitness standards is ongoing. It has involved the work of a national technical working group, of which Lesley Small, Manager of Member Services and Credentials, is a member. Michael Lucas, Manager of Policy and Legal Services, is working with his counterparts from other law societies to develop a legal policy foundation and analysis for the national character and fitness standards work. This national working group has been asked to report to the Federation Council by June 2013.

Lawyer Education Advisory Committee Role

The Committee plans to begin active admission program review in 2013, flowing from the national competency profile, and taking into account the work of the Federation National Admission Standards Steering Committee.

The Committee also continues to monitor the progress of the Federation's national character and fitness standards work, and will update the Benchers and initiate next steps relating to this aspect of the admission program review.

b) BC Code of Conduct Education (Law Society Strategic Initiative 1-3(b))

Law Society Strategic Initiative 1-3(b) is to work with continuing professional development providers to develop programs about the new Code of Conduct.

The new *BC Code of Professional Conduct*, largely based on the Federation's *Model Code of Conduct*, was approved by the Benchers on March 2, 2012 for implementation on January 1, 2013.

The Law Society and CLE Society of BC will jointly deliver *Code of Professional Conduct* education, which will be available beginning in January to all BC lawyers free of charge, using the CLE Society's innovative "CLE TV" program methodology. The Committee has endorsed this important initiative.

The Committee considered whether *Code* education should be mandatory or voluntary, and decided against recommending a mandatory approach. The voluntary approach will include accessible, free education, available throughout BC.

The Law Society website will also feature two *Code of Professional Conduct* resources:

1. the *Annotated BC Code of Professional Conduct*, an adaptation and updating of the current *Annotated Professional Conduct Handbook*,
2. the guide to the *Code of Professional Conduct*, including a comparison of key features in the *Professional Conduct Handbook* and the new *Code*.

Updated references to the new *Code* are being incorporated into in the Law Society's free online courses, including the Small Firm Practice Course, the Practice Refresher Course, and the Communication Toolkit. There will also be updates to the Professional Responsibility section of the PLTC *Practice Materials* and to the Courser itself.

c) Other Committee Activities and Monitoring

(i) CPD Program

The Committee continues to monitor the CPD program, which is in its fourth year.

In past, the Committee has overseen the development and modification of mandatory CPD standards, subject to Bencher approval.

In 2011 the Committee surveyed BC lawyers on the CPD program. Of the 1,419 lawyers who responded to the survey, 78% agreed that continuing education should be mandatory for lawyers, with more than half agreeing that the annual CPD requirement would likely strengthen the quality of legal services that BC lawyers provide their clients. The results demonstrated that the overall assessment of the CPD program has been positive.

In 2011, the Committee also completed a comprehensive review of the CPD program, with a report and recommendations that were approved by the Benchers in September 2011. The changes were implemented effective January 1, 2012. Although the Committee monitors the program, the Committee has not engaged in a further review, as the 2012 – 2014 Strategic Plan does not include a CPD program review.

(ii) Family Law Task Force Report - CPD

The Committee considered recommendation #6 in the Family Law Task Force Report.

> *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.*

Pursuant to this recommendation, these lawyers would continue to be subject to the current 12 hour CPD requirement, so that the 6 hours *in dispute resolution skills training and/or theory* would satisfy 6 hours of the 12 hour requirement. The Committee recommended to Benchers that recommendation #6 be amended so a minimum of 6 hours of CPD per year in dispute resolution skills training and/or theory would be recommended but not required. The Benchers, however, adopted recommendation #6 without amendment.

The Law Society of British Columbia

Code of Professional Conduct for British Columbia (The "BC Code"):

October 9, 2012

Purpose of Report:	**Recommendation to Benchers to Adopt Changes to BC Code Prior to Implementation on January 1, 2013**
Prepared by:	**Ethics Committee**

Code of Professional Conduct for British Columbia: Recommendations to Benchers

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The Law Society of British Columbia

Memo

To: Benchers

From: Ethics Committee

Date: October 9, 2012

Subject: **BC Code of Conduct: Further Issues and Potential Amendments**

When we recommended the adoption of the final part of the BC Code in March 2012, with the entire code to become effective January 1, 2013, we advised you, as well, there would be other small issues arise between adoption of the Code and its implementation that may also require some amendments. This memorandum raises a number of such issues and recommends changes to the BC Code before it becomes effective on January 1. Rule 3.01 of the Model Code was not adopted when you considered the non-conflicts portion of the BC Code in 2011, but because we did not draw your attention to its omission at the time the non-conflicts portion of the Code was adopted, we will draw your attention to it here. We set out the relevant issues below and attach copies of the changes we propose.

A. Rule 2.02(7) Dishonesty or Fraud by Client

You enacted Rule 2.02(7) in April 2011 on our recommendation: It states:

2.02 (7) When acting for a client, a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud, including a fraudulent conveyance, preference or settlement.

Commentary
A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client. A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

The lawyer should also make inquiries of a client who:

(a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or

(b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

The lawyer should make a record of the results of these inquiries.

A bona fide test case is not necessarily precluded by this subrule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case.

In June 2011, on our recommendation, you amended the *Professional Conduct Handbook* Chapter 4, Rule 6 to remove the reference to a fraudulent conveyance, preference or settlement following on the decision of the Court of Appeal in *Abakhan & Associates Inc. v Braydon Investments Ltd*., 2009 BCCA 521 which held that the words in section 1 of the *Fraudulent Conveyance Act* "by collusion, guile, malice or fraud" no longer perform a meaningful function and should be struck. In other words as long as there is an intent, dishonest or not, to delay and hinder a creditor the conveyance can be set aside.

Through inadvertence, we did not also recommend the amendment of the non-conflicts portion of the BC Code at the same time which raised the same issue. We recommend you amend it now.

B. Rule 2.03 (2.1): Lawyers' obligation to claim privilege when faced with requirement to surrender document

Since we presented the non-conflicts proposals to you in 2011 the Law Society has renewed its discussions with the Department of Justice with respect to the Department's claim for lawyers to produce client documents where the client cannot be located to give instructions with respect to a claim of privilege. The Law Society's position is that where a lawyer is unable to obtain such

instructions the lawyer may not produce documents that may be privileged, unless a court orders the production. Moreover, the Law Society maintains that the Department of Justice should not claim costs against a lawyer who makes a claim of privilege in these circumstances.

We believe that our position with respect to a claim of costs against a lawyer in these circumstances is strengthened by the case of *Donell v. GJB Enterprises Inc.* 2012 BCCA 135. In *Donell* a law firm was required by the B.C. Court of Appeal to turn over some of its trust account ledgers on the basis that such documents are not presumptively subject to solicitor-client privilege. Writing for a 2 to 1 majority Chiasson J. noted that the 2003 Supreme Court of Canada decision in *Maranda v. Richer* 2003 SCC 67, [2003] 3 S.C.R. 193 conferred a presumptive privilege on a lawyer's bills in a criminal context but did not agree that that principle could be extended to other financial records in a civil context. However, the court concluded that trust account ledgers that relate to communications to obtain legal advice or that could be used to deduce or otherwise acquire communications protected by solicitor-client privilege should not be produced.

While we believe that the existing confidentiality requirements of the BC Code in Rule 2.03 are probably sufficient to cover situations where lawyers are unable to obtain client instructions regarding a claim of privilege, we have concluded that it would be prudent to retain Chapter 5, Rule 14 from the *Professional Conduct Handbook* to remove any doubt about the issue. Rule 14 states:

> 14. A lawyer who is required, under the *Criminal Code*, the *Income Tax Act* or any other federal or provincial legislation, to produce or surrender a document or provide information which is or may be privileged shall, unless the client waives the privilege, claim a solicitor-client privilege in respect of the document.

Rule 14 has been duplicated in the attached materials under Rule 2.03 and we recommend its adoption. For your information, we attach a letter from President Bruce LeRose of May 16, 2012 to the Regional Director of Justice Canada concerning the matters currently at issue. Further correspondence has followed but the letter of May 16 describes the issues.

C. Rule 2.04(32): Lawyer acquires shares in lieu of fees:

A lawyer persuaded us that the current language of Rule 2.04(32) should refer to the "issuance" of shares as well as their "transfer." We recommend that you adopt the changes to Rule 2.04(32) in the attached materials.

D. Rule 3.01 of the Model Code: Making Legal Services Available

Between our consultation with the profession at the end of 2010 and approval of the non-conflicts portion of the BC Code in April 2011, Rule 3.01 of the Code was inadvertently deleted.

This means that, although the profession has seen and had a chance to comment on Rule 3.01, you have not formally approved it as part of the Code.

In our view, Rule 3.01 is unhelpful, confusing and does not assist lawyers in understanding the obligations it purports to address. Moreover, Rule 3.01(2) duplicates material that is already covered in Rule 3.02, the Marketing Rules. We think Rule 3.01 should be omitted from the BC Code.

We think the reference to pro bono activities in British Columbia is stated better in Chapter 3, Rule 13 of the *Professional Conduct Handbook* and we propose asking the Federation Standing Committee to consider substituting the *Professional Conduct Handbook* language for that currently in the Model Code. When that suggestion has been considered by the Standing Committee we will report back to you.

Rule 3.01 of the Model Code (not the *BC Code*) states:

3.01 MAKING LEGAL SERVICES AVAILABLE

Making Legal Services Available

3.01 (1) A lawyer must make legal services available to the public efficiently and conveniently and, subject to rule 3.01(2), may offer legal services to a prospective client by any means.

Commentary
A lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services and by engaging in programs of public information, education or advice concerning legal matters. As a matter of access to justice, it is in keeping with the best traditions of the legal profession to provide services *pro bono* and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. The Law Society encourages lawyers to provide public interest legal services and to support organizations that provide services to persons of limited means. A lawyer who knows or has reasonable grounds to believe that a client is entitled to Legal Aid should advise the client of the right to apply for Legal Aid, unless the circumstances indicate that the client has waived or does not need such assistance. **Right to Decline Representation** - A lawyer has a general right to decline a particular representation (except when assigned as counsel by a tribunal), but it is a right to be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, a lawyer should not exercise the right merely because

a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the lawyer's private opinion about the guilt of the accused. A lawyer declining representation should assist in obtaining the services of another lawyer qualified in the particular field and able to act. When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except where a referral fee is permitted by rule 2.06, without charge.

Restrictions

3.01 (2) In offering legal services, a lawyer must not use means that:

(a) are false or misleading;

(b) amount to coercion, duress, or harassment;

(c) take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet recovered; or

(d) otherwise bring the profession or the administration of justice into disrepute.

Commentary

A person who is vulnerable or who has suffered a traumatic experience and has not recovered may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering assistance to such a person. A lawyer is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the lawyer for this purpose, and to offer assistance to a person with whom the lawyer has a close family or professional relationship. The rule prohibits the lawyer from using unconscionable, exploitive or other means that bring the profession or the administration of justice into disrepute.

Chapter 3, Rule 13 of the Professional Conduct Handbook was amended in 2010 to add the following rule and footnote:

13. A lawyer's professional responsibility to provide quality legal services to all clients is not affected by the limited ability of some clients to pay for those services, or the fact that the services are provided wholly or partly on a pro bono basis.[7]

Footnote 7:

7. The provision of pro bono legal services has been a long tradition of the legal profession, which is consistent with Chapter 1, Canon 3(9). It is up to each lawyer to decide how much pro bono services he or she can provide.

E. Rule 5.01 (3.3): Supervision

The new Law Society Rule limiting the number of designated paralegals a lawyer may supervise states:

> **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.

We are of the view that Rule 5.01 should make express reference to Law Society Rule 2-9.2 and we recommend you adopt the changes to Rule 5.01 in the attached materials.

F. Real Estate Assistants

Chapter 12, Rules 10 to 12 of the *Professional Conduct Handbook* provide:

Real estate assistants

10. In Rules 10 to 12,

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show,**"** in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

(b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and

(c) conducting an open house at the property.

11. A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

(a) the assistant is employed in the office of the lawyer; and

(b) the lawyer personally shows the property.

12. A real estate marketing assistant may:

(a) arrange for maintenance and repairs of any property in the lawyer's care and control;

(b) place or remove signs relating to the sale of a property;

(c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and

(d) provide members of the public with preprinted information about the property prepared or approved by the lawyer.

These rules were added to the *Professional Conduct Handbook* in 2004 pursuant to an agreement between the Law Society and the Real Estate Association. At that time, a small number of British Columbia lawyers were selling real estate under an exemption permitted lawyers by the *Real Estate Act*. Beginning in 2003 the Real Estate Association began to lobby the Provincial Government to have the exemption from licensing under the *Real Estate Act* for lawyers in Section 2(1)(f) removed. That exemption stated:

2 (1) This Part does not apply

(f) to a barrister or solicitor whose name is inscribed on the rolls of barristers or solicitors in British Columbia, or to a person employed by him or her, in respect of transactions in the course of his or her practice,

The current *Real Estate Services Act* (the successor to the *Real Estate Act*) provides:

3 (1) A person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is

(a) licensed under this Part to provide those real estate services, or

(b) exempted by subsection (3) or the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.

(2) A licence required by this Part is additional to any licence, registration, certificate, enrollment or qualification required under any other Act.

(3) In addition to any exemption provided by regulation, the following are exempt from the requirement to be licensed under this Part:

(f) a practising lawyer as defined in section 1 of the *Legal Profession Act*, in respect of real estate services provided in the course of the person's practice.

The 2004 the Benchers created a task force to examine the issue and ultimately agreement was reached between the Law Society and the Real Estate Association to remove the reference in the *Real Estate Act* to lawyers' employees, but permit the reference to lawyers to remain. As part of the understanding it was agreed that the Law Society would amend the *Professional Conduct*

Handbook to restrict the activities of lawyers' employees engaged in the sale of real estate and the result on the Law Society's part was the passage of Rules 10 to 12.

Rules 10 to 12 have not been carried over into the BC Code provisions dealing with supervision, Rule 5.01, although the *Professional Conduct Handbook* rule dealing with the marketing of real property has survived into the BC Code. That BC Code Rule states:

3.02 (3) When engaged in marketing of real property for sale or lease, a lawyer must include in any marketing activity:

(a) the name of the lawyer or the lawyer's firm, and

(b) if a telephone number is used, only the telephone number of the lawyer or the lawyer's firm.

As a policy matter, it does not seem to us to be ideal to have the equivalent of *Professional Conduct Handbook* Rules 10 to 12 in the *BC Code*. Whether or not a lawyer's legal assistant is permitted to perform the tasks that are addressed in those rules does not seem to us to be a matter of professional responsibility. We are of the view the issues Rules 10 to 12 are designed to resolve would be better dealt with on the Law Society website. However, to this time we have been unsuccessful in persuading the Real Estate Association to release the Law Society from its 2004 commitment in relation to this matter, and unless we are able to do that we conclude that it is best to simply carry Rules 10 to 12 into the *BC Code*. In order to do this we recommend that you adopt the changes to Rule 5.01 in the attached materials.

G. Rule 6.01 (1): Regulatory Compliance

Current Rule 6.01 (1) simply requires a lawyer to reply promptly and completely to any communication from the Law Society. The Professional Conduct and Discipline Departments are concerned that this simple rule is inadequate to ensure the cooperation of lawyers in some other areas that are beyond a simple reply to a communication from the Law Society. Chapter 13, Rule 3 of the *Professional Conduct Handbook* was amended in 2010 and currently provides:

3. A lawyer must

(a) reply promptly to any communication from the Law Society;

(b) provide documents as required to the Law Society;

(c) not improperly obstruct or delay Law Society investigations, audits and inquiries;

(d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;

(e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and

(f) otherwise comply with the Law Society's regulation of the lawyer's practice.

We recommend that current Model Code Rule 6.01 (1) be expanded to include the same obligations as Rule 3. Rule 6.01 (1)(a) tracks the language of the current Rule 6.01 (1) with Rules 6.01 (b) to 6.01 (f) tracking the same language as Rule 3(a) to Rule 3 (f) of the *Professional Conduct Handbook*. The proposed revisions are shown in the attached materials.

H. Rule 6.01 (4): Encouraging Client to Report Dishonest Conduct

Sometime prior to our consultation with the profession on the non-conflicts portion of the BC Code, Rule 6.01 (4) of the Model Code was inadvertently deleted. It follows up on Rule 6.01 (3) which requires lawyers to report other lawyers to the Law Society in certain circumstances and is the equivalent of our current Chapter 13, Rule 1 of the *Professional Conduct Handbook*. Rule 6.01 (4) has no equivalent in the *Professional Conduct Handbook*; it requires lawyers to encourage clients who have claims or complaints against an apparently dishonest lawyer to report them to the Law Society.

Rule 6.01 (4) is shown in the attached materials and we recommend its adoption.

I. Rule 6.08(1) Commentary: Informing Client of Errors or Omission

The Lawyers Insurance Fund has asked for a small change to the Commentary to Rule 6.08(1) relating to a lawyer's ethical duty to report (currently PCH Ch. 4, Rule 5, footnote 2; BC Code).

Both the *Professional Conduct Handbook* and the *BC Code* include the following:

> "…a lawyer is contractually required to give written notice to the insurer immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could reasonably be expected to be the basis of a claim or suit covered under the policy."

This extract from the Commentary was not taken from the Model Code and is unique to the BC Code, since it is a commentary on the requirements of our Lawyers' Compulsory Professional Liability Insurance Policy.

The Lawyers Insurance Fund and practice advisors have noted that some lawyers are still under the misapprehension that only meritorious claims must be reported. These lawyers resist reporting a matter that they have concluded has little chance of success. The Lawyers Insurance Fund has asked that the Commentary draw lawyers' attention to Condition 4.1 and its

requirement that lawyers report a potential claim whether or not they believe the claim to be a meritorious one.

We propose, as well, and the Lawyers Insurance Fund agrees, there should be a specific reference in the Commentary to the governing clause of the Policy, Condition 4.1. Both changes are set out in the attached Rule 6.08(1) and Commentary. The rationale of the proposed changes is to reinforce lawyers' awareness that the merits of a potential claim are not relevant to their obligation to report.

Attachments:

- Proposed revisions to Rules 2.02 (7), 2.03 (2.1), 2.04 (32), 5.01 (3.3), 5.01 (4 to 6), 6.01 (1), 6.01 (4), and 6.08 (1)
- Letter of May 16, 2012 from President Bruce LeRose to Regional Director of Justice Canada

[mc544benchers(6)additions/12]

A. Rule 2.02 (7) Dishonesty or Fraud by Client

2.02 (7) When acting for a client, a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud~~, including a fraudulent conveyance, preference or settlement.~~

B. Rule 2.03 (2.1): Lawyers' obligation to claim privilege when faced with requirement to surrender document

2.03 (2.1) A lawyer who is required, under federal or provincial legislation~~,~~ to produce a document or provide information that is or may be privileged must, unless the client waives the privilege, claim solicitor-client privilege in respect of the document.

Commentary
A lawyer who is required by law or by order of a court to disclose a client's affairs must not disclose more information than is necessary.

C. Rule 2.04 (32): Lawyer acquires shares in lieu of fees:

2.04 (32) When a client intends to pay for legal services by issuing or causing to be transferred~~transferring~~ to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

D. Rule 3.01 of the Model Code: Making Legal Services Available

No additions necessary.

E. Rule 5.01 (3.3): Supervision

Commentary
~~The~~ Law Society Rule~~s~~ 2-9.2 limit~~s~~ the number of designated paralegals performing the enhanced duties of giving legal advice and appearing in court or before a tribunal.

F. Rules 5.01 (4 to 6): Real Estate Assistants

5.01 (4) In subrules (4) to (6),

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show," in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

(b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and

(c) conducting an open house at the property.

5.01 (5) A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

(a) the assistant is employed in the office of the lawyer; and

(b) the lawyer personally shows the property.

5.01 (6) A real estate marketing assistant may:

(a) arrange for maintenance and repairs of any property in the lawyer's care and control;

(b) place or remove signs relating to the sale of a property;

(c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and

(d) provide members of the public with preprinted information about the property prepared or approved by the lawyer.

G. Rule 6.01 (1): Regulatory Compliance

6.01 (1) A lawyer must:

(a) reply promptly and completely to any communication from the Law Society;

(b) provide documents as required to the Law Society;

(c) not improperly obstruct or delay Law Society investigations, audits and inquiries;

(d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;

(e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and

(f) otherwise comply with the Law Society's regulation of the lawyer's practice.

H. Rule 6.01 (4): Encouraging Client to Report Dishonest Conduct

6.01 (4) A lawyer must encourage a client who has a claim or complaint against an apparently dishonest lawyer to report the facts to the Society as soon as reasonably practicable.

I. Rule 6.08(1) Commentary: Informing Client of Errors or Omission

6.08 (1) When, in connection with a matter for which a lawyer is responsible, a lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer must:

(a) promptly inform the client of the error or omission without admitting legal liability;

(b) recommend that the client obtain independent legal advice concerning the matter, including any rights the client may have arising from the error or omission; and

(c) advise the client of the possibility that, in the circumstances, the lawyer may no longer be able to act for the client.

Commentary
Under Condition 4.1 of the Lawyers' Compulsory Professional Liability Insurance Policy, a lawyer is contractually required to give written notice to the insurer immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could reasonably be expected to be the basis of a claim or suit covered under the policy. This obligation arises whether or not the lawyer considers the claim to have merit. Subrule (2) imposes an ethical duty to report to the insurer. Subrule (1) should not be construed as relieving a lawyer from the obligation to report to the insurer before attempting any rectification.

A. Rule 2.02 (7) Dishonesty or Fraud by Client

2.02 (7) When acting for a client, a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud

B. Rule 2.03 (2.1): Lawyers' obligation to claim privilege when faced with requirement to surrender document

2.03 (2.1) A lawyer who is required, under federal or provincial legislation to produce a document or provide information that is or may be privileged must, unless the client waives the privilege, claim solicitor-client privilege in respect of the document.

Commentary
A lawyer who is required by law or by order of a court to disclose a client's affairs must not disclose more information than is necessary.

C. Rule 2.04 (32): Lawyer acquires shares in lieu of fees:

2.04 (32) When a client intends to pay for legal services by issuing or causing to be transferred to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

D. Rule 3.01 of the Model Code: Making Legal Services Available

No additions necessary.

E. Rule 5.01 (3.3): Supervision

Commentary
Law Society Rule 2-9.2 limits the number of designated paralegals performing the enhanced duties of giving legal advice and appearing in court or before a tribunal.

F. Real Estate Assistants Rules 5.01 (4 to 6)

5.01 (4) In subrules (4) to (6),

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show,**"** in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

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G. Regulatory Compliance

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6.01 (4) A lawyer must encourage a client who has a claim or complaint against an apparently dishonest lawyer to report the facts to the Society as soon as reasonably practicable.

I. Rule 6.08(1) Commentary

6.08 (1) When, in connection with a matter for which a lawyer is responsible, a lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer must:

(a) promptly inform the client of the error or omission without admitting legal liability;

(b) recommend that the client obtain independent legal advice concerning the matter, including any rights the client may have arising from the error or omission; and

(c) advise the client of the possibility that, in the circumstances, the lawyer may no longer be able to act for the client.

Commentary
Under Condition 4.1 of the Lawyers' Compulsory Professional Liability Insurance Policy, a lawyer is contractually required to give written notice to the insurer immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could reasonably be expected to be the basis of a claim or suit covered under the policy. This obligation arises whether or not the lawyer considers the claim to have merit. Subrule (2) imposes an ethical duty to report to the insurer. Subrule (1) should not be construed as relieving a lawyer from the obligation to report to the insurer before attempting any rectification.

The Law Society
of British Columbia

Reply to: Bruce LeRose, QC

May 16, 2012

Mr. Bill Basran
Regional Director General
Justice Canada
Robson Court 900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Dear Mr. Basran:

Re: Canada Revenue Agency: Notices of Requirement Delivered to Lawyers Pursuant to Section 231.2 of the *Income Tax Act*

***Donell v. G.J.B. Enterprises Inc.* 2012 BCCA 135**

We are writing further to past correspondence and discussions between the Law Society and your office concerning the issuance of Notices of Requirement delivered to lawyers pursuant to s. 231.2 of the *Income Tax Act*.

As you know, we have been unable to reach a consensus surrounding this issue. It is, we understand, the Canada Revenue Agency's ("CRA") view that the sort of documents that CRA routinely seek from lawyers pursuant to such Requirements (copies of cheques and trust ledgers) are not privileged and therefore must be produced by a lawyer. In the event that CRA is required to obtain a compliance order compelling the lawyer to produce the documents, the Department of Justice has said that it may seek costs against the lawyer for the application.

We have said that because any privilege always belongs to the client, the decision whether to claim privilege must always be made by the client and not the lawyer, regardless of the lawyer's view about the validity of a potential claim of privilege by the client. It is the role of the court to decide the issue of privilege, not the role of the lawyer who has custody of the document. While such documents are usually not privileged, they may be in some circumstances. A lawyer (where acting on instructions of the client to claims privilege, or in circumstances where the client cannot be found) is discharging professional obligations to preserve any claim of privilege that may exist and should not be subjected to costs where the matter is brought before a court.

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www.lawsociety.bc.ca

Recently, the Court of Appeal decided the case of *Donell v. G.J.B. Enterprises Inc.*. While this is not a tax case, the records that were being sought by the receiver were trust ledgers. The court ultimately held that those ledgers were not privileged and should be produced. However, in its reasons for judgment, the court provided some useful guidance on the law that, we believe, is particularly relevant to the issues that we are dealing with.

The Court of Appeal noted that *Maranda v. Richer* [2003] 3 S.C.R. 193 did not do away with the distinction between facts and communications, nor did it hold that entries in a lawyer's trust account ledgers are presumptively privileged. However, the Court of Appeal held that *Maranda* does mandate that such entries *must* be considered in light of any connection between them and the solicitor client relationship and what transpires within it.

As stated above, in the *Donell* case the receiver was seeking the production of trust ledgers. The majority for the Court said:

> "Generally, such documents record facts, not communications, and are not subject to solicitor client privilege *but I would not favour a blanket endorsement of the automatic production of such records*. In my view, while the analysis in *Maranda* did not dispose of the distinction between facts and communications, *it requires the court to ensure that entries on trust ledgers do not contain information that is ancillary to the provision of legal advice*." (emphasis added)

The majority of the Court then adopted the reasoning of the Alberta Court of Appeal in *Wyoming Machinery Co. v. Roch* 2008 ABCA 433, a case to which the Law Society has referred in previous correspondence with you. The majority in *Donell* concluded that whether the financial records of a lawyer are subject to solicitor client privilege depends on an assessment of the connection between the record in issue and "the nature of the relationship in question."

Consequently, while financial records of lawyers are not presumptively subject to solicitor client privilege insofar as they represent records of actions or facts, it is quite clear that they should not be produced automatically solely for that reason. The majority of the Court in *Donell* rejects the proposition that the issue of privilege can be decided simply on the basis of the nature of the documents in issue in the absence of judicial determination to determine whether they arise out of the solicitor client relationship and what transpires within it.

We continue to expect lawyers to have full and frank discussions with their clients about whether or not a claim of privilege should be made given the circumstances relating to the particular records sought. It is, however, ultimately the client's decision to make. Where the client cannot be found, it must be viewed as improper for a lawyer, in the absence of instructions, to in effect waive any ability for the client (should he or she ever be found) to make that determination. While CRA has in the past said that the sort of records that they are seeking are not privileged, the Court of Appeal has now made it clear that while such documents are not presumptively privileged, there should be no blanket endorsement of the automatic production of such records.

An application by CRA for a compliance order appears to be one way for a court to consider these matters. Given the decision in *Donell*, however, we seek your agreement that it would be improper to seek costs against a lawyer for not automatically producing the records as requested by the CRA, thereby preserving the ability for the court to make the determination as required.

We look forward to hearing from you at your early convenience.

Yours truly,

Bruce LeRose, QC
President

The Law Society of British Columbia

Memo

To: Benchers

From: Jack Olsen and Jeff Hoskins, QC

Date: **November 13, 2012**

Subject: **Proposal to Re-number the BC Code**

Consultants to the Federation of Law Societies have recommended to the Federation Standing Committee on the Model Code a new numbering system for the Code and that recommendation will be considered by the Federation Standing Committee in the coming weeks.

We have reviewed the proposed re-numbering of the Model Code with a view to determining whether we can usefully use it as a model to re-number our BC Code. We have concluded that by renumbering our own BC Code along the lines proposed for the Model Code we could make the numbering system for our own Code easier to use and more congruent with the Model Code. The proposed new numbering system also has the advantage of looking less like the Law Society Rules than our current system.

Because of the changes we have made from the Model Code in putting together the BC Code, it will not be possible to have the numbering of the BC Code line up perfectly with the Model Code. Nevertheless, we could make it considerably more compatible by re-numbering it in the numbering style now recommended for the Model Code. Of course, the more congruent the numbering system of the BC Code is with the Model Code, the easier it will be for lawyers who do work in multiple jurisdictions to track relevant rules from jurisdiction to jurisdiction.

There are some difficulties with re-numbering our BC Code. It is not certain the Federation will adopt the re-numbering system that has been recommended, although that seems likely, and we may not know the Federation's final plans until after the December Benchers meeting, which would be the last time to obtain Bencher approval for a re-numbering. Moreover, even if the Federation adopts the re-numbering system that has been recommended, it is not certain the Federation will apply it in exactly the same way to all its sections. If we proceed to re-number our BC Code along the lines of the current plan, we could find that we have done so in a way that is no longer as compatible with the Model Code renumbering as we had thought, with insufficient time to recast it before the January 1, 2013 implementation date.

We have had a chance to consult with Gavin Hume, QC in his capacity as Chair of the Federation Standing Committee on the Model Code. Jeff, Gavin and I are all of the view that we should seek your approval to re-number the BC Code along the lines recommended for the Model Code, but that our re-numbering project should be contingent on the Federation actually

implementing their consultants' re-numbering recommendations in a manner that is compatible with the re-numbering we would do of the BC Code.

We recommend, therefore, that you give authority to the Law Society President (or another member of the Executive Committee) to approve the re-numbering of the BC Code or to decline to approve it, depending on the steps the Federation takes regarding the re-numbering of the Model Code and the timing of those steps. That would enable the final decision about re-numbering to be made after the December Benchers meeting, if necessary. The Ethics Committee is in agreement with this proposal, although the Committee has not had an opportunity of discussing it except through email.

The Law Society of British Columbia

Memo

To: The Benchers
From: Michael Lucas and Doug Munro
Date: November 7, 2012
Subject: White Paper on Justice Reform: A Modern, Transparent Justice System

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In October, the Provincial Government released the White Paper on justice reform entitled "A Modern, Transparent Justice System." The White Paper is attached to this memorandum.

The White Paper focuses on the government's plan to reform the justice system. It says it is the "roadmap for justice reform in British Columbia." It outlines 10 separate actions that the government identifies as necessary to create a *transparent* system of justice, a system of justice that is *capable of reform and renewal*, and a system of justice that is capable of *delivering fast, well-balanced services*. Consequently, transparency, timeliness, and proportionality of the justice system are key considerations in the White Paper.

The White Paper follows on last spring's Green Paper and the report released in late August by the BC Justice Reform Initiative. Each identified to some extent that the justice system – particularly the criminal justice system – was failing to meet public expectations of a modern justice system. The White Paper "lays the foundation for achieving successful reform and is focused on creating a new model of transparent governance and reducing delays through the use of evidence-based approaches.[1]

The 10 actions identified by the government are as follows:

1. create a Justice and Public Safety Council;
2. create an annual Justice and Public Safety Plan;
3. establish a regular Justice Summit;
4. create greater transparency and better administrative tools;
5. develop a transformation of justice information systems;

[1] Minister's Message – Honourable Shirley Bond, White Paper page 2.

6. develop a justice business intelligence system;

7. develop approved ability to track and control systems costs;

8. create a public, evidence-based performance management;

9. collaborate on efficient case management; and

10. create greater efficiency in routine practices.

On page 21 of the White Paper, the government outlines its immediate steps, long term goals, and key milestones.

The Law Society's object and duty is to protect the public interest in the administration of justice in accordance with s. 3 of the *Legal Profession Act*. The White Paper, addressing as it does reform of the justice system, should be expected to affect the administration of justice. Indeed, its purpose is to do just that.

The Benchers are therefore asked to review the White Paper and consider the Law Society's response to it. For the purposes of generating discussion, the following 4 questions are proposed:

1. **Should the Law Society be supportive of the general vision/plan set out the in the White Paper?**

2. **Should the Law Society seek to participate in the process going forward, including participation at the Justice Summit**

3. **Should the Law Society recommend that the Justice and Public Safety Council consist of participants beyond merely government?**

4. **Is the Law Society able to contribute any expertise to the considerations and actions identified by the government in the White Paper?**

MDL/al

Attachments.

Memo

The Law Society of British Columbia

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To The Benchers

From The Executive Committee

Date November 13, 2012

Subject **Request for an Alternative Law Corporation Name Format: ULCs**

Summary

The Executive Committee has considered the attached Memorandum from Mr. Cooke and refers the issue of enabling the naming and registration of a law ULC, as a functional equivalent to a law corporation, to the Benchers for decision.

Background and Discussion

Please see the attached memorandum to the Executive Committee.

Recommendation

The Executive Committee recommends that the Act & Rules Subcommittee be directed to draft a rule or rule amendment enabling the Executive Director to issue law corporation permits to companies registered as ULCs and named, in accordance with the *Business Corporations Act*, without including the word "corporation" in the corporate name. More specifically, the Executive Committee recommends that in the case of proposed law ULCs that are deemed by the Executive Director to be acceptable for registration, the words "Law ULC" be included in the corporate name in place of the words "law corporation," as the latter is contemplated in section 82(1)(b) of the *Legal Profession Act*.

LC/al

Attachments.

The Law Society of British Columbia

Memo

To: Executive Committee
From: Lance Cooke
Date: October 7, 2012
Subject: Request for an Alternative Law Corporation Name Format: ULCs

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Executive Summary

The Law Society has received requests from two member lawyers, who are also U.S. citizens or U.S. "green card" holders, that they be allowed to convert their law corporations to unlimited liability corporations ("ULCs") pursuant to the *Business Corporations Act* (the "BCA") and to rename them accordingly, as required by the Registrar of Companies. Consistent with its usual practice, the Registry has required that the lawyers receive the Law Society's consent to the to the proposed name change. An example of the proposed name format would be: "Jane Smith Professional Law ULC;" as opposed to the usual format: "Jane Smith Professional Law Corporation."

The proposed form of name for the ULCs raises an issue for the Law Society because the *Legal Profession Act* (the "LPA") and the Law Society Rules ("the "Rules"), taken together, appear to require that the words "law corporation" be included in the name of any law corporation. The Law Society has not previously permitted registration of a law corporation unless the words "law corporation" were included in the corporate name. However, the requirements of the BCA and the Registrar of Companies do not permit the word "corporation" to be included in the name of a ULC in addition to the designation of the abbreviation "ULC" or the words "unlimited liability company." At the same time, either "ULC" or "unlimited liability company" must appear in the name of any ULC in order to satisfy the Registrar. It appears, quite apart from any more substantive reason as to whether law corporations ought to be allowed in the form of ULCs, the possibility of a "law ULC" is precluded from the outset by the conflicting naming requirements. Consequently, the request for consent to register law ULCs amounts to a request for a rule change that would enable the Law Society to issue such consent.

The issue for the Executive Committee is whether to direct the Act & Rules Subcommittee to prepare a rule or rule amendment for approval by the Benchers, which would authorize the Executive Director to issue law corporation permits to entities incorporated as unlimited liability

companies ("ULCs") and named in accordance with the requirements of the Registrar of Companies and the *Business Corporations Act* ("BCA").

The stated motivation behind the members' request for the ULC name format is that, as a consequence of U.S. tax law, B.C. lawyers who happen to be U.S. citizens or holders of U.S. green cards are disadvantaged by a duplication of a portion of their tax liability. Specifically, it appears that U.S. tax law does not allow a credit for the Canadian corporate tax liability applicable to law corporations. Instead, unless the corporation is a ULC, the U.S. tax regime treats the earnings of the law corporation as personal income in the hands of the lawyer. Because the Canadian corporate income tax is paid by the law corporation, and not by the lawyer personally, there is no recognition that the corporate tax paid in Canada ought to reduce the lawyer's personal U.S. tax liability. As a result, there is a potential for B.C. lawyers who happen to be U.S. citizens to face a disproportionately higher income tax liability as compared to B.C. lawyers who are not U.S. citizens or green card holders.

Background

The Law Society has received requests from two members that they be allowed to convert their law corporations, pursuant to the *Business Corporations Act* ("BCA") to *unlimited liability corporations* (also known as "ULCs"). In accordance with the BCA corporate name requirements for ULCs, and in light of the requirement that law corporations be registered with and certified by the Law Society, the requesting lawyers applied, using the Law Society's standard "Certificate Respecting Corporate Name" forms (the "Name Forms"), proposing that their ULCs be issued names in the format: "[lawyer's name or initials] Professional Law ULC".

Initially Members Services staff drew the requesting lawyers' attention to a notation on the Name Forms, which reads as follows:

> Please note that:
>
> 1. Section 82(1)(b) of the *Legal Profession Act* requires that a law corporation's name include the words "law corporation;"
>
> 2. ….

While the Law Society's practice has always been to require applicant law corporations to include the words "law corporation" in the corporate name, the relevant statutory provision actually describes the circumstances under which the Executive Director ***must*** issue a law corporation permit. It reads as follows:

> ***Law corporation permit***
>
> **82** (1) The executive director must issue a permit to a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act

or that is an extraprovincial company as defined in that Act, if the executive director is satisfied that

(a) …,

(b) the name of the corporation includes the words "law corporation",

…

Further, section 83(1) of the Legal Profession Act (the "LPA") sets out the rule-making authority of the Benchers with respect to the names of law corporations as follows:

Law corporation rules

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

…

(d) respecting names and the approval of names including the types of names by which the following may be known, be incorporated or practise law:

(i) a law corporation;

…

(h) any other rules the benchers consider necessary or advisable for the purposes of this Part.

…

[2012-16-44]

As regards the statutory requirements on the naming of ULCs, the applicable provision is BCA section 51.21, as follows:

51.21 (1) An unlimited liability company

(a) must have the words "Unlimited Liability Company" or the abbreviation "ULC" as part of and at the end of its name, and

(b) must not have any of the words or abbreviations referred to in section 23 (1) as part of its name.

(2) For all purposes, the words "Unlimited Liability Company" are interchangeable with the abbreviation "ULC".

(3) A person must not use in British Columbia any name of which "Unlimited Liability Company", "Unlimited Liability Corporation" or "ULC" is a part unless the person is

(a) an unlimited liability company,

(b) a foreign unlimited liability corporation, or

(c) a prescribed person.

(4) An unlimited liability company recognized under this Act has as its name, on its recognition,

(a) the name shown for the company on the application filed to effect the recognition of the company if

(i) that name has been reserved for the company, and

(ii) that reservation remains in effect at the date of the recognition of the company, or

(b) in any other case, the name created by adding "B.C. Unlimited Liability Company" after the incorporation number of the company.

The restriction in section 51.21(b), precludes the inclusion of any of the words or abbreviations described in section 23(1), as follows:

23 (1) Subject to section 51.21 (1), a company must have the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." as part of and at the end of its name.

To clarify, whereas a limited company must include a selection from the section 23(1) list in its corporate name, a ULC must not have any word or abbreviation from the same list in its corporate name.

Leaving naming requirements and ULC status disclosure requirements aside, the defining substantive characteristic of ULCs is the shareholders' liability component as set out in BCA section 51.3 as follows (subsection (1) only in text; full provision attached):

Liability of shareholders of unlimited liability companies

51.3 (1) Subject to subsection (2), shareholders and former shareholders of an unlimited liability company are jointly and severally liable as follows:

(a) if the company liquidates, the shareholders and former shareholders are jointly and severally liable, from the commencement of the company's liquidation to its dissolution, to contribute to the

> assets of the company for the payment of the unlimited liability company's debts and liabilities;
>
> (b) whether or not the company liquidates, the shareholders and former shareholders are jointly and severally liable, after the company's dissolution, for payment to the company's creditors of the unlimited liability company's debts and liabilities.

Discussion and Analysis

The creation of ULCs represents an expansion or extension of potential shareholder liability compared to the relative protection from shareholder liability afforded by limited companies. Pursuant to the BCA, the abbreviation "ULC" stands for "unlimited liability company." The significance of this denotation is that the shareholders of a ULC are jointly and severally liable to satisfy any surviving debts and liabilities otherwise unpaid upon the dissolution of the ULC. In this respect, a "law ULC" should offer no less protection to potential creditors, claimants or clients of the practicing lawyer than would a standard law corporation. Apart from the fact that the proposed corporate vehicles would be incorporated as ULCs, and would be named accordingly, the requesting lawyers are not proposing that their "law ULCs" should be excused from any of the Law Society's usual requirements for law corporations. Moreover, a review of the BCA discloses suggestion that a law ULC would offer any advantage over a standard law corporation for its incorporating lawyer, except for the motivation based on U.S. tax law.

In summary, the motivation behind the members' request for the ULC name format is that, as a consequence of U.S. tax law, B.C. lawyers who happen to be U.S. citizens or holders of U.S. green cards are disadvantaged by a duplication of a portion of their tax liability. Specifically, it appears that U.S. tax law does not allow a credit for the Canadian corporate tax liability applicable to our standard law corporations. Instead, unless the law corporation is a ULC, the U.S. tax regime treats the earnings of the law corporation as personal income in the hands of the lawyer. Because Canadian corporate income tax is paid by the law corporation, and not by the lawyer personally, there is no recognition in U.S. tax law that the corporate tax paid in Canada ought to reduce the lawyer's personal U.S. tax liability. As a result, there is a potential for B.C. lawyers who happen to be U.S. citizens to face a disproportionately higher income tax liability as compared to B.C. lawyers who are not U.S. citizens or green card holders.

It may be that there would be no potential risk of disadvantage for prospective clients or creditors of law ULCs as compared with clients or creditors of law corporations. Provided that the same regulatory restrictions and requirements apply equally to both law ULCs and law corporations, it may be that, aside from the motivating tax consequences, the difference between the proposed "law ULC" and a "law corporation" would be a difference in name only. However, even a difference in name would be a departure from the Law Society's standard practice of certifying only law corporations that include the words "law corporation" in the corporate name. Perhaps

more importantly, it would be a departure from the only potentially applicable corporate naming convention specifically mentioned in the *Legal Profession Act* ("LPA").

An important aspect of the requirement that the words "law corporation" appear in a corporate name is ease of recognition. Any company with the words "law corporation" will be a law corporation. Any company wishing to use the words "law corporation" would be directed to the Law Society for consent, which the Society may withhold if the enterprise is not really a law corporation. The inclusion requirement makes some sense from the point of view of identifying all law corporations with an exclusive marker. Arguably it reduces the potential for confusion based on name alone. Generally, the public can count on law corporations to be corporate vehicles offering legal services and advice. The Law Society, on the other hand, can recognize any unauthorized use of the words "law corporation" in the name of an entity to be a signal of potential unauthorized practice.

However, the value of simple name recognition, both for the Law Society as regulatory authority and for the public as potential clients, probably does not hinge on there being only one kind of name for law corporations. In other words, the addition of a second allowable name category to enable the creation of law ULCs would be unlikely to lead to problematic confusion, provided that some care were taken in creating the new flexibility. For members of the public, whose understanding of the names may be a *prima facie* one, it seems unlikely that the designation "law corporation" is significantly more informative than "law ULC" would be.

Section 82(1) of the LPA addresses the issuance of law corporation permits. In particular, section 82(1) indicates that if certain conditions are met then the Executive Director "must issue a permit." One of the preconditions to the *required* issuance of a permit, designated in subsection 82(1)(b), involves the Executive Director being satisfied that "the name of the corporation includes the words 'law corporation'." Thus, although the LPA does not expressly prohibit the issuance of a law corporation permit where the proposed name does not include "law corporation," it does expressly contemplate that the Executive Director may be *required* to issue a permit where "law corporation" is included in the corporate name.

While the inclusion of "law corporation" in the corporate name is contemplated in section 82(1) of the LPA, section 83(1) appears to provide the necessary flexibility to accommodate alternate forms of corporate names, by declaring that the Benchers may make rules "respecting names and the approval of names including the types of names by which … [a law corporation] may be known, be incorporated or practise law." Thus, reading sections 82 and 83 together, it would seem that the Executive Director could issue a law corporation permit for a ULC under the form of name proposed and approved by the Registrar of Companies, if the Benchers were to make a rule authorizing such issuance. And it appears that the Benchers have the authority to make such a rule if they deem it appropriate to do so. Conversely, given the Benchers' authority in this area, it might be inappropriate for the Executive Director to issue a law corporation permit for a ULC in absence of an authorizing rule.

The only other provincial jurisdictions whose business corporations' legislation creates the possibility of ULCs are Alberta and Nova Scotia. ULCs are a relatively recent development on the Canadian corporate landscape. As far as the writer is aware, there is not yet any track record of law ULCs in the other jurisdictions. However, a review of their requirements for law corporations reveals that in each case there are no obvious sticking points, akin to our naming requirements, that would *automatically* preclude lawyers from adopting the law ULC format for their law corporations.

Consultations

When considering a potential change to allow the registration of law ULCs, it is important to consider any implications for the provision of professional liability insurance to the lawyers who might use ULCs. As a preliminary consultation, the general concept of law ULCs has been suggested to the Law Society's Director of Insurance. Her first impression of the concept is that the introduction of law ULCs may not pose any insuperable difficulties from the insurance perspective. Providing adequate coverage for Law ULCs may require some changes to the language of the insurance policy. There would be some time and work needed to ensure that such coverage as would be required would have the correct scope and application. However, similar work was undertaken and completed successfully with the introduction of limited liability partnerships ("LLPs"), the use of which is now widespread.

Similar consultation with the Law Society's Unauthorized Practice Counsel has addressed the issue of whether the introduction of law ULCs may hold foreseeable problematic implications for the Law Society's obligation to protect the public from the unauthorized practice of law. It is the view of Counsel that there would be no additional complications in the unauthorized practice arena consequent on a decision to allow lawyers to use law ULCs as a form of corporate vehicle.

Options

The options suggested for the Executive Committee, upon considering the discussion set out in this memorandum, are as follows:

1. Direct the Act & Rules Subcommittee to prepare a draft Rule enabling the naming of law ULCs in compliance with the naming requirements of the BCA, for presentation to the Benchers;

2. Remit the issue of law ULCs and acceptable naming back to staff, with directions for further research or analysis by staff or for the purpose of obtaining an outside legal opinion;

3. Decline the request of the member lawyers seeking to establish law ULCs.

Analysis of Options

The issue for the Executive Committee is whether to direct the Act & Rules Subcommittee to prepare a rule or rule amendment for approval by the Benchers, which would authorize the Executive Director to issue law corporation permits to entities incorporated as unlimited liability companies and named in accordance with the requirements of the Registrar of Companies and the *Business Corporations Act*.

If the Executive Committee is of the view that the suggested rule change to accommodate the creation and registration of law ULCs has sufficient merit to warrant the attention of the Benchers, then it may be appropriate to direct the Act & Rules Subcommittee to prepare a draft Rule enabling the naming of law ULCs in compliance with the naming requirements of the BCA.

If the Executive Committee has specific concerns or questions that could be addressed with further research or analysis, it may prefer to remit the present matter back to staff with instructions and revisit the question after further work-up by staff or after an outside legal opinion can be obtained.

Alternatively, if the Executive Committee is not prepared to issue directions to the Act & Rules Subcommittee and is not of the view that the issue requires additional work-up by staff, it may prefer to direct the Executive Director to refuse the alternate name format requests received from the members who raised this issue with the Law Society.

Recommendations

This Memorandum has not attempted to present a persuasive case for a particular option. As the possibility of ULCs is a recent development it was not taken into account when the LPA provisions were created, nor would it have been addressed when the corresponding rules were prepared. The option of ULCs is now a reality under the BCA. Provided that other regulatory requirements for law corporations (apart from their naming but including applicable restrictions on corporate structure and ownership) are extended to ULCs, it may be that there is no public interest reason not to allow lawyers the option of practicing through a law ULC. Although in a relatively small way, the expansion of corporate vehicle options for lawyers may be viewed as consistent with a more open legal services marketplace and as preferring acceptably accredited competition to the alternative of entrenched exclusivity.

Liability of shareholders of unlimited liability companies

51.3 (1) Subject to subsection (2), shareholders and former shareholders of an unlimited liability company are jointly and severally liable as follows:

(a) if the company liquidates, the shareholders and former shareholders are jointly and severally liable, from the commencement of the company's liquidation to its dissolution, to contribute to the assets of the company for the payment of the unlimited liability company's debts and liabilities;

(b) whether or not the company liquidates, the shareholders and former shareholders are jointly and severally liable, after the company's dissolution, for payment to the company's creditors of the unlimited liability company's debts and liabilities.

(2) A former shareholder of an unlimited liability company is not liable under subsection (1) unless it appears to the court that the shareholders of the unlimited liability company are unable to satisfy the debts and liabilities referred to in subsection (1), and, even in that case, is not liable under subsection (1)

(a) in respect of any debt or liability of the unlimited liability company that arose after the former shareholder ceased to be a shareholder of the unlimited liability company,

(b) in a liquidation of the company, if the former shareholder ceased to be a shareholder of the unlimited liability company one year or more before the commencement of liquidation, or

(c) on or after a dissolution of the company effected without liquidation, if the former shareholder ceased to be a shareholder of the unlimited liability company one year or more before the date of dissolution.

(3) The liability under subsections (1) and (2) of a shareholder or former shareholder of an unlimited liability company continues even though the unlimited liability company transforms, and, in that event,

(a) a reference in subsections (1) and (2) to

(i) "shareholder" is deemed to be a reference to a person who was a shareholder of the unlimited liability company at the time it transformed, and

(ii) "former shareholder" is deemed to be a reference to a person who ceased to be a shareholder of the unlimited liability company before it transformed, and

(b) a reference in subsection (1) (a) or (b) or (2) (b) or (c) to "the company" is deemed to be a reference to the successor corporation.

(4) In subsection (3) and this subsection:

"successor corporation", in relation to an unlimited liability company, means any corporation that results from the company, or any of its successor corporations, transforming;

"transform", in relation to an unlimited liability company or any of its successor corporations, means to

(a) alter its notice of articles to become a limited company,

(b) continue into another jurisdiction, or

(c) amalgamate with another corporation.

The Law Society of British Columbia

Memo

To Benchers
From Deb Armour
Date November 28, 2012
Subject Chief Legal Officer Report

This memo reports on the Law Society of BC progress with the National Discipline Standards Pilot Project, the International Conference of Legal Regulators and the 2012 Discipline Administrators' Conference.

National Discipline Standards Pilot Project

As previously reported, in May of 2010 the Federation of Law Societies of Canada (FLSC) established a National Discipline Standards Project to develop high standards for the processing of complaints and discipline matters at all law societies. A Steering Committee was established which developed 23 standards. The FLSC approved a pilot project to test drive the standards with a view to making appropriate changes to them before they are adopted. The pilot was launched in April and is expected to last 2 years. All law societies in Canada are participating in the project with the exception of the Chambre des notaries du Québec.

The Law Society's progress as against the standards is captured in Attachment 1 to this memo. In summary, after making a number of improvements we are meeting most standards. Notably, 91% of complaints were closed within one year. There are some standards that we are not meeting. We are taking steps to improve in those areas or to provide feedback to the Steering Committee where we believe the standards should be changed. Those we are not meeting are:

- 75% of all hearings commence within 6 months of service of the citation
- 90% of all hearings commence within 12 months of service of the citation
- 90% of all hearing decisions are rendered within 60 days of the last date the panel hears submissions
- Where timeliness standards are not being met, all parties are advised of this, and of when it is estimated the citation, notice of hearing, hearing or decision will be complete and, except where privacy or other similar reasons make it inappropriate, all parties are given the reasons why the standard is not being met
- There is a lawyer directory available with status information, including discipline history and information on how to access more information about that history
- The recidivism rate is 25% or less.

International Conference of Legal Regulators

The first ever International Conference of Legal Regulators was held this year on September 27 and 28 in London. It was hosted by the Solicitors Regulation Authority (one of a number of legal regulators in the UK). Over 100 people attended from countries around the world. My counterparts from the law societies of Manitoba, Upper Canada and Nova Scotia as well as representatives from the FLSC presented at various sessions.

The goals of the conference were to:

1. allow attendees to share best practices
2. build better relationships among legal regulators
3. form a lasting network to share ideas on an ongoing basis.

Agenda items included:

- Regulating the changing legal market
- Proactive regulation
- Tools for monitoring standards
- Regulating law firms/entities (on which panel I spoke)
- Options when things go wrong
- Non-lawyer involvement in the delivery of legal services (Jonathan Herman, CEO of FLSC moderated
- Information regulators are able to share with one another.

This conference was heavily substantive and very worthwhile. The expectation is that it will become an annual conference.

2012 Discipline Administrators' Conference

Each year, a discipline administrators' conference (DAC) is held under the auspices of the FLSC. Senior staff involved in the various discipline functions at each of the Canadian law societies attend. This year, DAC was held in Regina October 24 – 26. Maureen Boyd, Andrea Brownstone, Sherelle Goodwin, Graeme Keirstead and I attended on behalf of the Law Society of BC. Approximately 60 of our counterparts attended from across Canada along with FLSC representatives. Panel discussions included such topics as:

- Multijurisdictional complaints
- Lawyer incompetence and capacity issues
- Conducting complex investigations
- Regulation of law firms

- National Discipline Standards project

Each of the BC attendees presented. In addition to the panels, each law society gave an update on developments during a roundtable discussion. This annual conference is invaluable for sharing best practices and promoting cooperative efforts amongst the law societies.

In addition to DAC, there is a meeting by conference call at least once a quarter attended by the senior person from each law society where a number of issues are discussed and determined. The broader discipline administrators group also communicates on an ad hoc basis by email (usually several times a week) sharing information and ideas. There is a very strong culture of collaboration and support amongst our members which also has the benefit of promoting uniformity among Canadian law societies. Lastly, the creation by the Federation of an intranet has assisted our members greatly in facilitating the exchange of information.

I am happy to answer questions on any of these topics.

ATTACHMENT 1

NATIONAL DISCIPLINE STANDARDS

LAW SOCIETY OF BC PROGRESS AS AT OCTOBER 2012

STANDARD		PROGRESS
TIMELINESS		
1.	Telephone inquiries: 75% of telephone inquiries are acknowledged within one business day and 100% within 2 business days.	**MET**
2.	Written complaints: 100% of written complaints are acknowledged in writing within three business days.	**MET**
3.	Timeline to close or refer complaint: 90% of all complaints are closed or referred for a disciplinary or remedial response within 12 months	**MET.** 91% of all complaints were closed or referred within 1 year as at Oct. 1, 2012
4.	Contact with complainant and lawyer: for every open complaint, there is contact with the complainant and member at least once every 90 days once the member has been notified to report on progress.	We have a process in place to meet this standard and do so in all cases except where it makes no sense. (e.g. waiting for Discipline Committee outcome in a few days before contacting complainant and member)
HEARINGS		
5.	Each citation or notice of hearing is issued and served upon the lawyer within 90 days of authorization.	**MET.** Rule 4-15 requires service within 45 days of authorization. This date is extended rarely in unusual circumstances e.g. unable to locate the respondent.
6.	75% of all hearings commence within 6 months of service of the citation.	**NOT MET.** For the 12 month period from April 1, 2011 to March 31, 2012, the hearing commenced within 6 months on 33% of those citations which were not rescinded (7 of 21).
7.	90% of all hearings commence within 12 months of service of the citation.	**NOT MET.** For the 12 month period from April 1, 2011 to March 31, 2012, the hearing commenced within 12 months on 80% of citations which were not rescinded (12 of 15)
8.	90% of all hearing decisions are rendered within 60 days of the last date the panel hears submissions.	**NOT MET.** Of the 14 discipline hearings that have concluded since the beginning of 2012, nine (64%) have met the standard.

STANDARD		PROGRESS
9.	Where any of standards 3 through 8 is not being met, all parties are advised of this, and of when it is estimated the citation, notice of hearing, hearing or decision will be complete and, except where privacy or other similar reasons make it inappropriate, all parties are given the reasons why the standard is not being met.	We are not currently doing this given concerns we have with this standard.
PUBLIC PARTICIPATION		
10.	There is public participation at every stage of discipline, i.e. on all hearing panels of three or more, at least one public representative; on the charging committee, at least one public representative.	**MET**
11.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	**MET**
TRANSPARENCY		
12.	Hearings are open to the public.	**MET.** Hearings are open to the public unless the panel exercises its discretion pursuant to Rule 5-6 to exclude some or all members of the public.
13.	Reasons are provided for any decision to close hearings.	**MET**
14.	Notices of hearings are published once the citation has been served.	**MET**
15.	Notices of hearing dates are published at least 60 days prior to the hearing, but if the citation is served less than 60 days before a hearing commences, publication takes place as soon thereafter as practical	**MET**
16.	There is an ability to share information about a lawyer who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer to disclose to all law societies of	Currently do not meet part of standard. Rule 2–15 requires the ED to provide all relevant information to a governing body that is investigating however no mention is made of protection of privilege. Accordingly, we may be producing information to other Law Societies even where there is no protection over

STANDARD		PROGRESS
	which he/she is a member that there is an investigation underway.	privileged information.
17.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	Arguably we do not meet part of standard. Rule 3-3(1) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency however 3-3 (4) indicates we can't share privileged material. We should probably not be sharing privileged material as there would not be an expectation of it being protected. We will seek a revision to this standard.
ACCESSIBILITY		
18.	A complaints help form is available to complainants.	**MET**
19.	Complainants may file their complaints electronically.	**MET**
20.	There is a lawyer directory available with status information, including discipline history and information on how to access more information about that history.	Currently most discipline information is available although historical information is not easy to access.
QUALITY		
21.	The recidivism rate is 25% or less.	Still to be determined.
QUALIFICATION AND TRAINING OF ADJUDICATORS		
22.	There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often that once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.	All hearing panellists are required to take a basic course on the principles of administrative law, Law Society procedures and decision-writing; all lawyer panellists are required to take an advanced workshop on decision writing; and all lawyer-Bencher panellists are required to take an advanced workshop on hearing skills.
23.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	**MET**

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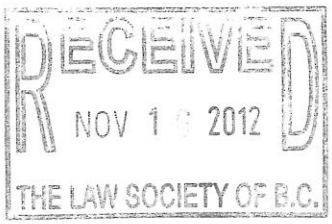

November 14, 2012

Timothy E. McGee
Executive Director
The Law Society of BC
845 Cambie Street
Vancouver, BC V6B 4Z9

Tim

Dear Mr. McGee,

On behalf of the directors and staff at Access Pro Bono, I extend a heartfelt thank you to the Law Society of BC for its continued sponsorship of our Pro Bono Going Public legal advice-a-thon. The annual legal service, awareness and fundraising event would not be possible without generous financial support from organizations like yours.

This year, over the course of four days in September, a record-breaking 109 volunteer lawyers provided free legal advice and assistance to 202 pre-booked and walk-up clients. As always, our clients were overwhelmingly appreciative of the opportunity to receive free legal advice at a time and place where they did not necessarily expect it.

The event also succeeded in raising considerable awareness of APB pro bono services and showcased the generosity BC's pro bono lawyers and their commitment to increasing access to justice. The event received widespread publicity in several media outlets, including CBC Radio, CFAX radio and several major newspapers.

Last and far from least, participating lawyers raised $41,250 in support of our direct pro bono services. Together with $22,000 in corporate sponsorships (including yours), the event raised $63,250 for the maintenance and expansion of our vital pro bono programs as we forge ahead into 2013.

Please visit our website at www.accessprobono.ca for more information on our pro bono programs, and our event website at www.advice-a-thon.ca/sponsors.php for acknowledgment of your support.

Our volunteers hard at work serving clients at the Vancouver event location.

Once again, we thank you for your continued support and we look forward to the possibility of partnering with you again for Pro Bono Going Public 2013.

Sincerely,

Jamie Maclaren
Executive Director

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2 October 2012

Mr. Tim McGee
CEO/Executive Director
Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9

Dear Tim,

I want to take this opportunity to thank you and the Law Society of British Columbia for the opportunity to work with you last year on the Pacific Legal Technology Conference (PLTC) held October 7 at the Vancouver Convention Centre.

Enclosed please find a cheque in the amount of $7,975.40, representing the LSBC's share of the net profits from the conference.

We look forward to working again with Dave Bilinsky and hope we can count on the LSBC's support as we plan for the next PLTC in 2013.

Please also pass along TLABC's thanks to the Benchers for supporting such a successful and worthwhile endeavour.

Sincerely,

Carla Terzariol
Executive Director/CEO

cc David Bilinsky, Practice Management Advisor, Law Society of BC

The Law Society of British Columbia

Memo

To: Benchers

From: The Complainants' Review Committee: Haydn Acheson, Chair; Ben Meisner, Vice-Chair; Ken Walker, Bencher; Lee Ongman, Bencher; Pinder Cheema, Ad-hoc Member; Thomas Fellhauer, Bencher

Date: November 21, 2012

Subject: Complainants' Review Committee

BACKGROUND

The Complainants' Review Committee ("CRC") was established in late 1988 under Rule 103 of the *Law Society Rules* (now Rule 3-8). The Benchers' Meeting Minutes of December 4 and 5, 1987 indicate that the purpose of the CRC was "to give unhappy complainants a procedure to have their complaints reviewed by an impartial body". The CRC carries out a review function to determine whether complaints have been closed at the staff level when they should not have been.

The CRC initially consisted of three members: an Appointed Bencher (Chair), a Bencher and a non-Bencher lawyer. Due to the increasing demand for reviews by the CRC over the years, the CRC was increased to six members in 1995. The Rules provide that at least one member of the CRC must be an appointed Bencher. Traditionally, the Chair and Vice Chair have been appointed Benchers.

Any complainant may apply to the CRC for a review if the file was closed under Rule 3-6 of the *Law Society Rules* after investigation of a complaint. When a file is closed under Rule 3-6, every closing letter sent to a complainant advises of their right to request a review by the CRC. If a file is closed under Rule 3-5 of the *Law Society Rules* the CRC does not have the jurisdiction to review it.

The role of the CRC is to determine whether an adequate investigation was conducted and whether the decision of the staff lawyer was appropriate in light of the information before them. The *Law Society Rules* require that the CRC be provided a copy of the entire file. Unlike other Committees, the CRC has the opportunity to see some of the 800-900 files that are closed each year at the staff level, and to obtain an insight into the types of complaints that, while important to the complainants, do not give rise to further Law Society action.

During 2012 CRC orientation, the Committee was provided information about the Practice Standards Committee and the Discipline Committee, to ensure they fully understood the mandates of those Committees.

The procedure governing the CRC is in Rule 3-9 of the *Law Society Rules*.

After review of the file the CRC can:

- make inquiries of the complainant, the lawyer or any other person (The purpose of an inquiry is to seek clarification on an issue, but not extend to investigating an issue);
- confirm the staff decision to take no further action;
- refer the complaint to the Practice Standards Committee; or
- refer the file to the Discipline Committee, with or without recommendation.

When the CRC process has concluded, the Chair sends a letter to the complainant and the lawyer advising of the decision. If the CRC decides to confirm the staff decision they advise the complainant that if they have remaining concerns about the Law Society's investigation of their complaint they may contact the Office of the Ombudsperson. The Ombudsperson is empowered by legislation to investigate complaints about regulatory bodies.

PROGRESS

In previous years the CRC held monthly reviews with agendas containing roughly 8-10 items. At the end of 2010 the CRC had a "backlog" of 49 files pending review, taking approximately 6 months for a review to occur. In 2011, the CRC eliminated the backlog of files by holding two meetings per month; to maintain the fairness and integrity of a file, the CRC set a goal to review files within a 2-3 month timeframe. The CRC cleared the backlog from 2010 in May of 2011 and maintained their target timeframe. The CRC advanced into 2012 having achieved their goal, without any files in the backlog. In 2012, the CRC decided to conduct their meetings reactively as file review requests were received as opposed to set meeting dates. Therefore if a large number of requests were received in any given month, two meetings were scheduled for the next month, rather than one. The CRC felt it was important to maintain the desired timeframe from the year before and successfully reviewed files within the timeframe. Below is a snapshot of the CRC statistics as of November from 2010, 2011 and 2012. The CRC has 3 reviews remaining for 2012 with 13 files scheduled for review before the end of the year. Therefore at year end the CRC will have reviewed 71 files with 0 files in the backlog.

STATISTICS

2010		2011		2012	
87	Total Files Reviewed	99	Total Files Reviewed	58	Total Files Reviewed
79	No Further Action	90	No Further Action	55	No Further Action
5	Additional Information Requested*	4	Additional Information Requested	2	Additional Information Requested**
0	DC Referrals	5	DC Referrals	2	DC Referrals
2	PSC Referrals	4	PSC Referrals	0	PSC Referrals
1	Other	0	Other	0	Other
49	Backlog	0	Backlog	0	Backlog

* After receiving and reviewing the additional information, the CRC ordered that no further action be taken.

** After receiving and reviewing the additional information, the CRC ordered that no further action be taken on one file and the other file is still awaiting information from the member to reconvene.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Inventory of Access to Legal Services Initiatives of the Law Societies of Canada

September 2012

INTRODUCTION

1. To take into account the different needs of different people, diverse groups of people and the broad array of legal problems they face, a variety of approaches to address gaps in access to legal services is needed. Law societies are engaged in a number of initiatives aimed at improving public access to legal services, ranging from those designed to prevent legal problems from arising, to those aimed at expanding knowledge and services for the self-represented, to those that increase access to legal assistance.

2. Access to legal services is a strategic priority of the Federation of Law Societies of Canada (FLSC). The FLSC and its member law societies are engaged in a variety of initiatives focused on promoting access to legal services as one of many ways to further the public interest mandate with which they are charged. The FLSC is an active member of the Chief Justice of Canada's National Action Committee on Access to Justice in Civil and Family Matters. This Committee facilitates national cooperation on access to justice issues across the spectrum of justice system actors and stakeholders in Canada.

3. This inventory outlines the activities that law societies across the country have underway or are contemplating to improve access to legal services for the Canadian public. The inventory is organized into the following categories:

- Self-help services
- Public legal education and information
- Advice from non-lawyers
- Summary advice, brief services and referrals
- Assessing legal needs
- Economic initiatives
- Unbundled legal services/limited scope retainers
- Prepaid legal insurance plans
- Legal Aid
- Reduced fees (Pro Bono and Low Bono)
- Alternative billing models
- Supply side issues (small and sole practitioners, rural and remote areas, cultural and linguistic issues)

4. In addition to the many activities outlined below, many member law societies are active in provincial access to justice committees that also include the spectrum of justice system actors, including government, the courts, public legal educators, legal aid bodies, and others. The Nova Scotia Barristers' Society, for example, is actively pursuing a coordinated provincial approach to access through the Nova Scotia Access to Justice Working Group whose members include the office of the Chief Justice, Nova Scotia Legal Aid, Court Services at the Department of Justice, the Public Prosecution Service, and the Canadian Bar Association. The Nova Scotia Access to Justice Working Group has developed an Access to Justice Inventory Database to provide a comprehensive understanding of the work that has already been done in the area of access to justice in Nova Scotia, to identify notable gaps in programming and services, and to bring clarity to the possible future direction for access to justice initiatives. The Law Society of Alberta is active on a similar provincial access to justice coordinating committee whose members include representatives of the government, the judiciary and others. The Law Society

of Manitoba is also active on the provincial Access Stakeholders Committee comprised of representatives from the Law Society of Manitoba, the Judiciary (Court of Queen's Bench and Provincial Courts), Manitoba Justice, the federal Department of Justice, Legal Aid Manitoba, the Legal Help Centre, the Manitoba Law Foundation, the Community Legal Education Association, the Manitoba Law Reform Commission, the Manitoba Bar Association, the Faculty of Law at the University of Manitoba and several client stakeholder groups (the Assembly of Manitoba Chiefs, The Manitoba Metis Federation, Manitoba Interfaith Immigration Council, and more).

INVENTORY

Self-help services

5. In the face of the growing numbers of unrepresented litigants expanding self-help services for individuals involved in the formal justice system has become one of the key priorities of the current access to legal services agenda in Canada.

LSBC The Law Society of British Columbia participated in the development and establishment in 2005 of the BC Supreme Court Self Help and Information Centre, which now forms part of the Justice Access Centre in Vancouver. The Centre provides self-help and legal information services for family and civil law matters.

LSA The Law Society of Alberta is working with Alberta Justice and the Alberta courts to find ways to enhance interpretation services available in court. This project includes efforts to offer courthouse services in languages other than English and French.

LSUC The Law Society of Upper Canada has provided ongoing consultation and support to Pro Bono Law Ontario (PBLO) and has amended its rules and bylaws to facilitate participation in PBLO projects. PBLO has been offering facilitated self-help services to unrepresented litigants for civil non-family matters since 2007 through a project called Law Help Ontario. Law Help Ontario provides plain language legal information, document assembly software to facilitate the completion of court forms, and summary advice. It has served almost 30,000 clients to date.

BdQ, CdN The Barreau du Québec and the Chambre des Notaires du Québec have partnered with the Quebec Minister of Justice in a pilot project to establish three community justice centres in Rimouski, Quebec and Montreal (other additional locations are currently being discussed). The community justice centres provide access to free legal information, a referral system and assistance filling out forms relating to the judicial process.

CdN The Chambre des Notaires du Québec has produced and made available on-line via YouTube, five short videos explaining legal topics based on questions frequently asked by the public.

BdQ — The *Fondation du Barreau du Québec* has published a number of guides to provide legal information and to assist self-represented litigants.

LSPEI — The Law Society of Prince Edward Island and the Law Foundation of PEI have been working with the Community Legal Information Association of PEI on a Self-Help Centre for lay litigants over the past number of years, including a feasibility study, pilot project and development of publications and support materials. The goal is to establish a physical presence in the province's main courthouse.

Public legal education and information ("PLEI")

6. Easy to find, easy to use information about legal issues is vitally important to providing access to justice. A large number of public legal education and information organizations across Canada are dedicated to providing this type of information. In addition, law societies and other legal organizations (such as the Canadian Bar Association) provide information about legal rights and how to access legal services. An array of public legal information initiatives is offered by a variety of organizations. These initiatives include the creation and distribution of printed legal guides and brochures (such as those produced by Community Legal Education Ontario, numerous law societies and public legal information organizations), workshops offered by legal clinics, legal information hotlines, legal information websites, and public legal information kiosks such as those in courthouses in a number of jurisdictions.

FLSC — The Federation of Law Societies of Canada manages the Canadian Legal Information Institute (CanLII), which provides Canadian law to the public free of charge. CanLII is funded through a levy on all licensees of all provincial and territorial law societies. CanLII provides free access to over 1 million documents, over 200 collections, and received nearly 7 million site visits. CanLII actively promotes and defends its mission to provide comprehensive and robust free access to legal information.

LSBC — The Law Society of British Columbia provides funding for the BC Courthouse Library. In 2012 this funding amounted to $180 per licensed lawyer. The Courthouse Library provides public legal information and was instrumental in designing CLICKLAW **http://www.clicklaw.bc.ca/.** The CLICKLAW site provides a wide variety of information to help the public solve legal problems, learn and teach the law, reform and research the law, navigate the justice system, and seek legal services.

LSA — The Law Society of Alberta is a significant funder of eleven courthouse law libraries, which are all open for use by the public. The libraries are governed cooperatively by the LSA, the Courts, and the library itself.

The LSA is also actively considering a number of initiatives relating to legal information.

LSS The Law Society of Saskatchewan Library provides online and in-person legal research resources for the public.

The LSS provides general support to the Public Legal Education Association of Saskatchewan and has a representative on the organization's Board of Directors.

The LSS recently restructured its website to provide more information to the public on common ethical concerns related to accessing legal services, including information to help self-represented litigants deal with lawyers representing other parties.

LSUC The Law Society of Upper Canada has produced a series of "Your Law" videos. These videos, available through the LSUC website as well as through the Your Law Series Channel on YouTube, provide legal information for the public in a number of practice areas and explain the roles of lawyers and paralegals. In the videos, leading practitioners provide information in the areas of personal injury, custody and child support, spousal support and property, real estate, and wills and estates.

The LSUC has also prepared and distributed brochures in English and French that provide information about LSUC services and retaining lawyers and paralegals. These are distributed to community centres, libraries, legal aid offices, etc.

The LSUC also runs an Equity Public Education Series in partnership with legal organizations, community groups, schools, universities, and governments. This series is designed to educate, promote awareness, and encourage discussion among members of the public on the legal challenges and opportunities for equity-seeking communities. The series also sometimes addresses the challenges specific to equity-seeking individuals working as legal professionals.

In addition, the LSUC launched the first phase of a unified family law information online portal in the summer of 2012. The Your Law: Family Law in Ontario website **(http://yourontariolaw.com/)** aggregates information on family law from the Ministry of the Attorney General, the Ontario Courts, Legal Aid Ontario, Community Legal Education Ontario, the Department of Justice, the LSUC and others. The first phase of the website offers information and resources on child custody and support. The website is designed as a centralized public information source to assist individuals in identifying and resolving their family law problems. The website also provides resources for self-represented litigants in family law disputes in Ontario.

BdQ, CdN The Barreau du Québec and the Chambre des Notaires du Québec have partnered with the federal and provincial justice ministers to finance the activities of *Éducaloi*, a legal information service aimed at helping members of the general public understand their rights and the justice system.

CdN For many years the the Chambre des Notaires du Québec has financed and organised a weekly public legal information television show called «Mêles-vous de vos affaires» that attracts around 65,000 viewers. In 2010 the Chambre launched **www.cdnq.tv** a dedicated website that archives all the previous TV shows by topic.

The Chambre has financed and provided legal support for the production of an extensive «Protégez-vous» magazine covering the various aspects of managing a succession.

BdQ The Barreau du Québec has produced a public legal information television show for over four years called “Le droit de savoir” on Canal Savoir and Télé-Québec **www.ledroitdesavoir.ca.** It provides legal information to the general public.

The Barreau with CIBL 101.5 FM Radio-Montreal produces a series of three to four radio shows per year informing the public about legal rights and obligations.

The Barreau also publishes a series of articles providing legal information for the general public in partnership with Protégez-vous, a non-profit consumer protection and consumer information organization.

The Barreau has published a “plain language” guide called *Le langage clair: Un outil indispensable à l’avocat* that translates commonly used legal expressions into plain language. The content of the guide was also used to create 13 short videos providing information in plain language for the public about common legal expressions. These videos are available on the Barreau’s website.

The Barreau provides funding to the Centre de justice de proximité, a non-profit organization that provides legal information, helps guide individuals through the justice system, and helps them access legal services.

LSPEI The Law Society of Prince Edward Island provides funding to the PEI Community Legal Information Association to help fund the production of a broad range of public legal information material including brochures, videos, and public information sessions.

NSBS The Nova Scotia Barristers’ Society launched a comprehensive family law information website in spring 2012. The site was created and launched in cooperation with the Nova Scotia Department of Justice, the judiciary, the Legal Information Society of Nova Scotia, Nova Scotia Legal Aid, the Nova Scotia Department of Community Services, the Canadian Bar Association - Nova Scotia, and the Halifax Capital District Health Authority-Mental Health Program. The site is called Family Law Nova Scotia **(http://www.nsfamilylaw.ca/)** and it offers the public comprehensive legal information including the services available for family law and help navigating the institutional process relating to family law issues in the province. The goal of the website is to help the public understand family law issues and provide tools to navigate the available options to solve their family law problem.

In addition, the Racial Equity Committee of the NSBS has been collaborating with the Legal Information Society of Nova Scotia to create accessible information for the public on Aboriginal people and the law. The content or availability of services are developed based on consultations with racialized communities and are designed to target legal needs identified by these communities.

The NSBS has also provided eight legal information sessions at the Immigrant Settlement and Integration Services (ISIS) on a wide variety of legal topics and has, on occasion, also been able to provide ongoing summary advice to ISIS clients on an as needed basis.

LSNL The Law Society of Newfoundland and Labrador liaises with the Public Legal Information Association of Newfoundland and Labrador to provide general support where needed on issues related to access to justice.

The LSNL also operates law libraries that provide free access to legal information and legal assistance to the public. A significant portion of the funding for these law libraries comes from the general fees paid by licensees of the LSNL.

LSY The Law Society of Yukon recently engaged in lobbying activities with the territorial government to request that public funding levels for the Yukon Public Law Library not be significantly reduced. The government funded Yukon Public Law Library provides free legal information to the public.

The LSY is considering supporting the the Yukon Public Legal Education Association to produce legal information for the public concerning what to expect when hiring a lawyer, what standard retainer agreements mean, and what to do when a lawyer-client relationship sours. This item is currently on the LSY's agenda of items to pursue.

LSNWT The Law Society of the Northwest Territories provides public legal information on its website with basic information about criminal law and procedure, real estate transactions, seeking legal services, and information about navigating the court system. The LSNWT is looking to expand the volume of public legal information it currently provides.

LSNU The Law Society of Nunavut will soon be launching a toll-free Inuktitut language legal information phone line. Starting in autumn 2012, callers who speak Inuktitut will be able to have questions answered relating to general legal information, referrals, help navigating the justice system, and lawyer discipline matters.

Advice from Non-Lawyers

7. It has been suggested that non-lawyers can play a crucial role in facilitating access to legal services for individuals in the low and middle income demographics. The literature suggests that non-lawyers and non-paralegals such as trained staff and volunteers from community organizations may be able to provide valuable and much needed legal advice. A number of law societies have begun to examine the feasibility of easing restrictions on the provision of legal services to permit non-lawyers to provide a greater range of services.

LSBC In October 2010 the Benchers of the Law Society of British Columbia approved the Delivery of Legal Services Task Force report. The report recommends increasing access to justice by increasing the permitted duties articled students and lawyer supervised paralegals can perform. The current status of the work is as follows:

- In July 2012 the LSBC Benchers finalized the changes to the *Professional Conduct Handbook* and LSBC Rules that will permit paralegals to provide legal advice and appear in court or before a tribunal, as permitted by the court or tribunal. Paralegals are subject to lawyer supervision. When the *Code of Professional Conduct for British Columbia* takes effect January 1, 2013, paralegals will also be permitted to give and receive undertakings, subject to the requirements of the *Code.*

- The LSBC is working with the Supreme Court of British Columbia and the British Columbia Provincial Court to launch family law pilot projects in each court. Each pilot project will allow paralegals to make certain types of procedural appearances in family law matters. The Supreme Court pilot is scheduled to launch January 2013 and run for two years. The terms of the Provincial Pilot are being discussed.

LSA The Law Society of Alberta is exploring opening up the legal services market to expand the range of legal services non-lawyers may provide. The LSA is working on clarifying the definition of the “practice of law” to expand the services non-lawyers are permitted to offer.

The LSA undertook a study of the unregulated paralegal industry in Alberta and discovered groups underserved by lawyers in the province are also underserved by paralegals; specifically family law clients and persons living in poverty. As a result, in cooperation with Legal Aid Alberta and Pro Bono Law Alberta, initiatives to increase paralegal use in legal clinics are now underway.

In addition, the LSA is working on a program that will increase the court work that law students working through Student Legal Services can do on family law cases, including limited participation in Queen’s Bench matters.

LSM The Law Society of Manitoba is exploring an initiative that would involve accrediting training programs for paralegals and expanding the scope of practice that paralegals who go through the programs would be permitted to engage in under the supervision of lawyers.

LSUC On June 28, 2012, the Law Society of Upper Canada presented its Five Year Report on Paralegal Regulation to the Attorney General of Ontario and then to the public. The report is available on the LSUC website. The LSUC consulted with the public, paralegals, lawyers, and the courts through the course of the review. The review looked at the fairness of the LSUC's paralegal regulatory scheme. It also examined the effect that regulation has had on licensed paralegals and the public who have used their services. The report found that the public has benefited from paralegal regulation through increased consumer protection and through the maintenance of access to legal services through paralegals.

NSBS The Nova Scotia Barristers' Society is in discussions with Nova Scotia Legal Aid and the Nova Scotia Department of Justice in order to facilitate greater use of paralegals in court.

Summary Advice, Brief Services and Referrals

8. Summary advice, brief services and referrals by paralegals and lawyers that fall short of full representation are another way to facilitate the delivery of legal information and advice at little or no cost to the client.

LSA The Law Society of Alberta funds the operation of a lawyer referral program designed to assist clients in finding a lawyer who matches their requirements.

LSM *Legal Help Centre:* This is a multidisciplinary clinic operated by students from several disciplines to provide free legal advice and referrals (under the supervision of volunteer lawyers). The Law Society of Manitoba has provided a deductible waiver on insurance claims and fee waivers for retired lawyers who volunteer at the clinic.

Law Phone-In Program: This is a program that provides summary legal advice over the telephone. It is funded in part by an annual grant from the LSM.

Lawyer Referral Service: The LSM founded and continues to provide financial support for a lawyer referral service through which individuals are referred to lawyers practising in the area of law with which the individual needs assistance. Lawyers on the referral roster agree to provide referred clients with 30 minutes of free advice. This program is now run by the Community Legal Education Association.

LSUC

The Law Society of Upper Canada has offered a lawyer referral service to members of the public since 1970. The service was expanded in May 2012 to include referrals to lawyers and paralegals and is now called the LSUC Referral Service. This free telephone service provides the public with a referral for a 30-minute free consultation with participating lawyers and paralegals who practise in their geographic area and in the field of law relevant to their issue. If a member of the public calls the LSUC Client Service Centre, which includes the referral service, and speaks a language other than English or French the LSUC offers services in a large number of other languages and pays for the multilingual service provision on a per-call basis.

Through its Client Service Centre (CSC), the LSUC also provides services by telephone, facsimile and email to respond to public inquiries and, where appropriate, provides contact information for Legal Aid Ontario, Pro Bono Law Ontario, and other service and information providers. In 2011, the CSC received 673,794 enquiries, including 161,855 calls to the Lawyer Referral Service.

CdN

The Chambre des Notaires du Québec maintains a call centre – *1-800-Notaire* - staffed with 13 part time professionals answering calls from the public. Although they don't provide legal advice they offer general legal information and direct the caller toward the organisation best able to help the caller if necessary. The centre currently handles about 300 calls a day or around 70,000 calls a year.

BdQ

The Barreau du Québec sponsors, supports or promotes a number of summary legal advice services including regional lawyer referral services, legal advice hotlines (organized and staffed by members of the Young Bar Association of Montreal) and the Barreau du Montreal's annual 4-day public legal information forum, *Salon Visez Droit,* where members of the public can obtain legal information and advice on a wide range of subjects.

The Barreau provides funding for a lawyer referral service that provides a 30 minute consultation with a lawyer for $30.

The Barreau also provides a telephone hotline providing free legal advice to people who have been arrested.

In October 2011 the Barreau launched a new phone hotline in cooperation with the Régie du logement, the Quebec landlord and tenant board. Lawyers staff the line and answer questions from callers free of charge.

LSNB The Law Society of New Brunswick is assisting the University of New Brunswick and the Université de Moncton with the implementation of law student legal clinic programs. Students will be supervised by lawyers and will obtain course credits for their legal services work. These clinical legal education courses have a target date of September 2013.

The LSNB is developing a Lawyer Referral Service and intends to launch this system by 2013-2014.

LSPEI The Law Society of Prince Edward Island provides annual funding to the Community Legal Information Association for a Lawyer Referral Service whereby a member of the public can receive 45 minutes of legal advice from a registered lawyer for $25.

LSY The Law Society of Yukon operates a lawyer referral service where members of the public can pay $30 for a 30 minute consultation with a participating lawyer in order to determine if they should retain a lawyer for their legal issue. The LSY asks every new licensee if they wish to participate in the lawyer referral service.

Assessing Legal Needs

9. Assessing legal needs involves gathering data from the public in order to determine legal needs, to determine how those needs are being met, to identify gaps, and to suggest strategies for bridging those gaps.

LSBC The Law Society of British Columbia commissioned Ipsos Reid to conduct a survey to gather information on how people solve their legal problems. This survey was published in 2009 and is entitled *Legal Services in BC*. This survey formed the basis of the 2009 Report to the Benchers of the LSBC Delivery of Legal Services Task Force.

LSUC In 2008 the Law Society of Upper Canada, Legal Aid Ontario, and Pro Bono Law Ontario agreed to undertake a joint research initiative called the Ontario Civil Legal Needs Project. The goal of the project is to build a detailed understanding of the civil legal needs of low and middle income Ontarians and to uncover strategies to better meet those needs. In 2010, the first report entitled, *Listening to Ontarians*, was released. It was based on a phone survey, a series of focus groups, and a mapping of the range of available services. In 2011, the second report, *The Geography of Civil Legal Services in Ontario*, was released. It compares and analyzes the demography of the population of Ontario with the distribution of legal services. Both reports, as well as the quantitative data reports from both, are available on the LSUC website.

NSBS The Nova Scotia legislature amended the *Legal Profession Act* in 2010 and changes included an addition to the purpose clause which now requires the Nova Scotia Barristers' Society to: seek to improve the administration of justice in the Province by (i) regularly consulting with organizations and communities in the Province having an interest in the NSBS' purpose, including, but not limited to, organizations and communities reflecting the economic, ethnic, racial, sexual and linguistic diversity of the Province, and (ii) engaging in such other relevant activities as approved by the Council (section (4)(d)). This amended purpose clause has resulted in the NSBS undertaking regular consultations concerning access to legal services with a specific focus on marginalized communities. These consultations include the Benchers in the Community Program where NSBS leaders consult directly on access issues with specific equity seeking groups for a full day each year.

The Gender Equity committee of the NSBS is in the midst of a series of consultations with women's' groups and marginalized women's' groups to determine what their access to justice issues are.

LSNU In 2011, the Law Society of Nunavut began a territorial access to justice committee with a number of stakeholders including: the Public Prosecution Service of Canada, the Government of Nunavut, Nunavut Legal Aid, private practitioners and Inuit organizations. The committee is in the process of preparing a request for proposal (RFP) for consultants, academics or others to undertake a study of current unmet legal services and access to justice needs in Nunavut.

Economic Initiatives

Unbundled Legal Services/Limited Scope Retainers

10. Unbundled legal services or limited scope retainers permit lawyers to provide limited representation to a client by taking on only part of the client's legal matter (e.g. drafting a statement of claim, but not representing the client further in the matter). The main impetus for unbundling is its potential to lower the cost of obtaining legal services. It creates a halfway house between the unrepresented and the represented.

FLSC The Federation of Law Societies of Canada's Standing Committee on Access to Legal Services is actively considering issues related to limited scope retainers. Based on this work, in December 2011, Council of the FLSC asked the Standing Committee on the Model Code of Professional Conduct to review the FLSC Model Code to remove any barriers to providing limited scope legal services. The Model Code committee sent draft rules out to model code liaisons in each law society over the summer of 2012 for feedback and is currently finalizing draft rules in the Code to promote unbundled legal services. The Access to Legal Services committee will continue to consider ways to promote unbundled legal services following the completion of the Mode Code work.

LSBC In 2008 the Law Society of British Columbia adopted the Unbundling of Legal Services Task Force report and limited scope retainers. This resulted in some amendments to the *Professional Conduct Handbook* to facilitate the delivery of unbundled services, including modification of the conflicts of interest rules to facilitate providing pro bono services at clinic and court-based programs.

LSA The Law Society of Alberta is exploring alternative delivery models, including limited scope retainers.

Under the auspices of an Access to Legal Services Steering Committee (comprised of representatives from the LSA, the Government of Alberta, and the Alberta Courts) the LSA is supporting limited scope retainer initiatives in general. One specific initiative of interest is the Family Law Office of Legal Aid, which uses limited scope retainers and paralegals to deliver legal services under the supervision of lawyers.

LSS The Law Society of Saskatchewan has also been working on the issue of unbundling of legal services and will be considering a report on the issue at upcoming Convocations.

LSUC In September 2011, the Law Society of Upper Canada approved amendments to its Rules of Professional Conduct and the Paralegal Rules of Conduct to provide guidance to lawyers and paralegals who provide legal services under limited scope retainers. The amendments include a general requirement for a written confirmation of the limited scope retainer. An LSUC working group will continue to consult with legal organizations and institutions to identify the key procedural issues associated with limited scope services in litigation and changes that may be appropriate to better facilitate such retainers.

The LSUC is also represented on Pro Bono Law Ontario's Unbundling Pilot Project Steering Committee. The Unbundling Pilot Project will make limited scope retainers available to eligible self-represented litigants who require more assistance than they are able to access through Law Help Ontario's walk-in services. The Steering Committee has created risk-management materials and a training module and will review the results of the pilot project, which launched in autumn 2011.

BdQ The Barreau de Montréal, a section of the Barreau du Québec, published a guide for lawyers on unbundled or limited scope legal services in 2011. This guide is aimed at providing guidance and promoting the use of unbundled legal services in Quebec.

NSBS The Nova Scotia Barristers' Society's Code of Conduct Committee is studying unbundled legal services and plans to recommend changes to the Code in November 2012.

Prepaid Legal Insurance Plans

11. Prepaid legal insurance plans provide insurance to cover either certain unforeseen legal expenses encountered by a subscriber, or foreseen events such as real estate transactions or the preparation of a will. Certain plans may also include a specific referral to a lawyer or a law firm to represent subscribers. Very common in many European countries (approximately 75% of French and German households and 90% of Swedish households) and gaining ground in the United States (approximately 30% of American households), legal expense insurance has not yet caught on to the same extent in Canada. Two notable Canadian exceptions are the legal expense insurance plans provided by the Canadian Auto Workers and the Power Workers Union for their members. These plans cover a wide range of legal matters including family law matters.

FLSC The Federation of Law Societies of Canada's access to legal services committee is currently considering methods for promoting legal expense insurance and legal service plans.

LSUC The Law Society of Upper Canada provides a brief explanation of legal expense insurance through the Access to Legal Services webpage on its website. The site also provides a link to the external website of DAS Canada, Canada's only mono-line legal expense insurance provider, which has been licensed to sell policies since July 2010.

BdQ The Barreau du Québec has been actively promoting legal expense insurance in Quebec since 1998. By 2009, an estimated 225,000 people in Quebec had legal expense insurance coverage (at a cost of $48-$100 per year). Quebec is leading this initiative in Canada. The Barreau has invested over $2 million dollars in promoting legal expense insurance to the public, to insurance companies, and to insurance vendors in Quebec. The Barreau has a phone hotline and website (**http://www.assurancejuridique.ca/**) offering information and answering questions from the public about legal expense insurance.

NSBS The Nova Scotia Barristers' Society has had discussions with a large provider of legal expense insurance. The NSBS plans to provide information to lawyers about legal expense insurance plans that are currently available.

Legal Aid

12. The funding of legal services through an adequately resourced public legal aid plan is essential to improving access to legal services.

LSBC The Law Society of British Columbia is one of the funders of the Public Commission on Legal Aid that toured British Columbia to get feedback from the public on ways to improve the delivery of legal aid in the province. In March 2011 the Commission issued a report entitled *Foundation for Change*, *Report of the Public Commission on Legal Aid in British Columbia*.

LSA The Law Society of Alberta is a signatory to the Legal Aid Governance Agreement (along with Alberta Justice and Legal Aid Alberta) and the Alberta Benchers have recently approved an amended and extended agreement which the LSA expects will enhance the delivery of legal aid services in Alberta. The LSA is also working on other initiatives to the same end.

The LSA participated in meetings with Alberta Justice (as well as members of other government departments with responsibility for social service policies and programs) with a view to supporting an appropriate level of funding for Legal Aid Alberta. This work was guided by an LSA-sponsored stakeholder committee of lawyers (prosecutors, criminal defence, and family law counsel), judges, legal aid management, and social service delivery managers.

BdQ Through a public and government advocacy campaign, the Barreau du Québec actively promotes access to legal aid services on an ongoing basis.

Reduced Fees (Pro Bono and Low Bono)

13. While most are familiar with the concept of pro bono services, where legal services are provided for free, “low bono” refers to the provision of legal services by lawyers and other legal professionals to low and middle income clients at reduced fees. These kinds of initiatives are specifically designed for clients who do not qualify for legal aid but cannot afford standard legal service fees.

LSBC *Creation of Pro Bono Law BC:* In the fall of 1998, the Law Society of British Columbia joined with the Canadian Bar Association to form a joint pro bono committee to develop and encourage programs for the delivery of *pro bono* legal services within the province of British Columbia. That initiative led to the establishment of an independent organization called Pro Bono Law of BC, which last year merged with the Western Society to Access Justice to form Access Pro Bono.

Funding pro bono legal services: Since 2006, one percent of fees from LSBC licensees are allocated to fund pro bono legal service providers in British Columbia. The monies are administered by the Law Foundation of British Columbia.

Insurance exemption for retired licensees offering pro bono legal services: In 2002, a program was put in place through the British Columbia Lawyers' Insurance Fund to provide insurance coverage at no cost for retired, non-practising or in-house lawyers (lawyers, in other words, who weren't otherwise insured) who were prepared to provide pro bono legal services through a pro bono legal services provider approved by the LSBC. Lawyers providing these services also avoid the usual financial consequences of a paid claim, if one arises.

LSA

The Law Society of Alberta is working to promote the delivery of pro bono legal services as a complement to, not a substitute for a properly funded legal aid system. The main element of this strategy is the LSA's support for Pro Bono Law Alberta, an independent organization that manages and enhances the delivery of pro bono legal services in Alberta (but does not deliver actual services). PBLA is piloting a new service that extends an existing program that matches non-profit organizations with lawyers; the extension will match individuals to lawyers willing to provide pro bono services. The LSA's Pro Bono Task Force is examining the nature and extent of the LSA's support, as well as other possible pro bono initiatives outside PBLA.

The LSA continues to support Pro Bono Law Alberta, and recently developed a pro bono law funding policy that affirms the LSA's continuing commitment to PBLA. The LSA has supported a pilot project, the Volunteer Lawyer Service program, which aims to match individual volunteer lawyers with low income clients in need of legal services.

LSS

In 2008 the Law Society of Saskatchewan incorporated Pro Bono Law Saskatchewan following the recommendations of a multi-party access to justice committee comprised of representatives of the LSS, the judiciary, legal aid, and the Saskatchewan Department of Justice. The LSS also provides office staff and administrative support to that organization. Pro Bono Law Saskatchewan has opened new clinics and increased participation from the Bar. The LSS has also introduced a levy of $15 on LSS license fees to support Pro Bono Law Saskatchewan.

The LSS has amended its insurance policy to waive any deductible and to provide coverage to otherwise uninsured lawyers.

LSUC

The Law Society of Upper Canada's Rules of Professional Conduct enable lawyers to provide *pro bono* summary legal services of limited duration to a client, without requiring the lawyer to conduct a conflict of interest search. This exception is available to lawyers who volunteer through Pro Bono Law Ontario's (PBLO) Law Help Ontario program for matters in the Superior Court of Justice or in Small Claims Court. LSUC By-laws also exempt lawyers in non-practising fee categories and retired lawyers who wish to provide *pro bono* services through PBLO from the requirement to pay practising fees.

The LSUC supports external access to justice and pro bono initiatives and organizations, including Pro Bono Law Ontario, the Law Commission of Ontario and the Ontario Justice Education Network.

BdQ The Barreau du Québec was involved in the creation of and provides ongoing financial support to *Pro Bono Québec*, an organization that coordinates all initiatives taken by lawyers in the area of *pro bono* legal services throughout the province.

NSBS The Nova Scotia Barristers' Society sits on the advisory committee of a three year pilot project to provide pro bono legal services. The project is being run by the Legal Information Society of Nova Scotia. The NSBS advises on accessing lawyers willing to do pro bono work and facilitates communication about the program with the legal profession.

LSNL The Law Society of Newfoundland and Labrador liaises with the Canadian Bar Association to provide general support on access to justice related issues. The LSNL recently provided support by communicating to licensed practitioners the launch of a Canadian Bar Association Newfoundland & Labrador Branch pro bono pilot project.

Alternative Billing Models

14. The billable-hours model is the norm for most lawyers and the literature suggests that this creates challenges for clients who face uncertainty about the anticipated costs of legal services and potentially extremely high fees. It has also been noted that the system may create undesirable incentives for lawyers to protract cases. Some of the alternatives to the billable hours model include competitive tendering, fixed tariff billing and commoditization of legal services.

LSM The Law Society of Manitoba has established the Family Law Access Centre, currently being run as a pilot project, to bridge the gap between Legal Aid and those able to afford legal services. The LSM recruited a panel of lawyers willing to provide family law services at a reduced rate to low and middle income people in exchange for the LSM guaranteeing the payments. Eligible clients pay LSM a monthly amount they can afford.

Supply Side Issues (Small and Sole Practitioners, Rural and Remote Areas, Cultural and Linguistic Issues)

15. Maintaining the supply of small firm and sole practitioners and practitioners in rural and remote areas is critical to meeting the legal service needs of low and middle income Canadians. The evidence suggests that the number of small firm and sole practitioners is shrinking in many geographic and practice areas. Moreover, linguistic minority populations continue to experience difficulties finding lawyers who speak their language. There has also been a substantial decline in lawyers participating in the provision of legal aid.

16. Lawyers in rural and remote areas are facing growing challenges in the form of large service areas, isolated clients, a lack of public awareness of their services and difficulty in recruiting staff. For clients, the most significant obstacle to obtaining legal service is distance. A number of innovations and solutions aimed at increasing the legal services available in rural and remote areas have been identified in the literature. These include: offering incentives or supports to the legal professionals who practice in rural and remote communities such as support for operating or facility costs, free access to continuing legal education, and loan forgiveness programs; developing urban-rural partnerships through which urban lawyers provide pro bono services to rural clients, using rural Legal Aid offices, charities, or community legal services providers as contact points; organizing law students to provide legal services in under-served areas; and promoting articling opportunities for law students in under-served communities.

17. The literature also suggests that technological innovations may help to bridge the gap between clients and legal service providers in rural and remote areas.

LSBC The Law Society of British Columbia is a co-funder with the Canadian Bar Association – BC Branch and the Law Foundation of BC of the Rural Education and Access to Lawyers Initiative ("REAL"). REAL seeks to place summer law students in rural and small communities. The goal is to generate an interest in young lawyers moving to these communities to practice law. As of August 2012 the REAL program has placed 13 summer students in rural and small communities throughout British Columbia.

LSA The Law Society of Alberta provides online facilities for an independent pilot project of its Equity Ombudsperson called *SoloNet*. *SoloNet* is a confidential forum for lawyers who are sole practitioners or working in remote locations in Alberta to connect, obtain practice advice and other resources, share information, pose questions, and offer advice.

The LSA, through its Retention and Re-engagement Task Force, is working on other policies and programs to assist rural practitioners and smaller law firms to continue providing service to their clients.

In addition, with funding from the Alberta Government, the LSA is studying ways to help foreign trained students who have completed the Federation of Law Societies of Canada's National Committee on Accreditation process to become lawyers. One of the goals of the project is to increase the number of lawyers with the linguistic and cultural skills needed by Alberta's immigrant communities.

LSS The Law Society of Saskatchewan has established a committee to review issues involving the changing demographics of the legal profession in Saskatchewan and the impact these changes will have on the delivery of legal services. The LSS committee will hold several town hall meetings with licensees from rural bar associations over the next year to discuss these issues.

The LSS has also established the Practice Review Program to provide practice management assistance to new solo practitioners and is exploring other initiatives, such as an online forum, to further assist solo and rural practitioners.

LSM The Law Society of Manitoba, the University of Manitoba Faculty of Law, and the Manitoba Branch of the Canadian Bar Association have partnered to create additional spaces at law school for students from under-serviced communities. The LSM provides forgivable loans of up to $25,000/year for students from those communities. Loans are forgiven at a rate of 20% a year for each year the student returns to practice in their home community.

The LSM has established a locum registry and a locum support structure to promote and encourage legal practice coverage in under-serviced communities.

LSUC In 2005 the Law Society of Upper Canada released the Sole Practitioner and Small Firm Task Force Report that included important research findings about the nature of sole and small firm practice in Ontario, the pressures operating on lawyers in this area and the implications of these pressures for access to justice for individual Ontarians. The report led the LSUC to increase operational supports to sole and small firm practitioners to increase their viability and success.

The LSUC's Professional Development and Competence department provides support for sole and small firm practitioners through on-line resources tailored to their needs. These resources include "how to" briefs, a practice management helpline for lawyers and paralegals, and ongoing practice guides on a range of practice management subjects. The LSUC also maintains a Contract Lawyers' Registry where lawyers can register for locum opportunities and lawyers needing short-term or flexible assistance can find available candidates.

Since 2006, the LSUC and the Ontario Bar Association have hosted an annual Solo and Small Firm Conference and Expo. These events enable participants to explore issues relevant to the practice of a small firm lawyer or sole practitioner and qualify participants for the LSUC's mandatory Continuing Professional Development (CPD) substantive law and professionalism credit hours.

In March 2009 the LSUC launched a three-year pilot parental leave program, the Parental Leave Assistance Program (PLAP), to enable lawyers to maintain their practice after the birth or adoption of a child. The program was developed in recognition of the fact that sole practitioners and lawyers in small firms have little or no access to parental leave benefits. The PLAP provides $750 a week to eligible lawyers for up to twelve weeks (maximum $9,000 per leave, per family unit) to cover, among other things, expenses associated with maintaining their practice during a maternity, parental or adoption leave.

LSNB The Law Society of New Brunswick has committed to establishing a task force to examine the possibility of using video conference technology to improve access to legal services, e.g. by providing facilities for individuals in remote areas to obtain legal services via video conference. The target date for implementation is 2014.

LSNL The Law Society of Newfoundland and Labrador is looking into the use of video-conferencing to enhance their ability to deliver quality continuing legal education programs across the province. The goal is to alleviate some of the disadvantages faced by rural practitioners.

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 787 *, Approved and Ordered* NOV 22 2012

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective January 1, 2013, the following provisions of the *Legal Profession Amendment Act, 2012*, S.B.C. 2012, c. 16, are brought into force:

(a) sections 1 (a) and (e), 3, 4, 20, 29, 31 (b) and (c), 33, 34, 35 (a), 36 (a) and (c) to (g), 37 and 45 (b);

(b) section 45 (d) to the extent that it repeals and replaces section 87 (4) and (5) of the *Legal Profession Act*, S.B.C. 1998, c. 9;

(c) section 50.

DEPOSITED

November 23, 2012

B.C. REG. 339/2012

Minister of Justice and Attorney General

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Legal Profession Amendment Act, 2012*, S.B.C. 2012, c. 16, s. 52

Other:

November 1, 2012

R/946/2012/17