The Law Society of British Columbia

Agenda

Benchers

Date: Saturday, June 15, 2013

Time: **8:00 am** Hot buffet breakfast
9:00 am Call to order
11:30 am Adjourn

Location: Wickaninnish Conference Centre, Ground Floor, Tin Wis Resort, Tofino, BC

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:

Consent agenda 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).

The Law Society of British Columbia

Agenda

Item	Topic	Time (min)	Speaker	Materials	Action
DISCUSSION/DECISION					
1	Consent Agenda • Draft minutes of the regular and *in camera* sessions of the last meeting • Appointment to Vancouver Airport Authority Board of Directors • Rules Amendments Implementing Benchers' Decision to Approve Credentials Committee Recommendation for Temporary Mobility of Foreign Lawyers	1	President	pg. 1100 pg. 1200 pg. 1300	Adoption Decision Approval
2	Remarks by Hon. Robert Bauman, Chief Justice of the Supreme Court of BC	15	Chief Justice Bauman		Briefing

The Law Society of British Columbia

Agenda

Item	Topic	Time (min)	Speaker	Materials	Action
3	Selection of Benchers' Nominee for 2014 Second Vice-President	5	President		Acclamation or Call for Election
REPORTS					
4	Report from the Governance Committee: Mid-Year Update	30	Jan Lindsay, QC as Co-Chair	pg. 4000	Briefing
5	2012-2014 Strategic Plan Implementation Update	5	President/CEO		Information
6	President's Report	15	President		Briefing

The Law Society of British Columbia

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Item	Topic	Time (min)	Speaker	Materials	Action
7	CEO's Report	15	CEO	*(To be circulated electronically before the meeting)*	Briefing
8	Federation of Law Societies of Canada Executive Update FLSC Council Update	30	Gerald Tremblay, QC and Jonathan Herman Gavin Hume, QC		Briefing Briefing
9	Report on Outstanding Hearing & Review Reports	5	President	(*To be circulated at the meeting*)	Briefing
FOR INFORMATION ONLY					
10	Preliminary Review of the New Composition of Hearing Panels			pg. 10000	Information
11	*Demographics of the Profession* (Article in forthcoming Benchers' Bulletin)			pg. 11000	Information

The Law Society of British Columbia

Agenda

Item	Topic	Time (min)	Speaker	Materials	Action
IN CAMERA					
12	*In camera* • Bencher concerns • Other business	15	Benchers President/CEO		Discussion/Decision

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, May 10, 2013

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

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

Absent:
Jan Lindsay, QC
Catherine Sas, QC

Staff Present:
Tim McGee
Adam Whitcombe
Alan Treleaven
Andrea Hilland
Bill McIntosh
Deborah Armour
Jeanette McPhee
Jeffrey Hoskins, QC
Lance Cooke
Robyn Crisanti
Su Forbes, QC

Guests: Dr. Jeremy Schmidt, Faculty of Law, University of BC
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
Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC
Anne Chopra, Equity Ombudsperson
Dean Crawford, Vice-President, CBABC
Donna Greschner, Dean, Faculty of Law, University of Victoria
Gavin Hume, QC, the Law Society's Representative on the Council of the Federation of Law Societies of Canada
Marc Kazimirski, President, Trial Lawyers Association of BC
Jamie Maclaren, Executive Director, Access Pro Bono
Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Ron Friesen, Continuing Legal Education Society of BC
Yves Moisan, President, BC Paralegal Association

1. CONSENT AGENDA

a. Minutes

The regular and *in camera* minutes of the meeting held on April 5, 2013 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

- **Selection of Recipient of the 2013 Law Society Aboriginal Scholarship**

BE IT RESOLVED to ratify the recommendation of the Credentials Committee to award the 2013 Law Society Aboriginal Scholarship to Robert J. Clifford, and to name Karen L. Whonnock as runner-up.

- **Selection of Recipient of the 2013 Law Society Scholarship**

BE IT RESOLVED to ratify the recommendation of the Credentials Committee to award the 2013 Law Society Aboriginal Scholarship to Kathryn Thomson, and to name Megan Kammerer as runner-up.

- **Role of Tribunal Counsel in Law Society Tribunals**

- *BE IT RESOLVED to approve the memorandum by Mr. Hoskins (page 1400 of the meeting materials and Appendix 1 to these minutes) regarding the provision of assistance to hearing panels by the Law Society's Tribunal Counsel.*

REGULAR AGENDA – for Discussion and Decision

2. Composition of Review Boards

Mr. Vertlieb confirmed that two issues are being brought to the Benchers for discussion and decision, with recommendations from the Executive Committee for determining:

- the size and composition of a review board

- a pre-condition for sitting as a member of a review board

Mr. Hoskins provided background, explaining that following recent amendments to the *Legal Profession Act* and the Law Society Rules, Bencher reviews of hearing panel decisions are to be replaced by review boards. He noted that the new legislation and rules do not specify the size or composition of each board. Mr. Hoskins also noted that the new review process does not affect citations that were in progress at the time the new legislation and rules took effect (January 1, 2013).

In the ensuing discussion the importance of public representation on review boards was emphasized, and consensus was reached regarding two related elements of the rationale for the wording of the proposed resolution:

- Benchers should not form the majority on review boards

- appointed Benchers should be counted as Benchers and not as members of the public for the purpose of constituting review boards

A concern was raised that large turnover of Benchers during Bencher elections could cause challenges for the review board process. Mr. Hoskins noted the importance of ensuring that hearing panelist skills training sessions are conducted as promptly as possible for newly elected Benchers.

Mr. Walker moved (seconded by Mr. Renwick) that the Benchers adopt the following resolution:

> *RESOLVED* to set the number of members of a review board at seven: one Bencher-lawyer chair, two other Benchers, two non-Bencher lawyers and two members of the public;
>
> *FURTHER RESOLVED* that members of the hearing panel pool be required to sit as a member of at least one hearing panel before sitting as a member of a review board.

The motion was carried unanimously.

3. Rules Concerning Trust and Other Client Property – Lawyers Acting as Attorneys and Executors

Ms. Berge briefed the Benchers regarding concerns raised by some members of the Victoria wills and estate bar regarding difficulties that may be faced by lawyers seeking to comply with the Law Society's current trust rules and honour their fiduciary duties, when their appointment as a personal representative derives from a solicitor-client relationship (such as an executor under a will, an attorney under a power of attorney, or as a trustee). She referred to the Executive Committee's memorandum at page 3000 for detailed discussion of the issues, and particularly to page 3009 for a recommended approach:

> After consideration, the recommended approach would be to carve out a definition of "trust property" from the current definition of "trust funds." "Trust property" would define funds and valuables received by a lawyer acting as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if a lawyer's appointment is derived from a solicitor-client relationship. In other words, "trust property" would be separately defined from "trust funds," applied to property that a lawyer holds as a fiduciary from a relationship in which the lawyer is not acting as a lawyer, but where the relationship has been derived from a solicitor-client relationship.
>
> The balance of the trust rules would continue to apply to "trust funds" that a lawyer holds in connection with the solicitor-client relationship. Many of those rules will continue to apply to "trust property" as well. However, some rules would be amended to allow a lawyer to hold or deal with "trust property" in ways more consistent with the trust,

thereby relieving the lawyer from some of the applications of the trust rules that may currently prove impractical or even, in some cases, inconsistent with a lawyer's trust obligations, and that gave rise to the tensions that prompted the analysis of this matter.

Ms. Berge noted that the Trust Assurance, Trust Regulation and Professional Conduct departments, and the Lawyers Insurance Fund were consulted and provided information and feedback to the content of the memorandum.

Ms. Berge moved (seconded by Mr. Maclagan) that the Benchers approve in principle amending the Law Society Rules to address the issues raised in the Executive Committee's memorandum, in the manner of the draft amendments appended to the Committee's memorandum (at page 3013); and that the Benchers refer the matter to the Act and Rules Subcommittee to finalize draft rules to be returned to the Benchers for consideration and approval.

Felicia Ciolfitto, Manager of Trust Assurance and Trust Regulation, noted that the clarification provided by the proposed separation of "trust property" from "trust funds" will be helpful to the Law Society's trust auditors.

Key points raised in the ensuing discussion were:

- It is important to ensure the fairness and practicality of the Law Society's regulatory approach to this matter, while also ensuring the protection of the public interest
- It will likely be impossible to create a "bright line" separation of "trust property" and "trust funds"
    - Guidance in the form of considerations noted in commentary to the Rules might be appropriate
- The draft rules appended to the Executive Committee's memorandum are provided for illustration and not intended to restrict the flexibility of the Act and Rules Subcommittee
- Consultation with the profession will be needed to support development of an appropriate set of criteria or considerations

There was a clear consensus to adopt the proposed resolution.

Ms. Berge noted with thanks the valuable contributions of Mr. Lucas, Mr. Hoskins and Ms. Ciolfitto.

4. Ratification of the National Mobility Agreement 2013

Mr. Petrisor briefed the Benchers as chair of the Credentials Committee, referring to the Committee's report (at page 4000) and the National Mobility Agreement 2013 ("NMA 2013") appended to that report (page 4006 of the meeting materials and Appendix 2 to these minutes). Mr. Petrisor reported that Council of the Federation of Law Societies of Canada voted unanimously in favour of a resolution to approve the NMA 2013, for submission to the Federation's member law societies for their approval. If approved and implemented, the NMA 2013 will provide for full, permanent mobility between the Barreau du Québec and the common law jurisdictions.

Mr. Treleaven noted that all the provincial law societies but the Law Society of BC and Nova Scotia Barristers Society have already approved the NMA 2013; and that the territorial societies are governed by the Territorial Mobility Agreement.

Mr. Petrisor moved (seconded by Mr. Walker):

1. That the Benchers approve in principle the National Mobility Agreement 2013 ("NMA 2013"), attached as Appendix A, on the condition that implementation will be subject

   a) to Bencher approval of such amendments to the Law Society Rules as are required,

   b) to resolution of the issues related to liability insurance and the approval of any consequential amendment to the insurance-related NMA 2013 provisions,

   c) to clarification that law societies will be permitted to require Canadian Legal Advisor applicants to certify that they have read and understood all of the reading materials reasonably required by the law societies, and

   d) in the case of implementation by the Barreau, to obtaining the necessary approvals by the Office des Professions du Québec and the Government of Québec, and

2. That the Law Society of British Columbia's President or his designate be authorized to execute the NMA 2013.

3. That the Benchers request that the Federation develop as an addition to the NMA reading requirement a guide on the key differences between the legal systems in Québec and the common law jurisdictions for law societies' use.

Mr. Petrisor also reported that at its May 9, 2013 meeting the Credentials Committee unanimously approved the motion for presentation to the Benchers.

In the ensuing discussion the following points were raised:

- the Benchers are being asked to approve the NMA 2013 in principle only , with implementation to be subject to the factors noted in the motion
- credit is due to the Federation for its successful pursuit of the "art of the possible" in developing this agreement
    - surmounting the civil/common law divide has been a great achievement in consensus-building
- all of the Federation's member law societies except the Law Society of Newfoundland and Labrador, the Law Society of PEI, and the Chambre des Notaries have already approved the Federation's National Admission Standards Competency Profile
    - development of implementation proposals for the National Admission Standards by the Federation's member law societies is underway

The motion was carried unanimously.

5. 2012-2014 Strategic Plan Implementation

a. Governance Committee Update

Mr. Vertlieb reported on progress being made by the Governance Committee in addressing the issues referred to that body by the Benchers at their December 2012 meeting. He confirmed that the Governance Committee will present its mid-year report to the Benchers at the June meeting.

b. Indigenous Lawyers Mentoring Program Implementation Update

Mr. McGee reported on the background of the Indigenous Lawyers Mentoring Program. He confirmed that the program is included in the current Strategic Plan, and that Phase 1 (Concept Development & Consultation) was completed last year under the management of Ms. Rosalie Wilson. Phase 2 (Design) is underway, led by Staff Lawyer Andrea Hilland.

Ms. Hilland briefed the Benchers on Phase 2's implementation progress. Ms. Hilland advised that program documentation should be finalized by the end of May, and the official launch of the Indigenous Lawyers Mentoring Program is being planned for June 21, 2013 (Aboriginal

Day). Enrolment of mentors and mentees will take place over the summer months, with their pairings to announced in September.

Ms. O'Grady noted that this is North America's first Aboriginal mentoring program for lawyers. Ms. Berge suggested that the Equity and Diversity Advisory Committee consider reviewing the ground-breaking report and recommendations of the Aboriginal Law Graduates Working Group (April 2000: *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*[1]).

6. President's Report

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

a. Commonwealth Law Conference (Cape Town, South Africa)

Agenda topics for sessions Mr. Vertlieb attended included: access to justice; the importance of paralegals and the need for expanded use of their services; the importance of legal aid and funding cuts to legal aid; and the need for greater diversity and affirmative action ("merit with bias") in judicial appointments. The relevance of these themes throughout Commonwealth was striking. Also striking was the support expressed by lawyers from many countries for enhanced provision of legal information and services by paralegals to the public.

b. CBA Envisioning Justice Conference

Lawyers from across the country attended this conference in Vancouver last month to discuss a broad spectrum of access issues. Mr. Vertlieb was honoured to be asked to speak on BC's designated paralegal pilot project.

Mr. McGee also attended the conference, and commented on the excellent quality of the presentations and discussions.

CBABC Executive Director Caroline Nevin confirmed that the participants' level of engagement was high throughout the conference sessions. She noted that 65% of the attendees were from outside BC. Ms. Nevin also noted the strong presence and involvement of the representatives of the Ministry of Justice and members of the judiciary.

[1] Download from the Law Society website – available here (under EQUITY AND DIVERSITY)

c. Paralegal Pilot Project Presentations in Kelowna and Vernon

In late April Mr. Vertlieb and Staff Lawyer Doug Munro attended in Kelowna and Vernon to deliver presentations on the designated paralegal pilot project. Mr. Vertlieb noted the strong interest shown by paralegals and members of the public, and thanked Kelowna Bencher Tom Fellhauer for his support with the Kelowna session.

d. CBA Workshop: Enhancing Diversity on the Bench

On May 1 Mr. Vertlieb attended at the Lawyers' Inn for an excellent program on diversity in the judiciary. Chief Justice Bauman, Justice of the BC Supreme Court, Chief Judge Crabtree of the BC Provincial Court, Hon. Donna Martinson, Hon. Lynn Smith and Hon. Wally Oppal all delivered presentations.

Ms. Morellato also attended. She noted that there were190 registrants, from a wide range of backgrounds, at this excellent event. She commented on the value of the mentoring aspect of the session.

Mr. Vertlieb confirmed that Hon. Lynn Smith will be attending the July Bencher meeting to deliver a presentation on enhancing judicial diversity.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 3 to these minutes), including the following matters:

- First Quarter Financial Results
- Review and Renewal of Management Structure
- Indigenous Lawyers Mentoring Program – Update
- Federation National Admission Standards Project Update
- Memorandum of Understanding among Judiciary and Minister of Justice and Attorney General
- Speakers Bureau
- Changes to Electronic Version of Benchers Bulletin
- *Time with Tim* Addition to Lex Website and Staff Breakfast Meetings

8. Quarterly Financial Report

Chief Financial Officer Jeanette McPhee provided the Benchers with highlights of her written report (page 8000), covering the following topics:

- General Fund (excluding capital and Trust Assurance Fee (TAF)
  - Revenue
  - Operating Expenses
  - 2013 Forecast
    - Operating Revenue
    - Operating Expenses
    - 845/835 Building
- TAF-related Revenue and Expenses
- Special Compensation Fund
- Lawyers Insurance Fund

Mr. Walker spoke as Vice-Chair of the Finance Committee, updating the Benchers on the 2014 budget-setting process that will culminate with the setting of the Law Society's 2014 practice fee by the Benchers at their September meeting. Mr. Walker noted that all Benchers are welcome to attend the Finance Committee's upcoming meetings:

- Review of LIF Statement of Investment Policy, Trust Administration Fee (TAF), External funding (LAP, CLBC, Advocate, Probono) (June 27)
- 2014 Law Society fees and operational budgets (September 5 and September 11)

Benchers who are interested in attending any of the Finance Committee meetings should contact Ms. Lindsay to receive meeting details and materials.

9. Report on Outstanding Hearing & Review Reports

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

10. Federation of Law Societies of Canada Council Update

Gavin Hume, QC reported as the Law Society's Federation of Law Societies of Canada Council representative. Mr. Hume thanked First Vice-President Jan Lindsay, QC for briefing the Benchers in his absence at the last Bencher meeting on the proceedings at the Federation Council

meeting and conference held March 20 – 22 in Quebec City. The next Council meeting will take place in Ottawa on June 3.

a. Standing Committee on the Model Code

The Federation's Standing Committee on the Model Code will meet next on June 4. The agenda for that meeting will include:

- Revisions to the Model Code conflicts rules
- Reviewing the Model Code provisions on lawyers' interprovincial transfers
- Property related to crime
- Limited legal services
- Language rights

Mr. Hume outlined the working process followed by the Standing Committee, and noted the importance of a related Liaison Committee composed of representatives of the member law societies' ethics committees. Mr. Hume stressed the importance of the consultative aspect of the Standing Committee's work in managing Code revision requests and input from the law societies, via the Liaison Committee and otherwise, and in conferring regularly with the CBA and ethics professors from law faculties across the country.

b. National Discipline Standards Project

This important Federation initiative is about half-way through its work. Deborah Armour, the Law Society's Chief Legal Officer, is a member of the project team and will be providing an update at an upcoming Bencher meeting.

The Benchers discussed other matters *in camera*.

WKM
2013-05-28

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: April 30, 2013
Subject: **Role of Tribunal Counsel in Law Society Tribunals**

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1. This memorandum is apropos of recent discussion about what additional assistance can be offered to hearing panels and the role of Tribunal Counsel in that regard. The Executive Committee refers the discussion to the Benchers for approval.

2. In my view, the service that is currently offered to hearing panels in connection with the writing of decisions is all that can properly and legally be done without putting the decisions seriously at risk of being quashed on review. However, I think that there are opportunities to improve the up-take of additional assistance by hearing panels. It may be that more assistance at an earlier stage in the process would help alleviate some decision-writing difficulties.

What we are doing now

3. I attach a document prepared for previous discussions indicating the function of staff in Tribunal Support.

4. Currently, in most cases, Tribunal Counsel has little contact with hearing panels before or during the hearing. Sometimes issues arise and hearing panels, or sometimes just one or two members of the panel, typically the chair, ask for help and meetings and/or correspondence can ensue. In most cases, though, the first contact of any significance is when the panel submits a near-final draft decision at the end of their active participation in the process.

5. This is a summary of the process from that point, paraphrased from the attached document:

> Tribunal Counsel reviews the draft decision closely for editorial purposes, ensuring consistency with LS standards and practices (spelling, punctuation, grammar, accuracy of quotes and citations), as well as suggesting better phrasing where appropriate.
>
> In addition, Tribunal Counsel reviews written submissions of counsel, when available, and reviews the draft decision for legal issues, raising questions with the panel and making suggestions as required.
>
> Tribunal Counsel may ask a Law Society staff lawyer not involved in the discipline or professional conduct process to review the draft decision for further corrections and identification of issues.
>
> Tribunal Counsel may contact the chair of the panel or the principal author of the draft, if known, regarding significant issues or shortcomings in the draft reasons. As well, Tribunal Counsel may include questions and suggestions in a draft returned to the panel for consideration. It is made clear to all panellists that the decision is theirs to make, and the panel may freely accept any suggestions of Tribunal Counsel in whole or in part, or reject them altogether.

Limits on assistance

6. The law is clear that the decisions of a tribunal must be that of the individuals who have the authority to make the decision, and not staff supporting the tribunal. While it is permissible for Tribunal Counsel to review draft decisions, make non-substantive edits and suggest other changes, he should not actively write all or part of hearing decisions.

7. The purpose of the position of Tribunal Counsel was to reduce the risk of successful review or appeal from hearing panel decisions on the basis of failure to observe the rules of natural justice and basic administrative law. Expansion of the role into decision writing would appear to be counterproductive in that regard.

Areas where up-take could be better:

8. The role of Tribunal Counsel is explained in some detail as part of the training program for hearing panel pool members. They are told to expect that their draft decisions will be vetted and they may get some suggestions on improvement or be directed to some legal issues that they had not fully dealt with. In addition, they are told that Tribunal Counsel is available to

assist with problems at any point in the hearing process. Nonetheless, few panels avail themselves of the opportunity to ask questions or discuss issues before they are about to sign off on the final decision.

9. Until the last act of the hearing panel, Tribunal Counsel is generally not in direct contact with panels, and uninvolved in the process unless invited into it by a panel. It seems to me that the process could often benefit from some earlier involvement of Tribunal Counsel. Besides the obvious advantage of early clarification of procedures and expectations, it may be that the timeliness of issuing decisions could also be improved through contact.

10. I suggest that there are two opportune times for proactive contact by Tribunal Counsel with hearing panels:

    (a) *Before hearing begins:* Tribunal Counsel could review the citation or notice of credentials hearing and contact the panel (or just the chair) at the time that the panel is appointed and a hearing date is set. The purpose would be to remind panellists that Tribunal Counsel is available to help before and during the hearing, as well as after, and to discuss any preliminary concerns.

    (b) *After the hearing has concluded, if the decision is reserved:* Tribunal Counsel could again contact the panel (or chair) to remind them of the expected timeframe and to discuss any issues that have given the panel difficulty. A further reminder could be given that Tribunal Counsel is available to help with the writing of the panel's decision. That assistance must stop short of writing all or part of the decision. Counsel could also be asked to formally or informally review a question of law or the submissions of counsel for the assistance of the panel. Panels would have to be reminded that the law requires that any significant new issue of fact or law that arises in that process must be shared with the parties so that they have the opportunity to make submissions on the issue.

Attachments:

description of current function, with its attachments

JGH

LAW SOCIETY OF BRITISH COLUMBIA
ROLE OF TRIBUNAL COUNSEL

BEFORE THE HEARING

1. Tribunal Counsel (TC) oversees the process of issuing citations, setting dates for hearings and appointment of hearing panels, holding of pre-hearing conferences and other preliminary matters, as well as the logistics of assigning a room and engaging a court reporter. All of this is performed by the Hearing Administrator.

2. From time to time, TC is consulted by hearing panels and individual panel members on possible issues to be confronted in the hearing, possible issues of reasonable apprehension of bias or procedural matters. All consultations and meetings with panels and individual panellists are on a privileged and confidential basis.

DURING THE HEARING

3. TC does not attend hearings except on request of the hearing panel, which rarely occurs.

4. TC may meet with panels, at the request of the panel, and advise with respect to procedural and other issues. In particular, TC offers opinions on procedural provisions in the Act and Rules.

AFTER THE HEARING

5. TC may meet with panels during the deliberation process. This is always at the request of the panel or the chair and usually in relation to particular issues.

6. A panel or panellist may ask TC for views on a particular issue, but to the extent that significant new matters (issues, arguments) are raised, they may need to be canvassed with the parties if the panel is to consider them in reaching a decision.

PREPARING WRITTEN REASONS

7. Hearing panels always draft their own reasons for their decisions. Drafts are circulated among the panellists. Panels are urged to complete this process within 45 days of the

completion of the hearing. TC may be consulted in this process, but does not, and should not, prepare any part of the draft decision.

8. When a hearing panel or other tribunal has completed their internal consultations, a draft is prepared and submitted electronically to the Hearing Administrator, who puts the draft into a standard format and does some proofing.

9. The draft is then forwarded to TC, who reviews it closely for editorial purposes, ensuring consistency with LS standards and practices (spelling, punctuation, grammar, accuracy of quotes and citations), as well as suggesting better phrasing where appropriate.

10. In addition, TC reviews written submissions of counsel, when available, and reviews the draft decision for legal issues, raising questions with the panel and making suggestions as required.

11. TC may ask a LS staff lawyer not involved in the discipline or professional conduct process to review the draft decision for further corrections and identification of issues.

12. TC may contact the chair of the panel or the principal author of the draft, if known, regarding significant issues or shortcomings in the draft reasons. As well, TC may include questions and suggestions in a draft returned to the panel for consideration. It is made clear to all panellists that the decision is theirs to make, and any suggestions of TC may be freely accepted in whole or in part, or rejected altogether.

13. I attach a document entitled "Decision Review Protocol", which was prepared for another administrative tribunal (BC Property Assessment Appeal Board). It sets out the purposes for review of draft decisions by professionals who are not part of the tribunal, as well as the types of advice that a reviewer might give to a tribunal and the limits on the role that the reviewer can take.

14. When the draft has been reviewed, it is returned to the panel in redlined form for approval. It is important that all panellists review the same version of the final decision and adopt it as their own. A record of approvals is kept on the tribunal's hearing file.

Also attached for information is a document entitled "Role of Tribunal Counsel" prepared by outside counsel. It was provided to members of the hearing panel pool with the materials for the training course in basic administrative law and introduction to Law Society procedures. It was also considered by the Executive Committee in 2011.

DECISION REVIEW PROTOCOL

The purpose of decision review is to ensure:

- Decisions are written clearly in plain language, with correct grammar and punctuation, in accordance with Board style guides
- Decisions contain essential elements including, as appropriate, an introduction, a clear statement of the issue(s), clear statements of the facts, evidence and submissions of the parties, a clear and logical analysis, and a conclusion and board order
- Findings are supported by evidence and analysis
- Conclusion and order are consistent with findings
- Consistency with previous Board decisions, or if a decision is inconsistent, that it contains reasons for not following a previous Board decision on point.
- Consistency with legal authority binding on the Board

The reviewer must respect the independence of the decision maker. The reviewer must not substitute their opinion for the writer's or pressure the decision maker to change their findings and conclusions.

The reviewer may

- Suggest amendments to language to enhance clarity, conciseness and readability
- Suggest amendments to organization to enhance clarity, conciseness and readability
- Point out gaps in reasoning or indicate where reasoning may need to be enhanced
- Indicate where writing or reasoning may be unclear
- Ask questions of decision writer to assist in clarifying reasoning
- Indicate where there is no apparent support in analysis for findings
- Indicate where there are apparent disconnects between analysis and findings or findings and conclusion
- Indicate potential reviewable errors such as making findings without evidence or relying on information that is not in evidence
- Indicate if decision is inconsistent with previous Board decisions and identify decisions that writer may need to consider
- Indicate if decision may be inconsistent with authority binding on the Board that has not been considered in the decision and identify that authority

The Role of Tribunal Counsel

1. The Law Society employs a senior staff lawyer as Tribunal Counsel (TC). This section of the manual outlines the TC's roles in connection with discipline and credentialling.

Advisor to Panels

2. The TC is responsible to provide legal advice and professional support to discipline panels and credentials panels convened to conduct a hearing. The TC may be consulted by the panel collectively, through the chair, or by individual panelists.

3. As an advisor to panels, the TC is independent of the Professional Conduct and Discipline Departments and the Admissions and Credentials Departments. With the panel's permission, the TC may consult with staff lawyers outside those departments (eg, Policy Department).

4. As with any legal consultation, communications between a panel and the TC are confidential. The panel may meet with the TC while the parties are not present while the case is being heard, or while the case is under reserve. As is noted below, however, there may be circumstances in which administrative law principles require the panel to disclose the TC's advice to the parties appearing before it.

5. The TC will not usually attend hearings, unless at a panel's request.

6. It is appropriate for a panel to ask the TC to review and comment upon arguments received from the parties.

7. Under the *Legal Profession Act* and the Rules, responsibility is imposed on the panel to decide the issue at hand. It is fundamental that this responsibility cannot be delegated. Moreover, the panel must decide the issue having regard to the evidence and arguments put forward by the parties. It follows that the panel may not rely on the TC's advice in place of considering the evidence, arguments and authorities submitted by the parties.

8. The TC should not be asked to draft reasons for decision. It is the responsibility of the panel to formulate its own reasons. It may not be inappropriate for the panel to incorporate into its reasons legal analysis taken from a memorandum prepared by the TC, if the analysis reflects the panel's own considered view.

9. A panel may ask the TC to consider new legal issues not raised by the parties, or the TC may identify new legal issues for the panel's consideration. In either case, if the issue is or may be significant to the result, it is incumbent on the panel to afford the parties an opportunity to address the issue before deciding it. The obligation may arise whether or not the panel has consulted the TC in connection with the new issue. If there has been consultation, this is the case in which the proper course may be to bring the TC's advice to the attention of both sides and invite further submissions. The TC can advise as to what is required in the circumstances.

10. A panel or a panel member may ask the TC to review and comment upon draft reasons for decision. Apart from any specific request made to the TC, draft reasons for decision, once

submitted to the hearing administrator, are circulated to the TC before the reasons are issued. The TC does copy and legal editing, and identifies for the panel's consideration any points in the draft decision that appear to him to be mistaken or controversial. It is up to the panel whether to take this advice. Because the final decision must always be that of the panel, it is essential that the reasons for decision, in their final form, be formally approved by the panel members.

Responsibility for Training and Orientation

11. The TC is also responsible for the training and orientation of panelists generally. This is a distinct role arising outside the context of a particular hearing involving a particular member or applicant for admission. In this context, the TC is supervised by the Society's Chief Legal Officer and may work with other professional staff, including staff in the Professional Conduct, Discipline and Credentials Departments.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

APPENDIX A

National Mobility Agreement 2013

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Federation of Law Societies of Canada

XX XX, 2013
City

The purpose of this agreement is to facilitate temporary and permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter- jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,

- while differences exist in the legislation, policies and programs pertaining to the signatories, including those differences between common law and civil law jurisdictions in Canada, lawyers have a professional responsibility to ensure that they are competent with respect to any matter that they undertake, and

- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Most of the signatories subscribed to the Interjurisdictional Practice Protocol of 1994, in which they agreed to certain measures to facilitate the temporary and permanent inter-jurisdictional practice of law and the enforcement of appropriate standards on lawyers practising law in host jurisdictions.

Since December 2002, all provincial law societies, other than the Chambre des notaires du Quebec ("Chambre"), have signed the National Mobility Agreement ("NMA") establishing a comprehensive mobility regime for Canadian lawyers.

In 2006 all law societies other than the Chambre, signed the Territorial Mobility Agreement. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces for five years. A further agreement made in November 2011 renewed the Territorial Mobility Agreement without a termination date.

In June 2008 Quebec enacted a "Regulation respecting the issuance of special permits of the Barreau du Quebec" ("Barreau"), which provided, inter alia, that a member in good standing of a bar of another Canadian province or territory could become a member of the Barreau known as a "Canadian legal advisor" ("CLA"). A CLA may provide legal services respecting the law of federal jurisdiction, the law of his or her home province and public international law.

In March 2010 all law societies, other than the Chambre, signed the Quebec Mobility Agreement ("QMA"). Under that agreement members of the Barreau are able to exercise mobility in the common law jurisdictions on a reciprocal basis as CLAs.

In June 2010 the Council of the Federation approved the Mobility Defalcation Compensation Agreement ("MDCA") to bring more consistency, certainty and transparency to the process for compensating the public if funds are misappropriated by lawyers exercising their mobility rights under the NMA. Since then, all provincial law societies, other than the Barreau and the Chambre, have signed the MDCA.

In March 2012 all law societies, including the Chambre, signed an addendum to the Quebec Mobility Agreement extending to members of the Chambre the right to acquire CLA status in another province.

In January 2013, the Council of the Federation of Law Societies approved a report from the National Mobility Policy Committee. In that report, the Committee concluded and recommended that it would be in the public interest to implement mobility to and from the Barreau on the same terms as now apply to mobility between common law jurisdictions under the permanent mobility provisions of the NMA. The Committee also reported that the CLA provisions of the QMA and its Addendum should continue in place with respect to members of the Chambre, and the Chambre was in favour of that resolution. The Committee's report and recommendations do not affect the current rules for temporary mobility between Quebec and other provinces and the territories.

As a result, the signatories hereby agree to adopt this new National Mobility Agreement, 2013 ("NMA 2013"), changing the original NMA to remove the distinction between members of the Barreau and members of law societies outside of Quebec for the purposes of transfer between governing bodies. The signatories also agree to incorporate into the NMA 2013 the provisions for members of the Chambre to be granted status as CLAs by law societies outside of Quebec and to rescind the QMA and its Addendum.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this agreement, unless the context indicates otherwise:

"Barreau" means le Barreau du Québec;

"Chambre" means la Chambre des notaires du Québec;

"day" means any calendar day or part of a calendar day in which a lawyer provides legal services;

"discipline" includes a finding by a governing body of any of the following:

(a) professional misconduct;

(b) incompetence;

(c) conduct unbecoming a lawyer;

(d) lack of physical or mental capacity to engage in the practice of law;

(e) any other breach of a lawyer's professional responsibilities;

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of discipline;

(b) disbarment;

(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

(d) restrictions or limits on a lawyer's entitlement to practise;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"entitled to practise law" means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

"governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction, the Barreau and the Chambre;

"home governing body" means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and "home

jurisdiction" has a corresponding meaning;

"host governing body" means a governing body of the legal profession in Canada in whose jurisdiction a lawyer practises law without being a member, and "host jurisdiction" has a corresponding meaning;

"Inter-Jurisdictional Practice Protocol" means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

"lawyer" means a member of a signatory governing body, other than the Chambre;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

"mobility permit" means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;

"notary" means a member of the Chambre;

"practice of law" has the meaning with respect to each jurisdiction that applies in that jurisdiction;

"providing legal services" means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

"Registry" means the National Registry of Practising Lawyers established under clause 18 of this agreement;

"resident" has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

General

2. The signatories agree to adopt this agreement as a replacement for the National Mobility Agreement of 2002, the Quebec Mobility Agreement of 2010 and the Addendum to the Quebec Mobility Agreement of 2012, all of which are revoked by consent.

3. The signatory governing bodies will

   (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this agreement;

   (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this agreement;

(c) comply with the spirit and intent of this agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and

(d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

4. Signatory governing bodies will subscribe to this agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this agreement.

5. A signatory governing body will not, by reason of this agreement alone,

(a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

(b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

6. Amendments made under clause 3(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

Temporary Mobility Among Common Law Jurisdictions

7. Clauses 8 to 32 apply to temporary mobility of lawyers of common law jurisdictions in other common law jurisdictions.

Mobility without permit

8. A host governing body will allow a lawyer from another jurisdiction to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, without a mobility permit or notice to the host governing body, for a total of not more than 100 days in a calendar year, provided the lawyer:

(a) meets the criteria in clause 11; and

(b) has not established an economic nexus with the host jurisdiction as described in clause 17.

9. The host governing body will have the discretion to extend the time limit for temporary mobility under clause 8 with respect to an individual lawyer.

10. It will be the responsibility of a lawyer to

    (a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and

    (b) prove that he or she has complied with provisions implementing clause 8.

11. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 8, a lawyer will be required to do each of the following at all times:

    (a) be entitled to practise law in a home jurisdiction;

    (b) carry liability insurance that:

        (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and

        (ii) extends to the lawyer's practice in the host jurisdiction;

    (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;

    (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;

    (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and

    (f) have no disciplinary record in any jurisdiction.

12. For the purposes of clause 8:

    (a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;

    (b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:

        (i) the Supreme Court of Canada;

        (ii) the Federal Court of Canada;

        (iii) the Tax Court of Canada;

        (iv) a federal administrative tribunal.

13. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:

    (a) in the lawyer's home jurisdiction; or

    (b) operated in the host jurisdiction by a member of the host governing body.

Mobility permit required

14. If a lawyer does not meet the criteria in clause 11 to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:

    (a) on application;

    (b) if, in the complete discretion of the host governing body, it is consistent with the public interest to do so;

    (c) for a total of not more than 100 days in a calendar year; and

    (d) subject to any conditions and restrictions that the host governing body considers appropriate.

Temporary mobility not allowed

15. A host governing body will not allow a lawyer who has established an economic nexus with the host jurisdiction to provide legal services on a temporary basis under clause 8, but will require the lawyer to do one of the following:

    (a) cease providing legal services in the host jurisdiction forthwith;

    (b) apply for and obtain membership in the host governing body; or

    (c) apply for and obtain a mobility permit under clause 14.

16. On application, the host governing body will have the discretion to allow a lawyer to continue to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction pending consideration of an application under clause 15(b) or (c).

17. In clause 15, an economic nexus is established by actions inconsistent with temporary mobility to the host jurisdiction, including but not limited to doing any of the following in the host jurisdiction:

    (a) providing legal services beyond 100 days, or longer period allowed under clause 9;

    (b) opening an office from which legal services are offered or provided to the public;

    (c) becoming resident;

    (d) opening or operating a trust account, or accepting trust funds, except as permitted under clause 13.

National Registry of Practising Lawyers

18. The signatory governing bodies will establish, maintain and operate a National Registry of Practising Lawyers containing the names of lawyers from each signatory governing body qualified under clause 11 to practise law interjurisdictionally without a mobility permit or notice to the host governing body.

19. Each signatory governing body will take all reasonable steps to ensure that all relevant information respecting its members is supplied to the Registry and is kept current and accurate.

Liability Insurance and Defalcation Compensation Funds

20. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction
    (a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and
    (b) provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

21. In the event that a claim arises from a lawyer providing legal services on a temporary basis, and the closest and most real connection to the claim is with a host jurisdiction, the home governing body will provide at least the same scope of coverage as the liability insurance in the host jurisdiction. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

22. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their liability insurance policies that affect the limits of liability or scope of coverage.

23. Signatory governing bodies that are also signatories to the MDCA will apply or continue to apply the provisions of the MDCA respecting defalcation compensation. Signatory governing bodies that are not signatories to the MDCA will apply or continue to apply the provisions of the Interjurisdictional Practice Protocol respecting defalcation compensation, specifically clause 10 of the Protocol and Appendix 6 to the Protocol.

24. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their defalcation compensation fund programs that affect the limits of compensation available or the criteria for payment.

Enforcement

25. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:
    (a) account for and verify the number of days spent providing legal services in the host jurisdiction; and
    (b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.

26. If a lawyer fails or refuses to comply with the provisions of clause 25, a host governing body will be entitled to:
    (a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or
    (b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.

27. When providing legal services in a host jurisdiction or with respect to the law of a host jurisdiction, all lawyers will be required to comply with the applicable legislation, regulations, rules and standards of professional conduct of the host jurisdiction.

28. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:
    (a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and
    (b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.

29. If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.

30. In determining the location of a hearing under clause 28, the primary considerations will be the public interest, convenience and cost.

31. A governing body that initiates disciplinary proceedings against a lawyer under clause 28 will assume full responsibility for conduct of the proceedings, including costs, subject to a contrary agreement between governing bodies.

32. In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.

Permanent Mobility of Lawyers

33. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:
    (a) entitlement to practise law in the lawyer's home jurisdiction;
    (b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and
    (c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.

34. Before admitting as a member a lawyer qualified under clauses 33 to 38, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:

    (a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;

    (b) disclose criminal and disciplinary records in any jurisdiction;

    (c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and

    (d) certify that he or she has reviewed all of the materials reasonably required by the governing body.

35. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Barreau are not qualifying members of the Barreau for the purpose of clauses 33 to 38.

Public Information

36. A governing body will make available to the public information obtained under clause 34 in the same manner as similar records originating in its jurisdiction.

Liability Insurance

37. On application, a signatory governing body will exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction:

    (a) is resident;

    (b) is a member of the governing body; and

    (c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

38. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause 37, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

Temporary Mobility between Quebec and Common Law Jurisdictions

39. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.

40. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:

    (a) as provided in clauses 8 to 32; or

    (b) as permitted by the Barreau in respect of the members of the signatory governing body.

Permanent Mobility of Quebec Notaries

41. Signatory common law governing bodies will establish and maintain a program in order to grant Canadian Legal Advisor ("CLA") status to qualifying members of the Chambre.

42. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Chambre are not qualifying members of the Chambre for the purpose of clauses 41 to 47.

43. A member of the Chambre who is granted the status of CLA in any jurisdiction outside of Quebec may, in his or her capacity as a CLA:

    (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;

    (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations;

    (c) give legal advice and consultations on legal matters involving public international law; and

    (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.

44. A governing body will require no further qualifications for a notary to be eligible for status as a CLA beyond the following:

    (a) entitlement to practise the notarial profession in Quebec; and
    (b) good character and fitness to be a member of the legal profession, on the standard ordinarily applied to applicants for membership.

45. Before granting CLA status to a notary qualified under clauses 41 to 47, a governing body will not require the notary to pass a transfer examination or other examination, but may require the notary to do all of the following:

    (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the notary is or has been a member;
    (b) disclose criminal and disciplinary records in any jurisdiction; and
    (c) consent to access by the governing body to the notary's regulatory files of all governing bodies of the legal profession of which the notary is a member, whether in Canada or elsewhere.

46. A governing body will make available to the public information obtained under clause 45 in the same manner as similar records originating in its jurisdiction.

47. A governing body must require that a notary who is granted the status of a CLA continue to maintain his or her practising membership in the Chambre.

Inter-Jurisdictional Practice Protocol

48. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect, to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.

Transition Provisions

49. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

50. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:

    (a) with respect to all Canadian lawyers until this agreement is implemented; and
    (b) with respect to members of Canadian law societies that are not signatories to this agreement.

Withdrawal

51. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.

52. A signatory that gives notice under clause 51 will:

    (a) immediately notify its members in writing of the effective date of withdrawal; and

    (b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.

SIGNED as indicated in respect of each signatory below

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF ALBERTA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF SASKATCHEWAN

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF MANITOBA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF UPPER CANADA

Per: _____ _____

Authorized Signatory Date

BARREAU DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

CHAMBRE DES NOTAIRES DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____ _____

Authorized Signatory Date

NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____ _____

Authorized Signatory Date

The Law Society
of British Columbia

CEO's Report to Benchers

May 10, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

First Quarter Financial Results

I'm pleased to advise that the financial results for the first quarter ending March 31, 2013 have been reviewed with the Chair of the Finance Committee, Jan Lindsay, QC. Ms Lindsay and Jeanette McPhee, Chief Financial Officer, will be reviewing the highlights of those results with you at the Bencher meeting. Materials will be provided to you separately as part of your Bencher agenda package. Together with members of the Management Board I will be pleased to respond to any questions or comments which you may have.

Review and Renewal of Management Structure

As you know, one of our operational priorities for the year is a review and renewal of the current management structure. I use the term management structure to capture the broad range of things that describe how management goes about its daily business. This includes such things as our internal reporting relationships, our meeting schedules, agenda setting, and initiatives involving all staff such as our quarterly Town Hall meetings and projects such as Leo and RRex. The current structure reflects changes which I initiated upon my arrival in 2005 and modifications we have made as a management team since then to better meet our evolving needs.

The review and renewal process has been a highly collaborative one involving the entire management team over the past several months. I am looking forward to sharing with you the highlights of the proposed new structure at the meeting. While the changes are quite selective and won't be noticeable to the Benchers on a day-to-day basis because of their operational focus I believe they will strengthen our management capability and benefit the organization as a whole. I am attaching as Appendix "A" a presentation which we have used at the staff level to track our progress. I am including it here just as background reference, as I will speak to the main points at the meeting.

Indigenous Lawyers Mentoring Program - Update

Initiative 2-1(c) of the Strategic Plan is to support the retention of Aboriginal lawyers by developing and implementing the Indigenous Lawyer Mentoring Program. The project was structured in two phases. Phase 1 was completed last summer when a report prepared by Rosalie Wilson was presented to the Benchers. The report, prepared after a consultation process, analyzed a needs assessment to determine appropriate options and structure for an Aboriginal mentoring program. The report detailed best practice guidelines tailored to mentor Aboriginal lawyers, and included recommendations regarding mentoring options and models, together with best practices. Phase 2 contemplated the development of the program itself based on the practices and options

identified in Phase 1. Andrea Hilland, Staff Lawyer, Policy and Legal Services, has been working hard at preparing a program, and I am pleased to advise that she is close to completion. Andrea will report to you on the proposed program and its anticipated commencement at the Bencher meeting.

Federation National Admission Standards Project Update

The Federation of Law Societies has published a Communiqué update (attached as Appendix "B") providing an update on the competencies aspect of the National Admission Standards project. The Competencies Project is now in Phase II, which is to identify options for implementing the National Competency Profile. The work includes meeting with expert consultants to designate the competencies in the National Competency Profile on which to test students, and how each competency might best be assessed. Using the data obtained through the national survey that was used to develop the National Competency Profile, the Phase II review process is identifying what is most important for testing, based on factors such as criticality (how critical the skill/task is from a risk perspective) and frequency (how often the competency is used). This preliminary process, referred to as "competency mapping," will also provide guidance on options for assessing the competencies. Lynn Burns, Deputy Director, PLTC, is a member of the Phase II Federation working group.

The Lawyer Education Advisory Committee's 2013 – 14 focus, pursuant to the Law Society Strategic Plan, is admission program reform linked to the National Admission Standards.

The Federation's Character and Fitness Standards Working Group continues to deliberate. Lesley Small, Manager, Member Services and Credentials, and Michael Lucas, Manager, Policy and Legal Services, represent BC.

Alan Treleaven, Director, Education and Practice, and I are members of the Steering Committee for the National Admission Standards project.

Memorandum of Understanding among Judiciary and Minister of Justice and Attorney General

Please find attached as Appendix "C" a copy of the Memorandum of Understanding effective April 3, 2013 among the three levels of judiciary in British Columbia and the Minister of Justice and Attorney General of British Columbia. You may have seen media reports referring to the MOU or heard it discussed at various events but I wanted to make sure that you had an opportunity to read the MOU in its entirety. It is posted on the Ministry website as well. This is an interesting and important document in my view

and it comes at an opportune time, given the intense scrutiny being directed at all facets of the justice system in British Columbia. As I reported to you at the last Bencher meeting, the Inaugural Justice Summit held in March which I participated in as moderator was viewed as a modest but important step forward by all those participating including the Judiciary and the Minister of Justice and Attorney General and senior Ministry officials. I believe this MOU is further evidence that a constructive and informed approach to reform is preferred by those who play essential and vital roles in the justice system.

Speakers Bureau

A number of Benchers have expressed an interest in participating in the Law Society's Speakers Bureau. Accordingly, I am pleased to attach as Appendix "D" a memo from Robyn Crisanti, Manager, Communications and Public Affairs setting out a proposed process for Bencher participation. Robyn will be available at the Bencher meeting to take your suggestions and to answer any questions you may have with respect to this suggested process.

Changes to Electronic Version of Benchers Bulletin

A change is being made to the electronic version of the Benchers Bulletin. At present, the Bulletin is sent via email in a newsletter format, with links to web pages on the Law Society website. It is also available as a simple pdf, though this is not immediately obvious to recipients.

With advances in pdf file options, the preference now is to send the Bulletin via email as an enhanced pdf with bookmarks, links and other features. It is our opinion that this will improve readability. In particular, we believe readers will be more likely to at least scan all the content. At present, individual web pages for each item in the Bulletin do not lend themselves to easy reading or scanning. Other advantages include improved access to the Bulletin on mobile devices and better control over the size of our website. If you have any questions or comments regarding this change, please contact Robyn Crisanti.

Time with Tim Addition to Lex Website and Staff Breakfast Meetings

I would like to share with you some new initiatives involving expanding and improving sharing of information with staff and encouraging interdepartmental relations. We have identified these as action items coming out of our last annual employee survey. The first initiative is a new section called *Time with Tim* on our internal Law Society website known as Lex. Lex is the go-to site for all of our employees and it is accessed heavily by

staff for a wide range of purposes. *Time with Tim* will provide staff with information and thoughts from me on a wide range of topics that staff might not otherwise hear about, such as important meetings that I attend on behalf of the Law Society or developments in our sister Law Societies. While it is specifically not designed as a blog it is intended to be more informal in tone and conversational. The page will be updated weekly or as events suggest. A copy of the current posting of *Time with Tim* is attached as Appendix "E" for your interest.

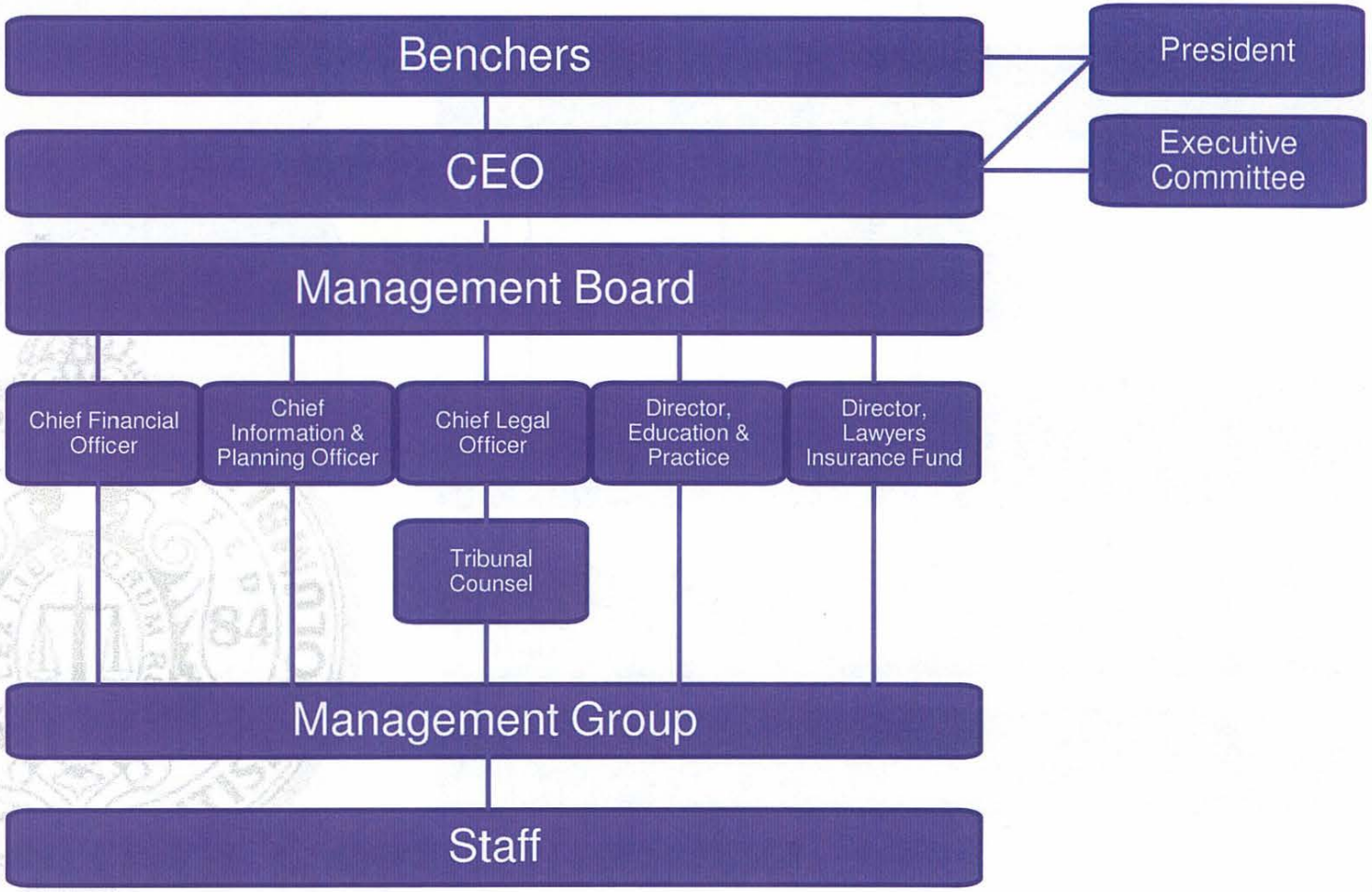
The second initiative that is now well underway is a series of CEO/staff breakfast meetings. These are breakfast meetings hosted by me with approximately 15 staff drawn from different departments. The breakfasts are informal and allow time for me to share some information about what is top of mind for me. We also go around the table and have everyone introduce themselves and say a bit about what they do at the Law Society and their interests before opening the floor to discussion on any topics of interest. This helps people to get to know their colleagues in other departments a little bit better. So far the breakfasts have been well attended and I am encouraged by the feedback. We have scheduled a total of 10 breakfast meetings to date (4 completed so far) and, when finished, I expect that every one of our employees will have participated.

The Law Society of British Columbia

Review and Renewal of Management Structure

2013-05-10

Current Management Structure

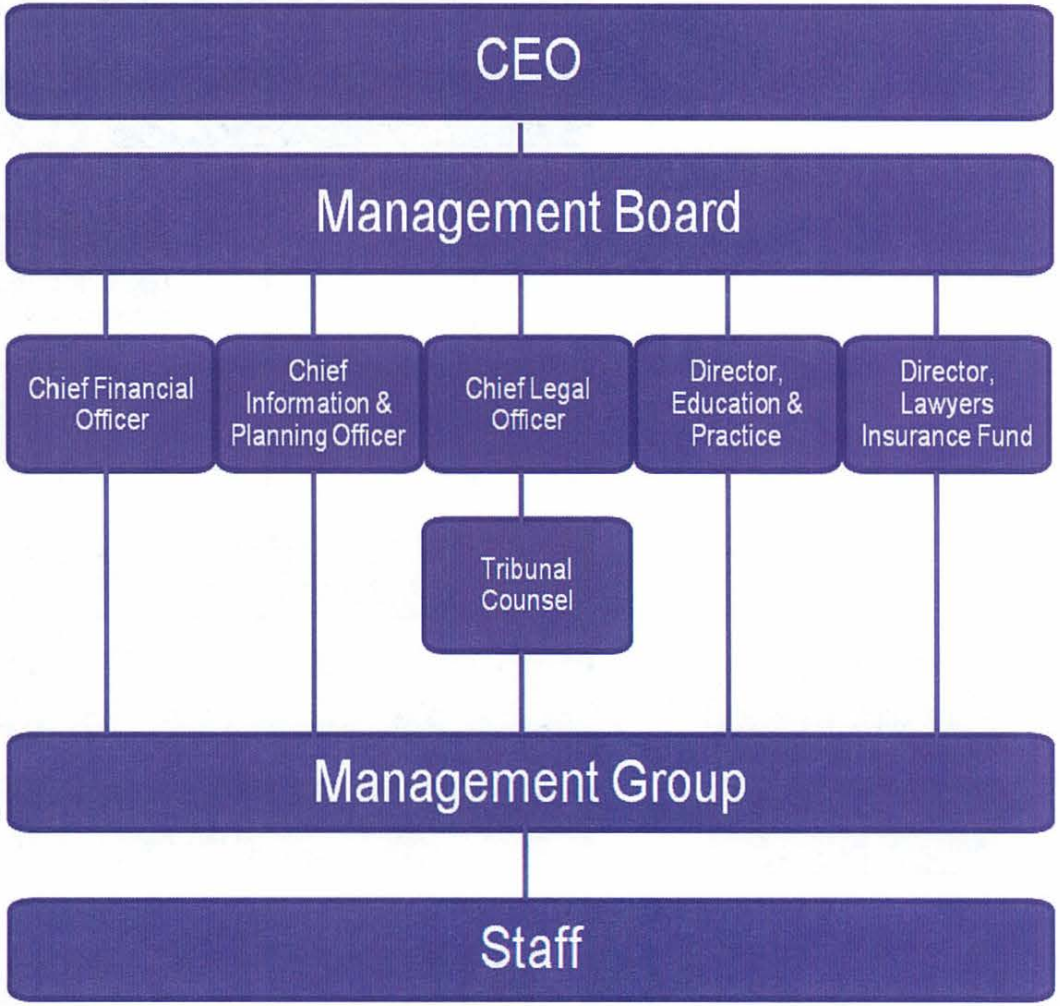


Current Relationships

CEO / MB

Management Board / Management Group

Management Group / Staff

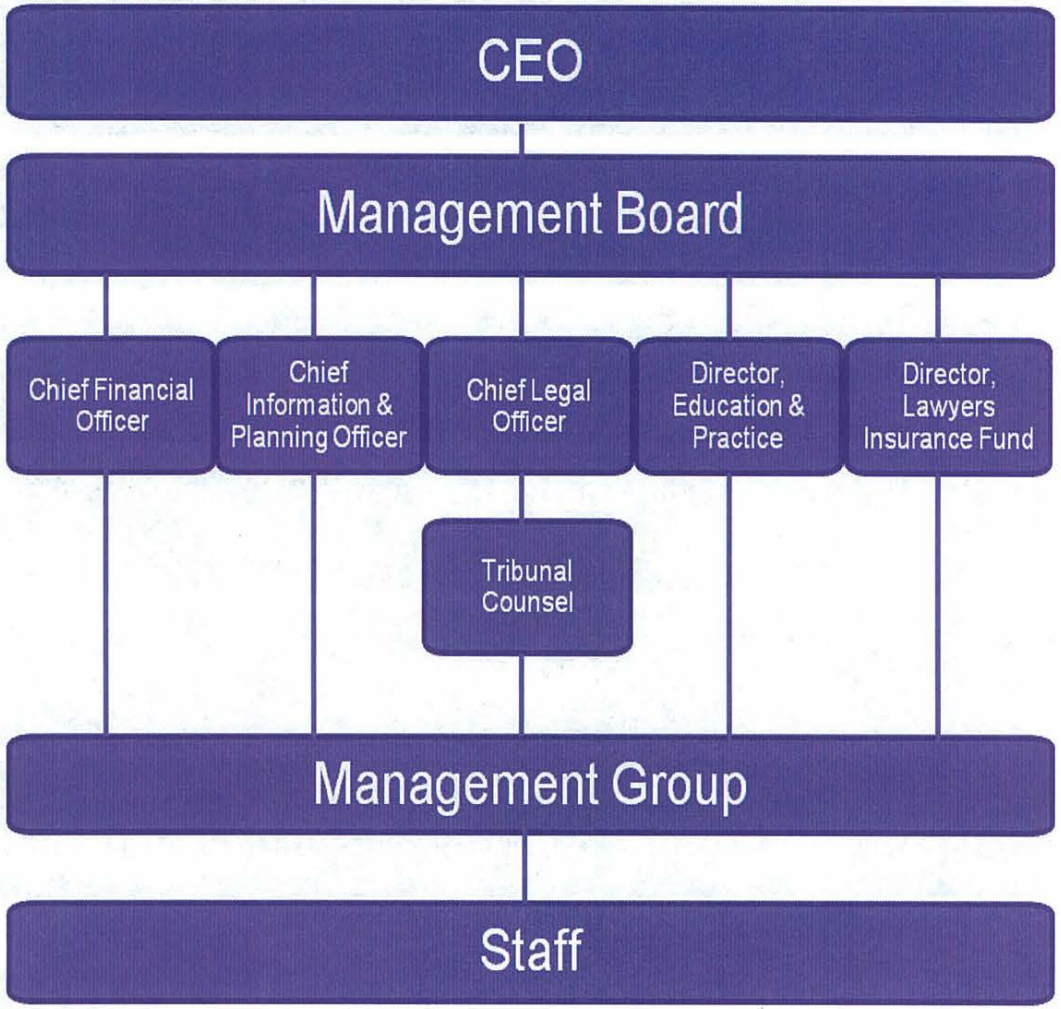


Current Meetings / Interactions

Management Board meets 2/month

Management Group meets 2/month

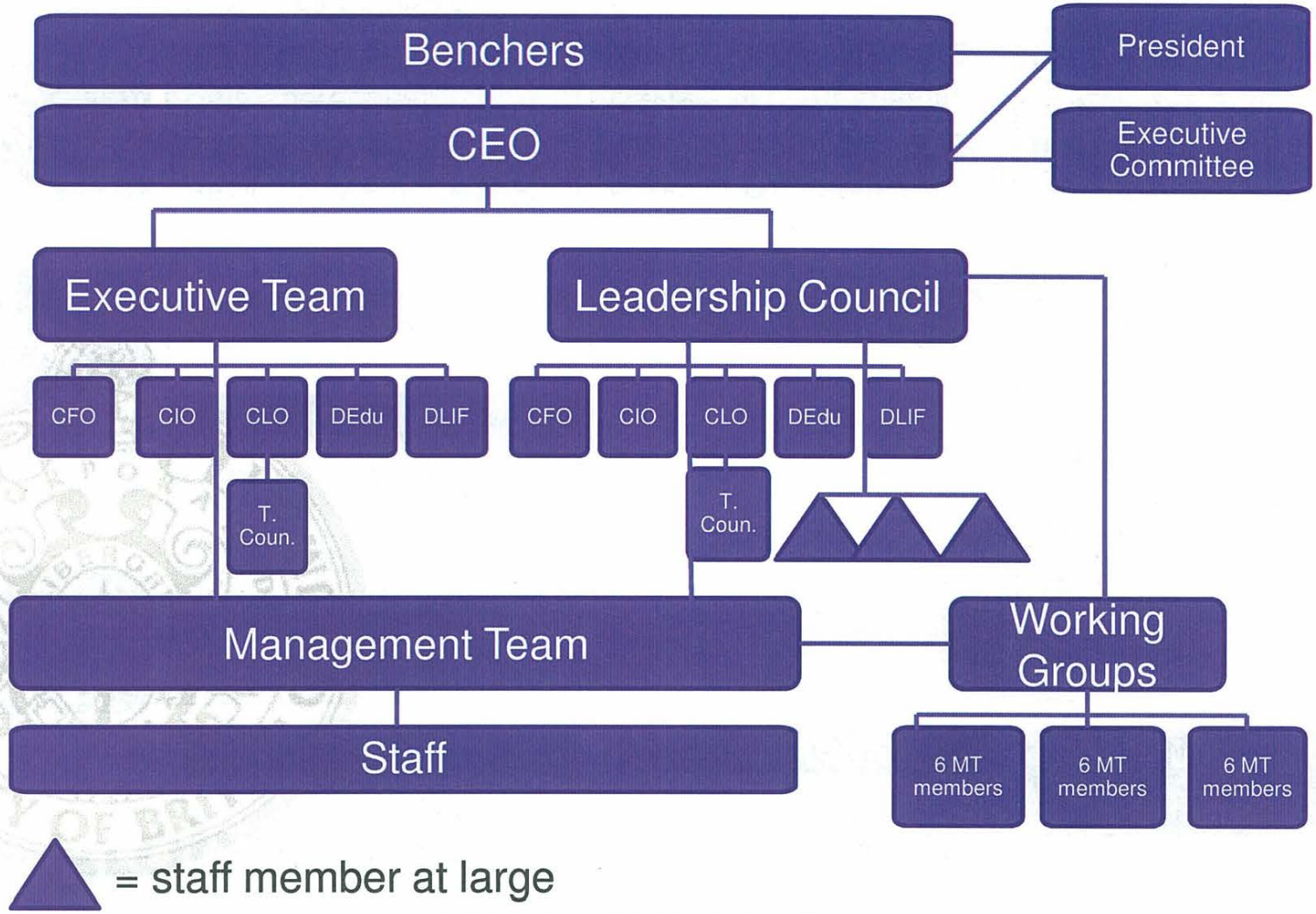
Staff Town Hall 3/year



Why Change?

- A key feature of effective leadership is review and renewal to meet evolving needs.
- Current management structure unchanged for more than 5 years.
- Recent project successes demonstrated wealth of management group skills – opportunity exists to take greater advantage of this.
- Benefits of investment in recent management skills and leadership training should be maximized.
- Workplace culture discussions showed appetite for more innovation and greater involvement in decisions that effect operations.
- Timing is right, given need to develop succession planning at all levels.

Proposed Management Structure



Proposed Governance

	Leadership Council	Executive Team	Management Team/ Working Groups
Who?	CEO, direct reports & T. Csl. + 3 "at large" mbrs:	CEO, direct reports + T. Csl.	All managers
	- top/strong performers		Working Groups – 3/yr
	- willing to serve		Working Group Chair TBD by subject matter
	- CEO appoints /1 year term		
When?	Meet twice a month	Meet ad hoc, as required	MT meets 1/month
			WG meets as required - set in January after operational priorities set & reports out to LC
What?	All on LC are full, equal members	Bencher confidential issues	Implementation planning of all operational priorities
	Sets operational priorities for year	Review of compensation policy	HR policies advisory role
	Oversees/monitors operational priorities	RRex Awards	Staff / personnel issues
	Sets/reviews operational policies	CEO issues	Other as required

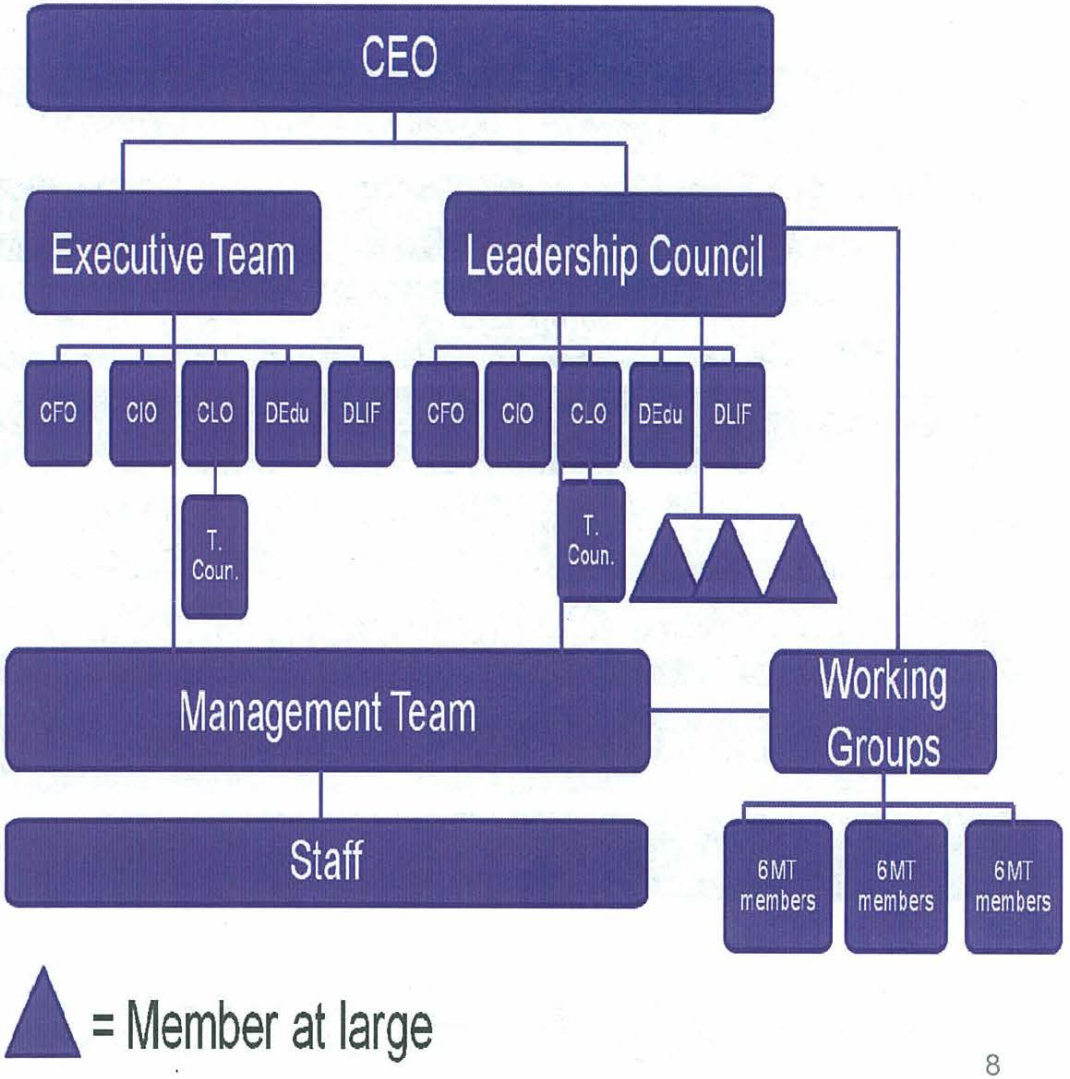
Proposed Meetings / Interactions

Leadership Council meets 2/month

Management Team meets 1/month

Working Groups meet as required

Executive Team meets as required



Benefits of Proposed New Structure

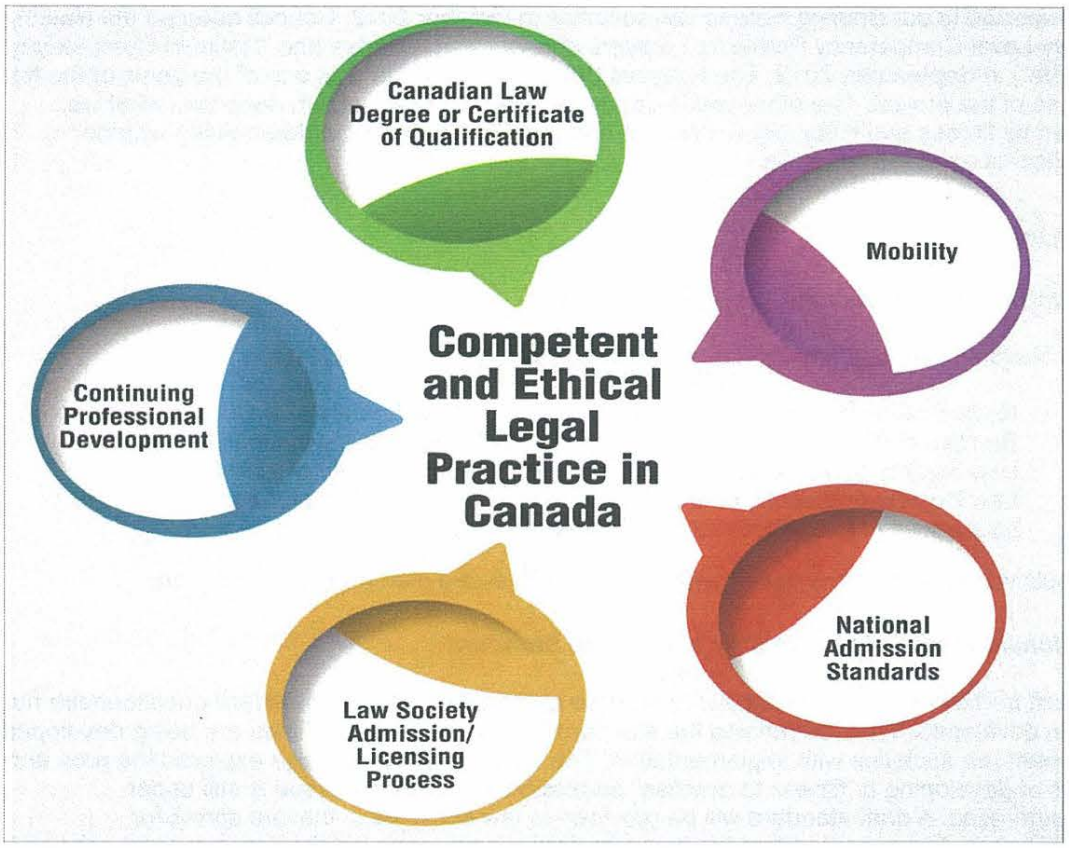
- Enhance decision making through broader perspectives.
- More strategic / planning focus.
- Shifts operational planning more to management team.
- Managers have new opportunity for leadership development.
- Added responsibility as part of Leadership Council.
- Skills development and assists with succession planning.
- Working groups – better use of management skills / engagement.
- Better coordination and build on teamwork strengths.

National Admission Standards

Communiqué **Spring 2013**

The Rationale For National Admission Standards

Lawyers and Quebec notaries are accountable to the public. They are required to be competent and to meet high ethical standards. Setting appropriate standards for admission to the legal profession is a critical aspect of the mandate of Canada's 14 law societies to regulate in the public interest. The diagram below illustrates some of the factors that have an impact on legal practice, including legal education, law society licensure requirements, continuing professional development and mobility. Collaboratively-driven national admission standards will ensure that entry-level legal professionals are equipped for competent and ethical legal practice anywhere in Canada, and will help law societies meet their public interest mandate given the realities of the legal practice landscape in Canada today.



In 2009, the CEOs of the law societies and the Council of the Federation identified the need to develop national standards for admission to the practice of law in Canada and the National Admission Standards Project took flight. The project reflects an important strategic priority identified by the Council of the Federation: the development and implementation of high, consistent and transparent national standards for the regulation of the legal profession.

National Admission Standards

In launching the project, members of Council recognized that while there is much common ground in the admission programs in Canadian law societies, significant differences do exist. With mobility, both as originally established through our mobility agreements and as now mandated by the Agreement on Internal Trade, admission to practice in one province or territory opens the door to admission in virtually every other jurisdiction in Canada. Coupled with fair access to regulated professions legislation in three jurisdictions, different admission practices may be difficult to justify as being in the public interest.

Identifying the essential competencies required of applicants for admission to practise was a key element of the first phase of the National Admissions Standards Project. Through the collaborative efforts of senior law society admission staff members (the Technical Advisory Committee), professional credentialing consultants from ProExam (formerly PES), and practicing lawyers (through the Competency Development Taskforce and survey of almost 7000 entry-level lawyers and Quebec notaries), a profile of entry-level competencies – knowledge, skills and tasks – was developed.

Project Update

As reported in our Briefing Note to law societies in October 2012, Council adopted the National Entry-Level Competency Profile for Lawyers and Quebec Notaries (the "National Competency Profile") in September, 2012. The National Competency Profile was one of the goals of the first phase of the project. The other was a good character standard, which describes what we mean by fitness and suitability to practise and provides guidance in determining whether applicants meet the standard.

Phase I

Adoption of the National Competency Profile

The National Competency Profile has been adopted by 10 law societies:

Nova Scotia Barristers' Society	Law Society of New Brunswick
Barreau du Québec	Law Society of Upper Canada
Law Society of Manitoba	Law Society of Alberta
Law Society of British Columbia	Law Society of Yukon
Law Society of the Northwest Territories	Law Society of Nunavut

Adoption is subject to the development and approval of a plan for implementation.

National Fitness and Suitability to Practise Standard

A draft framework for the suitability to practise standard and a draft standard questionnaire has been developed. Work on refining the standard is ongoing and guidelines are being developed to assist law societies with implementation. The working group has also explored the pros and cons of developing a "fitness to practise" admission standard; the issue is still under consideration. A draft standard will be provided to law societies in the late spring for consultation. It is expected that the final standard will be ready for circulation to law societies in the fall of 2013.

National Admission Standards

Phase II

Phase II of the National Admission Standards Project involves engaging with representatives of all of the law societies to identify options for implementing the National Competency Profile and the National Fitness and Suitability to Practise Standard and to reach agreement on moving forward.

Implementing National Admission Standards

The National Admission Standards Project Steering Committee set a timeline and developed a high level plan for exploring options and arriving at a recommendation for implementing National Admission Standards at its in-person meeting on December 19, 2012. The preliminary project plan identifies the major components of Phase II of the project, including a plan to engage stakeholders, the expert resources needed to complete the project, and the governance framework. The plan will be refined as stakeholders are engaged and the project unfolds. October 17, 2013 was identified as the target date by which a preliminary recommendation on implementation will be made to Council.

Engaging Stakeholders

The Steering Committee recognized that given the breadth of this endeavour, engaging law societies early in the planning process would be critical to the project's success. In Phase I, engagement efforts included involving law society staff and management through the Technical Advisory Committee and Fitness and Suitability to Practise Working Group; engaging the elected leaders and senior staff members of the law societies and various other stakeholders through Federation conferences in PEI and Vancouver; involving the profession through the Competency Development Task Force and national survey; and communicating with law society CEOs, elected leaders and senior staff through circulation of a communications package in the fall of 2012.

Teleconference meetings with CEOs on February 13, 2013 were important first steps in the engagement of key law society stakeholders in Phase II of the Project, and much of the feedback received from CEOs was echoed by senior law society staff at an in-person meeting held the following week. On February 20 and 21, a group of senior law society admission staff, several law society CEOs, Federation personnel and Don Thompson, chair of the National Admission Standards Steering Committee (23 people in total), met in Toronto to discuss Phase II. All law societies were represented directly, except for Nunavut and the Northwest Territories.

Through engaging this group, a great deal was learned about the distinctive features of each law society's admission program and the unique challenges that exist in implementing a national admission standard in different jurisdictions. The valuable feedback from these meetings will help tailor the planning as the project moves forward. The meeting provided an opportunity to engage senior law society staff members and to bring attendees up to speed on the status of the project and the time frame for achieving the first milestone by October 2013. The concepts of defensibility and consistency in evaluation and training were discussed, and a process for working together and moving forward was explored.

Governance Framework

The National Admission Standards Steering Committee, comprised of law society CEOs, volunteers and senior Federation staff, will continue to provide overall direction and oversight for the project. Its members will provide regular reports to Council of the Federation and ensure that law societies are kept well informed about progress. The Steering Committee will meet regularly by teleconference and in person.

Senior Federation staff will manage the project. With assistance from law society staff and credentialing experts, they will also carry out much of the substantive work. Law society elected leaders are key players in this initiative and the project will only succeed with your support. The Steering Committee recognizes that an open flow of communication about the project among those involved on the ground and law society leaders is critical. We will provide you with timely information and we invite your input and engagement, so that you are well informed about the content of the project recommendations and the process followed in reaching them.

Next Steps

The next step is to engage expert consultants to work with senior law society admissions staff and members of the profession to identify both which competencies in the National Competency Profile applicants should be tested on and how each competency might be best assessed. The list of competencies is long and not all substantive legal knowledge, skills and tasks can or need be tested. Using the data obtained through the national survey, the review process will identify what is most important to test based on factors such as criticality (how critical the skill/task is from a risk perspective), and frequency (how often the knowledge is used). This preliminary process, referred to as competency mapping, will also provide guidance on options for assessing the competencies.

The Federation is in the process of retaining a consultant for the competency mapping exercise. Information from the consultant is needed before the timeline and project plan can be finalized. We will continue to engage law society staff and practising lawyers to assist us in this critical strategic review process. A further Communiqué addressing developments in the Project will be provided in the summer, 2013.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MINISTER OF JUSTICE AND ATTORNEY GENERAL OF BRITISH COLUMBIA

-AND-

THE CHIEF JUSTICE OF BRITISH COLUMBIA

-AND-

THE CHIEF JUSTICE OF THE SUPREME COURT OF BRITISH COLUMBIA

-AND-

THE CHIEF JUDGE OF THE PROVINCIAL COURT OF BRITISH COLUMBIA

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1. PREAMBLE

1.1. The Attorney and the Chief Justices acknowledge their joint responsibility for the administration of justice in the Province of British Columbia, with each playing a vital role in the administration of each of the Courts.

1.2. The Attorney and the Chief Justices are committed to developing and maintaining an accessible, modern, and effective justice system in the Province of British Columbia that delivers timely, impartial, and open justice.

1.3. The Chief Justices recognise that the Attorney is accountable to the Legislative Assembly of British Columbia for the expenditure of public resources required for the administration of justice and, in particular, those resources that are used to operate each of the Courts.

1.4. The Attorney recognises that the Chief Justices are responsible for efficient and effective Judicial Administration and that each of the Courts must be given sufficient resources to allow them to carry out their functions under the *Constitution Act, 1867* (U.K.), 30 & 31 Vict, c. 3, reprinted in R.S.C. 1985 App. II, No. 5, and their Empowering Legislation.

1.5. The Attorney recognises that the Courts are an independent branch of government and that the constitutional principle of Judicial Independence must be respected to maintain the rule of law and to ensure public confidence in the administration of justice.

1.6. The Attorney and the Chief Justices recognise that Court Administration should be pursued collaboratively to ensure that resources are used as efficiently and effectively as possible.

2. PURPOSE

2.1. The purpose of this Memorandum of Understanding is to describe the roles and responsibilities of the Attorney and the Chief Justices in the administration of the Courts.

2.2. This Memorandum of Understanding does not create, purport to create, or detract from any law or legal rights or responsibilities that exist or may exist in the future between the Attorney and the Chief Justices. It is not intended as a justiciable document.

3. DEFINITIONS

3.1. **"Attorney"** means the Minister of Justice and Attorney General of British Columbia, or either role, as applicable.

3.2. **"Business Intelligence"** means the collection, storage, disclosure, and/or use of data, the goal of which is to study or otherwise influence the productivity or effectiveness of a process and includes strategic planning, analytics, performance measurement, and performance planning.

3.3. **"Chief Administrator of Court Services"** means the Assistant Deputy Minister of Court Services in the Ministry of Justice of British Columbia.

3.4. **"Chief Justice(s)"** means the Chief Justice of British Columbia, the Chief Justice of the Supreme Court of British Columbia, and the Chief Judge of the Provincial Court of British Columbia, or any of them, when used in singular form.

3.5. **"Court(s)"** means the Court of Appeal for British Columbia, the Supreme Court of British Columbia, and the Provincial Court of British Columbia, or any of them, when used in singular form.

3.6. "**Court Administration**" means the management and direction of matters necessary for the operation of the Courts or other matters assigned to the Attorney by law. Court Administration specifically excludes Judicial Administration.

3.7. **"Court Administration Record(s)"** means a record or records relating to Court Administration. Court Administration Record(s) includes information in aggregate and/or electronic form, but does not include a Court Record or Judicial Administration Record.

3.8. **"Court Record(s)"** means anything on or by which information, in whole or part, is stored that relates to proceedings before the Courts and includes the information itself. Court Record(s) includes information in aggregate and/or electronic form, but does not include a Court Administration Record or Judicial Administration Record.

3.9. **"Court Staff"** means an employee or employees appointed under the *Public Service Act*, R.S.B.C. 1996, c. 385, who provide services to the Courts, but excludes those managed by an Office of the Chief Justice.

3.10. **"Deputy Attorney"** means the Deputy Attorney General of the Ministry of Justice of British Columbia.

3.11. **"Empowering Legislation"** means, as applicable, the *Court of Appeal Act*, R.S.B.C. 1996, c. 77, the *Supreme Court Act,* R.S.B.C. 1996, c. 443, the *Provincial Court Act*, R.S.B.C. 1996, c. 379, or any other act or regulation of the Legislative Assembly of British Columbia or Parliament of Canada that enables the Courts to exercise their powers or grants jurisdiction to any of the Courts.

3.12. **"Judicial Administration"** means the management and direction of matters related to judicial functions, and includes, at a minimum, matters connected to the preparation, management, and adjudication of proceedings in the Courts and all other matters assigned to the judiciary by law or through this Memorandum of Understanding. Judicial Administration specifically excludes Court Administration.

3.13. **"Judicial Administration Record(s)"** means a record or records relating to Judicial Administration, and includes, as defined in the *Freedom of Information and Protection of Privacy Act,* R.S.B.C. 1996, c. 165, a record or records containing information relating to a judge, master, or justice of the peace. For greater certainty, it includes a record or records relating to a registrar, judicial justice, or judicial case manager. Judicial Administration Record(s) includes information in aggregate

and/or electronic form, but does not include a Court Record or Court Administration Record.

3.14. **"Judicial Independence"** includes the judicial independence of an individual judge, justice or other court officer exercising a judicial function, and/or the administrative and institutional independence of a Court.

3.15. **"Office of the Chief Justice"** means, for each of the Courts, the Chief Justice and legal and administrative personnel under his or her direction whose function relates to Judicial Administration of that Court. The Office of the Chief Justice excludes the Deputy District Registrar(s) of the Supreme Court and Deputy Registrar(s) of the Court of Appeal, but includes all other registrars, executive directors, law or legal officers, public information officers, judicial law interns or clerks, Court scheduling staff, and any other personnel whose function relates to Judicial Administration.

4. CONSTITUTIONAL AND LEGISLATIVE AUTHORITY

4.1. *Constitutional Principles*

4.1.1. Section 96 of the *Constitution Act, 1867* provides that "The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick."

4.1.2. Subsection 92(14) of the *Constitution Act, 1867* provides for the administration of justice in the Provinces, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

4.1.3. Subsection 11(d) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, section 96, and the preamble of the *Constitution Act, 1867* have been recognised by the Supreme Court of Canada as affirming the principle of Judicial Independence in Canada.

4.2. *The Attorney General Act*

4.2.1. Section 2 of the *Attorney General Act*, R.S.B.C. 1996, c. 22, provides for the duties and powers of the Attorney in respect of the administration of justice in the Province of British Columbia.

4.3. *The Court of Appeal Act*

4.3.1. Section 2 of the *Court of Appeal Act* provides for the continuation of the Court of Appeal for British Columbia.

4.3.2. Section 32 of the *Court of Appeal Act* provides for the appointment of certain persons under the *Public Service Act* and provides that "Subject to the direction of the Chief Justice in matters of judicial administration and to the direction of the Attorney General in other matters, the chief administrator of court services for the Court of Appeal must direct and supervise facilities, registries and administrative services for the Court of Appeal."

4.4. *The Supreme Court Act*

4.4.1. Section 2 of the *Supreme Court Act* provides for the continuation of the Supreme Court of British Columbia.

4.4.2. Subsection 2(3) of the *Supreme Court Act* provides that the Chief Justice of the Supreme Court has responsibility for the administration of the judges of the Supreme Court of British Columbia.

4.4.3. Subsection 10(1) of the *Supreme Court Act* provides that "The Attorney General is responsible for the provision, operation and maintenance of court facilities, registries and administrative services."

4.4.4. Subsections 10(2) and 10(4) of the *Supreme Court Act* provide for the appointment and responsibilities of the chief administrator of court services with respect to the Supreme Court of British Columbia.

4.4.5. Subsection 10(3) of the *Supreme Court Act* provides that "Subject to the direction of the Attorney General, and to the direction of the Chief Justice in matters of judicial administration and the use of court room facilities, the chief administrator of court services must direct and supervise registries and administrative services for the court."

4.5. *The Provincial Court Act*

4.5.1. Section 2 of the *Provincial Court Act* provides for the continuation of the Provincial Court of British Columbia.

4.5.2. Subsection 41(1) of the *Provincial Court Act* provides that "The Attorney General is responsible for the provision, operation and maintenance of court facilities and services."

4.5.3. Subsection 41(2) of the *Provincial Court Act* provides that "Subject to the direction of the Attorney General, and to the direction of the chief judge in matters of judicial administration, the chief administrator of court services must direct and supervise facilities, registries and administrative services for the court."

4.5.4. Subsection 41(3) of the *Provincial Court Act* provides that "The Attorney General may appoint, under the *Public Service Act*, persons the Attorney General considers necessary to carry out the purposes of this *Act*."

4.5.5. Subsection 41(3.1) of the *Provincial Court Act* provides that "The chief administrator of court services, for the purposes of carrying out his or her duties under this *Act*, may disclose to the chief judge information regarding the conduct of persons appointed under subsection (3) in the performance of their duties under this *Act*."

4.5.6. Subsection 41(4) of the *Provincial Court Act* provides that "The Attorney General may make regulations respecting the operation and maintenance of court facilities and services."

4.6. *The Justice Reform and Transparency Act*

4.6.1. Subsections 10(1), 10(2), and 10(3) of the *Justice Reform and Transparency Act,* S.B.C. 2013, c. 7, provides that the Attorney and the Chief Justices may enter into a memorandum of understanding governing any matter relating to the administration of their respective Courts.

4.6.2. Subsection 10(4) of the *Justice Reform and Transparency Act* provides that the memorandum of understanding may address the respective roles and responsibilities of the parties in the administration of the courts and may

specify how those parties are to share information, promote effective court administration, and report to the public.

4.6.3. Subsection 10(5) of the *Justice Reform and Transparency Act* provides that the Attorney may publish, in a manner that can reasonably be expected to bring to the attention of the public, all or part of the memorandum of understanding, except to the extent the memorandum of understanding otherwise provides.

5. ADMINISTRATION OF THE COURTS OF BRITISH COLUMBIA

5.1. *The Role of the Chief Justices*

5.1.1. Each Chief Justice has sole responsibility to manage and direct Judicial Administration in his or her Court, including the following specific areas:

5.1.1.1. the education and management (and for the Provincial Court, conduct and discipline) of justices, judges, masters, judicial justices, judicial case managers, and registrars;

5.1.1.2. the scheduling and assignment of justices, judges, masters, judicial justices, judicial case managers, and registrars as well as managing court sittings and courtrooms;

5.1.1.3. the supervision and control of Court Staff when carrying out functions related to Judicial Administration;

5.1.1.4. the supervision and control of Sheriffs, as officers of the Court, when carrying out functions related to Judicial Administration;

5.1.1.5. the independent management, budgeting, appointment, and staffing of an Office of the Chief Justice;

5.1.1.6. the supervision and control of Court Records and Judicial Administration Records;

5.1.1.7. the supervision and control of information technology related to Judicial Administration;

5.1.1.8. the supervision and control over the use of Court facilities, including courtrooms, courthouses, and other facilities when those uses relate to Judicial Administration or, for greater certainty, have the potential to affect the dignity and decorum of the Court(s);

5.1.1.9. the issuance of practice directives and other notices governing matters of practice and procedure, decorum, and matters relating to Judicial Administration;

5.1.1.10. the design and implementation of public and media relations strategies, including public education initiatives that relate to Judicial Administration;

5.1.1.11. the design, implementation, and reporting to the public of Business Intelligence relating to Judicial Administration; and

5.1.1.12. other matters assigned to the judiciary by law.

5.2. ***The Role of the Attorney***

5.2.1. The Attorney has sole responsibility to manage and direct Court Administration in the Courts, including the following specific areas:

5.2.1.1. the establishment of Court registries;

5.2.1.2. the provision, operation, and maintenance of Court facilities, registries, and administrative services;

5.2.1.3. the appointment, management, reclassification, and termination of Court Staff;

5.2.1.4. the supervision and control of Court Staff when those staff are carrying out functions related to Court Administration;

5.2.1.5. subject to subsection 5.1.1.6 of this Memorandum of Understanding, the management and storage, including archiving, of Court Records, Court Administration Records, and those Judicial Administration Records that the Chief Justice(s) request the Attorney to manage, store, and/or archive.

5.2.1.6. the security and safety of any person within a Court facility or a facility where a function relating to Judicial Administration is occurring, including emergency planning;

5.2.1.7. the administration of the Sheriffs, as outlined in the *Sheriff Act,* R.S.B.C. 1996, c. 425;

5.2.1.8. the design and implementation of public and media relations strategies relating to Court Administration;

5.2.1.9. the design, implementation, and reporting to the public of Business Intelligence relating to Court Administration; and

5.2.1.10. other matters assigned to the Attorney by law.

6. COLLABORATION AND CONSULTATION

6.1. *General Acknowledgement*

6.1.1. Given the division of roles and responsibilities described in section 5 of this Memorandum of Understanding, the Chief Justices and the Attorney agree that collaboration and consultation on matters of Judicial Administration and Court Administration are necessary to develop and maintain an accessible, modern, and effective justice system.

6.1.2. The Chief Justices acknowledge that the Attorney should be consulted in a timely, transparent, and accountable way on any programs or initiatives developed by an Office of the Chief Justice or delegates thereof that may affect Court Administration.

6.1.3. The Attorney acknowledges that the Chief Justices should be consulted in a timely, transparent, and accountable way on any programs or initiatives developed by the Attorney or delegates thereof that may affect Judicial Administration.

6.2. *Provision of Resources*

6.2.1. The Attorney acknowledges responsibility to provide sufficient resources to each of the Courts to allow them to carry out their functions under the *Constitution Act, 1867* and their Empowering Legislation.

6.2.2. The Attorney and the Chief Justices acknowledge that public funds must be used efficiently and effectively to fund the operation of the Courts.

6.2.3. The Attorney and the Chief Justices acknowledge that the preservation of a fair, independent, and impartial Court system is a priority in the allocation of public funds.

6.2.4. As part of the Attorney's commitment to provide sufficient resources to the Courts, the Attorney agrees to consult directly with the Chief Justice(s), as appropriate, but at a minimum, semi-annually, on the resource needs of their Court or the Courts generally, with particular regard to the following:

6.2.4.1. the general workload of the Court(s) and adjustments to the complement of each of the Courts;

6.2.4.2. changes to the law, both federal and provincial, including to Empowering Legislation, that may affect the workload of the Court(s);

6.2.4.3. changes to the demographics of British Columbia, including population growth and composition, that may affect the workload of the Court(s);

6.2.4.4. the presence of self-represented litigants and access to the Court(s) generally;

6.2.4.5. the use of technology and the modernisation of Court facilities, registries, and administrative services;

6.2.4.6. the needs of each Office of the Chief Justice, including those with respect to budgeting, strategic planning, and personnel; and

6.2.4.7. any further issues that are identified by the Attorney or the Chief Justice(s) and consented to, in writing, by the Attorney and the Chief Justice(s).

6.2.5. When the Attorney identifies and assesses resource needs related to Court Administration, the Attorney will develop proposals to address those resource needs and provide reasonable time for consultation with the Chief Justice(s) prior to the approval of a proposal.

6.2.6. The Chief Justices recognise that, for meaningful decisions to be made about providing sufficient resources to the Courts, information concerning the resource needs of the Courts and Judicial Administration must be provided to the Attorney.

6.2.7. With specific respect to subsection 6.2.4.1 of this Memorandum of Understanding, when the issue of judicial complement is to be addressed by the Attorney, each Chief Justice agrees to deliver information to the Attorney concerning the workload of his or her Court, trends in that workload, and the capacity of the existing judicial complement in his or her Court to address that workload.

6.3. ***Budgeting***

6.3.1. Every year, each Office of the Chief Justice shall prepare a yearly budget of expenditures for his or her Court for the following fiscal year, and an estimate of expenditures for the following two fiscal years, for inclusion in the budget of the Ministry of Justice and approval by the Treasury Board of British Columbia.

6.3.2. The yearly budgets of expenditures shall be submitted to the Deputy Attorney in sufficient time to be reviewed and finalised by the Deputy Attorney.

6.3.3. The Attorney and the Chief Justices agree that no changes to the operating budget of the Court(s) for the following year shall be made without reasonable consultation with Office(s) of the Chief Justice before the end of each fiscal year.

6.4. ***Facilities***

6.4.1. Where new courthouse facilities or significant alterations to existing facilities impacting operations or decorum are planned, at an early stage and before any undertaking or public commitment is made respecting a proposed project, the Attorney shall provide timely notice and detailed descriptions of the proposed project to, and consult with, the Chief Justice(s).

6.4.2. As part of that consultation process, the Attorney and the Chief Justices recognise that the following standards shall be considered: the dignity of the Court(s), the importance of the rule of law, the open court principle, and access to justice, Judicial Independence, the need to modernise the Court(s), and the effective and efficient use of public resources.

7. BUSINESS INTELLIGENCE

7.1. At the direction of a Chief Justice, each of the Courts may explore implementing a process for the use of Business Intelligence as it relates to Judicial Administration or, with the cooperation of the Attorney, Court Administration.

7.2. The Attorney agrees to consult with the Chief Justices on the development or use of Business Intelligence relating to Court Administration.

7.3. The Attorney shall not conduct any Business Intelligence activity that affects, or has the potential to affect, Judicial Administration or that impairs, or has the potential to impair, Judicial Independence.

8. ANNUAL REPORTS

8.1. The Chief Justice of British Columbia and the Chief Justice of the Supreme Court of British Columbia shall cause to be published an annual report prior to April 1 for his or her Court for the previous year that shall include a report on Judicial Administration in that Court.

8.2. The Chief Judge of the Provincial Court shall cause to be published an annual report prior to July 1 for his or her Court for the previous year that shall include a report on Judicial Administration in that Court.

8.3. The publication of annual reports that conform to these requirements shall commence in calendar year 2014.

9. INFORMATION TECHNOLOGY

9.1. The Attorney and Chief Justices acknowledge the need to maintain a judicial technology environment with comprehensive security and privacy specifications for Judicial Administration, having due consideration to the principles outlined in the Canadian Judicial Council's *Blueprint for the Security of Judicial Information,* published from time-to-time.

9.2. The Attorney recognises that, to ensure the integrity and security of information generated by the judiciary and Judicial Administration Records, a separate judicial information technology network and infrastructure is necessary for Judicial Administration of the Courts.

10. COURT RECORDS AND INFORMATION

10.1. *Access to and Use of Records*

10.1.1. As outlined in subsections5.1 and 5.2 of this Memorandum of Understanding, there is a shared responsibility for Court Records.

10.1.2. The Chief Justice of the Court to which the Court Record relates is responsible for developing policies on access to and use of Court Records and Judicial Administration Records.

10.1.3. Access to and use of Court Administration Records is governed by the *Freedom of Information and Protection of Privacy Act.*

10.1.4. The Chief Administrator of Court Services is responsible for developing policies and procedures for managing, auditing, and ensuring that access to Court Records conforms to the policies developed by the Chief Justice in the Court to which the Court Records relate.

10.2. *Combining of Records*

10.2.1. The Attorney and the Chief Justices recognise that, in practice, Court Records, Judicial Administration Records, and Court Administration Records, or any of them, may merge, particularly when in aggregate and/or electronic form.

10.2.2. When Court Records or Judicial Administration Records form part of Court Administration Records, authorisation from the Chief Justice(s) must be obtained for the use and/or disclosure by the Attorney, unless such use and disclosure is already permitted by policies developed by the Chief Justice in the Court to which the Court Records or Judicial Administration Records relate.

10.2.3. At the request of the Attorney, the Chief Justice(s) to which the Court Record or Judicial Administration Record relates may prepare a schedule of certain types or categories of Court Records and Judicial Administration Records where permission for specified use(s) and/or disclosure shall be granted as a matter of course or on terms and conditions set by the Chief Justice(s).

10.3. ***Support to the Courts***

10.3.1. Through the Chief Administrator of Court Services, the Attorney agrees to the continued provision of sufficient staff, including Court Staff, and sufficient resources to manage, store, and archive Court Records for each of the Courts.

10.3.2. Nothing in this Memorandum of Understanding affects the *Protocol Agreement on the use of Court Technology in Electronic Form* signed by the Chief Justices and the Chief Administrator of Court Services on 29 October 2002, nor does it affect any existing protocol or agreement between the Court(s) and the Ministry of Justice and/or Ministry of the Attorney General of British Columbia.

11. APPROVAL, TERMINATION, AND RENEWAL

11.1. This Memorandum of Understanding takes effect on the date of its signature by the Attorney and the Chief Justices.

11.2. This Memorandum of Understanding:

11.2.1. is subject to amendment with the agreement in writing of all parties to this Memorandum of Understanding at any time;

11.2.2. is subject to review at any time by the Attorney or the Chief Justice(s) on receipt of a written request from a party to this Memorandum of Understanding;

11.2.3. may be terminated by the Attorney or any Chief Justice(s) as it relates to his or her Court at any time on thirty (30) days written notice;

11.2.4. shall be reviewed upon the appointment of a new person to the office of the Attorney or Chief Justice and, unless that new person repudiates in writing this Memorandum of Understanding within ninety (90) days of that appointment, this Memorandum of Understanding remains in effect; and

11.2.5. if a Chief Justice elects to terminate or a new Chief Justice elects to repudiate this Memorandum of Understanding under subsections 11.2.3 or 11.2.4 respectively, this Memorandum of Understanding shall continue in effect between the remaining Chief Justice(s) and the Attorney.

THIS MEMORANDUM OF UNDERSTANDING effective this 3rd day of April, 2013.

"Shirley Bond"

The Honourable Shirley Bond
Minister of Justice and Attorney General
Province of British Columbia

"Lance S.G. Finch, CJBC"

The Honourable Lance S.G. Finch
Chief Justice of British Columbia

"Robert J. Bauman, CJSC"

The Honourable Robert J. Bauman
Chief Justice of the Supreme Court of British Columbia

"Thomas J. Crabtree, CJPC"

The Honourable Thomas J. Crabtree
Chief Judge of the Provincial Court of British Columbia

The Law Society of British Columbia

Memo

To: Benchers
From: Robyn Crisanti
Date: March 26, 2013
Subject: For information only: Bencher participation in Law Society Speakers Bureau

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The Law Society's Speakers Bureau was launched in 2012 and so far has included only staff speakers. At the request of some Benchers, the program is now being expanded beyond staff to include Benchers who would like to speak publicly on behalf of the Law Society, either to lawyers or the general public.

In addition, regardless of whether Benchers are registered Law Society speakers, we wish to capture all instances of Benchers speaking publicly so that overall outreach efforts can be reported annually.

This memo outlines the suggested related processes.

Process to be a Law Society Speaker

1. Advise Communications, who will add you to the online roster of Law Society speakers and clarify the topics on which you wish to speak.

2. As requests come in, you will be contacted by Communications as appropriate (given the topic and geographical area) to gauge your level of interest.

3. If you agree to take on a particular speaking engagement, you will be put in contact with the event organizer to determine the particulars.

4. If you require speaking notes, they will be provided by Communications.

Process to report your speaking engagements

To ensure any public speaking you do is included in the annual Speakers Bureau report, please forward the following information to Communications:

- Name of audience group

- Date of presentation
- Approximate size of audience
- Topic of presentation

The report of all public speaking activity will be written shortly after year end on an annual basis.

Quick links: **What's new** | **In the pipeline** | **Of interest** | **Reports**

Welcome to *Time with Tim*. Here I hope to give you information on our organizational goals and to learn a little about each other along the way. I'll be keeping this page up to date with the status of our organizational priorties and will provide updates from Bencher and management meetings and Breakfast with Tim.

What's new

Breakfast with Tim invitations in the mail

By now most of you have received invitations to Breakfast with Tim. I've increased the number of breakfasts per month to try and meet with everyone before August; however, due to the small group sizes some breakfasts will occur in the fall. If you have not received an invitation to a breakfast, please understand that we are in the process of scheduling fall dates and invitations will be sent out shortly.

I'm very excited to see that the majority of people receiving invitations so far have been able to accept them and I'm looking forward to getting together.

Breakfast with Tim

Starting in April, I will host monthly off-site breakfast meetings with staff. This is an informal opportunity to get to know other employees and share comments and suggestions with one another. Each breakfast will include randomly-selected staff members from across the organization. Over the course of 2013, I am hopeful that everyone will be able to attend a breakfast meeting.

In the pipeline

Project Leo

We're nearing the end of Project Leo and entering an exciting new road ahead for the Law Society. With training complete and Leo installed on everyone's computers, we are looking at the April 30 deadline of closing the network drives to saving. I encourage everyone to start using Leo and become comfortable with creating, saving and searching for documents. Personally, I've found using Recently Edited Documents and Content Searching highly effective in finding the documents I'm looking for. The project team has scheduled additional training sessions in April to help you become proficient. To register for a training session or for more information about the project, visit the project page.

Lawyer Support and Advice Project

As one of the operational priorities for 2013, this project will develop a recommendation for how lawyer advice and practice support at the Law Society can be delivered in an effective, efficient and consistent manner. The first stage of the project is to gather ideas on how to improve lawyer advice and support, and the project team is reaching out to all staff. This is an exciting opportunity for you to be involved in a major project, to think innovatively and to provide ideas on how we as an organization can reach this important goal. Interviews have been held with individual departments; however, you are welcome to submit any suggestions or ideas to the project team. After ideas have been generated, a telephone survey of lawyers will commence in April to get input on our ideas. Click here to

Highlights of Tim's April Calendar:

Presiding over the first Call & Admissions Ceremony of 2013

Meetings with several legal community stakeholders

Continuing working with Management Group on management review and renewal project

Saving all new documents into Leo

Contact me

Stop by my office or send me an email - tmcgee@lsbc.org

Bits

Birthplace: *Victoria, BC*

Favorite movie: *The Great Escape*

Favorite local restaurant: *Chambar*

UPCOMING EVENTS

- *May 01:* Bencher Agenda Materials (Final form deadline)
- *May 01:* Room 914 -Costco marketing presentation
- *May 02:* Management Group Meeting
- *May 10:* Bencher Meeting
- *May 14:* Management Board Meeting

MY LINKS [+/-]

- A-Z Directory
- Employee Pro
- Forms and Templates
- Law Society Information System (LSIS)
- Meeting Room Schedule
- Planned Absences
- Record Pro
- Resource Centre for Legal Research
- Safety and Security
- BC Courthouse Libraries
- BC Laws
- Department of Justice
- BC Online
- CanLII
- Continuing Legal Education
- Federal Legislation Search
- Great-West Life
- My ADP
- QuickLaw
- Yellow Pages

MY CONTACTS [+/-]

COMMITTEE MEETINGS

- *May 06:* Legal Service Providers Task Force
- *May 07:* Complainants' Review Committee
- *May 08:* Rule of Law and Lawyer Independence Advisory Committee
- *May 09:* Practice Standards Committee
- *May 09:* Act and Rules Subcommittee

submit an idea or for more information about the project, visit the project page.

Profession you would most like to try: *Architecture*

Favourite mentor: *My late uncle*

Person you would most like to meet: *Winston Churchill*

Of interest

RRex

For at least two reasons, RRex is a remarkable program for recognizing and rewarding employee excellence. First, it has been built from the ground up; that is, we have surveyed and consulted with staff over the past year to ensure that the program is responsive to the types of incentives and recognition that will motivate performance, innovation and teamwork. Second, because of the thorough external research we have done on this topic, we have also been able to design the program based upon the best features of successful programs elsewhere.

Congratulations to Denise Findlay, our first recipient of the Golden Lion Award! Nominitated by a colleague, Denise was recognized for her commitment and dedication to high quality work. More information about RRex is available here.

2012 Employee Survey feedback

Our seventh consecutive employee survey was conducted in November of 2012. We had a record high response rate for the survey and the results are both interesting and encouraging on several fronts. Key points that came out of the employee survey and that I plan to focus on this year are:

- connecting more with staff through Lex and monthly breakfasts
- increasing transparency around organizational priorities
- working towards creating more autonomy for all staff

2013 Operational Priorities

We are a high-performing organization dedicated to excellence. At the same time, we should always look for innovative ways to do things better, more efficiently or more effectively. Here are the five operational priorities for management for 2013:

1. Review and renewal of management structure
2. Lawyer Advice and Support Project
3. Support for Legal Service Provider Task Force
4. Regulation of law firms – policy and operational assessment
5. Implementation of Governance Review Task Force report

Detailed information on each priority can be found here or in my January report to Benchers.

Federation of Law Societies of Canada 2013 Semi-Annual Conference, March 20-22

I attended the Federation of Law Societies of Canada Semi-Annual Conference and Council meeting in Quebec City. The theme of the conference was "Globalization and Risk Management: Challenges for Law Societies". I gave a presentation on the topic of Globalization and International Trade in Legal Services which focused on the major trends associated with the globalization of law and a call for a unified approach to certain aspects of regulation. The highlight for me among the practical topics were the workshops focused on what all law societies are doing and could be doing to help lawyers comply with their professional and regulatory requirements. The most compelling presentation on the strategic front was given by Mr. Michel Nadeau, the head of the Quebec Institute for Governance of Private and Public Organizations, who reviewed public survey data which strongly suggests that regulatory bodies must never underestimate the public's high expectations that we do our jobs in a demonstrably effective and efficient manner.

More information on the conference can be found in my April report to Benchers.

Inaugural BC Justice Summit, March 15-16

The "Inaugural Justice Summit", at the UBC Law School, focused on reforms to the criminal justice system and was comprised of two full-day working sessions broken down into two parts. The Friday afternoon session focused on indentifying the values that should guide the criminal justice system. The Saturday session built on that foundation but carried on into more detailed small group discussions around what the priorities should be and how future Justice Summits could help address and facilitate desired reforms. I acted as moderator for the working sessions on Friday and Saturday and George Thompson, a former deputy attorney general and former Provincial Court Judge in Ontario, acted as facilitator.

The working sessions were attended by approximately 40 delegates, including senior representatives drawn from the principal participants and parties with an interest in the criminal justice system. In addition, Chief Justice Finch, Associate Chief Justice Cullen, Chief Judge Crabtree and Associate Chief Gill were in attendance for all of the Saturday sessions and participated actively in the discussions. Overall, the delegates were certainly engaged in the process and in the exchange of views and ideas. In the wrap-up there was a strong consensus that providing a safe and informal forum for the exchange of ideas and information among the key participants was a very useful tool to addressing the vexing issues of the day; however, it was also clear that the issues are complex and not easily addressed without considerable resolve and collaboration.

More information about the Summit can be found in my April report to Benchers.

Updated on: Apr-22-2013 12:23 PM by dpapove

[GO TO TOP]

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: June 4, 2013
Subject: Appointment to Vancouver Airport Authority Board of Directors

Vancouver Airport Authority (VAA) Board of Directors

Body	**Governing Statute /Applicable By-law/ Other Authority**	**Law Society Appointing Authority**	**Law Society Appointee(s) Profile**
Vancouver Airport Authority Board of Directors	*Canada Corporations Act*, Part II; Letters patent Vancouver Airport Authority By-law 1, ss. 1.1	Law Society Benchers	1 Law Society member, as Vancouver Airport Authority member (automatically a director)
Current Appointee	**Date First Appointed**	**Terms Served**	**Completion Date**
Carol Kerfoot	6/1/2006	Two 3-year terms, with a 1-year extension	5/14/2013

a. Background

Carol Kerfoot has served two three-year terms (with a one-year extension to the second term) as the Law Society's appointee to the VAA board of directors. VAA retained the consulting firm of Watson Advisors Inc. (Watson) to support the Law Society's solicitation and review of candidates for Ms. Kerfoot's replacement as a VAA director.

The Appointments Subcommittee reviewed and evaluated a pool of candidates referred to the Law Society by Watson on VAA's behalf, and a pool of candidates who submitted their applications and credentials directly to the Law Society. While a number of applicants were

excellent, in the Subcommittee's view Anna Fung, QC is the candidate whose attributes, background, skills and experience (Tab 1) align most strongly with VAA's selection criteria (Tab 2), and with the Law Society's commitment to excellence in governance.

We endorse the view of the Appointments Subcommittee.

b. Recommendation

The Executive Committee recommends that the Benchers adopt the following resolution:

> *BE IT RESOLVED to appoint Anna Fung, QC to the Vancouver Airport Authority Board of Directors for a three-year term, commencing June 30, 2013.*

May 7, 2013

DELIVERED BY EMAIL

Law Society of BC
Appointments Committee
845 Cambie Street
Vancouver, BC
V6B 4Z9

Attention: Mr. Bill McIntosh

Dear Bill:

Re: Appointment to the Board of Vancouver Airport Authority

I am pleased to submit my application for appointment by the Law Society of BC to the Board of Vancouver Airport Authority ("Authority"). I am very interested in serving on the Board and contributing my legal and Board experience to further the goals of the Authority and the interests of its various stakeholders.

I am aware that the Authority has an important and diverse mandate which necessitates the exercise of good judgment, sound governance and fiscal prudency by its management and Board. I believe that I can bring all of those attributes to the Board, having served in leadership positions of many professional, community and educational organizations over more than 25 years as a practising lawyer.

As a lawyer, I have been involved in a leadership role in many large organizations and have demonstrated an understanding of and capacity to deal effectively and collaboratively with a wide range of stakeholders. I have been involved in the financing and structuring of large capital and infrastructure projects. I have appeared before regulatory bodies as counsel. I have led multi-disciplinary teams within the workplace as well as in a volunteer capacity. In short, I have been a constant contributor to any organization with which I have been involved. I am no doubt that I will do the same if I were fortunate enough to be appointed to the Board of the Authority.

Lastly, I believe that my unique background and language skills will stand me in good stead as a representative of and ambassador for the Authority.

I am grateful to my current employer, TimberWest Forest Corp. and in particular, our President and CEO Brian Frank, for their support of my application.

Thank you very much for taking the time to consider my application. I have taken the liberty of enclosing my current resume for your review. Please do not hesitate to call or email me if you have any questions or concerns.

Best regards,

Anna K. Fung, Q.C.

CURRICULUM VITAE

Anna K. Fung, Q.C.

EDUCATION

2004	QUEEN'S SCHOOL OF BUSINESS • Completion of Leadership Program at Queen's Executive Development Centre
1984	UNIVERSITY OF BRITISH COLUMBIA • Bachelor of Laws Degree • Highest ranking in three years: 9th out of 227
1981	UNIVERSITY OF BRITISH COLUMBIA • Bachelor of Arts Degree (First Class Standing) • Double major in English and French

PROFESSIONAL & COMMUNITY AWARDS

April 14, 2000	Recipient of provincial Queen's Counsel designation
August 17, 2004	Recipient of RVA Jones Canadian Corporate Counsel Award for outstanding contribution and service to corporate counsel community
May, 2007	Winner of Vancouver YWCA Woman of Distinction Award in Business and Professions category
June, 2007	Winner of Canadian Bar Association (BC Branch) Equality and Diversity Award
August, 2007	Recipient of Friends of Simon Wiesenthal Centre for Holocaust Studies Award
March 13, 2008	Recipient of BC Community Achievement Award
April 12, 2012	Recipient of UBC Law Alumni Association Award of Distinction

LAW RELATED EMPLOYMENT EXPERIENCE

June, 2012 – Present

Vice President, Legal & General Counsel, TimberWest Forest Corp.

- Chief and sole legal officer of TimberWest with responsibility for managing and overseeing all of the legal affairs of BC's largest private timberlands company.

January, 2009 - December, 2011

Counsel & Chief Privacy Officer, Intrawest ULC

- Legal counsel to Intrawest and various North American and European resorts operated by Intrawest (including Mont Tremblant Resort and Club Intrawest), advising on wide range of corporate/commercial, contractual, aboriginal rights and title, restructuring, mergers and acquisitions, real estate, refinancing and regulatory compliance matters in both English and French;
- Manager of all Mont Tremblant Resort litigation;
- Chief Privacy Officer for Intrawest group of companies with responsibility for enterprise wide privacy compliance.

August, 1993 – December, 2008

Senior Counsel & Chief Privacy Officer, Terasen Inc. (now FortisBC Inc.)

- Legal counsel to Terasen group of companies on wide variety of matters including North American mergers and acquisitions, divestitures, corporate/commercial, contracts, lands and securities matters, aboriginal rights and title issues, corporate reorganizations and project financings; acted as company counsel in contested rate and facilities hearings before the B.C. Utilities Commission and the National Energy Board; managed external counsel including assuming responsibility for litigation management;
- Chief Privacy Officer for Terasen group of companies with responsibility for enterprise wide privacy compliance.

November, 1989 – August, 1993

Associate of McCarthy Tétrault LLP

- Focus on general corporate/commercial practice with emphasis on corporate acquisitions, reorganizations and take-overs, and some lending and security and lease work;
- Extensive experience in representing syndicators of immigrant investor offerings under the Canada Business Immigration Program and advising clients on general business immigration matters.

August, 1985 – October, 1989

Articled Student and Associate of Davis LLP

- Practised general corporate/commercial law with emphasis on share and asset purchase transactions, leasing matters and business immigration; advised professional associations on charter and compliance issues; advised Indian bands on land and resource development and taxation issues;
- Assisted lead counsel in major aboriginal rights and Charter of Rights litigation and appeals; investigated complaints against nurses on behalf of the B.C. Registered Nurses Association, advised said association on handling of complaints and assisted lead counsel in conducting related professional disciplinary hearings.

September, 1984 – August, 1985

Law clerk to three justices in the Court of Appeal for British Columbia with responsibility for legal research and drafting of legal memoranda on wide range of issues.

SELECTED VOLUNTEER ACTIVITIES (1998 – Present)

1998 – Present	Elected Bencher (Director) of Law Society of British Columbia (1998 -2007); Discipline Committee member (2001), Vice-Chair (2002), Chair (2003-2004, 2006); Futures Committee member (2002-2004), Chair (2005) & Vice-Chair (2006); Credentials Committee member (1999-2000, 2008) & Chair (2005); Equity and Diversity Committee Vice-Chair (1999) & Chair (2000-2001); member of Financial Planning Subcommittee, Public Affairs Committee, Western Law Societies Task Force, Executive Committee (2004-2007); President (2007); Life Bencher (2007 onwards); Discipline Guidelines Task Force member (2010 – 2011); member of select pre-qualified Discipline Hearing Panel Pool (2011 – present)
2000	Speaker on diversity in the workplace initiatives at Institute for International Research conferences
2002 – 2010	Director of Association of Chinese Canadian Professionals (BC) (2002 - 2007) & President (2004 - 2006); Honorary Advisor (2007 - 2010)
2003 – Present	Member of Foundation for Legal Research
2005 -- Present	Member of UBC Law School Dean's National Business Law Centre Advisory Committee
2007	BC Law Society's appointed representative on National Council of Federation of Law Societies of Canada
2008	Community Leader in Minerva Foundation for BC Women's "Follow a Leader 2008 Program"
2009 – Present	Governor of Law Foundation of British Columbia; Chair of Finance Committee (2010 – Present)
2010 -- 2011	Member of Judges Panel for 2010 and 2011 International Legal Alliance Summit and Awards
2011 to 2012	Member of Canadian Bar Association's 2012 Canadian Legal Conference organizing committee
2011 – Present	Director of Arts Club Theatre Society and the Vancouver Foundation
2013 -- Present	Member of UBC Alumni Association Advisory Council

LEGAL PUBLICATIONS

Mitchell H. Gropper, Q.C. and Anna K. Fung, "Significant Recent Legal Developments Affecting Foreign Investment in Canada", Guide to Canada-Hong Kong Business 1991, pp. 1 – 18, published by the Canada Festival Corporation, Hong Kong, 1991.

Anna K. Fung, "The Doctrine of Constructive Dismissal", (1986) 44 The Advocate 497-511.

Author and presenter at educational and professional development courses and legal information and ethics seminars of the Canadian Bar Association, Canadian Corporate Counsel Association, International Bar Association, Canadian Institute, Pacific Business & Law Institute, People's Law School, Institute for International Research, Insight, Federated Press, Law Society of BC, Continuing Legal Education Society of BC, and Career Women Interaction.

Co-author of chapter on "A Decade Since Delgamuukw: Update from an Industry Perspective" in Aboriginal Law Since Delgamuukw, Canada Law Book, 2009.

Co-author of chapter on "The Lawyer in Corporate Settings" in Canadian Legal Practice, LexisNexis Canada Inc., 2009.

LANGUAGE SKILLS

Fluent in English and French with conversational skills in Cantonese, Mandarin and Spanish.

WATSON™

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The Position

This job specification is in relation to a director position appointed by the Law Society of British Columbia ("LSBC") to the Board of the Vancouver Airport Authority ("VAA"). The role of VAA is to advise LSBC on the desirable attributes and traits to fill the position and the names of potential candidates who, in VAA's opinion, meet the desired criteria. The LSBC online application and further details on the appointment process can both be referenced here: http://www.lawsociety.bc.ca/apps/forms/appt/index.cfm. The ultimate appointment is made by LSBC in their sole discretion.

The Criteria

The Airport Authority looks at several factors, skills and experience, personal attributes and traits, community standing and expertise; and how these factors fit together, and the diversity of viewpoints that are being brought to the boardroom. Pre-eminent among these characteristics are two: Directors who have the skills and experience to add value and provide support for management in reviewing and approving strategy and reviewing risks and opportunities; and Directors who have the skills and experience to effectively monitor the performance of the Vancouver Airport Authority and its management team.

Within this context, the specific skills, experience and background sought by VAA in candidates for this position are as set out below.

- ☐ **Personal Attributes:** All candidates are required to adhere to high ethical standards, display mature wisdom and have strong interpersonal skills. Preferred candidates will be financially literate and be skilled in providing insight and suggestions in making strategic decisions. They must demonstrate commitment to VAA's values and vision and be free from conflict of interest. They must be able to commit approximately 20 days per year on Board business, not counting meeting preparation time.

  The following skills and experience are the main areas of experience sought in the new LSBC appointment:

  - Extensive corporate/commercial legal experience, preferably gained through serving as corporate counsel in relation to an entity at least similar in size and scope to VAA.
  - Experience in an international context; awareness of legal issues relevant to international business operations, particularly in the regions of Asia Pacific and Latin America.
  - A sophisticated aptitude for land or project development at the senior executive level, including previous experience with large capital projects from inception to completion.
  - Previous leadership and Board expertise.
  - Knowledge of, and recognized stature within, local jurisdictions adjacent to VAA operations.

- ☐ **Board Leadership:** Preferred candidates should have the experience necessary to fill leadership positions on the Board.
- ☐ **Diversity:** The VAA is subject to the Employment Equity Act and seeks to ensure that its Board and the Boards of its affiliates, as a whole, reflect diversity of skills and experience as well as diversity of gender, culture, and geography.

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC on behalf of Act and Rules Subcommittee
Date: May 17, 2013
Subject: **Temporary Mobility of Practitioners of Foreign Law**

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1. In July 2012 the Benchers approved a recommendation of the Credentials Committee to adopt a scheme whereby lawyers from jurisdictions outside Canada could advise on the law of their home jurisdictions in British Columbia on a temporary basis. The Benchers approved an option provided by the Committee "permitting the temporary practice of foreign law by a foreign lawyer under a series of conditions, such as a requirement that the lawyer be insured in his or her own jurisdiction and that the insurance extend to his or her provision of advice in a foreign jurisdiction."

2. The Act and Rules Subcommittee has considered the report of the Credentials Committee and the resolution adopted by the Benchers and recommends a the adoption of a new Rule 2-19.1 entitled "Providing foreign legal services without a permit" and a few other related amendments. These amendments would provide for a temporary mobility scheme for foreign lawyers similar to that in place for Canadian lawyers from other jurisdictions under the National Mobility Agreement. One significant difference is the time limit for practice of foreign law without a permit would be set at 30 business days, as opposed to 100 business days for Canadian lawyers.

3. I attach the report of the Credentials Committee, the relevant extract from the minutes of the Benchers meeting, a draft of amendments to the rules concerning practitioners of foreign law and a suggested resolution to give effect to the policy decision of the Benchers.

JGH

Attachments: report to Benchers
minute extract
draft rule amendment
suggested resolution

DM122089

The Law Society of British Columbia

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

For: The Benchers

Date: July 11, 2012

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

Introduction

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

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

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

Recommendation

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

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

Introduction, Background, and Policy Objective

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

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

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

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

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

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

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

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

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

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

Current Rules and Considerations

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

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

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

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

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

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

General Proposal

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

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

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

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

Implications of the Proposal

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

1. Recognizing Current Realities – Governmental/Political Considerations

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

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

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

2. Public Relations

It is doubtful that changing rules to permit temporary practice of foreign law will have much effect on or resonate with the public. However, for the reasons described under the heading above, talking a step that reduces barriers to temporary practise of foreign law may assist the Law Society's position with the public on future discussions about international mobility issues.

It is possible that a BC resident who has a concern about a "temporary" PFL may find that recourse must be had to the foreign regulator rather than through the Law Society, which may be less convenient. However, if the PFL's association to British Columbia is fleeting, the rationale for addressing the concern through the foreign regulator rather than through the Law Society should be relatively evident. An occasional, temporary attendance in BC by a foreign lawyer on a foreign matter should not necessarily be expected to involve the Law Society.

3. Member Relations

Increasing temporary mobility for PFLs should have few implications on members. It will not affect their practices, as PFLs cannot practice domestic law, and members of the Law Society cannot practice foreign law.

4. Financial Implications

It is possible that some of the PFLs who currently obtain permits will not need to obtain permits in the future if a temporary mobility scheme were implemented. Permits cost $600.00. They must be renewed every year. The cost for renewal is $125.00. Therefore, even if fewer permits or renewals are required, the financial implications will be slight.

Options

The Committee considered and debated three different options.

Option 1

Option 1 would provide that a permit would not be required where the foreign lawyer is properly registered to engage in legal practice in a foreign country by the relevant governing body for the legal profession in that country, as long as the foreign lawyer practises law in British Columbia for less than a certain number of days in any 12 month period, and does not establish an economic nexus in British Columbia;

The first option considered by the Credentials Committee was a broadly conceived proposal, and is closest to that created in Queensland and proposed under the National Regulatory Scheme under consideration in Australia.

Under this Option, a rule would persist preventing the practice of foreign law in British Columbia unless the person is registered or has a permit to do so.

However, a permit would not be required where the person is properly registered to engage in legal practice in a foreign country by the relevant governing body for the legal profession in that country and who:

- practises foreign law in BC for less than a certain number of days in any calendar year (or, perhaps, 12 month period); and

- does not establish an economic nexus in BC.

"Economic nexus" should parallel closely how that phrase applies to temporarily mobile lawyers within Canada, and would therefore include:

- providing legal services beyond the set number of days in a calendar year or 12 month period;

- opening an office in BC from which foreign legal services are offered or provided;

- becoming a partner of a law practice in BC;

- becoming a resident.

In addition to the "nexus" criteria described above, the Subcommittee believes "advertising the services of a PFL in British Columbia" should be added. Advertising in the province establishes a nexus to the province such that a resident who retains the services of a PFL based on the advertisement *might* expect the Law Society to have some role in regulating the PFL's conduct, even if the PFL only appeared in the province temporarily.

This option requires foreign lawyer to be properly registered in their "home" jurisdiction in order to take advantage of the temporary provisions to offer foreign legal services in British Columbia. It does not, however, give the Law Society the ability to verify that the PFL is in fact properly registered. It might however be expected that in most cases where the temporary provisions were exercised, the client will probably already have retained the PFL, as the PFL would simply be wanting to "fly in" to advise and "fly out" when the advice is given. In such cases, a prudent client would have already checked to make sure the PFL is qualified to advise.

Advantages of Option 1

- Would treat all foreign lawyers the same.

- Uses fewest resources

- Should be consistent with expectations of the public concerning regulatory reach. In other words, a member of the public who retains a lawyer who has no nexus to British Columbia to advise on the law of a foreign jurisdiction in which that lawyer is permitted to practise, may not reasonably be expecting British Columbia to regulate the provision of those legal services.

- Requires a permit if the foreign lawyer establishes a nexus to British Columbia, in which case the public may more reasonably expect the Law Society to regulate

the provision of those services – particularly if that foreign lawyer markets those services in the province.

- Bears some similarity to the current interprovincial mobility agreement, allowing the Law Society to take the position it does not unduly discriminate against lawyers based on jurisdiction.

Disadvantages of Option 1

- The Law Society would have to trust that lawyers are members in good standing and permitted to practise in their home jurisdiction, as no verification of their standing would be required.

- The Law Society would have to trust that individuals who are not permitted to practise law in a foreign jurisdiction do not do so here, (although that is really no different from any question of unauthorized practice where the Law Society must trust those who are not qualified to provide legal services do not do so. The remedies would be the same in either case).

- The Law Society would not be able to readily verify with the foreign lawyer's governing body that the foreign lawyer is eligible to visit, and would not have the advantage of the equivalent to the Federation of Law Societies' Interjurisdictional Database.

- Unlike Canadian lawyer mobility within Canada, there would be no form of agreement with a lawyer's home governing body, such as on the handling of complaints, discipline, insurance claims etc., and no agreement to share information.

Option 2

Option 2 would also permit the practice of foreign law in British Columbia temporarily without a permit, but would prescribe the jurisdictions from which the Law Society would accept a foreign lawyer for less than a certain number of days in any 12 month period. All others would be required to obtain a permit, even for the temporary practise of foreign law in British Columbia.

A "prescribed jurisdiction" could be one that the Law Society had pre-approved, or it could be a jurisdiction that reciprocated with British Columbia by accepting BC lawyers on as temporary PFLs without the need to obtain a permit.

The latter approach bears some similarity to the temporary mobility provisions for Canadian lawyers, which were only available to lawyers from reciprocating provinces whose law societies had signed the National Mobility Agreement.

The former approach would be aimed at protecting the public interest by ensuring that the Law Society was comfortable with the regulatory provisions of the foreign jurisdiction before permitting a lawyer to advise a client in BC even temporarily. However, such a process would be rather labour intensive. Moreover, it is more than is currently permitted even where a permit is sought. Under Rule 2-18 the Law Society must only satisfy itself that the PFL is a member of the legal profession, in good standing, in the foreign jurisdiction. "Vetting" that standard would be a departure from current practice.

Advantages of Option 2

- The Law Society would prescribe the jurisdictions whose lawyers it would allow to practice foreign law temporarily in the province without a permit.

- The public and foreign lawyers could access that information readily through the Law Society's website.

- The public interest would be protected safely in this manner because lawyers from non-prescribed jurisdictions would still be required to get a permit, which would allow the Law Society to satisfy itself as to their credentials.

Disadvantages of Option 2

- This option could require the use of a considerable amount of Law Society resources, which may not be warranted for the scope of the issue that is being addressed. Staff and perhaps Committee or Bencher time would have to be utilized to research and approve the prescribed jurisdictions. Criteria would have to be established to form the basis upon which to decide whether to prescribe a jurisdiction.

- The requirement to prescribe jurisdictions would have to be done on an on-going basis to ensure that the analysis of the foreign jurisdictions remains current. It would also have to be done for *all* jurisdictions – even though the Law Society rarely if ever receives applications for lawyers from some jurisdictions.

- The Law Society would still have to trust that lawyers are members in good standing in a prescribed jurisdiction, as no verification of their standing would be required.

- While it is likely that Commonwealth or Western European jurisdictions would be prescribed (thereby making it possible to permit temporary practice for PFLs from those jurisdictions), it may be more difficult to approve jurisdictions from other areas of the world and in particular some of the developing nations whose legal professions are not as well-entrenched or robustly regulated. Consequently, while

aimed at protecting the public interest, this outcome could be criticized by the federal government and/or parties seeking to liberalize the trade in services in legal advice in connection with international trade and services treaty negotiations, whether done under the auspices of the World Trade Organization or not.

- This option would create a more restrictive condition than already exists. Currently, before issuing a PFL permit, the Law Society only seeks confirmation that a foreign lawyer is a member in good standing by the regulatory body of the foreign jurisdiction. It does not "vet" the requirements of that regulatory body or the laws of the foreign jurisdiction through which the foreign lawyer has been qualified to practice.

- This option might be open to human rights concerns as well, as it would create a system that required individuals, based on their nationality (or place of origin) to go through different processes in order to receive a permit. These differences could amount to "adverse treatment" as defined in decisions under the *Human Rights Code* based on place of origin and raise a *prima facie* case of discrimination that would shift the burden to the Law Society to prove that there is no discrimination, or that there is a *bona fide* and reasonable justification for the discrimination. We have not yet sought a legal opinion in this regard, because a decision has not yet been made to prefer Option 2. Whether it is worthwhile, given the limited purpose that this proposal addresses, to raise the specter of human rights issues is something that is open to debate.

- The Law Society would not be able to readily verify with the foreign lawyer's governing body that the foreign lawyer is eligible to visit, and would not have the advantage of the equivalent to the Federation of Law Societies' Interjurisdictional Database.

- Unlike Canadian lawyer mobility within Canada, there would be no form of agreement with a foreign lawyer's home governing body, such as on the handling of complaints, discipline, insurance claims etc., and no agreement to share information.

Option 3

Option 3 would be a variant on Option 1, permitting the temporary practice of foreign law by a foreign lawyer under a series of conditions – such as a requirement that the lawyer be insured in his or her own jurisdiction and that the insurance extend to his or her provision of advice in a foreign jurisdiction. It would be left up to the lawyer to

determine whether or not he or she met those conditions, recognizing that if the conditions were not met, the foreign lawyer may be prosecuted for unauthorized practice.

Through implementing this option, the Law Society could permit temporary mobility under a series of conditions. This could be valuable to address foreign jurisdictions – such as most US states – where insurance is not required to practice law. In these cases, temporary mobility without a permit would only be permissible where, for example, a putative PFL carried insurance comparable to that required of a BC lawyer. Such a requirement is currently in place should such a PFL want a permit.

The weakness of this option, obviously, is that compliance with the requirement would be left to the PFL. The Law Society could not verify compliance, which could leave a BC resident seeking advice from a temporary PFL unprotected in the event of negligence. Would it be unreasonable, however, to expect a client of a temporarily mobile PFL in British Columbia to have conducted some due diligence to determine if the PFL is insured in his home jurisdiction and that the insurance covers his advice given in the province?

Advantages of Option 3

- Would permit temporary mobility only where the foreign lawyer could meet certain conditions that the Law Society had determined were necessary to protect the public interest, such as insurance.

Disadvantages of Option 3

- Whether the conditions are met is left to the foreign lawyer to determine.

- The Law Society could not verify that a foreign lawyer met the required conditions short of developing some monitoring criteria that one suspects may be difficult to create and enforce, or reverting to a process similar to the current permit process.

- The Law Society would not be able to readily verify with the foreign lawyer's governing body that the foreign lawyer is eligible to visit, and would not have the advantage of the equivalent to the Federation of Law Societies' Interjurisdictional Database.

- Unlike Canadian lawyer mobility within Canada, there would be no form of agreement with a visiting lawyer's home governing body, such as on the handling of complaints, discipline, insurance claims etc., and no agreement to share information.

Discussion and Analysis

In each of the options, the Law Society would not be verifying that the foreign lawyer is properly registered in his or her jurisdiction. However, for the purposes of *temporary* practice, that verification may be of considerably less importance, particularly where the foreign lawyer otherwise has no nexus to the province.

The rules contemplated by the proposal address the "fly-in-fly-out" practice of foreign law. The vast majority of the foreign lawyers who may be expected to benefit from such rules would have already been retained prior to their appearance in British Columbia. This contrasts with a lawyer who has established a nexus in British Columbia who may market his services, and be retained by clients, in the province. Clients in the latter situation may reasonably expect the Law Society to be regulating the provision of such services. Clients in the former may be surprised that the Law Society does so.

If that analysis is correct, then there would be no advantage to the Law Society pre-approving jurisdictions as contemplated in Option 2. Undertaking such an analysis would be a very labour-intensive exercise, and it would need continuous updating. The foreign jurisdiction cannot be vetted on an ad hoc basis because temporarily mobile foreign lawyers would need to know their jurisdiction is an approved jurisdiction *before* coming to the province. Moreover, as that option presents concerns under a human rights analysis, it would be necessary to establish a bona fide occupational requirement to justify the differentiation, and this would be difficult to achieve. Option 2 is therefore the least advantageous option through which to achieve the policy objective and the Committee therefore does not recommend that option.

Option 1, on the other hand, presents a reasonable method of achieving the policy objective. It treats foreign lawyers from all jurisdictions in the same manner, uses the fewest resources, and enhances the ability for the provision of advice on foreign law in a manner that is consistent with the Law Society's ability to protect the public interest. It is least likely to raise any human rights concerns. While the Law Society would not be able to verify that foreign lawyers utilising the rules were registered to practise in their "home" jurisdiction, such individuals would be engaging in the unauthorized practise of law were they to practise in British Columbia, and this would continue to be an offence. The public interest is adequately protected, as the vast majority of the foreign lawyers who would utilise the rules would have been retained outside of British Columbia, and clients ought to rely on the lawyer's home jurisdiction's requirements for licensing and practice.

Option 3 is also a reasonable method to achieve the policy objective. It may be thought of as an extension on Option 1. Option 3, like Option 1, would rely on the licensing of the lawyer by the home jurisdiction. It would add, however, certain requirements that the

Law Society considers necessary for practice in British Columbia that may or may not be required by the home jurisdiction. If Option 3 were used, temporary mobility would be permitted if the lawyer is allowed to practice in his or her home jurisdiction and can meet specified requirements set out by the Law Society regardless of whether they are required by the home jurisdiction. If met, temporary advice could be given without a permit. If the conditions could not be met, a permit would have to be requested. Failure to obtain a permit would result in the risk of a prosecution for unauthorized practise.

Option 3 may meet the policy objective more closely than Option 1. The Law Society has long considered that the public interest is best protected if lawyers are insured. However, not all jurisdictions require lawyers to be insured. Therefore, a foreign lawyer who meets all the requirements of his or her home jurisdiction may not be required to be insured. While relying on regulatory requirements of the home jurisdiction in order to permit temporary mobility for foreign lawyers to British Columbia makes sense, some protections that citizens in British Columbia may reasonably expect could still be required to permit such practice in British Columbia should Option 3 be chosen. On the other hand, as soon as that lawyer leaves the province, those protections would evaporate, so the protection may be illusory.

If Option 3 is chosen, it would be useful to consider what "additional requirements" should be included. The following are presented for discussion:

1. Insurance. The foreign lawyer must have professional liability insurance coverage from his or her home jurisdiction that covers the foreign lawyer's activities in British Columbia. Practitioners of foreign law are required to carry professional liability insurance, bond, indemnity or other security in a form and amount at least reasonably comparable to that required of lawyers in British Columbia. Such a requirement could be considered for temporary mobility, as well, although some thought should be given as to whether requiring the lawyer to be *more* insured than he or she is at home in order to engage in "fly-in-fly-out" mobility might be excessive.

2. "Entitled to Practice law" In other words, to engage in temporary mobility, the lawyer must not be prevented from practicing in his or her home jurisdiction.

3. Not be the subject to conditions or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings relating to discipline, competency or capacity.

4. Not be the subject of criminal or disciplinary proceedings in any jurisdiction.

5. Have no disciplinary record in any jurisdiction.

6. Not establish an economic nexus with British Columbia. An economic nexus could be defined as:

    a. Providing legal services beyond the time frame to be determined for "fly-in-fly out" temporary practice;

    b. Opening an office from which legal services are offered or provided to the public;

    c. Becoming resident;

    d. Holding out or allowing to be held out as willing or qualified to provide legal services, except on a fly-in-fly basis.

7. Experience. To obtain a PFL permit, a PFL must have practiced law of the foreign jurisdiction for 3 of the last 5 years (or undertake to practise under the supervision of a PFL who has practised for 3 of the last 5 years. Should this be required for temporary mobility? If a lawyer is duly qualified in his or her home jurisdiction, should it matter for the purposes of temporary mobility to British Columbia that the lawyer has practiced for 3 of the past 5 years? In cases where a lawyer with lesser experience may have already been retained by a resident of this province, is it sensible to prohibit that lawyer from coming to British Columbia on a fly-in-fly-out basis to provide advice or take instruction on a file?

While agreeing that Option 2 should not be recommended, the Committee did not have a preference between Options 1 and 3. Option 1 would require reliance solely on the licensing requirements of a foreign lawyer's home jurisdiction, but recognized that those requirements already governed the relationship between a foreign lawyer and a BC client where the work was done outside of the province. On the other hand, creating a requirement that temporarily mobile lawyers practicing without a permit in BC would still be required to meet some of the generally considered "essentials" that are considered to protect the public interest found favour with many of the members of the Committee. However, it was also questioned whether there was any point to creating conditions if the Law Society was not intending to verify that they were met. Would the existence of conditions create an expectation that the Law Society would verify that they were complied with proactively rather than reactively. Because no preference was expressed, the Committee resolved to send both Options 1 and 3 to the Benchers for debate.

Much of the discussion above is premised on the notion that "fly-in-fly-out" temporary legal practice addresses legal services provided by foreign lawyers that have been retained by someone in British Columbia to deal with a matter in a foreign jurisdiction, and that the lawyer was retained before ever coming to British Columbia. It recognizes

that the lawyer may on occasion need to come to British Columbia to advise the client, seek instructions, and perhaps engage in other activities that amount to the practice of law. It could also extend to any law firm that has offices in a foreign country with lawyers practising the law of that country who may be required to come to British Columbia to assist on a file by providing advice about the law of a foreign country. In these types of situations, the need for an extended stay in the province by the foreign lawyer is unlikely. Consequently, the length of the time that the foreign lawyer should be permitted to practise should reflect that fact. Queensland's legislation, for example, permits temporary practise that does not exceed an aggregate of 90 days in any 12 month period. That may be too long on the basis of the analysis set out above. After debate, the Committee agreed that a "30 day within 12 month period" would be more consistent with the rationale for the proposal, and therefore makes that recommendation.

Key Comparisons

No other law society in Canada currently permits temporary mobility for foreign lawyers. On the other hand, it is only very recently that some law societies have removed the local residency requirement for PFLs, so the question of temporary mobility would have been an uncontemplated consequence.

As mentioned above, Australia has legislation permitting temporary mobility for practitioners of foreign law.

Consultations

The Committee has not consulted with the profession or the public concerning this proposal.

If this proposal were adopted, it would be the first of its kind in Canada. Law Society Staff have advised staff at some of the other Canadian law societies and the Federation of Law Societies that the proposal may be under consideration. If the Subcommittee' recommendation is approved, it will be of interest to other law societies who may well find themselves in a position of having to adopt a similar rule. The rule would become known through the negotiations Canada is conducting internationally, and other jurisdictions would likely expect some degree of similarity on the issue amongst the internal jurisdictions within Canada.

If the proposal is accepted by the Benchers in principle, the Committee recommends consultations with operational staff in connection with preparing a rule, particularly, but not limited to, staff in the Member Services Department, which has primary responsibility for dealing with PFL Permits. Staff in the Unauthorized Practice Department should be consulted as well as it could be responsible for addressing unauthorized practice issues that would arise from the violation of any rule.

Conclusion

The Credentials Committee recommends that the Law Society rules be amended to permit a form of temporary mobility for PFLs, permitting the practice of foreign law without a permit where no nexus to British Columbia has been established.

MDL/al

Benchers

Date: Friday, July 13, 2012

Present:

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

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

OTHER MATTERS – For Discussion and/or Decision

5. Temporary Mobility for Practitioners of Foreign Law

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

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

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

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

> **Option 1** (page 8006)
>
> Option 1 would provide that a permit would not be required where the foreign lawyer is properly registered to engage in legal practice in a foreign country by the relevant governing body for the legal profession in that country, as long as the foreign lawyer practises law in British Columbia for less than a certain number of days in any 12 month period, and does not establish an economic nexus in British Columbia.
>
> **Option 2** (page 8008)
>
> Option 2 would also permit the practice of foreign law in British Columbia temporarily without a permit, but would prescribe the jurisdictions from which the Law Society would accept a foreign lawyer for less than a certain number of days in any 12 month period. All others would be required to obtain a permit, even for the temporary practise of foreign law in British Columbia.
>
> **Option 3** (page 8010)
>
> Option 3 would be a variant on Option 1, permitting the temporary practice of foreign law by a foreign lawyer under a series of conditions – such as a requirement that the lawyer be insured in his or her own jurisdiction and that the insurance extend to his or her provision of advice in a foreign jurisdiction. It would be left up to the lawyer to determine whether or not he or she met those conditions, recognizing that if the conditions were not met, the foreign lawyer may be prosecuted for unauthorized practice.

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

In the ensuing discussion the following points were made:

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

The motion was defeated.

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

The motion was carried.

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

Definitions

1 In these Rules, unless the context indicates otherwise:

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of

(i) professional misconduct,

(ii) incompetence,

(iii) conduct unbecoming a lawyer,

(iv) lack of physical or mental capacity to engage in the practice of law,

(v) any other breach of a lawyer's professional responsibilities;

(b) disbarment;

(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"foreign jurisdiction" means a country other than Canada or an internal jurisdiction of a country other than Canada;

"practitioner of foreign law" means a person qualified to practise law in a ~~country other than Canada or in an internal jurisdiction of that country,~~ foreign jurisdiction who ~~gives~~ provides foreign legal ~~advice~~ services in British Columbia respecting the laws of that ~~country or of the internal jurisdiction in which that person is qualified~~foreign jurisdiction;

"provide foreign legal services" means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Inter-jurisdictional practice

Definitions

2-10.1 In Rules 2-10.1 to 2-17.1,

~~**"disciplinary record"** includes any of the following, unless reversed on appeal or review:~~

~~(a) any action taken by a governing body as a result of~~

~~(i) professional misconduct,~~

~~(ii) incompetence,~~

~~(iii) conduct unbecoming a lawyer,~~

~~(iv) lack of physical or mental capacity to engage in the practice of law,~~

~~(v) any other breach of a lawyer's professional responsibilities;~~

~~(b) disbarment;~~

~~(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;~~

~~(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;~~

~~(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.~~

Practitioners of foreign law

Definitions

2-17.2 In Rules 2-17.2 to 2-22,

"business day" means any calendar day or part of a calendar day in which a practitioner of foreign law provides foreign legal services;

"permit" means a practitioner of foreign law permit issued under Rule 2-18;

"resident" has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

Practitioners of foreign law

2-18 (1) A person who qualifies under section 17 of the Act may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director

(a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society, and

(b) the application fee specified in Schedule 1.

(2) The Executive Director may issue a permit to a person applying under subrule (1) ~~a permit to act as a practitioner of foreign law~~ if satisfied that the person

(a) is a member of the legal profession in one or more foreign jurisdictions,

(b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,

(c) is a person of good character and repute,

(d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,

(e) carries professional liability insurance or a bond, indemnity or other security

(i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1), and

(ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.

Restrictions and limitations

2-19 (1) Subject to Rule 2-19.1, ~~No~~ no one may ~~practise the law of a~~ provide foreign ~~jurisdiction~~ legal services or market a foreign legal practice in British Columbia without a permit issued under Rule 2-18(2).

(2) A practitioner of foreign law who holds a current permit ~~issued under Rule 2-18(2)~~ may provide foreign legal services in British Columbia respecting

(a) the law of ~~the~~ a foreign jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and

(b) trans-jurisdictional or international legal transactions.

(3) A practitioner of foreign law must not

(a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or

(b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.

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

(5) A practitioner of foreign law must notify the Executive Director promptly if he or she

(a) is the subject of criminal or professional discipline proceedings in any jurisdiction,

(b) ceases to be a member in good standing of the legal profession in any jurisdiction, or

(c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

Providing foreign legal services without a permit

2-19.1 (1) Subject to the other requirements of this Rule, a practitioner of foreign law may provide foreign legal services without a permit for a maximum of 30 business days in any calendar year.

(2) Subject to subrule (3), to qualify to provide foreign legal services without a permit, a practitioner of foreign law must at all times

(a) qualify for a permit under Rule 2-18(2),

(b) comply with Rules 2-19(3) to (5),

(c) not be subject to conditions of or restrictions on his or her membership in the governing body or his or her qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,

(d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,

(e) have no criminal or disciplinary record in any jurisdiction, and

(f) not establish an economic nexus with British Columbia.

(3) A practitioner of foreign law who provides foreign legal services without a permit must, on request,

(a) provide evidence to the Executive Director that the practitioner of foreign law has complied with and continues to comply with this Rule, and

(b) disclose to the Executive Director each governing body of which the practitioner of foreign law is a member.

(4) For the purposes of this Rule, an economic nexus is established by actions inconsistent with a temporary basis for providing foreign legal services, including but not limited to doing any of the following in British Columbia:

(a) providing foreign legal services beyond 30 business days in a calendar year;

(b) opening an office from which foreign legal services are offered or provided to the public;

(c) becoming resident;

(d) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a practitioner of foreign law without a permit.

(5) A practitioner of foreign law who practises law in a law firm in his or her home jurisdiction and provides legal services in or from an office in British Columbia affiliated with that firm does not, for that reason alone, establish an economic nexus with British Columbia.

(6) A practitioner of foreign law who becomes disqualified under subrule (4) must cease providing foreign legal services forthwith, but may apply under Rule 2-18 for a permit.

(7) On application by a practitioner of foreign law, the Executive Director may allow the practitioner of foreign law to begin or continue to provide foreign legal services pending consideration of an application under Rule 2-18.

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PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

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2-10.1 In Rules 2-10.1 to 2-17.1,

"disciplinary record" [moved to Rule 1]

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(b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,

(c) is a person of good character and repute,

(d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,

(e) carries professional liability insurance or a bond, indemnity or other security

(i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1), and

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(a) the law of a foreign jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and

(b) trans-jurisdictional or international legal transactions.

(3) A practitioner of foreign law must not

(a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or

(b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.

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(a) qualify for a permit under Rule 2-18(2),

(b) comply with Rules 2-19(3) to (5),

(c) not be subject to conditions of or restrictions on his or her membership in the governing body or his or her qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,

(d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,

(e) have no criminal or disciplinary record in any jurisdiction, and

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(3) A practitioner of foreign law who provides foreign legal services without a permit must, on request,

(a) provide evidence to the Executive Director that the practitioner of foreign law has complied with and continues to comply with this Rule, and

(b) disclose to the Executive Director each governing body of which the practitioner of foreign law is a member.

(4) For the purposes of this Rule, an economic nexus is established by actions inconsistent with a temporary basis for providing foreign legal services, including but not limited to doing any of the following in British Columbia:

(a) providing foreign legal services beyond 30 business days in a calendar year;

(b) opening an office from which foreign legal services are offered or provided to the public;

(c) becoming resident;

(d) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a practitioner of foreign law without a permit.

(5) A practitioner of foreign law who practises law in a law firm in his or her home jurisdiction and provides legal services in or from an office in British Columbia affiliated with that firm does not, for that reason alone, establish an economic nexus with British Columbia.

(6) A practitioner of foreign law who becomes disqualified under subrule (4) must cease providing foreign legal services forthwith, but may apply under Rule 2-18 for a permit.

(7) On application by a practitioner of foreign law, the Executive Director may allow the practitioner of foreign law to begin or continue to provide foreign legal services pending consideration of an application under Rule 2-18.

TEMPORARY MOBILITY FOR FOREIGN LAWYERS

SUGGESTED RESOLUTION:

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

1. In Rule 1

(a) by rescinding the definition of "practitioner of foreign law" and substituting the following:

"practitioner of foreign law" means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services in British Columbia respecting the laws of that foreign jurisdiction;

(b) by adding the following definitions:

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of

(i) professional misconduct,

(ii) incompetence,

(iii) conduct unbecoming a lawyer,

(iv) lack of physical or mental capacity to engage in the practice of law, or

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(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing;

"provide foreign legal services" means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;

2. ***In Rule 2-10.1, by rescinding the definition of "disciplinary record".***

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

Definitions

2-17.2 In Rules 2-17.2 to 2-22,

"business day" means any calendar day or part of a calendar day in which a practitioner of foreign law provides foreign legal services;

"permit" means a practitioner of foreign law permit issued under Rule 2-18;

"resident" has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

4. ***By rescinding the preamble to Rule 2-18(2) and substituting the following:***

(2) The Executive Director may issue a permit to a person applying under subrule (1) if satisfied that the person

5. ***In Rule 2-19, by rescinding subrules (1) and (2) and substituting the following:***

2-19(1) Subject to Rule 2-19.1, no one may provide foreign legal services or market a foreign legal practice in British Columbia without a permit issued under Rule 2-18(2).

(2) A practitioner of foreign law who holds a current permit may provide foreign legal services in British Columbia respecting

(a) the law of a foreign jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and

(b) trans-jurisdictional or international legal transactions.

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

Providing foreign legal services without a permit

2-19.1(1) Subject to the other requirements of this Rule, a practitioner of foreign law may provide foreign legal services without a permit for a maximum of 30 business days in any calendar year.

(2) Subject to subrule (3), to qualify to provide foreign legal services without a permit, a practitioner of foreign law must at all times

(a) qualify for a permit under Rule 2-18(2),

(b) comply with Rules 2-19(3) to (5),

(c) not be subject to conditions of or restrictions on his or her membership in the governing body or his or her qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,

(d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,

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REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society
of British Columbia

Mid-Year Report: Governance Recommendations

Governance Committee

Art Vertlieb, QC (Chair)
Jan Lindsay, QC (Vice-Chair)
Haydn Acheson
Rita Andreone, QC
Miriam Kresivo, QC
Stacy Kuiack
Ken Walker, QC

June 15, 2013

Prepared for: Benchers

Prepared by: Adam Whitcombe, Executive Support

Purpose: Decision

Contents

Committee Process

1. Since the beginning of the year, the Governance Committee has met four times.

2. On January 15, 2013 the Committee met for the first time and reviewed the scope of work recommended in the final report of the Governance Review Task Force (GRTF) and approved by the Benchers at their governance retreat in October 2013. The Committee reviewed a number of the recommendations made by the GRTF which were simple and straight forward and which could be implemented without much further consideration.

3. On January 24, 2013 the Committee met to consider the Interim Report of the Bencher Election Working Group - Staggered Bencher elections and three-year term of office. The Committee subsequently reported to the Benchers and a resolution was moved that staggering Bencher election dates and a three-year term for Benchers be put to the members at the 2013 Annual General Meeting. There was not sufficient Bencher support for the resolution.

4. On February 22, 2013 the Committee met for half a day to consider recommendations relating to the President's position description, selection of the President, a Bencher position description, Bencher evaluation, Bencher conflicts and Benchers as Trusted Advisors.

5. On May 3, 2013 the Committee again met for half a day to consider recommendations relating to the Committee's terms of reference, a Bencher evaluation process, the development of a new Bencher Governance manual, the Executive Committee's roles and responsibilities, the committee appointment process and consensus decision-making.

Recommendations

A. The Benchers approve the terms of reference for the Governance Committee as set out in Appendix A at page 24.

B. The Benchers approve the development and implementation of the straightforward recommendations set out in the table at pages 9 - 10.

C. The Benchers amend the Rules to provide that the President is the Chair of the Executive Committee.

D. The Benchers approve the inclusion in the Bencher Governance Manual of the President position description as set out in Appendix C at page 28.

E. The Benchers make the Act and Rules Subcommittee a full committee of the Benchers.

F. The Benchers approve the terms of reference for the Executive Committee as set out in Appendix D at page 30.

G. The Benchers approve the inclusion in the Bencher Governance Manual of the Bencher position description as set out in Appendix E at page 33.

H. The Benchers approve the form of Bencher evaluation as set out in Appendix F at page 36.

I. The Benchers approve the form of Committee evaluation set out in Appendix G at page 40.

J. The Benchers approve a requirement that Benchers and Committee members annually complete anonymous online Benchers and Committee evaluations in December of each year and that the Governance Committee prepare a report on the evaluation results for the Benchers early in the following year.

K. The Benchers approve a requirement for the Chairs of the Regulatory committees to report annually to the Benchers on the performance of their committees, which report would not report on the outcomes of the committees' work, such as the number of citations issued or lawyers admitted, but rather a review and assessment of the committees' processes and functions.

Background

6. During 2012, the GRTF met a number of times to review and consider the Law Society's governance processes. The result was an Interim Report presented to the Benchers in July 2012 and a Final Report presented in December 2012 following a Bencher governance retreat in October 2012. Overall, the review process emphasized that the Law Society is a complex organization with diverse and complicated interactions among the Benchers, members, staff and the public, involving the statutory obligations of the organization, our own Rules and general legal obligations relating to governance, conflicts and administrative tribunals.

7. Our current governance model is an implementation of the Carver governance model adopted by the Benchers in 1994. It was an attempt to define roles for the various parts of the organization within the framework of the "board governance" theory championed by Dr. John Carver. The current Bencher Governance manual resulting from that work in the early 1990's still provides the formal basis for our governance model. However, in the course of last year's review, it became clear to the GRTF that the current Bencher governance policies no longer reflect current practice nor provide sufficient guidance on Law Society governance.

8. At the October governance retreat, the Benchers considered more than 70 recommendations from the GRTF. The GRTF believed a number of its recommendations were straightforward and not controversial and suggested they be referred to a Governance Committee for development and implementation. The GRTF thought a second group of recommendations required further consideration and recommended they be referred to a Governance Committee for a further work before bringing them back to the Benchers. A small number of the GRTF recommendations were not approved or adopted by the Benchers.

9. Following adoption of the Final Report of the GRTF, the Benchers established the Governance Committee and gave it the responsibility for developing a mandate for the Committee, considering the GRTF recommendations adopted by the Benchers, and shaping them into a current governance model for the Law Society.

10. The Committee has developed its mandate and terms of reference and has a recommendation to the Benchers on these matters.

11. The Committee has approached the more than 60 remaining recommendations by first dealing with the straightforward and non-controversial recommendations. The Committee concluded that a number of those recommendations could be implemented immediately or in the near future, or would be accomplished in the context of the other development work in which the Committee is engaged.

12. The Committee approached the balance of the recommendations by looking first at the roles of the President, the Executive Committee and Benchers, second at Bencher and committee evaluation and third at the process of committee appointments.

13. The Committee has also looked at the GRTF recommendations concerning selection of the President, the role of Benchers as trusted advisors, the consensus-based decision-making process, and the current conflicts policies. Further consideration of these recommendations and the additional GRTF recommendations not yet reviewed is expected to occupy the remainder of the year and will form the basis for subsequent reports from the Committee.

14. Overall, as proposed in the GRTF's recommendation 17.1, the Committee has been working towards establishing a new set of written governance policies and practices to replace the current Bencher Governance manual. What follows are a number of recommendations and proposals for the Benchers' consideration and decision.

Governance Committee Terms of Reference

15. The GRTF noted in its Interim Report "*When establishing committees, it is considered best practice to clarify in writing their purpose; composition and quorum; accountability; duties and responsibilities; meeting practices; reporting requirements and staff support*." The GRTF also observed that "*A governance committee oversees the board's work in the areas of board governance policies, president/chair succession, board and director evaluation, director orientation and board education.*"

16. The Committee was of the view that the purpose of a governance committee should be to assist the Benchers to ensure that governance policies and processes are regularly reviewed and updated. The Committee noted that last year's governance review found that our current governance policies had not been reviewed or substantially revised since their adoption in 1994.

17. In reviewing best practices for governance committees, the Committee concluded that the terms of reference for a governance committee at the Law Society should vary somewhat from what is commonly within the responsibilities of governance committees in other organizations. For example, governance committees are commonly responsible for "nominating board candidates…" and for identifying "new directors." As the discussion at the Bencher governance retreat indicated, the Benchers do not see a role for themselves or any committee in identifying or nominating candidates for the Bencher election process set out in the Act and Rules.

18. With these considerations in mind, the Committee recommends the following mandate for the Governance Committee *"The Governance Committee assists the Benchers in meeting their governance obligations by reviewing and advising the Benchers about governance policy and practice. The Governance Committee develops for consideration by the Benchers governance policies, practices and standards that promote and enhance effective Bencher, committee and task force deliberation, decision-making and conduct so as to ensure the Law Society fulfills its mandate."*

19. A proposed terms of reference is attached as Appendix A.

Bencher Governance Manual

GRTF Recommendation 17.1

Establish a new written governance framework for the Benchers reflecting the policies and practices ultimately adopted by the Benchers.

Commentary

20. The GRTF noted in its interim report that the current Bencher Governance policies do not reflect the present practice at the Law Society. The recommendation to the Benchers was that the Bencher Governance manual be revised as necessary to reflect the decisions eventually made. The consensus at the governance retreat was that once the Benchers had adopted governance policies and practices, they should be documented in a Bencher Governance manual.

21. As the Committee continues to work through the various areas covered in the governance recommendations and brings them to the Benchers for consideration, the expectation is that the Bencher decisions will then be documented in a new Bencher Governance manual. The manual will serve as a reference source for the governance decisions, policies and practices approved and adopted by the Benchers, and as a resource to assist new Benchers in becoming familiar with the governance of the Law Society.

22. A working table of contents for a new Bencher Governance manual is attached as Appendix B for the information of the Benchers.

Straightforward Recommendations

23. Of the more than 60 GRTF recommendations adopted by the Benchers, the Committee considered that the following could be implemented immediately or in the near future or could be accomplished in the context of the other work in which the Committee is engaged.

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.
2.2	The Benchers should develop an annual Bencher Calendar.
2.3	The orientation given to new Benchers should be enhanced in terms of governance fundamentals and the Benchers' specific governance responsibilities.
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).
5.8	Committee chairs and members should receive orientation and training around their role and their Committee's role.
6.4	Media and other relevant training should commence for a Bencher as soon as he/she is elected onto the ladder.
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.
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.
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.
8.5	Provide Committees and their members with the necessary support or education on areas that fall within their areas of responsibility.
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.
12.3	Allocate time for each item on the agenda, appropriate to the importance of the issue and length of expected discussion.
12.4	Ensure that all presentations and reports are sent out sufficiently in advance (e.g., seven days).
12.5	Ensure presentations at meetings are short and serve only to highlight key points, not repeat the pre-read information.
12.6	Create a template for Committee reports.

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.

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.

17.1 Establish a new written governance framework for the Benchers that provides:

a) clear roles and responsibilities for the Benchers, Committees, the Executive Committee, the President, individual Benchers and the CEO;

b) the individual Bencher's role with respect to elected and appointed Benchers;

c) the processes used for key governance responsibilities such as:

i. strategic planning;

ii. policy development;

iii. financial and operational oversight, including oversight of the Lawyers Insurance Fund, if applicable;

iv. regulatory and policy oversight;

v. risk management;

vi. CEO evaluation;

vii. CEO succession planning;

viii. Benchers, Committee and individual Bencher evaluation;

d) the processes used to support effective Bencher and Committee meetings such as:

i. orientation and education for Benchers and Committee members;

ii. annual Bencher meeting calendar;

iii. Bencher meeting guidelines;

iv. Committee meeting guidelines; and

e) Bencher and Committee member code of conduct.

17.2 The Benchers should revise the Rules to reflect all necessary revisions required based on decisions flowing from this governance review.

24. Subject to any direction from the Benchers, the Committee will ensure that these recommendations are implemented and form part of the new Bencher Governance manual.

President Position Description

GRTF Recommendation 6.1

The Benchers should establish a fulsome President Position description that sets out the President's role, duties and responsibilities and desirable attributes.

Commentary

25. As the GRTF noted in its Interim Report, the current role of the President extends well beyond that of the traditional board chair. The specific authority and responsibilities of the Law Society President are set out in the Act, the Rules and the current Governance Policies encompassing the traditional role of board chair but also providing for the representative functions that the President performs during her or his term and the regulatory and administrative law responsibilities of the position of President.

26. The Act defines the President as "the chief elected official of the society" and also establishes that the President is a Bencher (s. 4(1)(d)). The Rules supplement the Act by setting out the authority and responsibilities of the President.

27. In general, the President's authority and responsibilities involve:

    A. Formal duties, such as presiding over the annual general meeting, administering the oath of office and affixing the Law Society seal;

    B. Chairing meetings of the Benchers and calling special meetings;

    C. Appointing and terminating the appointment of persons to committees;

    D. Membership and participation on the Executive Committee;

    E. Conducting formal reviews of the Executive Director's decisions as provided in the Rules; establishing hearing panels and review panels; and deciding certain matters in the pre-hearing and hearing process.

28. In addition to the Rules, the current Bencher Governance policies contain a brief description of the President's role. Most notably, the current Governance Policies provide that the *"President is the public and ceremonial representative of the Society and the only Bencher authorized to speak on behalf of the Benchers."* The Committee was of the view that the use of the word "ceremonial" was not accurate or appropriate.

29. Along with the express authority and responsibility of the President as set out in the Act, Rules and Governance Policies, there are also a number of practices and traditions that have

come to be part of the role of the President. These include responsibilities such as attendance at call ceremonies and judicial swearing in ceremonies, and the fulfillment of unwritten responsibilities, such as writing a column for the quarterly Benchers' Bulletin and the selection of the location for the annual Bencher retreat.

30. In addition to setting out the general roles and responsibilities of the President, the Committee thought that the position description for the President should include a description of the honourarium that the President receives during her or his term.

31. The Committee noted that, while the Rules provide that the President is a member of the Executive Committee, there is no provision in the Rules that the President is the Chair of the Executive Committee. As the practice for many years has been that the President chairs the Executive Committee meetings, the Committee recommends that the Rules be amended to reflect this practice.

32. In considering the evaluation of the President, the Committee recommends that the Executive Committee have the responsibility for providing constructive performance feedback to the President.

33. A proposed position description for the President is attached as Appendix C.

The Executive Committee

GRTF Recommendations 7.1 and 7.2

The Benchers should come to a 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.)

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.

Commentary

34. The *Legal Profession Act* provides that the Benchers must establish an executive committee and the Rules provide for the membership of the committee and the process for electing those members who are elected. (*Rule 1-49)*

35. The *Legal Profession Act* also provides that the Benchers may delegate any of the powers and duties of the Benchers to the executive committee, subject to any conditions the Benchers consider necessary. *(LPA, s.10(2))*

36. Rule 1-49 provides that the powers and duties of the Executive Committee are:

    A. authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;

    B. authorizing the execution of documents relating to the business of the Society;

    C. approving the remuneration and benefits paid to the Executive Director;

    D. assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;

    E. planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;

    F. assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;

G. recommending to the appointing bodies on Law Society appointments to outside bodies;

H. approving the termination of the appointment of a panel under Rule 5-2(8);

I. appointing members of the Board of Governors of the Foundation under section 59 of the Act;

J. other functions authorized or assigned by these Rules or the Benchers.

37. In addition to the specific powers and duties set out in Rule 1-49, the Committee considered a number of other provisions in the Rules giving the Executive Committee certain authority or responsibilities.

38. The Committee noted that the Executive Committee's current powers and duties were established after a committee was struck in 1995 to consider the roles of the Executive Committee and report to the Benchers. In December of that year, the committee reported to the Benchers and the Benchers approved a number of amendments to the Rules which define the composition, election and authority of the current Executive Committee.

39. The Committee also spent some time considering what oversight responsibilities the Executive Committee should have. Currently, the Audit Committee is responsible for the key performance measures and the enterprise risk management plan, in addition to its responsibilities in relation to the annual audit. The Finance Committee is responsible for reviewing the annual budget and fee proposals. However, the Committee was mindful that one of the recommendations it will need to consider later this year is whether to merge the Finance and Audit Committees. The Committee recognized the outcome of that recommendation will be a factor in considering what, if any, oversight responsibilities should fall to the Executive Committee and, more broadly, to the Benchers, and will report later in the year on this issue.

40. The Committee recognized that some of the uncertainty about what the Executive Committee does may have arisen because neither the Act nor the Rules state an overall purpose for the Executive Committee. The Committee saw the Executive Committee in our current structure as situate somewhere between the Benchers as a whole and the day-to-day operations of the Law Society. This positioning seemed likely to create some tension between what properly must come before the Benchers and what the Executive Committee is authorized to decide on its own. As a result, the Committee thought there was some benefit in providing a brief general statement that describes the purpose for an executive committee, in addition to the current specific responsibilities set out in the Rules.

41. The Committee also looked at the three subcommittees of the Executive Committee. The Committee concluded that both the Litigation Subcommittee and the Appointments

Subcommittee should be retained as subcommittees given the nature of their work. The Committee will develop terms of reference for these two subcommittees.

42. However, in considering the Act and Rules Subcommittee, the Committee concluded that its functions were not consistent with concept of a subcommittee of the Executive Committee and recommended that the Benchers make the Act and Rules Subcommittee a full committee of the Benchers. Provided the Benchers accept this recommendation, the Governance Committee will develop terms of the reference for an Act and Rules Committee for future consideration by the Benchers.

43. The Committee also developed draft terms of reference for the Executive Committee attached as Appendix D for consideration and adoption by the Benchers.

Bencher Position Description

GRTF Recommendation 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.

Commentary

44. The Act provides that the Benchers **"**govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society." *(LPA, s.4(2))*

45. Each Bencher also takes an oath of office that provides that she or he will "*faithfully discharge the duties of a Bencher according to the best of my ability; and will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties."*

46. As the GRTF noted in its Interim Report, a number of current Benchers during their interviews said that they learned about the role through speaking with past Benchers. Because the current job description does not seem sufficient to adequately inform Benchers about the roles and responsibilities of the Benchers, the Committee concluded that, in addition to a more current Bencher Governance manual, a more current Bencher position description was required.

47. Our present Bencher Governance policies do provide a Benchers' job description.

C. Benchers' job description

The job of the Benchers is to represent the "moral ownership" in determining and demanding appropriate organizational performance. To distinguish the Benchers' own unique job from the jobs of the staff, the Benchers will concentrate their efforts on the following job "products" or outputs:

1. the link between the Society and the general public and the link between the Society and its membership;
2. written governing policies that, at the broadest levels, address:

   A. Mission and Ends: organizational products, impacts, benefits, outcomes, recipients, and their relative worth (what good for which needs at what cost),

B. Executive Limitations: constraints on executive authority that establish the prudence and ethics boundaries within which all executive activity and decisions must take place,

C. Governance Process: specification of how the Benchers conceive, carry out and monitor their own task, and

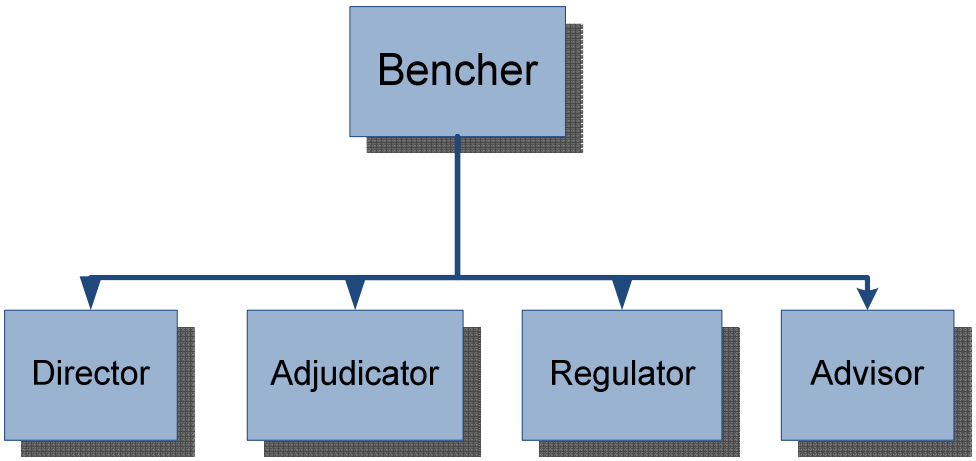
D. Bencher-CEO Relationship: how power is delegated and its proper use monitored; the CEO's role, authority and accountability;

3. the assurance of CEO performance (against policies in paragraphs 2(a) and (b)); and

4. legislative impact.

48. The Committee was not satisfied with the current description in the Bencher Governance manual, noting that it had not been considered or revised since November 1993. In particular, the Committee was unsure about the concept of "moral ownership" expressed in the opening paragraph of the job description and thought it did not fit with our current conception of the roles the Benchers fulfill.

49. The Committee recognized that the Benchers fulfill four roles as illustrated in the following diagram.



50. Each of these roles has a distinct set of responsibilities.

51. As directors of the Law Society, the Benchers act collectively to govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.

52. As an adjudicator, a Bencher participates in processes that determine whether a person should be admitted to the profession, whether a lawyer has committed professional misconduct; a breach of the Act or the rules; or is incompetent to perform the duties

undertaken as a lawyer or whether a lawyer's conduct is contrary to the best interest of the public or of the legal profession or harms the standing of the legal profession.

53. As regulators, the Benchers exercise authority under the *Legal Profession Act* to regulate the practice of law by Rules and the Code of Professional Conduct governing the conduct of the legal profession and to establish standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.

54. As advisors, the Benchers provide advice and support to lawyers seeking guidance in fulfilling their duties in the practice of law.

55. Given the scope of Bencher responsibilities[1] and the complex interaction between the various roles, the Committee thought that any position description that was less than book-length would necessarily be a summary of the roles and responsibilities of a Bencher. However, the Committee thought it was important to propose a Bencher Position description that made some attempt to capture the extent of Bencher responsibilities. This would, in turn, form the basis for both educating new Benchers and for evaluation of Bencher performance overall.

56. Attached as Appendix E is a proposed Bencher Position Description.

[1] The *Legal Profession Act* contains 154 references to the Benchers and the Rules contain 286 references.

Bencher and Committee Evaluation

GRTF Recommendations 14.1 and 14.2

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.

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.

Commentary

At its last meeting, the Committee spent some time considering both recommendations regarding Bencher and committee evaluation. The Committee noted that a study by Deloitte in 2012 had found that a significant majority of boards use an evaluation survey in evaluating their directors.[2]

How are your directors evaluated? (Select all that apply) (n=194)	
Board performance evaluation survey	78%
Individual peer-evaluation survey led by corporate secretary or other in-house personnel	14%
Individual peer-evaluation survey led by a third party facilitator	10%
Directors meet one-on-one with a designated board member	10%
Our organization does not have a formal director evaluation process	6%
Don't know/Not applicable	4%

57. After discussing the two types of evaluation identified in the recommendations, the Committee concluded that it would not recommend to the Benchers a peer review process and that the Bencher evaluation process should focus on the evaluation of the Benchers' performance as a whole. The Committee also thought that committee evaluation should not be limited to the oversight committees but should include all committees, task forces and working groups of the Benchers.

58. In crafting a collective Bencher and committee evaluation process, the GRTF noted that the considerations are:

    A. The content of the evaluation

    B. How the information will be gathered

[2] 2012 Board Practices Report, Deloitte and Society of Corporate Secretaries and Governance Professionals, p. 14

C. How will the results be reported

D. Who will see the report

59. In discussing the content of the evaluation, the Committee thought that the purpose for any assessment was to evaluate effectiveness and make improvements where required. The Committee was also mindful that there is no one correct way of carrying out an effective assessment, and the process should be reviewed and modified over time to ensure that the evaluation process is and remains meaningful.

60. The Committee considered that the suggestions by the province's Board Resourcing and Development Office for a board evaluation are helpful. They are:

    A. whether the board has adequately discharged its responsibilities (e.g., strategic planning, budgeting, CEO evaluation and compensation, risk management, etc.)

    B. the adequacy of board operations and decision-making processes (e.g., adequacy of information, committee structure, board composition, adequate discussion time, etc.)

    C. board effectiveness (e.g., board culture, opportunities for meaningful participation, communications with the responsible Minister and Government representatives, communications with management).

61. The Committee recommends to the Benchers that the evaluations be conducted annually in December and that they should be delivered and completed online. The Committee recognized that some Benchers and committee members might prefer to complete the evaluation on paper but was of the view that this should be an exception. The responses should be anonymous and should be provided before year-end. The Committee was strongly of the view that completion of the evaluations should not be optional.

62. With regard to reporting the results of the annual evaluation, the Committee was of the view that the Governance Committee should have responsibility for reviewing and compiling a report for the Benchers. It was expected that this would be done each year in early January with a view to having the report to the Benchers for the first or perhaps second meeting of the year. The Committee believed that all of the Benchers should see the results of the evaluations.

63. The Committee was also inclined to recommend to the Benchers that the Chairs of the Regulatory committees report annually to the Benchers on the performance of their committees. The Committee expected this would not be a report on the outcomes of the committees' work, such as the number of citations issued or lawyers admitted, but rather a review and assessment of the committees' processes and functions.

64. Attached as Appendix F is a proposed form of Benchers evaluation form.

65. Attached as Appendix G is a proposed form of committee evaluation form.

Consensus-Based Decision-Making

GRTF Recommendations 13.3 and 13.4

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.

The President should attempt to manage the meeting discussion in a way so that whenever possible, the Benchers reach general consensus on issues.

66. In the GRTF Interim Report, WATSON advisors observed that *"…the way in which issues are debated [at the Bencher table] sometimes suggests that the goal is not to build consensus, but simply to get a point across."* In commenting on the feedback from the governance review process, the GRTF noted that there was a tendency for Benchers to vote on issues (e.g., majority wins) rather than work towards consensus-based decisions (where the goal is that everyone should be comfortable with the decision).

67. The Committee recognized the recommendation that the President manage Bencher discussion so that the Benchers follow a consensus process on issues represents something of a culture change for the Benchers. The Committee observed that consensus-based decision-making involves two parts: process and decision.

68. The Committee considered material from Dr. Tim Hartnett, a professional group facilitator, who observed:

> *Often people use the terms unanimity and consensus synonymously … For group facilitators, consensus is more useful as a term describing the process of making decisions collaboratively. Thus, a consensus-oriented process is one in which people work together to reach as much agreement as possible. Unanimity (or unanimous consent) is more specific. It refers to the outcome of a vote showing all members are agreed. Consensus is the process. Unanimity is one possible result of a consensus process.*[3]

69. The Committee was of the view that the President should actively help the Benchers work together to reach as much agreement as possible by managing the discussion, framing and re-framing the points made, and building agreement throughout the process.

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[3] Hartnett, Tim. *Consensus-oriented Decision-making: The CODM Model for Facilitating Groups to Widespread Agreement*. New Society Pub, 2011, p. 2 Dr. Hartnett holds a PhD in counseling psychology and has facilitated a wide variety of community and non-profit groups for over twenty-five years.

70. The second part of consensus-based decision-making involves what Dr. Hartnett has characterized as the "final decision rule." He comments:

> *Any decision-making process will ultimately lead to the task of finalizing a decision. To finalize a decision, a group must use a final decision-making criterion (decision rule). A consensus-oriented process leads a group to solutions that generate as much agreement as possible. The decision rule, however, is what determines if the process has generated the degree of agreement necessary for a formal decision.*[4]

71. Dr. Hartnett notes in describing the process he uses that there is a stage in consensus-based decision-making where the group votes. He suggests, however, that initial voting involve what he calls a preference gradient. Those voting are asked to register the degree to which they support an idea or proposal rather than simple yes or no. In his words, *"This allows the group to gauge the degree of ambivalence that may be present. And it helps determine if there is a clear choice."* Preference gradient voting is expected to help the group finalize the decision or proposal that can then be voted on using a formal decision rule.

72. The Committee recognized that while achieving as much agreement as possible was always a desirable goal, the Benchers are faced with a number of decisions, ranging from minor procedural matters to significant decisions affecting major programs or the entire profession. The Law Society decision-rules reflect this, for example, in the context of amendments to the Rules which are not effective unless at least 2/3 of the benchers present at the meeting vote in favour. In any actions by the Benchers consistent with the Act, the Benchers may make the decision by resolution which can be passed by a majority of those voting at a meeting.[5] Overall, the Committee was supportive of consensus as a process but recognized that our current decision rules may be a necessary conclusion to any Bencher discussion.

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[4] Ibid, p. 23

[5] Legal Profession Act, Definitions and s.4(3)

Appendix A

Governance Committee Terms of Reference

Updated: June 2013

Mandate

The Governance Committee assists the Benchers in meeting their governance obligations by reviewing and advising the Benchers about governance policy and practice. The Governance Committee develops for consideration by the Benchers governance policies, practices and standards that promote and enhance effective Bencher, committee and task force deliberation, decision-making and conduct so as to ensure the Law Society fulfills its mandate.

Composition

1. The Committee is composed of the President, the First Vice-President and the Second Vice-President, and at least one elected Bencher and one appointed Bencher.

2. The Committee meets at least quarterly or as required.

3. Quorum is at least half the members of the Committee (Rule 1-16(1))

Meeting Practices

The Committee should operate in a manner that is consistent with the Benchers' governance policies.

Accountability

The Committee is accountable to the Benchers as a whole.

Reporting Requirements

The Chair reports regularly to the Benchers on the work of the Committee and the Committee provides written recommendations and reports to the Benchers as and when required to fulfill the Committee's mandate.

Duties and Responsibilities

The Governance Committee develops recommendations for the Benchers and regularly reviews:

1. The Bencher governance manual documenting the Bencher governance policies and procedures;
2. The Benchers' current approach to governance to ensure the Benchers are aware of governance trends and best practices;
3. The mandate of the Law Society, the position descriptions of the President and Benchers and the terms of reference for the Committees;
4. The essential and desired experiences and skills for Benchers;
5. The orientation, training, coaching, and mentoring for Benchers to develop their skills as Benchers;
6. The evaluation process for the Benchers;
7. The criteria Benchers consider government should apply when selecting appointed Benchers;
8. The conflict of Interest guidelines and policies; and
9. The adequacy of the quality, timeliness and relevance of information provided to the Benchers and Committees.

Staff Support

Chief Executive Officer

Appendix B

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Appendix C

President Position Description

Updated: June 2013

Role

The President is the chief elected official of the Law Society and its spokesperson and public representative. The President serves as chair of the Bencher and Executive Committees and is responsible for ensuring the proper and effective conduct of the Bencher and Executive Committee meetings. The President also works closely with the Chief Executive Officer to ensure that the Law Society fulfills its public interest mandate.

Duties and Responsibilities

1. The President is the chief elected official of the Law Society and is the public representative of the Law Society, authorized to speak on behalf of the Benchers and the Law Society. *(Legal Profession Act, ss.1, 4(1))*

2. The President builds and maintains a sound working relationship with the Chief Executive Officer.

3. The President presides over the annual general meeting. *(Rules 1-6(3), 1-11)*

4. The President presides over meetings of the Benchers and may call such meetings. *(Rule 1-12)*

5. The President is a member of the Executive Committee *(Rule 1-48)* and chairs the meetings.

6. The President is responsible for appointing and terminating the appointment of persons to committees and for the establishment of hearing panels and review boards and deciding certain matters in the pre-hearing and hearing process and administrative matters relating to Law Society regulatory proceedings. *(Rules 1-47, 2-63.1, 2-64, 2-65, 2-68.1, 2-69, 4-15, 4-16.2, 4-19, 4-26, 4-26.1, 4-27, 4-28, 4-29, 5-10, 5-12.1, 5-14, 5-18, 5-19, 5-21)*

7. The President, with the Chief Executive Officer and the assistance of the Executive Committee, establishes the agenda for Bencher meetings and the annual general meeting. *(Rule 1-49(d))*

8. If the President is absent, the powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President. *(Rule 1-3(8))*

Election and Term

1. The President serves from January 1 to December 31. On January 1, the First Vice-President becomes President, the Second Vice-President becomes First Vice-President, and the Second Vice-President-elect becomes Second Vice-President. Each year, at the annual general meeting the members must elect a Bencher who is a member of the Society as the Second Vice-President-elect. *(Rule 1-3)*

2. The President must take the oath of office at the next regular meeting of the Benchers after taking office. *(Rule 1-1.2)(1))*

3. The President may be removed from office by a resolution of a majority of the Benchers to remove the President and the results of a referendum of all members of the Society to determine if the President in which a 2/3 majority of the members voting in a referendum under this Rule vote to remove the President. *(Rule 1-4)*

4. During the term, the President agrees not to accept a judicial appointment or other position that requires withdrawing from any of those offices.

Evaluation

The Executive Committee has responsibility for providing constructive performance feedback to President.

Honorarium

In accordance with a referendum of the members of the Law Society held in 1991, the President has received an honorarium since 1992. The 2004 Annual General Meeting approved increasing the honorarium to $80,000 to be adjusted annually by an amount proportionate to the change in the Consumer Price Index for British Columbia for the preceding year.

Appendix D

Executive Committee Terms of Reference

Updated: June 2013

Mandate

The Executive Committee provides direction and oversight for the strategic and operational planning of the Law Society and develops agendas for Bencher meetings to ensure that the Benchers exercise their oversight, regulatory and policy development responsibilities. The Executive Committee also works with the CEO and senior management on the operational priorities for the organization and provides support and advice to the CEO and senior management on the overall operations of the Law Society. The Executive Committee authorizes significant agreements and the appointment of counsel for the Law Society. The Executive Committee also recommends appointments to outside bodies and exercises such other authority as is delegated to it by the Benchers or provided for in the Rules.

Composition

1. The Executive Committee consists of the following Benchers:

    A. the President;

    B. the First and Second Vice-Presidents;

    C. the Second Vice-President-elect, if not elected under paragraph (d);

    D. 3 other Benchers elected under Rule 1-39(1);

    E. one appointed Bencher elected under Rule 1-39(8).

2. The President is the Chair and the First Vice-President is the Vice-Chair.

Meeting Practices

1. The Committee operates in a manner that is consistent with the Benchers' governance policies.

2. The Committee meets as required.

3. Quorum is 4 members of the Committee (LPA, s.10(3))

Accountability

The Committee is accountable to the Benchers as a whole.

Reporting Requirements

The Chair reports regularly to the Benchers on the work of the Committee and the minutes of the Committee meetings are provided at each subsequent Bencher meeting.

Duties and Responsibilities

1. Assist the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting; assists the Benchers and the Executive Director in establishing relative priorities for the assignment of Society financial, staff and volunteer resources; and plans Bencher meetings or retreats held to consider a policy development schedule for the Benchers. (Rule 1-49) and is responsible for providing constructive performance feedback to President.

2. Authorize the execution of documents relating to the business of the Society and appoint one or more persons to affix the seal of the Society to a document as required (Rules 1-49(b) and 1-43) and specifically as provided in the Schedule of the Authorizations approved by the Benchers:

    A. Any lease of land or building <=3 years to the Law Society or leases of land and building > 3 years from the Law Society;

    B. Any banking resolutions and contracts;

    C. Any agreement concerning employment of the Chief Executive Officer and the remuneration and benefits to be paid (Rule 1-49(c)) and any agreement relating to the resignation or termination of the Chief Executive Officer;

    D. Any agreement for the acquisition of goods and services over $100,000 but not including any agreement for legal services pursuant to the statutory requirements or insurance obligations of the Law Society of British Columbia;

    E. Any document that settles or compromises a legal claim made by or against the Law Society of British Columbia (other than in relation to employment or pursuant to the Legal Profession Act, the Rules or the insurance obligations of the Law Society of British Columbia). A legal claim includes a civil action, or complaint before a judicial or quasi-judicial tribunal or any other action that potentially engages the liability of the Law Society of British Columbia over $25,000;

F. Any agreement for the provision of services by the Law Society of British Columbia to a third party; and

G. Any other agreement between $100,000 and $1 million not otherwise provided for in the Schedule.

3. Approve the forms in relation to the annual practice declaration, the trust administration report, the part-time insurance application, the mortgage discharge form, the corporate name approval, corporate name change and law corporation forms and the unclaimed trust fund form. (Rules 2-6, 2-23.10, 2-72.2, 3-22, 3-83, 3-89, 9-2, 9-4, 9-6)

4. Authorize the appointment of counsel to advise or represent the Law Society when the Law Society is the plaintiff, petitioner or intervenor in an action or proceeding. (Rule 1-46)

5. Recommend appointments to the appointing bodies on appointments to outside bodies. (Rule 1-49(g)) and make, as required, appointments to the Board of Governors of the Law Foundation. (Rule 1-49, Legal Profession Act, s. 59)

6. Determine the date, time and places for the Annual General Meeting, and set the agenda (Rules 1-49(c), 1-11)

7. Oversee the process in connection with the Bencher elections (Rules 1-24, 1-25, 1-29, 1-42))

8. Determine what constitutes a client matter in individual cases and extend or vary the time for remitting the trust administration fee and report. (Rule 2-75.5)

9. Designate savings institution under section 33(3)(b) of the Act. (Rule 3-50)

10. Consider claims for unclaimed trust funds and hold hearings if required. (Rule 3-84)

Staff Support

Chief Executive Officer

Appendix E

Bencher Position Description

Updated: June 2013

Role

A Bencher is one of 31 elected and appointed Benchers of the Law Society who act collectively as the directors of the Law Society and regulators of the legal profession and individually as adjudicators in connection with lawyer admission and conduct and as advisors to individual lawyers. A Bencher fulfills each of these roles so as to promote and protect the interests of the public.

Duties and Responsibilities

1. A Bencher participates in Bencher meetings so as to ensure that the Law Society acts in the public interest and encouraging full examination of all issues and solutions, and emphasizing collective rather than individual decisions and actions, and pro-activity rather than reactivity.

2. A Bencher participates on committees, task forces and in regulatory proceedings as appointed.

3. A Bencher assists in maintaining positive relations among the Benchers, staff, members, the public and other stakeholders in the administration of justice.

4. A Bencher avoids any situation or circumstance that involves a potential or actual conflict of interest or the appearance of conflict of interest relating to Bencher responsibilities.

5. The Benchers collectively govern and administer the affairs of the Law Society and take any action considered necessary for the promotion, protection, interest or welfare of the Law Society.

6. The Benchers collectively establish committees and may authorize a committee to do any act or to exercise any jurisdiction except the exercise of Bencher rule-making authority.

7. The Benchers collectively make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act.

8. The Benchers collectively set fees and special assessments to be paid by lawyers and applicants for admission.

9. The Benchers collectively make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student.

10. The Benchers collectively make rules requiring lawyers to maintain professional liability and trust protection insurance, establish an insurance fund and the Benchers may establish and operate a professional liability insurance program.

11. The Benchers collectively establish standards of financial responsibility relating to the integrity and financial viability of the professional practice of a lawyer or law firm.

12. The Benchers collectively make rules providing for the appointment and composition of panels and the practice and procedure for proceedings before panels.

13. The Benchers are collectively responsible for Bencher process and performance and for ensuring the Benchers adopt and practice good governance.

Election, Appointment and Term

1. A Bencher, other than an appointed bencher, must be a member of the Law Society in good standing for at least 7 years to take or hold office as a Bencher.

2. Elections for the office of Bencher in all districts are held on November 15 of each odd-numbered year and an election in the district represented by the President is held on November 15 of each even-numbered year.

3. Benchers are elected from 9 electoral districts for a total of 25 elected Benchers.

4. An elected Bencher holds office for 2 years beginning on January 1 following his or her election and an appointed Bencher holds office beginning on the date that the appointment is effective and ends on January 1 of the next even-numbered year or until a successor is appointed.

5. The Lieutenant Governor in Council may appoint up to 6 persons to be benchers known as appointed Benchers and a bencher appointed under this section is not eligible to hold the position of President, First Vice-President or Second Vice-President.

6. A Bencher is ineligible to be elected or appointed as a Bencher if at the conclusion of the Bencher's term of office, he or she will have served as a Bencher for more than 7 years, whether consecutive or not, or the Bencher has been elected Second Vice-President-elect.

7. A Bencher who is ineligible for further election or appointment as a Bencher is a Life Bencher on leaving office.

Evaluation

1. Bencher performance will be evaluated collectively at least once a year as provided for in the Bencher governance policies.

Appendix F

Strategic Planning and Oversight

The Benchers have an effective role in the strategic planning process.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

I have a full understanding of the financial and operational risks associated with the strategic plan.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The process for developing strategic plan allows for sufficient Bencher review and input.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers are up to date with latest developments in the regulatory environment and the market for legal services?

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

As part of the discussion around every major decision, the Benchers analyze the potential risks arising from the decision.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers receive adequate briefings on the principle risks of the organization, and on its systems for identifying, managing and monitoring such risks?

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers regularly receive information on organizational performance including progress on strategic goals.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The key performance indicators provide sufficient information about organizational performance to the Benchers.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers receive sufficient information on financial performance.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers have an effective role in setting the annual budget.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Meetings and Decision-making

Pre-meeting materials are received in sufficient time to allow for adequate preparation?

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Pre-meeting materials provide appropriate context and background information to support informed decision-making.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Presentations to the Benchers are generally of the appropriate length and content?

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Bencher meetings allow for candid, constructive discussion and critical questioning.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The right things are placed on the agenda.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

There is adequate time for discussion of agenda items during Bencher meetings.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Benchers come to meetings prepared.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Benchers use the meeting time effectively and efficiently

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Bencher meetings allow sufficient time for interaction with management

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers have the necessary information to resolve issues promptly

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Culture, Participation and Communication

The Benchers are aware of what is expected of them

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Bencher discussion is open, meaningful and respectful.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Benchers are encouraged to participate fully in board discussions.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Benchers have no hesitation raising issues in Bencher meetings.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers are actively engaged with each other and with management on issues.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers work constructively as a team.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers spend sufficient time, at Bencher meetings and at other times, to get to know each other and build trust in one another.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The President effectively manages dissent and works constructively towards arriving at decisions and achieving consensus.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The President facilitates effective communication between the Benchers and management, both inside and outside of Bencher meetings

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Orientation for new Benchers meets their needs.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers take advantage of education/developmental opportunities to improve governance capabilities.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Bencher/Management Relationship

The relationship between the Benchers and the CEO is clearly defined.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers respect the role of the CEO in managing the organization.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Evaluation of the CEO's performance is appropriate and well understood

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers have ensured there is an adequate CEO succession plan in place.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers provide adequate direction and support to the CEO.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

There is good two-way communication between the CEO and the Benchers.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers and senior management understand and respect each other's roles.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Benchers seek and obtain sufficient input from management and staff to support effective decision-making.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Appendix G

Committee Evaluation

Members understand and act within the mandate of the committee.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Members are aware of what is expected of them

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Pre-meeting materials are received in sufficient time to allow for adequate preparation.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Pre-meeting materials provide appropriate context and background information to support informed discussion and decision-making.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The right things are placed on the agenda.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Everyone comes to meetings prepared.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Presentations are generally of the appropriate length and content?

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Meetings allow for candid, constructive discussion and critical questioning.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

Discussion is open, meaningful and respectful.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Chair ensures that all agenda items are covered during the meetings.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Chair ensures that meeting time is used effectively and efficiently

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Chair effectively manages dissent and works constructively towards arriving at decisions and achieving consensus.

□ Strongly Agree □ Agree □ Neutral □ Disagree □ Strongly Disagree

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: May 17, 2013
Subject: **Preliminary review of new hearing panel configuration**

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1. Several Benchers have expressed an interest in a preliminary review of our experience with the new configuration of hearing panels. This is in advance of the three-year review that the Separations of Functions Task force recommended and the Benchers approved in July 2010. Since the new configuration was implemented around the beginning of 2012, we are nearing the halfway mark of the trial period. It appears an opportune time to consider how the program is working out and what improvements might be made in the short run.

Selection process

2. The selection process took place under the direction of a working group appointed by the President. The group undertook a process that was extraordinarily labour intensive, but in the end chose to delegate the function of evaluating applicants to an independent third party. In my view, an independent review and assessment of applications is essential, not only to facilitate making hard choices, but also in the credibility of the process with the applicants, the profession and the public.

3. One might consult the working group (Gavin Hume, QC, Art Vertlieb, QC, Jan Lindsay, QC and Haydn Acheson) and possibly the consultants (Odgers Berndtson) for an evaluation of the selection process and suggestions as to how it might be improved.

4. The criteria for selection were set by the working group in consultation with a few senior staff and the consultant. Before the next recruitment, this list should be thoroughly reviewed in light of the experience to date. It has been suggested, for example, that emphasis on past contribution to the Law Society and QC appointments has resulted in a pool of non-Bencher lawyers too heavily weighted to former Benchers.

Training

5. BC Council of Administrative Tribunals (BCCAT), the primary trainer of administrative adjudicators in BC, provides three levels of training for hearing panel pool members. Each course is tailored to a significant degree to our needs. Most members of the pool have attended special sessions designed for Law Society purposes. Where there are insufficient numbers of Law Society participants to justify a separate session, we have registered individuals in course offerings for the general administrative tribunal community.

6. In each offering, participant evaluations are very positive, and participants are in general appreciative of the benefit that they receive from the training program. I have it on good authority, but not for quotation or attribution, that the BCCAT training of Law Society adjudicators compares very favourably with the training provided for newly appointed judges of the British Columbia Provincial Court.

7. Some participants have made suggestions for the improvement of the program. In the first offering of the basic principles course, some participants suggested that the requirement to take the course not apply to experienced adjudicators (e.g., Life Benchers) or that lawyers should get a reduced version of the course. The Benchers decided that the requirement should apply to all members of the pool so that all are treated equally and have the opportunity to mix with each other. As well, no one would have to make the difficult decision as to who was to be exempted and who was not. In my view, that was the right choice. Administrative law is constantly developing, and there are of course some significant changes in the Law Society process. I have made a point of asking more experienced participants in the training program to share their insights for the benefit of less experienced participants. Most have done so in a gracious and useful fashion. In any case, I do not think that the assumption that every experienced Law Society adjudicator is not in need of training and skills development has been borne out by experience.

8. One participant suggested that the Law Society add to the introductory program information on what lawyers do professionally and they how think. I think that that should be taken into account in future offerings, but not to a degree that would be counterproductive to the purpose of including non-lawyers in the adjudicative process.

9. The hearing skills workshop consists of one day of instruction and discussion and a second day of mock hearings. For the mock hearings, attendees are divided into two groups. In the morning, one group role-plays the panel and the other counsel, parties and witnesses. In the afternoon, a second mock hearing is conducted with the participants reversing roles. It was

suggested that the curriculum be re-worked so that mock hearings are conducted on a Law Society case. That is a good suggestion, and I have made the course coordinator aware that we would like to do that before the next offering. Interestingly, though, when a number of Law Society hearing panel people were enrolled in the BCCAT advanced decision-writing workshop available for tribunals generally, there were alternative scenarios available, some involving Law Society facts and some based on other tribunals. Several of the Law Society participants chose to work with the non-Law Society fact patterns.

Operation

10. We have put in place a protocol for the appointment of hearing panels, which has been updated to accommodate review boards and to take into account our experience of the year and a half since it was implemented. I attach a copy for your reference.

11. The need for only one Bencher per hearing panel, without a committee or other conflict, along with the enthusiasm of the other panel members to make themselves available for appointment to a hearing panel has, in part, alleviated some of the difficulty that formerly existed in putting together hearing panels for specific dates. It remains to be seen if the effect of the replacement of Bencher reviews with review boards will have on the equivalent concerns in that area. In that case, the required number of Benchers has been reduced from a minimum of 7 to 3 in all cases.

12. It may be of some concern that several Benchers have effectively opted out of the hearing panel pool by not taking the required course work. I have already said that I do not think that that should result in exempting Benchers from training requirements. Some of the Benchers now excluded from hearing panels have done so deliberately, either because they do not want to participate in panels or because they do not see the investment of time justified near the end of their Bencher careers. Others await the availability of the courses.

13. At present there are 12 Benchers available to chair discipline hearing panels and 10 for credentials hearing panels. As a result of availability issues, a few Benchers are now doing multiple hearing panels beyond an equal share, which has been identified as a problem in the past.

14. At least one Bencher who has chaired a hearing panel since the changes were made has raised concerns that the inclusion of a non-lawyer panellist caused a delay in the preparation of a written decision. My impression is that there were particular circumstances in that case

that led to a difficulty in the three members of the panel reaching a consensus. I have not heard the same concern from any other Bencher.

15. I understand that discipline counsel do not consider that the process in the course of the hearing itself is delayed at all by the presence of non-lawyer panellists.

16. There should be some follow-up with panel members following the conclusion of each hearing. Ken Walker, QC has made two suggestions, both of which I recommend for consideration in the review of the new regime.

17. Mr. Walker proposed a brief survey form to be completed after each hearing is concluded. This could include some standard questions, but would largely be an assessment of the experience and an opportunity to raise any concerns on a confidential basis. Mr. Walker has volunteered to help prepare some questions for the form.

18. Mr. Walker also suggested an informal meeting of Benchers who have chaired discipline hearing panels under the new scheme, in the absence of Discipline Committee members and staff, to discuss the process and any concerns. We should also consider whether a separate meeting for chairs of credentials hearings should be conducted so that members of the Discipline Committee can attend while the Credentials Committee and staff are excluded.

19. The President was approached about convening such a meeting in the summer of 2012. Mr. LeRose considered that it was too soon to initiate that sort of discussion at that time, but perhaps the timing may be more appropriate this spring or summer.

Consultations

20. There are a number of people involved in the system, other than the panellists themselves, who could be consulted for impressions and concerns with the new makeup of the hearing panels.

21. The staff who investigate and prepare the cases and counsel, both staff and outside, who conduct the cases likely have views as to the differences under the new regime. They may well have concerns that could be addressed going forward.

22. If we consult with the Law Society side of the equation, we should also consult the small community of lawyers who appear on the other side of cases, representing respondents and applicants. It would be informative to know how the new regime has affected the experience

of counsel who have appeared in the last year. Several of them have appeared before all-Bencher panels in the past and may be able to provide a comparative view.

23. While the addition of several inexperienced participants has changed some aspects of the work of the hearing administrator, Michelle Robertson, some becoming more difficult and others less so, it would be worthwhile to ask her to provide her view on how the changes have affected the administrative side of Law Society tribunal functions.

24. There are also other participants, such as expert and material witnesses, court reporters, occasionally media and other observers, as well as the respondents and applicants themselves, that could be surveyed for their impressions of the effectiveness of the new scheme. A few of them have experience under the previous regime and could give comparative views.

25. A major point in changing the way that our tribunals do business was to improve the confidence of the public in the Law Society's processes. That could be measured, but the only statistically significant way of doing that, so far as I know, would be by random surveying at considerable expense. It is likely that not many members of the public have noticed what the Law Society has done. That may change over time, and I would recommend not taking that step at least until the three-year pilot project is more nearly completed.

JGH

Attachments: protocol for appointment

The Law Society of British Columbia

PANEL AND REVIEW BOARD APPOINTMENT PROTOCOL

Under the Law Society Rules, the appointment of hearing panels and review boards is in the discretion of the President. This protocol sets out guidelines for the exercise of that discretion, based on Benchers resolutions and operational practice.

1. Each hearing panel is chaired by a Bencher who is a lawyer and includes two members of the hearing panel pool:
    - one lawyer who is not a current Bencher, and
    - one person who is not a lawyer.

2. Each review board is chaired by a Bencher who is a lawyer and includes two additional Benchers and four members of the hearing panel pool:
    - two lawyers who are not current Benchers, and
    - two people who are not lawyers.

3. When a current Appointed Bencher is appointed to a review board, he or she is considered a Bencher, and two others will be appointed from the non-lawyer roster of the hearing panel pool. No more than one current Appointed Bencher will be appointed.

4. The hearing administrator maintains three rosters:
    - a roster of current lawyer Benchers who qualify to chair hearing panels and review boards;
    - a roster of non-Bencher lawyers who are members of the hearing panel pool; and
    - a roster of non-lawyer members of the hearing panel pools, including current Appointed Benchers.

5. When a member of the hearing panel pool or a lawyer-Bencher completes the required training courses, his or her name is added to the bottom of the appropriate roster.

6. The required courses are as follows:

- for all panellists, the introductory course on administrative justice and any annual updates required by the Benchers;
- for all lawyers, the decision-writing workshop; and
- for all lawyer Benchers, the hearing skills workshop;

7. When a hearing panel or review board is to be appointed, the hearing administrator determines the highest member(s) on each roster who

- is not disqualified under Rule 5-3(1) or (2);
- is not a member of the Committee that ordered the hearing, either at the time the hearing was ordered or at the time of the hearing;
- has not had previous dealings with the respondent or applicant that could give rise to a reasonable apprehension of bias;
- is not the subject of a complaint investigation or discipline matter;
- is available on the hearing dates.

8. Before being appointed to a review board, a member of the hearing panel pool or a Bencher must have completed at least one hearing as a member of the hearing panel.

9. The President establishes hearing panels composed of the three pool members under clause 1, and review boards composed of seven pool members under clauses 2 and 3.

10. The President may appoint members of the pool out of order in a case that, in the President's opinion, requires special skill, expertise or experience.

11. When a member of the pool is appointed to a hearing panel or review board, his or her name goes to the bottom of the appropriate roster. If the hearing or review does not

proceed, or if the pool member does not begin the hearing or review, for any reason, he or she may request that his or her name be returned to the top of the roster.

12. If a pool member at the top of a roster is not available for three or more consecutive hearings panels or review boards, the President may direct the hearing administrator to place the pool member's name at the bottom of the appropriate roster.

13. The hearing administrator keeps a complete record of the appointment process for each hearing panel or review board.

14. Pool members and Benchers may enquire of the hearing administrator as to where they stand on the applicable roster.

Demographics of the profession set to influence the delivery of legal services in the years ahead

IT HAS BEEN suggested that demographics are destiny, and while some take issue with the general proposition, there is little question that age, gender and geography will influence the delivery of legal services by lawyers in British Columbia in the coming decades.

What follows are some observations by the Law Society about the historical demographics of BC's lawyers and where the three factors of age, gender and geography will lead the profession in the future.

AGE

Over 1,100 (or 10.4%) of the 10,700 practising BC lawyers today are 65 years old of age or older, compared to only 380 practising lawyers 65 or older in 2003 (4.2% of total). That's an annual growth rate of 11.2%. There has also been a significant increase in the number of practising lawyers between the ages of 60 and 64, with 486 in 2003 compared with 1,245 in 2013, a 9.9% annual increase.

While 65 years of age has long been seen as a societal norm for retirement, there is evidence the norm has been changing in Canadian society generally. Statistics Canada has reported that there has been "a significant increase in delayed retirement starting in the mid-1990s, which is consistent with the increase in the employment rate of older Canadians starting in the same period.

At the same time, Statistics Canada noted in 2009 that "Canada's population aged 65 and older has more than doubled in the past 35 years to 4.3 million — or 13% of the population — in 2006. Medium-growth scenarios suggest the senior population will grow to 23% in 2031."

The implications of an unprecedented growth in the number of older lawyers continuing to practise remain a matter of speculation. As long ago as 1999, author Marc Galanter, in his article, "Old and in the Way: The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services," predicted that "... many of the much larger number of over-fifty lawyers that will soon populate the profession will be involuntary retirees, under-employed, or otherwise inclined to forsake their practices."

Based on Law Society data, generally lawyers aged 65 and older who continue on in their practices work fewer hours on average than younger members of the profession.

A significantly higher proportion (48.5%) of private practice lawyers 65 years of age or older are sole practitioners compared with the overall proportion in private practice. And in keeping with the greater number of sole practitioners, practising lawyers 65 years of age or older in private practice are much more likely to be practising outside Vancouver and most likely to be found in Victoria, northern Vancouver Island and in the Fraser Valley.

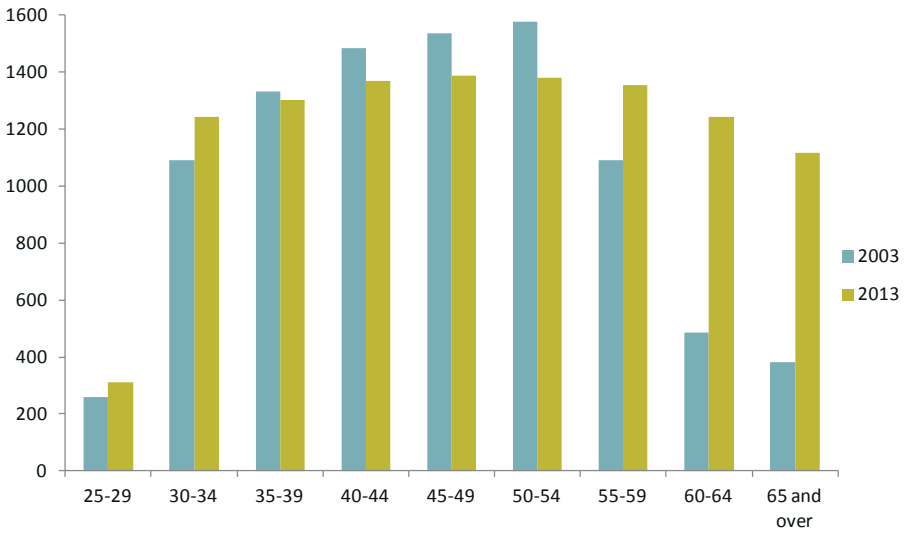
At the same time, there has been very little change in the proportion of practising lawyers under the age of 40. In 2003, about 2,660 or 29% of practising lawyers were under 40 years of age while, at the beginning of this year, 2,850 or about 27% of practising lawyers were under age 40.

As a result, the distribution of practising lawyers across the entire age range is more even today than it has been since the early 1980s.

In addition to lawyers practising longer, the other reason for the more even distribution of practising lawyers across the age range is the number of younger lawyers leaving practice early in their careers. For example, of the lawyers called to the bar in 2008, only 78% are practising lawyers in BC today. And while a slightly higher number of female lawyers from 2008 are now non-practising or have left practice in BC, an almost equal number of male lawyers have also left or are now non-practising.

The overall impact of these two trends is that the net growth rate for practising lawyers in BC over the past several years has been about 2.0%. This rate is slightly lower than for a number of other provinces and territories. Based on the national statistics compiled by the Federation of Law Societies of Canada, at year end 2005 there were 74,447 practising lawyers in Canada. By the end of 2010, the most recent year for Federation statistics, this number had grown to 83,675 practising lawyers. Over

Age of practising lawyers in BC – 2003 and 2013



the period, this amounts to a 2.4% annual growth rate. Alberta, Ontario and Quebec had annual growth rates at 2.4%, 2.4% and 2.2% respectively. Both Saskatchewan and Manitoba had much higher annual growth rates, at 5.2% and 5.3% respectively, and the Maritime provinces had lower rates, ranging from 0.5% in Prince Edward Island to 1.9% in New Brunswick.

In looking at the overall population of lawyers in BC over the coming decade, the most significant unknown is whether the proportion of the profession over the age of 65 and those approaching that age will continue to grow or whether the upcoming cohort of lawyers approaching 65 years of age will choose not to continue to practise for as long as their older colleagues.

GENDER

In September 1991, the Women in the Legal Profession Subcommittee published its report, *Women in the Legal Profession*. The report noted that, in 1990, 21% of practising lawyers were women and in 1988 (the last year for data at the time) 38.4% of those called to the Bar were women.

Today, 36.8% of practising lawyers are women and, of those called to the Bar in 2012, 47.5% were women. This latter percentage is a reversal of the trend we have seen in recent years of slightly more women than men being called to the Bar.

The report also noted that, as of January 1990, the attrition rate for women called between 1984 and 1988 was 19% while the attrition rate for men was 11%. Today, for those called in the last five years (2008 – 2012), the attrition rate calculated in the same manner is about 19% for women and 14% for men.

Over the long term, the attrition rate for women means that only 31% of lawyers with 10 or more years of practice experience are women, compared with 49.6% of lawyers with less than 10 years experience. For lawyers in private practice, the difference in proportions is even greater. Only 24.7% of lawyers in private practice with 10 or more years of experience are women compared with 48% in private practice with less than 10 years experience.

In 1992, the Gender Bias Committee endorsed the *Women in the Legal Profession* recommendation that the Law Society encourage part-time work and job sharing by providing lower fees and lower insurance premiums for part-time members. The result was the part-time insurance discount that was introduced in 1994.

Since its initial introduction, the number of lawyers claiming the discount has grown to roughly 1,100 each year. Of these, 56% are men and 44% are women. While the proportion of women receiving the part-time discount is greater than the proportion of women in private practice, men, particularly those over the age of 55, are most likely to claim the part-time insurance discount.

The Gender Bias Committee also endorsed the recommendation that the Law Society introduce an inactive category of membership with substantially lower fees to permit members to take leaves of absence from the profession and maintain contact with the legal profession. At any given time, women are significantly more likely to choose non-practising status than men, with 57% of the current non-practising lawyers being women.

Despite the measures put in place in the early 90s, women continue to leave practice in greater numbers than men. And while the increase in the proportion of women lawyers in practice from 21% in 1990 to 37% today is an improvement, the retention of women in the profession remains an unmet challenge.

GEOGRAPHY

As is generally known, the majority of the BC lawyers are located in Metro Vancouver, with over 7,700 practising lawyers located within this region. The city of Vancouver proper has over 5,700 practising lawyers, while the city of Victoria has 960 practising lawyers. Outside these two major urban areas of the province, other cities such as Kelowna, Kamloops, Nanaimo and Prince George account for another 850 lawyers. And while approximately three million citizens reside in these cities and urban areas, there remain about 1.4 million citizens residing throughout the rest of the province who might not find a lawyer close by.

The overall ratio of lawyers to population for the province is about one lawyer for every 450 residents. Based on the Federation of Law Societies statistics, this compares with about one lawyer for every 460 residents in Alberta and 437 residents in Ontario. The Maritime provinces, Saskatchewan and Manitoba have a lower ratio of lawyers to population with an average of one lawyer for every 600 residents, while Quebec has a higher ratio of about one legal advisor for every 290 residents when we combine the Barreau du Quebec and the Chambre des Notaires.

However, although the ratio of lawyers to population for BC is about one in 450, in Kitimat the ratio is one lawyer for every 4,500 residents and in Merritt it is one lawyer for every 2,400 residents. Similar examples of low ratios of lawyers to population exist throughout the province. Some of the distribution of lawyers is clearly driven by economic activity, and particularly corporate and commercial work, rather than population. Nevertheless, for personal legal services, there are some parts of the province where there are relatively few lawyers in relation to the population.

In addition to there being relatively few lawyers in some areas, there are parts of the province where the lawyer population is considerably older than average. For the province as a whole, the average age of the population of practising lawyers is 48. However, in some BC towns, the average age of the lawyer population is as much as a decade higher than the provincial average.

While the Rural Education and Access to Lawyers (REAL) program, supported by the Canadian Bar Association, BC Branch and the Law Society, is attempting to address a current and projected shortage of lawyers practising in the small communities of British Columbia, relatively few junior lawyers are taking up practice in those communities. Of the nearly 1,400 currently practising lawyers with one to three years of experience, only 53 are in Cariboo, Kamloops and Kootenay counties.

As a result of the aging lawyer demographic in the small and rural communities and the relatively few junior lawyers taking up practice in those communities, it remains likely that over the next decade even more small and rural communities will no longer have easy access to a lawyer. The situation is potentially a significant barrier to access to justice and legal services, and clearly not one that can be easily resolved.❖