



Agenda

Benchers

Date: Friday, July 12, 2013

Time: **8:00 am** Continental breakfast

9:00 am Call to order [**NOTE NEW START TIME**]

1:00 pm Adjourn

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

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



Agenda

CONSENT AGENDA:

The 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) prior to the meeting.

DISCUSSION/DECISION

ITEM	TOPIC	TIME (min)	SPEAKERS	MATERIALS	ACTION
1	Consent Agenda <ul style="list-style-type: none"> • Draft minutes of the regular session • Draft minutes of the <i>in camera</i> session (Benchers only) • Proposed Amendments to Rules 3-13 and 4-4.2: continuing a ceased member under investigation, citation or a practice review • Proposed Amendments to Rule 2-4.1: Application fee for practising certificate • Proposed Amendments to Rule 2-27 • Request for Approval of Protocol for Referrals to the Lawyers' Assistance Program by Law Society Staff 	1	President	Tab 1.1 Tab 1.2 Tab 1.3 Tab 1.4 Tab 1.5 Tab 1.6	Approval Approval Approval Approval Approval Approval



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ITEM	TOPIC	TIME (min)	SPEAKERS	MATERIALS	ACTION
	<ul style="list-style-type: none"> Selection of the Law Society's Representatives to the 2013 Queen's Counsel Appointments Advisory Committee 			Tab 1.7	Decision
	Greetings from Hon. Suzanne Anton, QC, Attorney General and Minister of Justice	5			
BRIEFING / DISCUSSION					
2	Interim Report of the Legal Service Provider Task Force	20	Bruce LeRose, QC	Tab 2	For Information and Discussion
3	Law Society Funding of Pro Bono: Report from Access to Legal Services Advisory Committee	40	Mr. Maclagan	Tab 3	Discussion
SCHOLARSHIP PRESENTATION					
	President and Hon Suzanne Anton, QC present the 2013 Law Society Scholarship and 2013 Law Society Aboriginal Scholarship to the recipients	5	President		
GUEST PRESENTATIONS					
4	Enhancing Diversity in the Legal Profession and the Judiciary	30	Hon. Lynn Smith, QC and Hon. Donna Martinson		Presentation and discussion



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ITEM	TOPIC	TIME (min)	SPEAKERS	MATERIALS	ACTION
5	Office of the BC Ombudsperson Update	15	Col. (retired) Kim Carter		Presentation
REPORTS					
6	2012-2014 Strategic Plan Implementation Update	5	President/CEO		Briefing
7	Mid-year Reports from the 2013 Advisory Committees (Agenda Item 3 is the Access to Legal Services Advisory Committee report)	15	Ms. Morellato, Ms. Merrill & Mr. Richmond	Tab 7	Briefing
8	President's Report	10	President		Briefing
9	CEO's Report	10	CEO	Tab 9	Briefing
10	Report on Outstanding Hearing & Review Reports	5	President	<i>(To be circulated at the meeting)</i>	Information



Agenda

ITEM	TOPIC	TIME (min)	SPEAKERS	MATERIALS	ACTION
FOR INFORMATION ONLY					
11	<ul style="list-style-type: none"> • CBABC REAL Initiative: Funding Request for 2014 • Law Society Financial Report (May 31, 2013) • Equity and Diversity Ombudsperson Annual Report • Best Practice Guidelines for Lawyers Practicing Family Law • Regulation of Law Firms: Planning Update • Thank You Letter to Best Western Tin Wis Resort • Letter from Anna Fung, QC to Art Vertlieb, QC: Appointment to Vancouver Airport Authority Board of Directors • Letter from Chief Judge Crabtree to Bruce LeRose, QC dated August 3, 2012, as background for agenda item 4 (Enhancing Diversity in the Legal Profession and the Judiciary) 	20	Ms. Kerry Simmons, CBABC President	Tab 11.1 Tab 11.2 Tab 11.3 Tab 11.4 Tab 11.5 Tab 11.6 Tab 11.7 Tab 11.8	Information Information Information Information Information Information Information Information



Agenda

ITEM	TOPIC	TIME (min)	SPEAKERS	MATERIALS	ACTION
IN CAMERA					
12	<i>In camera</i> <ul style="list-style-type: none"> • Report on Law Society Litigation Outstanding at June 30, 2013 • Other business • Bencher concerns 	5 30 5	CLO President/CEO Benchers	Tab 12	Briefing Discussion/Decision Discussion/Decision



Minutes

Benchers

Date: Saturday, June 15, 2013

Present:	Art Vertlieb, QC, President	Vincent Orchard, QC
	Jan Lindsay, QC 1 st Vice-President	David Renwick, QC
	Ken Walker, QC 2 nd Vice-President	Phil Riddell
	David Crossin, QC	Catherine Sas, QC
	Lynal Doerksen	Richard Stewart, QC
	Thomas Fellhauer	Tony Wilson
	Leon Getz, QC	Bill Maclagan
	Miriam Kresivo, QC	Haydn Acheson
	Nancy Merrill	Stacy Kuiack
	Maria Morellato, QC	Peter Lloyd, FCA
	David Mossop, QC	
	Thelma O'Grady	
	Lee Ongman	

Absent:	Rita Andreone, QC
	Satwinder Bains
	Kathryn Berge, QC
	Richard Fyfe, QC, Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Ben Meisner
	Greg Petrisor
	Claude Richmond
	Herman Van Ommen, QC
	Barry Zacharias

Staff Present: Tim McGee
 Deborah Armour
 Su Forbes, QC
 Jeffrey Hoskins, QC
 Michael Lucas

Bill McIntosh
 Jeanette McPhee
 Alan Treleaven
 Adam Whitcombe

Guests: Honourable Robert Bauman, Chief Justice of the Supreme Court of BC
 Kevin Feth, QC, President-Elect, Law Society of Canada
 Jonathan Herman, Chief Executive Officer, Federation Law Societies of Canada
 Gavin Hume, QC, Council Member representing the Law Society of BC,
 Federation of Law Societies of Canada
 Carsten Jensen, QC, President, Law Society of Alberta
 Bruce LeRose, QC, Past President, Law Society of BC
 Malcolm Mercer, Bencher, Law Society of Upper Canada, Partner, McCarthy
 Tetrault
 Myron Plett, Raincoast Law, Ucluelet, BC
 Don Thompson, QC, Executive Director, Law Society of Alberta
 Gérald R. Tremblay, C.M, O.Q., Q.C., Ad.E., President, Federation of Law
 Societies of Canada

1. CONSENT AGENDA

a. Minutes

The minutes of the meeting held on May 10, 2013 were approved as circulated.

The *in camera* minutes of the meeting held on May 10, 2013 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

- Appointment to Vancouver Airport Authority Board of Directors

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.

- Rules Amendments Implementing Benchers' Decision to Approve Credentials Committee Recommendation for Temporary Mobility of Foreign Lawyers

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

(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;

“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,
 - (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.

REGULAR AGENDA – for Discussion and Decision

2. Remarks by Hon. Robert Bauman, Chief Justice of the Supreme Court of BC

Mr. Vertlieb welcomed the Honourable Robert Bauman to the meeting, noting that His Lordship will become Chief Justice of British Columbia at midnight tonight.

Chief Justice Bauman addressed the Benchers and guests. He commented on the legislative changes embodied in the *Legal Profession Amendment Act, 2012*, noting particularly the importance of the Section 3's statement of the Law Society's sole object and duty "to uphold and protect ... the public interest in the administration of justice by ..."

Chief Justice Bauman's remarks covered a number of other themes, including the importance of the Law Society's initiatives to enhance access to legal services by expanding the scope of services that may be provided by paralegals and articulated students, and the importance of an independent judiciary and legal profession to safeguarding the rule of law. A summary of Chief Justice Bauman's presentation will be published in the fall issue of the Benchers' Bulletin.

3. Selection of Benchers' Nominee for 2014 Second Vice-President

Mr. Vertlieb announced that to date Vancouver Bencher David Crossin, QC is the only candidate for selection as the Benchers' nominee for 2014 Second Vice-President of the Law Society. After asking whether other Bencher were prepared to declare their candidacy and hearing none, Mr. Vertlieb declared David Crossin, QC acclaimed as the Benchers' nominee for election as 2014 Second Vice-President of the Law Society at the 2013 Annual General Meeting on Tuesday, October 1, 2013.

REPORTS

4. Mid-Year Report from the Governance Committee: Recommendations

Ms. Lindsay reported as Vice-Chair of the Governance Committee. She outlined the working process followed by the Governance in addressing the Bencher Governance Review Task Force recommendations referred to the Committee for review and action following the Benchers' adoption of the task force's final report in December 2012.

Ms. Lindsay referred to page 4003 of the meeting materials for a summary of the Governance Committee's recommendations to the Benchers, focusing on Recommendation B:

- B. The Benchers approve the development and implementation of the straightforward recommendations set out in the table at pages [4008-4009 of the meeting materials].

In the ensuing discussion a number of questions about specific provisions were raised and resolved by Ms. Lindsay and Mr. Whitcombe. A suggestion was passed on to Mr. Whitcombe for re-wording a clause of Appendix C.¹

The Benchers agreed to adopt the recommendations set out in the Governance Committee’s Mid-Year Report and summarized on page 4003.

Ms. Lindsay thanked Mr. Whitcombe for his excellent work in preparing the Committee’s report.

Mr. Vertlieb thanked the Committee members for their commitment and hard work.

5. 2012 - 2014 Strategic Plan Implementation Update

Mr. McGee addressed this matter in his CEO’s Report (see Item 7).

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) Follow-up to 2013 Benchers Retreat Workshop

Mr. Vertlieb noted that First Vice-President Jan Lindsay, QC deserves much credit for the success of yesterday’s Retreat Workshop (*The Business of Law in the 21st Century: Do We Risk Losing (or can we maintain) Our Professional Values?*). Ms. Lindsay thanked the presenters (Jordan Furlong of Edge International and Malcolm Mercer of McCarthy Tetrault LLP), the Bencher panelists (Bill Maclagan and Maria Morellato, QC), and Law Society staff (Michael Lucas, Manager of Policy & Legal Services, and Adam Whitcombe, Chief Information & Planning Officer) for their valuable contributions to the planning and execution of the program.

Mr. Vertlieb canvassed the Benchers for input regarding the Law Society’s possible and preferred next steps. The following issues were raised in the ensuing discussion:

- While many future events will be beyond the scope of our predictive abilities, much can and should be done by the Law Society to protect the public interest in the administration of justice
- The creation of a standing committee on the future of legal regulation should be considered

¹ Page 4028: President Position Description, Item 3 under the heading called “Election and Term.”

- The upcoming report of the Legal Service Provider Task Force (July Bencher meeting) should provide valuable insight and guidance for such a standing committee
- The Independence and Rule of Law Advisory Committee's 2012 report on regulation of alternate business structures should be revisited as a valuable source of context for consideration of the current Strategic Plan's provision for the regulation of law firms

Mr. Vertlieb confirmed that the Executive Committee will review the results of yesterday's Retreat Workshop and this discussion, and then prepare a memorandum with recommendations for the Benchers' consideration in the fall.

b) Law Society Luncheon for 50 & 60 Year Commemorative Certificate Recipients (May 30, 2013)

Mr. Vertlieb noted that Bencher attendance at the Law Society's 50 & 60th Cert Luncheon for 2013 was disappointingly low, and he stressed the importance of respecting the Society's traditions.

A Bencher requested that in future, staff email bulletins to Benchers regarding upcoming Law Society events make particular reference to events and functions hosted or sponsored by the Benchers, such as the 50 & 60 Year Certificate Commemorative Luncheon.

c) Designated Paralegal Pilot Project Update

Mr. Vertlieb reported that about 80 people attended a recent Designated Paralegal Pilot Project presentation in Victoria. He commented on the strong interest in the project expressed by paralegals and members of the public and noted the need for greater lawyer engagement. Mr. Vertlieb encouraged Benchers to promote and model the designated paralegal program.

d) Meeting with the Honourable Suzanne Anton, Attorney General and Minister of Justice

Mr. Vertlieb briefed the Benchers on his recent meeting with the Honourable Suzanne Anton, noting that he had confirmed the Attorney's right and standing invitation to attend Bencher meetings as an ex officio Bencher.

7. CEO's Report

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

- Introduction

- Media Relations Update
- National Action Committee on Access to Justice in Civil and Family Matters
- Inaugural Justice Summit – Follow-up
- Recent Activities
- CEO’s Breakfasts with Staff
- PLTC Thank You’s

8. Federation of Law Societies of Canada Executive Update

a. President’s Remarks

Gérald Tremblay, C.M., O.Q., Q.C., Ad. E, addressed the Benchers as President of the Federation of Law Societies of Canada for 2013. Mr. Tremblay commented on the parallels between the themes of the public interest and professionalism (the themes of the 2013 retreats of the Law Societies of Alberta and BC). He stressed the importance of effective public communication and expeditious discharge of regulatory responsibilities to the maintenance of public confidence in the legal profession and its regulators.

Mr. Tremblay also commented on the value of the Federation as an instrument for advancing the shared vision and values of its member societies, noting the National Mobility Agreement and the Model Code as examples. He noted the importance of cooperation and collaboration between the Federation and the Canadian Bar.

Mr. Tremblay thanked the Benchers and staff of the Law Society of BC for their hospitality.

b. CEO’s Briefing

Jonathan Herman briefed the Benchers as CEO of the Federation. Mr. Herman said that this is the sixth consecutive Law Society of BC Benchers Retreat he has attended as Federation CEO, and noted the importance he attaches to these annual gathering as opportunities to meet new Benchers and to brief them on the Federation’s operations.

Mr. Herman commented on the accountability of the Federation to its 14 member law societies. He stressed that the Federation is not akin to an autonomous level of government, but rather is a product of and answerable to all of its members. Mr. Herman described the Federation as the “national branch office” of the member societies.

The Federation relies on member societies' Benchers and staff for leadership and technical support on policy issues. Mr. Herman recognized Gavin Hume, QC as the Law Society of BC's member of the Federation Council and Chair of the Federation's Standing Committee on the Model Code, and David Mossop, QC as a member of the Standing Committee on Access to Legal Services. Mr. Herman also commented on the Federation's reliance on the staff and resources of its member societies for policy analysis and development, noting the perennially strong contributions of the Law Society of BC. He thanked CEO Tim McGee for his personal support and contributions in that regard, and recognized a number of staff members, including Deborah Armour, Chief Legal Officer, Robyn Crisanti, Manager of Communications and Public Relations, Su Forbes, QC, Director of Insurance, Jeff Hoskins, QC, Tribunal and Legislative Counsel, Michael Lucas, Manager of Policy and Legal Services, Alan Treleaven, Director of Education, and Adam Whitcombe, Chief Information and Planning Officer.

Two current initiatives were outlined as examples of the Federation's commitment to a harmonized and cooperative—as opposed to generic or prescriptive— approach to issues identified by the member societies as having mutual importance: the National Admission Standards and National Discipline Standards projects.

Mr. Herman thanked Mr. Vertlieb for providing this briefing opportunity to the Federation, and he thanked the Benchers and staff of the Law Society for their hospitality.

9. Report on Outstanding Hearing & Review Reports

The Benchers received and reviewed a report on outstanding hearing and review reports.

OTHER BUSINESS

10. Remarks by President of the Law Society of Alberta

Mr. Vertlieb invited Law Society of Alberta President Carsten Jensen, QC to address the Benchers.

Mr. Jensen commented on the value of the tradition of reciprocal attendance by senior Benchers of the Law Societies of Alberta and BC at their respective annual retreats. He noted that opportunities for collaboration often arise from the shared discussions, particularly when the retreat themes overlap, as is the case this year. Mr. Jensen particularly noted the interest of Law Society of Alberta leadership in pursuing joint study and discussion of alternate business structures and their regulation by the law societies of the western provinces.

On behalf of Law Society of Alberta President-Elect Keith Feth, QC and Executive Director Don Thompson, QC, Mr. Jensen thanked the Benchers and staff of the Law Society for their fellowship and hospitality.

The Benchers discussed other matters *in camera*.

WKM
2013-06-28

The Law Society
of British Columbia



CEO's Report to Benchers

June 15, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

My report this month will be briefer than usual, as I will be delivering a comprehensive mid-year report to the Benchers in July. That report will provide updates on progress made on the 2012 – 2014 Strategic Plan, our 2013 Operational Priorities and various other items.

In this report, I am pleased to provide you with a media relations report for 2012 and an update on activities to date in 2013. I will also share with you some of the activities I have participated in during the past months.

Media Relations Update

Appended to this report as Appendix “A” is the 2012 Media Relations Report, which details the extent of our media coverage last year. In general, the Law Society was mentioned in approximately 150 unique media reports (many of which ran in multiple publications). The quality of those reports was also evaluated. For those that ran in response to Law Society news releases, the average score for tone was 4.25 out of five, meaning the story is considered generally positive and the Law Society is portrayed favourably. On average, two or more key messages were included in each story. Reports that resulted from media inquiries tended to be about more negative subject matter overall, but the Law Society was still portrayed favourably and at least two key messages were included.

In 2013, we have run three media campaigns, the first at the beginning of the year to launch the paralegal rule changes, the second during Law Week and the third to launch the new unauthorized practice database. We were able to secure several radio interviews and other media coverage during these campaigns. The Law Society was also the title sponsor of the Law Week courthouse open houses held throughout the province.

In late May, we hosted fifty journalists from newsrooms across Metro Vancouver for the 2013 Law and the Media Workshop. The workshop is an annual Law Society event for news reporters, editors, producers and other newsroom staff. It examines the relationship between journalism, the legal system and the law, in addition to the exploring the latest trends and developments in defamation and media law. Sitting on this year’s panel were media lawyers Daniel Burnett and Michael Skene, Global National news director Doriana Temolo and the Province newspaper deputy editor Ros Guggi.

Currently, we are developing a proposal to the Vancouver Sun with the aim to have President Vertlieb, QC and me meet with the Sun’s editorial board. The key topic will be

access to justice and the opportunities presented by the paralegal and articulated student rule changes. We anticipate being able to confirm a date for that meeting soon.

National Action Committee on Access to Justice in Civil and Family Matters

As you may be aware, the National Action Committee on Access to Justice in Civil and Family Matters (ACATJ) chaired by Justice Thomas Cromwell of the Supreme Court of Canada recently released its report and recommendations (the “Cromwell Report”). The ACATJ is planning a cross-Canada “road show” to discuss the Cromwell Report with justice stakeholders, and has asked the Law Society to co-sponsor Vancouver events being planned for November 2013. We have offered to host a stakeholder event here at the Law Society and may have a further role in other consultative meetings. I will provide more information about this initiative as plans are confirmed.

Inaugural Justice Summit – Follow-up

Following on the success of the March 2013 Inaugural Justice Summit, planning is underway for a second summit, which will focus on further developing the ideas around reforms in the criminal justice system that were raised at the March event. This has been tentatively scheduled for October or November of this year. That summit may be partnered with the ACATJ’s Vancouver events around the Justice Cromwell reports, and I will provide further information as planning progresses.

Recent Activities

Together with a number of Benchers and staff I have attended a variety of bar related events in the past month including the Vancouver Bar Association Judges’ Lunch, the Law Society’s 50th and 60th Commemorative Certificate Luncheon, Chief Justice Finch’s Retirement Dinner and the Designated Paralegal and Lawyers’ Information Luncheon co-hosted with the Paralegal Association in Victoria. I will be attending the Victoria Bar Association Summer Dinner next week.

I would like to make particular mention of the comments of our President Art Vertlieb, QC, which he delivered as part of a tribute video aired at the Finch dinner. Art’s eloquent and moving comments were, in my view and in the view of many others at the event, the most memorable of those among all the testimonials. In fact, in the penultimate speech of the evening, the Chief Justice of Canada, The Honourable Beverley McLachlin, referred to Art’s comments (although not by name). In relating what Art had said to all the tributes offered to Chief Justice Finch that evening she said

“Those words said it best of all. . .”. We are trying to obtain transcripts of all the speeches and will put together a sampling for a future edition of the Bencher Bulletin.

CEO’s Breakfasts with Staff

Over the past few months I have hosted a series of small group breakfast meetings with staff. So far I have hosted a total of 9 breakfasts involving approximately 125 of our employees. The style is informal and the groups are picked to bring people together from different departments to learn a bit more about me and to find out what their colleagues are doing. I typically lead off the meetings by sharing some information about my personal background and also what I do day-to-day in my role as CEO. We also talk about some of our priorities and current developments. In the open discussion period we have covered a number of different topics and ideas. The most discussed topic so far has been the appetite for a shadowing or secondment program within the Law Society as a way to enhance career development and help better develop teamwork across the organization. Based upon feedback to-date, the breakfasts are a positive experience for all and I certainly appreciate the insightful comments and suggestions that staff have shared with me.

PLTC Thank Yous

Thank you to the following Benchers and Life Benchers who kindly volunteered to teach Professional Responsibility at the May 24, 2013 PLTC sessions:

Vancouver

Maria Morellato, QC
 Catherine Sas, QC
 Herman Van Ommen, QC
 Life Bencher Anna Fung, QC
 Life Bencher Terry La Liberte, QC

Victoria

Kathryn Berge, QC
 Richard Stewart, QC
 Life Bencher Ralston Alexander, QC

Appendix A

2012 Media Relations Report

Introduction

Media relations remains the primary tactic by which the Law Society communicates with the general public. It is also a key strategy for reinforcing communication with other stakeholders, including government, lawyers and complainants.

The goal of Law Society media relations efforts is to increase awareness of the Law Society as an efficient, effective and transparent regulator of the legal profession.

The Law Society's approach to media relations is to provide accurate and timely information, with as much disclosure as possible given Law Society policies and rules. Communications staff also understand the needs of newsrooms and work to establish respectful, high quality relationships with reporters to help build the organization's credibility and influence the way the Law Society is portrayed in the news.

The Law Society connects with the media by responding to reporters' inquiries and issuing news releases, and to a lesser extent through social media. The department tracks both the quantity and quality of media coverage to gauge the success of its efforts and to identify areas for improvement.

How the Law Society influences media coverage

Law Society staff influence media coverage in two ways: by proactively generating coverage and by providing information to shape how a story is reported.

The *quantity* of news stories in which the Law Society is mentioned is influenced by:

- Posting news releases to the Law Society website
- Strategically distributing news releases to reporters
- Encouraging reporters to take advantage of the Law Society's RSS feeds
- Tweeting all news releases and other news-worthy information
- Proactively contacting reporters with an interest in a particular matter or topic

The *quality* of news coverage is influenced by:

- Carefully developing news releases to include important Law Society key messages

- Prior to participating in an interview, developing key messages and anticipated questions and answers, then briefing spokespeople
- Providing additional information to media as needed through the Law Society’s website, particularly the newsroom
- Being responsive, professional and timely in all media interactions

Quantity of 2012 media coverage

Total number of media inquiries (telephone and email)	163
Interviews or statements provided	104
Unique published or broadcast stories from inquiries	49
Unique published or broadcast stories without inquiries	71

In 2012, the Law Society managed 163 inquiries from reporters, researchers and producers, or between three and four inquiries per week. The type of information requested varies, from updates on high profile disciplinary matters, to general information about Law Society policies and programs.

The Law Society provided information, an interview or an emailed statement in response to 104 inquiries, which resulted in 49 published or broadcast stories. This compares to 86 inquiries in 2011 in which the Law Society provided an interview or a statement, resulting in 79 published or broadcast stories. The decrease is due primarily to there being fewer high-profile discipline cases in 2012 and a staff vacancy mid-year that resulted in less pro-active media relations activity for a few months.

The Law Society was mentioned in the news media an additional 71 times in 2012 in stories where no inquiry was made of the Law Society.

Fifty-nine inquiries, or approximately 36%, were related to issues on which the Law Society could not comment. The most common misdirected inquiry involved requests for expert opinions related to news stories in which the Law Society had no role. For example, CBC Radio produced a segment examining Toronto mayor Rob Ford’s removal from office in November, and inquired about interviewing a lawyer who specialized in municipal law. Those calls are referred to the Canadian Bar Association BC Branch, which operates a media referral program.

2012 News releases

Total number of news releases posted to website	28
Releases that resulted in news coverage	14
Number of releases actively distributed to media	11
Releases distributed to media that resulted in coverage	8
Total number of unique news stories/media mentions generated by media releases	33

The Law Society issues news releases about topics that are of importance to the public and the profession. While all news releases are posted to the website, only those that are deemed to be of strategic importance are also distributed to reporters by email.

In 2012, the Law Society issued a total of 28 news releases. Fourteen of those releases resulted in media coverage, or 50%. The Law Society distributed 11 releases to the media, 8 of which resulted in coverage, or approximately 73%. In total, 33 unique news stories or media mentions stemmed from Law Society media releases.

Quality of media coverage

To gauge the quality of news coverage about the Law Society, the tone of print, broadcast and online stories is assessed as is the inclusion of key messages.

Articles that mention the Law Society, but where no request has been made for information or an interview, are not evaluated because there has been no opportunity to influence the story.

Of the 31 stories that ran as a result of press releases, the average score for tone was 4.25 of a possible five. Using the Law Society's evaluation rubric,¹ this means the story is considered generally positive and the Law Society is portrayed favourably.

Evaluating the same 31 stories for inclusion of key messages, the average score was 3.9 out of five, meaning two or more key messages are included with no more than two factual misrepresentations.

The average score for tone in stories resulting from media inquiries, but not press releases, was 3.6. This means the story had a more negative overall subject matter, but the Law Society was presented in a somewhat favourable way. Evaluating the same stories for key messages resulted

¹ Attached as Appendix A

in an average score of 3.5 of five, meaning on average at least two key messages are included and there were no more than two factual misrepresentations.

Building relationships

A key priority for the Law Society's media relations in 2013 is to continue to build relationships with reporters, researchers and producers, especially those who cover issues that are of importance to the Law Society. While most journalists are considered "general assignment," many have particular areas of interest. Targeting those reporters and the programs and publications they work for with news releases and story pitches is an effective way to generate positive coverage about the Law Society.

The coverage of the Justicia Project in November 2012 is a good example. CBC Radio covers equity and diversity issues extensively, and by reaching out to program producers and "selling" the story, the Law Society was able to secure coverage of the Justicia Project on CBC Radio's All Points West in Victoria, and Daybreak in Kamloops. As the Justicia Project had been announced by the Law Society one year earlier, it may have been ignored if targeted pitches had not been directed at newsrooms interested in equity and diversity topics.

Appendix A: Evaluation Rubric

Rating	Tone	Key messages
1	Story has negative overall subject matter; all comments about the Law Society are negative	Law Society portrayed as not acting in the public interest; no positive comments or hint of Law Society perspective
2	Story has negative overall subject matter; negative comments about the Law Society are balanced with positive comments	Some inclusion of factual information about the Law Society but minimal inclusion of key messages; missing or mistaken facts are evident
3	Story has somewhat negative overall subject matter; Law Society is portrayed in a somewhat favourable way	At least two key messages are included and no more than two factual misrepresentations
4	Story is generally positive; Law Society is favourably portrayed	Most key messages are included; no more than one factual misrepresentation
5	Story is positive; Law Society is recognized or praised for its good work	All key messages included in story; messages are accurate; readers left to conclude the Law Society is an efficient, effective regulator



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: June 17, 2013
Subject: **Continuing a ceased member under investigation, citation or a practice review**

1. Under new rules adopted in June 2012, a lawyer who is under investigation or the subject of a citation or a practice review order is not permitted to resign from Law Society membership without the consent of the Society. This is to keep the lawyer within the direct jurisdiction of the Law Society and allow for the imposition of conditions on the lawyer abandoning his or her practice.
2. Lawyers can cease membership in the Law Society simply by not paying the required fees at the end of the year. That would be a major loophole in the requirement for consent to resign without a provision to cover that situation. As a result, Rules 3-13 and 4-4.2 allow for the Law Society to continue a lawyer as a member not in good standing and not entitled to practise law despite the failure to pay fees.
3. Those rules currently refer to Rule 2-70 [*Annual practising fees*] as the authority for a non-paying lawyer to cease membership in the Law Society. As you can see from that rule, that is not accurate:

Annual practising fees

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

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

4. The Act and Rules Committee recommends amendments (attached in clean and redlined versions) to the two rules, removing the reference to Rule 2-70 and tracking the language of section 25(1) of the *Legal Profession Act*, which is the provision that sets out that non-payment leads to ceasing membership:

Failure to pay fee or penalty

25(1) If a lawyer fails to pay the annual fee or a special assessment as required under this Act by the time that it is required to be paid, the lawyer ceases to be a member, unless the benchers otherwise direct, subject to rules made under section 23 (7).

5. The Committee also recommends that the phrase referring to a lawyer who is subject to a complaints investigation, a citation or a practice review be changed from “investigated lawyer” to “lawyer under investigation.”
6. Attached is a suggested resolution to effect the changes recommended by the Committee.

Attachments: draft amendments
suggested resolution

JGH

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 2 – Practice Standards

Practice review

- 3-13 (7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society ~~under Rule 2-70 [Annual practising fees]~~ for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to practise law.

PART 4 – DISCIPLINE

Continuation of membership under investigation or disciplinary proceedings

- 4-4.2 (1) In this Rule, “~~investigated~~ lawyer under investigation” means a lawyer who is the subject of
- (a) an investigation under Part 3, Division 1, [*Complaints*] or
 - (b) a decision of the Discipline Committee under Rule 4-4(1)(a.2) or (b) [*Action on complaints*].
- (2) ~~An investigated~~ A lawyer under investigation may not resign from membership in the Society without the consent of the Executive Director.
- (4) The Executive Director may direct that ~~an a investigated~~ lawyer under investigation who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment ~~under Rule 2-70 [Annual practising fees]~~ continue as a member not in good standing and not permitted to engage in the practice of law.
- (5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment ~~under Rule 2-70 [Annual practising fees]~~ continue as a member not in good standing and not permitted to engage in the practice of law.

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- (a) an investigation under Part 3, Division 1, [*Complaints*] or
 - (b) a decision of the Discipline Committee under Rule 4-4(1)(a.2) or (b) [*Action on complaints*].
- (2) A lawyer under investigation may not resign from membership in the Society without the consent of the Executive Director.
- (4) The Executive Director may direct that a lawyer under investigation who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.
- (5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.

CONTINUATION OF CEASED MEMBER

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 3-13(7) and substituting the following:

- (7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to practise law.

2. By rescinding Rule 4-4.2(1), (2), (4) and (5) and substituting the following:

- (1) In this Rule, “lawyer under investigation” means a lawyer who is the subject of
 - (a) an investigation under Part 3, Division 1, *[Complaints]* or
 - (b) a decision of the Discipline Committee under Rule 4-4(1)(a.2) or *(b) [Action on complaints]*.
- (2) A lawyer under investigation may not resign from membership in the Society without the consent of the Executive Director.
- (4) The Executive Director may direct that a lawyer under investigation who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.
- (5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: June 17, 2013
Subject: **Rule 2-4.1 – Application fee for practising certificate**

1. Under the current Rule 2-4.1, a retired or non-practising member seeking to resume practising law in BC can apply for release from his or her undertaking not to practise law and to obtain a practising certificate. While the Rule indicates that the applicant may apply in the prescribed form, it makes no mention of the fee that must be paid.
2. Schedule 1 of the Rules, which sets out the annual fees and other miscellaneous charges, such as this application fee, indicates that \$60 is payable for this transaction. The line item setting out that fee indicates that it relates to Rule 2-56, which was rescinded in 2006. That does not affect the requirement to pay the fee because the Benchers may set fees by resolution under section 24 of the *Legal Profession Act*. The error, however, is misleading and needs to be corrected.
3. The Act and Rules Committee recommends the attached draft amendment that would set out in Rule 2-4.1 the need to submit the application fee along with the application form. That is done with a simple reference to Schedule 1, which is how we have worded most other requirements to pay an application fee under the Rules. The rule reference in the Schedule itself is also corrected.
4. A suggested resolution is attached to effect the recommended changes.

Attachments: draft amendments
suggested resolution

JGH

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Release from undertaking

- 2-4.1** (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 or 2-4 by delivering to the Executive Director
- (a) an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society, and
- (b) the application fee specified in Schedule 1.
- (2) The Executive Director must not grant a release from undertaking under this Rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

SCHEDULE 1 – 2013 LAW SOCIETY FEES AND ASSESSMENTS

G. Change of status fees

1.	Application fee to become retired member (Rule 2-4(2)(b))	30.00
2.	Application fee to become non-practising member (Rule 2-3(1)(b))	60.00
3.	Application fee for non-practising or retired member applying for practising certificate (Rule 2- 56 <u>4.1(1)</u> (b))	60.00

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

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- (a) an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society, and
 - (b) the application fee specified in Schedule 1.
- (2) The Executive Director must not grant a release from undertaking under this Rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

SCHEDULE 1 – 2013 LAW SOCIETY FEES AND ASSESSMENTS

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|----|---|-------|
| 1. | Application fee to become retired member (Rule 2-4(2)(b)) | 30.00 |
| 2. | Application fee to become non-practising member (Rule 2-3(1)(b)) | 60.00 |
| 3. | Application fee for non-practising or retired member applying for practising certificate (Rule 2-4.1(1)(b)) | 60.00 |

APPLICATION FEE FOR PRACTISING CERTIFICATE

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 2-4.1(1) and substituting the following:

- 2-4.1 (1)** A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 or 2-4 by delivering to the Executive Director
- (a) an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society, and
 - (b) the application fee specified in Schedule 1.

2. By rescinding item G3 on Schedule 1 and substituting the following:

3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-4.1(1)(b)) 60.00

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: The Benchers
From: The Credentials Committee
Date: June 17, 2013
Subject: Recommendation for Amendment to Rule 2-27

Action requested

1. The Benchers are asked to consider amendments to Rule 2-27(4). Amendments to that rule are necessary to reflect the decision that the Benchers made in October 2011 to adopt the recommendations contained in the final report of the Federation of Law Societies of Canada's Common Law Degree Implementation Committee.

Background

2. Rule 2-27 addresses enrolment in the admission program. Subrule (3) sets out how an application is made for enrolment. An application must include proof of academic qualification.
3. Subrule (4) sets out what constitutes "academic qualification." The first description, set out in subrule (4)(a), states:

successful completion of the requirements for a bachelor of law or the equivalent degree from a common law faculty of law in a Canadian university.
4. Consequently, a graduate from *any* common law faculty of law in *any* Canadian university currently meets the requirements for "academic qualification" for admission to the admission program.
5. However, in October 2011, the Benchers approved the final report of the Federation of Law Societies of Canada's Common Law Degree Implementation Committee. That report contained recommendations to implement a uniform national requirement for entry to law society admission programs. The recommendations included the creation of a Federation Committee called the Canadian Common Law Program Approval Committee

(the “Approval Committee”), a body that would determine compliance with the national requirement. The Approval Committee would review current law school programs against the criteria that were agreed upon, and would review proposed new programs to determine whether, if implemented, they would comply with the national requirements. Only graduates of programs that met with the approval of the Approval Committee would meet the criteria for enrolment in law society admission programs.

6. The current Rule 2-27(4), of course, contains no limitation that would reflect any role for the Approval Committee. By accepting, by way of “academic qualification,” the graduate of any common law degree program in any Canadian university, the current rule is inconsistent with the decision made by the Benchers to adopt the report of the Common Law Degree Implementation Committee. Therefore if (for example) a new law school received government authorization to grant a bachelor of laws or equivalent degree, but that degree did not comply with the national requirements agreed to through the Federation processes, the graduate of that program would still meet the “academic qualification” requirement set out in our Rules. Equally, if an existing law school’s program did not meet with the national requirements, a graduate of that program under the current rules would also still meet the “academic qualification” requirement. In either case, a determination by the Approval Committee that the program was deficient with regard to the national standards would be legally irrelevant in relation to current requirements for admission to the Law Society of BC’s admission program.
7. In order to effect the policy decision made by the Benchers in October 2011 when they adopted the final report of the Common Law Degree Implementation Committee, an amendment to Rule 2-27(4) is necessary.

Discussion

8. While it is easy to say that a rule change is necessary in order to implement the Benchers’ policy decision, care needs to be given to making a change given the language of the *Legal Profession Act* and having regard to how much decision-making powers can be delegated by the Benchers to bodies outside the Law Society.
9. The Committee considered the issues relating to rules relating to academic qualification, focusing on the scope of a permissible rule (what the rule could address by way of qualifications) and the extent, if any, to which the Law Society could delegate determinations about what constitutes academic qualification requirements. The Committee was assisted in its consideration by an opinion that the Law Society obtained on various issues relating to academic qualification, which is appended to the *in camera* portion of the Benchers agenda.

Scope of a permissible rule

10. Section 19 of the *Legal Profession Act* requires the Benchers to be satisfied that a person is of good character and repute and fit to be a barrister and solicitor before that person can be enrolled in the admission program or called to the bar. Sections 20 and 21 give the Benchers the ability to establish requirements, including academic requirements, for enrolment of articulated students and for call and admission.
11. Section 3 sets out the object and duty of the Law Society, which is to uphold and protect the public interest in the administration of justice in a number of ways. Relevant to this issue, those methods include:
 - (a) preserving and protecting the rights and freedoms of all persons,
 - (b) ensuring the independence, integrity, honour and competence of lawyers,
 - (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.
12. The Committee concluded that the object and duty of the Law Society, combined with the statutory powers given it in sections 19 through 21 concerning credentials, give the Law Society a broad scope to determine how and by whom prospective lawyers will be trained and educated, because the focus of the enquiry is ultimately on issues such as independence, integrity, honour, professional responsibility, and the rights and freedoms of all persons, (all with a view to upholding the public interest in the administration of justice).
13. The current Federation Approval Committee process agreed to by the Benchers in October 2011 examines general academic requirements: areas of study, learning outcomes, academic requirements, and the like. Law schools must demonstrate that they teach to these requirements, although how they achieve them is left to the law school. The Federation describes this as follows¹:

...it (is) neither necessary nor appropriate to dictate how individual law schools choose to teach the required competencies. The only exception is the requirement for a stand-alone course on professional responsibility. The Federation and its member law societies recognize the importance of academic freedom and the value of innovation and diversity in the teaching of law. Enquiring into the teaching methods or philosophies of the programs would go beyond what is necessary to ensure that graduates have acquired the competencies specified in the national requirement.

¹ <http://www.flsc.ca/en/national-requirement-for-approving-canadian-common-law-degree-programs/>

In keeping with this approach, the mandate of the Approval Committee is limited to determining whether law degree programs meet the national requirement. In assessing whether a law program meets the national requirement, the Approval Committee considers whether the program offers a curriculum that includes the substantive knowledge of Canadian law specified in the national requirement. Beyond ensuring that the minimum admission requirements set out in the national requirement are observed, the Approval Committee makes no enquiries into the admission practices of either the law degree programs or the universities of which they are a part.

14. Given the extent to which the Committee is satisfied that the Benchers *could* pass a rule addressing “requirements,” including “academic requirements,” the sort of considerations that the Approval Committee examines seem to fall well within the range of what is permissible. Adopting those types of processes in rules defining what constitutes “academic qualification” requirements would be consistent with the Benchers’ powers.

Ability to Delegate

15. Determining that the Federation’s Approval Committee’s processes fall within the scope of what constitutes “requirements” for the purposes of ss. 20 and 21 of the Act leaves the question as to whether the Benchers can create a rule delegating the determination of such requirements to an outside body such as the Federation of Law Societies and, more specifically, its Approvals Committee.
16. The Committee considered the extent to which the Law Society could delegate this function. It was concerned that the benchers’ discretion could be fettered to an unacceptable degree if a complete delegation of the ultimate determination about what constitutes academic qualification requirements were delegated. The Committee believes that the power to establish requirements and procedures is too closely related to one of the Law Society’s central objects and duties – to establish standards and programs for the education, professional responsibility and competence of ... applicants for call and admission (as stated in s. 3(c) of the Act). Moreover, the Committee notes the statutory use of the word “establish” (used in both ss. 20 and 21), which it understands connotes the intention of creating a non-delegable power.
17. However, while the *ultimate* determination of the requirements for academic qualifications may not be delegated, that does not mean that there can be no role for the Federation. The Committee has concluded that the general rule against delegation of a power does not prevent the Law Society from relying on the expertise of another in establishing criteria. Nor would it prevent the delegation of the administration of those criteria or procedures to third parties. Finally, it would not prevent the Law Society from establishing criteria in consultation with a third party.

18. The Committee concluded that the Benchers could not create a rule that delegates to the Federation (through the Approvals Committee) the ability to make a determination that binds the Law Society concerning whether a particular faculty of law's program constitutes "academic qualification" requirements. The Committee concluded that the Benchers should create a rule that allows a body such as the Approvals Committee to administer a program that reviews particular programs against agreed-upon national standards, and makes decisions about whether the criteria are met.
19. The default provision would be that a decision by the Approvals Committee that an institution met the requirements would suffice for purposes in British Columbia. In order not to fetter the Benchers' ultimate discretion, however, the Benchers should retain the final discretion not to approve the institution, which would be a decision made by a majority of Benchers. That outcome would rarely happen, if ever, but the provision would leave the ultimate determination to the Benchers to ensure that their discretion was not fettered, as it would be the Benchers who were ultimately responsible for the protection of the public interest in the administration of justice in BC.
20. While the power to delegate the ultimate determination as to whether an institution had met the requirements might be permissible so long as the Benchers had themselves set the requirements, the safer course would be to retain the final decision to the Benchers, recognizing that the Benchers should not stray from the Federation's decision unless there is a very compelling public interest reason to do so. Essentially, the Benchers would have to have determined that the Federation had erred in its determination, in which case, if the final decision was not reserved to Benchers, one the Benchers would likely resolve to change any rules that bound them to such a decision, a decision that would be made by a 2/3 majority of Benchers.
21. In order to reflect the policy agreed to by the Benchers when the Report of the Common Law Degree Implementation Committee was approved, the rule would best be drafted by making reference to the Federation of Law Societies' role in the process.

Recommendation

22. In order to implement the Benchers' policy decision to adopt the report and recommendations of the Federation of Law Societies' Common Law Degree Implementation Committee, Rule 2-27(4) needs to be amended, as the current rule is inconsistent with the decision to adopt the recommendations in that report.
23. An amended rule should be prepared by the Act and Rules Committee that permits the Benchers to utilize the expertise of another body (such as the Federation's Approval Committee) in reviewing nationally agreed-upon criteria or requirements for university law programs. As the Benchers have approved a process that utilizes the Federation of Law Societies, the rule should reference the role of that organization in the process.

Resolution

24. To approve, in principle, the need to amend Rule 2-27(4) to reflect the decision that the Benchers made in October 2011 to adopt the recommendations contained in the final report of the Federation of Law Societies of Canada's Common Law Degree Implementation Committee, and to refer to the matter to the Act and Rules Committee to prepare a draft rule consistent with the contents of this memorandum.



Memo

To: Benchers
From: Deborah Armour
Date: June 17, 2013
Subject: Referrals to Lawyers Assistance Program by staff of the Law Society

The Lawyers Assistance Program of British Columbia (LAP) accepts referrals about lawyers who are exhibiting behaviours that are concerning. Once LAP receives two independent contacts, they approach the lawyer to offer assistance.

Staff of the Law Society, in particular the Professional Regulation Department, sometimes observe concerning behaviours in lawyers. The Professional Regulation Department and LAP believe that it would be in the interest of the public, the profession and lawyers who are struggling with various issues to have staff able to refer such lawyers to LAP.

The Board of LAP has indicated it would accept calls from Law Society staff concerning members of the legal profession who are, or might be, having difficulties. ([See attached letter from Derek LaCroix, QC of LAP.](#)) LAP would treat the staff member as any other member of the legal community, would maintain confidentiality and would not be reporting back to the staff member.

Derek LaCroix advises that the kind of information LAP would want includes the name, contact information and the nature of the issue. We do not believe that the provision of such information would contravene Law Society confidentiality rules. However, such contacts with LAP would amount to disclosure of personal information under the *Freedom of Information and Protection of Privacy Act* (FOIPPA). Section 33.1(1)(c) of FOIPPA appears to justify disclosure to LAP:

Disclosure inside or outside Canada

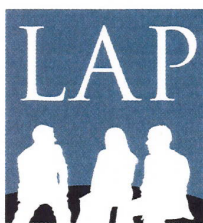
33.1 (1) A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:

- (c) **in accordance with an enactment of British Columbia**, other than this Act, or Canada that authorizes or requires its disclosure.
[emphasis added]

Law Society rules constitute enactments and therefore in order to comply with FOIPPA, we require a rule that allows us to disclose information to LAP.

Benchers are asked to indicate their approval in principle with staff being able to contact LAP regarding lawyers about whom there are concerns. If that approval is granted, the Act and Rules Committee will draft the necessary rule changes and bring those back before the Benchers at a subsequent meeting.

CLO Received

May 9, 2013
10:34amLAWYERS
ASSISTANCE
PROGRAM

May 7, 2013

The Law Society of British Columbia
8th Floor
845 Cambie Street
Vancouver, B.C.
V6B 4Z9

Attention: Deb Armour

Dear Deb,

I want to confirm that the Board of the LAPBC has agreed that we will accept calls from employees of the Law Society of B.C. concerning members of the legal profession who are, or might be, having difficulties. I want to confirm that these calls will be treated exactly the same as calls from any other person. They will be kept strictly confidential, we will not report back to the caller and generally we will need at least two independent calls before we do an outreach. All these calls are important as the caller never knows if there will be a second call or if they are the second call.

I appreciate your assistance in this regard. I hope this is of assistance to you. If you have any questions or would like to discuss this please contact me at 685-2131.

Yours truly,

Derek C. LaCroix QC
Executive Director
Lawyers Assistance Program of B.C.415-1080 Mainland Street • Vancouver, BC V6B 2T4
Tel: 604-685-2171 • Toll Free: 1-888-685-2171 • Fax: 604-685-2179
Email: info@lapbc.com • Website: www.lapbc.com

Memo

The Law Society
of British Columbia



To: Benchers
From: Bill McIntosh for the Executive Committee
Date: July 3, 2013
Subject: Law Society Representation on the 2013 QC Appointments Advisory Committee

1. Background

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

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

At its June 27 meeting the Executive Committee directed that this matter be added to the agenda for the July 12 Bencher meeting, with the Committee's usual recommendation.

2. Recommendation

The Executive Committee recommends that the Benchers appoint President Art Vertlieb, QC and First Vice-President Jan Lindsay, QC as the Law Society's representatives on the 2013 QC Appointments Advisory Committee.



Interim Report to Benchers

Legal Services Providers Task Force

Bruce LeRose, QC (Chair)
Ken Walker, QC (Vice-Chair)
Satwinder Bains
Godfrey Archbold
John Eastwood
Carmen Marolla
Kerry Simmons

July 12, 2013

Prepared for: Benchers

Prepared by: Michael Lucas and Doug Munro
Policy and Legal Services Department

Purpose: Information

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Task Force Mandate

1. The Task Force is to consider whether the Law Society ought to regulate only lawyers in British Columbia or whether it should regulate other legal service providers. In particular, the Benchers said the Task Force should:
 1. consider previous work at the Law Society on the regulation of non-lawyers;
 2. consider and report on legal service regulatory regimes in other jurisdictions where the regulation extends to non-lawyers;
 3. consider and report on the implications for Law Society operations on regulating non-lawyers;
 4. consider and report on whether it is in the public interest that non-lawyer legal service providers be regulated and if so, whether it is in the public interest that the Law Society should be that regulator;
 5. consider and report on whether the recognition and regulation of non-lawyer legal service providers would improve access to law-related services for the public;
 6. make a recommendation to the Benchers about whether the Law Society should continue to regulate only lawyers in British Columbia or whether it should take steps to implement the regulation of other legal service providers.

Task Force Process

2. The Task Force is comprised of Bruce LeRose, QC (Chair), Ken Walker QC (Vice-Chair), Satwinder Bains, Kerry Simmons, John Eastwood, Carmen Marolla, and Godfrey Archbold.
3. The Task Force has to date met six times.
4. The Task Force agreed to report to the Benchers in mid-2013 to provide a status report on its work.
5. Before providing the background giving rise to this report, the Task Force sets out some key points to assist in understanding its approach to its mandate.
6. The Task Force has addressed items 1 and 2 of its mandate, and its work on those items is detailed in this and the following section. The purpose of the consideration of items 1 and 2 is to assist in analyzing the remaining mandate items.
7. The main focus of the Task Force's work to date has been on items 4 and 5 of its mandate. In this interim report, the Task Force sets out its analytic process and some discussion of these subjects. The Task Force is of the view that these are concepts that need to be fleshed out in the consultation process in order to be refined into conclusions.
8. The Task Force has not yet analyzed item 3 of the mandate. As is detailed in the "Next Steps" section of this report, it is expected that this operational analysis can begin in the second half of 2013 and this analysis may well continue into 2014 and beyond and will, the Task Force expects, require significant resource allocation.
9. The mandate requires the Task Force to consider whether the Law Society ought to regulate just lawyers or also other legal service providers. In its discussion the Task Force recognized that the scope of what is meant by "other legal service providers" needs to be considered. The Task Force did not consider it realistic that the Law Society would regulate immigration consultants who are already regulated by the Canadian Society of Immigration Consultants in an area of federal jurisdiction, or the accounting profession with respect the circumstances where accountants provide accounting-related legal services. Instead the Task Force chose to focus on whether the Law Society should regulate notaries, paralegals and potentially other categories of similar legal service providers. The Task Force also considered that if an expanded regulatory role was to occur, future expansion might be possible if the public interest required it.

10. The Task Force has heard a wide range of views about how to define the concepts in this report and whether conclusions could be drawn based on the research and discussion to date. This report is written in a manner to suggest that the issues the Task Force is grappling with are open for discussion and are not hard and fast conclusions.

Purpose of Report

11. The purpose of this interim report is to provide the Benchers with an update on the work of the Task Force and to set out a plan for moving forward with the work of the Task Force to enable it to provide its final report by December 2013. The report provides an opportunity for the Benchers to comment on the work of the Task Force to date and to provide any suggestions as the Task Force moves forward with its work.

Background

12. At the 2011 Benchers' retreat, the Benchers debated whether the Law Society should seek to expand the scope of who it regulates. In particular the Benchers debated whether the Law Society should confine its regulatory responsibilities to regulating only lawyers, or whether it should expand its responsibilities to include regulating non-lawyers. The Benchers did not reach a consensus as to the best approach. Rather, it was determined that the scope of Law Society regulation was worth exploring in the next Strategic Plan.
13. When the Benchers adopted the current Strategic Plan, they established as Initiative 1-1(c): "Examine whether the Law Society should regulate just lawyers or whether it should regulate all legal service providers." The Task Force was constituted to carry out this work.
14. In establishing the Task Force the Benchers took several developments into account.
15. For over a decade, the Society of Notaries Public of British Columbia has sought to increase the scope of practice of notaries public in British Columbia. It has also approached government seeking to modernize the Notaries Act. Representatives of the Society of Notaries Public, the Law Society of British Columbia and the Canadian Bar Association (BC Branch) met with officials at the Ministry of Justice to discuss these proposals. While the Attorney General did not ultimately act on the Society of Notaries Public's request, the Attorney General expressed the hope that the Notaries Society and the Law Society could work through issues relating to expanding the scope of practice for notaries and a regulatory model for legal service providers that best protects the public while improving access to justice. Consequently, when the Task Force was appointed, representatives from both the CBA BC and the Society of Notaries Public were included on it.
16. While the discussions about the Notaries Society's requests was occurring with the government, the Law Society was moving forward with its own reforms for expanding the permitted roles of articulated students and paralegals. The Delivery of Legal Services Task Force proposed a model of expanded roles for paralegals under the existing model of lawyer supervision. The topic of paralegal credentialing and regulation was left open for future discussion. Consequently, a representative from the British Columbia Paralegal Association was also appointed to the Task Force. The British Columbia Paralegal Association supports the Law Society's exploration of expanding its regulatory role to perhaps include credentialing and regulating paralegals.
17. Lastly, Godfrey Archbold, President of the Land Title and Survey Authority (LTSA) of British Columbia, was appointed to the Task Force to represent a perspective not

aligned to any one profession's interest in the subject. Mr. Archbold has spent much of his career with the British Columbia provincial government in a senior management and executive capacity and in his capacity as President of the LTSA has worked extensively with lawyers and notaries.

18. The Task Force has compiled a large volume of research, including materials the Law Society has developed over the past 25 years relating to paralegals and the regulation of the practice of law, as well as statistics, surveys, reports and academic articles from other jurisdictions.
19. Of particular importance, as a starting point, was "Towards a New Regulatory Model, the report of the Futures Committee" (January 30, 2008). That report was considered by the Benchers and was instrumental to the development of the Law Society's Strategic Plan of 2009 - 2011. The report states:
 - i. The strategic policy question is whether the current regulatory arrangements, in which lawyers have the exclusive right to practise law, facilitate or present a barrier to access to legal services and access to justice, or would the public have greater access to justice if some non-lawyers are permitted to provide some legal services? An ancillary question is who would regulate non-lawyers who provide legal services? If those questions are examined in a systematic and principled way, then the Law Society can either defend the status quo or advocate for progressive change on public interest grounds...The discussions in 2007 proceeded on the premise that a complete reservation of the practice of law to lawyers cannot be maintained. (p. 2)*
20. The Task Force has also reviewed extensive core materials that set out the approach to regulation in British Columbia, Alberta, Ontario and Quebec. Jurisdictions outside of Canada that were considered include Washington State, Denmark and England and Wales.
21. The Task Force has engaged in some preliminary consultations to round out its analysis. This included meeting with Shelley Brown, Chair of the Canadian Institute of Chartered Accountants and co-chair of the Chartered Professional Accountants of Canada. Ms. Brown detailed the current initiative which is bringing the Chartered Accountants, Certified General Accountants and Certified Management Accountants under a single designation of Chartered Professional Accountants. The initiative seeks to harmonize standards of education and regulation and to streamline the number of regulatory bodies overseeing the delivery of accounting services. The initiative recognizes the evolution of the various accounting professions and how the public interest is better served by harmonizing standards. In addition, the professions

- recognized the increasingly global nature of their practices and that Canada would fall behind if it maintained a patchwork of regulatory standards in the accounting world.
22. The Task Force also reviewed the Law Society's unauthorized practice program and analyzed the current scope of practice and regulatory structure of notaries public in British Columbia.
 23. The Task Force has considered the decision by the Benchers to expand the scope of legal services that could be provided by paralegals as an important context for this report. The Task Force recognized that expanding the scope of practice of non-lawyers has always had two core elements: 1) the types of practices that non-lawyers should be permitted to perform; and 2) the type of regulation of non-lawyer legal service providers.
 24. The work of the Task Force builds upon past work at the Law Society that recognizes that an expansion of legal practices by non-lawyers is worth pursuing but requires developing regulatory standards that properly protect the public. Before those regulatory standards can be developed, it is essential to determine which body (or bodies) is best suited to engage in the regulation of legal service providers.

Discussion

25. As noted, the Task Force worked through mandate items 1 and 2 as part of its background research and analysis. After its review of the previous examinations of this subject at the Law Society, and after a review of selected regulatory regimes concerning the legal profession of other provinces and countries, the Task Force has focused its efforts on mandate items 4 and 5:

Mandate item 4

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

How should “the public interest” be defined?

26. To advance item 4 of the mandate, the Task Force attempted to arrive at a working definition of what constitutes “the public interest.”
27. The Task Force attempted to develop a methodology for defining the “public interest” that takes into consideration the expectations the public has of: 1) the legal service provider, 2) the regulator, 3) how complaints and discipline are dealt with, and 4) the rule of law. The objective was not to arrive at operational processes for giving effect to the public interest. The objective was to arrive at overarching public interest values from which a regulatory structure could be established to give effect to those values.
28. Ultimately, the Task Force came to the conclusion that the public interest is varied and context specific. The Task Force was concerned that any effort to arrive at a water-tight definition of the public interest would be futile and the Task Force would be unable to report to the Benchers in a timely manner if it sought to do so. The Task Force discussed the need for legal service providers to be competent and ethical. It also recognized the need for legal services to be accessible to the public. The Task Force did not, however, identify the deeper levels of what might constitute the “public” interest.
29. The Task Force considered that a single regulator, with a clear public interest mandate, may be able to play a role in educating the public as to the roles of legal service providers and the justice system, thereby improving public confidence in the administration of justice.
30. The Task Force plans to engage in consultations to arrive at a determination of whether a single regulator of other legal service providers is in the public interest.

Mandate item 5

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

31. Barriers to accessing legal services and access to justice are problems in every jurisdiction the Task Force considered in detail, regardless of the regulatory model that exists.
32. One of the challenges the Task Force faced in analyzing item 5 of the Mandate is that there are no empirical studies that analyze how forms of legal service regulation affect access to legal services and access to justice. The academic articles the Task Force reviewed confirmed the general lack of data and analysis on the relationship between regulation and access to legal services.
33. As a result, the Task Force considered statistics on the general wealth of Canadians to try and get a sense of the capacity of Canadians to pay for services. This included a review of materials from Statistics Canada as well as past survey material of the Law Society. The Task Force supplemented these materials with academic studies detailing the challenges with assessing the affordability of legal services, as well as research that suggested that cost was not the primary factor that determined whether one chose to seek legal assistance or not. The Task Force further considered whether capacity to afford services would be a real issue for anyone who ultimately did decide to seek the assistance of a legal professional.
34. The ability of the Task Force to analyze the affordability of legal services has been limited by the lack of data and methodologically sound studies. The Task Force recognized that the costs of delivering legal services or the capacity of the general public to pay for the services are not well understood. Also, because the services are delivered in a free market, the Task Force recognized that the cost of legal services is set at levels that the general market can afford, rather than what particular segments of the market can afford. In the legal profession, as in other professions or industries, this creates inequalities in the members of society to enjoy equal access to justice.
35. The Task Force also attempted to discern how regulation in general, and a single regulatory model in particular, might improve access to legal services.
36. The Task Force recognized that access to legal services is a concern for regulators of the legal profession and other legal system stakeholders and that changes are necessary if we hope to improve access to legal services. But the Task Force also recognized the tension between the desirability of empirical evidence to support change and the difficulty of ever changing if empirical evidence was a necessary prerequisite.

37. The Task Force discussed past initiatives of the Law Society, such as providing insurance coverage for pro bono legal services, modifying the rules of professional conduct to facilitate limited scope legal services, and expanding the roles of articulated students and paralegals to improve access to lower cost, competently delivered legal services. These initiatives removed regulatory barriers in the market for legal services.
38. The Task Force noted that at this point we do not know whether these initiatives have improved access to legal services. However, the common element of each of the initiatives is that they eliminate or modify regulatory barriers to services being provided. The Task Force also noted that regulation is necessary to ensure that standards are established and followed. In any regulatory model, therefore, there is a tension between attempting to maximize access to the regulated services while also providing assurances that services are provided by competent and ethical professionals.
39. The Task Force discussed the concept that a regulator can seek to facilitate greater access through policy reforms. It is then up to the market place to embrace or reject the reforms.
40. Regulatory reforms in other jurisdictions that the Task Force has examined are intended, in part, to maximize choice to the public in an effort to close the “access to justice gap”¹ but have recognized that this result is not certain. In Washington State, for example, the Supreme Court order that recognizing limited license legal technicians stated:
- No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.*
41. In Ontario, the Law Society of Upper Canada submitted its five year review of the new regulatory paradigm to the Attorney General of Ontario in 2012. The regulatory regime has largely been viewed as a success by the Law Society and the Ontario government. The report expresses the view that access to justice has been improved.
42. The Task Force recognizes that no one form of regulation has a monopoly on improving access to legal services or facilitating access to justice. In order for access to justice benefits to flow from a regulator it is necessary that the regulator have a

¹ “The difference between the level of legal assistance available and the level that is necessary to meet the needs of low-income Americans is the “justice gap”.” Legal Services Corporation, “Documenting the Justice Gap in America: *The Current Unmet Civil Legal Needs of Low-Income Americans* (September 2009).

commitment as part of its mandate and policy vision to improve the public's access to legal services. The regulator must then act on that vision. This is true whether one is dealing with a single regulator, or multiple regulators.

What are the possible advantages and disadvantages of a single regulator model?

43. Because the Task Force envisions the need for broad consultation on this project, it recognized the value in setting out some potential advantages and disadvantages of a single regulator model. The Task Force views these as propositions and not conclusions, as the conclusions will be informed by the feedback that results from the consultation process.
44. The Task Force identified the following possible advantages to a single regulator model:
- a. a single regulator can better align codes of conduct and the rules that govern the providers of legal services;
 - b. a single regulator can better collect data to determine what services each category of provider may offer the public, and may be better positioned to develop reforms to meet the public need in underserved areas;
 - c. a single regulator is more likely to achieve economies of scale;
 - d. a single regulator gives the public a “one-stop shop” for legal service regulation and can develop processes that assist the public in navigating the variety of services that are offered;
 - e. a single regulator carries greater weight when negotiating with other stakeholders, such as government and the courts, and is more likely to offer a greater range of solutions to the problems stakeholders face than a multiplicity of regulatory bodies;
 - f. a single regulator provides a stable platform for the regulation and expansion of needed legal services; and
 - g. a single regulator can clarify the separation between the regulator and various member advocacy bodies.
45. The Task Force identified the following possible disadvantages to the single regulator model:
- a. a single regulator may not generate as much innovation as a multiplicity of regulators as they are not all bound to a common governance and management scheme;

- b. a single regulator, if not properly structured, can lead to second class licensees – and this could lead to a stifling of reform initiatives. Consider the efforts of the notaries to expand their scope of practice. At present, the notaries can make such petitions directly to government. Under a single regulatory model, the Benchers would have to champion such reforms;
- c. a single regulator, and the scope of practices of the service providers it regulates, may expose the regulator to greater risk; and
- d. a single regulator of multiple legal service providers may generate more potential conflicts of interest.

Methodology and Next Steps

46. The methodology in the attached Appendix 1 was prepared to aid the Task Force in analyzing whether the Law Society should regulate legal service providers or maintain the status quo. The Task Force proposes to use this methodology as a framework for future consultation on the issues.
47. The Task Force recognizes the importance of a broad-based consultation given that the issue under consideration is whether it should become the regulator of other legal service providers. It notes, for example, that in the case of the regulatory reforms the three accounting professions are undertaking, each profession engaged in a vote on whether to proceed with efforts to harmonize education and regulatory standards. The vote resulted in approximately 80% of the professionals being in favour of moving forward with the reform initiative. There are, however, obvious differences between the national efforts of three large accounting professions to harmonize regulation and the question of whether the Law Society ought to regulate all legal service providers in British Columbia.
48. The Task Force believes that, at a minimum, consultation ought to include the Ministry of Justice, the Courts, the Council of Administrative Tribunals, lawyers (through for example the Canadian Bar Association, the Trial Lawyers Association, and local bar associations), notaries, paralegals, the Law Foundation, Access Pro Bono, and various groups through which direct input could be obtained from members of the public who need access to legal services.
49. The Task Force does not intend to consult with other groups, such as accountants and immigration consultants at this time. However, The Task Force expects that at some future point the Law Society should enter into discussions with the regulators of the accounting profession to settle on best practices for accountants who are giving legal advice in discrete areas to ensure they are not crossing the line into areas of practice for which they are not qualified. The Task Force also believes there is value in discussing best practices and standards with the Canadian Society of Immigration Consultants at some future date.
50. As noted earlier, the Task Force did not address the operational question in its mandate (item 3) because item 3 presupposes both a conclusion that the Benchers would move forward with consultations on the issues under discussion and what the results of those consultations would be. The Benchers need to be aware that item 3 has the potential to be a large, time-intensive project that will require allocation of staff resources and may stretch through 2014 and perhaps beyond.

51. The Task Force proposes the following consultation and communication process to set the groundwork for consultation in the late summer and fall of 2013:
- a. A copy of this Interim Report along with the consultation questions will be posted on the Law Society's website
 - b. A copy of the Interim Report with the consultation questions will be delivered to the groups identified in paragraph 48 above to elicit comment and discussion.
 - c. Meetings with the leadership of the groups identified will be organized so that in-person consultation on the questions can take place. The Task Force believes that in-person consultation is important in this process, and that merely requesting written responses from the groups to the questions circulated would not suffice.
52. The Task Force expects that the information gathered from these consultations together with the work it has already completed will allow it to make its final report to the Benchers in December 2013.

Appendix 1: Methodology for Analyzing the Mandate

1. Is it in the public interest for the Law Society to regulate “all” legal services providers?
 - a. why / why not?
2. Who should the Law Society regulate?
 - a. Why / why not?
 - b. On what basis do we include certain legal service providers?
 - c. On what basis do we exclude certain legal service providers?
3. Does a single regulator model give the public greater choice?
 - a. How does it improve choice?
 - b. How does it impede choice?
 - c. Consider:
 - i. Impacts on quantity of services that are available;
 - ii. Impacts on quality of services that are available;
 - iii. How the model protects the public;
 - iv. What theoretical policy options are available to a single legal service; regulator that are in the public interest and are not available when multiple regulators are used.
4. What evidence is there to support (or refute) a hypothesis that a single regulator is in the public interest?
5. Is there potentially relevant evidence we are missing?
 - a. Is it possible to obtain this evidence? How? Is it worth trying to do so?
6. Synthesis of discussion / analysis / weighing the options.
7. Conclusion.

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² The Task Force reviewed materials on regulation of the various legal professions in England and Wales; as a starting point, see http://www.legalservicesboard.org.uk/can_we_help/approved_regulators/index.htm. The Task Force also reviewed materials on regulation of health care professionals in British Columbia, available at <http://www.health.gov.bc.ca/professional-regulation/>.



Law Society Funding of Pro Bono

Access to Legal Services Advisory Committee

Bill Maclagan, Chair
David Mossop, QC, Vice-Chair
Thomas Fellhauer
Richard Stewart, QC
Carol Hickman, QC, Life Bencher
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MaryAnn Reinhardt
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July 12, 2013

Prepared for: Benchers

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Purpose: Decision

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Committee Process

1. The topic of Law Society contributions to pro bono legal services was discussed by the Committee in 2012 and 2013. In 2012 the Committee engaged in a preliminary discussion and requested that the Benchers direct the 2013 Committee to develop a position on the appropriateness of the current level of funding for the Benchers to consider in the spring.
2. In 2013 the Committee continued its discussion. It heard from Wayne Robertson, QC, Executive Director of the Law Foundation of British Columbia, Jamie Maclaren, Executive Director of Access Pro Bono. It reviewed past decisions of various committees, task forces, and the Benchers with respect to pro bono and analyzed them in the current framework of pro bono legal services in British Columbia.

Resolution

3. The Benchers are being asked to adopt the following:
- a. **Recommendation 1:** The “Principles for the Law Society’s Contributions to Pro Bono” (**Appendix**) be adopted as the guiding principles for future decisions regarding the Law Society’s financial support for pro bono organizations and pro bono activity.
 - b. **Recommendation 2:** The Benchers direct the Finance Committee to recommend an annual fee to the Benchers that includes an increase in the Law Society’s contribution to the Law Foundation and that the Finance Committee take into account the Principles for the Law Society’s Contributions to Pro Bono in doing so.
 - c. **Recommendation 3:** The Benchers direct the Finance Committee to consider in recommending an annual fee that includes the following:
 - i. Whether to replace the current percentage approach to the contribution to the Law Foundation with a definite amount; and
 - ii. Providing to the Law Foundation an annual amount up to \$340,000 minus any in-kind funding the Law Society provides to pro bono organizations, such as the \$47,200 rental subsidy provided to Access Pro Bono.
 - d. **Recommendation 4:** The Law Society direct the Law Foundation to allocate the difference between the current level of funding the Law Society sends to the Law Foundation and the amount the Finance Committee might recommend be included in the annual fee such that 50% of that amount increases the level of pro bono funding and 50% of that amount goes to a newly created Access to Justice Funding.
 - e. **Recommendation 5:** That the Law Society explore with the Law Foundation a process in which annual meetings take place to discuss the funding the Law Society provides to the Law Foundation to distribute to pro bono organizations as well as the Access to Justice Funding. The purpose of the meeting is to provide the organizations an opportunity to discuss worthwhile areas of focus for the funding and to explore the appropriateness of current levels of funding on an ongoing basis.
 - f. **Recommendation 6:** The Benchers direct the Access to Legal Services Advisory Committee, as part of its continuing discussion of Strategic Plan Initiative 2-1(a) *consider ways to improve the affordability of legal services: identify and consider new initiatives for improved access to legal services*, to report in December 2013 with recommendations for the Law Foundation as to where Access to Justice Funding might be best directed.

Background

4. At the December 2012 Benchers meeting, the Benchers decided that:
 - a. “In 2013 the Access to Legal Services Advisory Committee will continue to consider whether the current 1% allocation of general fees to support pro bono is appropriate and report to the Benchers in time for the Benchers to make a policy decision prior to the Finance Committee completing its budgeting process for the 2014 budget.”
5. The Benchers decision was the result of the work the Committee engaged in throughout 2012 as part of Initiative 2-1(a) of the Strategic Plan: “Consider ways to improve the affordability of legal services: identify and consider new initiatives for improved access to legal services.”
6. In 2012 the Committee began exploring whether the current level of funding the Law Society provides to support pro bono legal services is appropriate. Recognizing that the Committee structure might change in 2013, the 2012 Committee requested that the Benchers direct the Committee to continue its analysis and report in time for the Benchers to determine whether to task the Finance Committee with modifying the current level of funding.
7. In February 2013 the Committee heard from Jamie Maclaren, Executive Director of Access Pro Bono. The meeting with Mr. Maclaren focused on both the current and potential financial needs of Access Pro Bono, as well as an overview of the organized pro bono landscape in British Columbia.
8. In April and June 2013 the Committee heard from Wayne Robertson, QC, Executive Director of the Law Foundation of British Columbia. Mr. Robertson provided an overview of pro bono funding in British Columbia over the past decade as well as details on the growth of the Law Society contributions to pro bono. At the June meeting Mr. Robertson provided greater perspectives regarding the need for funding and what the Law Foundation might do if additional pro bono funding were to be provided.
9. In addition to these targeted consultations, the Committee also reviewed a range of materials on pro bono and legal needs. This included considering the report of the Pro Bono Funding Task Force (2006) and related minutes, which led to the present model of funding pro bono organizations by delivering 1% of the general fee to the Law Foundation for distribution (**Attachment 1**).
10. In November 2006 the Benchers adopted the report of the Pro Bono Funding Task Force. That report recommended a \$100,000 a year target level of funding for pro bono organizations in British Columbia. The amount was set at 1% of the general practice fee which is directed to the Law Foundation of British Columbia for distribution in accordance with the terms of reference set out in the letter of Mr. Robertson dated February 7, 2007 (**Attachment 2**).

11. The Pro Bono Funding Task Force found that funding pro bono is consistent with the Law Society's mandate in s. 3 of the *Legal Profession Act*. In adopting the report the Benchers also recognized that directing the funding to the Law Foundation also accomplished the goal of removing the Benchers from needing to consider requests for funding from pro bono agencies.
12. In 2007 the 1% funding allocation resulted in \$97,344 being sent to the Law Foundation to support pro bono. In 2013 the Law Society is sending \$169,840 to the Law Foundation. In addition, the Law Society is providing rental space to Access Pro Bono at 845 Cambie Street at a reduction from market rents of \$47,200. This makes the total 2013 financial contributions of the Law Society to support pro bono \$217,040. The Committee is of the view that in-kind contributions are an important part of how the Law Society supports pro bono legal services.
13. Since 2006, much has changed in the legal service landscape in British Columbia. Significant to the matter before the Benchers is the merger of the Western Canada Society to Access Justice and Pro Bono Law BC in 2010. The merged entity is Access Pro Bono. In November 2012 Salvation Army Pro Bono shut down its operation. It has since re-opened in a reduced and decentralized manner. The Multiple Sclerosis Society Volunteer Advocacy Program also provides targeted pro bono. Pro Bono Students Canada is also active in British Columbia. At present, the Law Foundation's funding of pro bono, which includes the funds received from the Law Society, goes to Access Pro Bono and the multiple Sclerosis Society Volunteer Advocacy Program and Pro Bono Students Canada.
14. Since 2006 we have also seen a global economic crisis, and prolonged low interest rates which affect the Law Foundation's funding model. Over that time the number of self-represented litigants continued to rise as has the demand for pro bono legal services. As the Benchers are aware, if the low interest rates persist, the Law Foundation will be faced with difficult decisions regarding its ongoing funding of various programs.
15. In 2009 the Benchers adopted the first Strategic Plan. Since then the Goal of finding ways to increase access to legal services, including considering ways to reduce financial barriers to accessing legal services, has been a core policy concern for the Benchers. This shift in organizational policy is relevant to an assessment of what the Law Society's commitment to pro bono should be.
16. It is in this context that the Committee reviewed the appropriateness of the current 1% funding policy.

Discussion of the Issue

17. The Committee developed a set of principles in order to answer whether the current level of pro bono funding provided by the Law Society is appropriate, and to provide a method going forward to address the issue of how the Law Society contributes to pro bono (**Appendix 1**). The Committee seeks the adoption of these principles by the Benchers.
18. The Committee is of the view that having principles for why the Law Society provides financial contributions to pro bono is important, as is articulating the general object of supporting pro bono. Principles can articulate the objects the Law Society seeks to achieve and establish some parameters for funding. Principles can also inform future consideration of this issue. The attached principles are designed to better accomplish these goals.
19. As a starting point, the Committee considered whether it is within the Law Society’s mandate to provide financial contributions to support pro bono. As noted, the Pro Bono Funding Task Force concluded that funding pro bono is consistent with s. 3 of the *Legal Profession Act*. No reason for this finding was articulated, however, so the Committee felt it was important to start at first principles and a re-examination of this question.
20. Sub-section 4(5) of the Act permits the Benchers to “use the fees, assessment and other funds of the society, including funds previously collected or designated for a special purpose before this Act came into force, for the purposes of the society.” The Committee took this to mean that if funding pro bono is consistent with the purposes of the Society, the Benchers may use fees and assessments for that purpose.
21. Section 3 of the *Legal Profession Act* states:
It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
 - a. Preserving and protecting the rights and freedoms of all persons,
 - b. Ensuring the independence, integrity, honour and competence of lawyers,
 - c. Establishing standards and programs for the education, professional responsibility and competence of lawyers and of applications for call and admission,
 - d. Regulating the practice of law, and
 - e. Supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practice law in British Columbia in fulfilling their duties in the practice of law.

22. The Committee is of the view that ss. 3(a) and (b) best support the concept of funding pro bono. The Benchers have recognized on a number of occasions, be it in reports of the Access to Legal Services Committee or its predecessor, the work of the Delivery of Legal Services Task Force, the Unbundling of Legal Services Task Force, or the inaugural and the current Strategic Plans, that many people face barriers to enjoying equal access to the services of lawyers. Financial barriers to equal access are part of the challenge people face. The Benchers have also recognized through these initiatives that the rights and freedoms of people are often best ensured when people have access to lawyers (or legal services provided under the supervision of lawyers). Pro bono legal services are part of a continuum of solutions to the access to justice challenges that pervade society. The Committee is of the view that the extensive policy work the Law Society has undertaken in the area of access to justice in the past decade supports the finding of the Pro Bono Funding Task Force that funding pro bono activities, or activities that support lawyers who carry out pro bono activities, is consistent with s. 3 of the *Legal Profession Act*.
23. The next issue the Committee considered was whether funding pro bono organizations is consistent with the Benchers' Policy on funding external organizations. The relevant provision of that policy is Section K "Funding and Donations:
- a. (1) Funding outside bodies: It is the Benchers' policy that the Law society will consider funding externally operated projects or programs only when the Law Society specifically sponsored or participated in the creation of the project or program.
24. In April 1999 when the Benchers first decided to direct \$3,000 to support a one-time funding request of Salvation Army Pro Bono, and again in the Pro Bono Funding Task Force report, reference was made to the Benchers' Policy. In each instance the Benchers found that providing funding was consistent with the policy, but the exact reasoning for how that might be the case was not explained. The Committee analyzed the policy to determine whether funding is, in fact, consistent. The answer is that in some cases it is and in some cases it is not.
25. The Benchers are not bound by the funding policy, but it is something that should be considered and used as a factor when making decisions about providing funding to external organizations. The policy seeks to limit the Law Society to providing funds to organizations and programs that the Law Society had a role in creating. This policy recognizes the principle that the Law Society is not a funding agency, it is a regulatory body and there are limits to the programs and organizations it should provide economic support to.
26. In the case of the funding the Law Society provides to the Law Foundation to support pro bono, the monies that are directed to Access Pro Bono are consistent with the policy to the extent that the Law Society was a co-founder of Pro Bono Law BC, which merged with Western Canada Society to Access Justice to form Access Pro Bono. Monies that are directed to other organizations might not be consistent with the funding policy.

27. The fact that some of the monies that the Law Society provides to the Law Foundation to support pro bono goes to organizations that the Law Society did not help develop does not mean that it is improper to send the money to the Law Foundation. Nor is it improper for the Law Foundation to disperse the funds in a manner consistent with the terms of Mr. Robertson's February 7, 2007 letter. The key factor is whether the use of the money by the Law Foundation is consistent with the ability of the Benchers to use members' money pursuant to s. 4(5) of the Act. The Committee is of the view that the distribution of the moneys to support pro bono is consistent with the authority in s. 4(5) of the Act as it advances purposes of the society pursuant to s. 3 of the Act.
28. In 2013 the Law Society provides \$169,840 to the Law Foundation to support pro bono organizations.¹ The Law Foundation provides Access Pro Bono \$365,000 (which includes contributions from the Law Society) as well as a supplemental grant of \$43,200. In 2013 the Law Foundation will provide \$534,000 to pro bono organizations, an increase of 44% since 2006. Since the inception of Law Society funding of pro bono, the Law Society's contribution has increased 74% (124% once one includes in-kind rental support to Access Pro Bono). This confirmed that the funding model has exceeded the target level of funding set by the Pro Bono Funding Task Force. While this information is important, it does not answer the question of whether that level (or the current level) is appropriate.
29. In order to develop its analysis, the Committee considered the advantages and disadvantages of funding pro bono.
30. The advantages of funding pro bono include:
- by supporting non-profit organizations that facilitate pro bono, the pro bono efforts of the profession can have a broader reach;
 - administrative tasks can be shifted from the lawyers providing pro bono to coordinating organizations;
 - the pro bono organizations can have better outreach and information for the public, raising the profile of pro bono and improving access in communities throughout British Columbia;
 - pro bono improves access to legal services for people who cannot afford a lawyer – this can improve the public confidence in the administration of justice;
 - pro bono allows the profession to better serve the public and not merely those who can afford to consume legal services;
 - the public perception of the legal profession can be improved through the delivery of pro bono; and, arguably

¹ This does not include the in-kind rent subsidy noted above.

- providing pro bono gives the profession greater credibility when it comes to discussing how to improve access to justice (i.e. it demonstrates a commitment to being part of the solution).

31. Some of the disadvantages include:

- Unless principled criteria are established that identify the object of the funding and how to measure how much funding is required, the amount of funding will be arbitrary. Arbitrary funding decisions can be attacked on the basis of principle but also create the problem that future requests for increased funding are almost guaranteed;
- There exists a line of reasoning that the more the profession takes the responsibility to fund pro bono, the greater room it gives government to reduce funding in this area; it can convert a societal responsibility to a profession's responsibility;
- We are without evidence that directing funds to pro bono best achieves the public interest objects for which the funds are directed. At the same time, we are without evidence that directing funds to pro bono does not best achieve these objects. The subjectivity that clouds the analysis makes it very difficult to identify an approach that is not subject to criticism for being too much or too little;
- The underlying social problems that give rise to the need for pro bono are not solved through the provision of pro bono. To the extent that these services are at best a small part of a much larger problem which requires solutions beyond the efforts of any one profession, caution is necessary in requiring lawyers to pay to support pro bono.

32. The Committee is of the view that the advantages of supporting pro bono outweigh the disadvantages of providing support. The disadvantages, however, were informative of the approach to the draft principles the Committee created.

33. Next, the Committee considered the ethical framework of pro bono.

34. In 2011 the Committee referred to the Ethics Committee the question of whether pro bono is a professional responsibility or a tradition that is to be encouraged. The purpose of the referral was to better understand the options that are available to the Law Society to foster pro bono. If pro bono were found to be a professional responsibility, certain options would be available that are less appropriate if pro bono is a just a tradition.

35. The Ethics Committee concluded pro bono is a tradition that is to be encouraged, and not a professional responsibility. The Ethics Committee's finding influenced the Committee's discussion in 2012 of whether pro bono should be mandatory, and it was also relevant to the analysis of what level of funding is appropriate. This is consistent with the members' resolution (as amended) that was adopted at the 1998 Annual General Meeting that: "Every member be encouraged to participate in a *pro bono* program." The original members' resolution had suggested that "Every member be encouraged to participate in the *pro bono* program by giving either time or money in proportion to his or her net earnings."
36. If one views a mandatory fee to fund pro bono as a type of mandatory pro bono, then it is necessary to consider how that is consistent with the decision of the Ethics Committee (or the resolution of the 1998 AGM). The Committee discussed this concept and concluded that while pro bono is neither a professional responsibility nor mandatory; it is to be strongly encouraged. It is more than mere semantics to modify the 1998 AGM resolution of "encouraging" pro bono to read "strongly encouraging" pro bono.
37. Part of how the Law Society can strongly encourage and support pro bono is to find ways to facilitate the delivery of pro bono legal advice. The Law Society has a range of options in this regard: it can develop policy and rules changes to facilitate pro bono (such as the rules extending insurance coverage to retired and non-practicing members who provide pro bono) to the changes to the conflicts of interest rules to support pro bono at not for profit and court-annexed clinic models. Another thing the Law Society can do is provide funding to support pro bono organizations that coordinate and provide critical infrastructure that leverages the capacity of the profession to reach the public and provide pro bono. The authority to spend money under s. 4(5) of the Act is not confined to matters that solely support the discharge of the professional responsibilities of lawyers; it includes broader public interest objectives that are contained in s. 3 of the Act.
38. The Committee weighed the various factors and concluded that the benefits of providing financial support to pro bono outweigh the detriments, provided principles for financial support can be adopted.

39. Having established the foundation of its analysis, the Committee then developed the appended principles. It did so over several meetings, refining the draft until it reached consensus. The principles are self-explanatory and are, therefore, not re-explained here. They arise from the Committee's conclusion that pro bono is to be strongly encouraged; that providing some funding for pro bono is consistent with the Law Society's public interest mandate; that despite that mandate, the Law Society is not a funding agency and therefore some limits must exist to the amount of funding the Law Society contributes; that guiding principles are required to arrive at a quantum that is reasonable in the circumstances and amounts to a meaningful contribution by the profession, recognizing the many hours of pro bono the profession already provides. In determining what constitutes a reasonable quantum, reference should be given to input from the Law Foundation, which the Committee feels is best situated to inform the Benchers as to the necessity to modify the level of funding from time to time on the basis of evidence. The principles are a blend of value statements and process, designed to give greater transparency to the funding process but also to better codify the concept the Benchers identified in 2006 that it ought to be the Law Foundation that determines how to distribute funds to support pro bono in British Columbia.
40. Having worked out the principles, the Committee then sought input from the Law Foundation (consistent with principle #6) as to whether the current quantum of funding by the Law Society is appropriate or ought to be modified.
41. The conversation with Mr. Robertson about quantum of funding included consideration of how the Law Foundation currently funds pro bono organizations, the potential for further growth of the profession's participation in pro bono, current financial challenges the Law Foundation faces due to the low interest rate environment, where any increase in funding might be directed, and potential ways of determining what constitutes an appropriate target level of funding.
42. The conversation reinforced the good work that is being done by organizations like Access Pro Bono, Pro Bono Students Canada and the Multiple Sclerosis Society to provide pro bono legal services to British Columbians. The Committee discussed the possibility that participation in organized pro bono by the profession still has room for growth, but likely not in an exponential manner. Greater growth in hours might occur, than in numbers of lawyers providing organized pro bono. Increased funding might also be needed to expand pro bono opportunities for students.
43. Significant to the discussion, and to the Committee's earlier discussion with Mr. Maclaren, was the sharp increase in demand for pro bono services over the past few years. The increase in number of clients served by pro bono organizations year over year from 2012-2013 is in the neighbourhood of 33% and early projections in 2013 suggest those numbers will continue to increase. The current level of funding is inadequate to meet the demand and as demand is likely to grow, organizations that provide pro bono will become more and more stretched.

44. While unmet need is a compelling indicator the Committee tempered its consideration against the recognition that need always outstrips the capacity of the profession to provide funding. The attached Principles recognize this fact. The Committee also discussed the risk of mission creep, whereby pro bono organizations might expand into non-traditional areas of legal services other than providing pure legal advice and information to clients. The Committee discussed the value in the Law Society and the Law Foundation establishing an annual meeting process in which the funding could be discussed, both to ensure the quantum of funding remains appropriate but also to ensure funding is being directed to the best sources.
45. The Committee discussed the level of funding other Law Societies provide to pro bono, including consideration of the per member cost for such funding. The Committee discussed the importance of the Law Society keeping pace with leaders in supporting access to legal services. While the Committee did not feel the Benchers had to commit to linking the Law Society's funding to that of any other organization, consideration of other benchmarks was relevant to the discussion.
46. After discussing funding with Mr. Robertson the Committee concluded that the lawyers of British Columbia and the Law Society must show leadership in the area of funding pro bono. Our funding should be at or near the top of what similar organizations provide. The best comparator of funding is the Law Society of Alberta. The Law Society of Alberta provides \$365,000 of funding per year to support pro bono. The Law Society of British Columbia currently provides \$169,840 to the Law Foundation to support pro bono, plus \$47,200 in rental subsidy to Access Pro Bono. The Alberta model differs from the British Columbia model in that the total amount of the Law Society of Alberta funding is directed to Pro Bono Law Alberta and funding runs on a three year model.² The British Columbia approach directs 1% of the general fee to the Law Foundation to distribute to pro bono organizations, separate and apart from any in-kind pro bono support the Law Society provides.
47. The Committee concluded that the Law Society's level of funding ought to increase to an amount closer to the level provided by the Law Society of Alberta, but needed to take into account the value of allocating some of the increased funding to access to justice projects other than pro bono.
48. In discussing the principles behind funding pro bono and creating a sub-category of funding to improve access to justice and access to legal services, the Committee considered how much the access to justice landscape has changed since the Benchers struck the original Access to Justice Committee in 1998. That decision by the Benchers recognized the growing importance of the Law Society to develop policy relating to access to justice and to stay on top of emerging trends. Early efforts were largely focused on legal aid but in the early 2000's pro bono took on an increasing role.

² In other words, any change to the funding gives Pro Bono Law Alberta a three year heads-up on future budget.

49. When the Benchers adopted the current pro bono funding model in 2006 the Law Society was developing a more detailed understanding of the importance of organized pro bono in the access to justice landscape. Since that time, access to legal services (as a means of achieving access to justice) has taken on increased prominence at the Law Society. The Benchers have led reforms in unbundled legal services as well as expanding the roles of articulated students and paralegals. All of this work has arisen out of the recognition of growing challenges and need regarding the public's access to legal services.
50. In 2009 the Benchers adopted the Law Society's first Strategic Plan, in which improving access to legal services was made a key goal. That commitment was carried over to the current Strategic Plan. The Strategic Plans represent a commitment, set by the governors of the Law Society, to place improving access to legal services at the forefront of the society focus.
51. In short, the Benchers have embraced the role of the Law Society in being a leader in access to justice reform. The prominence the society places on these issues in 2013 is greater and better understood than it was when the initial funding decision was made in 2006. That fact, in addition to all the other analysis the Committee engaged in, strongly supports the need to increase the society's commitment to funding pro bono. But what the Benchers have also learned with regard to access to justice is that there is not a one-size fits all solution.
52. Although the Committee believes funding for pro bono organizations needs to be increased, it is important to situate that need within the broader access to legal services context. The access to justice policy objectives of the society that might merit funding are broader than merely funding pro bono. As the appended principles recognize, however, while the Law Society may provide funding to support initiatives that are consistent with its mandate, it is not a funding organization. This requires recognizing that from time to time funding may be needed for access to justice projects other than pro bono, but that limits to the amount of funding are required.
53. The need to provide financial support for pro bono organizations and to develop access to justice initiatives must be tempered against the realization that deep-rooted societal problems that can cause people to have difficulty accessing justice cannot be solved by lawyers and law societies alone. Consequently, reasonable limits must be placed on the degree of financial contribution lawyers are required to provide to facilitate access to justice solutions. While the Committee recommends the current level of funding for pro bono organizations ought to be increased, it also believes it is important to provide some funding to support other, equally worthwhile access to justice initiatives.
54. While it is important to increase the financial contributions for access to justice and pro bono, the Committee believes it is also important not to embark on an open-ended and ill-defined agenda of social reform paid for through the practicing fees of lawyers. The Principles for the Law Society's Contributions to Pro Bono, coupled with adopting a process of meeting with the Law Foundation to discuss funding initiatives, guard against this risk.
55. The Committee concluded that:

- a. Application of the Principles for the Law Society's Contributions to Pro Bono and an analysis of need suggest the level of funding the Law Society provides to the Law Foundation to support organized pro bono ought to be increased;
- b. The access to legal services and access to justice needs of the public are best served by a broad range of solutions, so some portion of the money the Law Society directs to the Law Foundation ought to support access to justice and legal services initiatives and programs other than pro bono;
- c. In-kind support for pro bono organizations should be considered part of the financial support the Law Society provides to pro bono organizations.

56. In light of its analysis, the Committee concluded that the amount of funding for pro bono organizations and to support access to justice initiatives ought to meet the following goals:

- a. The 1% general fee model should be replaced by a flat fee model that takes into account the Principles for the Law Society's Contributions to Pro Bono. The current 1% amount (\$169,840) ought to be increased to \$340,000 to bring the Law Society more in line with the funding level in Alberta and give effect to the needs based changes highlighted in this report. Application of the attached principles will allow this amount to grow based on Consumer Price Index and allows a review mechanism based on evidence from the Law Foundation as to need. The approved amount should not be a percentage of the general fee which then necessarily increases or decreases on the basis of other funding decision which may have nothing to do with pro bono or access to justice issues;
- b. The in-kind rental subsidy for Access Pro Bono of \$47,200 should be considered part of the \$340,000 total. The difference (\$292,800) should be forwarded to the Law Foundation ($\$340,000 - \$47,200 = \$292,800$);
- c. The **difference** between the current level of funding provided to the Law Foundation and the increased level of funding provided to the Law Foundation is to be divided roughly equally, with 50% going to increase funding to pro bono organizations and 50% going to Access to Justice Funding. The 50% to a certain extent being based n the increased need for pro bono which has been shown by increased clients of Access Pro Bono and other providers. The particulars of this are to be worked out with the Law Foundation in an updated memorandum of understanding that will replace Mr. Robertson's letter of February 7, 2007;
- d. We recommend funding be reviewed with the Law Foundation at least every three years.

- 57. The Committee recognizes and stresses that it is the role of the Finance Committee to determine how to give effect to the policy object of increasing funding. The amount and mechanism of a fee increase will be determined by the Finance Committee and the suggested quantum and approach in this report is not prescriptive, it is meant to reflect a policy objective. The Finance Committee, as part of its fee setting process will recommend a fee to the Benchers later in 2013.**
58. The Committee also recognizes that despite using Alberta as a comparator for pro bono funding it is suggesting a model that sees a percentage of the increased funding go to Access to Justice Funding, whereas the Alberta model goes to Pro Bono Law Alberta. To be clear, when the Committee recommends that the 2014 level of funding ought to target \$340,000 it does not mean that is the appropriate level of funding for pro bono organizations. It is recommending a universal level of access to justice funding that includes financial support to pro bono organizations, in-kind support to pro bono organizations and a meaningful level of support to access to justice and access to legal services initiatives that may or may not involve pro bono. At present, the vast majority of that contribution supports pro bono. The model needs to be flexible enough to permit the Benchers to identify different priorities in the future based on the public interest.
59. The Committee heard about the financial needs of Access Pro Bono. In its discussions with Mr. Robertson the Committee was advised that any increased funding for pro bono would likely be directed primarily to both Access Pro Bono and Pro Bono Students Canada, with the larger distribution to the former. This may still result in Access Pro Bono not having enough funding to do all it wants to do in the absence of finding other sources of funding. As the attached principles seek to recognize, however, the Law Society cannot meet the funding needs of all organizations and the Committee continues to believe that a general funding commitment to pro bono and access to justice, distributed by the Law Foundation to organizations it feels are most deserving of the funds, remains the proper model. This reality should not be taken to mean that the Committee does not value the excellent work Access Pro Bono does in facilitating the delivery of pro bono legal services to British Columbians. The Committee places great value on this work. We are encouraged that the Law Foundation with its rigorous review process shares this view.

Conclusion

60. In 2006 the Benchers approved the recommendation of the Pro Bono Funding Task Force, the terms of which were memorialized in a February 7, 2007 letter from Law Foundation of British Columbia Executive Director, Wayne Robertson, QC. The Benchers discussion in November 2006 captured a range of perspectives, including that the quantum of funding might be subject to future consideration.
61. Although the Committee believes that the initial decision to fund pro bono at 1% of the general fee has led to good results, both in creating a model that has grown over time and in the good work it has helped facilitate, it is important to revisit that model in order to provide some guiding principles and to reconsider the quantum of funding that should be provided. Having created principles for funding, the Committee believes the better approach going forward is to replace the 1% model and apply the attached principles for its application going forward. The model builds in increases based on Consumer Price Index and also creates an evidence-based review process.
62. The Committee has framed the Principles as contributions to pro bono. However, if the Benchers accept the proposition that some portion of the funding ought to be reserved for access to justice and access to legal services initiatives other than pro bono, then the Principles apply equally to that broader category of funding. The particulars of how the Law Foundation would be expected to divide the increased contribution would be worked out in a new memorandum of understanding with the Law Foundation.
63. The Committee is of the view that the Benchers decision to direct the funds to the Law Foundation of British Columbia for distribution remains the right approach. The Law Foundation of British Columbia has the skills and expertise to evaluate proposals for funding and equally important, evaluate outcomes. The Committee recommends continuing that approach, but also recognizes that the Law Society and the Law Foundation should establish a process by which views as to the efficacy of the funding model can be considered and discussions can take place as to where Access to Justice Funding might best be directed. The purpose of such meetings would not be to dictate where the Law Foundation chooses to distribute funds. Rather, the purpose would be to advise the Law Foundation of access to justice and legal services projects the Benchers are interested in exploring and to discuss with the Law Foundation the merit of directing some financial support to such projects.
64. Since 2006 the Law Society's commitment to finding ways to improve access to justice and legal services has assumed a role of greater prominence. Access to justice concerns have also taken on prominence in jurisdictions across Canada and around the world. The capacity of the public to afford traditionally delivered legal services and access our systems of justice grows more strained. Perhaps not surprisingly, the demand for pro bono has increased dramatically since 2006.

65. While a 1% model of funding may have been an appropriate decision in 2006, the Committee is of the view based on a consideration of the current level of need, the level of funding the Law Society provides relative to the Law Society of Alberta, and application of the Principles for the Law Society's Contributions to Pro Bono, that a 1% level of funding is no longer appropriate. For the reasons contained in this report the Committee prefers a 2014 target level of approximately \$340,000 in funding to support pro bono organizations and Access to Justice Funding.
66. As the Committee continues its work on Strategic Plan initiative 2-1(a), with the Benchers direction, it intends to further consider what type of access to legal services and access to justice initiatives might benefit most from the Law Society's efforts in 2014 and beyond. The Committee intends to report to the Benchers in December 2013 with its views, which could inform the 2014 discussion with the Law Foundation.
67. The committee believes our recommendations show leadership. We are cognizant of the argument that if Law Society funding of pro bono increases the government may use this as a basis to reduce funding to legal aid and other access initiatives. We reject this argument as a reason not to increase funding. On the contrary, by increasing funding for pro bono and access to justice by lawyers our voice on all issues of public interest is strengthened. We as a law society must use that voice loudly and effectively to increase public understanding of access issues and ultimately government funding. This, whether it arises from the narrow words of the *Legal Profession Act*, or from the simple rights and privileges we have as lawyers, is our duty.
68. The Committee also does not wish to be seen as undervaluing the individual pro bono activities of lawyers. These activities, not our funding, are the backbone of all pro bono activities and are priceless. They are the true measure of our profession and give us our strongest voice.

Appendix

PRINCIPLES FOR THE LAW SOCIETY'S CONTRIBUTIONS TO PRO BONO

Preamble

The societal conditions that give rise to the need for pro bono are best addressed through proper funding of legal aid and social benefit programs by the provincial and federal governments and primary funders such as the Law Foundation of British Columbia. Law Society funding of pro bono is not a substitute for these governmental obligations. Nor does the Law Society have the broad funding mandate of the Law Foundation of British Columbia. Despite this, the Law Society is committed to encouraging lawyers to provide pro bono legal services to people of limited financial means and to find innovative ways to facilitate such pro bono legal services.

Many lawyers provide pro bono legal services through not for profit clinics. Many more lawyers provide pro bono as part of their day-to-day practice. The Law Society demonstrates its commitment to encouraging and facilitating pro bono through a combination of funding and in-kind support of pro bono organizations, as well as developing policy and rules-based reform that fosters the delivery of pro bono legal services (examples of the latter include the modification of the conflicts of interest rules to facilitate pro bono at court-annexed and non-profit legal clinics, and extending insurance coverage to retired lawyers providing pro bono legal services).

While the Law Society does not require lawyers to provide pro bono legal services, it does allocate a certain amount of lawyers practice fees to facilitate participation in and the delivery of organized pro bono legal services in British Columbia. The Principles set out below provide some guidance for how financial support will be determined and the purpose for financial and in-kind support of pro bono.

1. Providing financial and in-kind support for non-profit organizations that facilitate lawyers delivering pro bono legal services to people of limited financial means is consistent with the Law Society's public interest mandate as articulated in s. 3 of the *Legal Profession Act*, and with the spending authority of the Benchers under s. 4(5).
2. The Law Society is a public interest regulatory body. It is not a funding agency. The Law Society cannot provide sufficient levels of funding or in-kind support to meet the needs of existing or future organizations that facilitate the delivery of pro bono, nor is it appropriate to require that lawyers, as a condition of the privilege to practice law, meet those funding needs.
3. In establishing a quantum of funding, the Benchers should recognize that it is neither the responsibility of the Law Society to meet all the funding needs of pro bono organizations,

nor feasible to do so. In order to ensure that the funding is neither trivial nor excessive, the following factors are relevant to a determination of the proper quantum of funding:

- a. The amount of funding should be reasonable, taking into account the level of financial support provided by lawyers through practice fees as well as the amount of pro bono legal services lawyers provide. The object is to provide a meaningful amount of funding to encourage and support pro bono, which is reasonable in the circumstances;
 - b. The funding model should allow for the potential that the amount of funding may increase over time with the object of meeting or exceeding inflation as determined by Statistics Canada, the Bank of Canada, etc.
 - c. The Finance Committee should review the level of funding as part of its fee setting process to see that these objects are being achieved.
4. The amount of funding should only be subject to review or change at the direction of the Benchers.
 5. The amount of funding will be sent to the Law Foundation to distribute in accordance with the terms and conditions of the funding agreement entered into between the Law Society and the Law Foundation dated February 7, 2007 (as amended from time to time).
 6. If the Law Foundation is concerned about the appropriateness of the level of funding based on evidence it collects while distributing funding to pro bono organizations, the Law Foundation may present that evidence to the Benchers for consideration. All other requests for organizations to receive a portion of the funding provided by the Law Society must be made to the Law Foundation.
 7. If the Benchers reconsider the level of funding provided by the Law Society, consideration must be given to these principles. If the reconsideration includes specific funding needs of organizations, as identified by the Law Foundation in principle #6, consideration must also be given to the fiscal accountability and historic business practices of those organizations in order to be satisfied that any increase in funds will be managed in accordance with best financial practices.

The Law Society *of British Columbia*



Law Society Funding of Pro Bono Organizations

November 10, 2006

Purpose of Report:

Discussion and Decision

Prepared by:

Pro Bono Funding Task Force

PART 1: INTRODUCTION

The Benchers have asked the Pro Bono Funding Task Force to examine issues relating to the funding of pro bono organizations by the Law Society and to provide its recommendations regarding the Law Society's policy on funding outside organizations and the procedural issues relating to any recommended changes to the policy.

Throughout this memo, when we refer to "pro bono organizations" we are referring to any organization in British Columbia that provides pro bono legal services to the public.

PART 2: CURRENT POLICY

The current policy is set out in the Benchers Policies under Part 3 – Governance Process:

K. Funding and donations***1. Funding outside bodies***

It is the Benchers' policy that the Law Society will consider funding externally operated projects or programs only when the Law Society specifically sponsored or participated in the creation of the project or program.

PART 3: ANALYSIS AND RECOMMENDATIONS

The Task Force met several times to canvass a number of topics related to the Law Society's funding of pro bono organizations. The general views of the Task Force members focused on the following three questions:

1. Should the Law Society be funding pro bono organizations?

The Task Force members concluded that funding pro bono organizations falls within the Law Society's mandate to serve the public interest. The mandate is set out in Part 3 of the *Legal Profession Act*:

Public interest paramount

3 It is the object and duty of the society

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

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

The Law Society of British Columbia

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

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

(b) subject to paragraph (a),

(i) to regulate the practice of law, and

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

The Task Force members decided that the responsibility to support pro bono legal services includes funding organizations that provide these services to the public.

2. How much should the Law Society give and what is the source of those funds?

The Task Force considered what level of funding would be appropriate and discussed how the funds might be collected. It was determined that the target figure should be \$100,000 and that the amount would be based on a percentage of the practice fees paid annually to the Law Society. Based on the projected membership of 9,600 and a practice fee of \$1,014 for 2007, 1% would amount to \$97,344.

3. How will the funds be distributed?

The Task Force determined that the Law Society does not have the resources available for administering pro bono funding requests on an ongoing basis. The Task Force concluded that the funds designated for funding pro bono organizations should be turned over to the Law Foundation of British Columbia with the restriction that the funds are to be distributed to community-based organizations providing pro bono legal services to the public.

The Task Force **recommends** that the Benchers:

Provide funding to pro bono organizations by using a portion of the practice fee, based on a percentage of 1%, turn those funds over to the Law Foundation with a restriction on the funds to ensure that they are to be distributed to community-based organizations offering pro bono legal services to the public.

The Law Society
of British Columbia



To Benchers
From Jackie Drozdowski
Date February 21, 2007
Subject **Pro Bono Funding Task Force**

1000

Ian Donaldson, Chair of the Pro Bono Funding Task Force last reported to the Benchers on November 10, 2006. The motions passed by the Benchers following Mr. Donaldson's report are:

It was moved (Donaldson/LeRose) to approve in principle payment by the Law Society to the Law Foundation of British Columbia annually, commencing in 2007, an amount based on a percentage of the General Fund portion of the Law Society Annual Practice Fees collected subject to conditions to be determined to ensure the funds are distributed by the Law Foundation to organizations offering pro bono services to the public.

The motion was carried.

It was moved (Vilvang/LeRose) to set the amount to be transferred to the Law Foundation at 1% of the General Fund portion of the Annual Practice Fee, exclusive of in kind support to Pro Bono Law of BC.

The motion was carried.

The complete excerpt from the minutes of the November 10, 2006 Benchers meeting is attached for reference.

Mr. Donaldson will be reporting to the Benchers on behalf of the Task Force on the "conditions to be determined to ensure the funds are distributed by the Law Foundation to organizations offering pro bono services to the public". A copy of the February 7, 2007 letter from Wayne Robertson, Executive Director of the Law Foundation setting out the proposed terms is also attached for reference.

Mr. Donaldson will report orally.

JD
Attachments

LAW SOCIETY OF BRITISH COLUMBIA

1001

MINUTES

MEETING: Benchers
DATE: Friday November 10, 2006

5. PRO BONO FUNDING TASK FORCE

Mr. Donaldson circulated a memorandum from the Pro Bono Funding Task Force. He said the task force had begun by considering whether the Law Society should provide any funding to external pro bono services. The task force noted that there is a strong argument against taxing members only to give funds away, particularly when many members already donate their time to pro bono causes in any event. However, the task force also noted that the Law Society had already provided funding for Pro Bono Law of BC and the Western Canada Society to Access Justice in the past two years. After considering the practices of other Law Societies, the task force concluded that it would be appropriate for the Law Society to provide some pro bono funding. The task force then considered three questions: how much funding should be provided, from what source, and how should it be distributed? With respect to the first two questions, the task force looked to a proposal first made in 1997 by Law Society Secretary Bryan Ralph, as he then was, to allocate a percentage of the General Fund portion of the annual practice fee to funding pro bono causes. The task force concluded that one percent of the General Fund fee would provide a reasonable amount of money without being unduly burdensome. On the question of how to distribute the funds, the task force noted that the Law Foundation of BC allocates nearly \$4 million of its \$17 million budget (in 2006) to pro bono initiatives of various kinds, and it is uniquely well suited to determining appropriate recipients of grant funds. Mr. Donaldson said the Law Foundation was willing to receive funds from the Law Society with "strings attached" in terms of its use. This would have the twofold benefit of ensuring that worthy recipients receive the funding, and eliminated the need for the Benchers to consider how to allocate the funds. Accordingly, the task force recommended that the approve in principle transferring 1% of the General Fund portion of the annual practice fee in each year to the Law Foundation to be allocated to pro bono programs on specific terms to be developed and returned to the Benchers for approval.

Ms. Andreone asked if the Law Foundation would provide some comfort that if it received the proposed funding from the Law Society it would not divert its other funds to other projects.

Mr. Wilson thought the Law Foundation could give that assurance. He noted that the Law Foundation could continue its support of pro bono programs at similar levels as it had in the past, and use funds from the Law Society as additional funding in that field.

Mr. LeRose was in favour of the proposal. He asked if it would include funding for Pro Bono Law of BC.

Mr. Donaldson said the task force deliberately decided against considering funding specific organizations in favour of finding a principled basis for funding pro bono activities. The task force's view was that if 1% of the annual fee is contributed to the Law Foundation for funding pro bono activities, no other funding requests would be entertained by the Law Society.

In response to a question from Mr. Stewart, Mr. Robertson advised that the Law Foundation would not charge a fee for administering the funds.

Mr. Getz noted the reference to "community based organizations" among the recipients of Law Foundation funding, and he asked if that was a defined term. Mr. Donaldson said the specific nature of organizations that might receive funds from the Law Society via the Law Foundation was one of the matters that would have to be determined as part of the conditions attached to the money.

Ms. O'Grady asked where the money would come from. Mr. Donaldson said the task force hoped that in the long run the Law Society would not need to raise fees by 1% to fund this commitment. He noted that the Benchers had allocated approximately that amount to pro bono programs in the past two years. 1002

Ms. McPhee said the management team had allocated \$65,000 in cash to pro bono programs in the 2007 budget. Any additional amount would be unbudgeted for 2007.

Mr. Turriff agreed with the proposal in principle but questioned whether 1% was the right amount. Plainly the Benchers do not want to discourage lawyers from providing pro bono services on their own, but certainly 1% of the General Fund fee would not do that. He noted that the Law Society provides nearly three times as much to support CanLII.

Mr. Jackson was concerned that 1% of the General Fund fee would represent a net decrease in funding given to pro bono programs. He was also concerned that offloading the decision making process onto the Law Foundation might give the appearance of abandoning Pro Bono Law of BC.

Ms. Preston suggested that one of the conditions attached to the funds might be ongoing support for Pro Bono Law of BC.

Ms. Pratchett said Pro Bono Law of BC appreciated the thought that had gone into the proposal, and endorsed the theory of the recommendation, believing the Law Foundation to be better positioned to respond to grant requests. Ms. Pratchett had some concern about how the proposed 1% allocation might impact Pro Bono Law of BC funding, and she expressed the hope that the in kind support from the Law Society in the form of nominal rent could be continued.

Mr. Donaldson encouraged the Benchers to adopt the proposal in stages. He said the task force was not wedded to the proposed 1% allocation, and might suggest a different amount based on further information.

Mr. Vertlieb suggested that the Benchers could always reconsider the amount after further consultation and experience.

Mr. Ridgway noted that the proposed amount to be provided by the Law Society would be in addition to the millions of dollars already available to pro bono programs from the Law Foundation and the individual contributions of members around the province in the form of actual pro bono services. He said he would not want to stray too far from the proposed 1% figure.

Mr. Wilson said the Law Foundation had supported the organizations that had received Law Society funding in the past and would continue to support them.

It was moved (Donaldson/LeRose) to approve in principle payment by the Law Society to the Law Foundation of British Columbia annually, commencing in 2007, an amount based on a percentage of the General Fund portion of the Law Society Annual Practice Fees collected subject to conditions to be determined to ensure the funds are distributed by the Law Foundation to organizations offering pro bono services to the public.

The motion was carried.

It was moved (Vilvang/LeRose) to set the amount to be transferred to the Law Foundation at 1% of the General Fund portion of the Annual Practice Fee, exclusive of in kind support to Pro Bono Law of BC.

The motion was carried.

DMGN

06-11-27

1003


THE LAW
FOUNDATION
OF BRITISH COLUMBIA

1340-605 Robson Street, Vancouver,
British Columbia, V6B 5J3 Canada
FAX 604/688-4586 • Phone 604/688-2337

February 7, 2007

Ian Donaldson Q.C.
Donaldson Jetté
#490 - 1090 Homer Street
Vancouver, BC V6B 2W9

Dear Sir:

Re: Pro Bono Funding Task Force - Law Society grant to the Law Foundation of British Columbia to support pro bono activities in the province of British Columbia

Further to our previous discussions, and in particular the Benchers meeting of November 10, 2006, I am writing to provide you with some thoughts as to the wording of the grant to the Law Foundation of British Columbia from the Law Society of British Columbia to support pro bono services in the province.

The wording of the two motions as passed by the benchers and is reflected in the minutes are as follows:

It was moved to approve in principle payment by the Law Society to the Law Foundation of British Columbia annually, commencing in 2007, an amount based on a percentage of the General Fund portion of the Law Society Annual Practice Fees collected subject to conditions to be determined to ensure the funds are distributed by the Law Foundation to organizations offering pro bono services to the public.

It was moved to set the amount to be transferred to the Law Foundation at 1% of the General Fund portion of the Annual Practice Fee, exclusive of in kind support to Pro Bono Law BC.

In accordance with the wording of the motions and the discussion, it is my suggestion that the terms of the grant be as follows:

Amount of grant:

1% of the General Fund portion of the Annual Practice Fee, exclusive of in kind support provided by the Law Society of British Columbia to Pro Bono Law BC.

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Payment of grant:

The grant will be paid by the Law Society of British Columbia to the Law Foundation of British Columbia annually, on or before February 28 of each year.

Purpose of the grant:

The grant will be used by the Law Foundation of British Columbia to fund organizations in the province that provide pro bono legal services to the public. The grant will be in addition to the funding level provided by the Law Foundation of British Columbia to pro bono legal organizations prior to 2006.

Administration of the grant:

The Law Foundation will administer the grant by soliciting applications for funding, reviewing and assessing the applications, and making funding decisions. Programs and/or projects funded by the grant will be monitored and evaluated by the Law Foundation.

Reporting:

The Law Foundation will report annually, prior to January 31 of the following year, as to the usage that has been made of the Law Society funds.

Administrative costs:

The Law Foundation of British Columbia will assume all administrative costs related to the Law Society grant, and will ensure that the total amount of the Law Society grant is distributed to organizations providing pro bono legal services to the public.

I trust you find the above in order and look forward to hearing from you.

Yours truly,



Wayne Robertson
Executive Director

cc: Tim McGee, Executive Director, Law Society of BC
Jackie Drozdowski, Paralegal, Policy & Legal Services Department, Law Society



**Report to Benchers
July 2013**

**EQUITY AND DIVERSITY ADVISORY COMMITTEE:
MID-YEAR REPORT**

**Maria Morellato, QC, Chair
Satwinder Bains, Vice-Chair
Thelma O'Grady
Barry Zacharias
Pavel Dosanjh
Linda Locke, QC
Suzette Narbonne
Linda Robertson**

Purpose of Report: Information

**Prepared by Policy & Legal Services
Andrea Hilland, Staff Lawyer
604-443-5727**

Equity and Diversity Advisory Committee: Mid-Year Report

I. Introduction

The Equity and Diversity Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.

From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and maybe asked to develop the recommendations or policy alternatives regarding such initiatives.

The mandate is to:

- monitor and develop effective equity and diversity in the legal profession and the justice system in British Columbia;
- report to the Benchers on a semi-annual basis on those developments;
- advise the Benchers annually on priority planning in respect of issues affecting equity and diversity in the legal profession and the justice system in British Columbia; and
- attend to such other matters as the Benchers or Executive Committee may refer to the advisory committee from time to time.

II. Topics of Discussion: January to July 2013

The Committee met on January 24, February 28, April 4, May 9, and June 6, 2013. The following items have been addressed by the Committee between January and July 2013.

1. Aboriginal Lawyers

(a) Aboriginal Lawyers Mentoring Program

Phase two of this project, which involves the development and implementation of the Aboriginal Lawyers Mentoring Program, has commenced. A number of documents to guide the operation of the Program (including terms of reference, policies and procedures, mentorship agreements, evaluation forms, and promotional materials) have been finalized. Active recruitment of mentors began on June 21, 2013, recruitment of mentees will begin in August, 2013, and an event to bring mentors and mentees together will occur in September, 2013. Ms. Hilland provided a progress report at the Benchers Meeting on May 10, 2013, and presented on the Aboriginal Lawyers Mentoring Program at the CBA BC Women Lawyers Forum Annual General Meeting on June 18, 2013.

(b) Aboriginal Graduate Scholarship

On the recommendation of the Executive Committee, the Benchers created a scholarship for Aboriginal law students intending to pursue graduate legal studies. The scholarship of \$12,000 was awarded to Robert Clifford, an Aboriginal LL.M. student attending the University of Victoria.

2. Women Lawyers

(a) Justicia Project

The Committee launched the first phase of the Justicia Project in British Columbia on November 20, 2012. Phase one is directed at national law firms with offices in BC, as well as large regional firms. Phase two will be directed at all other BC firms. Phase one has already seen tremendous success. All seventeen firms that were targeted for participation have signed letters of commitment to address the retention and advancement of women in the profession in a proactive way.

Representatives from participating firms have formed three subcommittees to develop recommendations on six topics: 1) tracking gender demographics; 2) enhancing flexible work arrangements; 3) improving parental leave policies; 4) fostering women's business development; 5) promoting leadership skills for women; and 6) advancing paths to partnership initiatives. The subcommittees will finalize recommendations on the first three topics by the end of 2013, and will begin to address the remaining topics in 2014.

The Committee recommended increasing communications regarding Justicia in BC. Representatives from the participating firms unanimously agreed that the recommendations, model policies, and practical tools produced by the subcommittees should be shared broadly with the legal profession in British Columbia. Ms. Morellato provided an overview and progress report on Justicia at the CBA Women Lawyers Forum Annual General Meeting on June 18, 2013, and also invited a liaison from the CBA BC Women Lawyers Forum to attend Justicia in BC meetings. In addition, Ms. Hilland published an article about Justicia in BC in the CBA BC Women Lawyers Forum Spring 2013 Newsletter. Law Society staff is continuing the development and implementation of a communications strategy in relation to Justicia in BC.

3. Diversity

(a) Enhanced Demographic Question

On the recommendation of the Committee, the Executive Committee amended the Annual Practice Declaration in order to include a question that seeks further information on the demographic make-up of the legal profession. As of January, 2013, the Annual Practice Declaration includes the enhanced demographic question.

(b) Law Societies Equity Network

Law Society staff has been involved with the Law Societies Equity Network, and contributed to a presentation to the Federation of Law Societies of Canada on the importance of collaborating to compile the demographic data from various jurisdictions across Canada in order to create a national equity profile.

(c) Collaborations with the CBA BC Equality and Diversity Committee

The Committee nominated Ms. Hilland to liaise with the CBA BC Equality and Diversity Committee. The Committee assisted in the organization of the CBA BC Equality and Diversity Committee panel regarding diversity on the bench, held on May 1, 2013. The Committee also participated in the CBA BC Equality and Diversity Committee diversity stakeholders meeting on June 21, 2013 where a number of diverse groups shared information about their initiatives to identify possible future collaborations. The idea for the diversity stakeholders meeting originated from the Law Society of British Columbia's 2012 Report entitled "Towards a More Representative Legal Profession: Better practices, better workplaces, better results".

(d) Unconscious Bias Workshop

On the recommendation of the Committee, Laraine Kaminsky presented a workshop on unconscious bias to the Law Society on January 25, 2013. Twenty-seven participants, including Benchers and lawyers, attended.

The Law Society
of British Columbia



2013 Mid-Year Report: Lawyer Education Advisory Committee

Lawyer Education Advisory Committee

Nancy Merrill, Chair

Vincent Orchard, QC, Vice-Chair

Thelma O'Grady

David Renwick, QC

Phil Riddell

Catherine Sas, QC

Tony Wilson

July 12, 2013

Prepared for: Benchers

Prepared by: Alan Treleaven, Director, Education & Practice on behalf of the
Chair of the Lawyer Education Advisory Committee

Purpose: Information

INTRODUCTION

This mid-year report from the Lawyer Education Advisory Committee Chair, Nancy Merrill, summarizes the Committee's activities to date in 2013.

COMMITTEE ACTIVITY SUMMARY FOR 2013

Pursuant to the Law Society Strategic Plan, the Committee's 2012 - 2014 strategic priorities are to

- (a) ensure that Law Society of BC admission processes are appropriate and relevant, and work on national admission standards while considering the rationale and purpose of the overall BC admission program;
- (b) work with continuing professional development providers to develop programs about the new *Code of Conduct*.

a) Admission Program Review (Law Society Strategic Initiative 1-4(a))

The Committee's primary focus for 2013 and 2014 is Admission Program reform in the context of national admission standards. The Committee is linking its work to the Federation's National Admission Standards project, and has been monitoring the National Admission Standards Project, pursuant to which Canada's fourteen law societies, through the Federation, are developing proposals for national admission standards and related procedures.

One of the underlying premises of national lawyer mobility, which has been in place since 2003, is that standards for admission are reasonably similar from jurisdiction to jurisdiction. However, the reality is that significant differences exist in the admission standards and processes. Law societies have collectively recognized that these differences cannot be reasonably justified.

A Federation Steering Committee is responsible for overall direction of the national project. Tim McGee and Alan Treleaven are Steering Committee members.

The first phase of the project was to draft a profile of the competencies required for entry to the profession. This process involved the participation of a national technical working group, of which Lynn Burns, Deputy Director of the Professional Legal Training Course, has been a member.

The Benchers approved the *National Entry-Level Competency Profile for Lawyers and Quebec Notaries* on January 24, 2013 pursuant to the following resolution.

RESOLVED: to approve the Competency Profile on the understanding that implementation will be based on a nationally accepted implementation plan, and to support the development of that plan.

The second phase of the Federation project is focusing on developing proposals for implementation of the standards. At the Federation level, work is in progress on developing options, with the goal of achieving high levels of consistency and quality in national admission standards.

Ultimately, law societies will be asked to approve how the admission standards will be implemented.

Although articling was not initially a part of the project, law societies now informally appear to agree that national admission standards must logically take articling into account. So, for example, the Federation and law societies have been paying particular heed to the Law Society of Upper Canada's articling changes.

Possible national implementation options that could be considered might include any combination of

1. model competencies: law societies agree to the model competencies and work toward implementation, but do so at such time and to the extent they see fit (similar to the Federation Model Code of Conduct process);
2. competencies agreement: law societies agree to implement, but the "how" is up to each law society
 - a. with a Federation monitoring committee, or
 - b. no monitoring mechanism;
3. national bar examinations
 - a. full coverage, or
 - b. selected subjects (i.e. Model Code), or
 - c. individual law societies opt in or out, in whole or part (US model), or
 - d. accompanied by local bar examinations (US model);
4. national skills assessments (oral and written)
 - a. full coverage, or
 - b. selected subjects (i.e. Model Code), or
 - c. individual law societies opt in or out, in whole or part (US model), or
 - d. accompanied by local skills assessment;
5. pilot project(s), such as a Model Code examination
6. incremental implementation
 - a. begin with written examinations,
 - b. then written assessments,
 - c. then oral performance assessments (i.e. advocacy);
7. national training program (goal is to train, not just to prepare for testing)
 - a. full coverage, or

- b. selected subjects (i.e. Model Code), or
 - c. individual law societies opt in or out, in whole or part,
 - d. accompanied by local training programs,
 - e. in person and/or online;
8. national preparation courses for national testing (potentially pre-empting for-profit US type programs);
 9. national standards for articling and /or alternative experiential learning, including whether / how measured;
 10. national monitoring body.

Later in 2013 when the Federation’s options for implementation are provided to law societies, the Lawyer Education Advisory Committee should be in a position to move ahead with its work, including a full review of the Law Society admission program in the context of national admission standards.

b) BC Code of Conduct Education (Law Society Strategic Initiative 1-3(b))

Law Society Strategic Initiative 1-3(b) is to work with continuing professional development providers to develop programs about the new BC Code of Professional Conduct. This work has been completed.

The new *BC Code of Professional Conduct*, largely based on the Federation’s *Model Code of Conduct*, was approved by the Benchers on March 2, 2012 for implementation on January 1, 2013.

The Law Society and the Continuing Legal Education Society of BC have jointly planned and delivered webinars on the new *BC Code of Conduct*, which were available to all BC lawyers free of charge using the CLE Society’s innovative “CLE TV” program methodology. The recorded version of the webinars continues to be accessible free of charge through the Law Society website. The Law Society website also features an Annotated BC Code of Conduct as well as a guide to the BC Code of Conduct that compare key features of the former *Professional Conduct Handbook* to the new BC Code.

c) CPD Program Monitoring

The Committee continues to monitor the CPD program, which is in its fourth year. In 2013, the Committee has not conducted a CPD program review, as the 2012 – 2014 Strategic Plan does not mandate a review.

The Law Society
of British Columbia



Rule of Law and Lawyer Independence Advisory Committee – Mid Year Report

Claude Richmond, Chair
Kathryn Berge, QC, Vice Chair
David Crossin, QC
Leon Getz, QC
Herman Van Ommen, QC
James Vilvang, QC
Craig Dennis
Jeevyn Dhaliwal

July 12, 2013

Prepared for: Benchers

Prepared by: Michael Lucas, Manager, Policy and Legal Services

Purpose: Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
2. The mandate of the Committee is:
 - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure
 - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;
 - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and
 - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues.
3. The Committee met on January 23, February 12, February 27, May 8, and July 10, 2013.
4. This is the mid-year report of the Committee, prepared to update the Benchers on its work in 2013.

Overview

5. This Committee states at each opportunity that lawyer independence is a fundamental right of importance to the citizens of British Columbia and Canada. It is not a right that is well understood and, the Committee suspects, neither are the consequences of it being diluted or lost. Canadians are generally fortunate to live in a society that recognizes the importance of the Rule of Law.
6. The Rule of Law is, the Committee has concluded, best protected by lawyers who operate and are regulated independent of government. Self governance must therefore be vigilantly monitored to ensure that the obligation of self governance is not lost.

Topics of Discussion – January to July 2013

The Role of the Law Society as Insurer and Regulator

7. The Committee devoted almost the entirety of its work in the first half of 2013 to the issue tasked to it by the Benchers in connection with Initiative 1-1(b) of the first goal of the Strategic Plan. That initiative is:

Examine the relationship between the Law Society as the regulator of lawyers and the Law Society as the insurer of lawyers.
8. The Committee finalized its report in May of this year, and it has been circulated to the Benchers. The report is expected to be the subject of discussion at the July 2013 Benchers meeting.

Monitoring

9. The Committee continues to monitor issues relating to the Rule of Law, lawyer independence and judicial independence.
10. In particular, it has noted struggles and challenges with the Rule of Law as reported through the International Bar Association in Malawi, Hungary, and Georgia, noted particular concerns with respect to judicial independence in Sri Lanka and Argentina, with lawyer independence in Zimbabwe and Colombia, and has noted the struggles that lawyers have been facing in the recent upheavals in Turkey. Events that take place in China frequently come to the Committee's attention as well. The Committee also monitored the World Justice Project Rule of Law Index, noting with some concern that Canada does not rank as highly on this index might be expected, although the independence of the courts was commented on positively. However, delays in court processes were commented on in the report as an aspect of concern.

11. The Committee will continue to monitor events and issues world-wide, as it believes that understanding challenges elsewhere in the world is important to gaining a perspective on issues and challenges that may arise domestically. While it is obvious that the Law Society is not in a position to fix problems existing elsewhere, it is important to understand the events or history that have given rise to the systems in place in some of these countries, which ought to better inform us should concerns develop in British Columbia. There may be a time where the Committee will feel that a communications opportunity presents itself through which the importance of the Rule of Law can be clearly viewed through the events that take place elsewhere.

Planning for the Balance of the Year

12. The Committee has spent some time considering the work it intends to focus on for the balance of the year. Currently, the Committee expects it will be focussing its attention on an update of the discussion surrounding alternate business structures. The Committee presented its initial report to the Benchers on this topic in October 2011, and was asked by the Benchers to continue monitoring the developments and ownership and operational structures of law firms in other jurisdictions. The Committee expects that it will be further analyzing this issue in the early part of the Fall of 2013, with a view to making a further report later in the year.
13. The Committee also anticipates it will be asked to consider issues relating to lawyer independence and self governance in connection with the work of the Legal Service Providers Task Force. The Committee will reserve some time in the Fall for the purposes of this debate.
14. One of the issues that arose in relation to the question of the relation between the Law Society as regulator and Law Society as insurer related to whether there should be a policy surrounding Benchers representing parties who are suing lawyers where the insurance department had appointed counsel. The Committee believes that this issue warrants further consideration, although that consideration might wait until the Benchers have settled the question as to the nature of the relationship between the two arms of the Law Society.



CEO's Report to Benchers

July 12, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

This is my mid-year report to the Benchers which provides updates on our Top Five Operational Priorities for 2013, progress made under the 2012 – 2014 Strategic Plan to-date and information on other items of interest including our 2014 budget and fees planning process.

Top Five Operational Priorities for 2013

I have set out below a brief status report on the Top Five Operational Priorities for 2013. As described in my report to the Benchers in January, each year management outlines certain priorities for the coming year. I always emphasize that these priorities do not derogate from or substitute for our day-to-day responsibility to perform all of our core regulatory functions to a high standard. However, in each year there are items that require extra attention and focus to ensure success. So far in 2013 we are making good progress on these items.

1. Review and Renewal of Management Structure

The new leadership and governance structure for management which I reviewed with the Benchers in May has now been shared with all staff and is being phased in. The first phase is the creation of a new Leadership Council that will be comprised of my direct reports plus three Law Society managers selected at large, who will serve on the Council for a one year term. I am very pleased to report that for the three slots available for the initial Leadership Council we have ten strong candidates. In accordance with the established governance protocol for the Council I will be making the three appointments shortly based upon establishing a good mix of skills, together with varied departmental representation.

2. Lawyer Advice and Support Project

The Lawyer Advice and Support cross-departmental project team has been working diligently to complete a comprehensive report and recommendations on the following matters:

- what lawyer advice and support the Law Society should provide, including topic areas and priorities,
- who at the Law Society internally, as well as possibly externally, should provide the particular types of advice and support,

- the resource implications and needs, including staff, IT and financial, and
- the delivery methods by which the lawyer advice and support should be provided.

The project team is taking a Law Society-wide approach, and continues to be on track to deliver its recommendations and proposals by early fall. The report will be presented initially to the Executive Committee and then to the Benchers for review and direction.

3. Support for Legal Service Provider Task Force

The Legal Service Provider Task Force under the Chair of Bruce LeRose, QC has met six times from December 2012 to June 2013 and has engaged in a preliminary analysis of most of its mandated tasks. The Task Force also met on July 8 to refine the questions it intends to ask lawyers, notaries and paralegals during a consultation process that will take place later in the summer and into early fall. The Task Force then hopes to have a second stage consultation with the government and the courts to further refine its analysis. Feedback from the consultations will inform the Task Force's final report to the Benchers, scheduled for December 2013. Support for the work of the Task Force including the preparation of its interim report has been provided by Adam Whitcombe, Chief Information and Planning Officer, Michael Lucas, Manager, Policy & Legal Services and Doug Munro, Staff Lawyer, Policy & Legal Services.

The Task Force's interim report is being presented to the Benchers as a separate agenda item at the meeting.

4. Regulation of Law Firms – Policy and Operational Assessment

At its meeting on June 27, the Executive Committee reviewed a memorandum that I presented setting out a preliminary assessment of the rationale for regulating law firms and an initial assessment of the possible operational impacts of doing so. The Committee was supportive of further development of the analysis and has requested staff to prepare a more detailed briefing, which will include greater detail of the experiences in other jurisdictions and further analysis of resource requirements, among other things. The follow up report will be presented to the Executive Committee in the fall with a report to the Benchers by year-end, including a recommendation as to next steps regarding the desirability of a Bencher task force or working group.

5. Implementation of Governance Review Task Force Report

The Governance Review Task Force has met five times in 2013 and presented its mid-year report and recommendations to the Benchers at the June meeting in Tofino. The main implementation focus for the balance of the year will be the preparation of a Governance Manual incorporating the recommendations adopted by the Benchers and additional administrative items. The goal is to have a draft of the manual prepared for review by the Committee in the fall with a presentation to the Benchers by year end. Support of the work of the Committee including the preparation of the mid-year report and the pending preparation of the Governance Manual has been led by Adam Whitcombe, Chief Information and Planning Officer, with assistance from Bill McIntosh, Manager, Executive Support.

2012 – 2014 Strategic Plan Update

Attached to this report as Appendix A is a copy of the Law Society's 2012 – 2014 Strategic Plan, which has been annotated in each section to update you on the progress of specific initiatives. I believe we are making good progress against most of the initiatives established for 2013. There are a few initiatives that are slated for next year which will need to be re-evaluated by the Benchers during the annual Strategic Plan review in the fall to ensure they are still priorities for the organization. An example of this is a proposed study of the economics of the legal profession. This was originally proposed as a way to assist the Benchers in better understanding the issue of the affordability of legal services within the broader topic of enhancing access to legal services. While the goal remains valid, the means to achieve that end has so far proven elusive.

2013 Finance Update

The May 2013 year-to-date financial report is included in the Bencher package in the "For Information Only" section. Jan Lindsay, QC, Chair of the Finance Committee, and Jeanette McPhee, Chief Financial Officer, together with members of Management Board will be available to answer any questions you might have regarding the report. As you will see we are on budget year-to-date and tracking to our forecast for year end.

2014 Budgets and Fees

The Finance Committee met in June to review the 2014 fees and related budgets for the Lawyer's Assistance Program (LAP), the Advocate, and the Trust Administration Fee. In addition, management met several times in June to perform a full review of the Law Society's departmental operational budgets, which will be finalized over the next few weeks.

The Finance Committee will meet again in September to review the Law Society 2014 General Practice Fee and LIF Assessment, and the related operational budgets, with a view to making a recommendation to the Benchers on September 27 regarding 2014 member fees.

Trinity Western University Application to Federation of Law Societies of Canada for Law Degree Approval

As reported previously, the Federation of Law Societies of Canada Common Law Degree Approval Committee is completing its review of the Trinity Western University law degree application. In addition, a Special Advisory Committee of the Federation, chaired by John Hunter, QC, is completing its work on the following question:

What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?

We expect that the Federation will complete its work and provide its report and recommendations to Canada's law societies by the fall. A briefing binder on this topic is being provided to the Benchers under separate cover and will be discussed in greater detail during the in-camera portion of the meeting.

2013 Inaugural Justice Summit

Attached to this report as Appendix B is the government's report on the 2013 Inaugural Justice Summit, which I participated in as moderator in March 2013. The report summarizes the Summit proceedings, including the nine primary themes discussed: criminal justice and public health; access to justice issues; evidence-based justice; protection of vulnerable populations; accountability and transparency; economics of community safety; establishing shared values; system efficiencies and system governance under the *Justice Reform and Transparency Act*. Those themes will form the basis of future Summits, which are anticipated to be held twice a year.

The second Justice Summit is tentatively scheduled for early November 2013. I will provide further updates as planning progresses.

The Law Society
of British Columbia



2012 – 2014 Strategic Plan

Status Update as at June 2013

For: The Benchers
Date: June 30, 2013

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

INTRODUCTION

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

- (i) preserving and protecting the rights and freedoms of all persons;
- (ii) ensuring the independence, integrity and honour of its members; and
- (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership.

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

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

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

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

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

Law Society Goals

1. The Law Society will be a more innovative and effective professional regulatory body.
2. The public will have better access to legal services.
3. The public will have greater confidence in the administration of justice and the rule of law.

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

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

Strategy 1 – 1

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

Initiative 1-1(a)

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

Status – June 2013

The Legal Profession Act has been amended to permit the regulation of law firms. A review has been prepared for the Executive Committee that outlines the rational and anticipated benefits of law firm regulation. The Committee is being asked to confirm next steps.

Initiative 1-1(b)

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

Status – June 2013

The Rule of Law and Lawyer Independence Advisory Committee has completed its review of this issue and has prepared a report with recommendations, which is being considered by the Benchers in July.

Initiative 1–1(c)

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

Status – June 2013

The Legal Service Provider Task Force has been created to examine this topic, and has been working through its mandate as approved by the Benchers. The

Task Force has prepared an interim report, which is being presented to the Benchers in July.

Strategy 1 - 2

Identify and develop processes to ensure continued good governance.

Initiative 1–2(a)

Examine issues of governance of the Law Society generally including:

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

Status – June 2013

This initiative has been divided into separate tasks:

- *the Governance Task Force has taken the lead on a review of governance processes generally within the Law Society. Its most recent report, with a series of recommendations, was considered and approved by the Benchers in June;*
- *the issue of Bencher diversity was actively considered at the Bencher governance retreat and will be considered further by the Governance Committee as it works through the recommendations and implementation of the governance review;*
- *work on the development of a model for the independent evaluation of Law Society processes has been undertaken by the Chief Executive Officer in consultation with the President and last year's President, following debate and recommendations on this topic by the Executive Committee in connection with the 2009 – 2011 Strategic Plan. Further work was put in abeyance pending the report of the Governance Review Task Force in December 2012.*

Strategy 1–3

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

Initiative 1-3(a)

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

Status – June 2013

The Law Society and the Continuing Legal Education Society of BC have jointly planned and delivered webinars on the new BC Code of Conduct, which were available to all BC lawyers free of charge. The recorded version of the webinars continues to be accessible free of charge through the Law Society website. The Law Society website also features an Annotated BC Code of Conduct as well as a guide to the BC Code of Conduct that compares key features of the current Handbook to the new Code.

Initiative 1-3(b)

Improve uptake of Lawyer Wellness Programs.

Status – June 2013

Development of this initiative has been undertaken in the Practice Standards Department. A special Working Group of the Practice Standards Committee is chaired by Catherine Sas. A survey is being undertaken. Recommendations will be presented to the Committee later in 2013, with a report from the Committee to the Benchers to follow.

Strategy 1– 4

Ensure that admission processes are appropriate and relevant.

Initiative 1–4(a)

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

Status – June 2013

The Committee's 2013 – 14 focus is Admission Program reform linked to National Admission Standards.

The Committee has linked its work to the Federation of Law Societies of Canada's National Admission Standards Project.

The first phase of the project was to draft a profile of the competencies required for entry to the profession and the standard for ensuring that applicants meet the requirement to be fit and of good character. The Benchers approved the National Entry-Level Competency Profile for Lawyers and Quebec Notaries on January 24, 2013

Implementation of the standards is the focus of the second phase of the Federation project. At the Federation level, work is now underway on developing options for implementation of the admission competency standards, with the goal of achieving a high level of consistency and quality in national admission standards. Later in 2013 the Lawyer Education Advisory Committee should be in a position to move ahead with its work, including an active review of the Law Society admission program.

Ultimately, law societies will be asked to approve how the admission standards will be implemented.

Initiative 1–4(b)

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

Status – June 2013

On December 2, 2011, the Benchers approved the joint recommendation of the LEAC and the Access to Legal Services Advisory Committee that a Task Force be created to address the qualification standards or requirements necessary for the effective and competent provision of differing types of legal services. The Task Force was, amongst other things, to identify priorities for types of legal services that might be offered without the provider qualifying as a lawyer, and that would most benefit the public, identify priorities for types of legal services that might be offered by a lawyer with a restricted license, and that would most benefit the public, examine and analyse potential delivery models, and make recommendations to the Benchers. However, the creation of the Legal Services Provider Task Force overlapped some of the planned work for this Task Force. The work of this proposed Task force more logically follows decisions made by the Legal Service Task Force, and therefore this Task Force has not yet been appointed. Work would not be expected to commence until 2014.

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

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

Strategy 2–1

Increase the availability of legal service providers.

Initiative 2–1(a)

Consider ways to improve the affordability of legal services:

- continue work on initiatives raised by recommendations by the Delivery of Legal Services Task Force;
- identify and consider new initiatives for improved access to legal services.

Status – June 2013

Implementation of the recommendations of the Delivery of Legal Services Task Force continues. As of January 1, 2013, the family law pilot projects in the Supreme and Provincial Courts have begun to operate, and will run until January 2015 after which they will be evaluated. Changes to the Law Society Rules and to the BC Code of Conduct that permit expanded opportunities for articulated students and paralegals to provide legal services are all in effect. To date, the President and policy staff have engaged in four presentations to paralegals and lawyers to educate about the initiative and to encourage participation.

At the July Benchers meeting that Benchers will discuss the report of the Access to Legal Services Advisory Committee, which makes recommendations regarding increased funding to support organized pro bono legal service groups. The recommendations include principles that the Law Society should apply when considering funding requests in the futures. The Advisory Committee will continue throughout 2013 to consider discrete concepts that the Law Society might support in order to improve access to legal services, with a view to reporting to the Benchers in December 2013 with recommendations.

Initiative 2–1(b)

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

Status – June 2013

Work on Phase 1 on implementation of the Justicia project has begun. Managing Partners have met, and Diversity Officers have been appointed by participating firms. Working Groups have been created to examine Maternity Leave Policies, Flexible Work Plans, Demographic Information, and Business Development Programs for women. Work will continue on these topics through the Working Groups through the summer. Meetings are being scheduled for the fall to consider proposals and examine policies, with an expectation that model policies will be presented.

Initiative 2–1(c)

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

Status – June 2013

An Aboriginal Mentoring Program has been developed and was presented to the Benchers for information in May 2013. It was formally launched on National Aboriginal Day, June 21 with a call for mentors. It is expected that matching of mentors with mentees will take place in the fall.

Strategy 2–2

Improve access to justice in rural communities.

Initiative 2–2(a)

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

Status – June 2013

This initiative could benefit from information gathered through the REAL program. Work will begin after there has been some opportunity to review and analyse some of that programs results.

Initiative 2–2(b)

Develop ways to improve articling opportunities in rural communities.

Status – June 2013

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

Strategy 2–3

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

Initiative 2–3(a)

Work collaboratively with other stakeholders in the legal community to identify questions that need to be answered and engage, with others, in focused research.

Status – June 2013

In the implementation plan for this initiative, the initial work was assigned to staff to determine what work on this subject other stakeholders in the legal community were developing. After discussions with the Law Foundation, which is undertaking an examination relating to economic analysis of certain aspects of the justice system in conjunction with the Legal Services Society, it has been determined that the focus of their research is not focused on the market for legal services.

A staff group has therefore met to discuss what sort of research and issues could be examined in order to gather information to create a better understanding of the economics of operating a law practice and the market for legal services. A report will be presented at a later date to determine the feasibility of continuing with this initiative as drafted.

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

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

Strategy 3–1

Develop broader and more meaningful relationships with stakeholders.

Initiative 3–1(a)

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

Status – June 2013

Work has been undertaken at the Benchers and staff level and has resulted in meetings with the Minister of Justice and Attorney General and ministry senior staff on a number of occasions. A meeting in Victoria with policy staff in various government ministries together with the Chief Executive Officer and Law Society policy and communication staff took place in 2012. Future meetings are being arranged to keep the lines of communication relevant and open and to continue productive work with the new minister.

Strategy 3–2

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

Initiative 3–2(a)

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

Status – June 2013

To increase awareness of the Law Society and the Rule of Law, a number of initiatives have been completed. A dedicated webpage has been created and is updated regularly. During Law Week in 2012, the Law Society's "Day-in-the-Life" Twitter campaign was run and promoted. The following year, public

education was the Law Society's focus during Law Week and the first vice-president and senior staff were made available to the media over a week-long period to speak about the Law Society's role in promoting access to justice and protecting the public. Other proactive media relations efforts to discuss events or Law Society initiatives have also resulted in coverage of the Law Society and the opportunity to profile the work of the organization to hundreds of thousands of British Columbians. Content related to the Law Society have been added to Clicklaw, the primary online source of public information regarding the law in BC. The infrastructure to support the new Speakers' Bureau is complete and the bureau is being promoted on the Law Society website.

INAUGURAL BRITISH COLUMBIA JUSTICE SUMMIT

ALLARD HALL, FACULTY OF LAW, UNIVERSITY OF BRITISH COLUMBIA

MARCH 15-16, 2013

Report of Proceedings

Prepared for the Honourable Suzanne Anton, Attorney General and Minister of Justice; the Honourable Chief Justice Robert Bauman, Chief Justice of British Columbia; the Honourable Associate Chief Justice Austin Cullen, Supreme Court of British Columbia; and the Honourable Chief Judge Thomas Crabtree, Provincial Court of British Columbia

June 17, 2013

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BACKGROUND TO THE SUMMIT

As part of the British Columbia Justice Reform Initiative, the government asked Geoffrey Cowper, QC, to conduct a review of the criminal justice system. Mr. Cowper's report, *A Criminal Justice System for the 21st Century*, submitted in August 2012, recommended that, among other steps, the system should adopt a number of foundational changes to its governance structures. These changes, he suggested, should be designed to enhance cross-system dialogue and understanding, the capacity to plan, and the ability to increase the timeliness of justice services and processes. His specific recommendations included better system coordination and advice to government through a statutory council and advisory boards, the production of an overarching strategic plan, and a regular, inclusive justice summit to consider the most significant issues facing the system's leadership.

In the White Paper on Justice Reform – *Part One: Towards a Modern, Transparent Justice System* – released in October 2012, the government endorsed Mr. Cowper's recommendations regarding governance, and signaled the intention to introduce legislation to support these changes. The White Paper broadened the scope of the original recommendations beyond the boundaries of the criminal justice system to include the components of the justice and public safety sector more broadly. It also stated the government's intention to host a first Justice Summit in March 2013.

The *Justice Reform and Transparency Act* (2013), portions of which were brought into force on April 11, 2013, contains a number of provisions of direct relevance to the Summit. These include the requirement for a Justice Summit to be held at least annually, the establishment of a Justice and Public Safety Council responsible for identifying a strategic vision for the sector, and the requirement that the Council consult broadly in developing an annual Justice and Public Safety Plan.

GOVERNANCE AND PLANNING

The government's White Paper Part One commitment to host an inaugural Justice Summit required early decisions around event governance and subject matter, leading to the establishment of a Steering Committee (see Appendix 3) with representation from the executive and judicial branches of government, as well as independent legal and policing organizations. The Steering Committee was supported by an internal Working Group (see Appendix 3).

The Committee met between January and March 2013, its principal tasks being to develop an agenda, a representative list of participants, and agreement on facilitation, location, and other planning issues. To achieve continuity with Mr. Cowper's report, criminal justice was selected by the Committee as the broad-based topic of the first Summit and as an organizing principle to determine participation.

Recognizing the need to create conditions which would allow a high level of interaction and productive dialogue at the first such event, the Committee requested that participation be limited to not more than 40 to 50 attendees. The Committee agreed further that,

consistent with protocol in similar gatherings in other jurisdictions to encourage free expression, no attribution of comments made during the Summit would be noted in the Summit report.

AGENDA DEVELOPMENT

The Steering Committee, in developing the agenda, agreed that the first Summit was an opportunity to have three important discussions among participants.

White Paper Part One indicated that system performance measures would be a material discussion for the first Summit. However, the Committee concluded that, in the absence of an inclusive and legitimate consensus on **basic system values** (and following from that, desired outcomes), consideration of performance measures would be premature. The Summit provided an opportunity for participants to begin consideration of the basic values of the criminal justice system as a foundational element of future discussions, including that of system performance. Although the initial agenda was based on a single day, the Committee regarded discussion of system values as sufficiently important and complex to require extended consideration. Therefore, an optional event for participants to do preparatory work about system values was added to the afternoon preceding the day of the full Summit.

The second opportunity provided by the Summit was to canvass and discuss substantive **criminal justice priorities** that might be developed into focused Summit topics in the future.

Finally, the first Summit was seen by the Committee as an opportunity to discuss the ways in which **planning for future Summits** might be carried out. The key questions facing the Committee in planning of the first Summit were those the Committee felt participants themselves might address, such as: What factors would increase the legitimacy and credibility of Summits? How might the process give appropriate attention to the different aspects of the overall justice and public safety sector, including criminal, civil, family and administrative justice and broader questions of public safety? And, how might the best balance be struck between the values of broad and legitimate representation, and effective and productive deliberations?

SUMMIT PROCEEDINGS

A. VALUES IN THE CRIMINAL JUSTICE SYSTEM

Participants were invited to attend an optional facilitated discussion of the basic values of British Columbia's criminal justice system, held on the Friday afternoon prior to the Summit. The outcomes of the optional session would be reported to the Summit the following day. The session was well attended, with more than 90 per cent of invited Summit participants joining the optional event.

At the optional session, participants were divided into small groups. The groups were asked by the facilitator to identify a small number of value statements which might be considered fundamental by some or all participants of the criminal justice system. A plenary discussion followed, in which the small groups provided reports, and participants discussed the range of values that surfaced in this process.

Following the conclusion of the optional session, the facilitator, supported by members of the Working Group, developed a summary of the basic themes that were identified through the optional session. These themes were summarized for further discussion as follows.

- First, some values discussed appeared to be more **fundamental values**, such that they would be predominant, or otherwise limit the application of secondary values. Values in this category included, but are not limited to: respect for the rule of law; fairness; timeliness; and safety of the public.
- A second category included **values that relate to how the system responds to criminal behaviour**. These included, but are not limited to: proportionality; early resolution; promoting and resourcing creative solution; and a willingness to find answers outside the justice system.
- A third category included **values relating to the behaviour of those who work in/are responsible for the justice system**. These included, but are not limited to: evidence-based decision making; shared accountability; resisting measures that limit creativity in the response to criminal behaviour; being respectful and accountable to one another; recognizing independence in role, but dependence upon each other for success; recognizing intra-justice and cross-sectoral impacts in allocating resources; building effective relationships; building respect and trust across the system; and effective collaboration within and across systems.
- The final category was comprised of **values related to building public understanding and confidence in the justice system**. These included, but are not limited to: accountability to the public; identifying measurable outcomes; creative and honest education of the public about criminal behaviour and the effectiveness of the system; demonstrating the cost effectiveness of the system; building public understanding of the value of the system and the need to resource it adequately; ensuring public confidence is based on accurate information; and, recognizing the legitimacy of emotional as well as rational responses to the justice system.

The full Summit convened the following day. At the start of the day, participants were informed that on Friday, March 15, 2013, a bilateral meeting occurred between the Minister of Justice and Attorney General, her two Deputy Ministers, and the Chief Justice of British Columbia, the Associate Chief Justice of the Supreme Court of British Columbia, and the Chief Judge of the Provincial Court of British Columbia to discuss how participation in the work of the Summit would also be protective of the judiciary's independent constitutional role. It was a very productive meeting and work will continue on how the judiciary can remain fully involved, as they want to be, in this multilateral Summit, and how both arms of government can benefit from these Summits and from other bilateral meetings that take place between them.

Summit participants were provided with the summary of the previous day's plenary discussion and returned to small groups. The facilitator asked the groups to consider the summary document and to reflect on the completeness of the values as described and categorized.

In the plenary discussion, small group reports identified additional views on criminal justice system values. New points raised in this discussion include, but were not limited to:

- accountability and transparency of the system;

- the use of creative solutions, such as restorative justice and community courts;
- whether timeliness, public confidence and/or public safety are values or outcomes;
- the danger of erosion of public goodwill on which the system is based;
- the primacy of fundamental justice as a system principle;
- the importance of integration and collaboration;
- the danger of fundamental change based on short-term concerns;
- the need to avoid basing public policy on poorly grounded perceptions;
- whether public confidence is a necessary consequence of fairness;
- the public impact of high visibility measures taken in other justice systems;
- access to legal information, resources and representation;
- the importance of incorporating risk assessment approaches to accused persons and convicted offenders beyond the corrections environment;
- the importance of crime prevention through social development;
- the promotion of positive and creative approaches;
- that independence should be a fundamental value;
- that judicial independence is a fundamental value; and
- whether the public shares the participants' valuation of education about the system.

Upon conclusion of the plenary discussion, there was consensus that the process of value identification was incomplete and should continue. Summit participants supported the suggestion of the facilitator that, prior to the next Summit, additional focused work be undertaken to develop a draft statement of criminal justice system values for consideration at the next Summit. Participants were invited to provide feedback on the draft Report of Proceedings.

B. CRIMINAL JUSTICE PRIORITIES

Upon completion of the values discussion, the Summit moved to consideration of priority issues within the criminal justice system. After three individual presentations from different perspectives on key issues within the system, participants were invited by the facilitator to develop, in their small groups, a short list of priority issues which might be usefully addressed at a future Justice Summit, or would inform the development of the annual Justice and Public Safety Plan mandated by the *Justice Reform and Transparency Act*. Participants then returned to plenary.

There were many issues developed in discussion. By theme they included:

1. improved inter-system coordination regarding the intersection of **criminal justice and public health** (i.e., mental illness, harm reduction/substance abuse);
2. **access to justice** issues, including the funding of the legal aid system;
3. **evidence-based justice**, including professional and public education, research and knowledge transfer regarding best practices (i.e., risk assessment/proportionate response, crime prevention), and evaluation and performance measurement;
4. the **protection of vulnerable populations** (i.e., domestic, family or partner violence, other violent crime, and overrepresentation of Aboriginal persons in the criminal justice system);
5. **accountability and transparency** across the system and with other systems (i.e., addressing information and privacy issues, identifying and prioritizing the information participants need to access, and sharing and making available data on how the system is functioning and on measuring performance.);
6. the **economics of community safety**, including the costs of policing;
7. further work on **establishing shared values** and how they might be applied;
8. identification of **system efficiencies** (i.e., those achievable with technology supports, or targeting specific categories of delay, examining each stage of the criminal process, efficiency and cost items associated to disclosure); and
9. **system governance under the *Justice Reform and Transparency Act*** (i.e., relationship of the Summit, Council, Advisory Boards, planning and other work).

Upon conclusion of the plenary discussion, Summit participants supported the facilitator's recommendation that the Steering Committee work within these suggestions in ongoing consultation with respect to future Summit agendas. A small number of those themes would be selected as focus points for future Summits.

C. PLANNING FOR FUTURE SUMMITS

Following the final small group discussions, in which participants discussed questions related to ensuring the ongoing legitimacy, credibility and effectiveness of the Summit process, participants noted the following points:

- While over the longer term Summits might occur annually, the current momentum requires at least two Summits per year, with the next ideally being held in fall 2013.
- While the agenda for the first Summit was necessarily broad, future Summits will require a tighter focus and extensive preparatory work involving participants.
- Summit preparation and planning should reflect the need to consider all aspects of the system (i.e., administrative, civil, criminal and family justice as well as matters of public safety).
- Summits need to accomplish two distinct objectives: foster proactive involvement of the justice and public safety community as well as meet the statutory requirements (e.g. consultation on a draft Justice and Public Safety Plan).

The Summit concluded with an invitation from the facilitator to participants to indicate to Summit organizers their willingness to participate in the development of future Summits and to work on two topics requiring further work:

1. values identification and
2. priority setting.

FALL 2013 JUSTICE SUMMIT

Summit participants suggested that a second Justice Summit be held in the fall 2013. The full agenda for this event would be determined in consultation with Summit participants and other stakeholders. Participants anticipated that it would include consideration of a draft statement of values upheld by the criminal justice system. Participants also reflected on the participant makeup of future Summits, which could include expanded Aboriginal participation, as well as representation from other government policy areas.

APPRECIATION

The Steering Committee would like to express its thanks to the participants at the inaugural Justice Summit, whose commitment and goodwill contributed greatly to the event.

For assistance in the development and realization of this first Summit, special thanks are due to: the British Columbia Court of Appeal, the Supreme Court of British Columbia, the Provincial Court of British Columbia; the Law Society of British Columbia; the British Columbia Association of Chiefs of Police; the Canadian Bar Association (BC Branch); the Legal Services Society; and the Public Prosecution Service of Canada.



The Steering Committee would also like to thank Dean Mary Anne Bobinski, Associate Dean Benjamin Goold, and staff of the University of British Columbia, Faculty of Law, as well as the Law Society of British Columbia and their Chief Executive Officer, Tim McGee, for their generosity and flexibility in creating the best possible setting for the Summit.

Finally, the Steering Committee would like to thank the Summit moderator, Tim McGee; the Summit facilitator, George Thomson; the Honourable Mr. Justice Richard Wagner of the Supreme Court of Canada, Geoffrey Cowper QC, Professor Yvon Dandurand, Deputy Chief Constable Doug LePard of Vancouver Police Department, Kasandra Cronin of LaLiberté Cronin LLP, and Michelle Burchill of UBC Law, as well as the many individual employees of justice and public safety organizations in British Columbia who made direct personal contributions to the success of the Justice Summit.

SUMMIT FEEDBACK

Comments on this Report of Proceedings and the Summit process are encouraged and may be emailed to JusticeReform@gov.bc.ca

Written communication may be sent to:

Ministry of Justice
Province of British Columbia
1001 Douglas Street
Victoria, BC V8W 3V3
Attention: Justice Summit

APPENDIX 1: SUMMIT AGENDA

**INAUGURAL JUSTICE SUMMIT
AND
BC JUSTICE LEADERS DINNER
ALLARD HALL, FACULTY OF LAW, UBC
FRIDAY, MARCH 15 AND SATURDAY, MARCH 16, 2013**

AGENDA

Friday, March 15

Justice Summit – Forum

2:30 – 5:00 Afternoon session: Identifying the Values which Guide the Criminal Justice System

BC Justice Leaders Dinner¹

6:00 to 6:45 – Reception

7:00 to 9:00 – Dinner

7:00 to 7:05 Welcome from Mr. Tim McGee, Summit Moderator

7:05 to 7:10 Welcome from Associate Dean Benjamin Gould, on behalf of Dean Mary Anne Bobinski

7:15 to 7:30 Opening remarks from Minister of Justice and Attorney General Shirley Bond

7:30 to 8:30 Dinner

8:30 to 8:50 Keynote Address: Honourable Mr. Justice Richard Wagner, Supreme Court of Canada

8:50 to 9:00 Thank you to keynote speaker: Chief Justice Lance Finch, British Columbia Court of Appeal

9:05 Evening close: Tim McGee, Summit Moderator

¹ The BC Justice Leaders Dinner was held to coincide with, but did not form part of, the Justice Summit. It was an opportunity to include Summit participants and many other justice system leaders in an overall recognition of commitment, shared responsibility, partnership and opportunity with respect to our system.

Saturday, March 16

Justice Summit — Forum

8:30 – 8:45 Welcome and Overview of Summit

- *Welcome to participants – Tim McGee, Summit Moderator*
- *Format and goals of the Summit –George Thomson, Facilitator*

8:45 – 9:15 A New Framework for the Criminal Justice System

The goal of this session is to orient participants with respect to the key provisions of the Justice Reform and Transparency Act, and to outline the opportunities provided in the Act for an inclusive planning process.

- *The Justice Summit: Strengthened Relationships and New Opportunities*
- *The Justice Reform and Transparency Act: Broadening The Justice Dialogue*

9:15-10:45 Values in the Criminal Justice System

The goal of this session is to generate, consider, and refine a draft list of values which are essential to the oversight and practice of the criminal justice system. These values need not be of equal weight to all participants, nor need they be commonly held. However, they should be foundational for at least some participants in the criminal justice system.

- *Report back from Friday afternoon session (10 minutes)*
- *Small group sessions (45 minutes)*
Groups of 10 or fewer discuss draft values and answer following questions:
 - Should the list be amended, reduced or expanded?
 - Do any of these values reinforce one another?
 - Do any of them conflict with one another?

11:00-11:45 Identifying the Criminal Justice Priority Issues a Summit Should Address

The goal of this session is to offer, and have Summit participants consider, a diverse, non-exhaustive set of perspectives on sector-level topics or priority issues which might be addressed using the Summit framework in the next year, and/or which may be addressed in the Justice and Public Safety Plan.

11:45-12:30 Priorities for Criminal Justice, Part One

The goal of this session is to have participants in small groups identify (on flipcharts) a hierarchy of no more than five topics for future Summit consideration.

1:45 – 3:15 Priorities for Criminal Justice, Part Two

The goal of this session is, with a narrowed list of topics in hand, for participants to discuss in more depth what they think needs to be done to address the topics well in future Summits.

- Small group sessions (45 minutes)
- Report back in plenary (45 minutes)

3:30-4:30 Preparing for Future Summits

The goal of this session is to consider and identify key elements in ensuring a successful Summit process going forward.

A facilitated plenary discussion of a number of issues relating to future Summits. These may include:

- membership/participation
- ways of ensuring inclusiveness and diversity while keeping Summit events manageable and affordable
- bridging/organization (e.g., a formal Steering Committee, interim working groups)
- Summit format
- reporting and communications

4:30 Closing

Remarks by Facilitator

Closing by Tim McGee, Summit Moderator

APPENDIX 2: SUMMIT PARTICIPANTS

Anhorn	Michael	Executive Director	Canadian Mental Health Organization, B.C.
Bayes	Shawn	Executive Director	Elizabeth Fry Society of Greater Vancouver
Benton, QC	Mark	Executive Director	Legal Services Society
Bond	Honourable Shirley	Minister of Justice and Attorney General	Government of British Columbia
Braker, Q.C.	Hugh	President	Native Courtworkers and Counselling Association of B.C.
Brecknell	Honourable Michael	Associate Chief Judge	Provincial Court of British Columbia
Callens	Craig	Deputy Commissioner	E Division RCMP
Cavanaugh	Lynda	Assistant Deputy Minister	Community Safety and Crime Prevention, Ministry of Justice
Chalke, QC	Jay	Assistant Deputy Minister	Justice Services Branch, Ministry of Justice
Crabtree	Honourable Thomas	Chief Judge	Provincial Court of British Columbia
Cronin	Kasandra	Barrister	LaLiberté Cronin
Cullen	Honourable Austin	Associate Chief Justice	Supreme Court of British Columbia
Dandurand	Yvon	Professor	Senior Associate at the International Centre for Criminal Law Reform and Criminal Justice Policy and Associate Vice-President, Research and Graduate Studies, University of the Fraser Valley
Devlin, QC	Martha	Senior General Counsel	Public Prosecution Service of Canada
DeWitt-Van Oosten, QC	Joyce	Assistant Deputy Attorney General	Criminal Justice Branch, Ministry of Justice
Dinwoodie	Murray	Chief Administrative Officer	City of Surrey
Finch	Honourable Lance	Chief Justice	British Columbia Court of Appeal
Fowler	Richard	Barrister	Fowler and Smith
Fyfe, QC	Richard	Deputy Attorney General	Ministry of Justice
Gill	Honourable Gurmail	Associate Chief Judge	Provincial Court of British Columbia
Gottardi	Eric	Barrister	Canadian Bar Association – BC representative
Graham	Jamie	Chief Constable	Victoria Police Department/President BC Municipal Chiefs of Police
Haugli	Brad	Inspector	Penticton South Okanagan Similkameen Regional Detachment/President BC Association of Chiefs of Police
Jamieson, QC	Gene	Legal Officer	Provincial Court of British Columbia

Jardine	Kevin	Assistant Deputy Minister	Court Services Branch, Ministry of Justice
Jones	Dave	Chief	New Westminster Police Department
Juk, QC	Peter	Director, Appeals and Special Prosecutions, Criminal Law Division	Criminal Justice Branch
Kraemer, QC	Frank	Executive Coordinator	Supreme Court of British Columbia
LePard	Doug	Deputy Chief Constable	Vancouver Police Department
Mason	Heidi	Director, Legal Advice and Representation	Legal Services Society
McBride	Heidi	Law Officer	Supreme Court of British Columbia
McGee	Tim	Chief Executive Officer	Law Society of British Columbia
Merchant	Brent	Assistant Deputy Minister	Corrections Branch, Ministry of Justice
Morrison	Dr. Brenda	Director	Centre for Restorative Justice and Assistant Professor, School of Criminology, Simon Fraser University
Outerbridge	Tim	Law Officer	British Columbia Court of Appeal
Parkin	Ben	Assistant Director	Law Department, City of Vancouver
Pearson	Paul	Barrister	Mulligan, Tam, Pearson
Pecknold	Clayton	Assistant Deputy Minister	Policing and Security Programs Branch, Ministry of Justice
Phillips	Honourable Nancy	Associate Chief Judge	Provincial Court of British Columbia
Porteous	Tracy	Executive Director	Ending Violence Association
Prior	Robert	Chief Federal Prosecutor	Public Prosecution Service of Canada
Robertson, QC	Wayne	Executive Director	Law Foundation
Ruebsaat	Gisela	Legal Analyst	Ending Violence Association
Russell	Clark	Director of System and Service Coordination	Ministry of Children and Family Development
Shackelly	Darryl	Provincial Trainer	Native Courtworker and Counselling Association of B.C.
Simmons	Kerry	President	Canadian Bar Association – B.C.
Thomson	George	Director	National Judicial Institute
Vance	Kenneth	Senior Policy Advisor	Union of British Columbia Municipalities
Veresh	Tim	Executive Director	John Howard Society, Lower Mainland
Walter	Bernd	Chair	BC Review Board and BC Human Rights Tribunal
Wanamaker	Lori	Deputy Minister of Justice and Deputy Solicitor General	Ministry of Justice
Wilkinson	Craig	Executive Director	Provincial Court of British Columbia

APPENDIX 3: STEERING COMMITTEE AND WORKING GROUP

STEERING COMMITTEE

Members:

Jay Chalke, QC	Assistant Deputy Minister, Justice Services Branch (Chair)
Associate Chief Justice Austin Cullen	Supreme Court of British Columbia
Associate Chief Judge Gurmail Gill	Provincial Court of British Columbia
Eric Gottardi	Barrister, Peck and Company/Canadian Bar Association BC Branch
Joyce DeWitt-Van Oosten, QC	Assistant Deputy Attorney General, Criminal Justice Branch
Mark Benton, QC	Executive Director, Legal Services Society
Mark Fisher	Chief Constable, Oak Bay Police/BC Association of Chiefs of Police
Robert Prior	Chief Federal Prosecutor, Public Prosecution Service of Canada
Tim McGee	Chief Executive Officer, Law Society of British Columbia (Summit Moderator)

Facilitator:

George Thomson	Director, National Judicial Institute
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Ex-officio:

Allan Castle	Executive Lead, Justice and Public Safety Secretariat
Nancy Pearson	Manager, Stakeholder Relations, Justice Services Branch
Heidi McBride	Law Officer, Supreme Court of British Columbia
Gene Jamieson, QC	Law Officer, Provincial Court of British Columbia

WORKING GROUP

Members:

Allan Castle	Executive Lead, Justice and Public Safety Secretariat (Chair)
Barbara Greeniaus	Executive Advisor, Justice and Public Safety Secretariat
Darrion Campbell	Executive Director, Corporate Planning
Elenore Clark	Deputy Provincial Director, Community Corrections, Corrections Branch
Gene Jamieson, QC	Law Officer, Provincial Court of British Columbia
Heidi McBride	Law Officer, Supreme Court of British Columbia
James Deitch	Executive Director, Criminal Justice and Legal Access Policy Division, Justice Services Branch
Nancy Pearson	Manager, Stakeholder Relations, Justice Services Branch
Richard de Boer	Director, Policy and Legislation, Criminal Justice Branch
Toby Louie	Executive Director, Corporate Policy and Planning Office

Special assistance provided by:

Andrew Mitchell	Stakeholder Relations Officer, Justice Services Branch
Edna Philippides	Executive Assistant, Justice Services Branch
Julie Meier	Executive Assistant, Justice and Public Safety Secretariat
Tiny Vermaning	Administrative Assistant, Justice Services Branch



Memo

To: Benchers
From: Executive Committee
Date: July 4, 2013
Subject: CBABC REAL Initiative Funding Request

The Canadian Bar Association BC Branch (CBABC) is seeking an extension of the Law Society's current financial support for the Rural Education and Access to Lawyers Initiative (REAL) for one more year (September 2013 – August 2014). The detailed proposal from the CBABC is attached as Appendix A.

Background

The REAL initiative was established by the CBABC in 2009 with funding from the Law Foundation for the first three years of the initiative, covering 2009 to 2011.

In 2011, the CBABC made a presentation at the July Bencher meeting seeking financial support from the Law Society for continuation of the REAL initiative. Following the presentation to the Benchers, the Executive Committee was asked to consider the request with a view to making a recommendation to the Benchers for the September 2011 Bencher meeting. A copy of the memorandum from then President Gavin Hume, QC to the Executive Committee is attached as Appendix B.

The Executive Committee considered the request at its August 2011 meeting and agreed to recommend that the Benchers approve co-funding the REAL initiative with the CBABC for 2012 and 2013 for an amount of \$75,000 in each of the two years subject to certain conditions. A copy of the memorandum from the Executive Committee to the Benchers is attached as Appendix C.

The Benchers considered the recommendation from the Executive Committee at their September 2011 meeting. There was some discussion of the proposal. Mr. LeRose, in particular, noted his satisfaction with the REAL initiative's community inclusion criteria and the value added by its part-time Regional Career Officer. He also noted that completion of the initiative's five-year lifespan should provide enough data to support development of a strong permanent program and stressed that the Executive Committee's recommendation did not contemplate provision of Law

Society funding beyond the bridge financing needed for completion of the initiative's remaining two years.

As the conclusion of the discussion, the Benchers resolved to accept the recommendation from the Executive Committee as follows:

“... that the Benchers approve co-funding with the CBABC of the REAL initiative for 2012 and 2013, with a contribution of \$75,000 per year subject to satisfactory due diligence regarding the criteria for the inclusion of communities and the part-time Regional Career Officer and the following conditions:

- the Law Society will only provide funding for 2012 and 2013 to the conclusion of the original five-year program*
- the Law Society reaches agreement with the CBABC about the criteria for inclusion of the communities entitled to benefit from the initiative*
- the Law Society's contribution is recognized in communications and public relations about the program during the two years*
- conclusion of a satisfactory co-funding agreement with the CBABC consistent with the terms of the original proposal and grant from the Law Foundation.”*

CBABC Proposal

As the Proposal at Appendix A notes, the CBABC is now seeking funding to launch a new phase of the REAL initiative. Phase III is intended to build on the experience to date and will decrease the number of student placements while increasing the quality and engagement of the placements. The specific objective of Phase III will be to increase the articling return rate from 50% to 85%. A detailed description of Phase III can be found at page 4 – 5 of the Proposal.

The draft budget for Phase III covering 2013 and beyond is found at page 11 of the Proposal. The actual budget will depend on the level of funding but the Proposal sets out budgets based on contributions totalling \$150,000 or \$75,000.

As the Proposal notes, the CBABC has asked the Law Foundation to provide \$75,000 towards the optimal funding level of \$150,000 but also notes that the current financial position of the Law Foundation may not result in provision of the requested amount. The CBABC is therefore asking the Law Society to partner with the CBABC to fund the difference between the total amount required to fund the REAL program and any amount received from the Law Foundation.

Analysis

The Proposal suggests that financially supporting the REAL initiative is consistent with both the mandate of the Law Society and the goals of our current strategic plan. Certainly, the Benchers have previously approved funding for the REAL initiative based on the goals and objectives of the initiative.

The Benchers have recognized the issue with the aging population of practising lawyers in rural areas and small communities throughout British Columbia. This demographic shift is largely due to younger lawyers choosing not to take up practice in those communities. The REAL initiative is an attempt to address that shift by providing the opportunity for students to experience practice in these communities with the hope that they will return to articling there.

An evaluation of Phase I and II of the REAL initiative is provided at page 3 – 4 of the Proposal. Approximately 50% of the summer student placements to date have resulted in articles for those students in rural areas and small communities.

Phase III will involve a targeted identification of communities that in high need of lawyers and efforts on the part of the Project Manager to secure a commitment from lawyers in those areas to take on a summer student and return the student for articles. As noted above, the objective is to increase the take up rate from 50% to 85%.

Since the Proposal was submitted, the Law Foundation has advised that it will contribute a grant of up to \$50,000, on the condition that the CBABC and the Law Society each contribute a matching grant of up to \$50,000 (the Law Foundation's letter dated June 22, 2013 is attached at Appendix D).

Outstanding Issues

The Executive Committee considered the Proposal at its June 27 meeting and determined that more information is needed on a number of issues before a recommendation can be put to the Benchers. Those issues include:

1. Has the current REAL Initiative's effectiveness been assessed over its five-year term (2009-2013)?
2. Were exit interviews or surveys conducted with students and law firms where REAL placements of summer students:
 - a. did not lead to articles post-articles employment?
 - b. led to articles but not post-call employment?

3. Have structural barriers or other impediments to articling positions and permanent employment in targeted communities been identified and considered?
4. Were other approaches considered for addressing such barriers or impediments? Such as:
 - a. interest-free loans or forgiveness of student loans for young lawyers considering moving to rural communities; and
 - b. incentives for mid-career lawyers considering moving to rural communities.
5. Clarifying the Proposal's \$150,000 budget:
 - a. explain the proportion of Project Manager cost (\$60,000) to Student Placement cost (\$80,000), and strategic purpose for each;
 - b. explain the proposed "Committee" cost (\$2,000); and
 - c. confirm the Law Foundation's comfort with the apparent ratio of proposed administrative costs to student placement costs (46/100 for \$150,000 budget and 26/100 for \$75,000 budget).

Next Steps

The CBABC have been invited to review the Proposal and to take questions at the July 12 Benchers meeting. The issues summarized above have been shared with the CBABC and will be collated with other issues that may be raised by the Benchers on July 12, with the view of enabling the CBABC to augment or amend the Proposal for re-submission and decision in September.



**PROPOSAL TO THE
LAW SOCIETY OF BRITISH COLUMBIA**

June 2013

The Proposal

The Canadian Bar Association, BC Branch (CBABC) is proud to partner with the Law Society of British Columbia for the second phase of the Rural Education and Access to Lawyers (REAL) initiative. As we look ahead to another summer of successful student placements in rural communities again this year, it is also an opportunity to consider the future of this popular and effective initiative; one that addresses both the shortage of lawyers in this province, and access to legal services for the public.

The following information provides background on the history and evolution of REAL, and most importantly proposes a new funding model that will ensure its future.

We ask the LSBC to consider extending the current financial support of REAL for one more year (September 2013-August 2014) and join the original founding partner, the Law Foundation of BC, along with the CBABC in a joint effort. Details of the proposed funding model and future structure follow below.

The Overview

REAL Phase I and Phase II

The **REAL Initiative** is a coordinated set of programs established to address the current and projected shortage of lawyers in small communities and rural areas of British Columbia. This shortage was brought about by a combination of two factors, namely the aging of the profession as a whole and the preference among new lawyers to prefer practice in urban regions. The REAL initiative is delivered by the **Canadian Bar Association BC Branch** and made possible by funding from the Law Society of BC, the Canadian Bar Association BC Branch and the Law Foundation of BC.

The key components of REAL include:

- Funding for second year summer student placements in rural and small communities throughout British Columbia;
- Promotional support to assist with the marketing of regions to law students and new lawyers;
- Professional support from the Regional Legal Careers Officer for students who are interested in practicing in rural and small communities; and
- Professional support from the CBABC Regional Legal Careers Officer to assist law firms and practitioners with the recruitment, hiring and retention of students and new lawyers in rural and small communities.

With the completion of the Law Foundation of BC funding in 2012, the CBABC partnered with the Law Society of BC to continue to deliver the REAL Initiative through 2012 and 2013. The principal program of the REAL Initiative focused on the placement of a significant amount of students in second year summer positions throughout the province.

This placement resulted in approximately 50% of students remaining for articles in rural areas and small communities in the province. A map of all 68 placements over the five-year period can be found below along with links to maps from all years:

2009	- http://goo.gl/maps/sxjFl
2010	- http://goo.gl/maps/Uw042
2011	- http://goo.gl/maps/ZvZCc
2012	- http://goo.gl/maps/KQraU
2013	- http://goo.gl/maps/YKnYz
All Years	- http://goo.gl/maps/cxHR0

The Law Foundation funded REAL for the first three years of the program (“*Phase I*”). *Phase I* (2009-11) created 52 positions of summer employment, a year round

Regional Legal Careers Officer (“RLCO”) position, promotional materials and events in the four western provinces, and the legacy of guidebooks for lawyers and students. We have followed the students involved with the program and as a result of participation in this program, **27 of the first 52 participants are now lawyers working in smaller and rural communities today.**

In the following two years, “*Phase II*” (2012-13) evolved to provide more opportunities with less funding and yet still proving the theory that “if you build it, they will come”. Matching funds from the CBABC and the Law Society of BC reduced the annual budget by half yet increased the placements. Within this funding model, the RCLCO's contract was reduced to six months with the CBABC senior staff responding to inquiries the balance of each year. As the program matures, the promotion to the law firms and law schools increase primarily through the participants’ enthusiasm for the program, and both benefit from the education and past learning. Firms are requesting less funding and students are actively seeking rural and smaller community postings. Together this has resulted in stretching the funding pool to go further.

In addition to the matching funds from the CBABC, other branch resources and in-kind donations were provided during the two year window including: in-house management of the REAL account during the “off-peak” season, outreach to the law schools, promotion through various CBA communication vehicles, hosted reception for local and country bar associations and law students, recruitment and hiring of a Project Manager, and assorted administrative and marketing endeavors.

REAL Phase III

The CBABC is now seeking funding to launch a new phase of the REAL Initiative (“*Phase III*”). *REAL Phase III* will **build on the experiences and lessons learned** through the delivery of the Initiative over the past five years. Principally, *REAL Phase III* will decrease the number of student placements while increasing the quality and engagement of the placements. This process will begin, not with an open invitation to apply for funding, but with a **targeted identification of communities that are in high need** of lawyers. Once identified, the Project Manager will work with lawyers in the community, or adjoining communities if no lawyer exists in the high need area, to secure a commitment to take on a summer student and to return the student for articles. The Project Manager will then ascertain the lawyer’s specific needs; recruit a suitable student with an emphasis on a student with connections to the area or a strongly expressed desire to practice in the area and will provide a series of ongoing supports throughout the summer experience. These additional supports may range from the development of an orientation program to the facilitation of a succession plan and exit strategy for a retiring lawyer.

Specific Objectives

The specific objectives of *Phase III* will be to address the immediate and longer term requirements for legal services in high need communities in British Columbia through the placement of students that will continue to articles and eventually practice. Through the proposed approach it is hoped that the **articling return rate can be raised** from 50% to over 85%.

Phase III of the REAL initiative has the following concrete, purposeful and effective goals:

Enhance access to legal services in communities by:

- Addressing the shortage of lawyers
- Addressing the aging population of the profession
- Providing lower-cost alternatives
- Supporting greater retention rate

Provide effective education to the legal profession by:

- Supporting and encouraging principals
- Securing strong mentors while still active/available
- Increasing the number of available articling positions
- Providing a broad range of experience to law students, currently not available in other settings

The Evolution

Upon confirmation of funding, the Project Manager (formerly known as the Regional Legal Careers Officer), in consultation with the REAL Advisory Committee will establish a comprehensive work plan that includes detailed deliverables attached to specific timelines. The work plan will also contain an evaluation plan that identifies key quantitative and qualitative measures of success. At the completion of the project duration, the Project Manager will execute the evaluation plan to gather and analyze relevant data to determine the success of the project and set out future recommendations.

Key quantitative measures of success will include:

- Overall retention rate for program participants;
- Net increase in the overall number of lawyers practicing in high need communities;
- Net decrease in the average age of lawyers practicing in high need communities.

In addition to the above, the Project Manager will seek qualitative feedback from all REAL *Phase III* program participants through both informal discussion and the distribution of a formal survey. The Project Manager will also continue to track the 2012 and 2013 participants.

Specifically in *Phase III*, we aim to decrease the number of student placements and maintain a Project Manager on a 12 month basis so as to increase the effectiveness of the program. This role has been repeatedly identified as a key to the success of this program. CBABC will continue to support the initiative with ongoing administration assistance and program promotion. All promotional partners will be asked to increase the level of awareness with additional public relations activities and cross-promotion in their organizations' communication vehicles and professional outreach. As well, it is the intention that the Project Manager, through the delivery of REAL *Phase III*, will connect with local funding organizations such as the Columbia Basin Trust and Central Okanagan Foundation to develop support for the funding of positions in high need communities within their geographical funding regions.

Other factors of success will be measured by:

- Growing knowledge/promotion both within the local community and at the law schools;
- More information/requests from students directly;
- More involvement from the schools' career officers; and
- Continued increase in inquiries from other jurisdictions, media coverage, and funding partners.

The Need

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

- (i) preserving and protecting the rights and freedoms of all persons;
- (ii) ensuring the independence, integrity and honour of its members; and
- (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership.

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

The REAL program specifically addresses **the users** – and lends itself perfectly to aiding the LSBC in achieving this mandate.

The goals of the Law Society of BC, as outlined in the *2012-1014 Strategic Plan*, echo the objectives of the REAL initiative, specifically in Goals 2 & 3:

Law Society Goals

1. *The Law Society will be a more innovative and effective professional regulatory body.*
2. *The public will have **better access to legal services.***
3. *The public will have **greater confidence in the administration of justice and the rule of law.***

Financially supporting an existing and successful grassroots initiative that addresses both the geographical and economic constraints on our profession would aid the LSBC in achieving these goals. REAL extends a helping hand to the rural communities and at the same time aids in succession planning for the future by setting the stage for the youngest members of our professional community.

REAL supports LSBC Goal 1, Strategy 1.1 as well (*regulate provision of legal services effectively and in the public interest*) by requiring that students participating in the REAL program must obtain temporary articles. This requirement was introduced in 2012 and will continue, thus ensuring quality supervision.

LSBC Goal 2 is achieved in Strategy 2.1 (*Increase the availability of legal service providers*) and Strategy 2.2 (*Improve access to justice in rural communities*) as the REAL initiative instantly addresses these needs by placing law students in communities that are short on lawyers. The cycle continues when the students then return to smaller markets to article, and eventually return once again to

practice. This collaborative approach addresses the need for the long-term, engages young lawyers and brings them together with those aiming to retire. REAL sustains a vibrant legal workforce throughout the province for years to come.

And finally, Goal 3 of the LSBC Strategic Plan states 'access to justice equals public confidence'. The Rural Education and Access to Lawyers initiative does just that – provides access for students/lawyers and the public and boosts both the confidence in the administration of justice and the rule of law.

The Future

Each year the numbers of applications increase as do the offers of articles and accepted rural placements. The growing pains of start-up in *Phase I* are behind us and there is real momentum starting to take place as we come to the close of *Phase II*. Ensuring a strong finish in *Phase III* looks like this:

- **Changing the Conversation in Law Schools** – rural placements become a natural choice for students; equal option to practice in the urban centres
- **Stakeholder Engagement** – lawyers and law firms continue to actively pursue alternative funding streams to help offset the funding requests; students actively pursue rural placements earlier in the year, not as a default to not finding a big city summer job
- **Profile and Promotion** – increasing the awareness of the program beyond the Law Schools, working closely with other legal organizations for cross promotion (Law Foundation, Local Bar and County Associations, et al)

REAL *Phase III* is needed as there remains a shortage of lawyers practicing in certain rural areas and small communities in British Columbia which results in difficulties for those requiring access to legal services in these communities. This shortage is brought about by two factors; namely the aging of the baby boomer generation combined with a preference among new lawyers to practice in urban regions.

This initiative serves the residents of high need communities in British Columbia that are either experiencing a lack of access to legal services or who are in danger of experiencing a lack of access due to lawyer age and retirement.

One of the important benefits of REAL is how it changes the conversations at law schools about students' future careers. It can seem to students that the only career path is to start at a large firm in Vancouver and any other options either does not exist or is a second, "unsuccessful" choice. REAL provides an option of establishing a career in a smaller community with skilled lawyers who enjoy what they do. REAL promotes this choice and is the single consistent voice presenting this opportunity to students. The fact is that the majority of articling placements are in Vancouver and accordingly the Careers Officers focus on those relationships and opportunities. Because of REAL, and by having a Project Manager promoting REAL to the law schools, the Careers Officers can more easily promote the option of smaller communities.

The Comparison

REAL stands alone – no other similar service or resource exists in BC (or elsewhere in Canada as of yet). We are frequently asked for information from other provinces and welcome the opportunity to share the model of success to all who request. One common theme resonates with other organizations – the CBABC (with gratitude to our founding partners) took action and addressed an issue affecting our members (and non-members) in this province.

Our funding model has evolved, and will continue to adapt to the changing needs and restraints to the legal profession as a whole. As we contemplate the next phase with REAL, we envision collaboration between the Canadian Bar Association, BC Branch, the Law Foundation of BC, the Law Society of BC and the Local and County Bar Association network. Collectively we can support the needs in the local communities as well as the lawyers and law students. Each organization individually cannot fund the yearly program. However, we can each contribute variable amounts for this next phase and **together** sustain the future of our profession in BC.

There are no other similar resources that exist in British Columbia except for a limited overlap of services provided by the Career Office of the University of British Columbia, the University of Victoria and Thompson Rivers University. The REAL Initiative has worked with and will continue to work closely with the Career Offices of the law schools in various ways including participation in the Advisory Committee and the hosting of joint student events.

REAL *Phase III* will also focus a greater level of resources on assisting practitioners with succession planning and knowledge transfer than the REAL Initiative has in the past. There are no other organizations providing similar resources.

The Budget

2009-2012 (Phase I)

Funding was provided over a three year period supported solely by the Law Foundation (\$720,000).

2012-2013 (Phase II)

Funding was provided over a two year period by both the Law Society of BC and the CBABC (\$300,000). Each partner contributed \$75,000 in each year. A typical one-year budget consisted of:

\$115,000	Summer Student Placements
\$ 30,000	Project Manager
\$ 2,500	Travel Expenses
<u>\$ 2,500</u>	<u>Administration Costs</u>
\$150,000	Total

2013 and beyond (Phase III)

The following is a draft itemized project budget. The actual budget for the next phase of REAL will depend heavily on the level of funding achieved through the various funding requests for the project. The optimal total amount needed for this project is \$150,000. The total amount requested from the Law Foundation of BC *Large Project Grant* is \$75,000. Given the current financial position of the Law Foundation, it may not be likely that the full \$75,000 will be granted. **Our request to the Law Society of BC is to partner with the CBABC to fund any difference between the total amount required to fund the REAL program, and any amount received from the Law Foundation.**

\$150,000 Budget

Based on \$150,000 budget we would suggest the following allocation of funds:

- Student placements \$80,000
- Project Manager (part-time, year-round contract) \$60,000
- Project expenses (admin, promotion and resources) \$8,000
- Committee \$2,000

If the Law Foundation cannot provide any funds, and if \$150,000 is deemed by the Law Society and CBABC to be too large a commitment, a reduced proposal would be as follows:

\$75,000 Budget

Based on a \$75,000 budget we would suggest the following allocation of funds:

- Student placements \$55,000
- Project Manager (part-time peak period contract) \$15,000
- Project expenses (admin, promotion and resources) \$5,000

References

The following lists individuals who are familiar with REAL, the details of the program, and could verify the need and impact in the communities it serves:

Kerry L. Simmons
Chair, REAL Advisory Committee
250.413.3312 (Victoria)

Bruce LeRose, QC
Past President, Law Society of BC
250.368.3327 (Trail)

Donna Greschner
Dean, University of Victoria, Faculty of Law
250.721.8147 (Victoria)

Mark Benton, QC
Executive Director, Legal Services Society
604.601.6137 (Vancouver)

Tom Fellhauer
Bencher, Law Society of BC
250.762.2108 (Kelowna)

Chris McEwan
Partner, McEwan Law Corporation
250.368.8211 (Trail)

Sean Rowell
Partner, Perry and Company
250.847.4341 (Smithers)

Kerri-Ann Thomas
Partner, MacDonald Thomas
250.342.6921 (Invermere)

Pamela Cyr
Assistant Dean, Career Services, University of British Columbia, Faculty of Law
604.822.9486 (Vancouver)

Anne Pappas
Assistant Dean, Thompson Rivers University, Faculty of Law
250.852.7268 (Kamloops)

Grant Currie
Partner, Grant Currie Law Office
250.830.1111 (Campbell River)

Conclusion

On behalf of the Canadian Bar Association, BC Branch, we sincerely hope the Law Society of BC will once again return as a partner of the REAL program and re-establish funding for the future success of this province-wide initiative.

We thank you for your consideration and welcome any feedback as you weigh the options for involvement.



Kerry L. Simmons
President
CBABC
president@bccba.org



Memo

To: Executive Committee
From: Gavin Hume, QC
Date: August 11, 2011
Subject: REAL Request for Funding

At the July 15 Bencher meeting, the Benchers heard a presentation from Kerry Simmons, Treasurer of the Canadian Bar Association BC Branch regarding the Rural Education and Access to Lawyers (REAL) initiative. The purpose of the presentation was to seek financial support from the Law Society for the continuation of the REAL initiative initially begun with funding from the Law Foundation. At the conclusion of the presentation and questions, the President indicated that the request would be considered by the Executive Committee at its August meeting with a view to making a recommendation to the Benchers at the September meeting. The purpose of this memorandum is to provide background about the REAL program and the request the CBABC has made for funding, to assist the Executive Committee in making a recommendation to the Benchers.

Background

The Law Foundation provided initial funding of \$795,000 for the REAL initiative in 2008 based on a Canadian Bar Association BC Branch (CBABC) proposal for a three-year program designed to attract new lawyers to small and rural BC communities.

As described in the initial press release, the REAL initiative has six main components:

1. Funding for a Regional Legal Careers Officer position to promote practice opportunities in smaller communities, and match students with opportunities in local Bars.
2. Development of marketing materials and profile for regions at major recruitment events in Western Canadian law schools.
3. Funding for student visits to local law firms in smaller communities.
4. Fully funded summer student positions.

5. Ongoing liaison with local Bars to support articling positions and recruitment of new lawyers.
6. Oversight committee of lawyers and representatives of the law schools at UBC and UVic, and the Law Society of BC.

The objective was to place law students in rural law firms for summer work experience and to facilitate the placement of articulated students in communities of less than 100,000 people and a greater than 500 person to lawyer ratio.

The REAL initiative reports placing 11 summer students in 2009 with 5 receiving articling offers, 21 in 2010 with 11 receiving articling offers and 20 placed in 2011.

The Law Foundation has indicated that it cannot provide further funding for the REAL initiative and a funding request by the CBABC to the national Access to Justice Fund for funding was denied.

Law Society Funding Policy

Part 3.K.1 of the Benchers Governance policies provides that:

It is the Benchers' policy that the Law Society will consider funding externally operated projects or programs only when the Law Society specifically sponsored or participated in the creation of the project or program

As Ms. Simmons noted in her presentation to the Benchers, the Small Firm Task Force Final Report delivered in January 2007 stated:

The Task Force considers it is more likely that students who choose to article in smaller communities would, if given the opportunity, stay in those communities after being called to the bar. An increase of articling students in sole and small firm practices, particularly outside the Lower Mainland and Greater Victoria regions, would in both the short and longer term be likely to support and strengthen the viability of law practices and the provision of legal services. (page14)

To address articling in small firms, the Task Force made four recommendations but did not suggest a program such as the REAL initiative.

The CBABC established an oversight committee for the REAL initiative and Ron Tindale was our initial appointment to that committee, with the current representative being Tom Fellhauer.

Ms. Simmons also expressed the view that the REAL initiative is consistent with current strategic objectives of increasing access to legal services and enhancing education.

Funding Request

Ms. Simmons indicated that bridge funding is need for the remaining two years of the original five-year program. In her view, five years will allow detailed reporting on the effectiveness of the program in increasing the number of new young lawyers who choose to take up practice outside Vancouver and Victoria.

The CBABC proposed two options for funding:

Option 1 would involve a Law Society contribution of \$75,000 and a CBABC contribution of \$75,000 for each of two years.

10 students, 3 months @ \$3,500 per month	\$105,000
Part-time Regional Career Officer	\$37,000
Marketing Materials	\$8,000
Annual Cost	<u>\$150,000</u>

Option 2 would involve a Law Society contribution of \$55,000 and a like contribution by the CBABC in each of the two years

10 students, 3 months @ \$2,000 per month	\$60,000
Part-time Regional Career Officer	\$37,000
Marketing Materials	\$8,000
Annual Cost	<u>\$110,000</u>

Considerations

While the Law Society did not sponsor the creation of the REAL initiative, it did participate in discussions about how to most effectively encourage law students to consider practising outside Vancouver and Victoria, and the Chair of the Small Firm Task Force wrote a letter to the Law Foundation at the time in support of the initiative.

The main points in favour of providing some bridge funding for the next two years of the REAL initiative are:

- The CBABC is willing to commit an equal amount to the continuation of the initiative.
- It will allow completion of the initial five-year plan to permit a full assessment of the initiative.

- It has a low cost structure with no permanent commitment to space, equipment or staffing so that funding can be withdrawn if necessary in the future with minimal disruption.
- The initiative has made a promising start and the investment would not be throwing good money after bad.
- It is one of the few programs currently in place directed at increasing access to legal services in smaller communities.

Against these considerations is the obvious concern that two years from now, there will be no other more apparent source of alternate funding than there is today and the REAL initiative may be just as worthy of continued support then as now.

Memo

To: Benchers
From: Executive Committee
Date: August 31, 2011
Subject: REAL Request for Funding

At the July 15 Bencher meeting, the Benchers heard a presentation from Kerry Simmons, Treasurer (now Vice-President) of the Canadian Bar Association BC Branch regarding the Rural Education and Access to Lawyers (REAL) initiative. The purpose of the presentation was to seek financial support from the Law Society for the continuation of the REAL initiative initially begun with funding from the Law Foundation. At the conclusion of the presentation and questions, the President indicated that the request would be considered by the Executive Committee at its August meeting with a view to making a recommendation to the Benchers at the September meeting.

The Committee discussed the request at its August 25th meeting and considered not only the merits of the program but also the Law Society's policy on funding external projects. The balance of this memorandum reviews the Committee's understanding of the background to the request, the Law Society's funding policy, the request itself and the factors the Committee took into consideration in reaching its recommendation to the Benchers.

Background

The Law Foundation provided initial funding of \$795,000 for the REAL initiative in 2008 based on a Canadian Bar Association BC Branch (CBABC) proposal for an initiative designed to attract new lawyers to small and rural BC communities.

As described in the initial press release, the REAL initiative has six main components:

1. Funding for a Regional Legal Careers Officer position to promote practice opportunities in smaller communities, and match students with opportunities in local Bars.
2. Development of marketing materials and profile for regions at major recruitment events in Western Canadian law schools.

3. Funding for student visits to local law firms in smaller communities.
4. Fully funded summer student positions.
5. Ongoing liaison with local Bars to support articling positions and recruitment of new lawyers.
6. Oversight committee of lawyers and representatives of the law schools at UBC and UVic, and the Law Society of BC.

The objective was to place law students in rural law firms for summer work experience and to facilitate the placement of articulated students in communities of less than 100,000 people and a greater than 500 person to lawyer ratio.

The REAL initiative reports placing 11 summer students in 2009 with 5 receiving articling offers, 21 in 2010 with 11 receiving articling offers and 20 placed in 2011.

The Law Foundation has indicated that it cannot provide further funding for the REAL initiative and a funding request by the CBABC to the national Access to Justice Fund for funding was denied.

Law Society Funding Policy

Part 3.K.1 of the Benchers Governance policies provides that:

It is the Benchers' policy that the Law Society will consider funding externally operated projects or programs only when the Law Society specifically sponsored or participated in the creation of the project or program

As Ms. Simmons noted in her presentation to the Benchers, the Small Firm Task Force Final Report delivered in January 2007 stated:

The Task Force considers it is more likely that students who choose to article in smaller communities would, if given the opportunity, stay in those communities after being called to the bar. An increase of articling students in sole and small firm practices, particularly outside the Lower Mainland and Greater Victoria regions, would in both the short and longer term be likely to support and strengthen the viability of law practices and the provision of legal services. (page14)

To address articling in small firms, the Task Force made four recommendations but did not suggest a program such as the REAL initiative.

The CBABC established an oversight committee for the REAL initiative and Ron Tindale was our initial appointment to that committee, with the current representative being Tom Fellhauer.

Ms. Simmons also expressed the view that the REAL initiative is consistent with current strategic objectives of increasing access to legal services and enhancing education.

Funding Request

Ms. Simmons indicated that bridge funding is needed for the remaining two years of what was considered a five-year program. In her view, five years will allow detailed reporting on the effectiveness of the initiative in increasing the number of new young lawyers who choose to take up practice outside Vancouver and Victoria.

The CBABC proposed two options for funding:

Option 1 would involve a Law Society contribution of \$75,000 and a CBABC contribution of \$75,000 for each of two years.

10 students, 3 months @ \$3,500 per month	\$105,000
Part-time Regional Career Officer	\$37,000
Marketing Materials	\$8,000
Annual Cost	<u>\$150,000</u>

Option 2 would involve a Law Society contribution of \$55,000 and a like contribution by the CBABC in each of the two years

10 students, 3 months @ \$2,000 per month	\$60,000
Part-time Regional Career Officer	\$37,000
Marketing Materials	\$8,000
Annual Cost	<u>\$110,000</u>

Considerations

The Committee noted that the Law Society did not specifically sponsor the creation of the REAL initiative. However, the Law Society did participate in discussions about how to most effectively encourage law students to consider practising outside Vancouver and Victoria. The Chair of the Small Firm Task Force also wrote a letter to the Law Foundation in support of the initiative. While these activities were not sufficient to bring the project within the specific requirements of the Law Society funding policy, the Committee considered that there were a number of points in favour of providing some bridge funding for the next two years of the REAL initiative:

1. The CBABC is willing to commit an equal amount to the continuation of the initiative.
2. It will allow completion of the initial five-year plan to permit a full assessment of the initiative.

3. It has a low cost structure with no permanent commitment to space, equipment or staffing so that funding can be withdrawn if necessary in the future with minimal disruption.
4. The initiative has made a promising start and the investment would not be throwing good money after bad.
5. It is one of the few programs currently in place directed at increasing access to legal services in smaller communities.

The Committee did note that the criteria placing articulated students in communities of less than 100,000 people and a greater than 500 person to lawyer ratio might require some reconsideration to maximize the opportunity for assisting lawyers and law firms in those communities most in need of attracting articling students. The Committee also had some questions about the functions of the part-time Regional Career Officer.

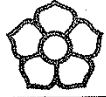
Against these considerations, the Committee expressed the obvious concern that providing funding for the two years as requested might be seen as a commitment to ongoing funding. The Committee was very much of the view that if the Benchers decide to provide the funding requested, it should be clearly understood that the Law Society only expects to be providing funding for the next two years.

Recommendation

At the conclusion of the discussion, the Committee agreed to recommend that the Benchers approve co-funding with the CBABC of the REAL initiative for 2012 and 2013 with a contribution of \$75,000 per year subject to a satisfactory due diligence regarding the criteria for the inclusion of communities and the part-time Regional Career Officer and the following conditions:

1. The Law Society will only provide funding for 2012 and 2013 to the conclusion of the original five-year program.
2. The Law Society reaches agreement with the CBABC about the criteria for inclusion of the communities entitled to benefit from the initiative.
3. The Law Society's contribution is recognized in communications and public relations about the program during the two years.
4. Conclusion of a satisfactory co-funding agreement with the CBABC consistent with the terms of the original proposal and grant from the Law Foundation.

Bruce LeRose offered to conduct the due diligence with the CBABC in respect of the part-time Regional Career Officer and the criteria for inclusion of communities. The CBABC has provided the attached memorandum for the Benchers' consideration.

THE  LAW
FOUNDATION
OF BRITISH COLUMBIA

1340-605 Robson Street, Vancouver,
British Columbia, V6B 5J3 Canada
FAX 604/688-4586 • Phone 604/688-2337

June 22, 2013

Ms. Kerry Simmons
President
Canadian Bar Association, BC Branch
10th Floor 845 Cambie Street
Vancouver, BC V6B 5T3

Dear Ms. Simmons:

Re: Large Project: Rural Education and Access to Lawyers Initiative (REAL) Phase 3
File No: LRG2861 (Please quote this file number on all future correspondence
with regard to this grant)

I am writing to inform you of the decision made by the Board of Governors of the Law Foundation of British Columbia (the "Foundation") at a meeting held on June 22, 2013.

I am pleased to advise you that, pursuant to the terms and conditions of this letter, the Foundation approved a grant of up to \$50,000 to the Canadian Bar Association, BC Branch for the Rural Education and Access to Lawyers Initiative (REAL) Phase 3 project.

Conditions

It is a condition of the grant that matching grants of \$50,000 each are made by the Canadian Bar Association, BC Branch and Law Society of British Columbia to the REAL Program.

It is a condition of the grant that the Canadian Bar Association, BC Branch submit a detailed revised budget satisfactory to Foundation staff.

Payment and Reporting Schedule

Please contact Program Director karima budhwani to establish a payment and reporting schedule.

Reporting Requirements

You are required to submit financial and activity reports under the terms of this grant.

The activity reports should detail your progress toward fulfilling the goals of the project during the reporting period.

Please note that scheduled grant payments may be delayed or cancelled if satisfactory financial and activity reports are not received by the scheduled time. If you have any problem in preparing the reports or meeting the deadlines, please contact karima budhwani.

The financial reports should outline in separate columns the budget for the reporting period and your actual receipts and expenditures during the reporting period. You should also include columns for your cumulative budget year-to-date and actual expenses and revenues for the year-to-date. The financial report should include a narrative explanation, where necessary, of significant variances from the budgeted income and expenses. A sample financial statement is attached for your reference and is also available on the Foundation's website at www.lawfoundationbc.org.

The costs of this project must be segregated in the financial records of your organization. The funds may not be transferred from one budget category to another without the prior approval of the Foundation. If you wish to request a change in either the budget or activity plan, please contact karima budhwani.

Any unused or unaccounted for portion of the grant must be refunded to the Foundation at the end of the grant period.

There shall be full rights of access by the Foundation, or its designate, to perform a spot analysis or audit of the project.

Audited Financial Statements

In addition to regular financial and activity reports, audited financial statements covering the duration of the project are to be submitted no later than six months after your organization's fiscal year end. Please note that a portion of your grant may be withheld pending submission of your organization's audited financial statements or an audit of the project.

Acknowledgement of Law Foundation Funding

In order that members of the public and the legal profession may be informed of the Foundation's contribution to projects funded by means of its grants, we request that you acknowledge the Foundation's support of this project wherever you can. This should include, for example, acknowledgement in your annual report, on your website, or in

your brochures or other publications. Please contact the Foundation should you require an electronic version of our logo.

General Terms and Conditions of the Grant

A. Terms and Conditions

In approving this grant, the Foundation relied on the facts and representations set out in your grant application and supporting materials. Please notify the Foundation immediately if any of those facts or representations change or can no longer be fulfilled.

The Foundation approved the grant on the basis of, among other considerations, the project goals, work plan, staffing level and budget which you submitted as part of your application. The grant funds (and any interest earned on them) may not be used for any other purpose without the Foundation's prior written approval.

It is a condition of this grant that you submit financial and activity reports as required in this letter.

Reporting to the Foundation does not mean that the Foundation is responsible for the work that has been performed under this grant, nor that the Foundation is performing any supervisory function over the legal advice or representation, or any other services provided.

The Foundation reserves, and is hereby granted, the right to distribute, and/or copy, material produced as a result of this grant. In the case of public legal education materials, the Foundation is hereby also granted the right to revise materials produced.

If there are significant changes in staff, either of the project, or in your organization generally, please notify us promptly.

As part of the ongoing monitoring of the grant, Foundation staff may contact third parties to discuss the project.

In carrying out the project funded by this grant, the Canadian Bar Association, BC Branch agrees to comply with all applicable legislation including federal and provincial laws and municipal bylaws, federal and provincial human rights legislation, and applicable employment legislation ("Applicable Laws").

B. Discretionary Nature of the Grant

The provision of any portion of this grant by the Foundation is entirely discretionary on the part of the Foundation.

In the event that the project funded by this grant is cancelled or substantially modified, approval for the grant shall be deemed to be withdrawn, and further payments will

cease. In addition, your organization will be required to account for all funds received prior to the termination of the project, and refund to the Foundation any money not spent on the project.

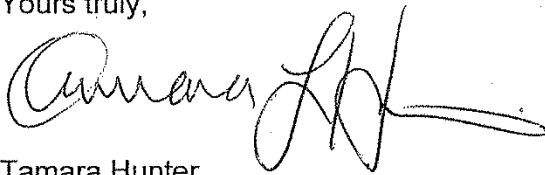
In the event that the project funded by this grant is not commenced within one year of the grant date, the grant shall be rescinded unless an extension is approved by Foundation staff.

In the event of a failure by your organization to comply with any condition of this grant, including the obligation to comply with Applicable Laws, the Foundation shall have no further obligation to provide funding, and may reclaim any funds paid to your organization.

Please indicate your organization's agreement to the terms of this grant by having the enclosed copy of this letter countersigned, as indicated below, by the appropriate signing officer of your organization and returning it to the Foundation.

The Foundation is pleased that it is able to provide funding support to the Canadian Bar Association, BC Branch for the Rural Education and Access to Lawyers Initiative (REAL) Phase 3 project.

Yours truly,



Tamara Hunter
Chair

Enc.

cc: Caroline Nevin, Executive Director
Maureen Cameron, Director of Membership & Public Affairs

AGREED TO AND ACCEPTED BY:

Organization Name: _____

Signature: _____

Title: _____

Date: _____



Financial Report

May 31, 2013

Prepared for: Bencher Meeting – July 12, 2013

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

- 2 -

Financial Report – To May 31, 2013

Attached are the financial results and highlights for the first five months of 2013.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance of \$414,000 to May 31, 2013. The positive variance is due to the timing of a number of revenue and expense items.

Revenue

Revenue is \$8,342,000, \$153,000 (1.9%) ahead of budget.

Operating Expenses

Operating expenses for the first quarter were \$7,806,000, \$121,000 (1.5%) below budget due the timing of costs in various areas.

2013 Forecast - General Fund (excluding capital and TAF)

We are forecasting the General Fund to be on budget for the year.

Operating Revenue

Practicing membership revenue is budgeted at 11,000 members, and is expected to be below budget by approximately 30 members, or \$50,000. PLTC revenue is projected at 430 students compared to a budget of 400, resulting in a positive variance of \$75,000.

Operating Expenses

There are two Bencher-approved unbudgeted expense items. The Benchers approved a \$75,000 contribution in 2013 to the CBA REAL program and an additional annual contribution of \$48,000 to the Access Pro Bono Society. At this time, we are projecting other savings will offset these additional costs.

845/835 Building

We are pleased that the second floor of 835 Cambie has been leased effective July 1st and Access Probono is now leasing space on the third floor of 845 Cambie. Our leasing agent continues to market the third floor of 835 Cambie. As the third floor of 835 Cambie was budgeted to be leased by July 1st, we are continuing to forecast a negative variance of \$82,000 in leasing revenue for the year.

- 3 -

TAF-related Revenue and Expenses

The first quarter TAF revenue was below budget by \$117,000. The second quarter TAF revenue will not be received until the July/August time period.

TAF operating expenses had a small positive variance in the first five months, with savings in travel costs.

With the continued slowdown in real estate unit sales, we are forecasting TAF revenue to be similar to 2012, which will result in a shortfall in the Trust Assurance Program of approximately \$235,000 for the year. The TAF fees will be reviewed at the upcoming Finance Committee meeting.

Special Compensation Fund

There has been little activity in the Special Compensation Fund.

When the final claim payments are paid out in 2013, the remaining Special Compensation Fund reserve will be transferred to the LIF as required by the Legal Profession Amendment Act, 2012.

Lawyers Insurance Fund

LIF operating revenues were \$5.9 million in the first five months, very close to budget.

LIF operating expenses were \$2.5 million, \$277,000 below budget. This positive variance was due to lower staffing costs, insurance costs and external counsel fees.

The market value of the LIF long term investments is \$105.6 million, an increase of \$6.7 million to date. The year to date investment returns were 6.8%, compared to a benchmark of 5.3%.

Summary of Financial Highlights - May 2013
(\$000's)

2013 General Fund Results - YTD May 2013 (Excluding Capital Allocation & Depreciation)				
	<u>Actual</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
Revenue (excluding Capital)				
Membership fees	6,958	6,878	80	1.2%
PLTC enrolment fees & grant	325	280	45	16.1%
Electronic filing revenue	318	329	(11)	-3.3%
Interest income	148	116	32	27.6%
PD Reporting penalties	97	75	22	29.3%
Other revenue	496	511	(15)	-2.9%
	<u>8,342</u>	<u>8,189</u>	<u>153</u>	<u>1.9%</u>
Expenses before 845 Cambie (excl. dep'n)	<u>7,806</u>	<u>7,927</u>	<u>121</u>	<u>1.5%</u>
	536	262	274	
845 Cambie St. - net results (excl. dep'n)	<u>253</u>	<u>113</u>	<u>140</u>	<u>123.9%</u>
	<u>789</u>	<u>375</u>	<u>414</u>	

2013 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)		
	<u>Avg # of Members</u>	
Practice Fee Revenue		
2008 Actual	10,035	
2009 Actual	10,213	
2010 Actual	10,368	
2011 Actual	10,564	
2012 Actual	10,746	
2013 Budget	11,000	
2013 Forecast	10,970	
2013 YTD Actual	10,859	
		Actual Variance
Revenue		
Membership Revenue - 30 members less than budget		(50)
PLTC - 30 students more than budget of 400		75
Lease revenue vacancy		(82)
PD reporting penalties & late payment fees		35
Miscellaneous		24
		<u>2</u>
Expenses		
CBA REAL Initiative contribution*		(75)
Access Pro Bono - additional contribution re: 3rd floor space*		(48)
Miscellaneous savings - various areas		121
		<u>(2)</u>
2013 General Fund Actual Variance		-
2013 General Fund Budget		-
2013 General Fund Actual		-

* Approved by Benchers as an unbudgeted item

Trust Assurance Program Actual & Forecast				
	<u>2013 Actual</u>	<u>2013 Budget</u>	<u>Variance</u>	<u>% Var</u>
TAF Revenue **	416	533	(117)	-22.0%
Trust Assurance Department	891	960	69	7.2%
Net Trust Assurance Program	<u>(475)</u>	<u>(427)</u>	<u>(48)</u>	
** Q1 only, Q2 revenue not due until July 31st				
	<u>2013 Forecast</u>			
TAF Revenue	2,158	- assumes same revenue as 2012 Actual		
Trust Assurance Department	2,393	- per 2013 Budget		
Trust Assurance Program - 2013 Forecast	<u>(235)</u>			

2013 Lawyers Insurance Fund Long Term Investments - YTD May 2013 Before investment management fees	
Performance	6.80%
Benchmark Performance	5.30%

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2013
(\$000's)

	2013 Actual	2013 Budget	\$ Var	% Var
Revenue				
Membership fees (1)	8,869	8,780		
PLTC and enrolment fees	325	280		
Electronic filing revenue	318	329		
Interest income	148	116		
Other revenue	594	586		
Total Revenues	10,254	10,091	163	1.6%
Expenses				
Regulation	2,705	2,851		
Education and Practice	1,572	1,564		
Corporate Services	1,174	1,190		
Bencher Governance	853	816		
Communications and Information Services	840	843		
Policy and Legal Services	663	709		
Depreciation	149	149		
Total Expenses	7,956	8,122	166	2.0%
General Fund Results before 845 Cambie and TAP	2,298	1,969	329	
845 Cambie net results	37	(205)	242	
General Fund Results before TAP	2,335	1,764	571	
Trust Administration Program (TAP)				
TAF revenues	416	533	(117)	
TAP expenses	891	960	69	7%
TAP Results	(475)	(427)	(48)	
General Fund Results including TAP	1,860	1,337	523	

Membership fees include capital allocation of \$1.911m (YTD capital allocation budget = \$1.902.7m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at May 31, 2013
(\$000's)

	May 31 2012	Dec 31 2012
Assets		
Current assets		
Cash and cash equivalents	201	672
Unclaimed trust funds	1,776	1,672
Accounts receivable and prepaid expenses	7,240	981
B.C. Courthouse Library Fund	1,460	2,487
Due from Lawyers Insurance Fund	4,989	19,402
	<u>15,666</u>	<u>25,214</u>
Property, plant and equipment		
Cambie Street property	12,378	11,382
Other - net	1,593	1,593
	<u>29,637</u>	<u>38,189</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,803	2,575
Liability for unclaimed trust funds	1,776	1,672
Current portion of building loan payable	500	500
Deferred revenue	10,023	18,225
Deferred capital contributions	54	58
B.C. Courthouse Library Grant	1,460	2,487
Deposits	18	29
Due to Lawyers Insurance Fund	-	-
	<u>15,634</u>	<u>25,546</u>
Building loan payable	3,600	4,100
	<u>19,234</u>	<u>29,646</u>
Net assets		
Capital Allocation	2,380	2,404
Unrestricted Net Assets	8,023	6,139
	<u>10,403</u>	<u>8,543</u>
	<u>29,637</u>	<u>38,189</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 5 Months ended May 31, 2013
(\$000's)

	Invested in P,P & E net of associated debt	Unrestricted	Unrestricted Net Assets	Trust Assurance Allocation	Capital Allocation	2013 Total	2012 Total
	\$	\$			\$	\$	\$
Net assets - December 31, 2012	8,448	(2,309)	6,067	72	2,404	8,543	7,112
Net (deficiency) excess of revenue over expense for the period	(421)	845	424	(475)	1,911	1,860	1,431
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:							
LSBC Operations	187	-	187	-	(187)	-	-
845 Cambie	1,248	-	1,248	-	(1,248)	-	-
Net assets - May 31, 2013	9,962	(1,464)	8,426	(403)	2,380	10,403	8,543

The Law Society of British Columbia
Special Compensation Fund
Results for the 5 Months ended May 31, 2013
(\$000's)

	2013 Actual	2013 Budget	\$ Var	% Var
Revenue				
Annual assessment	-	-		
Recoveries	1	229		
Total Revenues	1	229	(228)	-99.6%
Expenses				
Claims and costs, net of recoveries	-	30		
Administrative and general costs	18	20		
Loan interest expense	(10)	-		
Total Expenses	8	50	(42)	-84.0%
Special Compensation Fund Results	(7)	179	(186)	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at May 31, 2013
(\$000's)

	May 31 2012	Dec 31 2012
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable	-	-
Due from Lawyers Insurance Fund	1,385	1,396
	<u>1,386</u>	<u>1,397</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	167	171
Deferred revenue	-	-
	<u>167</u>	<u>171</u>
Net assets		
Unrestricted net assets	1,219	1,226
	<u>1,219</u>	<u>1,226</u>
	<u>1,386</u>	<u>1,397</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2013
(\$000's)

	2012	2011
	\$	\$
Unrestricted Net assets - December 31, 2012	1,226	932
Net excess of revenue over expense for the period	<u>(7)</u>	<u>294</u>
Net assets - May 31, 2013	<u><u>1,219</u></u>	<u><u>1,226</u></u>

**The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 5 Months ended May 31, 2013
(\$000's)**

	2013 Actual	2013 Budget	\$ Var	% Var
Revenue				
Annual assessment	5,947	5,892		
Investment income	6,661	765		
Other income	46	29		
Total Revenues	12,654	6,686	5,968	89.3%
Expenses				
Insurance Expense				
Provision for settlement of claims	5,267	5,267		
Salaries and benefits	997	1,164		
Contribution to program and administrative costs of General Fund	637	671		
Office	339	423		
Actuaries, consultants and investment brokers' fees	109	129		
Allocated office rent	62	61		
Premium taxes	8	5		
Income taxes	-	-		
	7,419	7,720		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	328	304		
Total Expenses	7,747	8,024	277	3.5%
Lawyers Insurance Fund Results before 750 Cambie	4,907	(1,338)	6,245	
750 Cambie net results	152	160	(8)	
Lawyers Insurance Fund Results	5,059	(1,178)	6,237	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at May 31, 2013
(\$000's)

	May 31 2013	Dec 31 2012
Assets		
Cash and cash equivalents	10,307	23,225
Accounts receivable and prepaid expenses	613	936
Due from members	125	35
General Fund building loan	4,100	4,600
Investments	114,085	108,573
	<u>129,230</u>	<u>137,369</u>
Liabilities		
Accounts payable and accrued liabilities	1,047	1,689
Deferred revenue	7,976	6,947
Due to General Fund	4,989	19,402
Due to Special Compensation Fund	1,385	1,396
Provision for claims	51,787	50,959
Provision for ULAE	7,166	7,155
	<u>74,350</u>	<u>87,548</u>
Net assets		
Unrestricted net assets	37,380	32,321
Internally restricted net assets	17,500	17,500
	<u>54,880</u>	<u>49,821</u>
	<u>129,230</u>	<u>137,369</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 5 Months ended May 31, 2013
(\$000's)

	Unrestricted \$	Internally Restricted \$	2013 Total \$	2012 Total \$
Net assets - December 31, 2012	32,321	17,500	49,821	44,266
Net excess of revenue over expense for the period	5,059	-	5,059	5,555
Net assets - May 31, 2013	<u>37,380</u>	<u>17,500</u>	<u>54,880</u>	<u>49,821</u>

The Law Society *of British Columbia*



Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2012 to December 31, 2012

For: The Benchers
Date: June 5, 2013

Purpose of Report: For Information

Prepared by: Anne Bhanu Chopra, Equity Ombudsperson, LSBC
B. Comm., MIR, LL.B

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PREFACE

The following report is prepared by Anne B. Chopra, the Equity Ombudsperson (the “Ombudsperson”) on an annual basis and disseminated to the Law Society of British Columbia for information purposes. Should the reader have any questions about the report, please feel free to email the Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the “LSBC”) Equity Ombudsperson Program (the “Program”) received 89 calls from individuals during the reporting period (January 1 to December 31, 2012) (the “Reporting Period”). These were calls from individuals with a new matter. Of the 89 calls, 50 of these new contacts were within the mandate of the Program (i.e. issues arising from the prohibited grounds of discrimination, including workplace harassment). Further, each caller may have contacted the Program on a number of occasions. As a result, the total number of contacts made with the Program during the Reporting Period was 261 contacts. (See Tables 2 and 3.)
2. The means of initial contact deployed by these individuals is distributed as follows: 13 (15%) made in person contact (e.g. after presentations); 70 (79%) used the telephone; 5 (5%) used email; and 1 (1 %) used regular mail.
3. Of the 89 new contacts, 80 (90%) were made by women and 9 (10%) were made by men.

TABLE 1: Total New Contacts—2012 (including contacts outside the mandate)

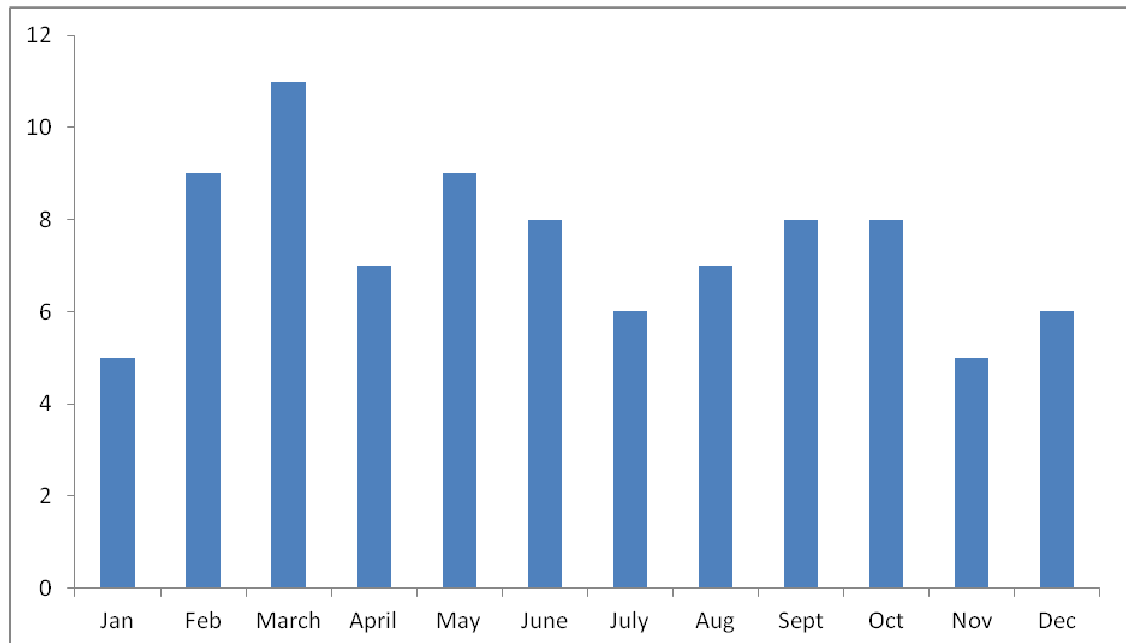


TABLE 2: Geographic Distribution of Contacts—2008-2012

	2008	2009	2010	2011	2012
Total Contacts¹:	275	258	260	256	261
Vancouver (GVRD ²):	133	128	135	140	133
Victoria:	68	64	65	60	58
Outside of GVRD & Victoria:	41	32	32	24	31
Outside of the mandate:	33	34	28	32	39
NOTE:					
¹ Contacts include all email, phone, in person, fax and mail contacts made with the Program. Some contacts may have resulted in more than one issue.					
² Greater Vancouver Regional District (GVRD) includes the municipalities of Vancouver, West Vancouver, North Vancouver, the District of North Vancouver, Burnaby, Richmond, New Westminister, Surrey, Delta, White Rock, the City of Langley, Coquitlam, Port Coquitlam, Port Moody, Anmore, Pitt Meadows, Maple Ridge and the University Endowment Lands.					

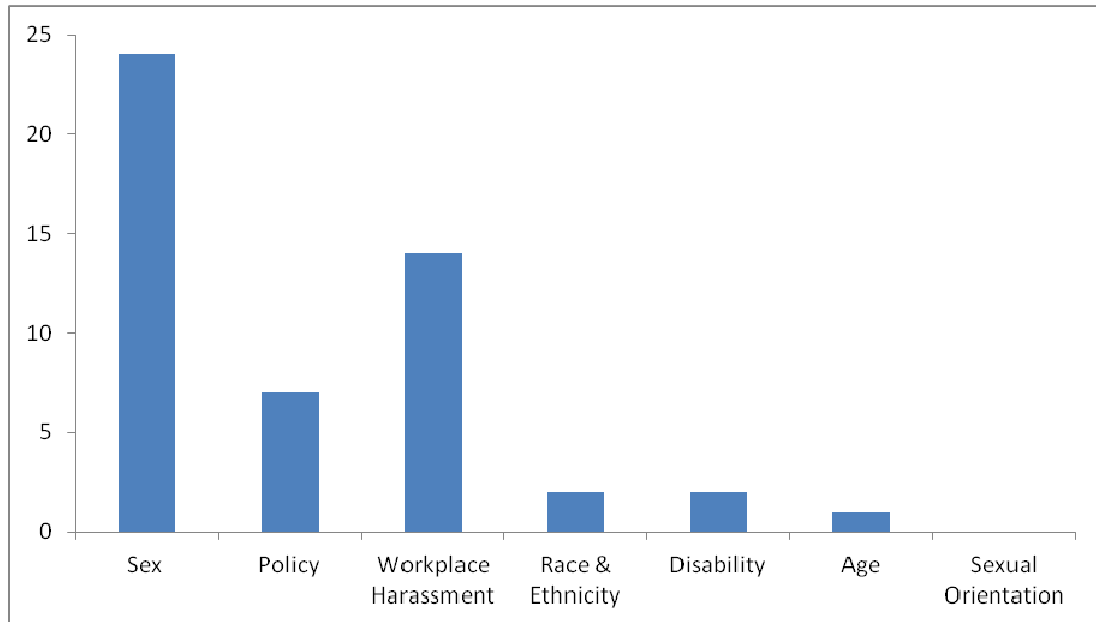
TABLE 3: Profile Distribution of Calls in the Mandate—2008-2012

Profile Distribution:	2008	2009	2010	2011	2012
Position					
Associates	56	53	58	56	54
Partners	43	38	26	21	23
Law Students	13	11	16	19	20
Articling Students	51	50	58	52	56
Support Staff	79	72	74	76	69
Gender					
Females	170	178	191	189	179
Males	72	46	41	35	43
Size of Firm in (Percent %)					
Small (1-10)	39%	42%	51%	42%	40%
Medium (10-50)	35%	32%	20%	28%	35%
Large (50 +)	23%	24%	29%	30%	25%

4. In 2012 there was no significant change in the volume of calls as they relate to firm size.

B. EXAMPLES OF THE CONTACTS WITHIN THE MANDATE:

TABLE 4: Grounds of Discrimination by Callers—2012



1. There was no significant change in the nature and number of the complaints compared to 2011.
2. Of the 50 contacts, (96%) 48 individuals made human rights based discrimination or workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 22 % associates, 4% partners, 23 % articling students 13 % law students and 38 % support staff.
3. The following examples demonstrate the types of complaints received by the Program:

Sex/gender:

- Two female lawyers complained that it was difficult to access the maternity leave that was provided in their law firms' policies.
- Upon returning to work after a maternity leave, one female lawyer found that many of her files were transferred permanently to other lawyers in the firm.

- One female lawyer reported experiencing workplace harassment once the firm became aware that she had requested maternity leave.

Disability:

- One female lawyer with a disability complained that the law firm that hired her made it difficult for her to function, paid her low wages, and failed to provide any accommodation.

Race and ethnicity:

- One female associate complained that she was asked inappropriate questions about her race and cultural customs during a job interview by a law firm.
- One female lawyer was asked whether she was married by arranged marriage.

Workplace harassment:

- One male lawyer was asked on various occasions how he passed the Bar exams and was humiliated in front of staff.

C. SERVICES PROVIDED TO CALLERS

TABLE 5: Services Provided to Callers—2004-Present

CALLERS:	SERVICES:
LAW FIRMS	<ul style="list-style-type: none"> • Advise them of obligations under the <i>Human Rights Act</i> and the LSBC Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training • Provide information to firms via education seminars or training workshops
COMPLAINANTS	<ul style="list-style-type: none"> • Receive complainants • Issue identification • Provide the complainant with his or her options • Informal mediation • Refer the complainant to additional resources, such as Personal Performance Consultants (PPC) and Lawyers Assistance Program (LAP)
GENERAL INQUIRES	<p>Provide information about:</p> <ul style="list-style-type: none"> • The Program mandate and services • Statistics gathered by the Program
OUTSIDE MANDATE	<ul style="list-style-type: none"> • Re-direction • The Program does not assist these callers beyond the initial contact

D. SUMMARY OF CALLERS

TABLE 6: Issue Distribution—2008-2012

Issues addressed	2008	2009	2010	2011	2012
1. Information, direction or referral:					
a) General Information	27	24	30	24	20
b) Office Policy Concerns	13	14	16	15	14
2. Discussion/Request:					
a) Article, Training or Presentation	28	26	14	21	25
3. Discuss specific issue or concern:					
Discrimination:					
a) Gender	21	17	24	20	21
b) Racial	13	12	14	14	9
c) Disability	17	16	10	10	14
d) Sexual Orientation ¹	n/a	0	0	4	0
e) Age ²	n/a	n/a	n/a	n/a	4
a) Sexual harassment	64	59	60	55	59
b) Workplace harassment	40	37	38	37	33
Specific Policy Concern					
a) Maternity leave policy	17	18	15	13	14
b) Other policies	2	1	2	1	3
Inappropriate questions asked in the interview process ¹	6	9	9	10	6

¹ New Category in 2009

² New Category in 2012

E. OUTREACH AND EDUCATION

1. To accomplish outreach objectives during this Reporting Period, the Ombudsperson:
 - a) Worked with the LSBC to publicize the Program. The Program is included under the LSBC website under *member support* and specifically referenced in the Bencher's orientation binder.
 - b) Published an article in the Benchers' Bulletin 2012, No. 3 titled: *Equity Ombudsperson asks: Are you acting in the best interest of your firm?*;
 - b) Presented to:
 - i. PLTC students in Victoria (1 session);
 - ii. PLTC students in Vancouver (2 sessions);
 - iii. The Women Lawyers Forum Mentoring Lunch; and
 - iv. The Women Lawyers Forum Education Day
 - c) Distributed brochures to:
 - i. PLTC students in Vancouver and Victoria;
 - ii. Counselors of the Personal Performance Consultants;
 - iii. Women Lawyers Forum mentoring event attendees;
 - iv. Women Lawyers Forum 2012 Annual General Meeting attendees; and
 - v. Lawyers Assistance Program Annual Gratitude Lawyers Luncheon attendees

2. To meet educational objectives during 2012, the Ombudsperson:
 - a) Developed a course titled: *Equity Ombudsperson Respectful Workplace*, which the LSBC approved for Continuing Professional Development credits. The Ombudsperson delivered this course in Campbell River, to an audience of 20 LSBC members. Their feedback included:
 - Participants appreciated that the Ombudsperson travelled to the region;

- A number of female participants (who had experienced disrespect in the workplace) conveyed the importance of informing the regional bar about respectful workplace issues;
- One male participant admitted that, prior to attending the course, he did not realize he was being offensive;
- Another male participant sought clarification about where the line between acceptable and non-acceptable behavior is; and
- Participants were informed of the Equity Ombudsperson's role.

Regional Law Society members expressed an interest in the Ombudsperson presenting the course in: Kelowna, Abbotsford, Chilliwack, Comox Valley, Cowichan Valley, Nanaimo, Prince George, Prince Rupert, Quesnel, and Salmon Arm.

- b) Initiated contact with the Continuing Legal Education Society of British Columbia (CLE) to develop a web-based training module on respectful workplace behaviour (the "Module"). The Module is currently being developed by CLE with input and recommendations from the Ombudsperson. It will be available to all members of the LSBC and others (articling students and staff in law firms) at no cost. Because it is web-based, the Module will be readily accessible. The target date for completion of the Module is 2014.

F. OBJECTIVES ACHIEVED DURING 2012

The following objectives were achieved in 2012:

- Raised awareness and knowledge of the Program;
- Provided support and education to the legal profession in British Columbia about respectful workplace issues;
- Received individual complaints about discrimination and harassment;
- Consulted on workplace policies;
- Disseminated the Ombudsperson informational brochure;
- Responded to contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;

- Delivered a presentation in Campbell River, BC in an effort to reach regional lawyers;
- Contacted the CLE to develop a training module for respectful workplace behaviour. The development of the module is ongoing;
- Exchanged information with provincial Equity Ombudsperson counterparts and other equity experts with other Canadian law societies;
- Developed a relationship with the Staff Lawyer responsible for equity and diversity initiatives in the Policy and Legal Services Department of the LSBC;
- Attended LSBC Equity and Diversity Advisory Committee meetings;
- Attended Benchers' events to enhance Bencher awareness of the Program; and
- Developed a roster of five volunteer lawyers with diverse backgrounds who are willing to speak to callers about their experiences.

G. RECOMENDATIONS FOR 2013

In 2013, the Ombudsperson intends to:

- Continue to meet the ongoing objectives listed in section F of this report;
- Increase awareness of the Program in more regions of the province by presenting in two geographic locations; and
- Prepare a detailed analysis of current Program operating costs for budgeting purposes for review by the Benchers and appropriate Law Society Committees.

APPENDIX A: Background to the Program- *Provided for New Benchers*

Background

The Law Society of British Columbia (the “Law Society”) launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the “Program”) to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group (“ERG”) was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program “were overwhelmingly satisfied with the way the complaint or request was handled.”

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;
2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;
3. Education: providing information and training to law firms about issues of harassment in the workplace;
4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and
5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

- A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting
- B. A Panel of Independent Mediators would be responsible for: 2. Mediation
- C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;
- provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;
- is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;
- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;
- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;
- liaises with the Law Society policy lawyer in order to keep her informed of the issues and trends of the Program; and
- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or

with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office, which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.



Memo

To: Benchers
From: Family Law Task Force
Date: June 25, 2013
Subject: For Information: Best Practice Guidelines for Lawyers Practicing Family Law

In July 2011 the Benchers endorsed the “Best Practice Guidelines for Lawyers Practicing in Family Law” (**Attached**). The guidelines were a collaborative project of the CBA BC Branch and the Law Society. The guidelines were adopted by the CBA BC Branch in June 2011. The theory in having the CBA adopt the guidelines, rather than the Law Society, was to encourage best practices to develop from the profession rather than being imposed as a code by the Law Society. The hope was that over time the best practices could become the *de facto* standard of conduct and that this, in turn, could be something the Law Society could point to in dealing with complaints relating to family law where the lawyer complained of was not following the guidelines.

Since the creation of the guidelines, Justice Cromwell’s National Action Committee on Access to Justice in Civil and Family Matters has been developing policy reform in several key areas of law. The Benchers may be interested to know that the recent report “Meaningful Change for Family Justice: Beyond Wise Words” includes the recommendation: “That the family law Bar in each jurisdiction review and consider adopting guidelines similar to those promulgated by the BC Branch of the Canadian Bar association for lawyers practicing family law.”

If the BC guidelines begin to be adopted in other jurisdictions it may help to better realize the object of the guidelines by adding a national focus to the evolution of best practices for lawyers practicing family law.

/DM
/Attachment

Attachment

BEST PRACTICE GUIDELINES FOR LAWYERS PRACTICING FAMILY LAW

Lawyers involved in a family law dispute should strive to ensure it is conducted in the following manner:

1. Lawyers should conduct themselves in a manner that is constructive, respectful and seeks to minimize conflict and should encourage their clients to do likewise.¹
2. Lawyers should strive to remain objective at all times, and not to over-identify with their clients or be unduly influenced by the emotions of the moment.
3. Lawyers should avoid using inflammatory language in spoken or written communications, and should encourage their clients to do likewise.
4. Lawyers should caution their clients about the limited relevance of allegations or evidence of conduct.
5. Lawyers should avoid actions that have the sole or predominant purpose of hindering, delaying or bullying an opposing party, and should encourage their clients to do likewise.
6. Lawyers cannot participate in, and should caution their clients against, any actions that are dishonest, misleading or undertaken for an improper purpose.
7. Lawyers should keep their clients advised of, and encourage their clients to consider, at all stages of the dispute:
 - a. the risks and costs of any proposed actions or communications;
 - b. both short and long term consequences;
 - c. the consequences for any children involved; and
 - d. the importance of court orders or agreements.
8. Lawyers should advise their clients that their clients are in a position of trust in relation to their children, and that
 - a. it is important for the client to put the children's interests before their own; and
 - b. failing to do so may have a significant impact on both the children's well-being and the client's case.
9. Lawyers should advise their clients of and encourage them to consider, at all stages of the dispute, all available and suitable resources for resolving the dispute, in or out of court.

¹ Lawyers are not obliged to assist persons who are being disrespectful or abusive.



Memo

To: Executive Committee
From: Tim McGee
Date: June 18, 2013
Subject: Regulating Law Firms

Introduction

The Law Society has, through its history, been a regulator of its individual members. Until the past few decades, law was practiced in British Columbia mostly through sole practitioners or very small firms set up as partnerships. A model of individual regulation was practical even where individuals practiced together in small groups because of the generally small size of those groups.

In the past decades, however, the size of many law firms has grown considerably. While over 90% of the firms in British Columbia still comprise fewer than six lawyers, and by far the majority of these small firms are sole practitioners, paradoxically more than 30% of lawyers in BC now practice through much larger firms, some larger than 100 members. While clients usually continue to retain a particular lawyer to whom they look for advice and with whom they build a working relationship, in larger firms many of the legal services are provided by teams of lawyers under the management or direction of a lead lawyer. Moreover, even at small and mid-sized firms, accounting, billing and other aspects of practice, including administration, are commonly handled not by individual lawyers at a firm, but by “the firm” itself through (for example) accounting or human resources departments (or, in smaller firms, individual non-lawyers tasked with these responsibilities).

Despite these changes in the delivery of legal services, the regulatory model of lawyers has not changed in BC. Regulation is still focused on individual lawyers. While the Law Society has been able to continue to regulate the practice of law through law firms by imposing responsibility on individual lawyers, this model of regulation, based as it is on individuals, has not always been ideal in a world where, to all intents and purposes, services are being delivered through organizations.

Goal 1 of the Strategic Plan is that the Law Society will be a more innovative and effective professional regulatory body. One of initiatives identified in connection with this Goal is to

consider ways to improve regulatory tools and to examine whether the Law Society should regulate law firms. This topic was considered in 2011 in connection with the request for amendments to the *Legal Profession Act*. The possibility of regulating law firms was considered by the benchers, and it was agreed to include a request for amendments to the *Act* to permit such regulation.

The rationale given to the government for this request was that the Law Society would, amongst other things, be able to deal more effectively with trust accounting, advertising, and other firm activities. Regulation would be simplified by reducing the steps that are currently necessary to regulate the activities of firms through their individual members. The government acceded to this request, and amended the *Act* to permit the Law Society to regulate law firms.

This memorandum sets out more specifically the opportunities and anticipated benefits that the Law Society expects can be realized through the regulation of law firms.

Rationale for Regulating Law Firms

1. General

While there is not a lot of academic discussion addressing law firm regulation, Adam Dodek wrote a useful paper on the subject in 2012 entitled “Regulating Law Firms in Canada.” He describes a number of general rationales as to why law societies should be regulating law firms.

The number of lawyers who practice in firms is significant. Approximately 70% of the lawyers in BC practise law in a law firm setting. Roughly 30% of those lawyers practise in large firms. Dodek argues that “the firm” has a culture in the way that legal services are provided. Larger firms, especially, tend to develop distinct, organizational cultures, and (Dodek argues) that culture can affect the types of services provided and to whom they are provided. Consequently, firms can be viewed as larger than the sum of their parts. Law firm culture, Dodek suggests, therefore needs to be a focus of regulation. How the culture manifests itself can be an important agent of professional conduct. Firms are relevant actors in terms of their impact on professional values, and yet they themselves are not regulated.

Dodek also suggests that there is a perception in the public and in the profession itself that members of large firms receive favourable treatment from regulators, and this can undermine confidence in self-regulation. Whether this *perception* is true or not, Dodek says, is not relevant. Its existence is troubling, and, he suggests, it can be ameliorated through the regulation of the entity itself, rather than the members of the entity individually. Consequently, the legitimacy of continued self-regulation may require regulation of firms as well as of individual lawyers.

Moreover, Dodek notes that law firms – especially large law firms – exercise a significant amount of power in the legal profession, yet they are not subject themselves to direct regulation. This, he suggests, is contrary to the principle of the rule of law. It is, he argues, not enough to

regulate only the individuals within a firm because firms themselves have a separate culture and identity that may (as noted above) affect the actions of their members.

Finally, Dodek notes, most other professions (such as engineering, medicine, pharmacy, real estate, accounting, as well as the securities industry) regulate entities. While this fact alone is not a determinative reason to copy other professions, it is worth noting. Other professions or occupations have considered it prudent to intertwine firm and individual responsibility and to subject firms to licensing activities, regulation and discipline. Viewed as a whole, the legal profession seems out of step with others given the argument that firms themselves are seen to provide legal services and that where, for example, a professional conduct issue within a firm is a collective or systemic one, it would mischaracterize the issue to treat it as one of multiple individual misfeasance.

2. “Proactive” Regulation

Preventing Complaints and Misconduct

Regulation of law firms would allow the Law Society to engage in proactive regulation. Much of legal regulation in Canada today is reactive. We wait for complaints to be made and then respond to each individually, doing our best to address issues through remediation or deterrence where appropriate and feasible. It is incumbent on regulators to always be looking for ways to prevent complaints and even misfeasance from occurring in the first place. Many jurisdictions in the world have implemented regulation of legal entities recognizing it as an important and effective proactive approach. (See for example, Nova Scotia to a limited degree, Solicitors Regulation Authority in the UK and a number of the Australian jurisdictions.)

A proactive model would aim to reduce the incidence of conduct giving rise to complaints. It would create expectations for law firms to create an environment of compliance within their firms to prevent issues, and therefore complaints, from occurring. Through this model, law firms thereby become joint owners of a strong regulatory environment. Complaints have reportedly declined by two-thirds in New South Wales since the implementation of direct regulation of incorporated legal practices.¹

Lower Regulatory and Insurance Costs

A model of law firm regulation could also give the Law Society the opportunity to convey expectations around minimum standards that would apply to all law firms regardless of size. Firms would be required to ensure compliance with these standards, and that could lead to fewer complaints being brought to the Law Society. Fewer complaints could realistically lead to lower regulatory costs as firms would bear greater responsibility up front to ensure competence and ethical conduct. Regardless of who bears the cost, it is anticipated that total costs will decline as it is generally cheaper to prevent than it is to “clean up” after the fact. In addition, regulation of

¹ Christine Parker, Tahlia Gordon and Steve Mark, “Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales” (September 2010) vol. 37, no. 3 *Journal of Law and Society* 466 at 485

law firms may reduce the incidence of professional errors, thereby reducing the number of insurance claims.

Systems, Policies, Procedures, Training and Supervision

Regardless of the model ultimately chosen for the regulation of law firms, firms would be expected to have in place appropriate systems, policies and procedures that could address areas such as conflicts, trust accounting, confidentiality and privacy and file retention. The regulation of law firms also dovetails nicely with the expansion of practice for paralegals and articulated students as firms, and not just individual lawyers, would be expected to have appropriate training and supervision in place. Training and supervision could also be expected to cover associates as well as paralegals and articulated students.

Effective and Fair Regulation

In addition to the expected preventative impact that should result from the regulation of law firms, it will also be more effective and procedurally fair as it relates to specific conduct. There are times when the Law Society has had to proceed against individual lawyers for particular issues when it would have made more sense to proceed against the law firm. This is particularly true in some cases involving conflicts of interest, breaches of the no cash rule, supervision and trust accounting, and advertising.

Examples

Specific examples of cases where the regulation of law firms would either have prevented the issues from arising in the first place or resulted in fairer and more effective investigations or regulatory actions include:

- Junior associate working on a securities deal, entices a number of staff and lawyers to invest in the offering. No supervisor of the associate or policies around investments in existence at the firm. The deal was a fraud with all who invested losing their money.
- A number of instances within one firm where articling students were not being trained or supervised resulting in multiple complaints.
- Firm takes an inappropriate security interest in litigation after lawyer gets the blessing of the managing committee and documents evidencing the arrangement are drafted by others in the firm.
- Inappropriate firm-wide policies or systems in place
 - Policy that *required* withdrawal from a client matter at last minute where client didn't pay, leaving client in lurch.
 - Improper policies enforced by firm around clearing trust balances

- Lawyer acting in a conflict because of inadequate firm conflicts system
- Trust cheques being issued with a lawyer's signature
- Inadequate systems to track the receipt of cash.

In each case, had there been regulatory standards that the firm was expected to meet and enforce, the likelihood of any of these examples having arisen would be expected to be significantly reduced.

Reputation of the Profession and the Law Society

All of the above advantages give rise to two others. It can be expected that fairer and more robust regulation will enhance the reputation of the profession generally. That in turn will strengthen the Law Society's status as a self-regulatory organization.

Facilitates Regulation of New Business Models

Finally, law firm regulation may be more sensible in relation to, and allow for more effective regulation of, new business models that either now exist (such as multi-disciplinary partnerships) or are under consideration (alternative business structures), where others besides lawyers will be involved in the provision of services, management, or (possibly) ownership of a legal service provider. While the responsibility of individual lawyers must always remain, the ability to regulate the broader entity through which the service is provided may prove advantageous where non-lawyers are involved in the decision-making.

3. Departmental Advantages

Professional Regulation

In addition to the over arching benefits enumerated above, the many anticipated advantages for individual departments include the following:

- 1. Remediation** – The Law Society receives approximately 1200 complaints a year. Early Resolution staff conducts remediation on hundreds of the complaints that are closed at the staff level. Often staff will tell the lawyer that they are closing the complaint but indicate that if they see another similar complaint against the same lawyer it will likely be referred for disciplinary action. Staff will take the time to review with the lawyer the conduct or omission that resulted in the complaint and how they will need to change their practices to avoid similar complaints in the future. The Nova Scotia Barristers' Society has recently gained the ability to regulate law firms. While the Nova Scotia regime is still in its early days, one benefit is that the society tells firms that they are expected to oversee the remediation to ensure that practices are improved.

2. **Contact person** – Some models for law firm regulation include having a person responsible for ensuring the appropriate systems, etc are in place. (See for example the requirements for Chief Legal and Chief Financial Officers by the Solicitors Regulation Authority.) While this is a burdensome requirement that this Law Society might not adopt, we should require each firm to designate a single contact person. This will facilitate exchange of information with firms and lawyers within firms.
3. **Cooperation in investigations** – Current requirements around confidentiality can make it difficult to engage firms to assist with investigations. Such assistance from firms would include discussing firm systems, discussing personal matters pertaining to individual lawyers but potentially impacting the firm, production of documents, putting litigation holds on the firm and requiring prompt response generally to the Law Society.
4. **Roll out of changes** – It is anticipated that implementation of changes in the regulatory area will be enhanced with the regulation of law firms. For example, we might wish to engage the firm directly with new requirements around retention of documents, trust accounting or the like.
5. **Succession Planning** – While our current campaign to encourage lawyers to have succession plans in place is aimed at sole practitioners, as we expand our horizons we may well focus on others such as small firms. Regulating law firms will enhance that initiative.

Audits and accounting

6. **Trust Accounts** – Regulatory requirements around trust accounting and who at the firm is responsible (perhaps even “licensed”) would be beneficial. To some degree, it would regularize current processes, which are somewhat hampered by needing to “bring back” a firm accounting issue to a particular lawyer. An audit is really a firm event, and it would be beneficial to treat it as such.

Member Services

7. **Law corporations, LLPs and MDPs** – “Entity regulation” would simplify the processes for registering and following up with requirements for each of these forms of legal service providers.

Credentials

8. **Articling** – There may be anticipated benefits concerning the operation of the admission program. Currently, students are articulated to a particular lawyer (principal), but there are frequently other lawyers at a firm who may be involved with the student. Sometimes those are lawyers who have been rejected as a principal by the Law Society. Creating standards for law firms who engage an articling student could create advantages for the efficacy of the Admission Program.

Insurance

9. **Part B** – To the extent that law firm regulation enhances the Law Society’s ability to regulate and audit lawyers to detect or avoid misappropriation, the Part B insurance program benefits. Prevention and early discovery of lawyer theft means fewer paid Part B claims.
10. **Part A** – Minimum law firm standards relating to matters such as supervision, conflict checks and central diary systems may help to avoid professional errors by firm lawyers who implement and adhere to the standards. Law firm regulation may also offer some incidental utility to the insurance program by, for instance, allowing excess insurance information to be collected for underwriting purposes.

Practice Standards

11. **Practice Reviews** – The ability to regulate firms can aid practice reviews by requiring co-operation from the firm of the lawyer under review. Firm regulation can also enable firm co-operation in the enforcement of reviews. See also point 3 above.
12. **Practice Standards** – Firm regulation will permit the examination of practice standards in general at a firm – such as where issues are systemic (for example, diary systems, file management procedures, etc.).

Moving Forward

This memo is intended to facilitate discussion at Executive Committee on the rationale and perceived advantages of regulating law firms. Following that discussion, the Committee should consider how and in what manner to proceed. Possible next steps include:

1. Further discussion at Executive Committee;
2. Establishment of a staff working group to gather information about law firm regulation in other jurisdictions and possible models for that regulation including advantages and disadvantages of each;
3. Establishment of a Bencher working group or task force to investigate options;
4. Discussion at the Bencher table for further direction.

While there is no set timeline, it would be helpful if next steps could be determined by year end.

The Law Society
of British Columbia



June 21, 2013

Sent via mail

Paul Dodds
General Manager
Best Western Tin Wis Resort
P.O. Box 389, 1119 Pacific Rim Hwy.
Tofino, BC V0R 2Z0

Art Vertlieb, QC
President

Dear Mr. Dodds:

**Re: Law Society of BC Benchers Retreat at Best Western Tin Wis Resort /
June 13 – 16, 2013**

I am writing on behalf of the Law Society of British Columbia to express our appreciation for the outstanding work done by the Best Western Tin Wis Resort in hosting our 2013 Benchers Retreat. With Guest Services Manager Donnale Edgar's careful direction and constant support, your staff did everything possible to make the Retreat's business meetings and social events go smoothly, and to ensure that our Benchers, guests and staff enjoyed their stay with you. We especially appreciated that Tin Wis's hospitality, including successful management of the weather!

We realize that looking after a group of more than 70 people for several days, with a number of meetings, social events and group meals each day, is extremely challenging. You should be proud of the job done by Donnale and her team, and by your entire organization. You should also feel welcome to use this letter as a reference for other organizations that may consider holding a major event at your hotel.

With my sincere best wishes,

Art Vertlieb, QC
President, Law Society of BC

Enc.

c. Ms. Donnale Edgar, Guest Services Manager

June 25, 2013

DELIVERED BY EMAIL & MAIL

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

Attention: Art Vertlieb, Q.C.

Dear Art:

Re: Appointment to the Board of Vancouver Airport Authority

I would like to express my utter delight and appreciation at receiving notice of my appointment to the Board of the Vancouver Airport Authority as the nominee of the Law Society of BC effective June 30, 2013. I would like to thank you, the members of the Appointment Committee and all the Benchers very much for entrusting me with this appointment and giving me the opportunity to serve on this Board. I promise to serve the Authority well and to the best of my ability. I am looking forward to the exciting challenge ahead.

Best regards,


Anna K. Fung, Q.C.

Cc: Mary B. Jordan, Michael J. O'Brien, Tim McGee



JUDICIAL COUNCIL
OF
BRITISH COLUMBIA

SUITE 502,700 W. GEORGIA STREET
BOX 10287 PACIFIC CENTRE
VANCOUVER, B.C. V7Y 1E8
(604) 660-2864

August 3, 2012

Ms. Sharon Matthews
President, Canadian Bar Association
BC Branch (2012)
10th Floor, 845 Cambie Street
Vancouver, BC V6B 5T3

Mr. Bruce LeRose, Q.C.
President, The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Ms. Matthews and Mr. LeRose:

The Judicial Council of British Columbia has recently passed a resolution that, as Chair, I write to the Canadian Bar Association, BC Branch, and the Law Society of British Columbia seeking your assistance in encouraging a broad range of applicants for judicial office on the Provincial Court.

Judicial Council's goal is to strengthen the Court by ensuring that there is a diverse pool of applicants from which Council can recommend applicants for appointment to the Court who are representative of the general population in the Province.

Judicial Council supports any assistance that the Canadian Bar Association, BC Branch, and the Law Society of British Columbia may offer to encourage all members to consider applying as judicial candidates. Judicial Council would like to acknowledge the work of the Law Society of British Columbia in this regard and in particular the June 2012 report of the Equality and Diversity Committee, *Towards a More Diverse Legal Profession: Better practices, better workplaces, better results.*

Judicial Council will publish this letter on its website at:
<http://www.provincialcourt.bc.ca/judicial-council>.

On behalf of Judicial Council I wish to thank you for raising this important issue with the members of your respective organization.

Yours sincerely,

Thomas J. Crabtree
Chair, Judicial Council
TJC:pg

cc: Mr. Timothy E. McGee, Chief Executive Officer and Executive Director
The Law Society of British Columbia