The Law Society of British Columbia

Agenda

Benchers

Date: Thursday, November 7, 2013

Time: **7:30 am** Continental breakfast
8:30 am Call to order
12:00 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.***

CONSENT AGENDA [Subject to Executive Committee Approval]:

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. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.

ITEM	TOPIC	TIME (min)	SPEAKERS	MATERIALS	ACTION
1	Consent Agenda	1	President		
	• Minutes of September 27, 2013 meeting (regular session)			Tab 1.1	Approval
	• Minutes of September 27, 2013 meeting (*in camera* session)			Tab 1.2	Approval
	• 2014 Fee Schedules			Tab 1.3	Approval
	• Schedule 4 Tariff of Costs and Rule 4-20.1 Notice to Admit			Tab 1.4	Approval
	• Rule 1-3(8), President Unable to Act			Tab 1.5	Approval
	• Ethics Committee Recommendation for Amendment to BC Code Rule 3.4-26.1			Tab 1.6	Approval

The Law Society of British Columbia

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ITEM	TOPIC	TIME (min)	SPEAKERS	MATERIALS	ACTION
DISCUSSION/DECISION					
2	Enhancing Access to Legal Services and Justice	60	Dr. Melina Buckley; Bill Maclagan	Tab 2	Discussion
3	Ethics Committee Recommendation for Commentary to BC Code Rule 3.6-3	10	David Crossin, QC	Tab 3	Decision
GUEST PRESENTATION					
4	Canadian Corporate Counsel Association Briefing	20	Grant Borbridge, QC and Wendy King		Presentation
REPORTS					
5	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC		Briefing
6	President's Report	15	President	Oral report (update on key issues)	Briefing
7	CEO's Report	15	CEO	*(To be circulated electronically before the meeting)*	Briefing
8	Law Society Financial Report (September 30, 2013)	5	CFO	Tab 8	Briefing
9	2012-2014 Strategic Plan Implementation Update	5	President/ CEO		Briefing
10	Report on Outstanding Hearing & Review Reports	4	President	(*To be circulated at the meeting*)	Briefing

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FOR INFORMATION ONLY					
11	• Final Report of the Bencher Election Working Group • Report of the Provincial Court of BC Concerning Judicial Resources • Chief Legal Officer Conference Report • Testimonial letter from Elsa Wyllie regarding REAL Initiative			Tab 11.1 Tab 11.2 Tab 11.3 Tab 11.4	Information Information Information Information
IN CAMERA					
12	*In camera* • Review and Approval of Bencher Expense Reimbursement Policy • Other business • Bencher concerns	20	President/ CEO	Tab 12.1	Discussion/ Decision Decision

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, September 27, 2013

Present:
Art Vertlieb, QC, President
Jan Lindsay, QC 1st Vice-President (by telephone)
Ken Walker, QC 2nd Vice-President
Haydn Acheson
Rita Andreone, QC
Satwinder Bains
Kathryn Berge, QC
David Crossin, QC
Lynal Doerksen
Leon Getz, QC
Miriam Kresivo, QC
Peter Lloyd, FCA
Bill Maclagan
Ben Meisner
Maria Morellato, QC
David Mossop, QC
Thelma O'Grady
Lee Ongman
Vincent Orchard, QC
Greg Petrisor
Claude Richmond
Phil Riddell
Herman Van Ommen, QC
Tony Wilson
Barry Zacharias

Excused:
David Crossin, QC
Thomas Fellhauer
Stacy Kuiack
Nancy Merrill
David Renwick, QC
Richard Stewart, QC

Staff Present:
Tim McGee
Deborah Armour
Felicia Ciolfitto
Lance Cook
Robyn Crisanti
Su Forbes, QC
Ben Hadaway
Andrea Hilland
Jeffrey Hoskins, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Amy Tang
Alan Treleaven

Guests: Mark Benton, QC, Executive Director, Legal Services Society
Karima Budhwani, Program Director, Law Foundation of BC
The Honourable Thomas Crabtree, Chief Judge of the Provincial Court of BC
Dean Crawford, President, Canadian Bar Association, BC Branch
Ron Friesen, CEO, Continuing Legal Education Society of BC
Jeremy Hainsworth, Reporter, Lawyers Weekly
Carol Hickman, QC, Life Bencher, Law Society of BC
Gavin Hume, QC, Law Society Member of Council of the Federation of Law Societies of Canada
Marc Kazimirski, President, Trial Lawyers Association of BC
Carmen Marolla, BC Paralegal Association
Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch
Anne Pappas, J.D, Interim Dean of Law, Thompson Rivers University
Dr. Jeremy Schmidt, Dean of Law, University of British Columbia
Kerry Simmons, Past President, Canadian Bar Association, BC Branch
Dr. Jeremy Webber, Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on July 12, 2013 were approved as circulated.

The *in camera* minutes of the meeting held on July 12, 2013 were approved as circulated.

The *in camera* minute of the Benchers' July 15, 2013 email authorization was approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

- Proposed Amendments to Rule 2-27(4): Academic Qualification for Enrolment in the Admission Program

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-27(4) and substituting the following:

(4) Each of the following constitutes academic qualification under this Rule:

(a) successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university;

(b) a Certificate of Qualification issued under the authority of the Federation of Law Societies of Canada;

(4.1) For the purposes of this Rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.

- Proposed Amendments to Rule 1-17: Procedure for Committee Meetings

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

1. By rescinding Rule 1-13
2. By amending Rule 1-17 by adding the following subrule:

(3) A committee may take any action consistent with the Act and these Rules by resolution of a majority of the members of the committee present at a meeting, if the members present constitute a quorum.

- Proposed Amendments to Rules 1-48 and 1-49: Composition and Mandate of the Executive Committee

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

1. By re-numbering Rule 1-48 as 1-48(1) and adding the following subrules:

(2) The President is the chair of the Executive Committee, and the First Vice-President is the vice-chair.

(3) The Executive Committee is accountable and reports directly to the Benchers as a whole.

2. By rescinding Rule 1-49 and substituting the following:

Powers and duties

1-49(1) The Executive Committee provides direction and oversight for the strategic and operational planning of the Society and ensures that the Benchers exercise their oversight, regulatory and policy development responsibilities.

(2) The powers and duties of the Executive Committee include the following:

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

(b) authorizing the execution of documents relating to the business of the Society;

(b.1) appointing persons to affix the seal of the Society to documents;

(b.2) approving forms under these Rules;

(c) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to him or her;

(d) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;

(e) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;

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

(f.1) providing constructive performance feedback to the President;

(g) recommending to the appointing bodies on Law Society appointments to outside bodies;

(g.1) determining the date, time and locations for the annual general meeting;

(g.2) overseeing Bencher elections in accordance with Division 1 of this Part;

(i) appointing members of the Board of Governors of the Foundation under section 59 of the Act;

(i.1) deciding matters referred by the Executive Director under Rule 2-72.5;

(i.2) declaring that a financial institution is not or ceases to be a savings institution under Rule 3-50;

(i.3) adjudicating claims for unclaimed trust funds under Rule 3-84;

(j) other functions authorized or assigned by these Rules or the Benchers.

- Ratification of the National Mobility Agreement – August 30, 2013

  BE IT RESOLVED to approve various amendments to the National Mobility Agreement 2013 (NMA 2013), and to authorize the President or his designate to execute the NMA 2013 on behalf of the Law Society of British Columbia, as recommended by the Credentials Committee (clean and redline drafts of the NMA 2013 are attached as Appendix 1 to these minutes))

- Re-appointment of Thomas Christensen to the Legal Services Society Board of Directors

  BE IT RESOLVED to re-appoint Thomas Christensen to the Board of Directors of the Legal Services Society for a two-year term effective September 7, 2013

- Reduced Fee Feasibility Working Group Report and Recommendation

  BE IT RESOLVED to accept the report of the Reduced Fee Feasibility Working Group (page 267 of the meeting materials), as recommended by the Executive Committee

- Amendments to BC Code Rule 3.2-1.1: Limited Retainers

  BE IT RESOLVED to adopt various amendments to the BC Code rules on limited retainers, as recommended by the Ethics Committee, as follows:

  Add definition of "limited scope retainer" as follows:

  "limited scope retainer" means the provision of legal services for part, but not all, of a client's legal matter by agreement with the client;

  Amend commentary to rule 3.1-2 on competence (amendments underlined)

  3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary
[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or

other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7.1] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1.1.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

[9] A lawyer should be wary of bold and over-confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or

services unrelated to the legal services retainer will also be subject to the constraints outlined in the rules/by-laws/regulations governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] Incompetence, Negligence and Mistakes - This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

Add new rule:

Limited Scope Retainers

3.2-1.1 Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of

the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (See rule 7.2-6.1)

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

Amend rule 7.2-6 to refer to new rule

7.2-6 Subject to rules 7.2-6.1 and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

(a) approach, communicate or deal with the person on the matter; or

(b) attempt to negotiate or compromise the matter directly with the person.

7.2-6.1 Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.

Commentary
[1] Where notice as described in rule 7.2-6.1 has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

REGULAR AGENDA – for Discussion and Decision

3. Examination of the Relationship Between the Law Society as Regulator of Lawyers and as Insurer of Lawyers: Report of the Rule of Law and Lawyer Independence Advisory Committee

Mr. Richmond addressed the Benchers as Chair of the Rule of Law and Lawyers Independence Advisory Committee. Mr. Richmond moved (seconded by Ms. Berge) that the Benchers adopt the following draft resolution:

> *Whereas, having read the report of the Rule of Law and Lawyer Independence Advisory Committee dated April 12, 2013 (the Report), the Benchers understand that the Law Society's current co-existing responsibilities as both regulator and insurer of lawyers creates a propensity and risk for a conflict of duties that warrants corrective action.*
>
> *THEREFORE BE IT RESOLVED THAT a working group of Benchers and staff be created to undertake a detailed examination and analysis of the two solution options described in the Report for future consideration by the Benchers.*

Mr. Richmond reviewed the background of the Committee's report (at page 300 of the meeting materials) and the draft resolution now before the meeting. He noted that the current Committee relied on discussion and analysis of this subject performed by the 2012 Rule of Law and Lawyers Independence Advisory Committee, and took note of the report prepared by the 2008 Independence and Self-Governance Advisory Committee. Mr. Richmond confirmed that the current review has been conducted pursuant to Initiative 1-1(b) of the 2012 - 2014 Strategic Plan: "Examine the relationship between the Law Society as the regulator of lawyers and the Law Society as insurer of lawyers;" and pursuant to Strategy 1-1: "Regulate the provision of legal services effectively and in the public interest." The review entailed extensive research of approaches taken by other law societies and regulatory bodies, and extensive consultation with the Law Society's regulatory, insurance, finance and executive staff.

Mr. Richmond outlined the Committee's conclusion: the regulating and insuring of lawyers by the Law Society are both within the public interest at the policy-setting level; however at the operational level and warranting corrective action, there is tension and propensity for conflict between the Law Society's co-existing responsibilities as regulator and insurer of lawyers.

Mr. Richmond noted that the Committee considered a range of potential solutions (paragraphs 56 – 68 of the Report, pages 320 – 322 of the meeting materials) before identifying two solution options which it recommends for further consideration and development. From the Report:

> 61. In the end the Committee supports the further consideration and development of two options. The two options should be measured by the extent to which they would be a reasonably practical solution in the public interest and by the extent to which they would provide substantive solutions to the various concerns identified by the Committee. As models of the two options are developed, they may display many similarities but they are distinguishable by a difference in corporate structure, as follows:
>
> *(a) Solution Option 1: Modify LIF's integration as a Law Society department –*
>
> 62. This option maintains the Lawyers Insurance Fund "in-house" and involves no significant changes to the corporate structure of the Law Society.
>
> 63. The development of Option 1 incorporates the challenge of maintaining the existing corporate structure of the Society while envisioning a list of operational policies, protocols, and other changes that will address the concerns of the Committee for matters of both appearance and underlying substance.
>
> …
>
> *(b) Solution Option 2: Operate LIF as a separate legal entity, in the form of a relatively independent subsidiary of the Law Society –*
>
> 66. Rather than operating claims management and insurance services through a private, for profit corporate model, this option envisages instead the creation of a separate, not-for profit Law Society subsidiary corporation that would handle claims management with a separate board and reporting structure.

Committee member Herman Van Ommen, QC, confirmed the Committee's conclusion that the status quo is not desirable and that corrective action is needed. He noted that the Committee has not had enough information to recommend specific changes.

In the ensuing discussion 10 Benchers spoke in favour of the resolution and two spoke against. Issues raised were:

- Whether public confidence in the Law Society's objectivity and regulatory function may be undermined by misunderstanding by complainants and the public as to why the Lawyers Insurance Fund and the Professional Conduct department sometimes take different positions on the same facts

- Whether current practices around sharing of information by the Lawyers Insurance Fund and the Professional Conduct department may have adverse effect on the Law Society's regulatory performance

- Whether the Report's language and tone is sufficiently objective and neutral

- Whether the Committee and its report should have focused more on evidence of actual conflicts and adverse effects on regulatory performance and public confidence

- Whether the fundamental issues are the potential for public misunderstanding and diminished confidence flowing from inherent tensions between the Law Society's regulatory and insurance responsibilities

- Whether the members of the Audit Committee generally possess sufficient technical knowledge of the insurance industry to conduct oversight of the Law Society's insurance program

- Whether the Governance Committee should consider the governance aspect of such oversight

Ms. Andreone proposed a friendly amendment, to add the following words to the draft resolution: "*…, having regard to the need to provide best practices oversight and governance of the insurance portfolio."*

The amendment was approved.

Mr. Richmond stated the amended resolution:

> *Whereas, having read the report of the Rule of Law and Lawyer Independence Advisory Committee dated April 12, 2013 (the Report), the Benchers understand that the Law*

Society's current co-existing responsibilities as both regulator and insurer of lawyers creates a propensity and risk for a conflict of duties that warrants corrective action.

BE IT RESOLVED THAT a working group of Benchers and staff be created to undertake a detailed examination and analysis of the two solution options described in the Report for future consideration by the Benchers, having regard to the need to provide best practices oversight and governance of the insurance portfolio.

The motion to adopt the amended resolution was carried.

The Benchers agreed that the mandate of any such working group should not be limited to the two solution options referenced in the resolution and in the Report.

The Benchers deferred consideration of the role of the Governance Committee in relation to the oversight and governance of the Law Society's insurance program.

4. CBABC Rural Education and Access to Lawyers (REAL) Initiative: Funding Request for 2014

Mr. Vertlieb briefed the Benchers on the background of this matter, noting that:

- CBABC Provincial Council has approved the contribution of $50,000 by CBABC to 2014 funding of the REAL Initiative (Phase 3)
- The REAL Initiative aligns with Strategy 2-2 of the 2012 – 2014 Strategic Plan: "Improve access to justice in rural communities"
- The Executive Committee unanimously recommends the contribution of $50,000 by the Law Society to 2014 funding of the REAL Initiative (Phase 3),
    - matching the contributions of CBABC and the Law Foundation of BC

Mr. Walker moved (seconded by Ms. Bains) that the Benchers approve the Law Society's contribution of $50,000 to 2014 funding of the REAL Initiative (Phase 3).

The motion was carried unanimously.

5. 2014 Fees and Budget: Finance Committee Recommendations to the Benchers

Ms. Lindsay briefed the Benchers as Chair of Finance Committee. She reviewed the work done by the Committee, with the full participation of Law Society management, in conducting a ground-up, zero-based review of the Law Society's operating budgets for 2014. Ms. Lindsay confirmed that she supports the view of the Finance Committee and management that the Law Society budget and fees proposed for 2014 will allow the Society to continue to regulate legal profession in the public interest.

Mr. McGee noted that the proposed 2014 budget includes funding for the first phase of an initiative already approved by the Benchers, to enhance the Law Society' practice advice and support functions. Ms. McPhee confirmed that the proposal before the Benchers calls for an increase of 1.3% for total mandatory fees paid by BC lawyers in 2014 (excluding taxes, and including the Lawyers Insurance Fund assessment, unchanged from 2013 at $1,750).

Mr. Walker (Vice-Chair of the 2013 Finance Committee) moved (seconded by Mr. Acheson) the adoption of the General Fund, Lawyers Insurance Fund and Trust Administration Fee resolutions, as set out at Tab 4 of the meeting materials:

BE IT RESOLVED THAT, commencing January 1, 2014, the practice fee be set at $1,940.00, pursuant to section 23(1)(a) of the Legal Profession Act, consisting of the following amounts:

General Fund	$1,571.11
Federation of Law Societies of Canada contribution	25.00
CanLII contribution	36.00
Pro Bono contribution	30.39
Courthouse Libraries BC	190.00
Lawyers Assistance Program	60.00
The Advocate	27.50
Practice Fee	**$1,940.00**

BE IT RESOLVED THAT:

- the insurance fee for 2014 pursuant to section 30(3) of the *Legal Profession Act* be set at $1,750;
- the part-time insurance fee for 2014 pursuant to Rule 3-22(2) be set at $875; and
- the insurance surcharge for 2014 pursuant to Rule 3-26(2) be set at $1,000.

BE IT RESOLVED THAT:

- effective January 1, 2014, the trust administration fee be set at $15 for each client matter, pursuant to Rule 2-72.2(1).

The motion was carried unanimously.

Mr. Vertlieb thanked the Finance Committee and acknowledged, Ms. Lindsay, Mr. McGee and Ms. McPhee for their direction and leadership throughout the 2014 budgeting and fee-setting process.

6. Family Law Task Force Request for Permission to Provide Analysis & Recommendations to the Benchers re: Authority, Guidelines and Training for Designated Paralegals to act as Counsel at Family Law Mediations & Arbitrations

Family Law Task Force Chair Carol Hickman, QC briefed the Benchers and presented the following draft resolution for approval:

BE IT RESOLVED THAT:

The Family Law Task Force analyze and report to the Benchers with recommendations on whether:

1. Designated paralegals can act as counsel at family law mediations and arbitrations, and in other family law dispute areas, and if so, to consider what guidelines or practice commentary should be created to assist supervising lawyers;

2. Designated paralegals practising in family law ought to be strongly encouraged to take training in screening for domestic violence, consistent with the statutory obligation for family dispute resolution professionals contained in the *Family Law Act*.

The Benchers unanimously approved the resolution.

GUEST PRESENTATIONS

7. Provincial Court of BC Update

Mr. Vertlieb welcomed the Honourable Thomas Crabtree, Chief Judge of the Provincial Court of BC to the meeting and invited him to address the Benchers.

Chief Judge Crabtree thanked the Benchers for their hospitality, and expressed his appreciation to the Law Society to the Court for its support on three issues:

- public support for the BC Courts, and in particular the Provincial Court
- the Law Society's willingness to pursue innovation and to collaborate with the BC Courts in that regard, particularly in relation to the Family Law Paralegals pilot project
- the Law Society's participation in and contributions to the Judicial Council over many years

Chief Judge Crabtree emphasized the Provincial Court's commitment to enhancing the accessibility and timeliness of the judicial process. He noted the importance of recent progress in three areas:

- streamlining of the Court's administrative structure,
- improvements to the Court's information management and scheduling systems
- use of technology, particularly video-conferencing

Chief Judge Crabtree also commented on the Provincial Court's commitment to communication and transparency in the use of its website, referring to the publication of quarterly updates to a report first published in September 2010 on the Court's resources, particularly its complement of judges.

REPORTS

8. 2012 – 2014 Strategic Plan Implementation Update

This matter was put over to the next meeting.

9. President's Report

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

a) First Year Faculty of Law Classes

Mr. Vertlieb spoke to the first year Law classes at UBC and the University of Victoria, addressing the themes of professionalism and collegiality. He will seek an early opportunity to visit the Faculty of Law at Thompson Rivers University.

b) CBA Legal Conference (August 18 – 20, 2013 in Saskatoon, Saskatchewan)

Mr. Vertlieb reported on the presentation by Dr. Melina Buckley, chair of the CBA's Envisioning Equal Justice Initiative, and briefed the Committee on the communications strategy for a proactive Law Society response to the release of the Initiative's report, which is expected later in the fall. Mr. Vertlieb also commented on Mr. McGee's presentation on corporate counsel issues, noting that representatives of the Canadian Corporate Counsel Association have been invited to deliver a presentation to the Benchers at the November 7 meeting.

c) International Criminal Court Conference in Victoria

Mr. Vertlieb delivered welcoming remarks for the Law Society at a recent International Criminal Court conference in Victoria.

d) Law Society Liaison to Canadian Bar Association Provincial and National Councils

Vancouver Bencher Maria Morellato, QC has been re-appointed as the Law Society President's non-voting nominee to the CBABC Provincial Council and the CBA National Council, each appointment for a one-year term commencing September 1, 2013.

10. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 2 to these minutes), including the following matters:

- Introduction
- 2014 Budgets and Fees
- Management and Staff Updates

- New Manager, Intake & Early Resolution
- Leadership Council
- RRex Program
- Thriving Professional Awards
- On-the-Spot Recognition
- Golden Lion Award
- RRex Day
- Inspired Lion Award
- RRex Award
- Annual Performance Awards
- 2013 Employee Survey

- Events and Conferences
  - Canadian Corporate Counsel Association Plenary Session – CBA Canadian Legal Conference
  - 2013 International Institute of Law Association Chief Executives (IILACE) Annual Conference
  - Kootenay Bar Association Summer Meeting
  - Federation of Law Societies of Canada Semi-Annual Meeting – St. John's Newfoundland
  - Fall Justice Summit
  - National Action Committee on Access to Justice Event
- PLTC Thank you

11. Trust Assurance Program Summary Report: First Six-Year Cycle

Felicia Ciolfitto, Manager of Trust Assurance and Trust Regulation, briefed the Benchers on the successful completion of the first six-year cycle of the Law Society's Trust Assurance and Trust Regulation programs. Ms. Ciolfitto's written report is at Tab 10 of the meeting materials.

12. Law Society Financial Report (August 31, 2013

Jeanette McPhee, Chief Financial Officer and Director of Trust Regulation, referred the Benchers to her report on the Law Society's financial results and highlights for the first eight months of 2013 (Tab 11 of the meeting materials).

13. Law Society Liaison to the Canadian Bar Association National and Provincial Councils: Annual Update

Maria Morellato, QC briefed the Benchers as the Law Society's designated liaison to the Canadian Bar Association (CBA) National and Provincial (BC) Councils. Ms. Morellato reported that during the past year she had the privilege of attending the two national CBA Council meetings, and most Provincial Council meetings. She noted that the Law Society and the CBA have much in common, including mutual commitment to the public interest, an independent legal profession and the rule of law, and a number of shared goals and priorities. As examples Ms. Morellato referred to Law Society and CBA initiatives relating to access to justice, diversity issues and the pressing need to address the implications of a rapidly changing legal marketplace, including emerging regulatory challenges.

Ms. Morellato also outlined highlights of the work presented at the CBA national meetings in February and August, referring the Benchers to her written report (Tab 12 of the meeting materials) for details.

14. Federation Council Update

Gavin Hume, QC reported as the Law Society's member of the Council of the Federation of Law Societies of Canada. Mr. Hume outlined significant issues to be addressed at the upcoming Council meeting and Conference (October 17-18 in St. John's, Newfoundland). Key matters on the Council meeting agenda include:

- signing of the Quebec Mobility Agreement
- discussion of implementation issues relating to National Admission Standards

- Trinity Western University's pending application for law school accreditation

The Conference will feature discussion of the impact of a number of topics on legal regulation, including:

- technology
- globalization
- the changing nature of legal practice and services

Mr. Hume also reported as Chair of the Federation Standing Committee on the Model Code of Professional Conduct. He noted that the Committee is about to send a major consultation package to the Federation's member law societies, the Canadian Bar Association and an association of ethics professors, proposing Model Code provisions and language on topics including:

- doing business with clients
- short term legal services
- conflicts rules
- incriminating physical evidence

15. Report on the Outstanding Hearing & Review Reports

A report on outstanding hearing and review reports was circulated, and a number of timing issues were discussed and explained.

The Benchers discussed other matters *in camera*.

WKM
2013-10-25

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

National Mobility Agreement 2013

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The signatories recognize that

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

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

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

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

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

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

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

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

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

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THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

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

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

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

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

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

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

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

jurisdiction" has a corresponding meaning;

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

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

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

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

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

"notary" means a member of the Chambre;

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

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

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

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

General

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

3. The signatory governing bodies will

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

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

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

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

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

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

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

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

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

Temporary Mobility Among Common Law Jurisdictions

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

Mobility without permit

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

(a) meets the criteria in clause 11; and

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

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

10. It will be the responsibility of a lawyer to
    (a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and
    (b) prove that he or she has complied with provisions implementing clause 8.

11. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 8, a lawyer will be required to do each of the following at all times:
    (a) be entitled to practise law in a home jurisdiction;
    (b) carry liability insurance that:
        (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
        (ii) extends to the lawyer's practice in the host jurisdiction;
    (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
    (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
    (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
    (f) have no disciplinary record in any jurisdiction.

12. For the purposes of clause 8:
    (a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;
    (b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:
        (i) the Supreme Court of Canada;
        (ii) the Federal Court of Canada;
        (iii) the Tax Court of Canada;
        (iv) a federal administrative tribunal.

13. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:
    (a) in the lawyer's home jurisdiction; or
    (b) operated in the host jurisdiction by a member of the host governing body.

Mobility permit required

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

    (a) on application;

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

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

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

Temporary mobility not allowed

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

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

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

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

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

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

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

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

    (c) becoming resident;

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

National Registry of Practising Lawyers

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

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

Liability Insurance and Defalcation Compensation Funds

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

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

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

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

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

Enforcement

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

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

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

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

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

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

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

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

Permanent Mobility of Lawyers

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

34. Before admitting as a member a lawyer qualified under clauses 33 to 38, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:
    (a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;
    (b) disclose criminal and disciplinary records in any jurisdiction;
    (c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and
    (d) certify that he or she has reviewed all of the materials reasonably required by the governing body.

35. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Barreau are not qualifying members of the Barreau for the purpose of clauses 33 to 40.

Public Information

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

Liability Insurance

37. Subject to clause 40, a signatory governing body other than the Barreau will, on application, exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction:
    (a) is resident;
    (b) is a member of the governing body; and
    (c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

38. For the purposes of clause 37, a lawyer who is resident in Quebec and who is a member of more than one signatory governing body other than the Barreau will be deemed resident in one of the other jurisdictions in which the lawyer is a member, as determined in accordance with nationally consistent criteria to be included in the insurance programs of all signatory jurisdictions. In the event that nationally consistent criteria are not in place, the lawyer will be deemed resident in the jurisdiction of the signatory body in which the lawyer has been a member continuously for the longest period of time.

39. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause 37, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which

the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

40. A lawyer who is a member of the Barreau and one or more of the other signatory governing bodies must comply with the liability insurance requirements of the Barreau and at least one of the other signatory governing bodies of which the lawyer is a member. Insurance coverage is to be provided as follows:

(a) by the professional liability insurance program of the Barreau with respect to services provided by the lawyer as a member of the Barreau;

(b) by the professional liability insurance program of a signatory governing body other than the Barreau with respect to services provided by the lawyer as a member of a signatory governing body other than the Barreau.

Temporary Mobility between Quebec and Common Law Jurisdictions

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

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

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

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

Permanent Mobility of Quebec Notaries

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

44. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Chambre are not qualifying members of the Chambre for the purpose of clauses 42 to 49.

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

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

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

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

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

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

(a) entitlement to practise the notarial profession in Quebec; and

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

47. Before granting CLA status to a notary qualified under clauses 42 to 50, a governing body will not require the notary to pass a transfer examination or other examination, but may require the notary to do all of the following:

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

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

(c) consent to access by the governing body to the notary's regulatory files of all governing bodies of the legal profession of which the notary is a member, whether in Canada or elsewhere.

48. A governing body will make available to the public information obtained under clause 47 in the same manner as similar records originating in its jurisdiction.

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

50. The Chambre will continue to make available to its members who are also CLAs in another jurisdiction ongoing liability insurance with minimum occurrence or claim limits for indemnity of $1,000,000 and $2,000,000 annual per member

aggregate.

Inter-Jurisdictional Practice Protocol

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

Transition Provisions

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

53. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:
    (a) with respect to all Canadian lawyers until this agreement is implemented; and
    (b) with respect to members of Canadian law societies that are not signatories to this agreement.

Withdrawal

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

55. A signatory that gives notice under clause 54 will:
    (a) immediately notify its members in writing of the effective date of withdrawal; and
    (b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.

SIGNED as indicated in respect of each signatory below

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF ALBERTA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF SASKATCHEWAN

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF MANITOBA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF UPPER CANADA

Per: _____ _____

Authorized Signatory Date

BARREAU DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

CHAMBRE DES NOTAIRES DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____ _____

Authorized Signatory Date

NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____ _____

Authorized Signatory Date

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

National Mobility Agreement 2013

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(b) disbarment;

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

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

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

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

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

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

jurisdiction" has a corresponding meaning;

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

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

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

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

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

"notary" means a member of the Chambre;

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

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

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

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

General

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

3. The signatory governing bodies will

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

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

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

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

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

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

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

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

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

Temporary Mobility Among Common Law Jurisdictions

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

Mobility without permit

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

(a) meets the criteria in clause 11; and

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

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

10. It will be the responsibility of a lawyer to
    (a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and
    (b) prove that he or she has complied with provisions implementing clause 8.

11. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 8, a lawyer will be required to do each of the following at all times:
    (a) be entitled to practise law in a home jurisdiction;
    (b) carry liability insurance that:
        (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
        (ii) extends to the lawyer's practice in the host jurisdiction;
    (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
    (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
    (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
    (f) have no disciplinary record in any jurisdiction.

12. For the purposes of clause 8:
    (a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;
    (b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:
        (i) the Supreme Court of Canada;
        (ii) the Federal Court of Canada;
        (iii) the Tax Court of Canada;
        (iv) a federal administrative tribunal.

13. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:
    (a) in the lawyer's home jurisdiction; or
    (b) operated in the host jurisdiction by a member of the host governing body.

Mobility permit required

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

    (a) on application;

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

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

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

Temporary mobility not allowed

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

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

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

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

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

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

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

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

    (c) becoming resident;

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

National Registry of Practising Lawyers

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

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

Liability Insurance and Defalcation Compensation Funds

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

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

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

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

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

Enforcement

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

26. If a lawyer fails or refuses to comply with the provisions of clause 25, a host governing body will be entitled to:

    (a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or

    (b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.

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

28. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:

    (a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and

    (b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.

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

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

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

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

Permanent Mobility of Lawyers

33. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:

    (a) entitlement to practise law in the lawyer's home jurisdiction;

    (b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and

    (c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.

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

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

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

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

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

35. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Barreau are not qualifying members of the Barreau for the purpose of clauses 33 to ~~38~~39~~40~~.

Public Information

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

Liability Insurance

37. Subject to clause 40, ~~On application,~~ a signatory governing body other than the Barreau will, on application, exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction:

(a) is resident;

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

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

38. For the purposes of clause 37, a lawyer who is resident in Quebec and who is a member of more than one signatory governing body other than the Barreau will be deemed resident in one of the other jurisdictions in which the lawyer is a member, as determined in accordance with nationally consistent criteria to be included in the insurance programs of all signatory jurisdictions. In the event that nationally consistent criteria are not in place, the lawyer will be deemed resident in the jurisdiction of the signatory body in which the lawyer has been a member continuously for the longest period of time.

~~38~~39. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause 37, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which

the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

40. A lawyer who is a member of the Barreau and one or more of the other signatory governing bodies must comply with the liability insurance requirements of the Barreau and at least one of the other signatory governing bodies of which the lawyer is a member. Insurance coverage is to be provided as follows:

(a) by the professional liability insurance program of the Barreau with respect to services provided by the lawyer as a member of the Barreau;

(b) by the professional liability insurance program of a signatory governing body other than the Barreau with respect to services provided by the lawyer as a member of a signatory governing body other than the Barreau.

Temporary Mobility between Quebec and Common Law Jurisdictions

~~40~~41. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.

~~41~~42. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:

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

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

Permanent Mobility of Quebec Notaries

~~42~~43. Signatory common law governing bodies will establish and maintain a program in order to grant Canadian Legal Advisor ("CLA") status to qualifying members of the Chambre.

~~43~~44. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Chambre are not qualifying members of the Chambre for the purpose of clauses ~~41~~42 to ~~47~~49.

4445. A member of the Chambre who is granted the status of CLA in any jurisdiction outside of Quebec may, in his or her capacity as a CLA:

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

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

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

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

4546. A governing body will require no further qualifications for a notary to be eligible for status as a CLA beyond the following:

(a) entitlement to practise the notarial profession in Quebec; and

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

4647. Before granting CLA status to a notary qualified under clauses 4142 to 4750, a governing body will not require the notary to pass a transfer examination or other examination, but may require the notary to do all of the following:

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

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

(c) consent to access by the governing body to the notary's regulatory files of all governing bodies of the legal profession of which the notary is a member, whether in Canada or elsewhere.

4748. A governing body will make available to the public information obtained under clause 4547 in the same manner as similar records originating in its jurisdiction.

4849. A governing body must require that a notary who is granted the status of a CLA continue to maintain his or her practising membership in the Chambre.

50. The Chambre will continue to make available to its members who are also CLAs in another jurisdiction ongoing liability insurance with minimum occurrence or claim limits for indemnity of $1,000,000 and $2,000,000 annual per member

aggregate.

Inter-Jurisdictional Practice Protocol

4951. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect, to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.

Transition Provisions

5052. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

5153. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:

(a) with respect to all Canadian lawyers until this agreement is implemented; and

(b) with respect to members of Canadian law societies that are not signatories to this agreement.

Withdrawal

5254. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.

5355. A signatory that gives notice under clause 5154 will:

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

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

SIGNED as indicated in respect of each signatory below

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF ALBERTA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF SASKATCHEWAN

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF MANITOBA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF UPPER CANADA

Per: _____ _____

Authorized Signatory Date

BARREAU DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

CHAMBRE DES NOTAIRES DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____ _____

Authorized Signatory Date

NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____ _____

Authorized Signatory Date

The Law Society of British Columbia

CEO's Report to Benchers

September 27, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

My report this month covers a variety of topics, the highlights of which are set out below. I would be happy to discuss any of these items in further detail with the Benchers at the meeting this week.

2014 Budgets and Fees

The Budget and Fees planning process, which commenced in April of this year with departmental reviews of budget requirements and resourcing priorities, has culminated in the Finance Committee report to the Benchers recommending the fees for 2014 and presenting the underlying operational budgets.

The approach that management has taken again this year is to present recommendations to the Finance Committee reflecting balanced budgets, limited use of reserves and sufficient funding for the proper performance of our core regulatory responsibilities. The basic elements of our budgets vary little from year to year; however, each year we generally have an area that generates particular needs and requirements. This year management focused on the results and recommendations of our Lawyer Support and Advice Working Group, which I have been reporting on to the Benchers throughout the year. This group conducted a comprehensive review of all of our activities and resources supporting lawyers and recommended a number of enhancements to improve those services. You will see that this priority is reflected in the budget proposal and in the specific practice fee recommendation brought forward by the Finance Committee.

Jeanette McPhee, our Chief Financial Officer, and the rest of the Executive Team will be at the meeting to address any specific questions you may have and to provide additional details as requested.

Management and Staff Updates

New Manager, Intake & Early Resolution

I am very pleased to advise that Katherine Crosbie has joined the Law Society as our new Manager, Intake & Early Resolution. Katherine was chosen from a pool of very strong candidates and brings with her extensive regulatory management experience.

Katherine graduated from the University of Toronto Law School in 1986 following which she moved to Newfoundland where she was in private practice before working in various government positions. Most recently she was Director, Quality Assurance,

Review Division, at WorkSafeBC overseeing a department of 30 professionals. She is on the Executive of the CBA National Administrative Law Section.

In her role at the Law Society, Katherine will be managing the staff and functions supporting the Complainants' Review Committee in addition to the Intake and Early Resolution areas of Professional Conduct.

Leadership Council

The Leadership Council is the name of our new senior management group which is a key part of the management renewal initiative which I announced earlier this year. The Council replaces the old Management Board and is comprised of my five direct reports (Deborah Armour, Su Forbes, QC, Jeanette McPhee, Alan Treleaven and Adam Whitcombe), plus Jeff Hoskins, QC and three managers appointed by me for a one year term from among a list of managers who put their names forward for consideration.

I am pleased to advise that Robyn Crisanti, Manager, Communications and Public Relations, Kensi Gounden, Manager, Standards and Professional Development and Lesley Small, Manager, Member Services and Credentials are the managers appointed to the initial Leadership Council, which is featured in the current edition of the Benchers Bulletin. The Council met twice over the summer and is planning a full day retreat in November to discuss operational priorities for 2014. Part of the new management approach is to utilize working groups comprised of managers and staff to assume responsibility for implementing the operational priorities established by the Leadership Council. This approach puts a premium on teamwork, initiative and accountability, while broadening the opportunities for managers and staff to demonstrate and develop their leadership skills and potential.

RRex Program

In January 2013 we launched a revamped program for recognizing and rewarding employee excellence at the Law Society. That program, known as RRex, was designed around feedback from staff together with extensive external research on best practices in this area. The program is intended to reinforce behavior which supports our mandate, encourages innovation, and builds a culture of recognition and appreciation at the Law Society. I am pleased to advise that so far this year it has been enthusiastically embraced by staff and managers alike.

The RRex program recognizes staff in a number of ways.

Thriving Professional Awards

These awards recognize management and staff who consistently demonstrate such attributes as a positive attitude, good teamwork and collaboration, inter-departmental collaboration or an innovative approach to processes. Awards in this category include:

On-the-Spot Recognition

Staff can be given “on-the-spot” recognition by a manager or peer in the form of a note and gift card to acknowledge outstanding or extraordinary service, behavior or achievement. This option has been very well received and utilized by managers and staff since its introduction.

An interesting and encouraging statistic is that approximately 56% of the on-the-spot recognition awards given out to date have been given by staff in one department to an employee in another department. This suggests that the on-the-spot recognition program will help break down work silos and reinforce inter-departmental cooperation.

Golden Lion Award

This award allows non-management employees to recognize an individual or team for outstanding achievement every month throughout the year. Selected by staff, the recipient keeps the trophy for four weeks and then selects a new recipient to whom the award is passed. The presentation is a fun event held in the Bencher Room and is usually standing room only.

Golden Lion award recipients to date are:

Denise Findlay, Communications Coordinator
Lynne Knights, Intake Officer
Brendan Dowd and Elizabeth Moul, Receptionists/Custodial Clerks
Quinot Matthee, PLTC Program Assistant.
Debra DeGaust, Senior Paralegal, Practice Standards
Ruth Long, Staff Lawyer, Intake & Early Resolution
Jack Olsen, Ethics Advisor, Ethics and Practice

RRex Day

On October 3, we will host our first annual RRex day to acknowledge and recognize the hard work and commitment of all staff members at the Law Society. Staff will be treated to an appreciation "grab-and-go" breakfast and an offsite lunch awards ceremony, where I will present the two annual Society Awards:

Inspired Lion Award – recognizes an individual or team who have significantly improved operational or financial efficiency by developing a new tool, process or design.

RRex Award – recognizes a non-management team or individual who has demonstrated a commitment to excellence.

The recipients of these two awards have been selected from nominees submitted to a committee comprised of managers and staff. I am told there were many outstanding nominees and that the awards committee had a difficult assignment. The quality and number of nominees is very encouraging and bodes well for the future success of the RRex program.

Annual Performance Awards

Staff who have consistently performed at top level throughout the year, or made significant contributions beyond normal job expectations are eligible to receive cash awards at the end of each year as part of their annual performance review. The awards will be based on recommendations by managers to the Executive Team. In making their recommendations, managers will consider standardized assessment criteria, annual performance reviews and key performance measures to ensure consistency and fairness of awards application across all departments.

I would like to take this opportunity to thank our Human Resources team for their tremendous efforts in unrolling this new program to our staff. They have worked very hard to develop the guidelines and assessment tools required to make this new recognition program a success.

If you would like to know more about our RRex program, please feel free to contact me, or Donna Embree, Manager, Human Resources.

2013 Employee Survey

We will soon be conducting our annual employee survey. The annual survey provides staff with an opportunity to provide feedback on how we can improve job satisfaction and our effectiveness as an organization. Each year management designs an action

plan around one or two of the most important findings from the survey. We will review the results of the survey and our action plan with the Benchers early in the New Year.

Events and Conferences

Canadian Corporate Counsel Association Plenary Session - CBA Canadian Legal Conference

On August 19, 2013 I participated on a panel at a plenary lunch session for the Canadian Corporate Counsel Association (CCCA) at the CBA 2013 Canadian Legal Conference in Saskatoon. The panel topic was “Three Pillars of the Legal Profession: education, regulation and association – the role each will play in the future of the profession”. My panel colleagues were Nathalie Des Rosiers, the new Dean of the University of Ottawa Law School, and Heather Innes, Incoming Chair of the CCCA, and current Global Process Leader for GM Canada. As you would expect, given the conference sponsor, the discussion among the panelists and the audience focused on the changing roles for in-house counsel over the next 10 years. A number of areas were covered, including the need for more practical training for law students and junior lawyers, issues regarding who is the client and how the public interest fits in, and the question: should regulators view in-house counsel any differently than private practitioners? My key message was that there are many changes emerging in the practice of law and the role of legal services providers, such as alternate business structures and paralegals, respectively. Accordingly, regulators must constantly consider what is in the public interest. Regulators must be flexible and creative enough to embrace change while never losing sight of the public interest imperative.

2013 International Institute of Law Association Chief Executives (IILACE) Annual Conference

I returned earlier this week from the annual conference of the International Institute of Law Association Chief Executives (IILACE) which was held this year in Berlin. I was elected Vice President of IILACE in 2012 and I will assume the Presidency of that organization for a two year term commencing at the Annual General Meeting in November 2014.

As in past years the conference delivered on its promise to create a forum for a small group of executives to discuss important topics for the regulation and advocacy of the profession and to compare notes on organizational and governance matters. This year we had approximately 45 delegates from around the world including all the major common law jurisdictions. It is interesting to note that the delegates regulate or

represent (and in some cases both) over 1.6 million lawyers worldwide. Of particular note this year was the attendance of two new members, the CEO of the State Bar of California and the CEO of the all Japan lawyers' regulatory body.

I will speak briefly at the Benchers meeting this week on some of the topical highlights and prepare my usual full written report to the Benchers for the October meeting. In the meantime, if you would like a copy of the conference program, please let me know.

Kootenay Bar Association Summer Meeting

I will be attending the 2013 summer (summer arrives late in the Kootenays!) meeting of the Kootenay Bar Association in Cranbrook this coming weekend. President Art Vertlieb, QC, Second Vice President Ken Walker, QC and I will be travelling to the meeting right after the Bencher meeting this week. I am looking forward to the sessions and to joining 2012 President Bruce LeRose, QC and the local members.

Federation of Law Societies of Canada Semi-Annual Meeting – St. John's Newfoundland

The Federation of Law Societies semi-annual meeting is being held in St. John's Newfoundland from October 16 to19. In addition to the formal business conducted at the Federation Council meeting there are meetings of the Law Societies CEOs and CEOs and senior staff, as well as the plenary conference program. This year the theme of the conference is the Canadian regulatory model and whether it remains responsive to the public interest and the profession given the significant changes in the profession over the past 20 years. As always, there is a good mix of strategic discussion as well as sharing of "nuts and bolts" information relevant to our respective operations. We will have a full report at the Bencher meeting in October.

Fall Justice Summit

The inaugural Justice Summit was held in March of this year and was widely regarded as having exceeded the expectations of the broad range of participants. A report of that inaugural summit was attached as Appendix B to my July report to the Benchers.

The follow-up summit is now in the final planning stages and I am participating in those sessions together with Michael Lucas, Manager of Policy and Legal Services. The goal of the Fall Justice Summit is once more to bring together the key stakeholders in the criminal justice system, including the Ministry of Attorney General, crown and defense counsel, police agencies, health and community support agencies and senior

representatives of all levels of the courts, to map out an approach that will better address the need for renewal and change. The summit will build on the framework of ideas established in March. I will once again be acting as Moderator for the sessions, which will be held on November 8 and 9 at Allard Hall at UBC.

National Action Committee on Access to Justice Event

On November 19, we will be hosting a breakfast briefing session here at the Law Society for justice stakeholders as part of events being held across the country to present the report of the National Action Committee on Access to Justice chaired by Supreme Court of Canada Justice Thomas Cromwell. Details are presently being sorted out and we will have more to report on this item at the Bencher meeting in October.

PLTC Thank You

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

Art Vertlieb, QC
Rita Andreone, QC
Ralston Alexander, QC (Life Bencher)
Bruce LeRose, QC (Life Bencher)
Jane S. Shackell, QC (Life Bencher)
Gordon Turriff, QC (Life Bencher)

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: October 8, 2013
Subject: **2014 Fee Schedules**

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1. Before the end of each calendar year, the Benchers must revise the fee schedules, which appear as schedules to the Law Society Rules, to reflect changes taking effect on the following January 1.

2. Under section 23(1)(a) of the *Legal Profession Act*, the Benchers have approved a practice fee of $1,940 for 2014. The insurance fee was also approved at $1,750 for lawyers in full-time practice and $875 for those in part-time practice, both of which are unchanged from 2013.

3. In addition, the Trust administration fee was increased from $10 to $15 per client matter.

4. I attach a suggested resolution that will give effect to the change.

JGH

Attachments: resolution

DM405320

2014 FEE SCHEDULES

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2014, as follows:

1. ***In Schedule 1,***

   (a) ***by striking "***$1,893.06***" at the end of item A 1 and substituting "***$1,940.00***", and***

   (b) ***by striking "***$10.00***" at the end of item A.1 1 and substituting "***$15.00***";***

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

3. ***In the headings of schedules 1, 2, and 3, by striking the year "2013" and substituting "2014".***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date: October 8, 2013
Subject: **Schedule 4 Tariff of costs and Rule 4-20.1 Notice to Admit**

---

1. In April 2013, the Benchers adopted Rule 4-20.1 establishing procedures for a Notice to Admit in disciplinary matters. Either discipline counsel or the respondent may serve a Notice to Admit on the opposing party. A response is required within 21 days of service, or the party receiving the Notice will be deemed to have admitted the truth of the fact or authenticity of the document attached.

2. Similar to an Agreed Statement of Fact or an Affidavit, an admission made or deemed to be made under Rule 4-20.1 may be accepted as evidence by a hearing panel under Rule 5-6(6).

3. However, the current Tariff of Costs for Law Society hearings and reviews (Schedule 4 to the Rules) does not provide for recovery of any part of the costs related to the Notice to Admit or a response. Discipline Counsel requested that the Tariff be brought into line with the new Notice to Admit provisions. The Act and Rules Committee considered the proposal and resolved to recommend to the Benchers that it be adopted in the form outlined below.

4. The current items (7 and 8) in the Tariff relating to Agreed Statement of Facts and Affidavits state:

Item No.	**Description**	**Number of units or amount payable**
7.	Preparation of agreed statement of facts • if signed more than 21 days prior to hearing date • if signed less than 21 days prior to hearing date • delivered to respondent and not signed	Min. 5 to Max. 15 Min. 10 to Max. 20 Min. 10 to Max 20

8.	Preparation of affidavits	Minimum 5 Maximum 20

5. The Act and Rules Committee recommends inserting two new items immediately after those by adopting of a resolution such as this:

BE IT RESOLVED to amend Schedule 4 of the Law Society Rules by adding the following items:

Item No.	**Description**	**Number of units or amount payable**
8.1	Preparation of Notice to Admit	Minimum 5 Maximum 20
8.2	Preparation of response to Notice to Admit	Minimum 5 Maximum 20

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: October 9, 2013
Subject: **Rule 1-3(8), President unable to act**

---

1. In 2011 the Benchers amended Rule 1-3(8) to its present form:

    (8) In the absence of the President, the powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President.

2. While the intention was that "absence" would be interpreted broadly to include instances where the President was physically present but not, for some reason, able to exercise some power assigned to the President by the Rules, the word is also capable of a more narrow interpretation that would not be consistent with the purpose of the provision in some instances.

3. The legislation governing many other Canadian law societies address the question of substitution for the president using a phrase such as "when the president is absent or unable to act." The Act and Rules Committee recommends an amendment to Rule 1-3(8) along those lines.

4. Additionally, the Committee recommends enlarging the provision to allow for the President the discretion to consent to another officer exercising a presidential power. There may be occasions in which the President is neither absent nor unable to act, but may reasonably feel that he or she should delegate the matter to one of the Vice-Presidents or another Executive Committee member.

5. Here is the amendment that the Act and Rules Committee recommends to the Benchers for adoption:

1-3 (8) ~~In the absence of the President, t~~The powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President~~.~~

(a) if the President is absent or otherwise unable to act, or

(b) with the consent of the President.

6. This is a suggested resolution for the adoption of the recommended change:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 1-3(8) and substituting the following:

(8) The powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President

(a) if the President is absent or otherwise unable to act, or

(b) with the consent of the President.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

JGH

The Law Society of British Columbia

BC Code rule 3.4-26.1: Lawyer Conflicts with Clients

June 14, 2013

Purpose of Report: **Recommendation for Change to BC Code**

Prepared by: **Ethics Committee**

The Law Society of British Columbia

Memo

To: Benchers
From: Ethics Committee
Date: June 14, 2013
Subject: **BC Code rule 3.4-26.1: Lawyer Conflicts With Clients**

I. Current Rule and its Rationale

Rule 3.4-26.1 currently states:

Conflicts with clients

3.4-26.1 A lawyer must not perform any legal services if it would reasonably be expected that the lawyer's professional judgment would be affected by the lawyer's or anyone else's

(a) relationship with the client, or

(b) interest in the client or the subject matter of the legal services.

Commentary

[1] Any relationship or interest that affects a lawyer's professional judgment is to be avoided under this rule, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer.

Rule 26.1 is a rule that we developed independently from the Federation of Law Societies Model Code, based on our old rules about lawyers' own conflicts in the old *Professional Conduct Handbook* (Chapter 7, Rule 1 & 2). We said this at the time we recommended this rule to you:

> Although it is clear from the Model Code rules respecting conflicts that a lawyer may not act when he or she is in a conflict with a client, we were concerned that the Model Code has no standards to determine when such a conflict exists. Rule 3.4-26.1 imports from Chapter 7 of the *Professional Conduct Handbook* the standards similar to those the LSBC has been using since 1993: a lawyer may not act if it would reasonably be expected the lawyer's professional judgment would be affected by the lawyer's or anyone else's relationship with the client, interest in the client or the subject matter of the legal services. We have given a variety of opinions on this

> standard since 1993 and, although the standard is not an exacting one, it nevertheless provides better guidance for lawyers than the Model Code.

II. Response of Federation Standing Committee

As you know, the Federation Standing Committee on the Model Code was established in September 2010 with a mandate to monitor developments in the law of professional responsibility, consider feedback from law societies as they implement the Model Code, and make recommendations for amendments to the Model Code as necessary. Past BC Law Society President and Ethics Committee member, Gavin Hume, Q.C., is the current Chair of the Standing Committee.

As part of our ongoing liaison with the Standing Committee we advised the Committee of the implementation of rule 3.4-26.1 and its rationale. The Standing Committee replied to us as follows:

> LSBC added this standard to the BC Code in order to determine when a conflict exists and in order to provide additional guidance for lawyers using the Code. The Committee was concerned that this standard sets a different standard for determining when a conflict exists from the standard set in rule 3.4. A conflict of interest is now defined in the model code but was undefined before, so the Committee did not think this additional guidance was necessary.....The Committee thought this standard was inconsistent with the conflicts rules and related definition of conflict of interest.

As you know, the definition of "conflict of interest" in the BC Code (taken from the Model Code) is

> "**conflict of interest"** means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person.

III. Proposed Redraft of Rule 26.1

The Standing Committee's argument is that the LSBC has created another standard for lawyers' own conflicts that differs from the standard set out for all other conflicts and embodied in the definition of "conflict of interest." Although we accept that argument, we have concluded that there is still a need for an express rule to deal with lawyers' own conflicts. Accordingly, we have redrafted rule 3.4-26.1 to use the same standard as in the definition and the proposed new rule is attached for your consideration. The commentary to the new rule preserves the reference to the lawyer's professional judgment as a way of interpreting what may be regarded as "material" from the definition of "conflict of interest."

We will be advising the Standing Committee of any changes you decide to make to rule 3.4-26.1.

IV. Recommendation

We recommend you adopt the changes to rule 3.4-26.1 set out in the attached draft.

Attachment:

- Draft changes to rule 3.4-26.1.

[182170/2013]

CODE OF PROFESSIONAL CONDUCT

Chapter 3 – Relationship to Clients

3.4 Conflicts

Conflicts with clients

3.4-26.1 A lawyer must not perform any legal services if there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's:

(a) relationship with the client, or

(b) interest in the client or the subject matter of the legal services.

Commentary

[1] Any relationship or interest that affects a lawyer's professional judgment is to be avoided under this rule, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer.

CODE OF PROFESSIONAL CONDUCT

Chapter 3 – Relationship to Clients

3.4 Conflicts

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3.4-26.1 A lawyer must not perform any legal services if ~~it would reasonably be expected that the lawyer's professional judgment would be affected~~ there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's ~~or anyone else's~~:

(a) relationship with the client, or

(b) interest in the client or the subject matter of the legal services.

Commentary

[1] Any relationship or interest that affects a lawyer's professional judgment is to be avoided under this rule, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer.

reaching equal justice:
an invitation to envision and act

equaljustice

balancing the scales

THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN
INFLUENCE. LEADERSHIP. PROTECTION.

reaching equal justice:
an invitation to envision and act

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reaching equal justice:
an invitation to envision and act

A summary report by the CBA Access to Justice Committee

THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN
INFLUENCE. LEADERSHIP. PROTECTION.

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Dear Colleagues,

A moment of opportunity is at hand: a moment created by a broad consensus on the need for significant change to improve access to justice, and an evolving consensus on the central directions for reform. This report is an invitation to act, to seize that opportunity. Each of us has a responsibility to contribute to our shared vision of equal access to justice across Canada, from sea to sea to sea.

Our understanding of the prevalence of legal problems and the severe and disruptive impact of unresolved legal problems has grown exponentially over the past two decades. But we have yet to fully translate that knowledge into action. Many organizations are dedicating a tremendous amount of energy and limited resources to new approaches to improve access to justice. Still, we have been unable to knit this work together to make substantial gains.

To mobilize and take advantage of this moment, we first need to convey the abysmal state of access to justice in Canada today. We need to make visible the pain caused by inadequate access and the huge discrepancies between the promise of justice and the lived reality of barriers and impediments. Inaccessible justice costs us all, but visits its harshest consequences on the poorest people in our communities. We need to illuminate how profoundly unequal access to justice is in Canada. We cannot shy away from the dramatic level of change required: in a very fundamental sense we live in "a world thick in law but thin in legal resources".[1] We need to radically redress this imbalance.

The term ***we*** refers to all of us, to affirm the important role and obligation of all justice system stakeholders, including the public, to contribute to equal justice. To refer to the authors, members of the CBA Access to Justice Committee, ***the Committee*** is employed.

This summary report and the full report that will follow this fall provide a strategic framework for action, to set a new direction for the national conversation on access to justice. They are meant to present our current state of knowledge about what is wrong, what types of changes are essential, and the steps and approaches we might take to overcome barriers to equal justice. The objective is to bring together and render the key ideas concrete, to enable and encourage action.

Both reports are designed to engage, rather than dictate or provide 'the answer'. The goal is to enlarge and change the conversation about access to justice to invite and inspire action.

Our greatest challenge is to simultaneously focus on individual innovations and the broader context of the interdependence of all aspects of access to justice. Collaboration works best when based on a shared understanding of the problem and a shared vision of the end goals. Our central animating principle must be envisioning a truly equal justice system, one that provides meaningful and effective access to all, taking into account the diverse lives that people live.

> In a riff on the idea of thinking globally, acting locally, the Committee asks you to think systemically, act locally.

We have a lot of work to do and that work needs to be shared over a broader segment of the legal profession and other justice system personnel than are currently engaged in the access project. While there are some signs of exhaustion, regeneration is in the air. At the CBA Envisioning Equal Justice Summit in April 2013,[2] we witnessed and participated in a radically different conversation, an energized and optimistic conversation about equal access to justice. The reports build on this important breakthrough.

We are poised to make gains at this juncture, but need to travel a little farther for the momentum already achieved to become an irresistible force and take over. As Justice Cromwell of the Supreme Court of Canada said in his Keynote Address at the Summit, this is a critical moment.

The CBA has already pledged to take action and continue to play its role in contributing to equal access to justice. Members of the Committee have taken this on as a personal challenge and we urge you to join us. The challenge is to each think of our roles in the justice system more expansively, each working to produce the best possible results for our individual clients, the individual case, in our association or institution, and simultaneously working to produce the best possible justice system. In a riff on the idea of thinking globally, acting locally, the Committee asks you to think systemically, act locally.

What can I do, either myself or working with others, to contribute to equal access to justice?

Though we are all busy, we can integrate this change in perspective, to work simultaneously on the matter at hand while contributing to broader systemic goals. At first this may appear to conflict with our professional duties to give one hundred percent to the individual client or matter. Yet we know that zero-sum thinking is almost always false: few situations are truly either/or. For lawyers, this challenge can be seen as an extension of our professional duty as officers of the court. By thinking systemically and acting locally, we can create real space for justice innovation.

Rather than simply reading this report, the Committee asks you to engage with it. Consider the targets proposed and the change-oriented ideas and ask yourself: what can I do, either myself or working with others, to contribute to equal access to justice? Every contact between an individual and the civil justice system is an opportunity for either disempowerment or empowerment, a moment to reinforce inequality and social exclusion or to create equality and inclusion.

As craftily stated in a slogan brainstormed during the Summit's closing plenary, we need to just(ice) do it!

Thank you,
CBA Access to Justice Committee

I sense here a tremendous level of commitment to making meaningful change in access to justice. That deep commitment is necessary because this will take long term sustained effort. I was reminded recently that Martin Luther King's famous speech did not start with "I have a plan". Of course he had a plan but he first needed to persuade people that change was needed and that things could get better. I hope we leave here with a shared sense of the dream and a commitment to do what we can to make it come true… we need a shared understanding of what success would look like.

So I ask: Is there a widespread firm belief that there is an urgent need for significant change? Do we have the dream and is it widely shared? If not, I doubt we will accomplish very much.

Justice Thomas Cromwell, Keynote Speech at CBA Envisioning Equal Justice Summit, April 2013

Introduction

The CBA Envisioning Equal Justice Initiative considers four systemic barriers that are blocking efforts to reach equal justice and proposes means to overcome them. The barriers are:

» *Lack of public profile*

» *Inadequate strategy and coordination*

» *No effective mechanisms for measuring change*

» *Gaps in our knowledge about what works and how to achieve substantive change*

The initiative focuses on human justice, on 'people law' – legal issues, problems and disputes experienced by people (including small businesses). Of course, the justice system has an impact on corporations, organizations and institutions, and access issues can arise for these bodies as well, but they are outside of the scope of this report. This summary report sets out the Committee's proposed strategic framework for reaching equal justice.

Based on research and consultations, the framework contains a series of 'targets' reflecting an emerging consensus on what must be done, in 31 key areas. The targets are framed as measurable, concrete goals to be achieved at the latest by 2030.[3] Inspired by other multi-sectoral change movements, including the United Nations Millennium Development Goals and approaches used by the environmental movement, the Committee decided to set long range targets for achieving equal justice across Canada. 2030 seems a reasonable time frame given the dimensions of the problem, the interconnected nature of the solutions, the resources and time required and recognizing that change will take longer in some jurisdictions than in others. One strong factor influencing this decision is that time will be required to build capacity to evaluate whether reforms work. Part of the change process is increasing our shared capacity for learning and adaptation.

Each target includes milestones (interim goals), as well as actions that can begin right now. The milestones and actions are indicative rather than comprehensive, a starting point rather than a detailed guide. They propose a way forward, recognizing that more detail is required and should be developed over time, by those working most closely on the particular target.

> We have a window of opportunity that only comes along rarely – to put it simply, let's not blow it.
>
> ***Justice Thomas Cromwell, Keynote Speech at CBA Envisioning Equal Justice Summit, April 2013***

While different organizations and individuals may debate the specifics, the targets reflect what the Committee understands to be a general consensus among those working for equal justice as to the type of action required. Achieving these targets will require individual, coordinated and collaborative efforts – no target falls to a sole justice system player.

The Committee's full report will be released in fall 2013. Its objective is to gather together what the Committee has learned over the course of its initiative and share it with all individuals and organizations engaged in justice innovation. It is a resource for the implementation process, with more detailed discussion on each issue touched on in this summary report. Wherever practicable, it includes examples of emerging good practices and insights from research and evaluations, as well as links to further information.

The Committee solicits feedback to these proposals and looks forward to an active and engaged dialogue. We welcome your feedback on the targets, milestones and actions, your suggestions on specific innovations and ideas, and your commitment to become involved on the issues on which you are especially passionate.

The Committee's work complements the work of the National Action Committee on Access to Justice in Civil and Family Matters (National Action Committee). Under the stewardship of Justice Thomas Cromwell, the National Action Committee has created a strong awareness of the need for change. Its working group reports have identified a large range of initiatives that have the potential for increasing access to justice. The National Action Committee final report is expected to provide additional overall guidance, especially on implementing these suggested reforms. The CBA is a member and supporter of the National Action Committee process. Like all members, the CBA has an obligation to contribute what it can. It is anticipated that both the National Action Committee and CBA reports will assist in making the most of this critical opportunity to achieve the substantive change needed to reach equal justice across Canada.

Contemporaneous to the CBA Envisioning Equal Justice Initiative is the CBA Legal Futures Initiative, a comprehensive examination of the future of the legal profession in Canada. It examines business structures and innovations, legal education and training and ethics and regulation of the profession. Its mandate is to develop original research, consult widely with the profession and other stakeholders, and ultimately create a framework for ideas, approaches and tools to assist the legal profession in adapting to future changes. The Legal Futures Initiative identifies access to justice as a foundational value underlying its work.

Why change is necessary

Public confidence in the justice system is declining.[4] This was apparent during the consultation phase of the CBA Envisioning Equal Justice Initiative.[5] People interviewed randomly 'on the street', and in meetings with marginalized communities consistently described the justice system as not to be trusted, only for people with money, arbitrary, difficult to navigate and inaccessible to ordinary people. The Committee's findings are not unique. Two recent surveys of people who represented themselves in civil courts concluded that the experience usually led to reduced confidence in the justice system.[6]

While there is generally low public awareness about legal aid, opinion polls have shown that when asked more detailed questions, people express strong and consistent support for providing adequate publicly funded legal aid. Polls have shown overwhelming support for legal aid (91-96%), with 65-74% expressing the view that it should receive the same funding priority as other important social services.[7]

Canadians believe justice systems must be accessible to all to be, in fact, just – and publicly funded services are required to get to equal justice. The current lack of confidence in our justice system suggests instead a perception that justice is inaccessible and even unfair.

What we know and don't know about access to justice

We have little hard data about Canada's justice system – especially relative to what we know about our healthcare and education systems. We also know too little about what works to increase access to justice, and how and why it does so. Much of what we do know about the system is anecdotal – descriptions rather than measurements. The justice system is not proficient at directly surveying users about satisfaction with their experiences, and then using the information obtained to make improvements, though some progress is being made on that front.

PART I
why change is necessary

The biggest evolution in our knowledge base comes from civil legal problem surveys by Canada's Dr. Ab Currie and his international colleagues. We've learned that civil legal problems, over time and across countries, have a "pervasive and invasive presence"[8] in the lives of many people. **Over three years, about 45% of Canadians will experience a problem implicating a legal solution (a "justiciable problem"[9]), suggesting that over the course of a lifetime almost everyone will confront a justiciable problem.**[10] Civil legal needs arise frequently, touch on fundamental issues and can vary in impact from minor inconvenience to great personal hardship.

Further, unresolved problems can escalate, and are linked to problems in other areas – health, social welfare and economic well-being, social exclusion and poverty. People with one justiciable problem are likely to experience more, especially if they live in poverty or are members of disadvantaged groups. One study found that 22% of people have 85% of legal problems.[11] Canadian studies have also found that legal problems tend to 'cluster' and multiply.[12]

Most justiciable problems are resolved outside the formal justice system. Vulnerable groups are more likely not to respond because of perceived or actual barriers to getting help. Other barriers include the complexities of the legal system, qualification processes for legal aid, limited coverage for civil legal problems and lack of knowledge about the legal system and resources available to support individuals.

Dr. Patricia Hughes notes that disadvantaged or socially excluded groups fare the worst. Not only are they more vulnerable to experiencing multiple legal problems, they are less likely to take action to resolve the problems, less capable of handling problems alone and more likely to suffer a variety of adverse consequences that end up further entrenching their social exclusion.[13]

PRIVATE MARKET LEGAL SERVICES

Surveys on private market legal services conducted by several Canadian law societies have come to consistent results. The main problem people identify in accessing legal assistance is perceived or actual cost. At the same time, we know that having legal assistance generally results in better outcomes for the people involved.[14] While complaints about lawyers' fees are often heard, the studies show that clients who have actually retained counsel are generally satisfied, both with the service received and the amount they paid.[15]

Concerns about private market legal services also relate to a worsening shortage of lawyers in smaller, rural and remote communities, or of lawyers working for people on personal or small business matters.[16]

Another important trend is that people want more active involvement in the management, strategy and decision-making about their legal matters, and more certainty in terms of cost. People seek legal information to enable them to make more informed choices, but they often get advice from friends and family, rather than legal professionals.

There is also a movement away from 'all or nothing' lawyering. Lawyers are responding through unbundled legal services, alternative billing arrangements, specialized law firms, and in other ways. The two CBA initiatives (Envisioning Equal Justice and Legal Futures) are considering these means of providing legal services, along with related concepts like preventative lawyering, use of technology in dispute resolution and non-lawyer providers of legal services, as potential innovations for increasing access to justice.

PUBLIC LEGAL SERVICES

Publicly funded legal services are provided by legal aid plans in each province and territory, but plans cannot meet current demands for legal help. There are huge regional disparities in who can access legal aid based on financial eligibility and the types of legal matters covered. In many jurisdictions, there is no legal aid (beyond information) for many legal problems that affect areas of vital interest, such as housing.

Although there has been some increased funding for legal aid in the past five years, a longer range perspective shows a 20% overall decrease from the pre-1994 spending on civil legal aid.[17] One major change is that the federal government has gradually reduced its proportionate contributions to both criminal and civil legal aid, from a high of 50-50 sharing until 1995, to contributing about 20-30% of the cost currently.[18]

The reduction in federal spending overall, increased complexity in the substantive law and growing demands for criminal legal aid have placed pressure on legal aid providers to ration services – in a way often inconsistent with the general purpose and public policy values underlying the program. In some places, people qualify only if they are living at subsistence levels (social assistance), leaving out the working poor. Eligibility rates do not keep pace with inflation and budgetary targets are often met by offering legal aid for fewer matters, to fewer people, or through only partial assistance or repayment requirements.

GROWTH OF PRO BONO

The Committee defines pro bono work as free legal services to people or organizations who cannot otherwise afford them and which have a direct connection to filling unmet legal needs. In the past decade, pro bono has increasingly become institutionalized through the development of pro bono organizations that act as a broker and facilitate the delivery of services from lawyers willing to volunteer time to individuals and small organizations. Formal pro bono organizations now exist in several provinces, providing an infrastructure and paid staff. Pro Bono Students Canada operates out of 21 law schools across the country.

As with so many aspects of the access to justice landscape in Canada, there are few firm statistics on the number of lawyers who provide services on a pro bono basis, the number of people helped or the value of this contribution. Unmet legal needs and the endless demand for legal services raise questions as to what can reasonably be provided on a charitable basis. The growing emphasis on pro bono services as a (or the) solution to the access to justice crisis can be problematic if it shifts focus away from inadequacies of our justice system.

UNREPRESENTED LITIGANTS

Perhaps the most obvious consequence of the gap between the prevalence of legal problems and inadequacies in public and private legal services is the exponential growth of unrepresented litigants in Canada's courts. We tend to refer to these litigants as 'SRLs' (self-represented litigants), although when asked, most would prefer to have counsel. While there is no comprehensive Canadian data on the number of unrepresented litigants,[19] estimates range from 10-80%, depending on the court and the subject matter. The problem is particularly pronounced in family law matters.

An in-depth evaluation of the experience of self-represented litigants in courts in Alberta, British Columbia and Ontario[21] refers to the 'arc' of the experience: from optimism to disillusionment, and from bad to worse. While online materials offer the prospect of enhanced access to justice, many are too complex and difficult to understand. Available resources are often insufficient to meet the need for face-to-face orientation, education and other support. Respondents to the study describe the justice system as 'broken'.

Another important finding is that court staff must constantly walk a fine line, distinguishing between legal information, which they are authorized to offer, and legal advice, which they must not provide.

There can be serious implications of the experience, including health issues, financial consequences, social isolation and declining faith in the justice system generally.[22] More than 200 US studies have demonstrated that unrepresented parties lose significantly more often – and in a bigger way – than represented ones.[23] Other recent US work is showing that unbundled legal services make little difference to outcome, although these limited services enhance procedural fairness.[24]

> Either lawyers should charge less, or there should be more legal aid. Something's gotta give or they can't say it's really justice, right? (an unrepresented litigant) [20]

Studies also show the increasingly prevalent self-help services are most effective for people with higher levels of literacy and comprehension, while people who face other barriers are less likely to be able to use those tools to effectively navigate the legal system.[25]

COURTS AND TECHNOLOGY

We know that quite few justiciable problems are actually resolved through the formal justice system. Recent studies emphasize the importance of timely intervention and assistance as key to enhancing access, avoiding problems, achieving positive outcomes and saving money. Public legal education and information providers are leading the way, often relying on online resources as a gateway. This significant trend to provide more online information and tools is important and welcome, as it can reach many people regardless of income. However, it is less helpful to the almost 48% of Canadians[26] who lack the literacy skills to make effective use of this type of information. As well, many people, especially already vulnerable and disadvantaged people, need 'human help' in tailoring information and tools to their own problems and answering their questions.

Overall, the justice system has not been subject to the same technological transformation as other institutions. Also, the civil justice system is incoherent and has been likened to a "body without a brain",[27] a system of systems, each with its own diffuse leadership and underdeveloped mechanisms for communication, cooperation and collaboration. This lack of coherence may also explain the justice system's failure to embrace innovation.

INTERNATIONALLY – HOW ARE WE DOING?

The Chief Justice of Canada has galvanized the national agenda for access to justice, in part by highlighting Canada's poor rating on international access to justice indicators. She has noted with dismay that the World Justice Project found that on civil justice, Canada ranked ninth out of 16 North American and Western European nations and 13th among the world's high-income countries, just ahead of Estonia.[28]

For civil legal aid, Canada ranks a shocking 54th in the world, well behind many countries with lower gross domestic products.[29] While Canada is known for its public commitment to a social safety net, we fall behind the US, ranked at 50th in the world on this indicator.

LOW RELATIVE SPENDING ON THE JUSTICE SYSTEM: ONLY 1%

Spending on the justice system (excluding policing and corrections but including prosecutions, courts, victim and other justice services, and legal aid) is roughly 1% of government budgets. In his 2008 Legal Aid Review in Ontario, Professor Michael Trebilcock calculated that while per capita health and education spending had risen 33% and 20% respectively from 1996 to 2006, legal aid spending over the same period had decreased by 9.7%.[30] Other government spending on justice compared to overall public spending shows a similar trend: health and education funding is generally stable or increases, while spending on justice is flat or declines from year to year.[31] At the same time federal government spending on prisons and policing has increased significantly while Canada's crime rate is falling. At the federal level, policing services use more than half the justice budget (57.2%), followed by corrections (32.2%), courts (4.5%), prosecutions (3.5%) and legal aid (2.5%).[32]

SO MUCH TO LEARN

Over the past two decades the justice system has become more adept at collecting baseline data, but the empirical basis for decision-making is still extremely limited compared to what is known about health and education. The justice system has a long way to go in terms of what information is collected, how it is collected and how available it is. Overall we have become better at counting inputs and outputs, although not all of this data is open or transparent and there is no coordination across agencies to collect information in a manner that permits comparison.

In 1996, the CBA identified this as an obstacle. This information is essential for planning and evaluating access to justice initiatives and understanding the role of legal and justice services vis-à-vis other support services.[33] But, that is just the tip of the iceberg. We also know little about the relative effectiveness and efficiency of different service delivery models, legal information, assistance and representation, or different dispute resolution mechanisms across different types of legal matters, and how to match processes and legal services to the nature and intensity of the legal dispute.[34] At this time we know that we fall far behind the health and education systems in our commitment to and capacity for evidence-based decision-making.

The case for fundamental change

Lack of knowledge must not be used as an excuse for inaction. Nor can we only focus on what is currently measured or easy to measure and ignore what cannot be measured or what we have chosen not to measure. Action is needed to develop and maintain a stronger knowledge base.

What has gone wrong? The simple answer is that justice has been devalued. We see justice as a luxury that we can no longer afford, not an integral part of our democracy charged with realizing opportunity and ensuring rights. The justice system has been starved of resources and all but paralyzed by lack of coordinated leadership and competitive blaming between the major justice institutions. Meaningful access to justice is a scarce resource and the mechanisms used to ration this scarce resource are largely hidden. The implications of this rationing are often also invisible.

We live in a society regulated by law. Everyone's lives are shaped by the law and everyone is likely to experience a justiciable problem at some point. This is not to say that everyone will engage with the formal justice system: many problems can and should be resolved in more informal ways. Still, we should all be confident that we will have meaningful access to justice if and when we need it. **Everyone is entitled to justice. This point needs to be a common thread of public discourse and individual understanding.**

DIRECT RELATIONSHIP BETWEEN THE COURTS AND DEMOCRACY

The courts are one branch of government (in addition to the executive and the legislature) and essential to Canadian democracy. There is a direct line between Canada's democratic principles and belief in the rule of law, and the need for services that may help an individual to resolve a legal problem. While the criminal courts ensure a fair trial and protect public safety, the civil courts contribute quietly and significantly to social and economic well-being. According to Dame Hazel Genn, "the civil justice system is a public good that serves more than private interests."[35]

GROWTH IN POVERTY AND SOCIAL EXCLUSION

The reality today is that not everyone has meaningful access to justice regardless of income. The justice system is aggregating, rather than mitigating inequality. The growth in income disparity and social exclusion is a leading public policy concern and has specific ramifications for justice policy.

Providing suitable legal advice and assistance can play a crucial role in helping people move out of some of the worst experiences of social exclusion. Timely intervention in a life crisis can make all the difference.[36]

> What has gone wrong? The simple answer is that justice has been devalued.

COSTS OF INACCESSIBLE JUSTICE

There are strong practical reasons for ensuring meaningful access to justice. When people receive appropriate assistance in reading and preparing documents and making arguments, or get timely legal advice and representation, it saves public money in the long run and results in better outcomes. Plus, the overall justice system functions more smoothly and effectively, to everyone's benefit.

Justice degrades with delay. The parties' position or personal safety may be compromised and the damage may be irreparable. People whose legal issues are not resolved face ongoing difficulties. Problems spread to other areas of their lives, at significant individual and social cost.

Studies are demonstrating how unresolved legal problems and inadequate access to justice can be costly to both the individual and to society.[37] More empirical data is needed to make the case and several initiatives are working toward this goal.[38] The Canadian Forum on Civil Justice is leading a five-year study to define the economic and social costs of justice. The study will develop methods to measure what our civil justice system costs, who it serves, whether it is meeting the needs of its users and the price of failing to do so. The project has two prongs: the costs of providing an accessible system; and the costs of not providing an accessible system.[39]

RETURN ON INVESTMENT FOR LEGAL AID SPENDING

In recent years, we have repeatedly heard that legal aid is not sustainable. But legal aid is our most important access to justice program. In addition to being a significant down payment on the promise of equal justice, funding for civil legal aid represents a good economic investment.

Synthesizing several studies on the economic benefits of civil legal aid, Dr. Laura Abel notes that it can actually save public money by reducing domestic violence, helping children leave foster care more quickly, reducing evictions and alleviating homelessness, protecting patients health and helping low-income people participate in federal safety-net programs.[40]

Other studies are building a business case by quantifying the return on investment for legal aid dollars. Studies in Australia, the UK and the US show cost-benefit ratios ranging from 1:2 to 1:18. The average demonstrated social return on investment is that every $1 of legal aid spending results in $6 in benefit to the public.[41]

WHY TINKERING IS INSUFFICIENT

The civil justice system is too badly broken for a quick fix. People fall between the cracks at an unacceptable cost. Injustice is too deeply woven into the system's very structure for piecemeal reforms to make much of a dent. We cannot say if the myriad of ad hoc access to justice interventions are helping without an overarching strategic framework. Individual initiatives may operate at cross-purposes, and risk hindering the cause by fostering complacency and diminishing support.

We need to go beyond trying to make do. Access to justice problems are not intractable. Change will not happen quickly, but every step along the right path – with a common vision and commitment to measure how effective each innovation is in achieving that vision – will help. Missteps can be corrected when evidence shows a better way, but we should not waiver about the need to start moving, or the ultimate destination.

Equal justice strategies

Envisioning equal justice

The first step in reaching equal, inclusive justice is to delineate the goal: a vision that is ambitious but possible. This entails rejecting the current rationing of access on an unprincipled basis, rationing that aggregates rather than mitigates inequality.

The Committee proposes a tangible vision of equal justice to guide reform:

> *An inclusive justice system requires that it be equally accessible to all, regardless of means, capacity or social situation. It requires six concrete commitments:*

1. ***People*** *– The system focuses on people's needs, not those of justice system professionals and institutions.*
2. ***Participation*** *– The system empowers people. It builds people's capacity to participate, by managing their own matters and having a voice in the system as a whole.*
3. ***Prevention*** *– The system focuses attention and resources on preventing legal problems, not just on resolving them after they arise.*
4. ***Paths to justice*** *– A coherent system involves several options and a continuum of services to arrive at a just result. People get the help they need at the earliest opportunity, and find the most direct route to justice.*
5. ***Personalized*** *– Access to justice is tailored to the individual and the situation, responding holistically to both legal and related non-legal dimensions, so that access is meaningful and effective.*
6. ***Practices are evidence-based*** *– The system encourages equal justice by ensuring justice institutions are 'learning organizations', committed to evidence-based best practices and ongoing innovation.*

PART II
equal justice strategies

We need to continually ask: who needs what kind of help in accessing justice?

The Committee employs broad categories to distinguish between the legal needs of different segments within Canadian society, people who are vulnerable and living in marginalized conditions, low-income, middle class and affluent. These categories are imperfect and there are no hard and fast rules that separate the legal needs of various groups of people. They do however reflect differing means, capacities and social situations in a general way, and assist us to keep in mind important differences in legal needs, the impact of unresolved legal problems, and problem-solving and dispute resolution behavior, so we can assess who is most likely to benefit from proposed innovations.

While "100% access is the only defensible ultimate goal",[42] the Committee recognizes that this will be challenging. To the extent that rationing justice must be done, and undoubtedly is done on a daily basis, how can it be done to mitigate rather than reinforce patterns of inequality? Getting to equal justice demands that we first focus on the people who are most disadvantaged by their social and economic situation.

We need to continually ask: who needs what kind of help in accessing justice?

A STANDARD FOR MEANINGFUL ACCESS TO JUSTICE

The system must deliver just outcomes secured by meaningful access to justice. Assessing whether the system, process, service or resource provides meaningful access to justice depends on the nature of the right, interest, legal problem at issue, the capacity of the individual, the complexity of the legal process or proceeding and the seriousness and impact of potential outcomes.

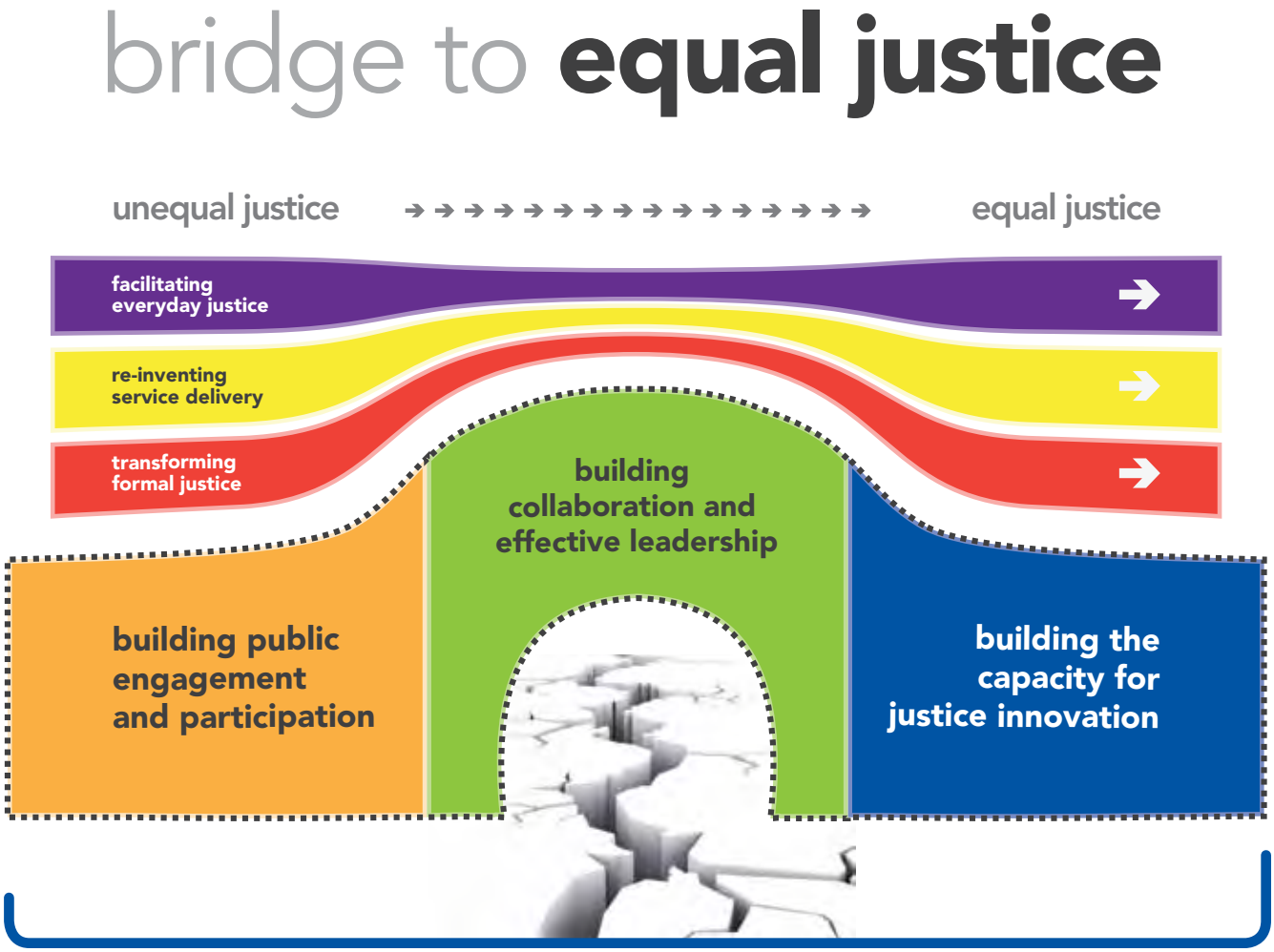
Full legal representation is not required in every case: meaningful access can be assured through a range of legal services and forms of assistance, depending on the circumstances. A growing body of research can assist in translating this general standard into best practices to guide the delivery of legal services and decision-making processes (both court and non-court-based). The key is to provide a seamless continuum of legal and non-legal services, and ensure that representation is available when needed to have meaningful access to justice.

Building a bridge to equal justice

Reaching equal justice requires us to bridge the distance from the current state of inequality to the vision articulated above. The Committee imagines this 'bridge' as having three lanes, each representing different strategies for moving to equal justice. One lane is facilitating everyday justice, the second is transforming formal justice and the third is reinventing the delivery of legal services. Those three lanes are the topic of this part of the report.

The conceptual bridge rests on three structural supports: increased public participation and engagement; improved collaboration and effective leadership; and enhanced capacity for justice innovation. Those structural supports will be discussed in part III.

The Committee has proposed targets, milestones and actions for each lane and structural support.



Facilitating everyday justice

The idea of everyday justice is that few problems, in reality, are dealt with in the formal justice system. Knowing this, we need to take a much broader view of access to justice. Facilitating everyday justice requires three main changes. We need to:

» *Recognize that there are many paths to justice.*

» *Find ways to deal with more legal problems through a larger range of mechanisms.*

» *Shift our attention 'far upstream from the courts' by investing in timely intervention and preventative services.*

Facilitating everyday justice means improving legal capability, taking legal health seriously, enhancing triage and referral systems to navigate paths to justice and taking active steps to ensure that technology is well used to enhance equal, inclusive justice.

LAW AS A LIFE SKILL

Law should be seen as a life skill, with opportunities for all to develop and improve legal capabilities at various stages in their lives, ideally well before a legal problem arises. Law is a fact of life in the 21st century. Almost everyone will experience a legal problem at some point in their lives, but until that happens, most people don't know what to expect from the justice system, the benefits of different paths and legal services and so on. Those involved in the justice system and in legal service delivery have a shared responsibility to increase the legal capabilities of everyone in Canada.

Building legal capability involves knowledge, skills and attitudes. Teaching law as a life skill also helps to cultivate trust and confidence in the justice system. All justice system participants can find ways to help build capability in their daily contact with members of the public.

TARGET:

■ **By 2030, 5 million Canadians have received legal capability training.**

Milestones:

» *Law as a life skill courses are integrated into public education curricula*

» *Legal capabilities training modules are available to specific groups during life transitions (e.g. newcomers to Canada, older adults at retirement, young adults entering the workforce)*

» *Legal capabilities training is embedded into workplaces and other environments where training can be sustained*

» *Lawyers integrate legal capabilities approaches and work with public legal education and information providers (PLEI) in their delivery of legal services*

Actions:

» *The CBA and PLEI organizations work with the Council of Ministers of Education, departments of education, school boards and other interested organizations to advocate for the integration of law as a life skill courses into schools across Canada*

» *The CBA encourages lawyers to integrate PLEI materials and a legal capabilities approach in the delivery of legal services (where appropriate) and to assist PLEI organizations to develop and update materials*

» *PLEI organizations develop stronger partnerships with public and private sector organizations to integrate legal capabilities training into their existing programs, including those organizations serving members of the public experiencing life transitions (e.g. newcomers and seniors organizations)*

» *PLEI organizations develop, pilot and test national model legal capabilities training modules and protocols*

» *Justice system stakeholders work with PLEI organizations to develop and train rosters of law students, and current and retired lawyers and judges to deliver legal capabilities training in a variety of settings*

LEGAL HEALTH CHECKS

Initiatives that focus on legal health advance our capability to prevent legal problems and build resilience to future or recurring legal problems. Just as the health system aims to both prevent and treat disease, so too the justice system should aim to prevent legal problems in addition to providing assistance when they arise.

The legal health checklist model ties together ideas of prevention, resilience and increased legal capability. A number of legal practice websites encourage people to have an 'annual legal health checkup' or offer checklists of situations in which legal needs or issues often arise. Legal health checklists create awareness of common legal problems and suggest how to address them. They can be self-administered or used by service providers to ascertain whether an individual seeking one form of assistance, say in a homeless shelter, has other types of problems that could be addressed through an appropriate referral. These checklists can also provide general advice on 'how to stay legally healthy'.

Legal service providers, including legal aid plans and community-based clinics, have a particularly important role in contributing to legal health, both at the individual and systemic levels. In addition to administering or making available individual legal health checklists, with appropriate resources, these organizations could also carry out systemic health checks – providing important feedback about the incidence of legal problems in a community and potential systemic solutions.

TARGET:

■ **By 2020, individual and systemic legal health checks are a routine feature of the justice system.**

Milestones:

» *Legal aid/assistance providers have a strong capacity to undertake follow up with clients on a routine basis, including, for example, through post-resolution follow up*

» *Legal aid/assistance providers have a strong capacity to carry out systemic health checks and routinely provide input to law and justice reform processes to enhance capability to prevent/minimize frequent legal problems*

Actions:

» *The CBA partners with PLEI organizations to establish a universal Canadian legal health checklist and make it broadly available to individuals, to students as part of high school and other training curriculum, or by service providers to review with people using their services*

» *The CBA promotes the use of legal health checklists at Law Day and other forums and encourages other justice stakeholders to do the same*

» *Legal aid/assistance providers collaborate with each other and community groups to adapt the legal health checklist to their communities/specific contexts. The adapted checklist includes a tool kit with information on where to go for help and best practices guide for integrating checklists into service delivery*

» *The CBA collaborates with interested organizations to prepare an options paper on the broader concept of legal health and the prevention of legal disputes, including the use of legal health system checklists*

EFFECTIVE TRIAGE AND REFERRAL

There are many paths to justice and more are required to ensure that people are quickly and properly directed to services and assistance, so they can effectively address legal problems. Research shows that people currently find it difficult to navigate the system.

The way people enter the system and the way they are treated on day one is the essence of a people-designed justice system. Perhaps the most pressing access innovation is to develop effective triage and referral systems in each jurisdiction. Some important steps have been made in some locations, including Family Law Information Centres in Alberta and Ontario, Justice Access Centres in British Columbia, and Centres de justice de proximité in Québec. Nevertheless, we remain far from the goal of "integrated well-designed, transparent and intellectually defensible" triage and referral systems.[43]

TARGET:

■ **By 2020, each provincial and territorial government has established effective triage systems guiding people along the appropriate paths to justice.**

Milestones:

» *Triage and referral demonstration projects, including an evaluation component, are in place in each province and territory, building on existing initiatives and experience*

» *A national mechanism is in place to integrate evolving knowledge on the effectiveness of triage and referral services, policies and protocols, including the evaluation of demonstration projects*

» *A best practices guide is available presenting Canadian research and knowledge*

Actions:

» *Provincial and territorial governments work with PLEI organizations, legal aid providers and other service providers to prepare and maintain a comprehensive list of early resolution, legal and related services in each jurisdiction or region*

» *Provincial and territorial governments work with PLEI organizations, legal aid providers and other service providers to develop an agreed upon set of core principles to guide the design of triage and referral processes, including a common intake form. Some of this work takes place on a national basis or through the development and testing of prototypes in one jurisdiction to avoid duplication of effort*

» *Provincial and territorial governments work with PLEI organizations, legal aid providers and other service providers, to develop and implement training in support of triage and referral policies and protocols*

INCLUSIVE TECHNOLOGY SOLUTIONS

The Canadian justice system has lagged behind other sectors in integrating technology. Technology (including information technology) can be harnessed to improve access to justice and is an integral part of all three major changes discussed in this report: facilitating everyday justice; transforming formal justice; and reinventing the delivery of legal services. Technology can:

» *automate current processes and make them more efficient and accessible to individuals*

» *create new pathways to justice*

» *provide direct access to justice services (e.g. online dispute resolution)*

Careful planning is needed to prevent technological innovations from creating or reinforcing barriers to equal justice.

TARGET:

■ **By 2020, all justice sector organizations have plans to harness technology to increase access to justice, ensuring inclusivity by eliminating barriers to underserved populations and avoiding the creation of new barriers.**

Milestones:

» *Evaluation and feedback mechanisms for internet-based and other technology-assisted solutions assess user experience, as well as the reasons people do not use the technology, or try to use it and give up*

» *Grants and other incentives foster the development of inclusive access to justice technologies*

Actions:

- *Technological innovations preserve traditional access for people challenged by technology, including access to a service provider, and the use of technological solutions is not mandatory*
- *Justice system stakeholders survey legal service and community service providers, court staff and others to identify potential benefits and barriers posed by increased use of technology for low-income persons*
- *Justice system service providers offer ongoing education and support to people using technology to access their services*
- *Justice system service providers provide active warnings to people about the need to secure private information and protect confidentiality. Users receive messages about the limitations of the technology-based service and value of review by a legal service provider*
- *The National Action Committee, its successor, or another national organization:*
  - *develops guiding principles for justice system stakeholders on how to avoid barriers to access to justice when using technology*
  - *provides centralized support for making good technology decisions, including by developing an evaluation tool for investments in new technology, and*
  - *offers knowledge, experience and data about using technology to advance the planning and delivery of justice services for the most disadvantaged and vulnerable populations*
- *The Federation of Law Societies, law societies, or the CBA Ethics Committee, provides guidance on ethical and professional obligations when using technology to deliver legal services*

Transforming formal justice

Court systems are undergoing transformation processes but the purpose and direction of the changes are far from clear. There are three main scenarios on the future role of civil courts: courts as the forum of last resort; courts as the solver of legal issues; and courts as the central service responsible for adjudicating people's problems (recognizing that many disputes may start out before an administrative board or tribunal). The first two scenarios result in a de-centring of courts in a civil justice system, with a corresponding decrease in their accessibility and role in people's lives. The last scenario, favoured by the Committee, involves a re-centring of courts as the main pathway to dispute resolution processes and referral to other services for non-legal aspects of people's problems.

Re-centred courts will provide tailored public dispute resolution services with effective internal and external triage and referral processes and will employ a wide range of quasi-judicial officers to assist litigants to achieve just and timely outcomes. Re-centred courts will be dedicated to innovation, learning and integration of evidence-based best practices. They will be open to feedback from users of court services and to developing transparent performance evaluation measures.

Judges must be ready to integrate new functions and approaches, potentially including active case management, judicial dispute resolution, specialization, court simplification and active adjudication models. Many Canadian courts have already taken steps in these directions and should be supported in these important reform efforts.

TARGET:

■ **By 2025, courts are re-centred within the civil justice system and resourced to provide tailored public dispute resolution services with effective internal and external triage and referral processes.**

Milestones:

» *All courts have effective triage and referral systems*

» *All courts have the capacity to provide a range of dispute resolution processes and tailored, simplified processes*

» *Courts employ a wide range of quasi-judicial officers to assist litigants to achieve just and timely outcomes*

» *Courts have the resources to carry out this range of functions*

Actions:

» *Courts develop and employ a range of mechanisms to solicit feedback from people accessing court services and use these perspectives to inform innovations and reforms*

» *Courts develop and test prototypes of specialized procedures for priority categories of cases. Piloting different prototypes in each jurisdiction within an overarching strategy will maximize use of resources, avoid duplication of effort and enhance evidence-based reform*

» *The National Action Committee, its successor or another national organization develops an evidence-based best practices guide to assist courts in their access to justice innovations*

» *Judicial appointment processes take into consideration candidates' openness to and suitability for broader judicial functions, including active case management and judicial dispute resolution methods*

» *The CBA champions this re-centred role for the courts within a coherent civil justice system: a central role not based on the traditional, status quo role of the courts but on this people-centred vision*

Reinventing the delivery of legal services

To 'facilitate everyday justice' and 'transform formal justice' (two lanes on our conceptual bridge to equal justice) and to most effectively deliver legal services, a spectrum of legal service providers and a broad continuum of legal services is required to meet a range of legal needs. The goal in 'reinventing the delivery of legal services', the third lane, is seamlessness: to eliminate assistance gaps and to ensure meaningful access to justice in every case. A range of new and creative approaches to meet the access to legal services gap is required.

The Committee's diagram below proposes how the spectrum of legal service providers and the continuum of legal services could best be matched with categories of legal needs.

Some legal needs can be fully met by the private market, and the extent to which law firms and practitioners can innovate to better serve those legal needs is an issue for the CBA Legal Futures Initiative. Some legal needs can be adequately met only through publicly funded legal services. The public-private hybrids have developed mainly in response to failures of the private and public providers to meet the most pressing or essential legal needs.

Reinventing legal services for equal justice involves meeting three challenges: ensuring the most effective delivery of both private and public legal services; achieving a consensus on where legal needs fall on this spectrum from private to public; and reaching a better understanding of the structure and role of the service providers in between the public-private ends of the spectrum.

The Committee believes that it is critical to define the concept of essential legal needs and to find ways to meet these needs. Essential legal needs are those that arise from legal problems or situations that put into jeopardy a person or a person's family's security – including liberty, personal safety and security, health, employment, housing or ability to meet the basic necessities of life. A main objective of equal justice efforts must be to provide essential legal services.

Most of the targets in this section are therefore aimed at improving capacity at both ends of the publicly funded/private market spectrum, to provide meaningful access to justice for people experiencing legal problems related to essential legal needs.

LIMITED SCOPE RETAINERS

The greatest potential for achieving meaningful access to justice and fair and lasting outcomes comes from a comprehensive, holistic approach. Yet, one of the current trends to make legal services more affordable to clients or reduce cost to the providing organization is moving away from the holistic approach to limited scope retainers or unbundled legal services. This issue cuts across the service delivery spectrum, affecting lawyers in private practice, legal aid and those working pro bono, as well as those providing other forms of legal assistance, also increasingly in a limited, piecemeal fashion.

From an equal justice perspective, the question is whether limited scope services are consistent with the meaningful access to justice standard. To answer this question we need to carefully consider who may benefit from what types of limited legal services and in which situations. Meaningful access is advanced when these services are provided to capable litigants through an effective relationship between lawyer and client. For example, coaching, particularly during a hearing, can mean the difference between ineffective or effective assistance. However, limited scope services are not the solution for everyone.

This innovation requires a new model of lawyering based on a reciprocal partnership and effective communications between legal service provider and client, where the provider offers the client appropriate information resources and connections to other service providers. This underscores the importance of lawyers and other legal service providers collaborating with PLEI providers.

TARGET:

■ **By 2020, limited scope legal services are only offered in situations where they meet the meaningful access to justice standard.**

Milestone:

» *Best practice guidelines, based on empirical studies of emerging limited scope service models and their impact on meaningful access to justice are in place*

Actions:

» *All law societies provide detailed guidelines to lawyers providing limited scope services, including advice and precedents for limited scope retainers*

» *Bar associations, law societies and legal aid organizations develop resources to assist lawyers to provide limited scope services in an integrated seamless way by equipping lawyers to inform clients about other service providers and sources of information*

» *The CBA provides professional development on coaching and other skills that support the delivery of effective limited scope services*

» *The CBA, law societies, other bar associations and legal aid organizations work with PLEI organizations to inform the public about limited scope services*

» *The CBA and the Federation of Law Societies ensure the integration of existing research and evaluations of limited scope service models to formulate evidence-based best practices and identify further research needs*

SUSTAINABLE PEOPLE-CENTRED LAW PRACTICES

Making the practice of people-centred law practices (personal services law) more attractive to lawyers is a key component of reinventing the delivery of legal services. Bar associations and law societies have an important role in fostering and supporting the development of alternative organizational models for viable and sustainable people-centred law practices.

The legal profession can foster these initiatives through 'incubator programs' helping recent law school graduates transition into sustainable practice situations that serve individuals and small businesses, as well as through virtual practice arrangements.

New initiatives are especially important outside urban centres, where barriers to accessing legal services are even more acute. Various legal organizations have worked collaboratively, particularly in Manitoba, Alberta and BC, to encourage the practice of law outside major centres.

TARGET:

■ **By 2025, a wide range of alternative organizational models for the provision of legal services exists to meet the legal needs of low and moderate income Canadians, including those living outside major urban centres.**

Milestones:

» *An evaluation of the effectiveness of sustainable people-centred law practices at filling legal services gaps and providing meaningful access to justice is carried out, and the results are broadly shared to encourage learning, further innovation and best practices*

» *All jurisdictions have legal practice incubator programs*

Actions:

» *The CBA provides professional development materials, and hosts a PD webinar and online discussion groups to foster conversation and learning about alternative organizational models for providing people-centred law services*

» *The CBA develops a 'start up package' for alternative organizational models for sustainable people-centred law practices comprising, for example, a handbook, contracts, other documents and training materials*

» *A consortium of bar associations, law societies, law schools, law firms and business enterprises support the development of one or more accessible legal practice incubators in at least three jurisdictions*

» *The CBA supports the establishment and maintenance of networking among incubator programs to facilitate information exchange, develop best practices and promote continuous improvement*

» *The CBA and law societies provide ongoing opportunities for mentoring and peer-to-peer sharing of best practices for sustainable people-centred law practices*

» *The CBA coordinates a roster of experienced justice system participants, including law practice management consultants, to carry out awareness campaigns for law students, young lawyers and members of the profession (not just law firms) about alternative organizational models for delivering legal services*

TEAM DELIVERY OF LEGAL SERVICES

Recognizing the value of a continuum of legal services approach means recognizing the importance of increased diversity and specialization among legal service providers and enhanced capacity to provide comprehensive, cost-efficient services through teams of lawyers, other legal service providers (like paralegals) and providers of related services (like social workers). Teams can deliver more comprehensive and holistic services tailored to people's needs. There is a growing consensus that this is a positive way forward, providing more affordable services to clients and adequate income to lawyers.

To smooth the way for team delivery of legal and related non-legal services, licensing, insurance and professional and ethical issues, such as confidentiality and solicitor-client privilege, have to be resolved. Some Canadian law societies have examined alternative delivery of legal services, focusing on paralegals. Other countries recognize a broader range of legal service providers with regulations and protections in place. For example, in the UK there are eight categories of legal practitioners, and the State of Washington has recently begun providing limited licenses to legal technicians.[44]

TARGET:

■ **By 2030, 80% of lawyers in people-centred law practices work with an integrated team of service providers; in many cases these teams will operate in a shared practice that includes non-legal services and services provided by team members who are not lawyers.**

Milestone:

» *Evidence-based best practice guidelines for team delivery of legal and non-legal services in people-centred law practices are available*

Actions:

» *The CBA prepares a discussion paper and models for team legal service delivery and coordination of legal and non-legal services for both private market and publicly-funded legal services*

» *The CBA offers professional development materials and online discussion groups*

» *Law societies develop comprehensive regulatory frameworks for alternate delivery of legal services*

» *Law offices partner with other service providers facilitating team delivery of services*

LEGAL EXPENSE INSURANCE

The holder of legal expense insurance (LEI) has a commitment from an insurer to pay some or all of the legal costs arising from certain legal situations. Insurers support legal services by both lawyers and paralegals, and customers may include individuals, families and small to midsize businesses.

LEI is popular in Europe and provides basic access to legal assistance for people who can afford to buy the insurance, often in conjunction with home insurance or tenant insurance policies. In a few countries, LEI is mandatory.[45]

LEI is not a panacea, but evidence from jurisdictions where it is commonly used suggests that it could help many people get legal assistance when they need it. LEI has not caught on in Canada with the exception of Quebec where it has been successfully promoted by the Barreau du Quebec.

The CBA has endorsed LEI, adapted for the Canadian market, as one mechanism to increase access to justice.[46] The Committee is committed to encouraging LEI and would like to see LEI coverage expanded, particularly to family law matters.

Legal expense insurance is not a panacea, but evidence from jurisdictions where it is commonly used suggests that it could help many people get legal assistance when they need it.

TARGET:

■ **By 2030, 75% of middle income Canadians have legal expense insurance.**

Milestones:

» *Insurance providers offer a range of LEI policies that assist in advancing meaningful access to justice to middle income Canadians, including on family law matters*

» *Options for mandatory legal expense insurance are being fully considered*

Actions:

» *The CBA communicates that making LEI more available contributes to access to justice and is compatible with the profession's interests*

» *The CBA develops a strategy, building on the Barreau du Quebec initiative, to increase public awareness of the benefits and relatively low cost of LEI through speeches, articles and testimonials*

» *The CBA continues to collaborate with insurance providers to encourage them to develop more LEI policies for Canadians, including for family law matters*

» *The CBA works with governments to explore the feasibility of mandatory legal insurance based on existing European models*

REGENERATING PUBLICLY FUNDED LEGAL SERVICES

Public-funded legal services, generally referred to as legal aid programs, are an indispensable component of a fair, efficient, healthy and equal justice system. At present, Canada's legal aid system is inadequate and underfunded, and there are huge disparities between provinces and territories on who is eligible for legal aid, what types of matters are covered and the extent of the legal services provided.

Three main components are needed to regenerate legal aid:

» *national legal aid benchmarks with a commitment to their progressive implementation, monitored through an open, transparent process;*

» *reasonable eligibility policies that give priority to people of low and modest means but provide graduated access to all residents of Canada who are unable to retain private counsel (including through contributory schemes); and*

» *effective legal service delivery approaches and mechanisms designed to meet community needs and the meaningful access to justice standard.*

Rather than simply setting a minimum threshold, national benchmarks should be aspirational and include targets for progressive implementation. Benchmarks will provide a principled basis for legal aid funding decisions, be focused and concrete, while still leaving scope for local priority setting and innovation.

TARGET:

■ **By 2020, national benchmarks for legal aid coverage, eligibility and quality of legal services are in place with a commitment and plan for their progressive realization across Canada.**

Milestone:

» *Federal, provincial and territorial governments establish a national working group with representation from all stakeholders, including recipients of legal aid, to develop national benchmarks*

Actions:

» *The CBA works with all interested justice sector, service provider and community-based organizations to increase public awareness about the importance of legal aid and the costly personal and social consequences of inadequate legal aid*

» *The CBA works with all interested justice sector, service provider and community-based organizations to develop a broad alliance of individuals and groups to support and champion the regeneration of legal aid and the development of national benchmarks*

» *The CBA and the Association of Legal Aid Plans, in consultation with other justice system stakeholders, prepare draft national benchmarks as a means of engaging stakeholders and fostering dialogue and action*

» *The Association of Legal Aid Plans consults with the Federal-Provincial-Territorial Permanent Working Group on Legal Aid on an action plan to initiate work on national legal aid benchmarks*

» *The CBA and the Association of Legal Aid Plans, in consultation with other justice system stakeholders, carry out research to develop and refine the empirical basis for understanding 'essential legal needs' and 'meaningful and effective access to justice'*

TARGETS:

■ **By 2030, options for a viable national justice care system have been fully developed and considered.**

■ **By 2025, all Canadians whose income is two times or less than the poverty line (Statistics Canada's Low Income Measure) are eligible for full coverage of essential public legal services.**

■ **By 2020, all Canadians living at and below the poverty line (Statistics Canada's Low Income Measure) are eligible for full coverage of essential public legal services.**

Milestones:

» *The national working group on national benchmarks (see Milestone for legal aid benchmarks) develops a proposal for a gradual expansion of eligibility for legal aid*

» *A vigorous public policy dialogue about the value and feasibility of a national justice care system is underway*

» *Federal, provincial and territorial governments commit to continue increasing funding for legal aid to ensure progressive implementation of the national benchmarks (see Targets under 'Reinvigorated Federal Government Role')*

Actions:

» *The CBA works with the Association of Legal Aid Plans and other interested stakeholders to prepare draft national benchmarks on eligibility as a means of engaging stakeholders and fostering dialogue and action*

» *The CBA works with interested public policy institutes and think tanks to develop an options paper for a national justice care system building on existing research and considering universal legal aid models in Canada and abroad*

TARGET:

■ **By 2025, all legal aid programs provide meaningful access to justice for essential legal needs through inclusive and holistic services that respond to individual and community needs and integrate evidence-based best practices.**

Milestones:

» *Legal aid providers develop an increased capacity for outcome-based evaluation and research, as well as monitoring and sharing information about developments to facilitate evidence-based best practices*

» *Prototypes of innovative holistic legal aid service delivery models have been developed and tested. Results are integrated into practice and broadly shared to encourage learning, further innovation and best practices*

Actions:

» *Legal aid providers build and strengthen relationships with other social service organizations to develop more holistic service delivery*

» *The Association of Legal Aid Plans is resourced to play a national leadership role in support of strong, innovative legal aid service delivery including through research, monitoring and sharing developments*

» *The Association of Legal Aid Plans develops measures of inclusivity to integrate into evaluation frameworks*

» *The Association of Legal Aid Plans completes its work on a common framework for data collection for all legal aid providers*

» *The Association of Legal Aid Plans increases opportunities for legal aid providers to come together to share and learn (e.g. regular webinars, an annual or biennial conference)*

BRIDGING THE PUBLIC-PRIVATE DIVIDE

Organized pro bono services are trying to bridge the widening gap between private market and publicly funded legal services.

The Committee's vision of equal justice is one in which all essential legal needs are met by public and private legal service providers (supported by legal expense insurance as appropriate). A justice system based on volunteer efforts is too ad hoc and unsustainable to provide effective access. Regardless of how extensive the legal profession's efforts, pro bono cannot possibly fill the gap between public and private market legal service providers. The same is true of public-private partnerships that provide legal services, such as private non-profit and student clinics.

Where does this leave pro bono and public-private partnerships? As these service providers are neither designed nor equipped to provide a predictable and secure response to essential legal needs, their energies are more appropriately streamed toward other important but non-essential legal needs, such as resolving disputes that have a significant impact on the individuals involved but may not put their security or ability to meet basic needs at risk. Consumer protection issues could often fall within this category, for example.

Pro bono organizations should continue to work in collaboration with legal aid organizations to provide seamless delivery, but with greater clarity on the line between their responsibilities. Pro bono programs are nimble, flexible and can marshal resources quickly, and so are particularly suited to emergent and emergency situations as a stop-gap measure.

Lawyers should continue to consider pro bono as a professional obligation and pro bono organizations should continue to play an important role in encouraging and facilitating these volunteer efforts. The focus should be on encouraging pro bono contributions by lawyers who do not provide people-centred law services on a regular basis, such as lawyers in large law firms, corporate counsel and government lawyers. The transition in pro bono priorities and participation should be tracked through a survey of members of the legal profession.

TARGETS:

- **By 2025, the justice system does not rely on volunteer legal services to meet people's essential legal needs.**

- **By 2020, all lawyers volunteer legal services at some point in their career.**

Milestone:

» *Pro bono programs work with legal aid and other service providers to phase out dependence on volunteer legal services to meet people's essential legal needs and reprioritize their work to meet other gaps in the availability of legal assistance*

Actions:

» *All law societies and legal employers remove barriers to participation in pro bono programs*

» *The CBA Pro Bono Committee collaborates with pro bono organizations to develop and carry out a national survey of pro bono contributions in Canada*

LAW SCHOOLS, LEGAL EDUCATION AND LAW STUDENTS

An important avenue to advancing access to justice is engaging the legal academy to a larger extent than at present. One promising development is that the Council of Canadian Law Deans has established an access to justice committee to consider the role of law schools in this area. Priorities include moving toward a requirement that law school education include an experiential component and increasing access to justice research. At the same time, education and training goals do not always coincide with access goals. Students can make an important contribution, but cannot be expected to address the vast range of unmet needs.

To the extent that they are not already doing so, law schools should take a dual focus to integrating access to justice into education, by establishing requirements for all students and supporting opportunities for those particularly interested in access to justice. All graduating law students should have a basic understanding of the issues relating to access to justice and know that fostering access to justice is an integral part of their professional responsibility.

TARGETS:

- **By 2030, three Canadian law schools will establish centres of excellence for access to justice research.**
- **By 2030, substantial experiential learning experience is a requirement for all law students.**
- **By 2020, all graduating law students:**
  - ***have a basic understanding of the issues relating to access to justice in Canada***
  - ***know that fostering access to justice is an integral part of their professional responsibility***
  - ***have taken at least one course or volunteer activity that involves experiential learning providing access to justice.***
- **By 2020, all law schools in Canada have at least one student legal clinic that provides representation to low income persons.**

All graduating law students should have a basic understanding of the issues relating to access to justice and know that fostering access to justice is an integral part of their professional responsibility.

Milestone:

- *Law school curricula examined and adjusted as needed to meet the targets*

Actions:

- *The CBA adopts a statement on the 'Model Lawyer of Tomorrow' to encourage and foster dialogue on the role of lawyers in promoting access to justice as one important criteria*
- *The CBA encourages law schools to offer substantial opportunities for experiential learning in the access to justice context. This ties into the Legal Futures Initiative, which is considering legal education and training of the next generation of lawyers*
- *The Federation of Law Societies includes an access to justice component in its competency requirements*
- *Law schools expand the access to justice content of their curricula*
- *Law schools expand the availability of experiential learning to their law students*
- *The Council of Canadian Law Deans supports development of access to justice curricula*
- *Each law school appoints a staff member to serve as champion/leader for engaging discussion between the school and justice system stakeholders, including the public, about the role of law schools in supporting equal access to justice*
- *Law students have opportunities to become involved in CBA access to justice initiatives, including discussions of this report*

Making the equal justice vision real

A fundamental step to reaching equal justice is laying the foundation for ambitious but possible targets for an equal, inclusive justice system by 2030. At the same time, the Committee recognizes the barriers to even modest improvements to access to justice, let alone the type of change the Committee advocates.

This part looks at how we can move from the current situation of unequal justice to the vision of truly equal justice, relying on the three structural supports to our conceptual bridge: increased public engagement, participation and ownership of the justice system; improved collaboration with effective leadership; and enhanced capacity for justice innovation.

Building public engagement and participation

Civil justice is a low priority for the Canadian public and hence a low political priority. While public polling shows support in principle for legal aid, there is no public outrage at the current deficiencies or broadly supported movement for change. Criminal justice issues tend to dominate the media and have a high public profile. In contrast, a lack of awareness of the importance of a functioning justice system for non-criminal matters means that civil justice issues receive little attention and carry less political weight. Overall, justice concerns have a lower priority compared to concerns about other parts of our social safety net, notably education and healthcare. Political attention to equal justice is unlikely given this lack of public recognition or support. Increased public engagement is a necessary condition for reaching equal justice.

The long-term strategy for increasing public engagement with the justice system and building commitment to equal justice is linked to the commitment to improving individual legal capability, beginning with early education to build law as a life skill. In the shorter term,

PART III

making the equal justice vision real

a comprehensive public engagement campaign is required. We need a convincing answer when people ask: "why should I care about equal justice?" While each justice stakeholder group has a role, the legal profession and the CBA have a leadership role in developing this campaign.

The justice community has to change the way we talk and how we act. Our goal is an equal, inclusive justice system everyone can take part in. To start, we need to listen to the public perspective and create inclusive forums for dialogue and accountability structures.

TARGETS:

■ **By 2025, all provincial and territorial governments engage in dialogues with the public (e.g. community roundtables, townhall meetings) on a regular basis and demonstrate how the public perspective informs justice system policies and processes, innovations and reforms.**

■ **By 2020, Canadians have a greater sense of public ownership of the justice system.**

Milestones:

» *All governments hold dialogue sessions with the public (e.g. community roundtables, townhall meetings), in partnership with community groups, at least three to five times per year*

» *A principled framework for community dialogue (e.g. inclusion, respect, reciprocity) integrating evidence-based best practices is in place*

» *Justice reform captures the public perspective, which informs policy and process development, innovation and reform to the justice system*

» *A suggestion from a member of the public is championed by an appropriate justice system participant and is successfully implemented*

Actions:

» *The CBA works with other justice system stakeholders to develop a public engagement strategy, including an interactive 'My Justice System' campaign to learn more about public expectations of the justice system and to seek out concrete proposals for access to justice reforms*

» *Provincial and territorial governments build on the consultative practices of legal aid providers and legal clinics to identify justice system user groups they should include in consultation processes*

» *All justice system governing boards and advisory committees include more than one public representative and operate according to inclusive guidelines for communication and consultation*

» *Justice system stakeholders collaborate to increase the number and types of mechanisms to receive feedback from people accessing the justice system, including online discussion forums and surveys of people denied services; feedback is taken into account in reform strategies*

We need a convincing answer when people ask: "why should I care about equal justice?"

Building collaboration and effective leadership

There is effectively no coherent civil justice system in Canada. Fragmentation is to some degree a necessary consequence of institutional and individual independence of the parts of our justice system – the courts and judges, the legal profession and lawyers, the legislative and executive branches of government, legislators and civil servants. Independence of the judiciary and of the bar and the separation of powers between branches of government are foundational principles of Canadian democracy that must be steadfastly preserved. At the same time, a rigid application of these principles can act as shield against justice innovation and prevent the necessary collaboration and coordination.

Certainly to reach equal justice we must develop collaborative skills, processes and structures. The National Action Committee is an important forum bringing together justice system stakeholders, including a member of the public. Collaborative forums such as this are also needed at the provincial, territorial and local levels.

However, collaboration alone will not create a coherent civil justice system. Effective leadership is also essential. If the justice system is a 'body without a brain' or an organization without a CEO, then genuine leadership in the access to justice field must be developed to fill this void. Champions for change are likely to emerge at a local level in connection with specific reforms, but the most effective overall leadership could come by appointing access to justice commissioners, individuals given adequate resources and the mandate of striving for equal justice.

TARGET:

■ **By 2020, effective, ongoing collaborative structures with effective leadership are well-established at the national, provincial, territorial and local levels, including through the appointment of access to justice commissioners.**

Milestones:

» *Access to justice commissioners are in place in every province and territory and at the federal level*

» *The performance of collaborative structures is reviewed every two years and lessons and improvements integrated into their operations. Evidence about collaborative best practices is widely-shared*

Actions:

» *The National Action Committee, its successor or another national organization is properly resourced as a national collaborative structure with a mandate to support and coordinate provincial and territorial efforts*

» *The National Action Committee, its successor or another national organization works with other justice system stakeholders, including provincial and territorial committees, to organize an annual or biennial national conference*

» *Provincial and territorial governments establish collaborative structures to bring together stakeholders and establish networks between local equal justice communities and task-based collaborative initiatives*

» *Access to justice leaders create local equal justice communities, including pathways for communication and collaboration with other communities and initiatives*

Building capacity for justice innovation

Our greatest challenge in reaching equal justice is addressing what the National Action Committee has identified as 'the implementation gap'. The justice system's capacity for innovation is underdeveloped and undernourished. For the most part we know what needs to happen, but we are not as clear on how to do it.

The Hague Institute for the Internationalisation of Law (HiiL) is a justice innovation centre complete with a 'lab' for the development of prototypes. The HiiL publication Innovating Justice states the key to success: Innovation requires an extensive ecosystem nurturing the process. Justice innovation experts identify components of this ecosystem:

» *Adopt a 'Yes, AND', not a 'Yes, BUT' mentality*

» *Forget about the rules*

» *Treat 'failure' as an entrée to adaptation and eventual success*

» *Be clear on who benefits: an innovation is not just an idea*

» *Nurture a champion*

» *Ensure the time is ripe*

» *Engage a critical mass*

» *Provide incentives and resources*

» *Cultivate a diversity of skills and knowledge and partnerships.*

The Canadian justice system has dedicated few resources to, and has limited capacity for justice innovation. An efficient way to fill this remaining gap is to establish a dedicated centre for justice innovation. In addition, all justice system stakeholders, including law firms, need to increase their research and development capacities to explore ongoing innovation for the practice of law. The CBA Legal Futures Initiative has initiated a conversation about prospects for innovation in legal practice, and is consulting widely to obtain a diversity of perspectives about better ways to serve the public.

TARGETS:

- **By 2025, justice system stakeholders have substantially increased their innovation capacities by committing 10% of time and budgets to research and development.**
- **By 2020, Canada has a Canadian Centre for Justice Innovation.**

> Innovation requires an extensive ecosystem nurturing the process.

Milestones:

» *Justice innovation leaders are recognized and share their best practices with others*

» *Regular environmental scans of justice innovations in Canada and abroad are carried out*

» *All justice system stakeholders, including law offices develop innovation plans, with definite interim targets to increase their research and development functions in line with a 10 year goal of 10%*

Actions:

» *The CBA Legal Futures initiative uses the results of its work to facilitate enhanced networking and exchanges of information on practice innovation*

» *The CBA works with other justice system stakeholders to develop a partnership with the HiiL*

» *The CBA works with other justice system stakeholders to develop options for establishing a Canadian Centre for Justice Innovation to support local initiatives*

» *Law firms adopt models of compensation for lawyers that reward innovation*

» *Law schools establish innovation think tanks and involve a broad range of justice system stakeholders, including members of the public, consultants and experts on justice innovation*

ACCESS TO JUSTICE METRICS

Access to justice metrics are important to support justice innovation. Currently, we have only fragmentary data and no capacity to pull it together to get a complete picture of access to justice in Canada. The absence of an evidentiary base for action, and shared views on what to measure and how to measure it, are serious obstacles to achieving equal justice.

Metrics serve a range of purposes, from informing the public about our justice system and grounding day to day decision-making of justice system participants, to supporting policy-making and change processes. Metrics enhance people's choices, enable comparison and learning, increase transparency and create incentives for improving access to justice.

TARGET:

■ **By 2020, the first annual access to justice metrics report is released; by 2030, this report is comprehensive.**

Milestone:

» *The federal government establishes a working group to develop a framework and action plan for the development of access to justice metrics*

Actions:

» *The CBA works with other justice system stakeholders to develop a proposal for assessment of the quality and coverage of existing data*

» *Building on initiatives of the Canadian Association of Provincial Court Judges and the Association of Legal Aid Plans, justice system stakeholders develop a protocol for the collection of a common standard data set*

» *The CBA encourages the courts and other key agencies in the justice sector to see the value of access to justice metrics and commit to work to attain these targets*

STRATEGIC FRAMEWORK FOR ACCESS TO JUSTICE RESEARCH

Canada is plagued by a paucity of access to justice research. This gap exists in tandem with the poor state of justice data collection and evidence. The lack of high quality publicly available data detracts from scholarship and the lack of scholarship contributes to the poor state of data, since empirical research would help determine which types of data should be collected. Other barriers to research include: fragmentation of access to justice research across disciplines and under-development of interdisciplinary studies; lack of integration of recent methodological developments such as internet-based tools; and lack of connection between academics and practitioners.

A national research strategy is needed, not in the sense of a centralized 'master plan' but rather to ensure coordination, avoid duplication and enable researchers to build on each other's efforts. A national access to justice research framework to contribute to equal justice should encompass three main objectives:

» *generate new high quality research activity;*

» *ensure the coordination of research efforts; and*

» *improve the communication of research results, including aggregating and synthesizing research findings and program evaluations to make this information more accessible to decision-makers and in policy-making processes and forums for public dialogue.*

TARGETS:

■ **By 2025, Canada has a sustainable access to justice research agenda with four minimum components:**

1. ***available, high quality data that supports empirical study of effectiveness of measures to ensure access to justice***
2. ***a central independent research organization that assumes responsibility for developing and coordinating the required data sources and research activities***
3. ***effective mechanisms through which researchers and people in the field collaborate and coordinate research activities, and***
4. ***ongoing commitment to and adoption of best practices in access to justice research.***

■ **By 2020, the amount of access to justice research conducted in Canada has doubled.**

Milestones:

» *A central research organization continues to conduct – or support and coordinate – initiatives that synthesize and coordinate existing, and generate new research activity, including research that can inform policy*

» *A central research organization establishes – or supports the establishment of – a mechanism and methods for amassing quality data to support empirical access to justice research*

Actions:

» *The CBA, law foundations and other justice system stakeholders hold a workshop that provides an inventory of current and planned access to justice research initiatives, facilitates a dialogue between researchers and practitioners and considers potential mechanisms to coordinate existing and generate new research activity*

» *The CBA, law foundations, law faculties and other justice system stakeholders identify or develop a central organization that is able and willing to coordinate efforts to develop a national research agenda on an initial basis*

» *The central research organization establishes international collaboration networks with access to justice research institutes including the Law and Justice Foundation of New South Wales and the American Bar Foundation*

REINVIGORATED NATIONAL/ FEDERAL GOVERNMENT ROLE

This report sets targets and actions that depend on strong national leadership on access to justice reform. While provincial and territorial governments have primary responsibility for the day to day functioning of the justice system, the federal government also has a critical role. Like healthcare, justice is a shared governmental responsibility. A reinvigorated federal role is imperative if we are to reach equal justice.

TARGETS:

■ **By 2025, the federal government is fully engaged in ensuring an equal, inclusive justice system.**

■ **By 2020, the federal government reinstates legal aid funding to 1994 levels and commits to increases in line with national legal aid benchmarks.**

Milestones:

» *The federal government commits to steady increases in contributions to legal aid funding, including returning to 50% cost-sharing in criminal matters and establishing a dedicated civil legal aid contribution*

» *The federal government is a leader in supporting access to justice innovation*

Actions:

» *The federal government commits to supporting justice innovation by taking a leadership role in building the evidence base necessary to develop access to justice metrics, appointing an access to justice commissioner, supporting the creation of a centre for justice innovation and funding access to justice research*

» *The federal government makes funding for civil legal aid transparent and works with provincial and territorial governments and justice system stakeholders to regenerate legal aid*

CBA AS AN ACCESS TO JUSTICE LEADER

The CBA established this Access to Justice Committee in 2011 with a view to consolidating and enlarging its work on these important issues. The CBA fills an important role in national access to justice reform efforts but a stronger organizational commitment is required for the CBA to become an access to justice leader.

The Committee is committed to take action on six fronts working in conjunction with other CBA entities, committed members and outside organizations:

» *Encourage greater collaboration between justice system stakeholders, including the public, and coordinate initiatives in a strategic framework;*

» *Develop and revise CBA policies to support improvements in the public and private delivery of legal services;*

» *Partner with the CBA Legal Futures Initiative on elements of its work that relate to education, practice and regulatory innovations that could have an impact on access to justice;*

» *Foster greater public ownership of access to justice issues;*

» *Develop tools for advocacy geared to improving publicly funded access to justice, including legal aid; and*

» *Support and encourage CBA members to enhance the legal profession's contributions to equal justice through the practice of law.*

TARGET:

■ **By 2020, the CBA has increased its capacity to provide support to access to justice iniatives.**

Milestones:

» *The CBA provides support to its members so they can participate actively in increasing equal access to justice*

» *The CBA takes a leadership role in encouraging public engagement with the justice system and changing the conversation in support of achieving equal justice*

» *The CBA continues and expands its collaboration with other justice system stakeholders, including members of the public, in support of inclusive access to justice initiatives*

» *The CBA substantially increases resources provided to access to justice initiatives*

Actions:

» *The CBA Access to Justice Committee develops a multi-year workplan to implement the actions in this report*

» *The CBA Access to Justice Committee develops resolutions to update CBA policies consistent with this report for consideration by CBA Council*

» *The CBA Access to Justice Committee provides many avenues for interested members and others to participate in the development of its initiatives and to share their ideas and experiences*

» *The CBA Access to Justice Committee seeks out and cultivates access to justice champions in the legal profession*

Acknowledgements

The CBA Access to Justice Committee began its work on the Envisioning Equal Justice Initiative in September 2011. The Committee members during this period were:

Melina Buckley, Ph.D., Chair

John Sims, QC, Vice-Chair

Sheila Cameron, QC

Amanda Dodge

Patricia Hebert

Sarah Lugtig

Gillian Marriott, QC

Gaylene Schellenberg, Project Director

Each member came to this work with different personal and professional backgrounds and perspectives. These differences have enriched our discussions, and our efforts to tackle the 'wicked problem' of reaching equal justice.

The Committee would like to acknowledge the help and encouragement it has received throughout the Envisioning Equal Justice Initiative. The Committee is deeply indebted to Gaylene Schellenberg for her hard work and dedication to this initiative. She had the difficult job of turning our ambitious goals into reality and her invaluable assistance did in fact make this vision possible. The Committee is also grateful for the administrative and technical assistance provided by the CBA National Office, particularly Lorraine Prezeau.

In launching the Envisioning Equal Justice Initiative, the Committee took note of the significant efforts and resources currently devoted to improving access to justice from so many different and influential factions of the legal profession and justice system. The Committee began by informing the legal profession and justice system participants about the initiative. Judges, government officials and politicians, law societies, law foundations, legal aid leaders and many more offered help and support. They provided ongoing feedback as work progressed. The Committee also consulted with justice system participants through conferences and meetings of CBA Council.

The Committee developed three main strategies to remove past barriers to progress:

1. *consultation and research, to create the knowledge foundation for the initiative.*
2. *a new conversation about equal justice – to ask the hard questions and pull people out of acting in silos toward a more common goal.*
3. *ongoing collaboration and coordination, to enable those committed to equal justice to work together more effectively and productively.*

PART IV
project description, acknowledgements and conclusion

Consultation and research

To inform thinking on how to define 'access to justice', and what 'equal justice' means for the people who need justice services, community consultations were organized. These took place with different marginalized communities in Nova Scotia, New Brunswick, Quebec, Ontario, Saskatchewan and Alberta. Local lawyers and community partners helped to organize and facilitate these consultations, and link the Committee to community members willing to share their often painful experiences. Pro Bono Students Canada, a group of committed law students and the Canadian Forum on Civil Justice helped gather video footage for perspectives from people 'on the street'. Town hall consultations, in collaboration with CBA Branches, have been held in recent years in British Columbia, Manitoba and Ontario, and the results were used by the Committee. Legal aid lawyers, community legal workers and paralegals were surveyed for their views on current issues, and legal aid plans were very helpful in this effort, both in commenting on the survey and ensuring its broad dissemination. The Committee is grateful to the many individuals and organizations who arranged and participated in these consultations.

Five discussion papers were prepared, with the help of several law students, social science students and young lawyers. The Committee acknowledges these important contributions. The valuable resources produced can be found on www.CBA.org.

» *Access to Justice Metrics*

» *Toward National Standards for Publicly Funded Legal Services*

» *Future Directions for Legal Aid Delivery*

» *"Tension at the Border": Pro Bono and Legal Aid*

» *Underexplored Alternatives for the Middle Class*

A new conversation

On April 25-27, 2013, the Envisioning Equal Justice Summit in Vancouver brought together about 250 lawyers, community advocates, judges, paralegals, law foundation and law society representatives, and members of the public. As we hoped, it marked a turning point and started a different, more productive and coordinated conversation about access to justice, with justice system participants working together to solve the challenge of achieving equal justice.

Participants were asked to leave their 'day jobs' at the door, and tackle the big challenges we face in a new, more collaborative and collegial way, and we are grateful for their involvement. At the closing plenary, they worked in small groups to offer their best advice for going forward. For more information, please see www.cba.org/CBA/Access/main/project.aspx

The Summit would not have been possible without the generous contributions of the speakers, international guests and Summit sponsors: Law Foundation of BC; Law Foundation of BC/Legal Services Society Research Fund; DAS Canada; CBA BC; Alberta Justice; Law Society of BC; Law Society of Upper Canada and Actus Law Droit.

The report, our vision and the targets

Inspired, the Committee worked on developing the targets, milestones and actions in this report. The Committee then asked 10 external reviewers to read a draft and again were rewarded by the encouragement and support offered by these busy individuals representing various justice sectors. Their comments were instrumental in clarifying and more fully developing this strategic framework.

The Committee now wants to hear from you. We look forward to your thoughts and your assistance in taking the next steps to achieving equal justice in Canada.

Thank you.

Endnotes

1 Gillian K. Hadfield, "Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans" (2010) 37 Fordham Urban Law Journal 129 at 151.

2 See description in Part IV, *infra* at 47.

3 See: http://www.un.org/millenniumgoals/.

4 http://www.angus-reid.com/polls/48758/british-columbians-dissatisfied-with-current-state-of-justice-system/; see also, Julian Roberts, Public Confidence in Criminal Justice: A Review of Recent Trends (2004-2005) (report prepared for Public Safety and Emergency Preparedness Canada, 2004); http://www.angus-reid.com/polls/47831/most-canadians-dissatisfied-with-the-state-of-the-justice-system/.

5 To benefit from the views of marginalized communities, the Committee held regional consultations in conjunction with community organizers familiar to those communities. See discussion at 46, *infra*. A summary of this input is available at http://www.cba.org/CBA/Access/PDF/Community_Voice_Paper.pdf.

6 See; Rachel Birnbaum, Nick Bala, Lorne Bertrand, "The rise of self-representation in Canada's family courts: The complex picture revealed in surveys of judges, lawyers and litigants" (2013) 91 Canadian Bar Review 67 and Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (May 2013).

7 See; http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/legalAidPollReport08.pdf; http://legalaid.on.ca/en/news/June-2006b.asp; and http://www.legalaid.ab.ca/media/Documents/2006/LegalAidAlberta_NewsReleaseNov2006.pdf.

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11 C. Coumarelos, D. Macourt, J. People, H.M. MacDonald, Z. Wei, R. Iriana, & S. Ramsey, *Legal Australia-Wide Survey: Legal Need in Australia* (Sydney, Australia: Law and Justice Foundation of NSW, 2012).

12 Currie, *supra*, note 10.

13 Patricia Hughes, *Inclusivity as a Measure of Access to Justice* (Paper prepared for CBA, Envisioning Equal Justice Summit, Vancouver, April 2013).

14 Russell Engler, "Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?" (2010) 9 Seattle Journal for Social Justice 97 at 117; Rebecca Sandefur, "The Impact of Counsel: An analysis of the empirical evidence" (2010) 9 Seattle Journal for Social Justice 51.

15 Surveys of people who have recently retained a lawyer have found that they did not view the cost of legal services as a major concern – see Rebecca Sandefur, "Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services" in Michael Trebilcock, Anthony Duggan and Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) at 232. A 2010 Alberta Law Society study found that 91% of people who had recently retained a lawyer were satisfied with the "good cost value" of the experience (Presentation by Susan Billington, Policy and Program Counsel, Law Society of Alberta, to International Legal Ethics Conference, July 2012). The Ontario Civil Needs study also noted a widespread public perception that legal fees are prohibitively expensive, but also that 30% of the study's target population with a civil legal problem found free service, and another 20% had paid less than $1000 for help. See, *Listening to Ontarians, supra,* note 8 at 57. See also, http://www.lawsociety.bc.ca/newsroom/2010lawsocietycommissioned poll_table.pdf.

16 Debra Cassens Weiss, "'Massive Layoffs' predicted in law schools due to drop in applicants" (Jan 31 2013) ABA Journal, citing Gillian Hadfield referring to a shortage of 'ordinary folk' lawyers.

17 Ab Currie, *The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012* (Toronto: CFCJ, 2013) http://www.cfcj-fcjc.org/commentary/the-state-of-civil-legal-aid-in-canada-by-the-numbers-in-2011-2012.

18 See; http://www5.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=85F0015XIE&lang=eng#formatdisp This is a difficult number to arrive at, given that the federal contribution for civil legal aid is unmarked and part of a global transfer. Provinces have disputed there is anything for civil legal aid in that transfer (Canada Social Transfer).

19 Macfarlane, *supra*, note 6.

20 Self-represented litigant quoted by Macfarlane, *ibid*.

21 *Ibid.*

22 As noted *infra* at 6, two recent surveys of people who represented themselves in civil courts concluded that the experience usually led to reduced confidence in the justice system. *Supra*, note 6.

23 Engler and Sandefur, *supra*, note 14.

24 Jessica K. Steinberg, "In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services" (2011) 18 Georgetown Journal on Poverty Law & Policy 453; D. James Greiner, Cassandra Wolos Pattanayak, and Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future* (draft March 2012).

25 See for example, Carol McEown, *Civil Legal Needs Research Report* (Vancouver: Law Foundation of BC, 2nd Edition, March 2009) at 30; Community Legal Education Ontario, *Tapping the Community Voice: Looking at Family law Self-Help through an Access to Justice Lens – Themes and Recommended next Steps* (Toronto: CLEO, September 2009) at 3.

26 See http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=31.

27 Rebecca Sandefur and Aaron Smyth, *Access Across America: first report of the Civil Justice Infrastructure Mapping Project* (Chicago: American Bar Foundation, 2011) at 21.

28 http://worldjusticeproject.org/.

29 2011 World Justice Project, http://worldjusticeproject.org/publication/annual-reports/annual-report-2011.

30 Michael Trebilcock, *Report of the Legal Aid Review, 2008* (Prepared for Ontario Attorney General, Chris Bentley) (Toronto: AG ON, 2008).

31 Based on the *Annual Budget Estimates* from BC, NS and ON over the past decade.

32 See; Ting Zhang, *Costs of Crime in Canada, 2008* (Ottawa: Justice Canada, 2008) at 5.

33 CBA Systems of Civil Justice Task Force, The Right Hon. Brian Dickson, Hon. Chair, *Systems of Civil Justice Task Force Report* (Ottawa: CBA, 1996).

34 The CBA Legal Futures Initiative is canvassing the legal profession, the public, and other stakeholders for their opinions about these concepts.

35 Dame Hazel Genn, "What is Civil Justice For?" (2012) 24:1 Yale Journal of Law & the Humanities 24 Art. 18.

36 Dr. Ab Currie's Canadian research highlights the relationship between legal problems and health problems, demonstrating a strong policy rationale for connecting access to justice policy with other public policy concerns. His findings also show the ways in which lack of access to justice reinforces social exclusion faced by certain groups in Canada, particularly people with disabilities.

37 See; Macfarlane, *supra*, note 6; See also reports from the Canadian Forum on Civil Justice, http://www.cfcj-fcjc.org/.

38 Yvon Dandurand and Michael Maschek, *Assessing the Economic Impact of Legal Aid – Promising Areas for Future Research* (Prepared for the Law Foundation of British Columbia, 2012). See also, Canadian Forum on Civil Justice, http://www.cfcj-fcjc.org/cost-of-justice.

39 *Ibid.*

40 Laura K. Abel, *Economic Benefits of Civil Legal Aid*, National Centre for Access to Justice at Cardoza Law School (4 September 2012).

41 See a summary of recent studies in the Committee's *Future Directions for Legal Aid Delivery* (Ottawa: CBA, 2013) at 10-11.

42 Richard Zorza, "The Access to Justice "Sorting Hat": Towards a System of Triage and Intake That Maximizes Access and Outcomes" (2012) 89:4 Denver University Law Review 859 at 861.

43 *Ibid.*

44 The CBA's Legal Futures Initiative is likely to also consider limited scope retainers and their utility in increasing access to justice, in their research and consultation on how best to provide legal services in a changing, client-driven market. The Initiative may examine these innovations from a regulatory and a business structure lens, considering their future impact on the Canadian legal profession.

45 For more detail, please see the Committee's working paper on legal expense insurance at http://www.cba.org/CBA/Access/PDF/WorkingPaper1LegalExpenseInsurance.pdf

46 See Resolution 12-07-A, *Improving Access to Justice through Legal Expense Insurance.*


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map to **equal justice**

- By 2020, all graduating law students have a basic understanding of access to justice
- By 2020, all Canadians living below the poverty line are eligible for full coverage of essential public legal services
- By 2020, all law schools in Canada have one student legal clinic
- By 2020, national benchmarks for legal aid coverage, eligibility and quality of legal services are in place
- By 2020, all lawyers volunteer legal services at some point in their career
- By 2020, limited scope legal services are only offered in situations where they meet the meaningful access to justice standard
- By 2025, all legal aid programs provide meaningful access to justice for essential legal needs
- By 2025, alternative service delivery models exist to provide legal services for low and middle income Canadians
- By 2025, all Canadians whose income is less than twice the poverty line are eligible for full coverage for essential public legal services
- By 2025, the justice system does not rely on volunteer services to meet essential legal needs
- By 2030, 80% of lawyers in people centered practices work with an integrated team of service providers
- By 2030, 75% of middle income Canadians have legal expense insurance
- By 2030, three centres of excellence for access to justice research have been established
- By 2030, options for a viable national justice care system have been fully developed and considered
- By 2030, substantial experiential learning experience is required of all law students

- By 2020, justice organizations have plans to harness technology to advance access and ensure inclusivity
- By 2020, PT's have established effective triage systems guiding people along pathways to justice
- By 2020, legal health checks are a routine feature of the justice system
- By 2030, 5 million Canadians have received legal capability training

- By 2020, Canadians have a greater sense of public ownership of the justice system
- By 2025, all PT's engage in regular dialogues with the public

- By 2025, courts are re-centered within the civil justice and resourced to provide tailored public dispute resolution with triage and referral processes

- By 2020, the CBA has increased its capacity to provide support to access to justice initiatives
- By 2020, the federal government reinstates legal aid funding to 1994 levels and commits to increases in line with national legal aid benchmarks
- By 2020, the first annual access to justice metrics report is released – by 2030, this report is comprehensive
- By 2020, the amount of access to justice research in Canada has doubled
- By 2020, Canada has a Canadian Centre for Justice Innovation
- By 2025, justice system stakeholders have increased their innovation capacity by committing 10% of time and budgets to research and development
- By 2025, the federal government is fully engaged in ensuring an equal and inclusive justice system
- By 2025, Canada has a sustainable access to justice research agenda

LEGEND

- facilitating everyday justice
- transforming formal justice
- re-inventing service delivery
- building public engagement and participation
- building collaboration and effective leadership
- building the capacity for justice innovation

- By 2020, effective ongoing collaborative structures with effective leadership are well established at the FPT levels, and Access to Justice commissioners are appointed

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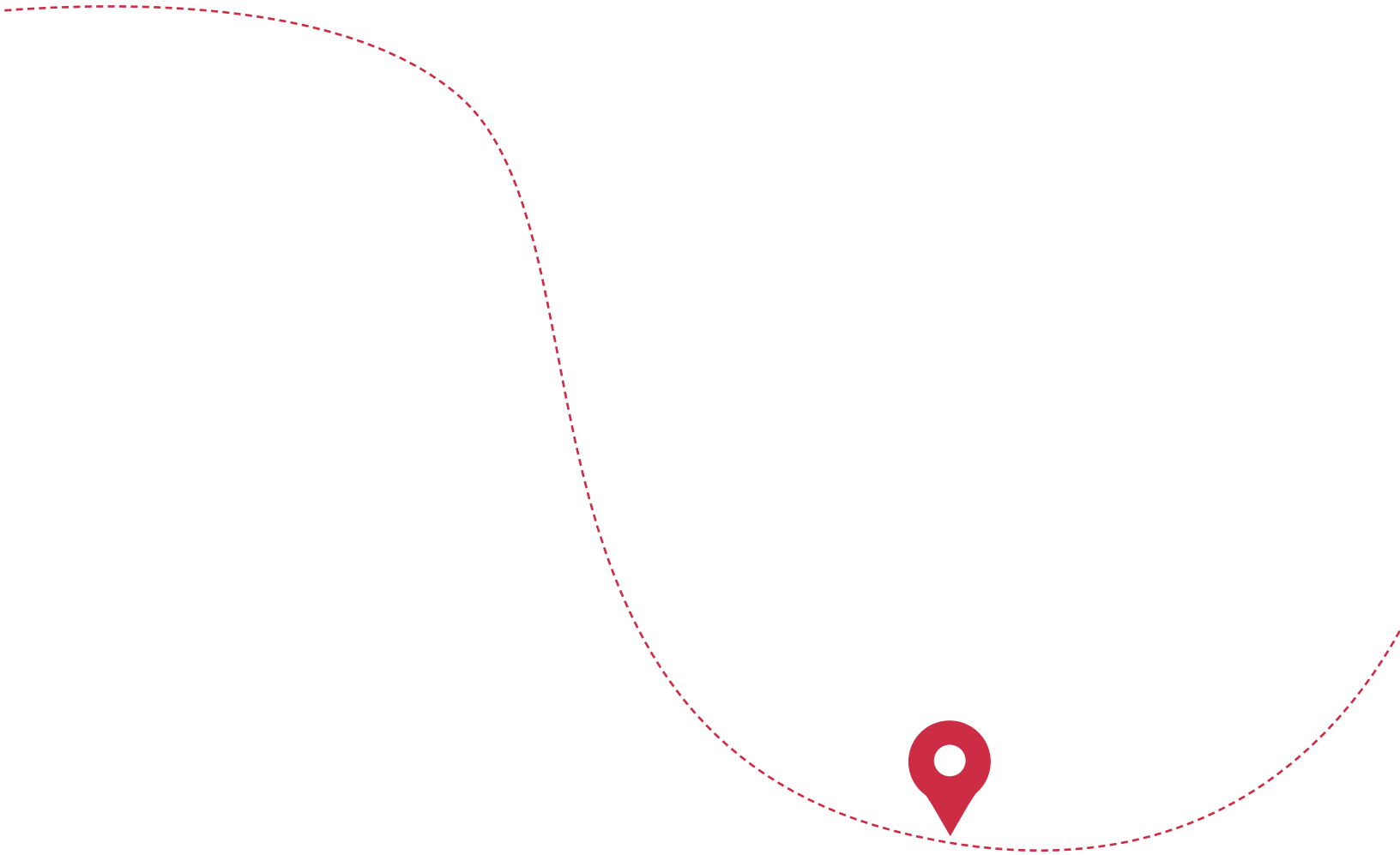
INFLUENCE. LEADERSHIP. PROTECTION.

ACCESS TO CIVIL & FAMILY JUSTICE

A Roadmap for Change

October 2013



Action Committee on
Access to Justice in
Civil and Family Matters

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Comments on this report can be sent to the Action Committee through the Canadian Forum on Civil Justice, online at: <**communications@cfcj-fcjc.org**>.

Action Committee on
Access to Justice in
Civil and Family Matters

FOREWARD

It is a great pleasure and honour to acknowledge the tireless dedication and endless commitment of the members of the Action Committee on Access to Justice in Civil and Family Matters by writing a foreword to this final report. As this report marks the conclusion of the first phase of the Action Committee's work, allow me to reflect on how we arrived this far.

Let me start by saying that the problem of access to justice is not a new one. As long as justice has existed, there have been those who struggled to access it. But as Canadians celebrated the new millennium, it became clear that we were increasingly failing in our responsibility to provide a justice system that was accessible, responsive and citizen-focused. Reports told us that cost, delays, long trials, complex procedures and other barriers were making it impossible for more and more Canadians to exercise their legal rights.

Fortunately, governments, organizations, and many individuals responded to the plea for change. Across the country they embarked on initiatives aimed at improving access to justice. However, too often, these initiatives proceeded in isolation from one another. Despite much hard work, it became increasingly clear that what was required was a national discussion and a coordinated action strategy to access to justice. So, in 2008, the Action Committee was convened.

The Action Committee is composed of leaders in the civil and family justice community and a public representative, each representing a different part of the justice system. Its aim is to help all stakeholders in the justice system develop consensus priorities for civil and family justice reform and to encourage them to work together in a cooperative and collaborative way to improve access to justice.

The Action Committee identified four priority areas: access to legal services, court processes simplification, family law, and prevention, triage and referral. In each area, a working group was formed to look at specific ways of improving access to justice. Each working group has now issued its final report, identifying how accessible justice can be achieved, the tools that can assist people in dealing with their legal needs effectively and expeditiously, and changes to the system that will improve access to justice.

Under the leadership of the Honourable Thomas A. Cromwell and each working group's chair, the working groups have produced reports that outline the concrete challenges and provide a rational, coherent and imaginative vision for meeting those challenges. They focus not only on good ideas, but on concrete actions to change the *status quo*. The Action Committee's final report bridges the work of the four working groups and identifies a national roadmap for improving the ability of every Canadian to access the justice system.

Our task is far from complete. The next step is implementation – to put the Action Committee's vision into action. But it is not amiss to celebrate what we have achieved thus far: a plan for practical and achievable actions that will improve access to family and civil justice across Canada. This could not have been accomplished without the contribution of all the individuals and organizations involved with the Action Committee. I thank you all for bringing accessible justice for all Canadians a significant step closer to reality.

Beverley McLachlin, P.C.
Chief Justice of Canada

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EXECUTIVE SUMMARY

There is a serious access to justice problem in Canada. The civil and family justice system is too complex, too slow and too expensive. It is too often incapable of producing just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve. While there are many dedicated people trying hard to make it work and there have been many reform efforts, the system continues to lack coherent leadership, institutional structures that can design and implement change, and appropriate coordination to ensure consistent and cost effective reform. Major change is needed.

This report has three purposes:

- to promote a broad understanding of what we mean by access to justice and of the access to justice problem facing our civil and family justice system;
- to identify and promote a new way of thinking — a culture shift — to guide our approach to reform; and
- to provide an access to justice roadmap for real improvement.

The report does not set out to provide detailed guidance on how to improve all aspects of the civil and family justice system across Canada's ten provinces and three territories. That needs to come largely from the ground up, through strong mechanisms and institutions developed locally. Local service providers, justice system stakeholders and individual champions must be the change makers. This report can, however, help fill the need for a coordinated and collaborative national voice — a change agent — providing a multi-party justice system vision and an overall goal-based roadmap for change. The ways of the past — often working in silos and reinventing wheels — are not sustainable. A coordinated, although not centralized, national reform effort is needed. Innovative thinking at all levels will be critical for success.

When thinking about access to justice, the starting point and consistent focus of the Action Committee is on the broad range of legal problems experienced by the public — not just those that are adjudicated by courts. As we detail in part 1 of this report, there are clearly major access to justice gaps in Canada. For example:

- Nearly 12 million Canadians will experience at least 1 legal problem in a given 3 year period. Few will have the resources to solve them.
- Members of poor and vulnerable groups are particularly prone to legal problems. They experience more legal problems than higher income earners and more secure groups.
- People's problems multiply; that is, having one kind of legal problem can often lead to other legal, social and health related problems.
- Finally, legal problems have social and economic costs. Unresolved legal problems adversely affect people's lives and the public purse.

The current system, which is inaccessible to so many and unable to respond adequately to the problem, is unsustainable.

In part 2 of this report we offer six guiding principles for change, which amount to a shift in culture:

1. Put the Public First
2. Collaborate and Coordinate
3. Prevent and Educate
4. Simplify, Make Coherent, Proportional and Sustainable
5. Take Action
6. Focus on Outcomes

Taken together, these principles spell out the elements of an overriding culture of reform that is a precondition for developing specific measures of change and implementation.

Part 3 of this report provides a nine-point access to justice roadmap designed to bridge the implementation gap between ideas and action. It sets out three main areas for reform: (A) specific civil and family justice innovations, (B) institutions and structures, and (C) research and funding:

A. Innovation Goals

1. Refocus the Justice System to Reflect and Address Everyday Legal Problems

2. Make Essential Legal Services Available to Everyone

3. Make Courts and Tribunals Fully Accessible Multi-Service Centres for Public Dispute Resolution

4. Make Coordinated and Appropriate Multidisciplinary Family Services Easily Accessible

B. Institutional and Structural Goals

5. Create Local and National Access to Justice Implementation Mechanisms

6. Promote a Sustainable, Accessible and Integrated Justice Agenda through Legal Education

7. Enhance the Innovation Capacity of the Civil and Family Justice System

C. Research and Funding Goals

8. Support Access to Justice Research to Promote Evidence-Based Policy Making

9. Promote Coherent, Integrated and Sustained Funding Strategies

Access to justice is at a critical stage in Canada. What is needed is major, sustained and collaborative system-wide change – in the form of cultural and institutional innovation, research and funding-based reform. This report provides a multi-sector national plan for reform. The approach is to provide leadership through the promotion of concrete development goals. These are recommended goals, not dictates. Specific local conditions or problems call for locally tailored approaches and solutions.

Although we face serious access to justice challenges, there are many reasons to be optimistic about our ability to bridge the current implementation gap by pursuing concrete access to justice reforms. People within and beyond the civil and family justice system are increasingly engaged by access to justice challenges and many individuals and organizations are already working hard for change. We hope that the work of the Action Committee and in particular this report will lead to:

- a measurable and significant increase in civil and family access to justice within 5 years;
- a national access to justice policy framework that is widely accepted and adopted;
- local jurisdictions putting in place strategies and mechanisms for meaningful and sustainable change;
- a permanent national body being created and supported to promote, guide and monitor meaningful local and national access to justice initiatives;
- access to civil and family justice becoming a topic of general civic discussion and engagement – an issue of everyday individual and community interest and wellbeing; and
- the public being placed squarely at the centre of all meaningful civil and family justice education and reform efforts.

INTRODUCTION

Today we take an important step on the road to improved access to civil and family justice in Canada. Through this report, the Action Committee on Access to Justice in Civil and Family Matters makes the case that we must make changes urgently, that we must take a collaborative, cooperative and systemic approach and, above all else, that we must act in a sustained and focused way. We are building on firm foundations, but the structure urgently needs attention. The goal should be nothing less than to make our system of civil and family justice the most just and accessible in the world. As one speaker put it recently, we must think big together.

The Action Committee is a group broadly representative of all sectors of the civil and family justice system as well as of the public. Its report is the product of a stakeholder driven process and it is offered as a report back to all of the stakeholders in the civil and family justice system for their consideration and action. While the release of this report is the culmination of the work of the Action Committee, it is only the beginning of the process for reform. We must build the mechanisms that can instigate, manage and evaluate change in ways that are suitable to the widely varying needs and priorities of jurisdictions and regions. We must define specific problems, design solutions, and implement and monitor their success or failure. We must learn how to work together more effectively in the public interest.

I hope that this report will provide an impetus for meaningful change, some effective models to facilitate the sort of collaborative and cooperative work that I believe is essential and a menu of innovative ideas and possibilities for everyone working at the provincial, territorial and local levels. The real work begins now.

The members of the Action Committee, its Steering Committee and its four Working Groups have all worked tirelessly and as volunteers to make the Committee's work possible. Working with these accomplished and committed people has been a highlight of my professional life. We were greatly assisted by the logistical support of the Canadian Forum on Civil Justice, the Canadian Judicial Council, the Justice Education Society of British Columbia and the Department of Justice for Canada where a dedicated group of people made up our highly efficient and effective secretariat without which we could not have completed our work.

We were also assisted by funding from Alberta Justice and Solicitor General, the Law Foundation of British Columbia and the Federation of Law Societies of Canada. Owen Rees, the Executive Legal Officer to the Chief Justice of Canada and my judicial assistant, Me Michelle Fournier have contributed far beyond the call of duty. Diana Lowe, Q.C., the founding Executive Director of the Forum was instrumental in the launch of the Action Committee. Professor Trevor Farrow of Osgoode Hall Law School and Chair of the Board of the Forum has played an invaluable role not only as an active member of the Action Committee but also as the one who held the pen during the preparation of this report.

Finally, I offer my thanks to Chief Justice McLachlin for having the vision to establish the Action Committee and for providing me with the opportunity to be part of it.

Thomas A. Cromwell

PART 1

Access to Civil and Family Justice: *Urgent Need for Change*

> "[A]ccess to justice is the most important issue facing the legal system".[1]

OVERVIEW

There is a serious access to justice problem in Canada.

The civil and family justice system is too complex, too slow and too expensive. It is too often incapable of producing just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve.[2] While there are many dedicated people trying hard to make it work and there have been many reform efforts, the system continues to lack coherent leadership, institutional structures that can design and implement change, and appropriate coordination to ensure consistent and cost effective reform. Major change is needed.

PURPOSE

This report has three purposes:

(in part 1) to promote a broad understanding of what we mean by access to justice and of the access to justice problem facing our civil and family justice system; (in part 2) to identify and promote a new way of thinking — a culture shift — to guide our approach to reform; and (in part 3) to provide an access to justice roadmap for real improvement. The report does not set out to provide detailed, line-item guidance on how to improve all aspects of the civil and family justice system across Canada's ten provinces and three territories. That needs to come largely from the ground up, through strong mechanisms and institutions developed locally. Local service providers, justice system stakeholders and individual champions must be the change makers. This report can, however, help fill the need for a coordinated and collaborative national voice — a change agent — providing a multi-party justice system vision and an overall goal-based roadmap for change. The ways of the past — often working in silos and reinventing wheels — are not sustainable. A coordinated, although not centralized, national reform effort is needed. Put simply, we should "think systemically and act locally."[3] Innovative thinking at all levels will be critical for success.

The formal system is, of course, important. **But a more expansive, user-centered vision of an accessible civil and family justice system is required.**

ACCESS TO JUSTICE: AN EXPANSIVE VISION

When thinking about access to justice, the starting point and consistent focus of the Action Committee is on the broad range of legal problems experienced by the public — not just those that are adjudicated by courts.[4] Key to this understanding of the justice system is that it looks at everyday legal problems from the point of view of the people experiencing them. Historically, access to justice has been a concept that centered on the formal justice system (courts, tribunals, lawyers and judges) and its procedures.[5] The formal system is, of course, important. But a more expansive, user-centered vision of an accessible civil and family justice system is required. We need a system that provides the necessary institutions, knowledge, resources and services to avoid, manage and resolve civil and family legal problems and disputes. That system must be able to do so in ways that are as timely, efficient, effective, proportional and just as possible:

- by preventing disputes and by early management of legal issues;
- through negotiation and informal dispute resolution services; and
- where necessary, through formal dispute resolution by tribunals and courts.

Important elements of this vision include:

- public awareness of rights, entitlements, obligations and responsibilities;
- public awareness of ways to avoid or prevent legal problems;
- ability to participate effectively in negotiations to achieve a just outcome;
- ability to effectively utilize non-court and court dispute resolution procedures; and
- institutions and mechanisms designed to implement accessible civil and family justice reforms.

CURRENT GAPS IN ACCESS TO JUSTICE — THE PROBLEM

1. Everyday Legal Problems

Civil justice problems are "pervasive in the lives of Canadians" and frequently have negative impacts on them.[6]

- **Many People Have Everyday Legal Problems.** Nearly 12 million Canadians will experience at least 1 legal problem in a given 3 year period.[7] In the area of family law alone, annual averages indicate that approximately 40% of marriages will end in divorce.[8] These are the problems of everyday people in everyday life.[9]
- **The Poor and the Vulnerable are Particularly Prone to Legal Problems.** Individuals with lower incomes and members of vulnerable groups experience more legal problems than higher income earners and members of more secure groups.[10] For example, people who self-identify as disabled are more than 4 times more likely to experience social assistance problems and 3 times more likely to experience housing related problems, and people who self-identify as aboriginal are nearly 4 times more likely to experience social assistance problems.[11]

We need a stronger and more effective civil and family justice system that is viewed and experienced as such by the public

- **Problems Multiply.** One kind of legal problem (for example, domestic violence) often leads to, or is aggravated by, others (such as relationship breakdown, child education issues, etc.).[12] Legal problems also have momentum: the more legal problems an individual experiences, the greater the likelihood that she or he will experience others.[13] Legal problems also tend to lead to other problems of other types. For example, almost 40% of people with one or more legal problems reported having other social or health related problems that they directly attributed to a justiciable problem.[14]
- **Legal Problems Have Social and Economic Costs.** Unresolved legal problems adversely affect people's lives, their finances and the public purse. They of course tend to make people's lives difficult.[15] Unresolved problems relating (for example) to debt, housing, and social services lead to social exclusion, which may in turn lead to a dependency on government assistance.[16] One recent U.K. study reported that unresolved legal problems cost individuals and the public £13 billion over a 3.5 year period.[17]

2. Importance Of Accessible Justice

To address these problems, we need a stronger and more effective civil and family justice system that is viewed and experienced as such by the public. This is critically important for the daily lives of people and for the social, political and economic well-being of society. For the system to be strong and effective, people must have meaningful access to it.[18]

3. The Current System Has Serious Gaps In Access

According to a wide range of justice system indicators and stakeholders, Canada is facing major access to justice challenges. For example, in the area of access to civil justice Canada ranked 13th out of 29 high-income countries in 2012-2013 and 16th out of 23 high-income countries in 2011.[19] According to the 2011 study, Canada's ranking was "partially explained by shortcomings in the affordability of legal advice and representation, and the lengthy duration of civil cases."[20]

These international indicators tell us two things. First, Canada has a functioning justice system that is well regarded by many countries in the world. Second, improvement is urgently needed. There is a major gap between what legal services cost and what the vast majority of Canadians can afford. Some cost indicators are:

- **Legal Aid Funding and Coverage is Not Available for Most People and Problems**. Legal aid funding is available only for those of extremely modest means. For example in Ontario, legal aid funding is generally only available for individuals with a gross annual salary of less than $18,000, or for a family of 4 with a total gross annual salary of $37,000.[21] In Alberta, legal aid funding is generally only available for individuals with a net annual salary of approximately $16,000, or for a family of 4 with a total net annual salary of approximately $30,000.[22] In Manitoba[23] and Saskatchewan,[24] the eligibility levels for individuals and families of 4 are, respectively, gross annual salaries of $14,000 and $27,000 and net annual salaries of $11,800 and $22,800. Even within these financial eligibility ranges,

The “ language of justice tends to be ... foreign to most people”

- participant in a recent survey on access to justice

legal aid covers only a limited number of areas of legal services.[25] For example, in Ontario, but for some civil matters covered by community, specialty and student clinics, legal aid coverage for civil matters does not exist.[26]

- **The Cost of Legal Services and Length of Proceedings is Increasing**. Legal fees in Canada vary significantly; however, one recent report provides a rough range of national average hourly rates from approximately $195 (for lawyers called in 2012) to $380 (for lawyers called in 1992 and earlier).[27] Rates can vary from this range significantly depending on jurisdiction, type of case, seniority and experience. The cost of civil and family matters also varies significantly. For example, national ranges of legal fees are recently reported to be $13,561 - $37,229 for a civil action up to trial (2 days), $23,083 - $79,750 for a civil action up to trial (5 days), $38,296 - $124,574 for a civil action up to trial (7 days), and $12,333 - $36,750 for a civil action appeal.[28] The length and cost of legal matters have continued to increase.[29]

4. Unmet Legal Needs

Most people earn too much money to qualify for legal aid, but too little to afford the legal services necessary to meaningfully address any significant legal problem. The system is essentially inaccessible for all of these people.[30] Below are some of the indicators.

- **Unmet Legal Needs**. According to one recent American study, as much as 70%-90% of legal needs in society go unmet.[31] This statistic is particularly troubling given what we know about the negative impacts of justiciable problems, particularly those that go unresolved.[32] In Canada, over 20% of the population take no meaningful action with respect to their legal problems, and over 65% think that nothing can be done, are uncertain about their rights, do not know what to do, think it will take too much time, cost too much money or are simply afraid.[33]
- **Cost is a Major Factor.** Of those who do not seek legal assistance, recent reports indicate that between 42% and 90% identified cost — or at least perceived cost — as the reason for not doing so.[34] An important result of the inaccessibility of legal services and the fact that many people do nothing to address their legal problems is that a proportion of legal problems that could be resolved relatively easily at an earlier stage escalate and shift to ones that require expensive legal services and court time down the road.[35]
- **Self-Representation**. As a result of the inaccessibility of early assistance, legal services and dispute resolution assistance, as well as the complexity and length of formal procedures, approximately 50% of people try to solve their problems on their own with no or minimal legal or authoritative non-legal assistance.[36] Many people — often well over 50% (depending on the court and jurisdiction) — represent themselves in judicial proceedings (usually not by choice).[37] The number is equally — and often more — significant and troubling in family court proceedings.[38] And statistics indicate that individuals who receive legal assistance are between 17% and 1,380% more likely to receive better results than those who do not.[39]

What is needed is major, sustained and collaborative system-wide change — in the form of cultural and institutional innovation, research and funding-based reform.

Not surprisingly, people's attitudes towards the system reflect this reality. According to a recent study of self-represented litigants in the Canadian court system, various court workers were of the view that the "civil system [is] … very much open to abuse by those with more money at their disposal"; and the "general public has no idea about court procedures, requirements, the language, who or where to go for help".[40]

Further, according to a recent study, people expressed similar concerns about access to justice, including the following:

- "I don't have much faith in the lawyers and the system";
- the "language of justice tends to be … foreign to most people";
- "[p]eople with money have access to more justice than people without";
- I think there are a lot of people who don't … understand what the justice system is or how to use it – struggling to earn a living, dealing with addictions…"; and
- the justice system "should be equally important as our health care system…."[41]

5. What is Needed?

There are clearly major access to justice gaps in Canada.[42] The current system, which is inaccessible to so many and unable to respond adequately to the problem, is unsustainable.[43] Two things are urgently needed.

- **First,** a new way of thinking — a culture shift — is required to move away from old patterns and old approaches. We offer six guiding principles for change reflecting this culture shift in part 2 of this report.
- **Second,** a specific action plan — a goal-oriented access to justice roadmap — is urgently needed. That roadmap, which is set out in part 3 of this report, proposes goals relating to innovation, institutions and structures, and research and funding.

Taken together, what is needed is major, sustained and collaborative system-wide change — in the form of cultural and institutional innovation, research and funding-based reform.

PART 2

Moving Forward:
Six Guiding Principles for Change

We need a fresh approach and a new way of thinking

CULTURE SHIFT

Many dedicated people in our civil and family justice system do their best to make the system work and many reform efforts have been put forward in past years. However, it is now clear that the previous approach to access to justice problems and solutions, far from succeeding, has produced our present, unsustainable situation.

We need a fresh approach and a new way of thinking. In short, we need a significant shift in culture to achieve meaningful improvement to access to justice in Canada — a new culture of reform. As Lawrence M. Friedman observed, "law reform is doomed to failure if it does not take legal culture into account."[44]

This new culture of reform should be based on six guiding principles. Taken together, these principles spell out the elements of an overriding culture of reform. A new way of thinking, while important, is not enough. We also need innovative ideas, creative solutions and specific goals, as we set out in part 3. A full embrace of a new culture of reform is a precondition for developing those more specific measures.[45]

SIX GUIDING PRINCIPLES FOR CHANGE

Here are six guiding principles that make up this new culture.

Guiding Principles For Change

1. Put the Public First
2. Collaborate and Coordinate
3. Prevent and Educate
4. Simplify, Make Coherent, Proportional and Sustainable
5. Take Action
6. Focus on Outcomes

The focus must be on the people who need to use the system

1. Put the Public First

We need to change our primary focus. Too often, we focus inward on how the system operates from the point of view of those who work in it. For example, court processes — language, location, operating times, administrative systems, paper and filing requirements, etc. — typically make sense and work for lawyers, judges and court staff. They often do not make sense or do not work for litigants.

The focus must be on the people who need to use the system. This focus must include all people, especially members of immigrant, aboriginal and rural populations and other vulnerable groups. Litigants, and particularly self-represented litigants, are not, as they are too often seen, an inconvenience; they are why the system exists.[46]

Until we involve those who use the system in the reform process, the system will not really work for those who use it. As one court administrator recently commented, we need to "change … how we do business within the context of courts."[47] Those of us working within the system need to remember that it exists to serve the public. That must be the focus of all reform efforts.

2. Collaborate and Coordinate

We also need to focus on collaboration and coordination. The administration of justice in Canada is fragmented. In fact, it is hard to say that there is a system — as opposed to many systems and parts of systems. Justice services are delivered at various levels in this country — national, provincial and territorial, and often regional, local and sectoral as well.[48]

Within our current constitutional, administrative and sectoral frameworks, much more collaboration and coordination is not only needed but achievable. We can and must improve collaboration and coordination not only across and within jurisdictions, but also across and within all sectors and aspects of the justice system (civil, family, early dispute resolution, courts, tribunals, the Bar, the Bench, court administration, the academy, the public, etc.). We can and must improve collaboration, coordination and service integration with other social service sectors and providers as well.

We are long past the time for reinventing wheels. We can no longer afford to ignore what is going on in different regions and sectors and miss opportunities for sharing and collaboration.[49] Openness, proactivity, collaboration and coordination must animate how we approach improving access to justice at all levels and across all sectors of the system.[50] In sum, we all — those who use the justice system and those who work within the justice community — are in this project together. A just society is in all of our interest.

3. Prevent and Educate

We need to focus not only on resolving disputes but on preventing them as well. Access to justice has often been thought of as access to courts and lawyers.[51] However, we know that everyday legal problems mostly occur outside of formal justice structures.[52] This insight should lead us to fundamentally re-think how we approach legal problems in terms of preventing them from happening where possible, and when they do occur, providing those who experience them with adequate

To make a meaningful difference in the lives of the people who rely on the justice system, **we need to move beyond "wise words" and bridge the "implementation gap"**

information and resources to deal with them in an efficient and effective way.[53] As the Action Committee's Prevention, Triage and Referral Working Group indicated, "Avoiding problems or the escalation of problems, and/or early resolution of problems is generally cheaper and less disruptive than resolution using the courts. To borrow Richard Susskind's observation, 'it is much less expensive to build a fence at the top of a cliff than to have need of an expensive ambulance at the bottom.'"[54]

4. Simplify, Make Coherent, Proportional and Sustainable

We must work to make things simple, coherent, proportional and sustainable. One aspect of this task, building on the "public first" principle set out above, is the public's understanding of the system. The Canadian Bar Association acknowledged the system's complexity in its 1996 *Systems of Civil Justice Task Force Report*:

"Many aspects of the civil justice system are difficult to understand for those untrained in the law. Without assistance it is difficult, if not impossible, to gain access to a system one does not comprehend. Barriers to understanding include:

- unavailability and inaccessibility of legal information;
- complexity of the law, its vocabulary, procedures and institutions; and
- linguistic, cultural and communication barriers."[55]

In spite of recent efforts, the civil and family justice system is still too complicated and largely incomprehensible to all but those with legal training. As one participant in a recent access to justice survey of the public put it, we need to "make the whole thing much less complex."[56] Similarly, in a recent study of self-represented litigants, respondents regularly indicated feeling overwhelmed by the complexity of the system. One respondent indicated that the "procedure as I read it sounded easy … but it was anything but."[57] Another indicated that, as a result of the system's many procedural steps, "I was eaten alive."[58]

Our current formal procedures seem to grow ever more complicated and disproportionate to the needs of the litigants and the matters involved. Everyday legal problems need everyday solutions that are timely, fair and cost-effective. Procedures must be simple and proportional for the entire system to be sustainable. To improve the system, we need a new way of thinking that concentrates on simplicity, coherence, proportionality and sustainability at every stage of the process.

5. Take Action

We need research, thinking and deliberation. But for meaningful change to occur, they are not enough. We also need action. We cannot put off, to another day, formulating and carrying out a specific and effective action plan. There have been many reports and reform initiatives, but the concrete results have been extremely modest. As the Family Justice Working Group indicated, to make a meaningful difference in the lives of the people who rely on the justice system, we need to move beyond "wise words" and bridge the "implementation gap."[59]

6. Focus On Outcomes

Our final guiding principle calls for a shift in focus from process to outcomes. We must be sure our process is just. But we must not just focus on process. We should not be preoccupied with fair processes for their own sake, but with achieving fair and just **results** for those who use the system. Of course fair process is important. But at the end of the day, what people want most is a safe, healthy and productive life for themselves, their children and their loved ones. In a recent survey of public views about justice, one respondent defined justice as "access to society."[60] According to another respondent: "We're not even talking access to justice … we're talking access to food, to shelter, to security, to opportunities for ourselves and our kids and until we deal with that, the other stuff doesn't make sense."[61]

In order to make justice more accessible, we must keep in mind that we are trying to improve law and process not for their own sake, but rather for the sake of providing and improving justice in the lives of Canadians. Providing justice — not just in the form of fair and just process but also in the form of fair and just outcomes — must be our primary concern.

PART 3

Bridging the Implementation Gap Through Justice Development Goals: *A Nine-Point Access To Justice Roadmap*

The third part of this report sets out an access to justice roadmap, designed to bridge the implementation gap between reform ideas and real reform. It sets out three main areas for reform: (A) specific innovations, (B) institutions and structures, and (C) research and funding. Within each, we offer specific justice development goals.[62] Each of the goals has been significantly influenced by the Action Committee's working group reports.[63] This part of the report lays out an overall approach to respond to the serious access to justice problems facing the public within our civil and family justice system.

Access to Justice Roadmap

A. INNOVATION GOALS

1. Refocus the Justice System to Reflect and Address Everyday Legal Problems
2. Make Essential Legal Services Available to Everyone
3. Make Courts and Tribunals Fully Accessible Multi-Service Centres for Public Dispute Resolution
4. Make Coordinated and Appropriate Multidisciplinary Family Services Easily Accessible

B. INSTITUTIONAL AND STRUCTURAL GOALS

5. Create Local and National Access to Justice Implementation Mechanisms
6. Promote a Sustainable, Accessible and Integrated Justice Agenda through Legal Education
7. Enhance the Innovation Capacity of the Civil and Family Justice System

C. RESEARCH AND FUNDING GOALS

8. Support Access to Justice Research to Promote Evidence-Based Policy Making
9. Promote Coherent, Integrated and Sustained Funding Strategies

A. INNOVATION GOALS[64]

1. Refocus the Justice System to Reflect and Address Everyday Legal Problems – By 2018[65]

1.1 Widen the Focus from Dispute Resolution to Education and Prevention

As we saw earlier in part 1,[66] people experience and deal with most everyday legal problems outside of the traditional formal justice system; or put differently, only a small portion of legal problems — approximately 6.5%[67] — ever reach the formal justice system.[68]

The justice system must acknowledge this reality by widening its focus from its current (and expensive) court-based "emergency room" orientation to include education and dispute prevention. As one member of the public recently commented, it would be helpful if "a little more money can be spent on education … to prevent heading to jail or court, to prevent it before it starts…."[69] This shift in focus is designed to help the most people in the most efficient, effective and just way at the earliest point in the process.

To achieve this shift, the justice system must be significantly enhanced so that it provides a flexible continuum of justice services, which includes court services of course, but which is not dominated by those more expensive services (see Figs. 1 and 2).[70] The motto might be: "court if necessary, but not necessarily court."

1.2 Build a Robust "Front End": Early Resolution Services Sector

A key element of this expanded continuum of services is a robust, coherent and coordinated "front end" (prior to more formal court and tribunal related services), which is referred to by the Action Committee as the Early Resolution Services Sector (ERSS).[71] It is the ERSS that will provide accessible justice services at a time and place at which most everyday legal problems occur (see Fig. 1).

Figure 1: **Involvement of the ERSS and the Formal Justice System in the Overall Volume of Legal Problems**

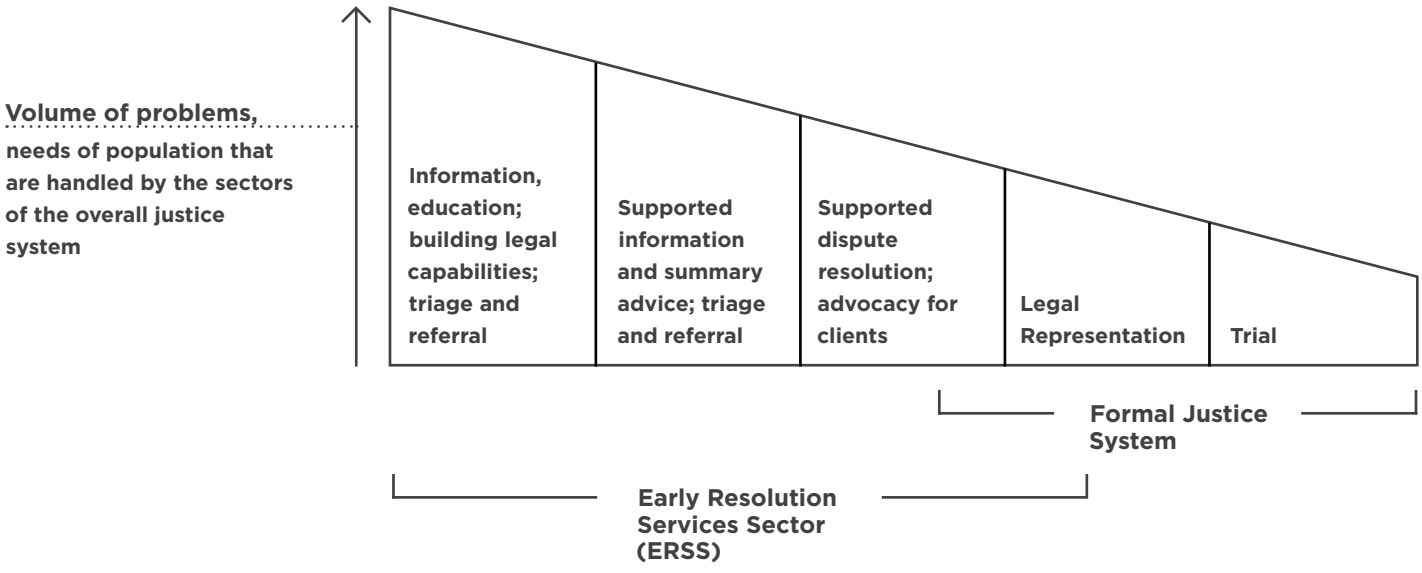
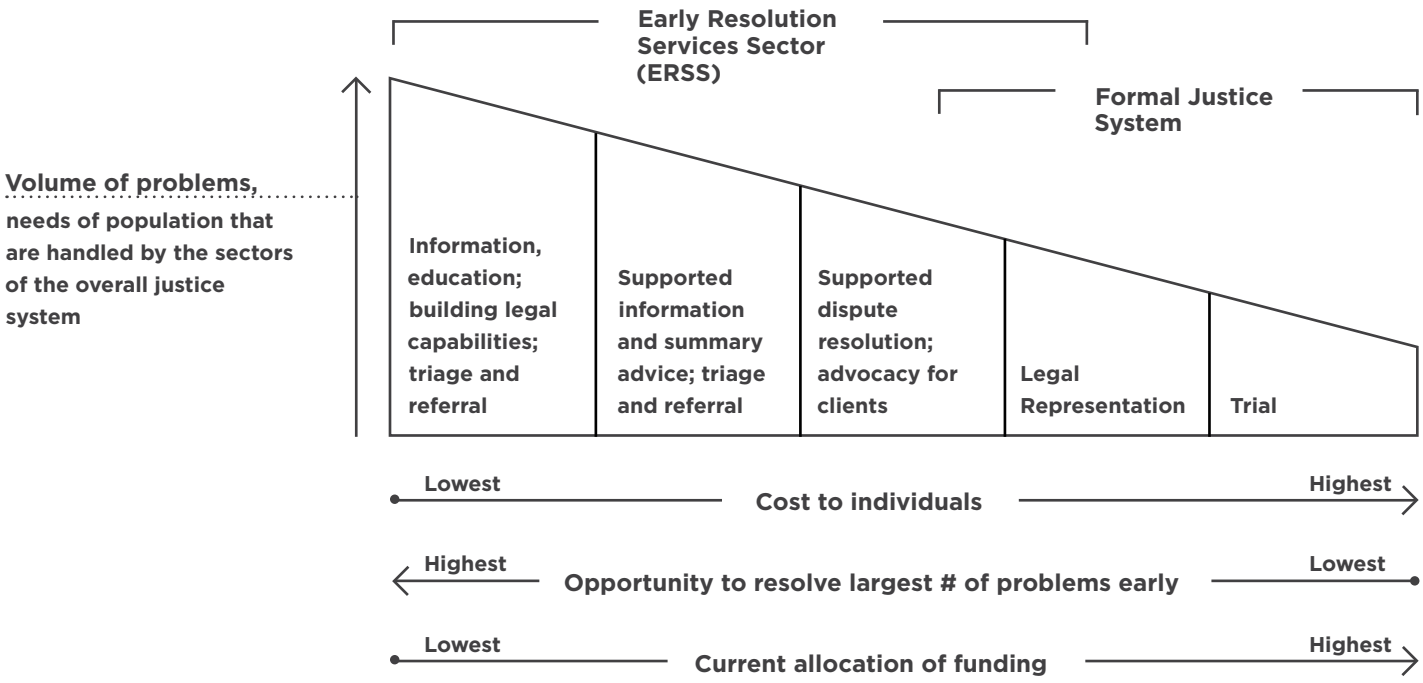


Figure 2: **The ERSS and Formal Justice System: Volume of needs vs. cost and funding allocations**



The ERSS is made up of services such as:

- community and public legal education;
- triage (i.e. effective channeling of people to needed services);
- pro bono services;
- other in-person, telephone and e-referral services;
- intermediary referral assistance (help in recognizing legal problems and connecting them with legal and other services);
- telephone and e-legal information services;[72]
- legal publications programs and in-person and e-law library services;[73]
- dispute resolution programs (e.g. family mediation and conciliation services, small claims mediation, lower cost civil mediation, etc.);
- various legal aid services, including legal clinics, certificate programs, duty counsel, etc.;
- community justice hubs;[74]
- co-location of services;[75]
- student support services including clinical services, student mediation initiatives, public interest programs, etc.; and
- others.[76]

Collectively, the ERSS is designed to provide resources that:

- assist people in clarifying the nature of law and problems that have a legal component;
- help people to develop their legal capacity to manage conflicts, resolve problems earlier by themselves and/or seek early and appropriate assistance;
- promote early understanding and resolution of legal problems outside the court system through alternative dispute resolution mechanisms and/or directly by parties themselves;
- assist people in navigating the court system efficiently and effectively; and
- provide effective referrals.

Given the breadth of servies available as part of the ERSS, it is critical that:

- the ERSS be developed in a coordinated, deliberate and collaborative way (in the context of all justice services) in order to avoid the kinds of overlap, gaps and inefficiencies that currently exist;
- means be established by all those active in this sector and all those providing funding to engage in action-oriented consultation to define and rationalize this sector;
- adequate training for ERSS personnel be provided, including training on how to coordinate services across the ERSS; and
- the ERSS be integrated into the formal justice system as part of an expanded justice system continuum, coordinated as far as possible with the provision of other services, including social services, health services,[77] education, etc., all with a view to meeting complex and often clustered everyday legal needs.[78] Coordination and communication will be critical for this further integration to take place. Examples of this kind of coordination include community hubs, coordinated community service centres, etc.[79]

1.3 Improve Accessibility to and Coordination of Public Legal Information

Providing access to legal information is an important aspect of the ERSS. The good news is that there is an enormous amount of publicly available legal information in Canada and that there are active and creative information providers.[80] But there are significant challenges. It is not always clear to the user what information is authoritative, current or reliable. There is work to be done to improve the accessibility and in some cases the quality of these resources. The biggest challenge, however, is the lack of integration and coordination among information providers. A much greater degree of coordination and integration is required to avoid duplication of effort and to provide clear paths for the public to reliable information. This could be achieved through enhanced coordination and cooperation among providers, the development of regional, sector or national information portals, authoritative online information hubs,[81] virtual self-help information services, certification protocols, a complaints process, etc.[82]

1.4 Justice Continuum Must Be Reflective of the Population it Serves

Services within the justice continuum must reflect and be responsive to Canada's culturally and geographically diverse population.[83] We need to focus on the needs of

Access to justice must become more than a vague and aspirational principle.

marginalized groups and communities and to recognize that there are many barriers to accessing the formal and informal systems — language, financial status, mental health capacity, geographical remoteness, gender, class, religion, sexual orientation, immigration status, culture and aboriginal status. We need to identify these barriers to access to justice and take steps to eliminate them.

2. Make Essential Legal Services Available to Everyone – By 2018[84]

2.1 Modernize and Expand the Legal Services Sector

Many everyday problems require legal services from legal professionals. For many, those services are not accessible. Innovations are needed in the way we provide essential legal services in order to make them available to everyone. The profession — including the Canadian Bar Association, the Federation of Law Societies of Canada, law societies, regional and other lawyer associations — will, together with the national and local access to justice organizations discussed below (see pt.3.B.5), take a leadership role in this important innovation process.[85]

Specific innovations and improvements that should be considered and potentially developed include:[86]

- limited scope retainers – "unbundling";[87]
- alternative business and delivery models;[88]
- increased opportunities for paralegal services;[89]
- increased legal information services by lawyers and qualified non-lawyers;[90]
- appropriate outsourcing of legal services;[91]
- summary advice and referrals;[92]
- alternative billing models;[93]
- legal expense insurance[94] and broad-based legal care;
- pro bono and low bono services;[95]
- creative partnerships and initiatives designed to encourage expanding access to legal services – particularly to low income clients;[96]
- programs to promote justice services to rural and remote communities as well as marginalized and equity seeking communities;[97] and
- programs that match unmet legal needs with unmet legal markets.[98]

2.2 Increase Legal Aid Services and Funding

Legal services provided by lawyers, paralegals and other trained legal service providers are vital to assuring access to justice in all sectors, particularly for low and moderate income communities and other rural, remote and marginalized groups in society. To assist with the provision of these services for civil and family legal problems, it is essential that the availability of legal aid services for civil and family legal problems be increased.

The Canadian justice system is currently served by **excellent lawyers, judges, courts and tribunals.**

2.3 Make Access to Justice a Central Aspect of Professionalism

Access to justice[99] must become more than a vague and aspirational principle. Law societies and lawyers must see it as part of a modern — "sustainable"[100] — notion of legal professionalism.[101] Access to justice should feature prominently in law school curricula, bar admission and continuing education programs, codes of conduct, etc.[102] Mentoring will be important to sustained success. Serving the public — in the form of concrete and measurable outcomes — should be an increasingly central feature of professionalism.[103]

3. Make Courts And Tribunals Fully Accessible Multi-Service Centres for Public Dispute Resolution – By 2019[104]

3.1 Courts and Tribunals Must Be Accessible to and Reflective of the Society they Serve[105]

The Canadian justice system is currently served by excellent lawyers, judges, courts and tribunals. The problem is not their quality, but rather their accessibility. While many of the goals and recommendations considered elsewhere in this report focus on the parts of the justice system that lie outside of formal dispute resolution processes (see e.g. Fig. 1), there is still a central role for robust and accessible public dispute resolution venues. Justice — including a robust court and tribunal system — is very much a central part of any access to justice discussion. However, to make courts and tribunals more accessible to more people and more cases, they must be significantly reformed with the user centrally in mind.[106]

While maintaining their constitutional and administrative importance in the context of a democracy governed by the rule of law, courts and tribunals must become much more accessible to and reflective of the needs of the society they serve. Put simply, just, creative and proportional processes should be available for all legal problems that need dispute resolution assistance. We recognize that much has been done. We also recognize that much more can be done. Further, the resources and support that are needed for initiatives discussed elsewhere in this report should not come at the expense of service to the public and respect for other important and ongoing initiatives that are working to improve access to justice in courts and tribunals.

3.2 Courts and Tribunals Should Become Multi-Service Dispute Resolution Centres

In the spirit of the "multi-door courthouse",[107] a range of dispute resolution services — negotiation, conciliation and mediation, judicial dispute resolution, mini-trials, etc., as well as motions, applications, full trials, hearings and appeals — should be offered within most courts and tribunals.[108] Some form of court-annexed dispute resolution process — mediation, judicial dispute resolution, etc. — should be more readily available in virtually all cases. While masters, judges and panel members will do some of this work, some of it can also be offered by trained court staff, duty counsel, dispute resolution officers, court-based mediators and others.[109]

Building on the current administrative law model, specialized court services — e.g. mental health courts, municipal courts,[110] commercial lists, expanded and accessible small claims and consumer courts, etc. — should be offered within the court or tribunal structure.

> **“We may well have something to learn from online dispute resolution on eBay and elsewhere....”**
>
> - Lord Neuberger, President of U.K. Supreme Court

Online dispute resolution options, including court and non-court-based online dispute resolution services, should also be expanded where possible and appropriate, particularly for small claims matters,[111] debt and consumer issues,[112] property assessment appeals[113] and others. As Lord Neuberger, President of the U.K. Supreme Court recently stated, “We may well have something to learn from online dispute resolution on eBay and elsewhere....”[114]

3.3 Court and Tribunal Services Must Provide Appropriate Services for Self-Represented Litigants

Appropriate and accessible processes must be readily available for litigants who represent themselves on their own, or with limited scope retainers. All who work in the formal dispute resolution system must be properly trained to assist litigants in ways that meet their dispute resolution needs to the extent that it is reasonably possible to do so.[115] To achieve this goal, courts and tribunals must be coordinated and integrated with the ERSS information and service providers (some of which may be located within courts and tribunal buildings).[116] Law and family law information centres should be expanded and integrated with all court services.[117] Civil and family duty counsel and pro bono programs (including lawyers and students) should also be expanded.[118]

3.4 Case Management Should be Promoted and Available in All Appropriate Cases

Timely — often early — judicial case management should be readily available. In addition, where necessary, case management officers, who may be lawyers, duty counsel, or other appropriately trained people, should be readily available at all courts and tribunals for all cases, with the authority to assist parties to manage their cases and to help resolve their disputes.[119]

Parties should be encouraged to agree on common experts; to use simplified notices; to plead orally where appropriate (to reduce the cost and time of preparing legal materials); and, generally, to talk to one another about solving problems in a timely and cost-effective manner.[120] Judges and tribunal members should not hesitate to use their powers to limit the number of issues to be tried and the number of witnesses to be examined. Scheduling procedures should also be put into place to allow for fast-track trials where possible.

Overall, judges, tribunal members, masters, registrars and all other such court officers should take a strong leadership role in promoting a culture shift toward high efficiency, proportionality and effectiveness through the management of cases. Of course, justice according to law must always be the ultimate guide by which to evaluate the efficiency and effectiveness of judicial and tribunal processes.

3.5 Court and Tribunal Processes and Procedures Must Be More Accessible and User-Friendly

The guiding principles in part 2 of the report — specifically including (pt.2.1) putting the public first, (pt.2.4) simplification, coherence, proportionality and sustainability, and (pt.2.6) a focus on outcomes – must animate court and tribunal innovations and reforms. The technology in all courts and tribunals must be modernized to a level that reflects the electronic needs, abilities and expectations of a modern society. Interactive court forms should be widely accessible. Scheduling, e-filing[121] and docket management should all be simplified and made easily accessible and all court and

tribunal documents must be accessible electronically (both on site and remotely).[122] Courts and tribunals should be encouraged to develop the ability to generate real time court orders.[123] Courthouse electronic systems should be integrated with other ERSS electronic and self-help services.

Teleconferencing, videoconferencing and internet-based conferencing (e.g. Skype) should be widely available for all appearance types, including case management, status hearings, motions, applications, judicial dispute resolution proceedings, mediation,[124] trials and appeals, etc.[125]

Better public communication, including through the use of social and other media, should be encouraged to demystify the court and tribunal process.[126] Overall, and in all cases, rules and processes should be simplified to promote and balance the principles of proportionality, simplification, efficiency, fairness and justice.[127]

3.6 Judicial Independence and Ethical Responsibilities

The innovations advanced in this report do not and must not undermine the importance of judicial independence or the ethical standards that judges strive to meet.[128] Rather, they must complement and reinforce these important principles.

4. Make Coordinated and Appropriate Multidisciplinary Family Services Easily Accessible – By 2018[129]

Major change is urgently needed in the family justice system.[130] The Family Justice Working Group Report sets out a comprehensive list of suggested reforms. That report is readily accessible and it is not necessary to reproduce all of its recommendations here. Instead we set out some of the main themes.

4.1 Progressive Values Must Guide All Family Justice Services

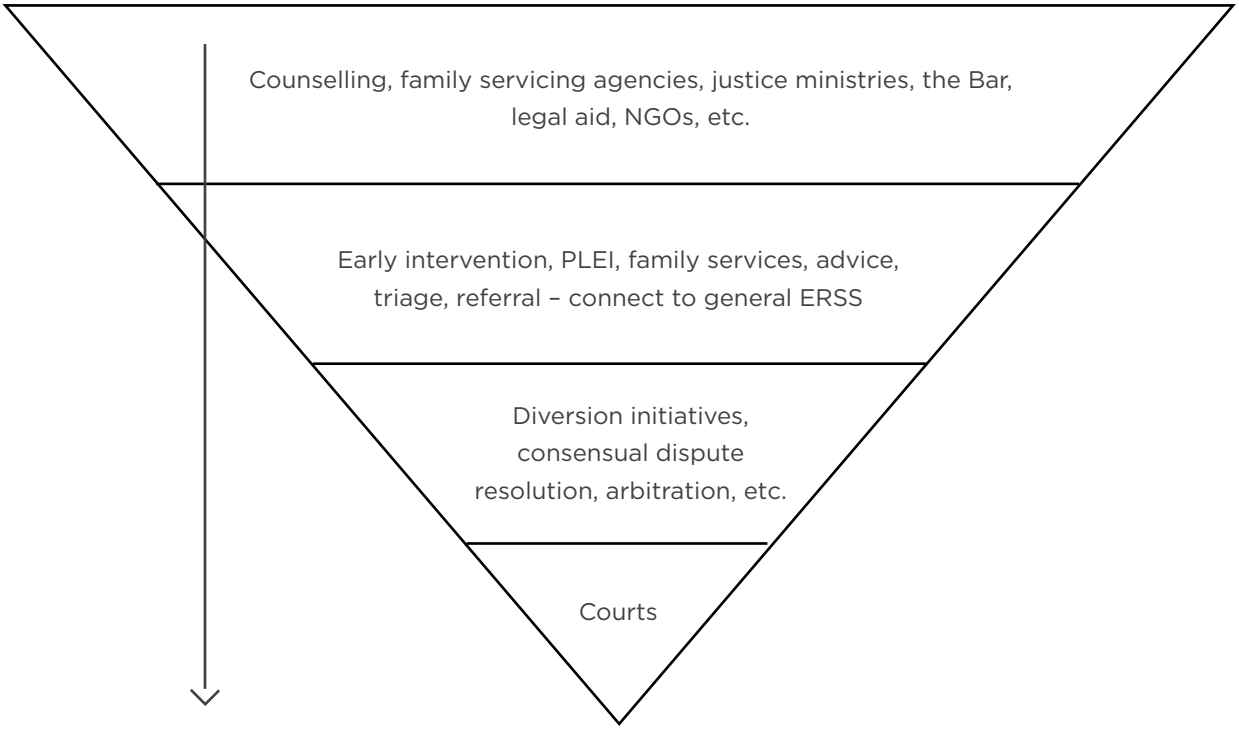
The core values, aims and principles that should guide all family justice reforms include: conflict minimization; collaboration; client-focus; empowered families; integration of multidisciplinary services; timely resolution; affordability; voice, fairness, safety; and proportionality.[131]

4.2 A Range of Family Services Must be Provided

A range of accessible and affordable services and options — in the form of a family justice services continuum — must be available and affordable for all family law problems (see Fig. 3). The family justice services system should offer an array of dispute resolution options to help families resolve their disputes, including information, mediation, collaborative law, parenting coordination, and adjudication.

Early "front end" services in the family justice services system should be expanded.[132] Specifically, this means allocating resources so as to make front-end services highly visible, easy to access and user-friendly; coordinating and integrating the delivery of all services for separating families; and making triage services (i.e. effective channeling of people to required services), including assessment, information and referral, available for all people with family law problems.

Figure 3: **Family Justice Services Continuum**[133]



4.3 Consensual Approaches to Dispute Resolution Should Be Integrated as Far as Possible into the Family Justice System

We need to expand significantly the availability of integrated family programs and services to support the proactive management of family law-related problems and to facilitate early, consensual family dispute resolution and to support a broader and deeper integration of consensual values and problem-solving approaches into the justice system culture.[134]

4.4 Innovation Across the Family Justice System Must Be Encouraged[135]

A number of specific family justice innovations are suggested below.

- Law society regulation of family lawyers should explicitly address and support the non-traditional knowledge, skills, abilities, traits and attitudes required by lawyers optimally to manage family law files.[136]
- Ministries of Justice, Bar associations, law schools, mediators, collaborative practitioners, PLEI providers and — to the extent appropriate — the judiciary, should contribute to and advocate for enhanced public education and understanding about the nature of collaborative values and the availability of consensual dispute resolution (CDR) procedures in the family justice system.
- Before filing a contested application in a family matter (but after filing initial pleadings), parties should be required to participate in a single non-judicial CDR session. Rules should indicate the types of processes that are included and ensure they are delivered by qualified professionals. Exemptions should be available

Free or subsidized CDR services should be available to those who cannot afford them.

where the parties have already participated in CDR, for cases involving family violence, or where it is otherwise urgent for one or both parties to appear before the court. Free or subsidized CDR services should be available to those who cannot afford them.

- Except in cases of urgency and consent orders, information sessions should be mandatory for self-represented litigants and all parents with dependent children. The sessions should take place as early as possible and before parties can appear in court. At a minimum, the following information should be provided: how to parent after separation and the effects of conflict on children; basic legal information; information about mediation and other procedural options; and information about available non-legal family services.
- Jurisdictions should expand reliance upon properly trained and supervised paralegals, law students, articling students and non-lawyer experts to provide a range of services to families with legal problems.

4.5 Courts Should Be Restructured to Better Handle Family Law Issues[137]

Recognizing that each jurisdiction would have its own version of the unified court model, to meet the needs of families and children, jurisdictions should consider whether implementation of a unified family court would be desirable.

A unified family court should retain the benefits of provincial family courts, including their distinctive and simplified procedures, and should have its own simplified rules, forms and dispute resolution processes that are attuned to the distinctive needs and limited means of family law participants. The judges presiding over proceedings in the court should be specialized. They should have or be willing to acquire substantive and procedural expertise in family law; the ability to bring strong dispute resolution skills to bear on family cases; training in and sensitivity to the psychological and social dimensions of family law cases (in particular, family violence and the impact of separation and divorce on children); and an awareness of the range of family justice services available to the families appearing before them.

Jurisdictions that do not consider implementation of a unified family court to be desirable or feasible should take into consideration the hallmarks of unified family courts as set out above and strive to provide them as far as appropriate and possible.

Family courts should adopt simplified procedures for smaller or more limited family law disputes. The same judge should preside over all pre-trial motions, conferences and hearings in family cases.

4.6 Substantive Family Law Should Be Modernized to Reflect More Consensual and Supportive Approaches to Dispute Resolution[138]

Canadian family law statutes should encourage CDR processes as the norm in family law, and the language of substantive law should be revised to reflect that orientation. Substantive family laws should provide more support for early and complete disclosure by providing for positive obligations to govern all stages of a case as well as serious consequences for failure to comply. Overall, substantive family laws should be simpler and offer more guidance by way of rules, guidelines and presumptions.

B. INSTITUTIONAL AND STRUCTURAL GOALS

5. Create Local and National Access to Justice Implementation Mechanisms – By 2016

5.1 Create and Support Coordinated Local Access to Justice Implementation Commissions (AJICs)

No one department or agency has sole responsibility for the delivery of justice in Canada.[139] That, in our view, is a core reason for why the improvement of access to justice continues to be such a challenge. For coherent, collaborative and coordinated change to occur, mechanisms need to be available in all provinces and territories. Where such collaborative mechanisms already exist, they need to be supported and perhaps reformed where necessary. Where they do not already exist, they need to be created and supported. While each region will have to identify or design a structure to suit its own particular needs, some structure or institution is needed to promote, design and implement change on a sustained and ongoing basis.[140] Where new financial or other support is required, it should not come at the expense of service to the public and respect for local organizations and providers. After all, it will be these local organizations, along with others, who will have the important ideas for moving forward together.

In order to provide some assistance in terms of what these mechanisms might look like, particularly in jurisdictions in which such mechanisms do not already exist or are not adequately developed and supported, we set out here an example of the kind of mechanism and approach we have in mind. For the purpose of this report, we call these mechanisms local standing access to justice implementation commissions (AJICs).

5.2 Broad-Based Membership

The membership of AJICs should be broadly based, with judicial and court administration participation, combined with multi-stakeholder collaboration, through top down and bottom up coherent, collaborative and consultative approaches. The public – through various representative organizations – should play a central role. The kinds of individuals and organizations that should be part of these committees include the member organizations of the Action Committee, as well as other relevant stakeholder groups and individuals.[141]

Members from the justice sector must be directly linked at a leadership level with their organizations and must commit for a minimum of three years. In addition to volunteer individual members, AJICs need to have administrative staff and support. The modest support needed for AJICs should come from stakeholders. The AJICs must consist of leaders who are champions of change who will form strong guiding coalitions for change.[142]

There are innovative and efficient ways of bringing these sorts of mechanisms together. Local centres, in-person meetings, electronic and distance participation, and other accessible methods – including the use of social media, streaming, blogging, and other broad-based and participatory tools – should be considered. These tools should also allow for meaningful public engagement and feedback where possible.

The AJICs must consist of leaders who are champions of change who will form **strong guiding coalitions for change**

5.3 Innovation and Action-Oriented Terms of Reference

AJICs must be innovative and action-oriented, not just advisory. They need to inspire, lead and support change by clearly defining problems and crafting solutions and assisting with the piloting, implementation and evaluation of reforms. Early on in the process, AJICs should follow up on various recent mapping initiatives[143] to build on some of the good work that has been done in identifying key players and important initiatives in the access to justice communities.

Key priority areas need to be targeted and promising initiatives developed and pursued, likely through the formation of innovation and implementation working groups within the various AJICs. For example, priority areas could include legal and court services, family law, early resolution services,[144] legal aid, legal education in schools, homelessness, poverty and administrative law, etc. The work and recommendations of the Action Committee, it is hoped, will provide a good place to start.

5.4 Other Sector and Institution Specific Access to Justice Groups

In addition to standing AJICs, other access to justice groups should be encouraged where appropriate in the context of individual organizations and sectors. For example, all courts and tribunals should have an access to justice committee designed to conduct self-studies, share best practices, review performance, develop innovations, etc. Further, all law societies,[145] Bar associations[146] and law schools should create internal standing access to justice committees. These groups should be connected to the AJICs, to avoid duplication and facilitate coordination.

5.5 Establish Permanent National Access to Justice Organization

In addition to the AJICs, a national organization should be established or created within an existing organization or organizations to promote and monitor, on a long-term basis, access to civil and family justice in Canada.[147] Specifically, it will monitor and promote a national access to justice policy framework, best practices and standards,[148] identify and share information, review international developments, potentially conduct and support research on pressing access to justice issues, support "train-the-trainer" programs in the context of AJICs, etc. This organization, which will be critical for continuing the reform agenda following the completion of the Action Committee's work, will provide a coordinated voice to the access to justice agenda in Canada.

6. Promote a Sustainable, Accessible and Integrated Justice Agenda through Legal Education – By 2016

6.1 Law School, Bar Admission and Continuing Life Long Learning

Law schools, bar admission programs and continuing legal education providers should put a modern access to justice agenda at the forefront of Canadian legal education. This agenda will be an important part of a new legal reform culture. While

> **“ [J]ustice incorporates our life … perhaps it can be taught in school** as a life skill so that kids are more aware of what it means to make a choice and do the right thing for themselves and each other. **”**
>
> - participant in a recent survey on access to justice

law faculties will need to develop their own particular research and teaching agendas, and recognizing that many innovative initiatives have already begun, the following initiatives should be developed and expanded.

- Modules, courses and research agendas focused specifically on access to justice, professionalism, public service, diversity, pluralism and globalization.[149] The needs of all individuals, groups and communities, and in particular self-represented litigants, aboriginal communities, immigrants, other marginalized and vulnerable groups and rural communities should be specifically considered.
- Increased skills based learning that focuses on consensual dispute resolution,[150] alternative dispute resolution and other non-adversarial skills.[151]
- Social, community, poverty law, mediation and other clinical, intensive and experiential programs.
- The theory and practice of family law should be promoted as a central feature of the law school program.
- Research and promotion of different ways of delivering legal services that provide affordable and accessible services to the public as well as a meaningful professional experience for lawyers, including a reasonable standard of living.[152]

Similarly, bar admission programs and continuing legal education providers should promote access to justice as a central feature of essentially all lawyering programs.[153]

6.2 Promote Access to Justice Education in Primary, Secondary and Post-Secondary Education

Primary, secondary and post-secondary education should promote teaching and learning about access to justice, law and a just society. Building legal capacity through education helps people to manage their lives, property and relationships, to avoid problems and also to understand and address them effectively when they do arise. As one respondent to a recent access to justice survey put it: “[J]ustice incorporates our life … perhaps it can be taught in school as a life skill so that kids are more aware of what it means to make a choice and do the right thing for themselves and each other.”[154]

A national dialogue involving Ministries of Education, Ministries of Justice, legal educators, relevant community groups and others should be promoted to push forward a common access to justice framework for schools,[155] colleges and universities. AJICs should play an important role here.

7. Enhance the Innovation Capacity of the Civil and Family Justice System – By 2016

We need to expand the innovation capacity at all levels and in all sectors of the justice system. The national access to justice organization could be a key leader in this capacity building process, along with the AJICs, other access to justice groups, researchers and others. Research on what exists, what works and what is needed, along with evaluations and metrics of success, will all be important aspects of building innovation capacity.[156]

Money spent on the resolution of legal problems results in **individual and collective social, health and economic benefits**

C. RESEARCH AND FUNDING GOALS

8. Support Access to Justice Research to Promote Evidence-Based Policy Making – By 2015

8.1 Promote a National Access to Justice Research and Innovation Agenda that is both Aspirational and Practical

This goal is directed primarily to researchers and governments, but additionally to all those who care about working with and improving the system – including AJICs, etc.

A national research and innovation agenda should be both aspirational and practical. Innovative and forward thinking will be central to this project.[157] Equally important to this process, however, will be to look at what works.[158] Collaboration among legal researchers, economists, social scientists, health care researchers and others should be encouraged.

8.2 Develop Metrics of Success and Systems of Evaluation

Reliable and meaningful metrics and benchmarks need to be established across all levels of the system in order to evaluate the effects of reform measures. We need better information in the context of increasing demand, increasing costs and stretched fiscal realities.[159]

9. Promote Coherent, Integrated and Sustained Funding Strategies – By 2016

Although research on the costs and benefits of delivering and not delivering accessible justice is still developing,[160] there is meaningful evidence tending to establish the benefits of sound civil and family economic investment.[161] Money spent on the resolution of legal problems results in individual and collective social, health and economic benefits.[162]

Based on this developing body of research, a sustainable justice funding model — recognizing the realities of current fiscal challenges but also recognizing the long term individual and collective social and economic benefits that flow from sound justice investment — needs to be encouraged and developed. There are several aspects to this proposed funding model:

- increased legal aid;
- governments working with participants from all sectors of the justice community;
- funding reallocation within the justice system and across public institutions as better coordination, more effective front end services and better education produce efficiencies;[163] and
- AJICs (which will require sustained funding themselves) to identify key research, innovation and action items and to work collaboratively with the national access to justice organization and others toward developing realistic and sustainable funding goals and strategies.

CONCLUSION

Access to justice is at a critical stage in Canada.... Now is the time to act.

Access to justice is at a critical stage in Canada. Change is urgently needed.[164] This report provides a multi-sector national plan for reform. It is a roadmap, not a repair manual. The approach is to provide leadership through the promotion of concrete development goals. These are recommended goals, not dictates. Specific local conditions or problems call for locally tailored approaches and solutions. We believe that those responsible for implementing change — all local, provincial, territorial and national justice system stakeholders — will find this roadmap useful for making meaningful reforms in the service of the everyday justice needs of Canadians. The timeframes attached to each development goal are suggestions. They may change depending on the scope of the goal as well as on local needs and conditions.

Although we face serious access to justice challenges, there are many reasons to be optimistic about our ability to bridge the current implementation gap by pursuing concrete access to justice reforms. People within and beyond the civil and family justice system are increasingly engaged by access to justice challenges and many individuals and organizations are already working hard for change.

We hope that the work of the Action Committee and in particular this report will lead to:

- a measurable and significant increase in civil and family access to justice within 5 years;
- a national access to justice policy framework that is widely accepted and adopted;
- local jurisdictions, through AJICs with strong multi-sector leadership, putting in place strategies and mechanisms for meaningful and sustainable change;
- a permanent national body being created and supported to promote, guide and monitor meaningful local and national access to justice initiatives;
- access to civil and family justice becoming a topic of general civic discussion and engagement – an issue of everyday individual and community interest and wellbeing; and
- the public being placed squarely at the centre of all meaningful civil and family justice education and reform efforts.

In this report we have described the need, set out the guiding principles and provided a roadmap for change. Now it is time to act.

ACKNOWLEDGMENTS

Access to Civil and Family Justice: A Roadmap for Change is the final report of the Action Committee on Access to Justice in Civil and Family Matters.

The Action Committee is grateful for the tireless efforts of Professor Trevor C.W. Farrow, Osgoode Hall Law School and Chair of the Canadian Forum on Civil Justice, who was the "holder of the pen" for this final report.

ACTION COMMITTEE

The Action Committee was convened in late 2008 at the invitation of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada as a catalyst for meaningful action to justice reform. The Action Committee, which is a collaborative, consultative and stakeholder-driven initiative, includes:

- The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada (Honourary Chair)
- The Honourable Mr. Justice Thomas A. Cromwell, Supreme Court of Canada (Chair)
- Alberta Justice
- Association of Legal Aid Plans
- Canadian Association of Provincial Court Judges
- Canadian Bar Association
- Canadian Council of Chief Judges
- Canadian Forum on Civil Justice
- Canadian Institute for the Administration of Justice
- Canadian Judicial Council
- Canadian Superior Court Judges Association
- Canadian Public (represented by Mary Ellen Hodgins)
- Council of Canadian Law Deans
- Department of Justice Canada
- Federation of Law Societies of Canada
- Heads of Court Administration
- British Columbia Ministry of Justice
- Pro Bono Law Ontario
- Public Legal Education Association of Canada

STEERING COMMITTEE, WORKING GROUPS AND SECRETARIAT

The individual members of the Steering Committee of the Action Committee include:

- The Honourable Mr. Justice Thomas A. Cromwell (Chair)
- Mark Benton, Q.C. (Association of Legal Aid Plans)
- Deputy Minister of Justice Raymond Bodnarek, Q.C. (Alberta Justice)
- Melina Buckley, Ph.D. (Canadian Bar Association)
- The Honourable juge en chef Élizabeth Corte (Canadian Council of Chief Judges)
- Rick Craig (Public Legal Education Association of Canada)
- Professor Trevor C.W. Farrow, Ph.D. (Canadian Forum on Civil Justice)
- Jeff Hirsch (Federation of Law Societies of Canada)
- M. Jerry McHale, Q.C. (British Columbia Ministry of Justice)

The Action Committee is extremely grateful to all members of the Steering Committee for their constant leadership and guidance throughout the work of the Action Committee. Much of the work of the Action Committee, designed to look at four key priority areas, was done by four working groups: the Court Processes Simplification Working Group, the Access to Legal Services Working Group, the Prevention, Triage and Referral Working Group, and the Family Justice Working Group. Reports from these working groups (which include lists of their members) were released as a collection of final working group reports in April 2013. The Action Committee is very grateful to the

members of these working groups for their significant efforts. The working group reports can be found on the website of the Canadian Forum on Civil Justice (**http://www.cfcj-fcjc.org/collaborations).**

The Action Committee would also like to thank members of its effective and efficient secretariat at the Department of Justice for Canada who have worked tirelessly to support the work of the Action Committee, the Steering Committee and the working groups.

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- Federation of Law Societies of Canada
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This report was prepared as part of the Action Committee's overall collaborative and consultative process, with direct guidance from the Steering Committee and in consultation with Mary Ellen Hodgins (on behalf of the Canadian public). Research and publication assistance was provided by the Canadian Forum on Civil Justice. The Action Committee has also relied heavily — and at times directly — on the reports of the Action Committee's four working groups.

Comments on this report can be sent to the Action Committee through the Canadian Forum on Civil Justice, online at: <**communications@cfcj-fcjc.org**>.

The Action Committee consists of senior representatives from many organizations in the justice system and a representative of the Canadian public, who share a commitment to working together to improve access to justice for the Canadian public. This report offers a general consensus on the issues discussed, but does not necessarily reflect the formal position of each of the respective organizations represented.

This report is published by the Action Committee on Access to Justice in Civil and Family Matters, Ottawa, Canada, October 2013.

ENDNOTES

[1]Rt. Hon. Beverley McLachlin, P.C., "The Challenges We Face", citing the former Chief Justice of Ontario (remarks presented at Empire Club of Canada, Toronto, 8 March 2007), online: Supreme Court of Canada <http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm07-03-08-eng.asp>.

[2]As the Chief Justice of Canada recently acknowledged, "Regrettably, we do not have adequate access to justice in Canada." Rt. Hon. Beverley McLachlin, P.C., from "Forward" in Michael Trebilcock, Anthony Duggan and Lorne Sossin, eds., *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) at ix. Similarly, according to Justice Thomas Cromwell: "By nearly any standard, our current situation falls far short of providing access to the knowledge, resources and services that allow people to deal effectively with civil and family legal matters. There is a mountain of evidence to support this view." Hon. Thomas A. Cromwell, "Access to Justice: Towards a Collaborative and Strategic Approach", Viscount Bennett Memorial Lecture, (2012) 63 U.N.B.L.J. 38 at 39.

[3]Melina Buckley, Plenary Address (Canadian Bar Association "Envisioning Equal Justice Summit: Building Justice for Everyone", Vancouver, 26 April 2013). See also Canadian Bar Association, Envisioning Equal Justice Project, *Equal Justice Report: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, August 2013).

[4]See, for example, the following comments from Justice Thomas Cromwell:

> In general terms, members of our society would have appropriate access to civil and family justice if they had the knowledge, resources and services to deal effectively with civil and family legal matters. I emphasize that I do not have a "court–centric" view of what this knowledge in these resources and services include. They include a range of out-of-court services, including access to knowledge about the law and the legal process and both formal and informal dispute resolution services, including those available through the courts. I do not view access to justice … as simply access to litigation or even simply as access to lawyers, judges and courts, although these are, of course, aspects of what access to justice requires.

Hon. Thomas A. Cromwell, "Access to Justice: Towards a Collaborative and Strategic Approach", *supra* note 2 at 39.

[5]See e.g. Patricia Hughes, "Law Commissions and Access to Justice: What Justice Should We Be Talking About?" (2008) 46 Osgoode Hall L.J. 773 at 777-779. See generally Roderick A. Macdonald, "Access to Justice in Canada Today: Scope, Scale and Ambitions" in Julia Bass, W.A. Bogart, Frederick H. Zemans, eds., *Access to Justice for a New Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005) 19.

[6]Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2007) at 88.

[7]See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 2, 10-12.

[8]Mary Bess Kelly, "Divorce cases in civil court, 2010/2011" (Ottawa: Minister of Industry, 28 March 2012) at 7-9, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11634-eng.pdf> (this figure is based on marriages ending before a couple's 30th wedding anniversary). For a discussion of the public costs of family breakdown, see Rebecca Walberg and Andrea Mrozek, *Private Choice, Public Costs: How Failing Families Cost Us All* (Ottawa: Institute of Marriage and Family Canada, June 2009).

[9]Everyday legal problems — often termed "justiciable problems" — include a broad range of problems that might raise legal issues and/or might be addressed by way of legal solutions. See e.g. Hazel Genn *et al.*, *Paths to Justice: What People do and Think About Going to Law* (Oxford: Hart, 1999) at v-vi, 12, and generally c. 2. See further Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 5-6; Pascoe Pleasence *et al.*, *Causes of Action: Civil Law and Social Justice* (Norwich: Legal Services Commission, 2004) at 1. For a recent Australian study, see Christine Coumarelos *et al.*, *Legal*

Australia-Wide Survey: Legal Need in Australia (Sydney: Law and Justice Foundation of New South Wales, August 2012).

[10]See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 23-26. More vulnerable groups include, for example, people who self-report as aboriginal, being part of a visible minority, disabled, or being on social assistance. See *ibid*. See further Pleasence *et al*., *Causes of Action*, *ibid.* at 14-31.

[11]Currie, *The Legal Problems of Everyday Life*, *ibid.* at 23-25.

[12]See e.g. Pleasence *et al*., *Causes of Action*, *supra* note 9 at 37-44; Currie, *The Legal Problems of Everyday Life*, *ibid.* at 49-51. See further Pascoe Pleasence *et al*., "Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators" (2004) 1 J. Emp. Legal Stud. 301.

[13]See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 42-48.

[14]*Ibid*. at 73. See further Nigel J. Balmer *et al*., *Knowledge, Capability and the Experience of Rights Problems* (London: Public Legal Education Network, March 2010) at 25-26, 42-43. See further Mary Stratton and Travis Anderson, *Social, Economic and Health Problems Associated with a Lack of Access to the Courts* (Edmonton: Canadian Forum on Civil Justice, March 2006).

[15]See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 33. See further Balmer *et al*., *Knowledge, Capability and the Experience of Rights Problems*, *ibid.* at 20-21.

[16]See e.g. Currie, *The Legal Problems of Everyday Life*, *ibid.* at 88-89. See further Alexy Buck, Pascoe Pleasence and Nigel J. Balmer, "Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups" (2005) 39(3) Soc. Pol'y Admin. 302.

[17]See Balmer *et al*., *Knowledge, Capability and the Experience of Rights Problems*, *supra* note 14 at 3 [citation omitted]. See further Pleasence *et al*., *Causes of Action, supra* note 9. For current research on the cost of civil justice in Canada, see Canadian Forum on Civil Justice, "The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems", online: Canadian Forum on Civil Justice <http://www.cfcj-fcjc.org/cost-of-justice>.

[18]As the Chief Justice of Canada has further recognized, the "most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve." Rt. Hon. Beverley McLachlin, P.C., "The Challenges We Face", *supra* note 1 [citation omitted].

[19]Mark D. Agrast *et al., Rule of Law Index 2012-2013* (Washington, D.C.: The World Justice Project, 2012) at 27; Mark D. Agrast *et al*., *Rule of Law Index 2011* (Washington, D.C.: The World Justice Project, 2011) at 23.

[20]*Rule of Law Index 2011*, *ibid*. at 23.

[21]Legal Aid Ontario, "Am I eligible for legal aid?", online: LAO <http://www.legalaid.on.ca/en/getting/eligibility.asp>.

[22]Legal Aid Alberta, "Accessing Legal Aid: Eligibility", online: LAA <http://www.legalaid.ab.ca/help/Pages/Eligibility.aspx>. In some cases certain limited advice may be available for individuals and families earning slightly more than these amounts. See *ibid*.

[23]Legal Aid Manitoba, "Who Qualifies Financially", online: LAM <http://www.legalaid.mb.ca/>.

[24]Legal Aid Saskatchewan, "Am I eligible for Legal Aid?", online" LAS <http://69.27.116.234/legal_help/eligible.php>.

[25]See e.g. Legal Aid Ontario, "Types of help", online: LAO <http://www.legalaid.on.ca/en/getting/typesofhelp.asp>.

[26]See Jamie Baxter and Albert Yoon, *The Geography of Civil Legal Services in Ontario*, Report of the mapping phase of the Ontario Civil Legal Needs Project (Toronto: The Ontario Civil Legal Needs Project Steering Committee, November 2011) at 63 [citation omitted], online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>.

[27]Charlotte Santry, "The Going Rate" (2013 Legal Fees Survey), *Canadian Lawyer* (June 2013) 33 at 34, online: <http://www.canadianlawyermag.com/images/stories/pdfs/Surveys/2013/cljune13legalfees.pdf>.

[28]*Ibid*. at 36. As a general matter, a 3-day civil trial is often considered to cost overall in the range of $60,000 (or more depending on the amounts and issues involved). See e.g. Tracey Tyler, "A 3-day trial likely to cost you $60,000" *Toronto Star* (3 March 2007), online: <http://www.thestar.com/news/2007/03/03/a_3day_trial_likely_to_cost_you_60000.html>.

[29]For example, in the U.K., the cost of family law cases involving children reportedly increased by 71% between 1998 and 2003, while the average length of a family law case rose from 50 weeks in 1998 to 63 weeks in 2003. See Vicky Kemp, Pascoe Pleasence and Nigel J. Balmer, "Incentivising Disputes: The Role of Public Funding in Private Law Children Cases" (2005) 27 J. Soc. Welfare & Fam. L. 125 at 126. Indicators of rising costs and fees have also been reported in Australia and Canada. In Australia, see e.g. PricewaterhouseCoopers, *Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law* (Australia: Legal Aid Queensland, 2009) at 15. One recent Canadian report indicates that "many [law firms] increased their legal fees in 2011 and 2012". See Santry, "The Going Rate", *supra* note 27 at 33. However, according to the same report, of those who responded, 56% plan to freeze their fees in 2013. See *ibid*.

[30]As the Chief Justice of Canada has recognized, "Among the hardest hit are the middle class. They earn too much to qualify for legal aid, but frequently not enough to retain a lawyer for a matter of any complexity or length. When it comes to the justice system, the majority of Canadians do not have access to sufficient resources of their own, nor do they have access to the safety net programs established by the government." Rt. Hon. Beverley McLachlin, P.C., from "Forward" in Trebilcock, Duggan and Sossin, eds., *Middle Income Access to Justice*, *supra* note 2 at ix.

[31]Russell Engler, "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about when Counsel is Most Needed" (2010) 37 Fordham Urban L.J. 37 at 40 (citing Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, updated report (Washington, D.C.: Legal Services Corporation, September 2009).

[32]See *supra* notes 6-17.

[33]See e.g. Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 55-56 and generally 55-67 and 88. Compare Ontario Civil Legal Needs Project, *Listening to Ontarians* (Toronto: Ontario Civil Legal Needs Project Steering Committee, May 2010) at 31.

[34]See e.g. Ontario Civil Legal Needs Project, *Listening to Ontarians*, *ibid.* at 32, 39-40; Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (May 2013) at 39, online: <http://www.representing-yourself.com/doc/report.pdf>. Compare Ipsos Reid Survey (2009) in Law Society of Alberta, "Most Albertans Satisfied with their Lawyers: Ipsos Reid Poll Shows" *The Advisory* 8:3 (June 2010) 7 at 8 ("Other Challenges in Resolving Legal Problems – Expected Cost"), online: LSA <http://www.lawsociety.ab.ca/files/newsletters/Advisory_Volume_8_Issue_3_Jun2010/PollCharts.pdf>; Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 56.

[35]See e.g. Balmer *et al*., *Knowledge, Capability and the Experience of Rights Problems*, *supra* note 14 at 31-36. See further Hazel Genn *et al*., *Tribunals for Diverse Users*, Department for Constitutional Affairs Research Series 1/06 (London: Department for Constitutional Affairs, 2006).

[36]Ab Currie, "Self-Helpers Need Help Too" (2010) [unpublished] at 1, available online: <http://www.lawforlife.org.uk/data/files/self-helpers-need-help-too-ab-currie-2010-283.pdf>. See also Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 14 (citing the number at 44%); Balmer *et al*., *Knowledge, Capability and the Experience of Rights Problems*, *ibid*. at 14 (citing the number at closer to 34%).

[37]See e.g. Trevor C.W. Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, A White Paper for the Association of Canadian Court Administrators (Toronto and Edmonton: 27 March 2012) at 14-16. See also Macfarlane, *The National Self-Represented Litigants Project*, *supra* note 34 at 33-35.

[38]See e.g. Rachel Birnbaum and Nicholas Bala, "Views of Ontario Lawyers on Family Litigants without Representation" (2012) 63 U.N.B.L.J. 99 at 100; Canadian Bar Association, Standing Committee on Access to Justice, "Underexplored Alternatives for the Middle Class" (Ottawa: Canadian Bar Association, February 2013) at 3-4 [citation omitted].

[39]Canadian Bar Association, Standing Committee on Access to Justice, "Toward National Standards for Publicly-Funded Legal Services" (Ottawa: Canadian Bar Association, April 2013) at 18, citing Russell Engler, "Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?" (2010) 9:1 Seattle J. for Soc. Just. 97 at 115, citing Rebecca Sandefur, "Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes" (26 March 2008) at 24. See further Sean Rehaag, "The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment" (2011) 49 Osgoode Hall L.J. 71 at 87 (reporting that in refugee cases, claimants represented by lawyers were 70.1% more likely to succeed than claimants represented by consultants, and 275% more likely to succeed than unrepresented claimants).

[40]Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37 at 46.

[41]Trevor C.W. Farrow, "What is Access to Justice?" Osgoode Hall L.J. (in progress), excerpts of which were featured as part of the opening plenary presentation at the Canadian Bar Association, "Envisioning Equal Justice Summit: Building Justice for Everyone", *supra* note 3. See also Canadian Bar Association, Envisioning Equal Justice Project, *Equal Justice Report: An Invitation to Envision and Act, supra* note 3.

[42]This problem has been acknowledged and described by the Chief Justice of Canada as follows: "Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system. Some of them decide to become their own lawyers. Our courtrooms today are filled with litigants who are not represented by counsel, trying to navigate the sometimes complex demands of law and procedure. Others simply give up." Rt. Hon. Beverley McLachlin, P.C., "The Challenges We Face", *supra* note 1.

[43]As Justice Thomas Cromwell has observed, "I have serious concerns that we have hit the iceberg but are being too slow to recognize the seriousness of the damage.... [T]he problem is real and growing." Hon. Thomas A. Cromwell, Address in 66 *Bulletin* (Spring 2011) 22 at 23 (on the occasion of his induction as an Honorary Fellow of the American College of Trial Lawyers, Washington, D.C., 22 October 2011).

[44]Lawrence M. Friedman, "Is There a Modern Legal Culture?" (July 1994) 7:2 Ratio Juris 117 at 130.

[45]For a recent discussion on shifting culture in the legal profession, see Canadian Bar Association, Legal Futures Initiative, *The Future of Legal Services in Canada: Trends and Issues* (Ottawa: Canadian Bar Association, 2013) at 29, 34 and 39.

[46]See Law Commission of Ontario, "Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System" (Toronto, September 2009) at 11, online: LCO <http://www.lco-cdo.org/familylaw/Family%20Law%20Process%20Consultation%20Paper%20-%20September%202009.pdf>; Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37 at 28-30. See also generally Macfarlane, *The National Self-Represented Litigants Project, supra* note 34; Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report* (Ottawa: Canadian Bar Association, August 1996) at 17.

[47]See Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37 at 29.

[48]See generally Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report*, *supra* note 46 at 19.

[49]See *ibid*. at 76-78.

[50]According to the Chief Justice of Canada, "If we are to have any success in improving access, a coordinated, collaborative approach ... is necessary." Rt. Hon. Beverley McLachlin, P.C., from "Forward" in Trebilcock, Duggan and Sossin, eds., *Middle Income Access to Justice*, *supra* note 2 at x.

[51]See *supra* notes 4-5 and accompanying text.

[52]See *supra* pt.1.1 and *infra* notes 66-68 and accompanying text.

[53]For general discussions, see e.g. Coumarelos *et al*., *Legal Australia-Wide Survey: Legal Need in Australia*, *supra* note 9 at 207-214. In Canada, see recently Canadian Bar Association, Standing Committee on Access to Justice, "Underexplored Alternatives for the Middle Class", *supra* note 38 at 8-9.

[54]Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, "Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector" (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 9 [citations omitted], online: CFCJ <http://www.cfcj-fcjc.org/collaborations>. See further Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008) at sec. 6.7.

[55]Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report*, *supra* note 46 at 16.

[56]Farrow, "What is Access to Justice?", *supra* note 41.

[57]Macfarlane, *The National Self-Represented Litigants Project, supra* note 34 at 54 [citation omitted].

[58]*Ibid*. [citation omitted].

[59]See e.g. Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, "Meaningful Change for Family Justice: Beyond Wise Words" (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 3, online: CFCJ <http://www.cfcj-fcjc.org/collaborations>.

[60]Farrow, "What is Access to Justice?", *supra* note 41.

[61]*Ibid*.

[62]The Action Committee's approach to the use of development goals has been directly influenced by the United Nations Millennium Development Goals (see online: United Nations <http://www.un.org/millenniumgoals/>). The Millennium Development Goals "range from halving extreme poverty rates to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015" and are designed to "form a blueprint agreed to by all the world's countries and all the world's leading development institutions." See *ibid*. The Action Committee has benefitted from the work of Sam Muller and the Hague Institute for the Internationalisation of Law (HiiL). See e.g. HiiL, *Towards Basic Justice Care for Everyone: Challenges and Promising Approaches*, Trend Report/Part 1 (The Hague: HiiL, 2012). For further examples of HiiL's work, see *infra* notes 157-158.

[63]Action Committee on Access to Justice in Civil and Family Matters, Final Working Group Reports, online: Canadian Forum on Civil Justice <http://www.cfcj-fcjc.org/collaborations>.

[64]Much of the detail and analysis (and examples) that animate these innovation goals can be found in the four Action Committee working group reports (discussed further in the Acknowledgments section of this report).

[65]Much of the material in this section of the report is very much influenced by, and in some cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, "Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector", *supra* note 54.

[66]See *supra* pt.1.1.

[67]Ab Currie, "Self-Helpers Need Help Too", *supra* note 36 at 1. Compare earlier Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 9 (citing the number at 11.7%). See further Pleasence *et al*., *Causes of Action*, *supra* note 9 at 96.

[68]As Australia's Attorney-General's Department recently acknowledged:

> "Courts are not the primary means by which people resolve their disputes. They never have been. Very few civil disputes reach formal justice mechanisms such as courts, and fewer reach final determination. Most disputes are resolved without recourse to formal legal institutions or dispute resolution mechanisms. To improve the quality of dispute resolution, justice must be maintained in individuals' daily activities, and dispute resolution mechanisms situated within a community and economic context. Reform should focus on everyday justice, not simply the mechanics of legal institutions which people may not understand or be able to afford...."

Access to Justice Taskforce, Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (Australia: Attorney-General's Department, September 2009) at 3. Similarly, according to Marc Galanter:

> Just as health is not found primarily in hospitals or knowledge in schools, so justice is not primarily to be found in official justice-dispensing institutions. Ultimately, access to justice is not just a matter of bringing cases to a font of official justice, but of enhancing the justice quality of the relations and transactions in which people are engaged.

Marc Galanter, "Justice in Many Rooms" in Mauro Cappelletti, ed., *Access to Justice and the Welfare State* (Alphen aan den Rijn: Sijthoff; Brussels: Bruylant; Florence: Le Monnier; Stuttgart: Klett-Cotta, 1981) 147 at 161–162, cited in Access to Justice Taskforce, Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, *ibid.* at 3. It is important to recognize, however, that even in the context of informal mechanisms, the formal justice system – through the production of precedents as well as the potential recourse to its use – plays a significant influencing role. See e.g. Robert H. Mnookin and L. Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce" (1979) 88 Yale L.J. 950.

[69]See Farrow, "What is Access to Justice?", *supra* note 41.

[70]See Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, "Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector", *supra* note 54 at 5 and 10.

[71]See e.g. *ibid*. at 5-8.

[72]See e.g. Clicklaw, online: <http://www.clicklaw.bc.ca/>; Legalline, online: <http://www.legalline.ca/>. For a further discussion, see Action Committee on Access to Justice in Civil and Family Matters, "Report of the Access to Legal Services Working Group" (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 8-10, online: CFCJ <http://www.cfcj-fcjc.org/collaborations>.

[73]For a discussion of innovations in e-learning, see Mohamed Ally *et al*., *Expanding Access to Legal Services in Alberta through E-Learning* (Alberta: Alberta Law Foundation, November 2012).

[74]See e.g. B.C.'s Justice Access Centres and Family Justice Centres. Other provinces have similar initiatives.

[75]See e.g. Alberta Justice and Solicitor General's current initiative designed to explore opportunities for combining services in one location to coordinate and deliver comprehensive services to the community, with a particular focus on prevention and early resolution.

[76]For further specific examples of these various initiatives (and others), see Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, "Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector", *supra* note 54 at 6-8. See also Canadian Bar Association, Standing Committee on Access to Justice, "Underexplored Alternatives for the Middle Class", *supra* note 38 at 7-9. For the kinds of services that are currently available (and also that are still needed), see e.g. Canadian Forum on Civil Justice, *Alberta Legal Services Mapping Project*, online: CFCJ <http://www.cfcj-fcjc.org/alberta-legal-services>; Carol McEown, *Civil Legal Needs Research Report*, 2d ed. (Vancouver: Law Foundation of British Columbia, March 2009); Baxter and Yoon, *The Geography of Civil Legal Services in Ontario*, *supra* note 26.

[77]See e.g. the B.C. Legal Services Society's initiatives in B.C.'s Women's Hospital and at a drop-in centre in Vancouver's Downtown Eastside, which provide a lawyer for a short period per week at each location who is available to give legal advice with respect to family law, child protection and other issues.

[78]See *supra* pt.1.1. For a useful discussion of multidisciplinary and collaborative approaches to service delivery, see Canadian Bar Association, Standing Committee on Access to Justice, "Future Directions for Legal Aid Delivery" (Ottawa: Canadian Bar Association, April 2013) at 24-28.

[79]See e.g. Unison Health and Community Services, online: <http://unisonhcs.org/>.

[80]See e.g. Community Legal Education Ontario, online: <http://www.cleo.on.ca/en>; Justice Education Society, online: <http://www.justiceeducation.ca/>; Ontario Justice Education Network, online: <http://www.ojen.ca/welcome>, and others.

[81]See e.g. Australia's "Foolkit", online: <http://www.foolkit.com.au/>.

[82]For further detailed discussions, see Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, "Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector", *supra* note 54 at 17-18, 22-25; Action Committee on Access to Justice in Civil and Family Matters, "Report of the Access to Legal Services Working Group", *supra* note 72 at 5-8; Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group" (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 10-13, online: CFCJ <http://www.cfcj-fcjc.org/collaborations>.

[83]See e.g. Trevor C.W. Farrow, "Ethical Lawyering in a Global Community" 2012 Isaac Pitblado Lecture, (2013) 36:1 Man. L.J. 141.

[84]Much of the material in this section of the report is very much influenced by, and in some cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, "Report of the Access to Legal Services Working Group", *supra* note 82.

[85]See e.g. Canadian Bar Association, Envisioning Equal Justice Project, *Equal Justice Report: An Invitation to Envision and Act, supra* note 3.

[86]For a useful collection, see Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada* (September 2012) at 11, online: FLSC <http://www.flsc.ca/_documents/Inventory-of-Access-to-Legal-AccessLawSocietiesInitiativesSept2012.pdf>.

[87]See e.g. Federation of Law Societies of Canada, *Model Code of Professional Conduct* (as amended 12 December 2012) at c. 3.2-1.1. See further the various current limited scope retainer initiatives, including in Ontario and Alberta. The initiative in Alberta, for example, which involves Alberta Justice and Solicitor General, the Law Society of Alberta, Legal Aid Alberta, Pro Bono Law Alberta and the Calgary Legal Guidance Clinic, is a good example of cross sector collaboration and coordination. But see D. James Greiner *et al*., "The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future" (2013) 126 Harv. L. Rev. 901.

[88]See e.g. Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, *supra* note 54 at sec. 7.6.

[89]See e.g. the various paralegal discussions, regulations and innovations in B.C., Alberta, Manitoba, Ontario and Nova Scotia, discussed in Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 7-8.

[90]See e.g. *ibid*. at 2-8.

[91]Outsourcing involves a number of initiatives including subcontracting legal work to other domestic or off-shore lawyers and other service providers (often under the supervision of a lawyer). For a discussion of various outsourcing trends, see e.g. Michael D. Greenberg and Geoffrey McGovern, *An Early Assessment of the Civil Justice System After the Financial Crisis: Something Wicked This Way Comes?* (Santa Monica, CA: RAND Corporation, 2012) at 35-36. See further Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services, supra* note 54 at sec. 2.5.

[92]See e.g. Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 8-10.

[93]See e.g. Law Society of Manitoba, Family Law Access Centre, online: LSM <http://www.lawsociety.mb.ca/for-the-public/family-law-access-centre>, which is designed to provide legal services primarily to middle income families. Other options include alternatives to billable hours, competitive tenders, fixed tariffs, etc. See Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *ibid.* at 16.

[94]See e.g. various initiatives and programs, including most extensively in Québec and also in B.C. and Ontario, discussed in Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *ibid.* at 13.

[95]For a recent discussion of pro bono initiatives and thinking, see Canadian Bar Association, Standing Committee on Access to Justice, "Tension at the Border: Pro Bono and Legal Aid" (Ottawa: Canadian Bar Association, October 2012). See further Lorne Sossin, "The Public Interest, Professionalism, and Pro Bono Publico" (2008) 46 Osgoode Hall L.J. 131; Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *ibid.* at 14-16.

[96]See e.g. Law Society of Upper Canada, *Rules of Professional Conduct* (adopted 22 June 2000), rr. 2.04 (15)-(19), which can exempt, for example, short-term pro bono legal advice from typical conflicts of interest rules, which is particularly important for lawyers who practice with larger firms and in institutional settings whose clients may have conflicting interests with those of the clients involved in the short term retainers. This initiative is also a good example of the kinds of collaborations that can occur across sectors of the justice system – in this case with the Law Society of Upper Canada and Pro Bono Law Ontario. See also similar provincial initiatives elsewhere, for example, in B.C. and Alberta.

[97]See e.g. Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 16-19.

[98]See e.g. Law Society of Manitoba, Family Law Access Centre, *supra* note 93.

[99]See e.g. *Law Society Act*, R.S.O. 1990, c. L.8 at s. 4.2.

[100]See Trevor C.W. Farrow, "Sustainable Professionalism" (2008) 46 Osgoode Hall L.J. 51 at 96.

[101]See further *infra* note 149 and accompanying text. See generally Farrow, "Sustainable Professionalism", *ibid*.; Brent Cotter, "Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada" (2012) 63 U.N.B.L.J. 54; Richard Devlin, "Breach of Contract?: The New Economy, Access to Justice and the Ethical Responsibilities of the Legal Profession" (2002) 25 Dal. L.J. 335; Alice Woolley, "Imperfect Duty: Lawyers' Obligation to Foster Access to Justice" (2008) 45 Alta. L. Rev. 107.

[102]See further *infra* pt.3.B.6.

[103]The specific legal services innovations discussed above, *supra* pt.3.A.2, should be actively considered and implemented by individual lawyers as well as law societies, bar associations and others.

[104]Much of the material in this section of the report is influenced by, and in some cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group", *supra* note 82.

[105]For a more detailed discussion of court-based innovations, see Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group", *ibid.*

[106]As Richard Zorza has argued: "Courts must become institutions that are easy-to-access, regardless of whether the litigant has a lawyer. This can be made possible by the reconsideration and simplification of how the court operates, and by the provision of informational access services and tools to those who must navigate its procedures." Richard Zorza, "Access to justice: The emerging consensus and some questions and implications" (2011) 94 Judicature 156 at 157.

[107]See *e.g.* American Bar Association, Report of the American Bar Association Working Group on Civil Justice System Proposals, *ABA Blueprint for Improving the Civil Justice System* (Chicago: ABA, 1992) at 36. See further Frank E.A. Sander, "Varieties of Dispute Processing" in A. Leo Levin and Russell R. Wheeler, eds., *The Pound Conference: Perspectives on Justice in the Future* (St. Paul: West, 1979) 65; Jeffrey W. Stempel, "Reflections on Judicial ADR and the Multi-Door Courthouse at Twenty: Fait Accompli, Failed Overture, or Fledgling Adulthood?" (1996) 11 Ohio St. J. Disp. Resol. 297.

[108]See Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group", *supra* note 82 at 13-17.

[109]For a detailed discussion of current court-based dispute resolution options, see Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group", *ibid.* at 13-17.

[110]See e.g. Montréal's Municipal Court, online: <http://ville.montreal.qc.ca/portal/page?_dad=portal&_pageid=5977,40497558&_schema=PORTAL>.

[111]See e.g. the newly developed B.C. Civil Resolution Tribunal, online: <http://www.ag.gov.bc.ca/legislation/civil-resolution-tribunal-act/>.

[112]See e.g. Consumer Protection BC, which is an online dispute resolution service for consumer matters (developed in 2011 with funding from the B.C. Ministry of Justice). See Consumer Protection BC, online: <http://consumerprotectionbc.ca/odr>.

[113]See e.g. Property Assessment Appeal Board of B.C., online: <http://www.assessmentappeal.bc.ca/default.aspx>.

[114]Rt. Hon. the Lord Neuberger of Abbotsbury, quoted in Catherine Baksi, "Neuberger defends judges' right to speak out on cuts" *The Law Society Gazette* (19 June 2013), online: <http://www.lawgazette.co.uk/news/neuberger-defends-judges-right-speak-out-cuts?utm_source=emailhosts&utm_medium=email&utm_campaign=GAZ+19/06/2013>.

[115]See e.g. Macfarlane, *The National Self-Represented Litigants Project*, *supra* note 34; Farrow, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37.

[116]For example, in Québec, the Montréal Bar has prepared a best practices guide for litigation. In Newfoundland and Labrador, there are various booklets available both at the courts and in the Public Legal Information Association's office on a range of legal topics. In Ontario, the Ministry of the Attorney General has created several self-help guides that clarify procedures under the family court rules. Additionally, LawHelp Ontario (a pro bono Ontario project) provides various information booklets and how-to manuals for self-represented litigants.

[117]In Alberta, for example, Law Information Centres provide information about general court procedures and Family Law Information Centres employ staff members who provide advice regarding family law procedures.

[118]See Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group", *supra* note 82 at 17-19.

[119]See e.g. Court of Queen's Bench of Alberta, Notice to the Profession, "Case Management Counsel Pilot Project", NP#2011-03 (30 September 2011), online: Alberta Courts <http://www.albertacourts.ab.ca/LinkClick.aspx?fileticket=liayJcjYAbI%3D&tabid=92&mid=704>.

[120]See e.g. the Québec Superior Court initiative that uses a panel of judges who encourage early reconciliation and conciliation and, if necessary, the use of simplified procedures for various matters including latent defects, inheritance issues, property boundary issues, etc.

[121]For examples of jurisdictions with e-filing options, see Superior Court and Court of Appeal in British Columbia, the Court of Appeal in Alberta, the Superior Court in Newfoundland and Labrador (in estate matters), and the Federal Court of Canada.

[122]For example, B.C. Court Services Online is an electronic service that provides electronic searches of court files, online access to daily court lists and e-filing capacity. For its part, the Alberta Court of Appeal has a practice direction that supports e-appeals if both parties consent or if the court makes such an order.

[123]See e.g. the real time court order initiatives in provincial court – civil in Edmonton and Calgary.

[124]See e.g. Alberta Justice and Solicitor General's Technology Assisted Mediation program, developed in 2009, which parties can now attend via Skype.

[125]See e.g. *Paiva v. Corpening*, 2012 ONCJ 88. See further Justice Québec, "Justice Access Plan", online: <http://www.justice.gouv.qc.ca/english/ministre/paj/index.htm> (last updated 24 April 2012).

[126]For example, the Superior Court in Nova Scotia employs a communications director to answer questions from the general public and the media. Further, the Supreme Court of Canada, for example, is now on Twitter. See Supreme Court of Canada, online: <http://twitter.com/#!/scc_csc>.

[127]See Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group", *supra* note 82 at 19-20. For a discussion on current and future court simplification initiatives in the U.S., see Richard Zorza, "Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation" (2013) 61 Drake U. L. Rev. 845. See generally Trevor C.W. Farrow, *Civil Justice, Privatization and Democracy* (Toronto: University of Toronto Press, forthcoming) at cc. 6-7.

[128]See e.g. Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa: Canadian Judicial Council, 1998), online: CJC <https://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf>.

[129]Much of the material in this section of the report is very much influenced by, and in many cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, "Meaningful Change for Family Justice: Beyond Wise Words", *supra* note 59.

[130]For general discussions, see *ibid*. See also Law Commission of Ontario, *Towards a More Efficient and Responsive Family Law System*, Interim Report (Toronto: Law Commission of Ontario, February 2012); Law Commission of Ontario, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity*, Final Report (Toronto: Law Commission of Ontario, February 2013).

[131]See Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, "Meaningful Change for Family Justice: Beyond Wise Words", *supra* note 59 at 3-4.

[132]See *ibid*. at 36-38.

[133]See *ibid*. at 3.

[134]See *ibid*. at 25-26.

[135]See e.g. *ibid*. at recs. 5, 7, 9, 12 and 17.

[136]See e.g. Canadian Bar Association – B.C., "Best Practice Guidelines for Lawyers Practicing Family Law" (18 June 2011), online: <http://www.cba.org/bc/bartalk_11_15/pdf/best_practice_guidelines.pdf>.

[137]See Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, "Meaningful Change for Family Justice: Beyond Wise Words", *supra* note 59 at e.g. recs. 19-27. The Working Group Report sets out a comprehensive list of reform initiatives. Only a few highlights are given here.

[138]See e.g. *ibid*. at recs. 29-31.

[139]See *supra* pt.2.2.

[140]See e.g. Northern Access to Justice Committee, *Final Report* (Saskatchewan: Ministry of Justice and Attorney General, September 2007), online: Government of Saskatchewan <http://www.justice.gov.sk.ca/Final-Report-Northern-Access-to-Justice.pdf>. See recently the Law Society of Nunavut's Territorial Access to Justice Committee, which it started in 2011, discussed further in Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 11. See generally Chief Justice Karla M. Gray and Robert Echols, *Mobilizing Judges, Lawyers, and Communities: State Access to Justice Commissions* (Summer 2008) 47:3 Judges' J.; Access to Justice Partnerships, "State Access to Justice Tools – Access to Justice Checklist" (Washington, National Legal Aid and Defender Association), online: <http://www.nlada.org/DMS/Documents/1117200283.21/>.

[141]Examples include judicial associations, court administrators, government departments, public interest groups and advocacy organizations, legal aid plans, community clinics and service providers, civil and family rules committees, libraries and information providers, public legal educators, family law specialists, NGOs, academics and researchers, various cultural communities with particular justice interests and/or challenges, members of the bar, paralegals and other service providers, legal insurers and the like.

[142]See e.g. John P. Kotter, "Accelerate!", *Harv. Bus. Rev.* (November 2012) 1 at 10. See earlier John P. Kotter, "Leading Change: Why Transformation Efforts Fail", *Harv. Bus. Rev.* (March-April 1995) 1 at 62-63.

[143]See e.g. Ontario Civil Legal Needs Project, "Listening to Ontarians" and Baxter and Yoon, "The Geography of Civil Legal Services in Ontario", *supra* notes 33 and 26; Canadian Forum on Civil Justice, *Alberta Legal Services Mapping Project*, *supra* note 76.

[144]See further *infra* note 157.

[145]See e.g. Nova Scotia Barristers' Society, Justice Sector Liaison Committee and Access to Justice Working Group; Law Society of Upper Canada, Access to Justice Committee; Federation of Law Societies of Canada, Standing Committee on Access to Legal Services, etc.

[146]See e.g. Canadian Bar Association, Access to Justice Committee.

[147]An example of an organization that could play this role is the Canadian Forum on Civil Justice, which was created largely for a similar purpose following the Canadian Bar Association's earlier review of Canada's systems of civil justice. See Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report*, *supra* note 46 at 76-78.

[148]For a recent discussion on the importance of national standards for access to justice, see Canadian Bar Association, Standing Committee on Access to Justice, "Toward National Standards for Publicly-Funded Legal Services", *supra* note 39.

[149]For a discussion of this shift in focus, see e.g. Farrow, "Ethical Lawyering in a Global Community", *supra* note 83. For recent national regulatory approaches, see Task Force on the Canadian Common Law Degree, *Final Report* (Ottawa: Federation of Law Societies of Canada, October 2009), online: FLSC <http://www.flsc.ca/_documents/Common-Law-Degree-Report-C(1).pdf>; Common Law Degree Implementation Committee, *Final Report* (Ottawa: Federation of Law Societies of Canada, August 2011), online: FLSC <http://www.flsc.ca/_documents/Implementation-Report-ECC-Aug-2011-R.pdf>.

[150]Discussed further *supra* at pt.3.A.4.4.

[151]See e.g. Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2008) at 224-232; Farrow, "Sustainable Professionalism", *supra* note 100 at 100-102.

[152]See e.g. Farrow, "Ethical Lawyering in a Global Community", *supra* note 83.

[153]See e.g. Law Society of Upper Canada, "Continuing Professional Development Overview", online: LSUC <http://www.lsuc.on.ca/For-Lawyers/Improve-Your-Practice/Education/Continuing-Professional-Development-Overview/>, as well as other recent provincial continuing professional development ethics requirements. For a general collection, see Stephen G.A. Pitel and Trevor C.W. Farrow, eds., Special Feature – "Life Long Learning in Professionalism" (2010) 4 Can. Legal Ed. Annual Rev. 1-117.

[154]Farrow, "What is Access to Justice?", *supra* note 41.

[155]See e.g Law in Action Within Schools, online: LAWS <http://www.lawinaction.ca/>.

[156]See further *supra* pt.3.A and *infra* pt.3.C.8. See also Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 10-11.

[157]See e.g. HiiL, *Scenarios to 2030: Signposting the legal space for the future* (The Hague: HiiL, 2011); Sam Muller *et al*., *Innovating Justice: Developing new ways to bring fairness between people* (The Hague: HiiL, 2013). For a recent innovation initiative in Canada, see the Winkler Institute for Dispute Resolution, which is being developed at Osgoode Hall Law School, and which is "devoted to innovation, research, education and the creative practice of methods of dispute resolution through mediation, arbitration and the traditional court system." Winkler Institute for Dispute Resolution, online: <http://winklerinstitute.ca/>.

[158]See e.g. Law and Justice Foundation of New South Wales, "What Works?" research program, online: <http://www.lawfoundation.net.au/ljf/app/&id=7B11620ED3302A0CCA257464001880F4>. See further Hazel Genn, Martin Partington and Sally Wheeler, *Law in the Real World: Improving Our Understanding of How Law Works*, Final Report and Recommendations (London: Nuffield Foundation, November 2006). An example of this kind of innovative research is the Canadian Forum on Civil Justice multi-year collaborative research project, "***The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems"***, *supra* note 17. See further Maurits Barendrecht *et al*., *Strategies Towards Basic Justice Care for Everyone* (The Hague: HiiL, 2012) at 17.

[159]For a recent discussion on the importance of metrics in the context of access to justice, see Canadian Bar Association, Standing Committee on Access to Justice, "Access to Justice Metrics: A Discussion Paper" (Ottawa: Canadian Bar Association, April 2013). See further Martin Gramatikov *et al*., *A Handbook for Measuring the Costs and Quality of Access to Justice* (Apeldoorn, The Netherlands: Maklu, 2009).

[160]For a recent study on costs and the civil and family justice system, see Canadian Forum on Civil Justice, "The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems", *supra* note 17.

[161]For example, according to one Australian study in the specific context of family cases, legal aid assistance in relation to courts and dispute resolution services demonstrated a positive efficiency benefit for the justice system. Specifically, these benefits reportedly outweighed the costs of providing the services in a range from a return of $1.60 to $2.25 for every dollar spent. See PricewaterhouseCoopers, *Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law*, *supra* note 29 at ix and c. 5. According to a different U.S.-based study, the return on investment for every $1 spent on civil legal aid funding was as high as $6. See Public Welfare Foundation, "Natural Allies: Philanthropy and Civil Legal Aid" (Washington, D.C.: Public Welfare Foundation and the Kresge Foundation, 2013) at 3, online: Public Welfare Foundation <http://www.publicwelfare.org/NaturalAllies.pdf> [citation omitted]. See further John Greacen, *The Benefits and Costs of Programs to Assist Self-Represented Litigants, Results from Limited Data Gathering Conducted by Six Trial Courts in California's San Joaquin Valley*, Final Report (San Francisco: Judicial Council of California, Administrative Office of the Courts, Centre for Families, Children and the Courts, 3 May 2009).

[162]For example, according to a recent U.S. study, money spent on civil legal assistance for protecting against domestic violence had a significant positive protective outcome. It also had a significant collective economic impact, reportedly saving costs for the Interest on Lawyers Account Fund of New York State for medical care, lost wages, police resources, counseling for affected children, etc., in the amounts of $6 million in 2009 and $36 million over the years 2005-2009. See the Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York* (New York: State of New York Unified Court System, 23 November 2010) at 25-26. For other reports, see e.g. Jonah Kushner, *Legal Aid in Illinois: Selected Social and Economic Benefits* (Chicago: Social IMPACT Research Center, May 2012); Laura K. Abel, "Economic Benefits of Civil Legal Aid" (National Center for Access to Justice at Cardozo Law School, 4 September 2012); Laura K. Abel and Susan Vignola, "Economic Benefits Associated with the Provision of Civil Legal Aid" (2010-2011) 9 Seattle J. Soc. Just. 139; Maryland Access to Justice Commission, *Economic Impact of Civil Legal Services in Maryland* (Maryland: Access to Justice Commission, 1 January 2013); The Perryman Group, *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential* (Waco, TX: Perryman Group, February 2009). For a useful discussion of these and other studies, see Canadian Bar Association, Standing Committee on Access to Justice, "Future Directions for Legal Aid Delivery", *supra* note 78 at 9-11.

[163]The Canadian Forum on Civil Justice, "*The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems*" research project, *supra* note 17, is considering potential allocation issues related to various costs of civil and family justice.

[164]According to Justice Thomas Cromwell, "We have a window of opportunity that comes along quite rarely. Let's not blow it." Hon. Thomas A. Cromwell, quoted in Jeremy Hainsworth, "'Window of opportunity' closing to fix country's access to justice" *The Lawyers Weekly* (10 May 2013), online: Lawyers Weekly <http://www.lawyersweekly.ca/index.php?section=article&articleid=1895>.

Action Committee on
Access to Justice in
Civil and Family Matters

The Law Society of British Columbia

BC Code rule 3.6-3: Statement of Account

October21, 2013

Purpose of Report: **Recommendation for Change to BC Code**

Prepared by: **Ethics Committee**

The Law Society of British Columbia

Memo

To: Benchers

From: Ethics Committee

Date: October 21, 2013

Subject: **BC Code rule 3.6-3: Statement of Account**

I. Background

This rule formerly stated:

3. 6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

[1] The two main categories of charges on a statement of account are fees and disbursements. A lawyer may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a lawyer wishes to separately itemize charges such as paralegal, word processing or computer costs that are not disbursements, provided that the client has agreed, in writing, to such costs.

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

At the May 2013 Benchers meeting, on our recommendation, you rescinded commentary [1] and requested us to consult with the profession about the rule and commentary and recommend to you whether commentary [1] should be restored, restored in a modified form, or permanently eliminated. We have now completed that process.

This memorandum recommends that you do not restore the former wording of commentary [1], but instead, adopt alternative wording.

II. Consultation with the Profession

We received numerous submissions as a result of our invitation to the profession to comment on commentary [1]. The major criticisms of commentary [1] were:

- The commentary requirement that the client agree in writing to the "other charges" is onerous and unnecessary.
- Lawyers, legal accounting software developers and bookkeepers have not had sufficient time to update, distribute and install software and change billing practices in order to accommodate the commentary billing requirements.
- The changes required by the commentary would be further complicated by PST charges when those come into effect on April 1, 2013.
- Some decisions of the Registrar establish that certain charges that are not payment to third parties, in particular photocopying costs and on-line legal research, are not "fees."
- Although the commentary properly distinguishes between true third-party disbursements and other charges that could contain a profit component, the commentary goes too far in requiring the "other charges" to necessarily be included in the fees component of a lawyer's account.

Other lawyers thought something like commentary [1] is long overdue and commend its terms.

III. Assessment of Rescinded Commentary [1]

Rescinded commentary [1] contained three specific requirements:

1. Lawyers may only charge as disbursements charges that have been made or are required to be made to a third party by the lawyer on the client's behalf.

2. Lawyers may charge amounts that are not disbursements in a subcategory to the fee portion of the account called "Other Charges".

3. "Other Charges" as described above must be agreed to by the client in writing.

Provided lawyers are candid about informing clients about charges, explain any unusual charges and have client agreement to the charges clients will be billed and how the charges will be described on the bill, we concluded that some aspects of these requirements were more onerous than necessary and did not give lawyers and clients sufficient flexibility to depart from the standards where they choose to do so: We do not think "Other Charges" must necessarily be billed as a subcategory of the fee portion of the account, nor is it necessary that all such charges must be agreed to in writing. In other circumstances, it is our view that the former wording of

commentary [1] did not give lawyers sufficient guidance about the propriety of billing in-house expenses and surcharging disbursements and how such expenditures should be shown on the bill.

While certain billing practices are clearly desirable and the Law Society should promote them, we do not think desirable practices necessarily require rules of professional conduct that are enforceable through disciplinary action, as the former commentary [1] did.

IV. Other Law Societies

Commentary [1] is now part of the Federation of Law Societies of Canada Model Code of Professional Conduct. The Alberta, Saskatchewan, Nova Scotia, and Newfoundland law societies have included commentary [1] in their codes of conduct. The Law Society of Manitoba declined to do so and the Law Society of Upper Canada, which has not yet adopted the Model Code, is submitting its report on the Model Code to Convocation without including any commentary under rule 3.6-3.

V. Criteria for Commentary [1]

In drafting a substitute for the former commentary [1] we took as a model for the criteria commentary [1] ought to cover the summary of the American Bar Association Formal Opinion 93-379 which states:

> Consistent with the Model Rules of Professional Conduct, a lawyer must disclose to a client the basis on which the client is to be billed for both professional time and any other charges. Absent a contrary understanding, any invoice for professional services should fairly reflect the basis on which the client's charges have been determined. In matters where the client has agreed to have the fee determined with reference to the time expended by the lawyer, a lawyer may not bill more time than she actually spends on a matter, except to the extent that she rounds up to minimum time periods (such as one-quarter or one-tenth of an hour). A lawyer may not charge a client for overhead expenses generally associated with properly maintaining, staffing and equipping an office; however, the lawyer may recoup expenses reasonably incurred in connection with the client's matter for services performed in-house, such as photocopying, long distance telephone calls, computer research, special deliveries, secretarial overtime, and other similar services, so long as the charge reasonably reflects the lawyer's actual cost for the services rendered. A lawyer may not charge a client more than her disbursements for services provided by third parties like court reporters, travel agents or expert witnesses, except to the extent that the lawyer incurs costs additional to the direct cost of the third-party services.

Having regard to ABA Opinion 93-379, we think it would be desirable to have a commentary that reflects the following principles:

1) Lawyers' duty of candour requires that clients be informed of and understand all charges that appear on the lawyer's bill, especially unusual charges.

2) Lawyers may not charge for overhead expenses. Overhead expenses would typically involve charges for rent, staff salaries, utilities etc.

3) Lawyers may charge for expenses incurred in-house if the charges reasonably reflect the lawyer's actual cost for the services rendered. In-house charges could include charges such as photocopying, long distance telephone calls, computer research, special deliveries, secretarial overtime, and other similar services, although sometimes such services could be provided exclusively by third parties instead of in-house, in which case they would be typically shown as disbursements.

4) Charges for in-house services should be readily distinguishable on the account from disbursements payable to third parties.

5) Lawyers may not charge a client more than the actual disbursement cost for services provided by third parties, except to the extent that they incur additional costs in arranging for the services. Such services could include charges such as court reporters, travel agents or expert witnesses.

6) Lawyers and clients should be entitled to agree that charges for in-house services and third party services may be calculated or shown on the account in some other way than described above.

VI. Recommendation

We recommend the following be adopted as commentary [1] to rule 3.6-3:

> The lawyer's duty of candour to the client requires the lawyer to disclose to a client at the outset the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges in a manner that is transparent and understandable to the client. A lawyer may not charge a client more than the actual disbursement cost for services provided by third parties such as court reporters, travel agents, expert witnesses, and printing businesses, except to the extent that the lawyer incurs additional costs in procuring the third party services. A lawyer may not charge a client for overhead expenses generally associated with properly maintaining, staffing and equipping an office; however, the lawyer may charge expenses reasonably incurred in connection with the client's matter for services performed in-house so long as the charge reasonably reflects the lawyer's actual cost for the services rendered. Such charges must be shown on the bill as "Other Charges." Lawyers and clients may agree that

charges for overhead expenses, in-house services and third party services may be calculated or shown on the account on some other basis.

Attachments:

- Draft changes to rule 3.6-3, commentary [1]

[4116982013]

Statement of account

3. 6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

[1] The lawyer's duty of candour to the client requires the lawyer to disclose to a client at the outset the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges in a manner that is transparent and understandable to the client. A lawyer may not charge a client more than the actual disbursement cost for services provided by third parties such as court reporters, travel agents, expert witnesses, and printing businesses, except to the extent that the lawyer incurs additional costs in procuring the third party services. A lawyer may not charge a client for overhead expenses generally associated with properly maintaining, staffing and equipping an office; however, the lawyer may charge expenses reasonably incurred in connection with the client's matter for services performed in-house so long as the charge reasonably reflects the lawyer's actual cost for the services rendered. Such charges must be shown on the bill as "Other Charges." Lawyers and clients may agree that charges for overhead expenses, in-house services and third party services may be calculated or shown on the account on some other basis.

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

Statement of account

3. 6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

~~**[1]** The two main categories of charges on a statement of account are fees and disbursements. A lawyer may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a lawyer wishes to separately itemize charges such as paralegal, word processing or computer costs that are not disbursements, provided that the client has agreed, in writing, to such costs.~~

[1] The lawyer's duty of candour to the client requires the lawyer to disclose to a client at the outset the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges in a manner that is transparent and understandable to the client. A lawyer may not charge a client more than the actual disbursement cost for services provided by third parties such as court reporters, travel agents, expert witnesses, and printing businesses, except to the extent that the lawyer incurs additional costs in procuring the third party services. A lawyer may not charge a client for overhead expenses generally associated with properly maintaining, staffing and equipping an office; however, the lawyer may charge expenses reasonably incurred in connection with the client's matter for services performed in-house so long as the charge reasonably reflects the lawyer's actual cost for the services rendered. Such charges must be shown on the bill as "Other Charges." Lawyers and clients may agree that charges for overhead expenses, in-house services and third party services may be calculated or shown on the account on some other basis.

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

The Law Society of British Columbia

Financial Report

September 30, 2013

Prepared for: Bencher Meeting – November 7, 2013

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

Financial Report – To September 30, 2013

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

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance of $814,000 to the end of September, 2013. There has been additional revenue from PLTC enrolment fees, and expense savings related to staff vacancies and professional fees and the timing of building maintenance costs.

Revenue

Revenue (excluding capital allocation) is $15,042,000, $160,000 (1.1%) ahead of budget, due to an increase in PLTC student enrolment.

Operating Expenses

Operating expenses to the end of September were $13,886,000, $528,000 (3.7%) below budget. On a year to date basis, there have been additional salary vacancy savings and there have been savings in external counsel fees and forensic audit fees.

845 Cambie building costs were under budget $126,000, which relates to the timing of maintenance projects which will occur before the end of the year.

2013 Forecast - General Fund (excluding capital and TAF)

We are forecasting a positive variance of $400,000 (2%) for the year.

Operating Revenue

Revenues are projected to be very close to budget for the year. Practicing membership revenue is projected at 10,935 members, 65 below the 2013 budget, a negative variance of $85,000. Offsetting this shortfall, PLTC students are projected at 445 students for the year, a positive variance of $115,000. Other miscellaneous revenues relating to penalties and fines are projected to have a positive variance of $100,000, and lease revenues will be under budget $82,000.

Operating Expenses

Operating expenses are projected to be have a positive variance of $380,000 (2%) for the year. Additional expense items in the year approved by the Benchers are the $75,000 for the 2013 contribution to the CBA REAL program and the additional contribution of $48,000 relating to the Access Pro Bono space. With the increase in PLTC students, there will be additional costs of $75,000 related to the additional

students, and $70,000 for an update to the on-line courses. Offsetting this, there will be cost savings related to staff vacancies, external counsel fees and forensic audit fees.

TAF-related Revenue and Expenses

TAF revenue for the first two quarters of the year was $998,000, $222,000 below budget.

TAF operating expenses were $105,000 (5.9%) below budget due to savings in travel.

With the continued slowdown in real estate unit sales, TAF revenue is forecast to be similar to 2012 levels, resulting in a negative variance to budgeted revenue of $242,000. With this reduction in revenue, the Trust Assurance Program will have shortfall of $104,000 for the year, which will be partially offset by the TAF reserve of $72,000.

Special Compensation Fund

Once all activities have concluded, the remaining Special Compensation Fund reserve will be transferred to the LIF as required by the Legal Profession Amendment Act, 2012. Currently, the reserve is $1.3 million.

Lawyers Insurance Fund

LIF operating revenues were $10.5 million in the first nine months, slightly above budget by $180,000 (1.7%).

LIF operating expenses were $4.5 million, $573,000 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 $107.8 million, and the year to date investment returns were 9.0%, compared to a benchmark of 6.4%.

The Law Society of British Columbia

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2013
($000's)

	2013 Actual	2013 Budget	$ Var	% Var
Revenue				
Membership fees **(1)**	14,270	14,267		
PLTC and enrolment fees	826	716		
Electronic filing revenue	600	621		
Interest income	216	228		
Other revenue	1,054	980		
Total Revenues	16,966	16,812	154	0.9%
Expenses				
Regulation	4,982	5,438		
Education and Practice	2,845	2,766		
Corporate Services	2,127	2,155		
Bencher Governance	1,202	1,167		
Communications and Information Services	1,458	1,486		
Policy and Legal Services	1,271	1,402		
Depreciation	283	269		
Total Expenses	14,168	14,683	515	3.5%
General Fund Results before 845 Cambie and TAP	2,798	2,129	669	
845 Cambie net results	25	(280)	305	
General Fund Results before TAP	**2,823**	**1,849**	**974**	
Trust Administration Program (TAP)				
TAF revenues	998	1,220	(222)	
TAP expenses	1,673	1,777	104	6%
TAP Results	**(675)**	**(557)**	**(118)**	
General Fund Results including TAP	**2,148**	**1,292**	**856**	

(1) Membership fees include capital allocation of $1.924m (YTD capital allocation budget = $1.930m).

The Law Society of British Columbia

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2013
($000's)

	Sep 30 2013	Dec 31 2012
Assets		
Current assets		
Cash and cash equivalents	268	672
Unclaimed trust funds	1,773	1,672
Accounts receivable and prepaid expenses	831	981
B.C. Courthouse Library Fund	931	2,487
Due from Lawyers Insurance Fund	5,249	19,402
	9,052	25,214
Property, plant and equipment		
Cambie Street property	12,748	11,382
Other - net	1,569	1,593
	23,369	38,189
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,241	2,575
Liability for unclaimed trust funds	1,773	1,672
Current portion of building loan payable	500	500
Deferred revenue	4,568	18,225
Deferred capital contributions	50	58
B.C. Courthouse Library Grant	931	2,487
Deposits	15	29
Due to Lawyers Insurance Fund	-	-
	9,078	25,546
Building loan payable	3,600	4,100
	12,678	29,646
Net assets		
Capital Allocation	1,664	2,404
Unrestricted Net Assets	9,027	6,139
	10,691	8,543
	23,369	38,189

The Law Society of British Columbia

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 9 Months ended September 30, 2013
($000's)

	Invested in P,P & E net of associated debt	Unrestricted	Unrestricted Net Assets	Capital Allocation	2013 Total	2012 Total
	$	$		$	$	$
Net assets - December 31, 2012	8,448	(2,309)	6,139	2,404	8,543	7,112
Net (deficiency) excess of revenue over expense for the period	(780)	1,004	224	1,924	2,148	1,431
Repayment of building loan	500	-	500	(500)	-	-
Purchase of capital assets:						
LSBC Operations	329	-	329	(329)	-	-
845 Cambie	1,835	-	1,835	(1,835)	-	-
Net assets - September 30, 2013	10,332	(1,305)	9,027	1,664	10,691	8,543

The Law Society of British Columbia

The Law Society of British Columbia
Special Compensation Fund
Results for the 9 Months ended September 30, 2013
($000's)

	2013 Actual	2013 Budget	$ Var	% Var
Revenue				
Annual assessment	-	-		
Recoveries	54	413		
Total Revenues	54	413	(359)	-86.9%
Expenses				
Claims and costs, net of recoveries	-	53		
Administrative and general costs	29	38		
Loan interest expense	(24)	-		
Total Expenses	5	91	(86)	-94.5%
Special Compensation Fund Results	49	322	(273)	

The Law Society of British Columbia

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at September 30, 2013
($000's)

	Sep 30 2013	Dec 31 2012
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable	-	-
Due from Lawyers Insurance Fund	1,281	1,396
	1,282	1,397
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	7	171
Deferred revenue	-	-
	7	171
Net assets		
Unrestricted net assets	1,275	1,226
	1,275	1,226
	1,282	1,397

The Law Society of British Columbia

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
0
($000's)

	2013 $	2012 $
Unrestricted Net assets - December 31, 2012	1,226	932
Net excess of revenue over expense for the period	49	294
Net assets - September 30, 2013	1,275	1,226

The Law Society of British Columbia

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 9 Months ended September 30, 2013
($000's)

	2013 Actual	2013 Budget	$ Var	% Var
Revenue				
Annual assessment	10,534	10,354		
Investment income	10,095	2,077		
Other income	52	50		
Total Revenues	20,681	12,481	8,200	65.7%
Expenses				
Insurance Expense				
Provision for settlement of claims	9,480	9,480		
Salaries and benefits	1,800	2,097		
Contribution to program and administrative costs of General Fund	1,153	1,207		
Office	565	789		
Actuaries, consultants and investment brokers' fees	312	343		
Allocated office rent	111	111		
Premium taxes	8	8		
Income taxes	-	-		
	13,429	14,035		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	574	541		
Total Expenses	14,003	14,576	573	3.9%
Lawyers Insurance Fund Results before 750 Cambie	6,678	(2,095)	8,773	
750 Cambie net results	192	266	(74)	
Lawyers Insurance Fund Results	**6,870**	**(1,829)**	**8,699**	

The Law Society of British Columbia

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at September 30, 2013
($000's)

	Sep 30 2013	Dec 31 2012
Assets		
Cash and cash equivalents	7,527	23,225
Accounts receivable and prepaid expenses	656	936
Due from members	82	35
General Fund building loan	4,100	4,600
Investments	116,102	108,573
	128,467	137,369
Liabilities		
Accounts payable and accrued liabilities	552	1,689
Deferred revenue	3,425	6,947
Due to General Fund	5,249	19,402
Due to Special Compensation Fund	1,281	1,396
Provision for claims	54,094	50,959
Provision for ULAE	7,175	7,155
	71,776	87,548
Net assets		
Unrestricted net assets	39,191	32,321
Internally restricted net assets	17,500	17,500
	56,691	49,821
	128,467	137,369

The Law Society of British Columbia

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 9 Months ended September 30, 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	6,870	-	6,870	5,555
Net assets - September 30, 2013	39,191	17,500	56,691	49,821

The Law Society of British Columbia

Report

Bencher Election Working Group

November 7, 2013

Prepared for: Benchers

Prepared by: Bencher Election Working Group

Brian J. Wallace, QC, Chair

Patrick Kelly

Patricia Schmit, QC

Jeffrey Hoskins, QC, staff support

Contents

I. EXECUTIVE SUMMARY

1. The Bencher Election Working Group was asked to review three issues involving the election and term of office for Benchers of the Law Society of British Columbia: the uneven turnover of new Benchers from year to year, the term of office that Benchers ought to serve after election or appointment, and the districts in which Benchers are elected. Although issues such as these have been raised and discussed in the past, there has been little change in this area since election of Benchers by district was introduced in 1955.
2. The Working Group felt that two of the issues assigned to it could be addressed with relatively simple and unobtrusive changes that we recommended be implemented at the first opportunity. To that end, the Working Group issued an Interim Report in January, 2013, which is attached to this Report as Appendix A.
3. The third issue is more complicated, and we perceive that any solution to the problem is going to be difficult for some to accept. Resolution of the issue also ought to be considered in conjunction with the ongoing examination of Law Society governance issues. We recommend that discussion toward resolution of the issue begin in the near future:
    - Current districts for election of Benchers are in violation of the principles that apply to electoral representation in Canada. In some cases, the variance is extreme. The working group makes specific suggestions for discussion of revision of the districts to rectify the situation.
    - The working group also recommends that the Benchers consider a variation on the electoral process that would allow lawyers in all parts of the province to vote for all Bencher positions, but would guarantee some representation to all geographic parts of the province.
4. The Working Group completed its report in draft in August 2012, but was requested to delay its presentation to the Benchers to ensure that consideration of recommendations of the Governance Task Force was not interfered with. As a result, the statistics cited in the report are based on Law Society membership figures

as of June 2012. Changes since that date do not significantly affect the validity of the data, and the Working Group has not found it necessary to update the figures.

II. BACKGROUND

A. EXECUTIVE/BENCHER RESOLUTIONS 2011

5. In April, 2011 the Executive Committee asked the Benchers to consider a number of governance issues. These issues ranged from the appointment of non-lawyers to Law Society committees to the system for electing Benchers and the term of office for which they are elected. They were divided into issues that the Executive Committee considered to be high and low priority and into issues that the *Legal Profession Act* requires the approval of the membership, and those that do not.
6. The Benchers approved the priorities assigned by the Executive Committee and referred most of the issues back to the Executive Committee for further action in accordance with the priority assigned. Three issues were considered sufficiently complex that they should be referred to a Task Force specially constituted to study the issues and report back to the Benchers with recommendations.
7. These are the three issues that were referred to a Task Force:
   a) Bencher turnover and whether it can or should be addressed by staggering elections. A sub-issue was added by the Executive Committee as to how best to make the transition to staggered elections.
   b) The length of the Bencher term of office. Whether it should be extended from two years to three or more.
   c) Bencher electoral districts. Should they be revised for either or both of
      - more equitable numerical apportionment, and
      - better grouping of like communities in the same district.
8. It was suggested that, since each of these issues could be seen to involve the interests of the current Benchers in the Bencher electoral process, the working group to which the issues were to be referred should comprise individuals who, while experienced in Law Society matters, are not currently elected as Benchers. In consideration of that suggestion, the President at the time, Gavin Hume, QC, appointed a working group

consisting entirely of Life Benchers, who are neither currently sitting Benchers nor, for that matter, eligible ever to be a candidate for election or appointment as a Bencher. The Bencher Elections Working Group is chaired by Brian Wallace, QC, a former President of the Law Society (then known as the "Treasurer"). The other members of the Task Force are Patricia Schmit, QC and Patrick Kelly. Staff support was provided by Jeff Hoskins, QC, Tribunal and Legislative Counsel, with the assistance of Ingrid Reynolds.

B. HISTORY

9. Before 1955, Benchers in British Columbia were elected at-large, with each lawyer in the province having a vote for every elected Bencher and being able to vote for any candidate from anywhere in the province. In the last province-wide at-large election for Benchers, which was held in June, 1953, 12 lawyers were elected Benchers: nine from Vancouver, two from Victoria and one from Penticton. That was typical of the election results for at least the previous decade, with two from Victoria, one from the interior of British Columbia and the rest from the lower mainland.
10. Presumably in order to increase regional representation at the Benchers table, the *Legal Professions Act* was amended in 1955 to provide for election of Benchers from the various Counties of the province. At the same time, a number of ex-officio Bencher positions were abolished and the number of elected Benchers was nearly doubled.

11. This is how the original regional representation was constructed:

County of Vancouver	13 Benchers
County of Victoria	2 Benchers
County of Nanaimo	1 Bencher
County of Westminster	1 Bencher
County of Kootenay	1 Bencher
County of Yale	1 Bencher
Counties of Cariboo and Prince Rupert	1 Bencher
TOTAL BENCHERS	20 Benchers

12. Victoria kept its usual two elected Benchers, while Vancouver considerably increased its contingent at the table. So did the rest of the province, going from what had typically been one to five, including one from Vancouver Island north of Victoria, which had never had a Bencher before in the 20th Century.
13. The total number of elected Benchers increased from 12 to 20. While each district was guaranteed a Bencher (more than one in Vancouver and Victoria), each was also limited to the assigned number.
14. At first, lawyers throughout the province could vote for Benchers in all of the Counties. However, a change was made, effective with the election in 1981, so that lawyers are now only able to vote for candidates for Bencher in the districts in which they practise, or where they live in the case of retired and non-practising members.
15. From time to time in the 1960s and 70s, the Law Society passed resolutions asking the provincial government to amend the legislation to increase the number of Benchers elected in this County or that. Those resolutions were implemented by government, which even added a second Bencher to Cariboo County on its own motion.
16. In 1992, the Benchers considered changes to how Benchers are elected. The Planning Committee reported a large number of possible changes that were intended to make voting for Benchers more equal across the province and to group together

communities in a more logical manner. The membership of the Law Society was consulted extensively, including in the form of a *Benchers' Bulletin Supplement* canvassing the proposed changes. A copy is attached as Appendix B.

17. In the end, the Benchers decided only to put two proposals to the membership at the Annual General Meeting in 1993: the division of Yale County into two districts and the division of Cariboo County into two districts. The first resolution passed, resulting in the creation of Okanagan District and of Kamloops District. The second would have divided the City of Prince George from the rest of Cariboo County. It met some opposition from members from Cariboo County, and the motion to adopt the resolution was tabled indefinitely. Subsequent consultations with local members of the Bar by some senior Benchers indicated a lack of support, and the proposal was not pursued further.

18. With the passage of the current *Legal Profession Act* in 1998, the number of appointed non-lawyer Benchers was increased from three to six. That brought the total number of Benchers up to 31. That established the complement of Benchers as follows, as it remains today:

County of Vancouver	13 Benchers
County of Victoria	2 Benchers
County of Nanaimo	1 Bencher
County of Westminster	3 Benchers
County of Kootenay	1 Bencher
Okanagan District	1 Bencher
County of Cariboo	2 Benchers
County of Prince Rupert	1 Bencher
Kamloops District	1 Bencher
Appointed Benchers	6 Benchers
TOTAL BENCHERS	31 Benchers

19. In 2003 the Benchers considered a number of Law Society governance issues that then required a referendum vote of all the members in order to adopt Rule amendments. It was agreed to ask the members of the Law Society to approve a

series of questions in a referendum, including extending the term limits for Benchers, but the Benchers decided not to advance questions having to do with Bencher electoral districts, staggered elections or increasing the term of office.

20. In 2011 the Benchers again considered a number of governance issues. Three issues were referred to this working group. They are subject to section 12 of the *Legal Profession Act*, which requires that the membership endorse rule changes at a general meeting or in a referendum ballot before the Benchers can give them effect by amending the Law Society Rules. This requirement was included in the *Legal Profession Act* because the nature of these provisions gives the appearance that the self-interest of the Benchers is involved.
21. In order to dispel that appearance and give any proposals for reform more credibility with the membership voting in a subsequent referendum, the Benchers referred the three issues to a working group of individuals who are knowledgeable in Law Society matters and have been in a position of trust as Benchers in the past, but are not currently Benchers and therefore do not have a current personal interest in the outcome.

III. MANDATE

A. BENCHER ELECTION DISTRICTS

22. The issue to be addressed in this Report relates to the number of lawyers in each of the nine Bencher electoral districts. The Working Group was asked to consider the vastly different numbers of lawyers voting per Bencher in the various districts, whether the differences are a concern, and whether there may be other electoral districts, or alterations to the current ones, that would provide fairer voting.

IV. BENCHER ELECTIONS

23. Since 1955 Benchers have been elected in the districts established under the *County Boundaries Act.* Originally there were 20 elected Benchers. Five have been added over the years, but all to existing districts. There have been no revisions to the boundaries in 58 years, with the exception of the division of the County of Yale into

Okanagan and Kamloops Districts in 1993. In the meantime, the County Courts were abolished 20 years ago, and the County boundaries have little legal significance outside of Bencher elections.

24. Most problematic is that the uneven distribution of lawyer population in the province has left the districts with a wide variation in the number of lawyers voting for each Bencher.

25. The table below shows the numbers of members in each District as of June 1, 2012, along with the number per Bencher. While the average Bencher is elected by 507 lawyers, the actual figures vary from a low of 76 to a high of 624, with variations from the provincial norm ranging from over 23 per cent above to 85 per cent below.

Bencher representation by district

Actual, June 1, 2012

DISTRICT (Benchers)	MEMBERS	MEMS/ BENCHER	VARIATION (%)
Vancouver (13)	8,111	624	+23.1
Victoria (2)	1,245	623	+22.8
Nanaimo (1)	457	457	- 9.8
Westminster (3)	1,665	555	+9.5
Kootenay (1)	140	140	-72.4
Okanagan (1)	491	491	- 3.1
Cariboo (2)	218	109	-78.5
Prince Rupert (1)	76	76	-85.0
Kamloops (1)	270	270	-46.7
TOTALS (25)	**12,673**	**507**	

See Appendix C for a graphic representation of these data.

26. The Supreme Court of Canada has found that, in the context of federal and provincial elections, Canadians have a right under section 3 of the *Canadian Charter of Rights and Freedoms* to relative parity of voting power (*Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158). Other factors apply, of course, and section 3 does not govern Law Society elections, but the working group is of the view that the principle is apt for Bencher elections, and could be achieved with some adjustments to the current districts and numbers.
27. In the *Saskatchewan Reference* case, McLachlin, J (as she then was) writing for the majority articulated the principles of redistribution that have guided such endeavours in Canada for over 20 years:

> What are the conditions of effective representation? The first is relative parity of voting power. A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation to the citizen whose vote is diluted. The legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation.
>
> But parity of voting power, though of prime importance, is not the only factor to be taken into account in ensuring effective representation. …
>
> Notwithstanding the fact that the value of a citizen's vote should not be unduly diluted, it is a practical fact that effective representation often cannot be achieved without taking into account countervailing factors.
>
> First, absolute parity is impossible. It is impossible to draw boundary lines which guarantee exactly the same number of voters in each district. Voters die, voters move. Even with the aid of frequent censuses, voter parity is impossible.
>
> Secondly, such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of

> effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation; the list is not closed.
>
> It emerges therefore that deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced. I adhere to the proposition asserted in *Dixon v. B.C. (A.G.)* (1986), 7 BCLR (2d) 174, at p. 414, that "only those deviations should be admitted which can be justified on the ground that they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed."

28. So it is a fundamental principle of representation in Canada that there should be as much parity of voter power, which is to say equality of numbers of persons represented by each elected official, as the other factors will bear.
29. The other matters to be considered and not to be compromised unnecessarily as a result of parity of voting power include factors such as
    - geography,
    - community history,
    - community interests, and
    - minority representation
30. Principles similar to these are embedded in the law governing redistribution of provincial electoral boundaries in British Columbia. The *Electoral Boundaries Commission Act*, RSBC 1996, c. 107, contains this provision:

Determining boundaries

9 (1) In determining the area to be included in and in fixing the boundaries of proposed electoral districts, the commission must be governed by the following principles:

(a) that the principle of representation by population be achieved, recognizing the imperatives imposed by geographical and demographic realities, the legacy of our history and the need to balance the community interests of the people of British Columbia;

(b) to achieve that principle, the commission be permitted to deviate from a common statistical Provincial electoral quota by no more than 25%, plus or minus;

(c) the commission be permitted to exceed the 25% deviation principle where it considers that very special circumstances exist.

(2) For the purpose of making proposals under section 3(2), the commission must take into account the following:

(a) geographic and demographic considerations, including the sparsity, density or rate of growth of the population of any part of British Columbia and the accessibility, size or physical configuration of any part of British Columbia;

(b) the availability of means of communication and transportation between various parts of British Columbia.

31. The working group is of the view that the variations from even relative parity of voting power are so extreme in the current configuration that they cannot be sustained. Significant changes need to be adopted to bring the Bencher electoral districts into line with the 25 per cent maximum variation mandated by the provincial law. The extreme deviance from this standard is illustrated by the fact that the County of Prince Rupert would only barely be within the 25 per cent deviation if the number of elected Benchers were increased fivefold to 125.

32. Secondly, there are some changes that can be made to improve the community of interest within districts. Since the County boundaries were established as electoral districts for Bencher elections in 1955, there have been numerous changes in the distribution of lawyers throughout the province and way they practise their profession. Changes to recognize those changes and make the electoral districts more relevant to lawyers in 2012 are in order.

1. County of Vancouver

33. The County of Vancouver has elected 13 Benchers from the start. In 1955, that was 65 per cent of the Benchers; in 2012 it is 42 per cent. As of June 1, 2012, the 8,111 lawyers voting in the County of Vancouver represented 64.0 per cent of the total Law Society membership of 12,673.
34. The district is currently the most under-represented in the province, with more than 23 per cent more lawyers per Bencher than the provincial average. While there may be some reason for that in the very densely populated heart of the district, there is no justification with respect to the outlying areas of the district.
35. Within the county, there are wide variations in the communities and the nature of the practice of law. The majority of lawyers in the county practise in Downtown Vancouver, as defined for another purpose in Law Society Rule 2-31(2). At the same time, lawyers in the rest of the City of Vancouver, on the North Shore and in the City of Richmond practise in what might be termed a suburban setting. As well, the county includes the Sunshine Coast, Powell River, Howe Sound, Squamish and Whistler, all which are variations on a more rural theme.
36. The working group suggests dividing the County of Vancouver into areas with more community of interest and adjusting the representation level of each to something more appropriate to the nature of the area.
37. This would be the result:

    Downtown Vancouver, being the downtown peninsula west of Carrall Street, would elect 10 Benchers and still be one of the two districts with the highest ratio of members to Bencher.

Suburban Vancouver, being the remainder of the City of Vancouver, would elect three Benchers and would be very close to the provincial average in ratio of members to Bencher.

The North Shore, being the part of Metro Vancouver north of Burrard Inlet, has enough lawyers to have its own Bencher and be slightly above the provincial average in ratio of members to Bencher.

The City of Richmond would appear to have much more in common with municipalities in the County of Westminster. We suggest making Richmond part of that district, justifying an increase in Benchers from three to four.

The Sunshine Coast, Powell River, Howe Sound, Squamish and Whistler would be more suited to a large district that would comprise much of the rural areas of British Columbia.

2. County of Westminster

38. This county currently has three Benchers representing 1,665 lawyers, which puts it significantly over the provincial average ratio of members to Bencher. It covers a significant territory south and east of Vancouver. Lawyers in the area appear to share most interests, but the nature of the community bar organizations makes it a difficult area to represent because of the expectation that local Benchers will attend frequent functions. Westminster County Benchers have been looking for an increase in their numbers for some time.
39. At the same time, it appears that the nature of practice in the City of Richmond has more in common with its neighbours in Delta, Surrey and Burnaby than with the City of Vancouver, particularly Downtown Vancouver. Adding Richmond to Westminster County would increase its lawyer population to nearly 2,000, which would support the addition of a fourth Bencher. That would put it somewhat below the provincial average ratio of lawyers to Bencher, but continued growth, especially in the Surrey and Abbotsford areas, will likely change that within a few years.

3. County of Victoria

40. The County of Victoria is currently one of the most under-represented districts. It comprises 1,245 lawyers electing two Benchers. That makes it 22.8 per cent above the provincial average in the ratio of lawyers to Bencher. If the 106 lawyers who practise in the County but outside of the City of Victoria were taken out and added to the County of Nanaimo, that would put Victoria much closer to the provincial average.

4. County of Nanaimo

41. The County of Nanaimo consists of some urban centres and some more rural and coastal areas. Its ratio of lawyers to Bencher is almost 10 per cent below the provincial average, which is not inconsistent with the principles of representation of more rural areas. However, if the suburban area around Victoria is added to the district in order to relieve problems in that county, the population of Nanaimo County becomes too great for a district that includes a significant rural component. The mix of population from rural to nearly urban over almost the entirety of a large island is also probably not appropriate. The solution is to make Nanaimo district less rural in aspect overall and include the part of Vancouver Island north of the Parksville-Qualicum area in a large district that would comprise much of the rural areas of British Columbia.

5. County of Kootenay and Kamloops District

42. These two districts currently elect one Bencher each. However, the lawyer population in each case is below the provincial average by very large amounts – 46.7 per cent in the case of Kamloops and 72.4 per cent in the case of Kootenay. If the two districts are combined in a single district with one Bencher, however, the variation from the provincial average comes within the 25 per cent limit suggested by the provincial legislation governing the redistribution of provincial legislative representation.

6. Okanagan District

43. This district currently has 491 lawyers, which is a very small variation (3.1 per cent) from the provincial average. There does not appear to be any reason to make any adjustments.**7.**

7. Counties of Cariboo and Prince Rupert

44. These two districts are the most out of line with the provincial ratio of lawyers to Bencher.
45. The County of Cariboo covers a very large area of the province, and there is every reason to allow for that in redrawing electoral boundaries. But, with 218 lawyers and two Benchers, the district is 78.5 per cent below the provincial average. Even with one Bencher, it would be significantly offside the principles of voting fairness.
46. The County of Prince Rupert is even farther out of line with the rest of the province. With only 76 lawyers and one Bencher, the variation here is 85.0 per cent below.
47. In order to get a district within the 25 per cent suggested as a maximum variation by provincial legislation, the working group suggests a large portion of rural British Columbia as a Bencher election district with one Bencher. It would comprise the Counties of Cariboo and Prince Rupert and rural and coastal parts of the Counties of Nanaimo and Vancouver.

8. Overall

48. These changes would result in Bencher election districts that would all come within the 25 per cent guideline, with urban districts that would tend toward to the higher member to Bencher ratio and rural ones that would have a lower ratio. The table below would represent the result, using figures current to June 1, 2012.

Bencher representation by district, Proposed

DISTRICT (Benchers)	MEMBERS	MEMS/ BENCHER	VARIATION (%)
Vancouver Downtown (10)	5,622	562	+6.5
Vancouver Suburban (3)	1,541	514	-2.7
Victoria (2)	1,143	572	+8.2
Nanaimo (1)	530	530	+0.4
Westminster (4)	1,978	495	-6.4
Kootenay-Kamloops (1)	410	410	-22.4
Okanagan (1)	491	491	-7.0
Cariboo-Prince Rupert (1)	408	408	-22.7
North Shore (1)	550	550	+4.2
TOTALS (24)	**12,673**	**528**	

Appendix C contains a graphic representation of these projected data, in a form that can easily be compared to the existing figures.

V. METHOD OF ELECTING BENCHERS

49. In the course of considering the questions referred to them by the Benchers, the working group had occasion to look at the systems by which other professional governing bodies, particularly other Canadian law societies, elected their governors. There is more diversity in methods of election than members of the working group had expected. See Appendix A to the Interim Report for further details.

50. In particular, the way that two Canadian law societies elect their benchers was of interest. The working group spent some time considering the methods used by the Law Society of Alberta and the Law Society of Upper Canada to see if there are lessons that we can learn.

51. Although the mandate given the working group by the Benchers does not include making recommendations about the basic method of electing Benchers, the working group recommends that the Benchers consider some alteration to the way that BC Benchers are elected, taking some ideas from other law societies. This would be in the alternative to the recommendations regarding reapportionment of Bencher election districts.

Bencher elections in Alberta

52. Members of the Law Society of Alberta elect 20 lawyers as Benchers. Each member gets to vote for 20 candidates in one large ballot. Everyone's vote is equal, and everyone has a say about all the Benchers. In order to assure that each region of the province elects at least one Bencher, the Law Society has established three districts, which do not include either of the major cities, Edmonton and Calgary.

53. The three districts, called Northern, Southern and Central Districts, are each guaranteed one Bencher. The top vote-getter from each district in the across-the-province election is elected a Bencher, no matter where they fall overall. The top 16 other candidates are elected Benchers, no matter where in the province they are from. (The President-elect is also taken as elected under the governing legislation.) So, at least theoretically, more than one Bencher could be elected from any or all of the rural districts.

54. In the 2011 Bencher election in Alberta, there were 48 candidates for the 20 elected positions. Only one candidate from the Central District was nominated, so he was elected by acclamation. There were two candidates from the Northern District and three from the Southern District. The top Northern candidate ranked 19th and was elected; the top Southern candidate ranked 35th and was also elected. The top 16 candidates overall, nine from Calgary and seven from Edmonton, were also elected. (Number 16 was decided by tie-breaker, with the candidate from Edmonton successful over a candidate from Calgary. Another candidate from Calgary was one vote behind those two.)

55. Under this method of electing Benchers, each of three geographically large regions of the province are each guaranteed at least one Bencher. There is also the possibility that more than one candidate could be elected a Bencher, if enough votes for more than one candidate are garnered on a province-wide basis. Each voter in all parts of the province has a vote as to all the Benchers to be elected from all parts of the province.

56. The working group noted a weakness of this approach is that, since all members across the province vote for all Benchers, including the district representatives, voters in the major urban centres could determine the representatives from the rural districts.

Bencher elections in Ontario

57. In 1999 the Law Society of Upper Canada instituted a system of electing Benchers that has some similarities to that of Alberta, but with some adjustments for the larger population and

more complex geography, along with other refinements that the working group found interesting.

58. Until 1995 40 Benchers were elected from two areas: Toronto and not-Toronto. All members across the province could vote on two separate ballots with 20 to be elected from each. The simple result was that the top 20 vote-getters on each ballot were elected Benchers. The weakness in that system was the same that existed in British Columbia before the advent of electoral districts for Bencher elections. The urban centres tended to dominate the results, and large geographic parts of the province often went without electing a Bencher.

59. In the reforms of 1999, eight districts were established for the election of Benchers. But, unlike in British Columbia, voters did not vote only in their own district. They continued to have a say in the election of all Benchers across the province. Each district, while guaranteed at least one Bencher, was not limited to that number if a second candidate, or more, could garner enough votes across the province to be elected at-large.

60. The new Ontario scheme continued the two-ballot scheme. As before, 20 Benchers are elected by all lawyers in Ontario from the Toronto membership. But the other 20 Benchers are elected quite differently. All lawyers in the province vote on the not-Toronto ballot, but those elected are not necessarily the top 20 vote-getters. Each district or region elects a "Regional Bencher", who is the candidate resident in each district who gets the most votes from among the members in that district. The top 13 vote-getters who are not Regional Benchers are then elected at-large.

61. This method allows all regions to elect their own local Bencher while allowing all voters to have a say on the election of all Benchers across the province. At the same time, it caps the number of Benchers from the largest metropolitan area at half of the elected Benchers so that members in other regions are able to be elected at-large.

62. The most recent election for Benchers of the Law Society of Upper Canada was held in April 2011. There were 53 candidates for Bencher in Toronto, with 20 to be elected. Since there was only one region involved, as one might expect, the top 20 candidates were elected. But the top vote-getter across the province, Treasurer Laurie Pawlitza, was not the Regional Bencher for Toronto. That went to second place Linda Rothstein, because she got the most votes in the Toronto region.

63. There were also 53 candidates for Bencher from outside Toronto, also for 20 Bencher positions. The top vote-getter across the province (higher even than the Treasurer) was Constance Backhouse from Ottawa, but among lawyers in the East region, she was second to Adriana Doyle, who became the East Regional Bencher.

64. Three other Regional Benchers finished among the top 12 candidates, but three others did not. Regional Benchers from Central South, Central East and Northwest finished 22nd, 36th and 46th overall. Because they got the most votes in their home region, they were elected Benchers. In two cases of the three, other candidates from the region got more votes across the province, but were not elected.

65. Other candidates from six of the Regions finished in the top 17 and were elected Benchers as well. The 20 Benchers from outside Toronto broke down by region (with one or two major cities) as follows:

East (Ottawa-Kingston)	5
Northeast (Sudbury)	4
Central East (Markham-Newmarket)	3
Southwest (Windsor-London)	3
Central West (Mississauga-Oakville)	1
Central South (Hamilton)	2
Northwest (Thunder Bay-Kenora)	2

How these examples might be applied in British Columbia

66. The working group found the systems of electing Benchers in Alberta and Ontario very interesting. The working group had come to the conclusion that the current districts for the election of Benchers in British Columbia could not be justified if every lawyer's vote is to have close to the same value. However, we also realized that representation based entirely on geography means that lawyers outside Vancouver can influence the election of only one, two or three Benchers, while those in Vancouver have a say, albeit a very much smaller one, in the election of 13.

67. As a result, the working group is attracted to an electoral model that combines constituency and at-large voting. Taking from the examples of Alberta and Ontario Law Societies, these

are some of the advantages that might be served in trying to achieve both objectives of electoral fairness and adequate representation:

- A guarantee of at least one Bencher elected from each major region of the province;
- Each region would determine one regional Bencher without influence from voters outside the region;
- A possibility of electing more than one Bencher from a region if there are candidates with enough votes province-wide;
- Each lawyer would be able to vote for all Benchers across the province;
- Benchers would represent the public interest with the support of lawyers across the province, and not just in one region;
- A lawyer who changed the location of his or her practice from one region to another would still have the opportunity to be elected a Bencher with province-wide support.

68. Because of the dominance of its numbers in the profession, the number of Benchers that can be elected from downtown Vancouver should be capped at a number commensurate with its proportion of the lawyers in the province.

69. The working group recommends that the Benchers initiate a discussion with the membership to consider changing the method of electing Benchers to something along the following lines:

1. British Columbia is divided into five major regions:

    - Downtown Vancouver – The downtown peninsula only.
    - Suburban Vancouver – The rest of the Metro Vancouver Regional District, plus the Fraser Valley as far as Hope and Sea-to-Sky as far as Whistler.
    - Vancouver Island and Central Coast – The island plus Sunshine Coast, Powell River.

- Northern British Columbia – All of Prince Rupert County and Cariboo County north of the Quesnel area.

- Southern Interior – The southern part of Cariboo County and Kootenay and Yale Counties.

2. The Benchers would be elected in two ballots: 10 in Downtown Vancouver, 15 in the rest of the province.

3. All lawyers would be eligible to vote on both ballots.

4. The candidate in each region getting the most votes among voters in that region would be elected, regardless of their standing across the province. In Downtown Vancouver, the top other nine candidates would also be elected. Outside Downtown Vancouver, the top 11 other candidates would be elected.

70. In the last general election in November 2011, Benchers were elected (or in the cases of the incoming President and Vice-Presidents, continued without further election) in this proportion to the proposed regions:

    - Downtown Vancouver – 11
    - Suburban Vancouver – 5
    - Vancouver Island and Central Coast – 3
    - Northern British Columbia – 3
    - Southern Interior – 3

71. A fixed number of Benchers for downtown Vancouver would ensure that lawyers practising there are fully represented, while not allowing the Bencher table to be disproportionately dominated by them. Suburban Vancouver lawyers, particularly those in the County of Vancouver, have historically been under-represented. That would change, but it is not possible to know whether that would be in proportion to their numbers. The Ontario experience would seem to indicate that all regions can be represented adequately under this system, while a relatively small region can be afforded more Benchers if the voters across the province consider it warranted.

72. After much consideration of various approaches, the working group is of the view that the Benchers should initiate a discussion among lawyers across the province to consider whether a significant departure from the method of electing Benchers in place since 1955 could benefit the Law Society. It also may ameliorate a change toward electoral fairness that could otherwise reduce the number of elected Benchers from some parts of the province.

VI. SUMMARY OF RECOMMENDATIONS

For discussion with membership

1. Adjust electoral districts

73. The electoral districts for the election of Benchers should be adjusted
    - to reduce disparities in the number of lawyers electing Benchers to conform to the law respecting representation by population in federal and provincial elections, while taking into account the need for representation of rural and sparsely populated parts of the province;
    - to allow for more appropriate or separate representation of smaller communities in the urban setting.
74. Specifically, the Benchers and members of the Law Society should consider the reapportionment of Bencher electoral districts such as the following:

    City of Vancouver Downtown, 10 Benchers

    City of Vancouver remainder, 3 Benchers

    City of Victoria, 2 Benchers

    Nanaimo (not including North Island, including suburban Victoria), 1 Bencher

    County of Westminster (including City of Richmond), 4 Benchers

    County of Kootenay and District of Kamloops, 1 Bencher

    District of Okanagan, 1 Bencher

    County of Cariboo, County of Prince Rupert, Sunshine Coast and North Island, 1 Bencher

    North Shore, 1 Bencher

2. Province-wide election with guaranteed regional Benchers

75. The Benchers and members of the Law Society should consider, as an alternative to recommendation 1, adopting a voting system in which all members are entitled to vote for all elected Benchers and each region is guaranteed a minimum of one Bencher elected by the local members in the region, but the number of Benchers beyond the one guaranteed is not restricted for most districts. The working group would make an exception of Downtown Vancouver, whose representation should be restricted to the number that accords with its proportion of the overall membership.

Appendix A

The Law Society of British Columbia

Interim Report

Bencher Election Working Group

January 25, 2013

Prepared for: Benchers

Prepared by: Bencher Election Working Group

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Contents

INTERIM REPORT OF THE WORKING GROUP ON BENCHER ELECTIONS

I. EXECUTIVE SUMMARY

1. The Bencher Election Working Group was asked to review three issues involving the election and term of office for Benchers of the Law Society of British Columbia: the uneven turnover of new Benchers from year to year, the term of office that Benchers ought to serve after election or appointment, and the districts in which Benchers are elected. Although issues such as these have been raised and discussed in the past, there has been little change in this area since election of Benchers by district was introduced in 1955.

2. Two of these issues can be addressed with relatively simple and unobtrusive changes that we recommend be implemented at the first opportunity:

   - There is a problem with a large cohort of new Benchers being introduced every two years, with only one or two new Benchers in alternate years. This problem can be solved by electing an equal portion of Benchers every year. The portion depends on the term of office for Benchers.
   - The working group is of the view that a term of office of three years is appropriate for Benchers of the Law Society.

3. The third issue is more complicated, and we perceive that any solution to the problem is going to be difficult for some to accept. Resolution of the issue also ought to be considered in conjunction with the ongoing examination of Law Society governance issues. Governance issues were the subject of interim and final reports in 2012, and work will continue in 2013 with the appointment of a Governance Committee. The Working Group recommends that discussion toward resolution of the Bencher district issue begin in the near future.

II. BACKGROUND

A. EXECUTIVE/BENCHER RESOLUTIONS 2011

4. In April, 2011 the Executive Committee asked the Benchers to consider a number of governance issues. These issues ranged from the appointment of non-lawyers to Law Society committees to the system for electing Benchers and the term of office for which they

are elected. They were divided into issues that the Executive Committee considered to be high and low priority and into issues that the *Legal Profession Act* requires the approval of the membership, and those that do not.

5. The Benchers approved the priorities assigned by the Executive Committee and referred most of the issues back to the Executive Committee for further action in accordance with the priority assigned. Three issues were considered sufficiently complex that they should be referred to a Task Force specially constituted to study the issues and report back to the Benchers with recommendations.

6. These are the three issues that were referred to a Task Force:

   (1) Bencher turnover and whether it can or should be addressed by staggering elections. A sub-issue was added by the Executive Committee as to how best to make the transition to staggered elections.

   (2) The length of the Bencher term of office. Whether it should be extended from two years to three or more.

   (3) Bencher electoral districts. Should they be revised for either or both of

   - more equitable numerical representation, and
   - better grouping of like communities in the same district?

7. It was suggested that, since each of these issues could be seen to involve the interests of the current Benchers in the Bencher electoral process, the working group to which the issues were to be referred should comprise individuals who, while experienced in Law Society matters, are not currently elected as Benchers. In consideration of that suggestion, the President at the time, Gavin Hume, QC, appointed a working group consisting entirely of Life Benchers, who are neither currently sitting Benchers nor, for that matter, eligible ever to be a candidate for election or appointment as a Bencher. The Bencher Elections Working Group is chaired by Brian J. Wallace, QC, a former President of the Law Society (then known as the "Treasurer"). The other members of the Task Force are Patricia Schmit, QC and Patrick Kelly. Staff support was provided by Jeff Hoskins, QC, Tribunal and Legislative Counsel, with the assistance of Ingrid Reynolds.

B. HISTORY

8. In 2003 the Benchers considered a number of Law Society governance issues that then required a referendum vote of all the members in order to adopt Rule amendments. It was agreed to ask the members of the Law Society to approve a series of questions in a referendum, including extending the term limits for Benchers, but the Benchers decided not to advance questions having to do with Bencher electoral districts, staggered elections or increasing the term of office.

9. In 2011 the Benchers again considered a number of governance issues. Three issues were referred to this working group. They are subject to section 12 of the *Legal Profession Act*, which requires that the membership endorse rule changes at a general meeting or in a referendum ballot before the Benchers can give them effect by amending the Law Society Rules. This requirement was included in the *Legal Profession Act* because the nature of these provisions gives the appearance that the self-interest of the Benchers is involved.

10. In order to dispel that appearance and give any proposals for reform more credibility with the membership voting in a subsequent referendum, the Benchers referred the three issues to a working group of individuals who are knowledgeable in Law Society matters and have been in a position of trust as Benchers in the past, but are not currently Benchers and therefore do not have a current personal interest in the outcome.

III. MANDATE

A. BENCHER TURNOVER

11. The first issue referred by the Benchers is the question of the uneven turnover of Benchers. The Working Group was charged with examining and evaluating the problem and making recommendations as to changes that may provide a solution, if required.

B. TERM OF OFFICE

12. The second issue for the Working Group's consideration is the term of office of Benchers. Under the current rules, all Benchers serve a two-year term, with a maximum of four and one-half terms, which means in most cases eight years in office as a Bencher. The Working Group is to consider whether two years continues to be the appropriate term of office in today's Law Society. If a change is to be made, that may involve an adjustment to the term

limit, although the Benchers did not ask for a recommendation concerning the term limit other than to accommodate a change in the term of office.

C. BENCHER REPRESENTATION

13. The third issue relates to the number of lawyers in each of the nine Bencher electoral districts. The Working Group was asked to consider the vastly different numbers of lawyers per Bencher representing the various districts, whether the differences are a concern, and whether there may be other electoral districts, or alterations to the current ones, that would provide fairer representation. The Working Group's consideration of that issue will be the subject of its final report in 2013.

IV. BENCHER TURNOVER

14. Every two years, there is a general election of Benchers, the terms of Appointed Benchers come to an end, and several are replaced at the same time. In alternate years, an election is required to replace the out-going President and sometimes others who have left for one reason or another. The result is a very large number of inexperienced Benchers in alternate years and a very low number in other years.

15. These are the figures for the past decade:

YEAR	NEW BENCHERS
2002	13
2003	2
2004	8
2005	1
2006	11
2007	1
2008	5
2009	2
2010	10
2011	1
2012	7
2013	1

16. Operationally, this situation is inefficient in that the Law Society is required to dedicate a large number of staff hours per Bencher to the orientation and education of one individual in some years and, in other years, the logistics of orienting and training a large number of people is often a problem. There is also a risk to the quality of decision-making in having up to 42 per cent of the Board without experience for a period of time.

17. If the number of new Benchers could be averaged out, one would expect about four or five new Benchers annually.

18. One common way of mitigating the effects of high turnover of elected officials is to elect only a partial slate of candidates at each election, for overlapping terms, so that there is a carry-over when new members arrive. With two-year terms, the Rules could be amended to call for the election of half of the elected Benchers each year. The provincial government could also be asked to appoint half of the Appointed Benchers each year. This is commonly referred to a "staggered" terms of office and "staggered" elections.

19. If the term of office for Benchers is changed to three years, then as close as possible to one-third could be elected and appointed each year.

20. An additional disadvantage of electing all Benchers at once is the large number of candidates that are involved and the large number of votes each member is required to make to fully exercise the franchise. This is especially so in the very large district of the County of Vancouver, where a minimum of 10 and a maximum of 13 Benchers must be elected in a full election. There have been up to 37 candidates in elections, with mean and median of 24.

21. The transition from full elections to partial staggered elections would have some manageable complexities. In the long run, though, this would have little effect on the Law Society administration of elections, in that the current Rules require at least one election on November 15 every year, to replace the outgoing President in off years.

22. The working group considered the effect that staggering elections may have on the collegiality of Benchers while in office. The cohort of new Benchers with whom a Bencher joins the group is important throughout the Benchers' terms in office. There was some concern that making the cohorts smaller and more frequent might affect the dynamic at the Bencher table. However, it was considered in the end that the change would not be sufficiently negative to outweigh the advantages of stability and continuity to be had from staggering elections. At the same time, it was recognized that the present system often

provides a cohort of only one new Bencher in years when only the outgoing President is replaced. There is a value in providing a larger cohort for the otherwise single new Bencher.

V. TERM OF OFFICE

23. The current term of office for Benchers in British Columbia is two years. Several other Canadian law societies elect Benchers for longer terms. The Bencher term of office is three years in Alberta and Saskatchewan and four years in Ontario and Newfoundland and Labrador. See Appendix A for further details.

24. Frequency of election has its rewards in terms of involvement of the electorate, but it is also a distraction to elected officials to be perpetually, or at least frequently, up for re-election. Staggered elections, if adopted would provide the desired level of involvement of the electorate without necessarily requiring Benchers to seek re-election frequently.

25. The working group considered what the optimum term of office would be. As it is currently, Benchers have said that they barely learn all that they need to know for the job before it is necessary to seek re-election. The working group noted that two years appears to be the low end of term of office among law societies in Canada and other professions in British Columbia. They also noted that elected officials in government generally serve for longer terms, with municipal government in British Columbia serving for three years and federal and provincial governments normally lasting about four years.

26. The working group observed that very few Benchers serve only one term in office. See Appendix C. Even fewer are rejected by the voters when attempting to return for a subsequent term. Outside of the Lower Mainland, in fact, incumbent Benchers are rarely opposed for re-election. There does not seem to be a high value in the opportunity to remove a Bencher at an early date that needs to be preserved with a short term of office.

27. The group considered four years to be too long, but two years to be too short for many purposes. They chose to recommend the middle solution of three-year terms. This would make the term for elected and appointed Benchers the same as that for Benchers elected to the presidential “ladder”, who serve one year each at President and First and Second Vice-President.

28. If the term of office was increased to three years, this would require an amendment to the term limit, which is currently eight years for most Benchers, with an adjustment for fairness to those Benchers who are elected or appointed to complete a term of office begun by

another Bencher who is unable to finish the term. Presumably the term of office would have to be increased to nine years, with a similar adjustment to deal with partial terms.

VI. IMPLEMENTATION AND TRANSITION

Process for considering reforms

29. The working group recommends that the Benchers put forward the reforms increasing the term of office for Benchers and staggering elections for consideration by the membership of the Law Society at the earliest opportunity.

30. These two proposed reforms will require the approval of the membership of the Law Society under section 12 of the *Legal Profession Act*. Under that section, approval can be given either in a referendum of all members or in a general meeting.

31. It is our view that the reforms ought to be implemented in time for the general election scheduled for November 2013. The next opportunity would not take effect for a further two years, which means it would not affect the election and appointment of Benchers until the end of 2015. Since the Annual General meeting is generally held in the fall of the year, which would be too late in the year to implement the proposed changes, we recommend that the Benchers authorize a referendum of all members to be held in the late spring of 2013.

32. Following a positive decision of the members on either or both of the recommendations, the Benchers would then have to adopt amendments to the Law Society Rules to give effect to the decisions. That would require time for staff, working with the Act and Rules Subcommittee and in consultation with this working group, to develop the appropriate changes. Generally, a call for nominations for the November election is mailed by the Law Society in mid-September. In order for that notice to include notice of changes to the method of election, the Benchers would have to ratify rule changes before that time.

Transition issues

33. Transition should not be a major problem. All the terms of office of current Benchers not on the ladder will expire at the end of 2013. Those who are elected to carry on beginning January 1, 2014 can be elected for a term of office different from the existing two years without difficulty.

34. A transition to staggered elections would be manageable but more complicated. To start that system, there would have to be an election at which some Benchers are elected for terms that differ from other Benchers. For example, if the two-year term of office were retained, in order to establish a system where roughly half of the Benchers were elected each year, the initial election would require half of the Benchers elected to one-year terms, while the other half were elected to two-year terms. A year later, the one-year term seats could be filled for two years, and the system would continue from there.

35. Similarly, if the term of office were increased to three years, the initial election would require one-third elected for one year, one-third for two years and one-third for three years. A year later, the one-year seats would be filled for three-year terms, and another year after that, the two-year seats would be filled for three-year terms, and the system would continue.

36. The hardest part of making the transition would be deciding which positions would be filled for which term. In multiple member districts, the voters could decide. The higher the vote, the longer the term. For example, if the County of Vancouver were electing 12 Benchers to start a staggered three-year term system, the top four candidates would be elected for three years. Numbers 5 to 8 would be elected for two-years, and numbers 9 to 12 would be elected for one year.

37. There will be some districts in which the Benchers to be elected cannot be evenly divided either in two for a two-year term election or in three for a three-year term election. Choices would have to be made as to which districts would elect for which term of office. One fair way of doing that would be to decide that by drawing lots, so that there was no chance it would appear that any favoritism was applied. Alternatively, the lower term of office could be assigned to districts where no incumbent Bencher qualified to run again, and the rest could be determined by lot.

38. The next two sections provide brief examples of how the transition to staggered elections could be done.

Staggering elections - two-year term:

39. This is an example of how it could be done in 2013:

County of Vancouver	7 for 2 years; 6 for 1 year
County of Victoria	1 for 2 years; 1 for 1 year

County of Westminster	1 for 2 years; 2 for 1 year
County of Nanaimo	1 for 2 years
County of Cariboo	1 for 2 years; 1 for 1 year
County of Kootenay	1 for 1 year
District of Kamloops	1 for 2 years
District of Okanagan	1 for 2 years
County of Prince Rupert	1 for 1 year

40. Benchers on the "ladder" would be assigned a term of office ending with the end of the year in which the Bencher is to be President. Multiple Bencher districts would be divided as evenly as possible. Candidates with higher votes would be assigned the longer term of office. In which districts Benchers would have one-year or two-year terms would be determined by lot. That way there would be 13 Benchers elected for two years and 12 for one year. After 2013, half slates would be elected each November.

Staggering elections - three-year term

41. This is an example of how it could be done in 2013:

County of Vancouver	5 for 3 years; 4 for 2 years; 4 for 1 year
County of Victoria	1 for 3 years; 1 for 2 years
County of Westminster	1 for 3 years; 1 for 2 years; 1 for 1 year
County of Nanaimo	1 for 1 year
County of Cariboo	1 for 2 years; 1 for 1 year
County of Kootenay	1 for 3 years
District of Kamloops	1 for 2 year
District of Okanagan	1 for 1 years
County of Prince Rupert	1 for 3 years

42. Benchers on the "ladder" would be assigned a term of office ending with the end of the year in which the Bencher is to be President. Multiple Bencher districts would be divided as evenly as possible. Candidates with higher votes would be assigned the longer term of office. In which districts Benchers would have one-year, two-year or three-year terms would be determined by lot. That way there would be eight Benchers elected for three years, seven

Benchers elected for two years and seven for one year. After 2013, slates of one-third of the Benchers would be elected each November.

VI. SUMMARY OF RECOMMENDATIONS

Staggered elections

43. The Law Society should conduct annual elections with the number of Benchers to be elected approximately equal to the total number of Benchers divided by the number of years in the term of office. Therefore, if the term of office remains at two years, half of the Benchers would be elected each year. If the term of office increases to three years, one-third of Benchers would be elected each year.

Term of office increased to three years

44. The term of office for all elected and appointed Benchers should be increased to three years and the term limit should be increased to allow three full terms in office. In the case of partial terms, the principle of not counting half or less of a term against the term limit should continue. That means that a Bencher or former Bencher would not be allowed to seek election or accept appointment to a term that would take the total time served as a Bencher beyond 10½ years.

APPENDIX A — OTHER MODELS

Alberta

All members of the Law Society of Alberta are entitled to vote for all 20 Bencher positions from across the province. The top vote-getter in each of three regions outside of the two major metropolitan centres is elected, along with the 16 other top voters province-wide. The President-elect is also deemed elected under the governing legislation. Benchers are elected in a single (not staggered) election for a three-year term.

Manitoba

Lawyers in Manitoba elect 16 Benchers from seven districts in a single election for a two-year term.

New Brunswick

Lawyers in New Brunswick elect 20 Benchers from 11 districts in a single election for a two-year term.

Newfoundland and Labrador

The Law Society in Newfoundland and Labrador holds annual elections at which four Benchers are elected. There are six districts for Bencher elections, but all members of the Law Society across the province are entitled to vote for all candidates.

Northwest Territories

In the Northwest Territories, two of the four elected Benchers are elected each year in staggered elections for two-year terms. The public members of the Benchers are appointed for three-year terms.

Nova Scotia

Members of the Barristers' Society of Nova Scotia elect their 13 elected Benchers in a single election for a two-year term. There are four districts, but three Benchers are elected at-large across the province.

Nunavut

Nunavut follows the same rules as the Northwest Territories. Two of the four elected Benchers are elected each year in staggered elections for two-year terms. The public members of the Benchers are appointed for three-year terms.

Ontario

Ontario lawyers elect 40 Benchers, 20 from inside Toronto and 20 from outside Toronto. Eight of the 40 benchers are Regional Benchers - the candidates who received the highest number of votes from voters in their own electoral region. The remaining 32 Benchers are the 13 candidates from outside Toronto who received the most votes from all voters and the 19 candidates from inside Toronto who received the most votes from all voters. The regions are Northwest, Northeast, East, Central East, Central West, Central South, Southwest and Toronto. The term of office is four years, and elections of the complete complement of elected Benchers takes place every four years.

Prince Edward Island

The eight Benchers of the Law Society of Prince Edward Island are elected each year at the Annual General Meeting.

Québec

Local Barreau councils elect delegates to the Barreau du Québec annually. There are 31 members of the council elected by 15 local Barreaux.

Saskatchewan

Members of the Law Society of Saskatchewan elect 18 Benchers in 10 divisions, including one province-wide division for new lawyers. Benchers are elected in a single election for three-year terms.

Yukon

The four Benchers in Yukon are elected for a one-year term on the day before the Annual General Meeting each year.

BENCHER TERM OF OFFICE

A. CANADIAN LAW SOCIETIES

Organization	No.	Districts	Term	Staggered	Notes
LS Alberta	20	3+	3 yrs	No	All members vote for all 20. Top vote-getter in each district is elected plus 17 more. Districts include only rural areas.
LS Saskatchewan	18	10	3 yrs	No	New division for new lawyers.
LS Manitoba	16	7	2 yrs	No	
LS Upper Canada	40	8	4 yrs	No	Ontario lawyers elect 40 benchers, 20 from inside Toronto and 20 from outside Toronto. Eight of the 40 benchers are regional benchers - the candidates who received the highest number of votes from voters in their own electoral region. The remaining 32 benchers are the 13 candidates from outside Toronto who received the most votes from all voters and the 19 candidates from inside Toronto who received the most votes from all voters. The regions are Northwest, Northeast, East, Central East, Central West, Central South, Southwest and Toronto.
Barreau du Quebec	31	15	1 yr	No	General Council delegate elected by local Barreau councils.
LS New Brunswick	20	11	2 yrs	No	
BS Nova Scotia	13	4	2 yrs	No	3 elected at-large.
LS Prince Edward Island	8	1	1 yr	No	Elected at AGM
LS Newfound-land and Labrador	15	6	4 yrs	Yes	4 elected each year (when only 3 Benchers' terms expire, they choose a fourth by lot). All members can vote in each district.
LS Yukon	4	1	1 yr	No	Elected day before AGM
LS Northwest Territories	4	1	2 yrs	Yes	2 elected each year public members appointed for 3 year terms.
LS Nunavut	4	1	2 yrs	Yes	2 elected each year public members appointed for 3 year terms.

B. SELECTED PROFESSIONAL BODIES IN BRITISH COLUMBIA

Organization	No.	Districts	Term	Staggered	Notes
Engineers and Geoscientists	7	1	2 yrs	Yes	1/2 of council elected each year.
Dentists	12	5	2 yrs	Yes	1 council member elected by specialists, 1 by UBC Faculty of Dentistry
Pharmacists	8	8	2 yrs	Yes	Districts include 2 “hospital” districts
Physicians and Surgeons	10	7	2 yrs	No	
Registered Nurses	9	2	3 yrs	Yes	3 rural, 3 urban, 3 at-large.
Social Workers	12	1	2 yrs	Yes	
Teachers	12	12	3 yrs	Yes	College now replaced
Chartered Accountants	15	4	2 yrs	Yes	Minimum of 5 elected at-large.
Real Estate Council	13	9	2 yrs	Yes	1 broker per County, 3 representatives, 1 manager

APPENDIX B — HISTORICAL LONGEVITY OF BENCHERS

LAW SOCIETY OF BRITISH COLUMBIA

BENCHERS ELECTED SINCE 1992

BENCHER/Life Bencher	DISTRICT	DATES/*Treasurer* or President	YEARS IN OFFICE
Shona A. Moore, QC	County of Vancouver	1990-1991; 1993-1995	5.0
Trudi L. Brown, QC	County of Victoria	1992-1998/*1998*	6.5
Ann Howard	Appointed Bencher	1992-2002	10.5
Marjorie Martin	Appointed Bencher	1992-2002	10.5
Gerald J. Lecovin, QC	County of Vancouver	1994-2001	8.0
Emily M. Reid, QC	County of Vancouver	1994-2001	8.0
Jane Shackell, QC	County of Vancouver	1994-2001	8.0
Karl F. Warner, QC	County of Westminster	1994-2000/2000	7.0
T. Mark McEwan	County of Kootenay	1994-1996	2.6
Alexander P. Watt	Kamloops	1994-1995	2.0
Richard S. Margetts, QC	County of Victoria	1995-2001/2001	7.0
Robert D. Diebolt, QC	County of Vancouver	1996-2003	8.0
Bruce Woolley, QC	County of Vancouver	1996-2000	4.8
Linda Loo, QC	County of Vancouver	1996	0.7
David W. Gibbons, QC	County of Vancouver	1996-2003	8.0
Peter J. Keighley, QC	County of Westminster	1996-2004	9.2
Richard C. Gibbs, QC	County of Cariboo	1996-2002/2002	7.0
G. Ronald Toews, QC	County of Pr. Rupert	1996-2003	8.0
Kristian P. Jensen	Kamloops	1996-1997	2.0
Reeva Joshee	Appointed Bencher	1996-1997	1.3
Robert W. Gourlay, QC	County of Vancouver	1996-2003	8.0
Gerald J. Kambeitz, QC	County of Kootenay	1996-2003	8.0
William J. Sullivan, QC	County of Vancouver	1997-2003	7.0
Anna K. Fung, QC	County of Vancouver	1998-2007/2007	10.0
JoAnn Carmichael, QC	County of Vancouver	1998-2001	4.0
William M. Everett, QC	County of Vancouver	1998-2004/2003-2004	7.0
D. Peter Ramsay, QC	County of Nanaimo	1998-2001	4.0
Patricia L. Schmit, QC	County of Cariboo	1998-2005	8.0
Robert W. McDiarmid, QC	Kamloops	1998-2006/2006	9.0
Ross D. Tunnicliffe	County of Vancouver	1998-1999; 2000-2005	6.8
Ralston S. Alexander, QC	County of Victoria	1999-2005/2005	7.0
Nao Fernando	Appointed Bencher	1999-2000	1.3
Wendy John	Appointed Bencher	1999-2001	1.5
Anita Olsen	Appointed Bencher	1999-2002	3.1
Ian Donaldson, QC	County of Vancouver	2000-2007	8.0
Terence L. LaLiberté, QC	County of Vancouver	2000-2001; 2004-2009	8.0
Jaynie Clark	Appointed Bencher	2000-2002	1.7
Dr. V. Setty Pendakur	Appointed Bencher	2000-2001	1.2
Robert Crawford, QC	County of Westminster	2001	0.8
June Preston	Appointed Bencher	2001-2008	7.0
John J.L. Hunter, QC	County of Vancouver	2002-2008/2008	7.0

BENCHER/Life Bencher	DISTRICT	DATES/*Treasurer* or	YEARS IN OFFICE
Margaret Ostrowski, QC	County of Vancouver	2002-2005	4.0
James Vilvang, QC	County of Vancouver	2002-2009	8.0
Gordon Turriff, QC	County of Vancouver	2002-2009/2009	8.0
David Zacks, QC	County of Vancouver	2002-2009	8.0
Anne Wallace, QC	County of Victoria	2002-2005	3.6
Glen Ridgway, QC	County of Nanaimo	2002-2010/2010	9.0
Grant Taylor, QC	County of Westminster	2002-2005	3.6
Michael J. Falkins	Appointed Bencher	2002-2007	4.6
Patrick Kelly	Appointed Bencher	2002-2010	7.9
Valerie J. MacLean	Appointed Bencher	2002-2003	0.5
Patrick Nagle	Appointed Bencher	2002-2006	3.8
Dr. Maelor Vallance	Appointed Bencher	2002-2010	7.5
William Jackson, QC	County of Cariboo	2003-2009	7.0
Lillian To	Appointed Bencher	2003-2005	2.1
Joost Blom, QC	County of Vancouver	2004-2011	8.0
Gavin Hume, QC	County of Vancouver	2004-2011/2011	8.0
Carol Hickman, QC	County of Westminster	2004-2011	8.0
Darrell O'Byrne, QC	County of Pr. Rupert	2004-2005	1.7
Dirk Sigalet, QC	Okanagan	2004-2007	3.9
Gregory Rideout, QC	County of Westminster	2004-2005	1.6
Robert C. Brun, QC	County of Vancouver	2005; 2008-2011	5.0
Ronald Tindale	County of Cariboo	2006-2010	4.1
Robert Punnett, QC	County of Pr. Rupert	2006-2009	3.5
Ken Dobell	Appointed Bencher	2006-2008	2.1
Barbara Levesque	Appointed Bencher	2006-2010	4.1
Marguerite (Meg) Shaw, QC	Okanagan	2008-2009	1.9
Suzette Narbonne	County of Pr. Rupert	2009-2011	2.3
Patricia Bond	County of Vancouver	2010-2012	2.2
TOTAL	**BRITISH COLUMBIA**	69 BENCHERS	**5.5**

Appendix B

Benchers' Bulletin Supplement

The Law Society of British Columbia

Your information bulletin on Law Society of British Columbia activities 1992: December

Lawyers asked to comment on proposal to change electoral districts

Looking to fairer Bencher representation

The B.C. legal profession has grown and the distribution of lawyers across the province has changed dramatically in the past four decades. Yet, since the *Legal Professions Act* was amended in 1955 to introduce Bencher elections by county, the boundaries of the Bencher electoral districts have changed very little and the number of Benchers has increased in only an *ad hoc* fashion.

One elected B.C. Bencher now represents an average of 296 lawyers, more than five times the number in 1955. And the ratio varies significantly from district to district. A Victoria County Bencher represents 25% more lawyers than the provincial average. By contrast, the Bencher for Prince Rupert represents 75% fewer lawyers than the provincial average. These disparities mean that lawyers in some districts are significantly under-represented.

The Benchers see a need to rationalize the electoral districts for better representation by population and also for better representation in areas of significant lawyer population that have not traditionally elected Benchers.

The Planning Committee urged the Benchers in 1992 to adopt a more comprehensive electoral scheme. The Benchers agreed to put forward to the profession a package of 15 possible changes including several options to restructure electoral districts.

Section 12 (1) of the *Legal Profession Act* provides that the current eight electoral districts follow county boundary lines, and sets the number of Benchers for each district: Vancouver (13), Victoria (2), Nanaimo (1), Westminster (3), Kootenay (1), Yale (2), Cariboo (2) and Prince Rupert (1) *[see map on page 6.]*

Electoral boundaries and the number of Benchers can be changed by approval by 2/3 of the members at a general meeting of the Society, or in a referendum.

The Benchers would like to have the proposed electoral boundary changes put in final form for members at the next Annual Meeting, now scheduled for September, 1993. But before finalizing the proposal, the Law Society needs the views of the profession.

The Benchers urge all members to reflect on the proposals set out in this *Supplement* and to forward their comments and suggestions to the Planning Committee by **February 15, 1993**. A final draft of the proposals will be distributed in advance of the 1993 Annual Meeting.

History of Bencher electoral districts

When the election of Benchers by district was introduced in 1955, there were 1,147 lawyers practising in the province and 20 Benchers elected in the eight counties, approximately 57 members for each elected Bencher.

Although the county boundaries have remained essentially unchanged since 1955, there have been changes to the number of Benchers in some counties and an increase from 20 to 25 in the total number of elected Benchers.

Benchers' Bulletin

The *Benchers' Bulletin* is published by the Law Society of British Columbia, the governing body of the legal profession, and is distributed to all members, retired members, articled students and judges in the province to keep them apprised of the activities of the Benchers and their committees.

Additional subscriptions to this and the Law Society's other regular publications may be ordered at a cost of $50.00 per year, prorated at $12.50 per quarter.

If you have ideas on how to improve the *Bulletin*, to make it more useful, please write to:

The Editor, *Benchers' Bulletin*
Law Society of British Columbia
845 Cambie Street
Vancouver, B.C.
V6B 4Z9.

Appendix B

With one exception, each change in representation was brought about by a membership resolution passed at an Annual Meeting of the Law Society, with statutory amendments enacted afterward.

What goes into a new electoral distribution?

A primary concern in realigning Bencher electoral boundaries is achieving representation by population, to ensure the voting power of each individual is relatively equal to that of every other voter. In other words, each group of voters electing a representative should be of more or less the same size. Each voter would then have relatively the same say in electing a representative.

In Canada it is well accepted that, while the relative population size of constituencies is an important factor and probably the most important factor, there are other considerations to be taken into account.

In *Dixon v. Attorney General of British Columbia* (1989), 35 BCLR (2d) 273 at 293 Chief Justice McLachlin (as she then was) had this to say on provincial electoral boundaries:

> ... [O]nly those deviations *[from equal population per member elected]* should be admitted which can be justified on the ground that they contribute to better government of the populace and geographic factors within the territory governed. Geographic considerations affecting the servicing of a riding and regional interests meriting representation may fall in this category and hence be justifiable.

Generally, the factors other than population that should be taken into account in establishing electoral boundaries have to do with geographic barriers and connectors and the way people organize themselves into communities. The Planning Committee identified the important factors for the representation of B.C. lawyers within the Law Society:

- first and foremost, the number of lawyers practising in each district;
- historical and regional claims for representation, including where possible, separate representation of areas of significant lawyer population that have not traditionally elected a Bencher;
- the geographic size of each district, the distribution of members within the district and other factors affecting the representation of the district by a Bencher or Benchers;
- the community of interest of members, specifically the distinctiveness of urban, suburban and rural or small town practice;
- the organization of the courts, local bar associations, which affect communications among lawyers.

What disparities now exist?

In examining the adequacy of the present electoral boundaries for the election of Benchers, the first consideration is the relative lawyer population of the electoral districts.

The following table is based on figures accurate to August 14, 1992:

LAWYER POPULATION BY COUNTY

County	Benchers	Members	Ratio	Variation
Vancouver	13	4308	331.4	+ 18.55%
Victoria	2	701	350.5	+ 25.39%
Nanaimo	1	283	283.0	+ 1.24%
Westminster	3	901	300.3	+ 7.45%
Kootenay	1	108	108.0	- 61.36%
Yale	2	431	215.5	- 22.90%
Cariboo	2	187	93.5	- 66.55%
Prince Rupert	1	69	69.0	- 75.31%
TOTAL	25	*6,988	279.5	

* This figure does not include members residing or practising out of province.

This table shows wide differences in the numbers of members per Bencher in the electoral districts. While some variation can certainly be justified by the geography of the province, the Benchers wish to alleviate the extent of the differences.

There are historical as well as geographical or regional reasons for the representation of the smaller population counties, and arguments for absolute equality in electoral representation have only limited application outside the context of government elections. There are also legitimate claims for additional Bencher representation in rural and remote regions.

The wide variations from the provincial average in Prince Rupert, Cariboo, Kootenay and Yale counties will be reduced if Benchers are simply added to other counties. For that reason, there is no proposal for changing the outer boundaries of these counties or changing the number of Benchers in them.

Adding Benchers to under-represented areas would create some additional expense to the Law Society — though the largest Bencher expense is travel to and from Vancouver, and the proposals put forward add only one Bencher outside the Lower Mainland. This consideration is off-set by the fact that members would enjoy better representation and the Society would benefit from additional volunteers to share an ever-increasing Bencher workload.

The number of elected Benchers has increased only 25 percent since 1955, while the number of lawyers in the province has increased by 545 percent over the same

period.

After Ontario, B.C. now has the lowest per capita number of Benchers in Canada.

The Planning Committee option

In June, 1992 the Planning Committee summarized for the Benchers the current disparities in Bencher representation and the factors for consideration in a redistribution. The Committee outlined one package of electoral changes for consideration. The Committee recommended three boundary changes and an increase in the number of elected Benchers from 25 to 29, as follows:

- no change to the number of Benchers representing Prince Rupert, Cariboo, Kootenay, Yale and Nanaimo Counties;
- increasing representation in Victoria County from two Benchers to three;
- creating a new electoral district on the North Shore, with one Bencher
- transferring the City of Richmond from Vancouver Electoral District to Westminster Electoral District;
- creating a new Fraser Valley electoral district, with one Bencher, from the portion of Westminster County east of Coquitlam, Port Coquitlam and Surrey;
- allotting one additional Bencher to the County of Vancouver (for a total of 14); and
- requesting a legislative amendment to permit the appointment of an additional lay Bencher.

Benchers' proposal for change

In July, 1992 the Benchers discussed the Planning Committee report and asked the Committee to consider additional proposals. In October the Benchers received a revised report, which they decided to send to members for comment. The package incorporates some of the Committee's original recommendations and proposes additional electoral districts with more Bencher representatives. The package is explained below and summarized briefly on pages 5 and 6.

Kootenay and Prince Rupert

There are no proposed changes to the electoral districts of Kootenay and Prince Rupert, which have the smallest lawyer populations in the province and one Bencher representative each.

Yale

STEP 1

Divide Yale County into two electoral districts: Okanagan and Kamloops, each represented by one Bencher.

The County of Yale now has 431 lawyers and is represented by two Benchers. The number of members per Bencher is 215.5, or about 23% below the provincial average. If the total number of elected Benchers is increased to 30 or more, Yale County will be suitably near the provincial average.

One proposal is to divide Yale County into two electoral districts to ensure continued representation of both of its distinct north and south regions. Unfortunately, the lawyer population does not divide very equally on those grounds. The proposal is to separate the Okanagan, which has about 251 lawyers, from the rest of the County, including the City of Kamloops, where about 180 lawyers practise.

Cariboo

STEP 2

Divide Cariboo County into two electoral districts: Prince George and Cariboo, each represented by one Bencher.

The County of Cariboo has about 187 members within its boundaries, represented by two Benchers. This is an average number of lawyers per Bencher of 93.5, well below the provincial average.

Since over half of the lawyers in Cariboo County practise in the City of Prince George, the only practical way of dividing the County would be to make an electoral district of the City and another district from the remainder of the County.

This would have the advantage of ensuring that one Bencher from the present county comes from outside Prince George. That Bencher, however, would be required, without assistance, to represent an enormous area beginning at Lytton and Pemberton in the south and going to the Yukon and Northwest Territories border in the north, but excluding the one major centre in that area.

Victoria and Nanaimo

Victoria is now the most under-represented county with a population of about 701 lawyers and only two Benchers. Nanaimo, on the other hand, at 283 lawyers is about average at present. If there is to be a significant increase in the number of Benchers, the County of Nanaimo would also become under-represented.

Although the geography of the Island does not lend itself easily to dividing into one-Bencher electoral districts or districts that follow community boundaries, the Benchers have considered two options for a realignment.

STEP 3 (OPTION A)

Divide the Vancouver Island counties into three electoral districts: the *City of Victoria*, with two Benchers,

and Malahat and Nanaimo, with one Bencher each.

In the City of Victoria there are approximately 545 lawyers. Making the City of Victoria a two-Bencher electoral district would achieve a ratio of one Bencher for 273 lawyers, a distinct improvement, though higher than the provincial average.

A second district would encompass the remainder of Victoria County, together with the present Nanaimo County from the boundary with Victoria north to include Ladysmith. That mid-Island region [proposed to be called Malahat] has about 209 lawyers.

The rest of Nanaimo County with some 230 lawyers, would be the third electoral district on the Island.

STEP 3 (OPTION B)

Divide the Vancouver Island Counties into three electoral districts: *Downtown Victoria*, with two Benchers, and Malahat and Nanaimo, with one Bencher each.

This is a variation of Option 3A, creating a two-Bencher Victoria electoral district encompassing downtown Victoria only (postal districts V8V and V8W). This would achieve a ratio of one Bencher for about 250 lawyers. That would leave the mid-Island electoral district [the Malahat region] with 258 lawyers and Nanaimo electoral district with 230.

Westminster

Westminster County is somewhat under-represented compared to the provincial average and is the fastest growing county in population. It is also very large geographically for an urban-suburban district. This means there are significantly large communities without local Bencher representation.

Part of Westminster County is close to Vancouver and is essentially a suburban community. But the County becomes more rural further east, and lawyers located in small towns are often engaged in a different form of practice.

The Benchers are considering a separate electoral district for the Fraser Valley, represented by one Bencher. In one option, Pitt Meadows and Maple Ridge would be included in the Fraser Valley Electoral District. In a second option, they would be included in the same district as Coquitlam and New Westminster *[see step 5 below]*.

STEP 4 (OPTION A)

Constitute a new electoral district of Fraser Valley [to include Pitt Meadows, Langley and all areas east in Westminster County], represented by one Bencher.

This new district would begin at the Pitt River, the boundary between Surrey and the two Langley municipalities and the part of the Fraser River that connects the two boundary lines.

STEP 4 (OPTION B)

Constitute a new electoral district of Fraser Valley [to include Mission, Langley and all areas east in Westminster County], represented by one Bencher.

Under this option, the new district would begin at the boundary between Maple-Ridge and Mission, the boundary between Surrey and the two Langley municipalities and the part of the Fraser River that connects the two boundary lines.

STEP 5 (OPTION A)

Constitute from parts of the Counties of Westminster and Vancouver the following two electoral districts: Surrey-Richmond-Delta and Westminster-Burnaby-Coquitlam, with two Benchers each.

The City of Richmond is now part of Vancouver County. Though Richmond has ties to Vancouver, the 151 lawyers in Richmond have relatively little voting power in the county and also share many similarities to the suburban practice of Westminster County. Both these factors favour a realignment.

Westminster County [without the Fraser Valley] and Richmond together have a lawyer population of about 830 or 855 [depending on whether Option A or B of step 4 above were adopted.]

Option 5A would combine Burnaby, New Westminster, Coquitlam and possibly Maple Ridge and Port Moody in a two-Bencher electoral district, with about 400 or 425 lawyers, and would combine Richmond, Delta, Surrey and White Rock in another two-Bencher district with about 429 lawyers.

STEP 5 (OPTION B)

Constitute from parts of the Counties of Westminster and Vancouver three new electoral districts: Westminster-Burnaby-Coquitlam, with two Benchers, and Richmond-Delta and Surrey-White Rock, with one Bencher each.

This option would keep the Westminster-Burnaby-Coquitlam district but divide the southern party into Richmond-Delta (231) and Surrey-White Rock (198).

STEP 5 (OPTION C)

Constitute from parts of the Counties of Vancouver and Westminster four new electoral districts: Richmond-Delta, Surrey-White Rock, Westminster-Coquitlam and Burnaby, with one Bencher each.

This option would further divide the northern area into New Westminster-Coquitlam (214 or 240 lawyers) and the City of Burnaby (186).

Vancouver

STEP 6

Constitute a new electoral district of North Vancouver represented by one Bencher.

The County of Vancouver can be divided into three distinct regions, with these approximate lawyer populations:

City of Vancouver	3900	90.5%
City of Richmond	151	3.5%
North Shore	257	6.0%

With over 90 percent of the lawyer population, the City of Vancouver tends to dominate the County over the

Richmond and North Shore, even though these areas have a significant number of lawyers.

Like Richmond, the North Shore arguably has a different community of interest from the City of Vancouver by the suburban nature of legal practice. With 257 lawyers, the North Shore and surrounding area is almost as large in population as Nanaimo County and larger than three other counties, including one county with two Benchers.

The North Shore — including the Sunshine Coast and the Squamish-Whistler area — could accordingly be severed from the County of Vancouver, named North Vancouver Electoral District and allotted one Bencher.

What then remains is an electoral district of the City of Vancouver and the University Endowment Lands. The lawyer population of that area is about 3900 or 56% of all lawyers in B.C.

There are two key issues to decide in achieving equitable representation in this electoral district:

1. **How many Benchers should Vancouver be allotted?**

The impact of allotting additional Benchers to Vancouver is described in step 7, options A to D below.

2. **Should Vancouver be broken down further into new electoral districts?**

This issue is described in Step 8, options A and B below.

STEP 7 (OPTION A)
Allot Vancouver Electoral District 18 Benchers.

The proposals to this point, if adopted, would result in the election of 16 Benchers outside of Vancouver. It is arguable that the City of Vancouver, with slightly over half of the lawyer population, should have slightly over half of the elected Benchers. The present County of Vancouver, with 62% of the lawyers in British Columbia has 52% of the elected Benchers.

If Vancouver Electoral District were allotted 18 Benchers it would have about 53% of the 34 total elected Benchers. That would make the lawyer-Bencher ratio in Vancouver 216.7 or 5.42% above the provincial average of 205.5.

STEP 7 (OPTION B)
Allot Vancouver Electoral District 17 Benchers.

If Vancouver Electoral District were allotted 17 Benchers it would have at 52.5% of the 33 elected Benchers. That would make the lawyer-Bencher ratio in Vancouver 229.4 or 8.34% above the provincial average of 211.8.

STEP 7 (OPTION C)
Allot Vancouver Electoral District 16 Benchers.

The result of the City of Vancouver having exactly half of the elected Benchers, 16 out of 32, would be a lawyer to Bencher ratio of 243.8 which would be 11.6% above the provincial average of 218.54.

STEP 7 (OPTION D)
Allot Vancouver Electoral District 15 Benchers.

With 15 of 32 Benchers, Vancouver would have a lawyer to Bencher ratio of 260, higher than any other electoral district.

STEP 8 (OPTION A)
Divide the City of Vancouver and constitute a separate electoral district outside the downtown, with three Benchers.

According to a postal code breakdown, there are about 3,117 lawyers in downtown Vancouver (west of Carroll Street). In the rest of the City there are about 783.

Option 8A is intended to recognize the often significant differences in the practice of large and medium-size law firms, compared to the practice of small firms or sole practitioners, and the fact that areas of the City outside the downtown core now have little local Bencher representation.

STEP 8 (OPTION B)
Divide the City of Vancouver into three electoral districts: Downtown Vancouver, Vancouver West, represented by two Benchers, and Vancouver East, represented by one Bencher.

This alternative would create three electoral districts in the City: the downtown (west of Carroll), the region west of Cambie Street (528 lawyers) and the region that is east of Cambie and east of Carroll downtown (255 lawyers).

STEP 9
Request an amendment to section 6 of the *Legal Profession Act* to permit the appointment of an additional Lay Bencher.

With an increase in the number of elected Benchers, an additional Lay Bencher would ensure the influence of the Lay Benchers is not diluted.

Summary of proposed changes

1. **Divide Yale County into two electoral districts: Okanagan and Kamloops, each represented by one Bencher.**

2. **Divide Cariboo County into two electoral districts: Prince George and Cariboo, each represented by one Bencher.**

3A. **Divide the Vancouver Island counties into three electoral districts: the *City of Victoria*, with two Benchers, and Malahat and Nanaimo, with one Bencher each.**

3B. **Divide the Vancouver Island Counties into three electoral districts: *Downtown Victoria*, with two Benchers, and Malahat and Nanaimo, with one Bencher each.**

4. **Constitute a new electoral district of Fraser Valley represented by one Bencher.**

5A. **Constitute from parts of the Counties of Westminster and Vancouver the following two electoral districts: Surrey-Richmond-Delta and**

Westminster-Burnaby-Coquitlam, with two Benchers each.

5B. Constitute from parts of the Counties of Westminster and Vancouver three new electoral districts: Westminster-Burnaby-Coquitlam, with two Benchers, and Richmond-Delta and Surrey-White Rock, with one Bencher each.

6. Constitute a new electoral district of North Vancouver represented by one Bencher.

7A. Allot Vancouver Electoral District 18 Benchers.

7B. Allot Vancouver Electoral District 17 Benchers.

7C. Allot Vancouver Electoral District 16 Benchers.

7D. Allot Vancouver Electoral District 15 Benchers.

8A. Divide the City of Vancouver and constitute a separate electoral district outside of the downtown, with three Benchers.

8B. Divide the City of Vancouver into three electoral districts: Downtown Vancouver, Vancouver West, represented by two Benchers, and Vancouver East, represented by one Bencher.

9. Request an amendment to section 6 of the *Legal Profession Act* to permit the appointment of an additional Lay Bencher.

Your comments ...

Please let us hear your comments, concerns and suggestions on the proposed changes to Bencher electoral districts, by writing to:

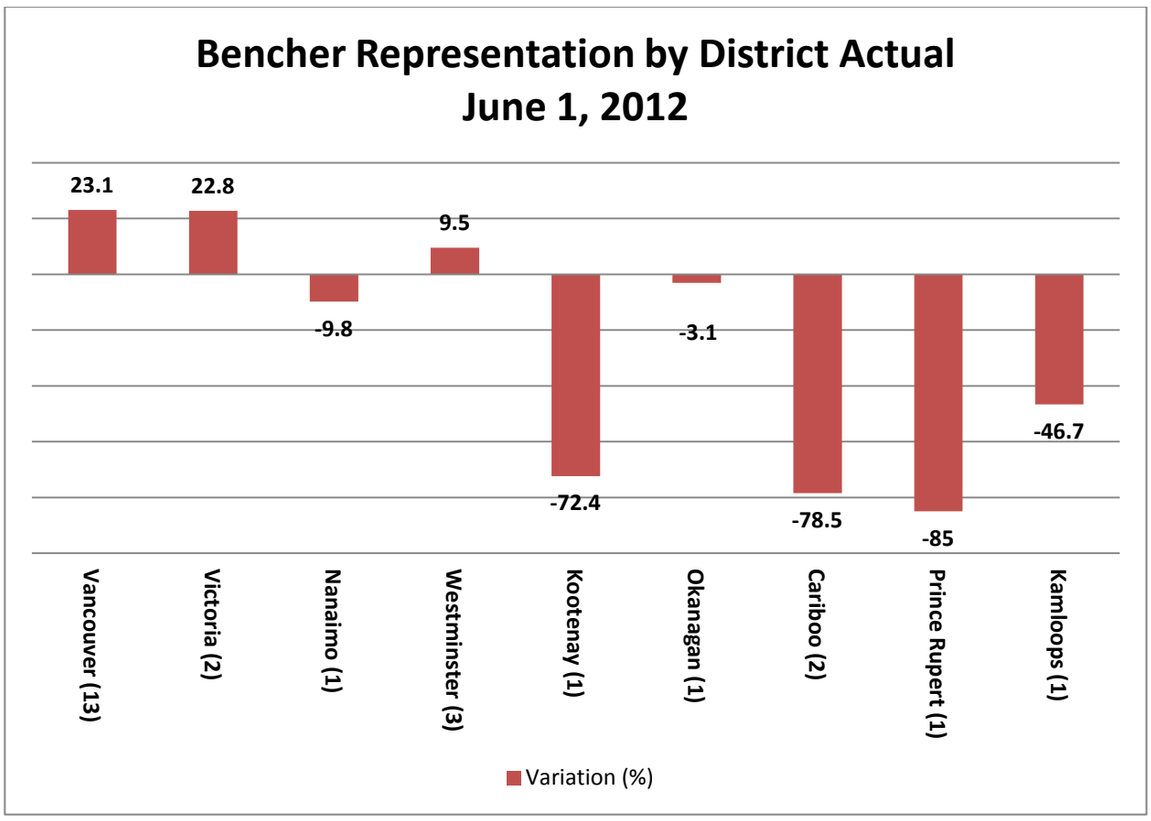
Planning Committee
The Law Society of British Columbia
8th Floor — 845 Cambie Street
Vancouver, B.C.
V6B 4Z9
FAX: 669-5232

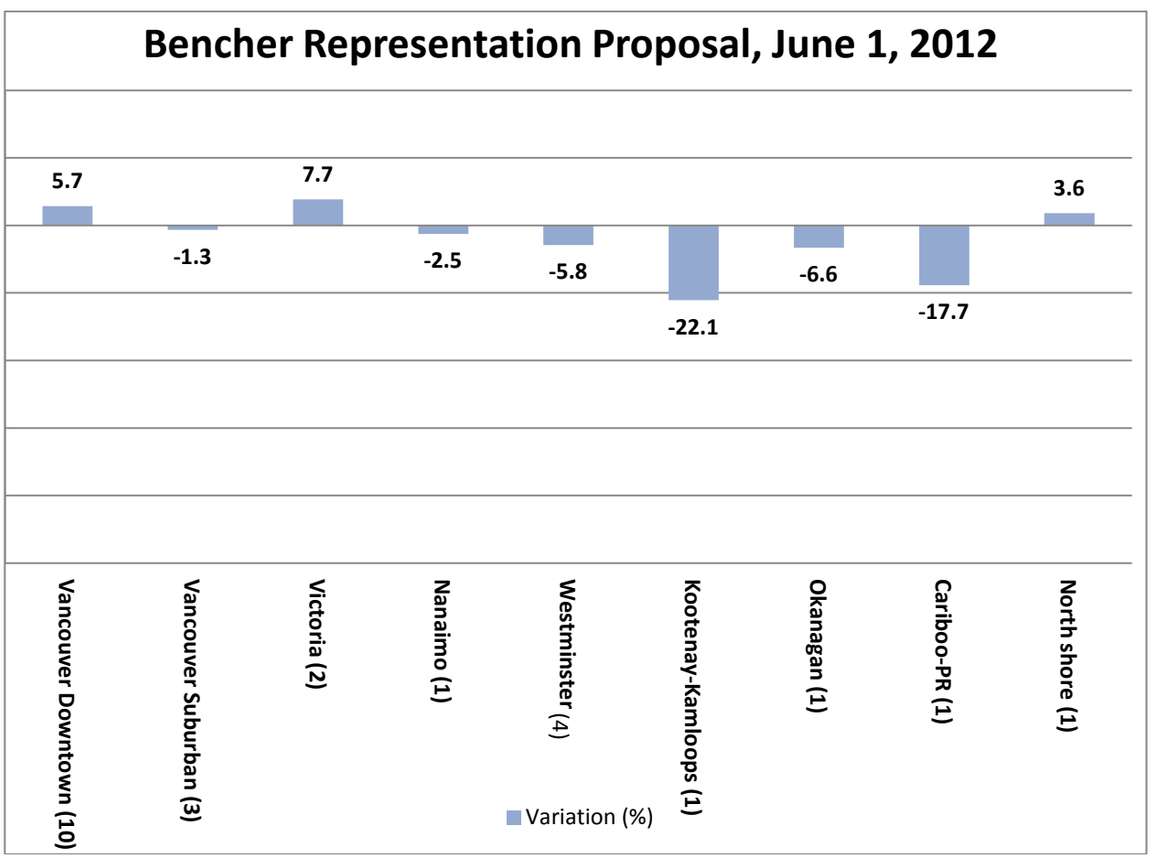
If you have questions or would like more information, please contact Jeff Hoskins, Director of Research and Planning at 669-2533. A copy of the full report of the Planning Committee can also be obtained by contacting Sylvia Habisch at the Law Society office.❐

The counties of B.C. : current Bencher electoral districts

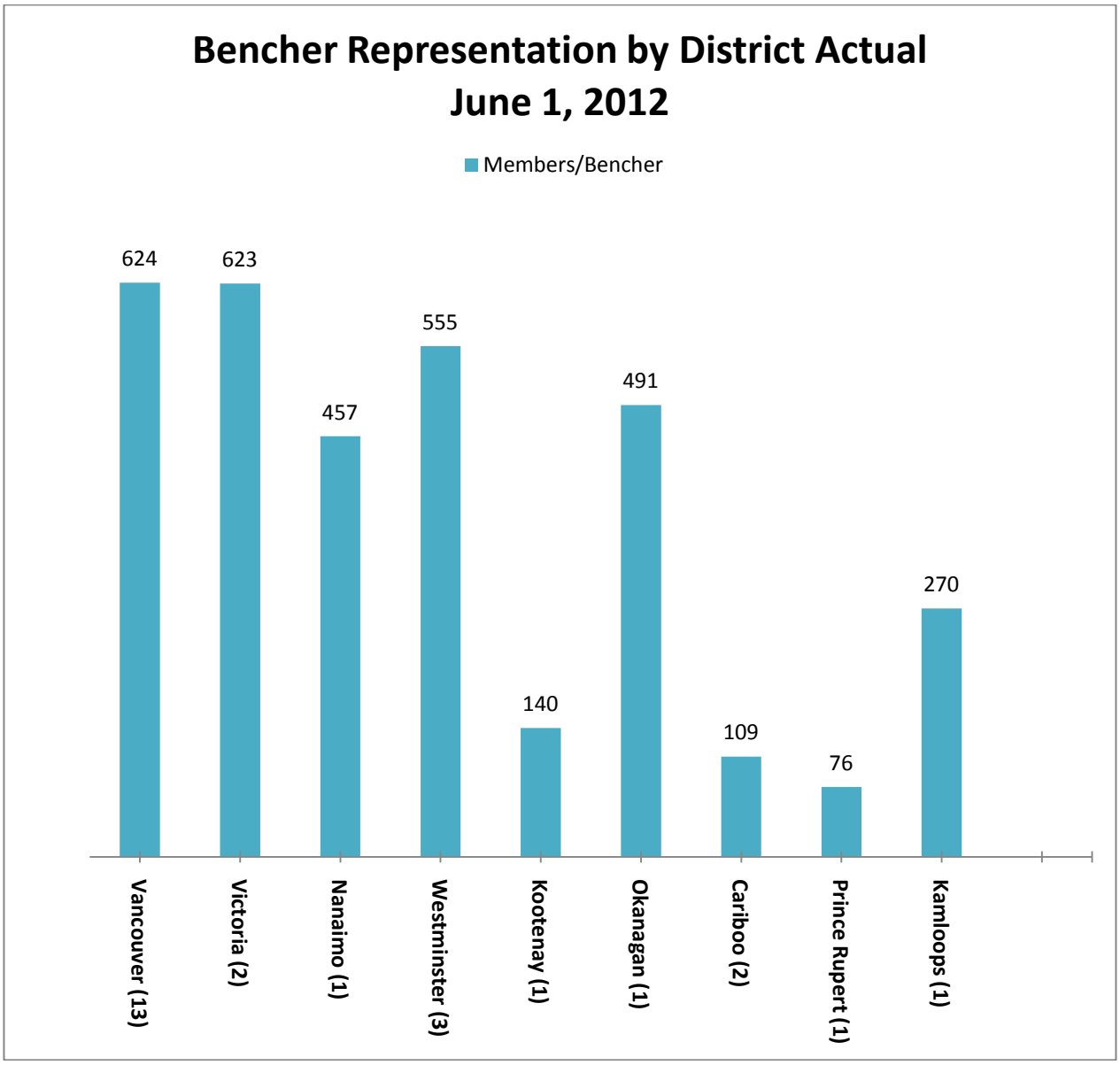
Reprinted with permission, courtesy of Ministry of the Environment, Lands and Parks Branch

Appendix C


Bencher Representation by District Actual
June 1, 2012
23.1
22.8
-9.8
9.5
-72.4
-3.1
-78.5
-85
-46.7
Vancouver (13)
Victoria (2)
Nanaimo (1)
Westminster (3)
Kootenay (1)
Okanagan (1)
Cariboo (2)
Prince Rupert (1)
Kamloops (1)
Variation (%)


Bencher Representation Proposal, June 1, 2012
5.7
-1.3
7.7
-2.5
-5.8
-22.1
-6.6
-17.7
3.6
Vancouver Downtown (10)
Vancouver Suburban (3)
Victoria (2)
Nanaimo (1)
Westminster (4)
Kootenay-Kamloops (1)
Okanagan (1)
Cariboo-PR (1)
North shore (1)
Variation (%)

Appendix C


Bencher Representation by District Actual
June 1, 2012
Members/Bencher
624
623
457
555
140
491
109
76
270
Vancouver (13)
Victoria (2)
Nanaimo (1)
Westminster (3)
Kootenay (1)
Okanagan (1)
Cariboo (2)
Prince Rupert (1)
Kamloops (1)

THE PROVINCIAL COURT OF BRITISH COLUMBIA

A Report of the Provincial Court of British Columbia Concerning Judicial Resources[1]

March 31, 2013

[1] On September 14, 2010 the Provincial Court of British Columbia released its "*Justice Delayed*" Report. The Report concluded that it would be appropriate to issue regular updates to the Attorney General and the public concerning the judicial complement of the Court, caseloads and times to trial in each area of the Court's jurisdiction.

Table of Contents

1. Introduction

On September 14, 2010, the Provincial Court of British Columbia released its "*Justice Delayed*" Report. The Report concluded that it would be appropriate to issue regular updates to the Attorney General and the public concerning the judicial complement of the Court, as well as caseloads, and times to trial in each area of the Court's jurisdiction.

This document provides the following updates as of March 31, 2013:

- Total Judge Complement and Judge FTE's [number of Judges];
- Adult Criminal Cases Exceeding the Court's Standard;
- Adult Criminal Weighted Provincial Delay;
- Child Protection Weighted Provincial Delay;
- Family Weighted Provincial Delay;
- Civil Small Claims Weighted Provincial Delay;
- Locations with the Longest Delays to Trial in each area of the Court's jurisdiction.

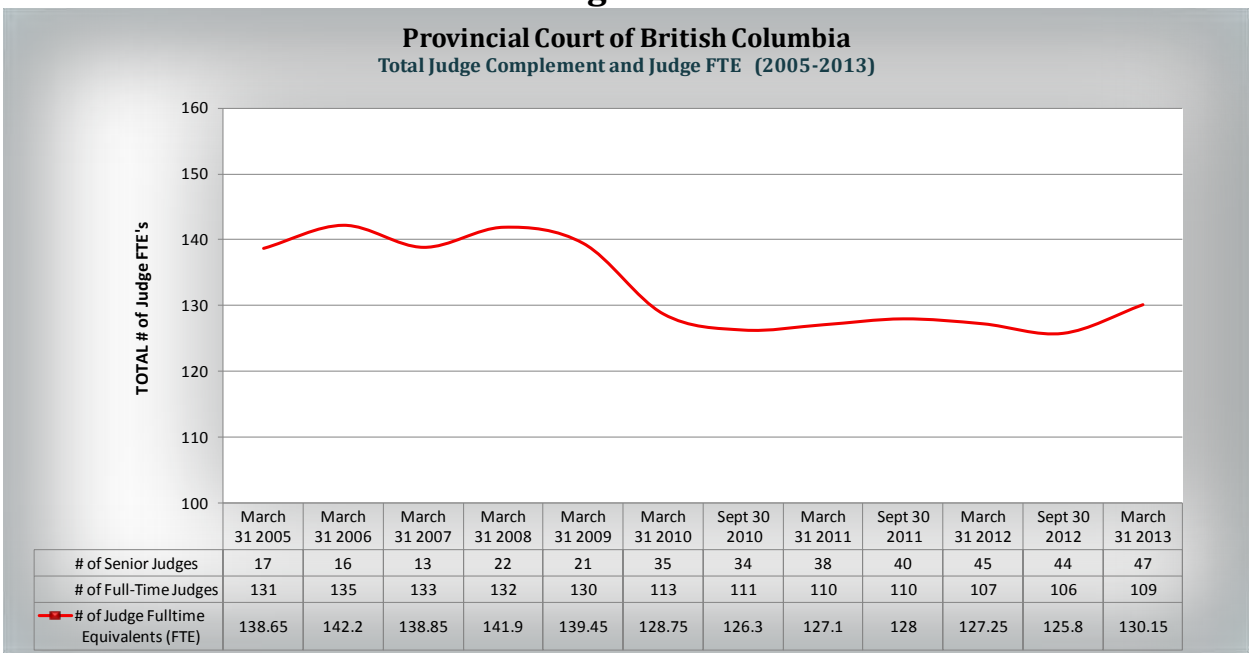
The next scheduled update will be based on data obtained as of September 30, 2013.

2. Total Judge Complement and Judge FTE's

The Judge Complement is based on the total number of fulltime and Senior Judges who were sitting as Provincial Court Judges as of March 31, 2013. Information regarding the current complement can be found here.

When the *Justice Delayed* report was issued in September 2010, the judicial complement was 126.30. As of March 31, 2013, it was 130.15, or 8.5 Judges less than at March 31, 2005. **Figure 1** summarizes changes in the Judge Complement between March, 2005 and March, 2013.

Figure 1



	March 31 2005	March 31 2006	March 31 2007	March 31 2008	March 31 2009	March 31 2010	Sept 30 2010	March 31 2011	Sept 30 2011	March 31 2012	Sept 30 2012	March 31 2013
# of Senior Judges	17	16	13	22	21	35	34	38	40	45	44	47
# of Full-Time Judges	131	135	133	132	130	113	111	110	110	107	106	109
# of Judge Fulltime Equivalents (FTE)	138.65	142.2	138.85	141.9	139.45	128.75	126.3	127.1	128	127.25	125.8	130.15

Data Source: Rota6.

TOTAL Judicial fulltime equivalent positions = the number of fulltime sitting judges + the number of senior Judges. Each fulltime judge is calculated at 1.0 JFTE; each senior judge is calculated at 0.45 JFTE.

3. Adult Criminal Pending Caseloads Over 180 Days

The current report is as of the ends of calendar year 2012, and represents a snapshot of the pending case inventory for all cases over 180 days. **Figure 2** breaks these cases into 4 different timelines: 6 to 10 months, 10-12 months, 12-18 months, and over 18 months. These results are preliminary and will be adjusted once the data has been finalized. Pending cases are likely to adjust upwards due to data latency issues.

Figure 2

Adult Criminal Caseloads Pending Over 180 Days

as at December 31, 2012 (1)

Data Source: CORIN Database

(1) Provincial Court Pending Case 180 days: A case that has not completed where the number of days between the first appearance and the next scheduled appearance is over 180 days.

Figure 2.1 summarizes adult criminal pending caseload data over the past five reporting periods.

Figure 2.1

Report	Total Pending	Over 180 Days	6-10 Months	10-12 Months	12-18 Months	>18 Months
09/2010	28,867	15,859	5,915	3,050	4,856	2,038
09/2011	25,038	14,016	3,946	2,463	5,085	2,522
03/2012	25,333	13,548	4,574	2,144	4,358	2,472
09/2012	24,148	12,418	4,605	1,998	3,729	2,086
03/2013	**24,143**	**11,583**	**5,102**	**1,786**	**3,001**	**1,694**

Delay Reports

Figures 3 to 8 are weighted province-wide delays for each area of the Court's jurisdiction. They set out the average provincial wait time (weighted by case load), in months, from the time a request is made to the 'first available date' for various types of proceedings. These tables compare results for June, 2005 to the three-year period from March, 2010 to March, 2013. 'First available dates' do not include those that have opened up due to cancellations, since that is not when the court would normally schedule the matter. Wait times also take into account any cases currently waiting to be scheduled, factoring them into the delay estimates. Each figure also includes the Office of the Chief Judge (OCJ) Standard for wait times. In order to meet the OCJ standard, 90% of cases must meet the listed time to trial. The standards are set out in the descriptions of each figure and are visually represented as an arrow.

Figures 3.1 to 8.1 represent the ten locations with the longest delays to trial in each area of the Court's jurisdiction. Results for Adult Criminal and Civil proceedings are broken down into delays for trials of different expected durations ('half day' and 'two or more day' trials). Smaller locations - i.e. those falling below the median provincial caseload - are screened out of these calculations, as they experience more volatility (and thus, a long wait time in any given quarter is less likely to be indicative of a concerning trend). These tables also contain the OCJ standard.

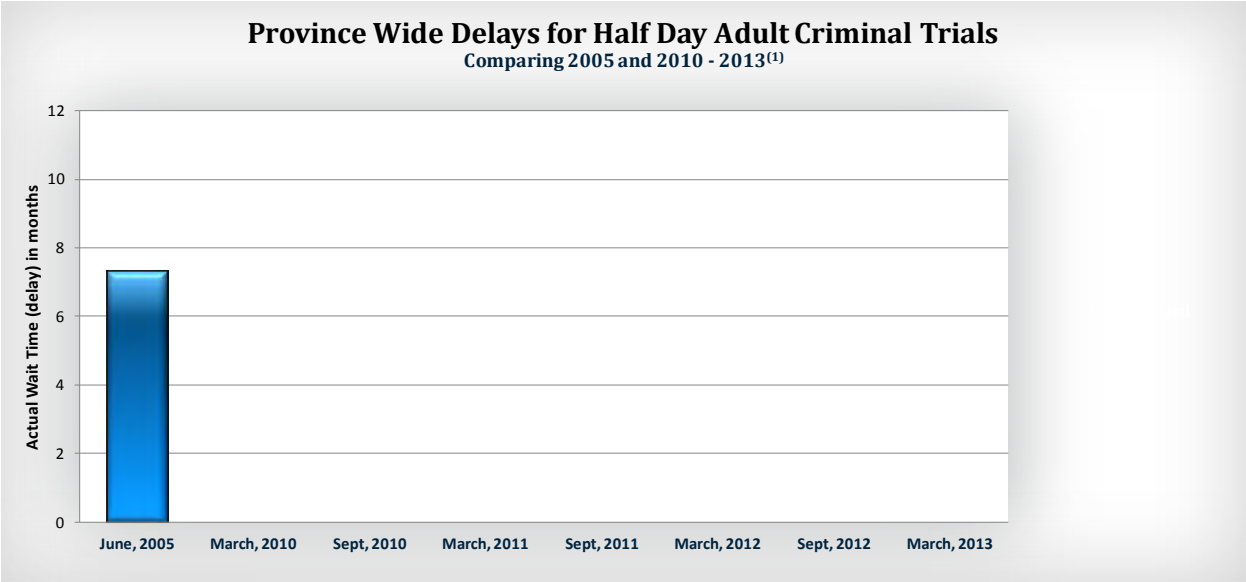
Figures 3.2 to 7.2 examine the history of each location included in Figures 3.1 to 7.1 with respect to previous 'longest delay' tables.[2] These tables compare the location's current rank with its rank in the immediately previous report (if any – those locations that weren't ranked in the last report are marked with a dash). They also track the number of times a location has been included in any 'longest delay' table of the kind. There have been a total of five updated *Justice Delayed* reports (including this one), so a score of '5' in the third column of Figures 3.2 to 7.2 indicates that a location has been in every report.

[2] There is no Figure 8.2 because Figure 8.1 is new as of this report.

4. Criminal

Figure 3 sets out the number of months between an Arraignment Hearing/Fix Date and the first available court date for a typical half day **Adult Criminal Trial**. These results do not take into account delays between a first appearance in Court and the Arraignment Hearing/Fix Date. The **OCJ standard** for adult criminal half day trials is **six months** from the arraignment hearing to the first available trial date.

Figure 3



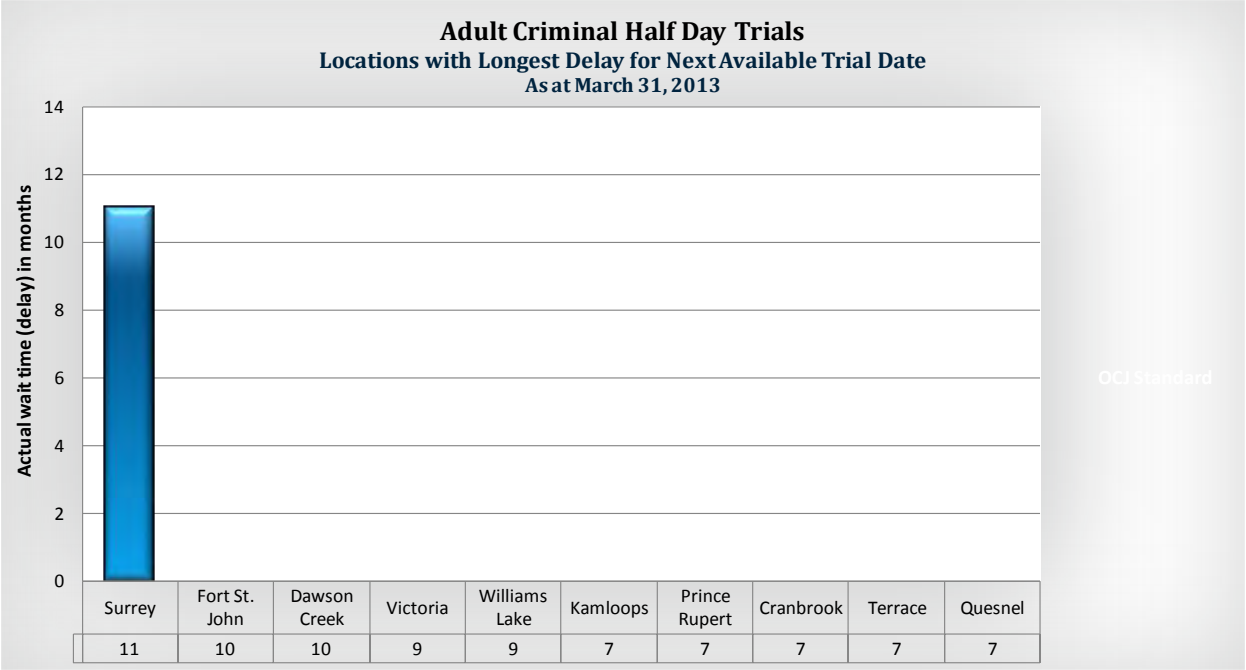
Data Source: Judicial (Quarterly) Next Available Date Surveys.

(1)All locations in the province were weighted based on the following caseload time periods:

- 2004/05 new caseloads for the June, 2005 delays
- Calendar year 2009 new caseloads for the March, 2010 delays
- 2009/10 new caseloads for the September, 2010 delays
- Calendar year 2010 new caseloads for the March, 2011 delays
- 2010/11 new caseloads for the September, 2011 delays
- Calendar year 2011 new caseloads for the March, 2012 delays
- 2011/12 new caseloads for the September, 2012 delays
- Calendar year 2012 new caseloads for the March, 2013 delays

Figure 3.1 sets out wait times for locations with the longest scheduling delays for **Adult Criminal Half Day Trials**.

Figure 3.1



Data Source: Judicial (Quarterly) Next Available Date Surveys.

Figure 3.2 sets out the history of each location in Figure 3.1 in previous **Adult Criminal Half Day Trial** longest delay tables.

Figure 3.2

	Location	Previous Rank (September, 2012)	Number of times in the 'top ten' in the past five reporting periods
1	Surrey	1	5
2	Fort St. John	3	4
3	Dawson Creek	-	2
4	Victoria	2	4
5	Williams Lake	9	2
6	Kamloops	6	4
7	Prince Rupert	-	2
8	Cranbrook	10	2
9	Terrace	4	5
10	Quesnel	-	2

Figure 4 sets out the number of months between an Arraignment Hearing/Fix Date and the first available court date for a typical two or more day **Adult Criminal Trial**. These results do not take into account delays between a first appearance in Court and the Arraignment Hearing/Fix Date. The **OCJ standard** for adult criminal two or more day trials is **eight months** from the arraignment hearing to the first available trial date.

Figure 4

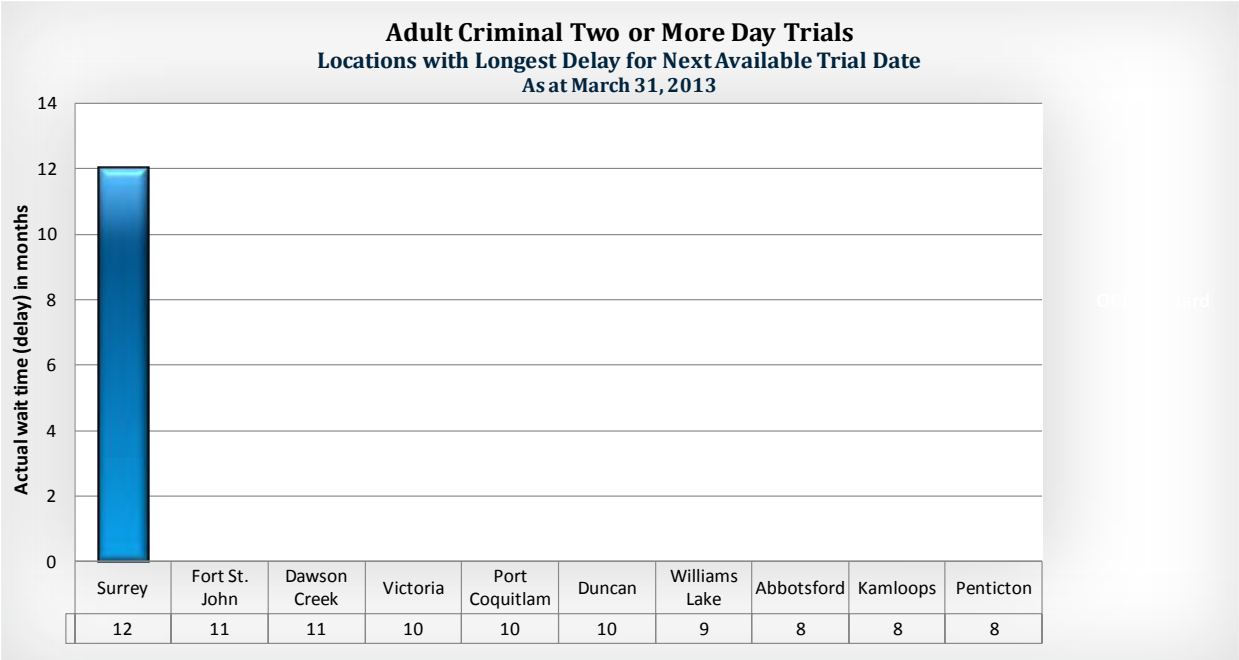
Data Source: Judicial (Quarterly) Next Available Date Surveys.

(1)All locations in the province were weighted based on the following caseload time periods:

- 2004/05 new caseloads for the June, 2005 delays
- Calendar year 2009 new caseloads for the March, 2010 delays
- 2009/10 new caseloads for the September, 2010 delays
- Calendar year 2010 new caseloads for the March, 2011 delays
- 2010/11 new caseloads for the September, 2011 delays
- Calendar year 2011 new caseloads for the March, 2012 delays
- 2011/12 new caseloads for the September, 2012 delays
- Calendar year 2012 new caseloads for the March, 2013 delays

Figure 4.1 sets out wait times for locations with the longest scheduling delays for **Adult Criminal Two Day Trials**.

Figure 4.1



Data Source: Judicial (Quarterly) Next Available Date Surveys.

Figure 4.2 sets out the history of each location in Figure 4.1 in previous **Adult Criminal Two Day Trial** longest delay tables.

Figure 4.2

	Location	Previous Rank (September, 2012)	Number of times in the 'top ten' in the past five reporting periods
1	Surrey	2	5
2	Fort St. John	7	4
3	Dawson Creek	-	2
4	Victoria	4	3
5	Port Coquitlam	1	4
6	Duncan	6	3
7	Williams Lake	-	1
8	Abbotsford	-	1
9	Kamloops	-	3
10	Penticton	-	4

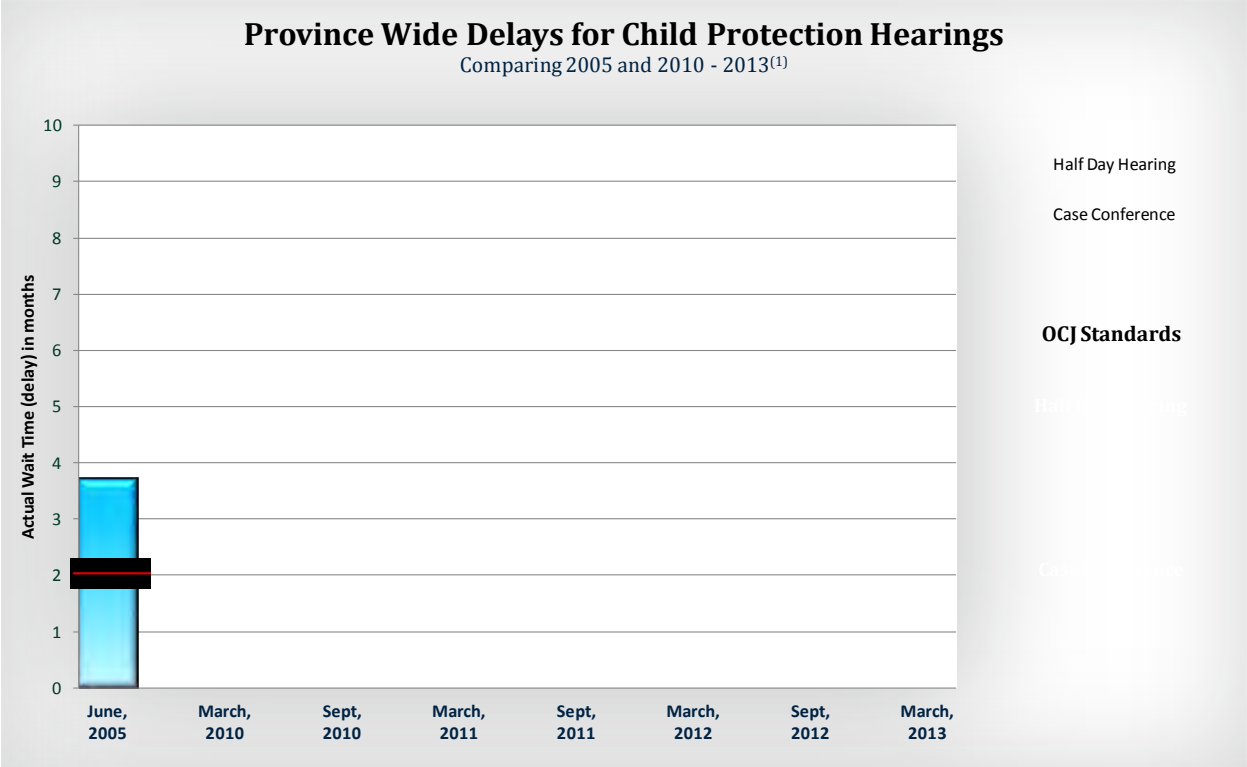
5. Child Protection

Figure 5 is a set of stacked columns depicting the average number of months between:

- An initial filing and the first available date for a case conference, and
- The case conference and the first available date for a typical half day **Child Protection Hearing**

The columns as a whole provide the average cumulative delay in this process. The **OCJ Standard** for child protection hearings is **two months** from initial filing to case conference date, and **three months** from the case conference to the first available half day hearing.

Figure 5



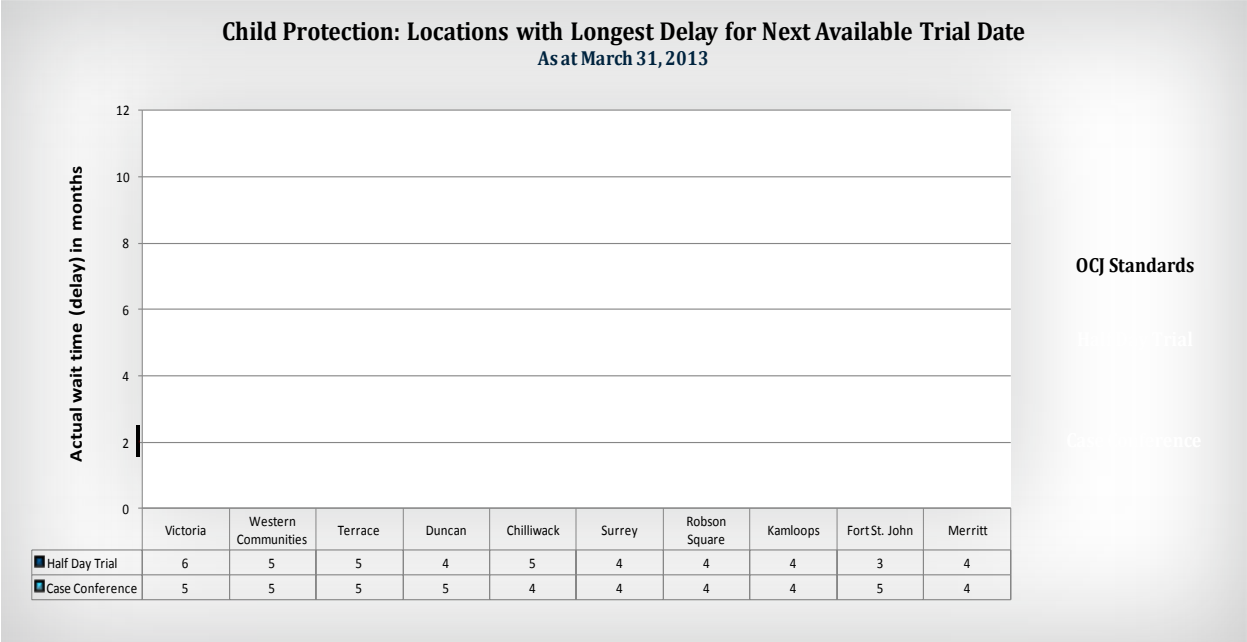
Data Source: Judicial (Quarterly) Next Available Date Surveys.

(1)All locations in the province were weighted based on the following caseload time periods:

- 2004/05 new caseloads for the June, 2005 delays
- Calendar year 2009 new caseloads for the March, 2010 delays
- 2009/10 new caseloads for the September, 2010 delays
- Calendar year 2010 new caseloads for the March, 2011 delays
- 2010/11 new caseloads for the September, 2011 delays
- Calendar year 2011 new caseloads for the March, 2012 delays
- 2011/12 new caseloads for the September, 2012 delays
- Calendar year 2012 new caseloads for the March, 2013 delays

Figure 5.1 sets out wait times for locations with the longest scheduling delay for **Child Protection Hearings.**

Figure 5.1



Data Source: Judicial (Quarterly) Next Available Date Surveys.

Figure 5.2 sets out the history of each location in Figure 5.1 in previous **Child Protection Hearing** longest delay tables.

Figure 5.2

	Location	Previous Rank (September, 2012)	Number of times in the 'top ten' in the past five reporting periods
1	Victoria	3	2
2	Western Communities	-	1
3	Terrace	4	5
4	Duncan	-	1
5	Chilliwack	6	5
6	Surrey	-	1
7	Robson Square	-	2
8	Kamloops	-	2
9	Fort St. John	2	2
10	Merritt	-	1

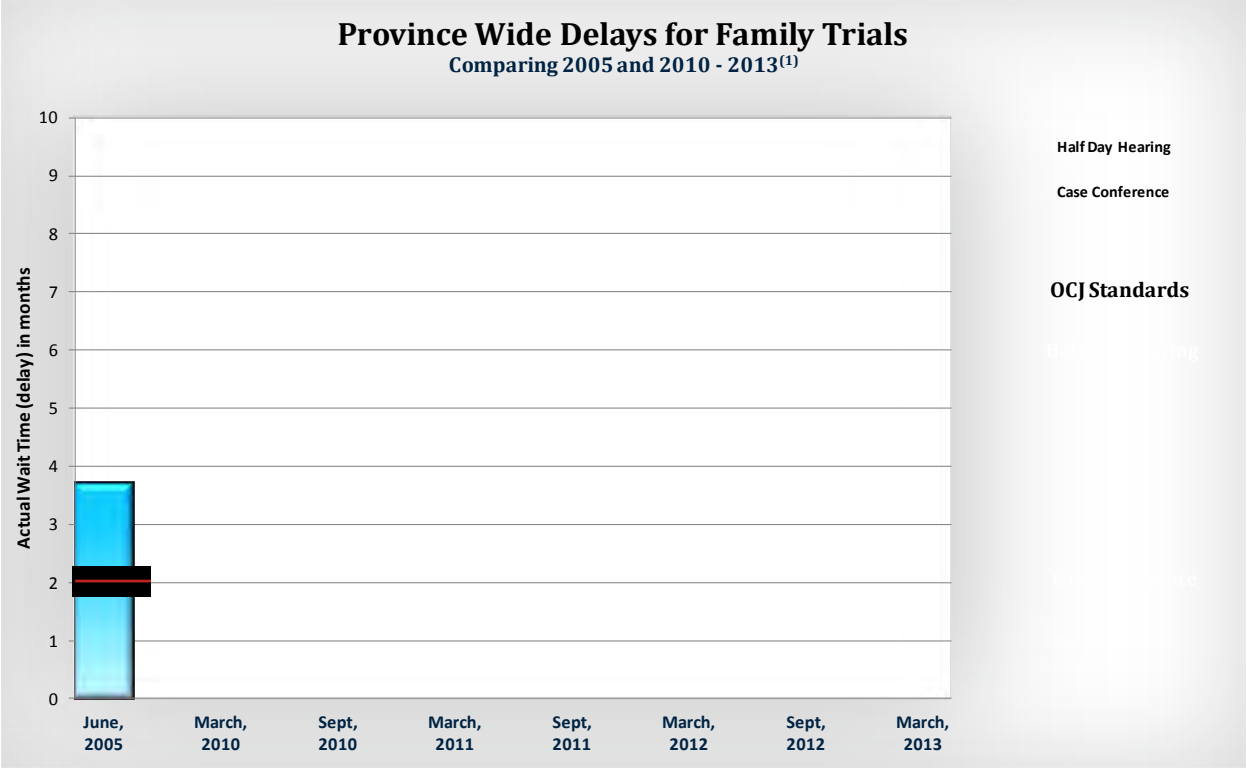
6. Family

Figure 6 is a set of stacked columns depicting the average number of months between:

- An initial filing and the first available date for a case conference, and
- The case conference and the first available date for the typical half day **Family Trial**

The columns provide the average cumulative delay in this process. The **OCJ standard** for Family Trials is **two months** from initial filing to case conference date, and **four months** from the case conference to the first available half-day hearing.

Figure 6



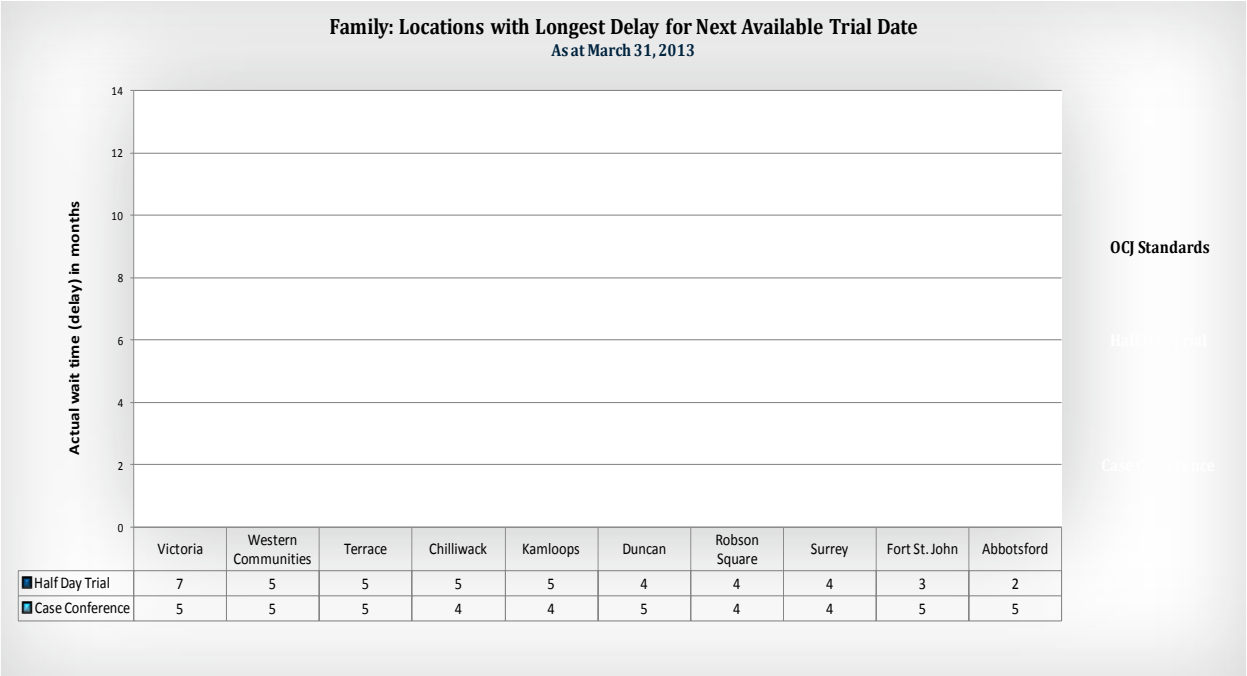
Data Source: Judicial (Quarterly) Next Available Date Surveys.

(1)All locations in the province were weighted based on the following caseload time periods:

- 2004/05 new caseloads for the June, 2005 delays
- Calendar year 2009 new caseloads for the March, 2010 delays
- 2009/10 new caseloads for the September, 2010 delays
- Calendar year 2010 new caseloads for the March, 2011 delays
- 2010/11 new caseloads for the September, 2011 delays
- Calendar year 2011 new caseloads for the March, 2012 delays
- 2011/12 new caseloads for the September, 2012 delays
- Calendar year 2012 new caseloads for the March, 2013 delays

Figure 6.1 sets out wait times for locations with the longest scheduling delay for **Family Trials.**

Figure 6.1



Data Source: Judicial (Quarterly) Next Available Date Surveys.

Figure 6.2 sets out the history of each location in Figure 6.1 in previous **Family Trial** longest delay tables.

Figure 6.2

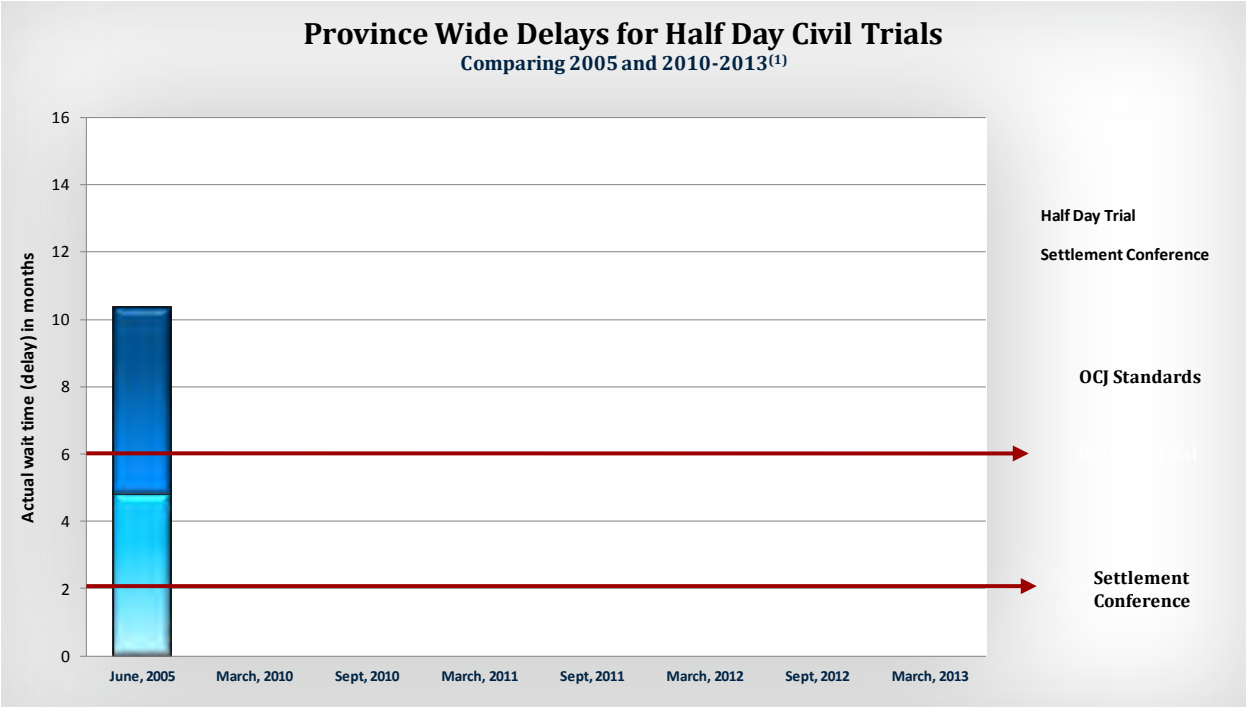
	Location	Previous Rank (September, 2012)	Number of times in the 'top ten' in the past five reporting periods
1	Victoria	3	3
2	Western Communities	-	1
3	Terrace	5	5
4	Chilliwack	7	5
5	Kamloops	4	5
6	Duncan	-	1
7	Robson Square	-	2
8	Surrey	-	2
9	Fort St. John	2	2
10	Abbotsford	10	2

7. Civil

Figure 7 is a set of stacked columns depicting the average number of months between the filing of a reply and the first available settlment conference date, as well as between the date of the settlement conference and the first available date for a typical half day **Small Claims Trial**.

Taken as a whole, these columns indicate the total average delay between the filing of a reply and the trial date. This measure does not take into account the time between filing the initial claim and the date when all pleadings are closed (replies and other documentation filed). The **OCJ Standard** for small claims is **two months** from final document filing to the settlement conference and **four months** from the settlement conference to the first available half day trial.

Figure 7



Data Source: Judicial (Quarterly) Next Available Date Surveys.

(1)All locations in the province were weighted based on the following caseload time periods:

- 2004/05 new caseloads for the June, 2005 delays
- Calendar year 2009 new caseloads for the March, 2010 delays
- 2009/10 new caseloads for the September, 2010 delays
- Calendar year 2010 new caseloads for the March, 2011 delays
- 2010/11 new caseloads for the September, 2011 delays
- Calendar year 2011 new caseloads for the March, 2012 delays
- 2011/12 new caseloads for the September, 2012 delays
- Calendar year 2012 new caseloads for the March, 2013 delays

Figure 7.1 sets out wait times for locations with the longest scheduling delay for **Civil Half Day Trials.**

Figure 7.1

Data Source: Judicial (Quarterly) Next Available Date Surveys.

Figure 7.2 sets out the history of each location in Figure 7.1 in previous **Small Claims Trial** longest delay tables.

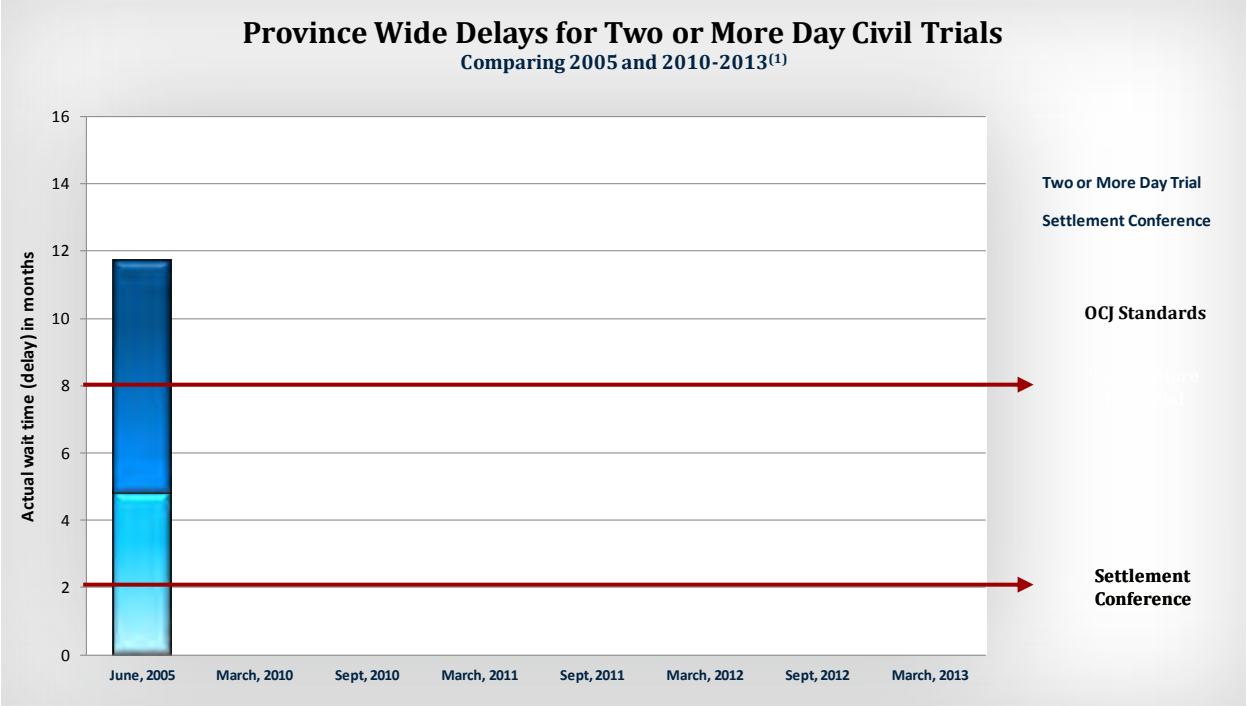
Figure 7.2

	Location	Previous Rank (September, 2012)	Number of times in the 'top ten' in the past five reporting periods
1	Kamloops	7	4
2	Lillooet	-	1
3	Victoria	3	3
4	Port Coquitlam	2	4
5	Surrey	-	2
6	Penticton	10	3
7	Duncan	4	3
8	Robson Square	-	1
9	Richmond	-	2
10	Chilliwack	6	4

Figure 8 is a set of stacked columns depicting the average number of months between the filing of a reply and the first available settlment conference date, as well as between the date of the settlement conference and the first available date for a typical two or more day **Small Claims Trial**.

Taken as a whole, these columns indicate the total average delay between the filing of a reply and the trial date. This measure does not take into account the time between filing the initial claim and the date when all pleadings are closed (replies and other documentation filed). The **OCJ Standard** for small claims is **two months** from final document filing to the settlement conference and **six months** from the settlement conference to the first available two or more day trial.

Figure 8



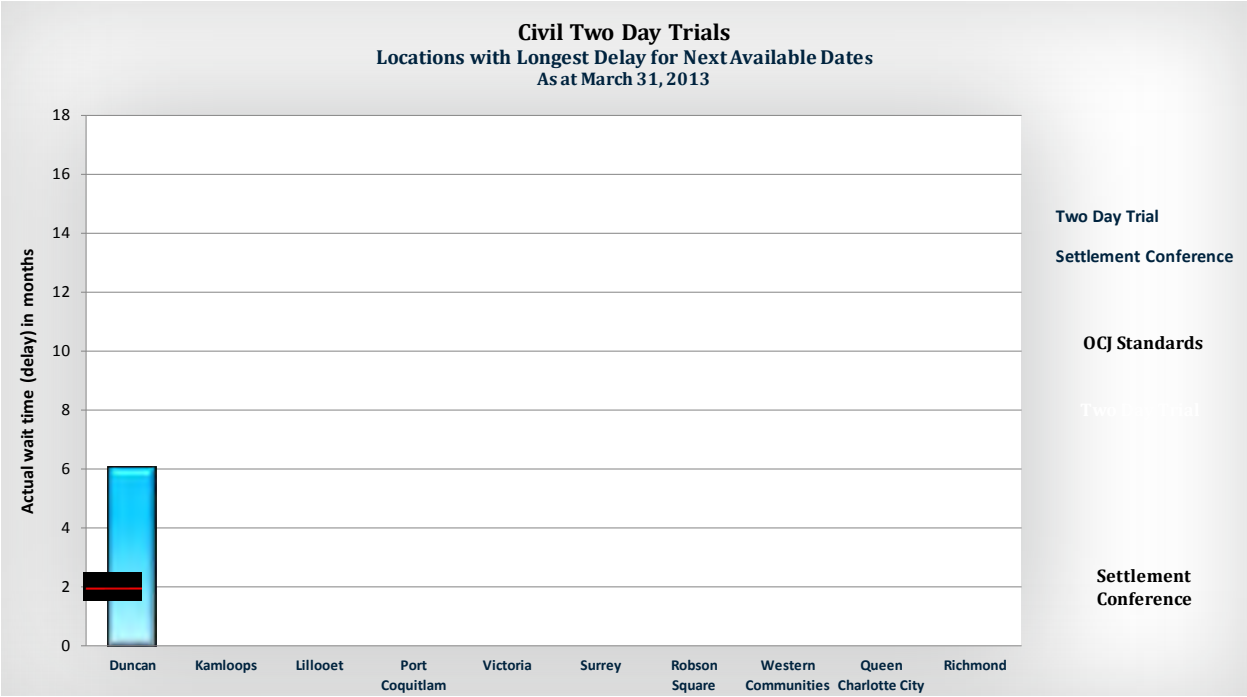
Data Source: Judicial (Quarterly) Next Available Date Surveys.

(1)All locations in the province were weighted based on the following caseload time periods:

- 2004/05 new caseloads for the June, 2005 delays
- Calendar year 2009 new caseloads for the March, 2010 delays
- 2009/10 new caseloads for the September, 2010 delays
- Calendar year 2010 new caseloads for the March, 2011 delays
- 2010/11 new caseloads for the September, 2011 delays
- Calendar year 2011 new caseloads for the March, 2012 delays
- 2011/12 new caseloads for the September, 2012 delays
- Calendar year 2012 new caseloads for the March, 2013 delays

Figure 8.1 sets out wait times for locations with the longest scheduling delay for **Civil Two Day Trials.**

Figure 8.1



Data Source: Judicial (Quarterly) Next Available Date Surveys.

There can be no comparison of Figure 8.1 to previous data because this report is new as of this update.

The Law Society of British Columbia

Memo

To Benchers
From Deb Armour
Date October 11, 2013
Subject Chief Legal Officer Conference Report

This memo reports on the 2013 International Conference of Legal Regulators and the 2013 Discipline Administrators' Conference.

International Conference of Legal Regulators

Last year at this time I reported on the first ever International Conference of Legal Regulators which took place in London. That event brought together from all over the world representatives with responsibility for regulatory functions allowing for the sharing of best practices and the building of relationships. Given the success of that conference, it was decided that it should become an annual event.

This year's conference was held in San Francisco. Approximately 60 people attended from the US, UK, Ireland, Denmark, Japan, Hong Kong, Singapore, Australia, New Zealand, the Federation of Law Societies of Canada, Ontario, Nova Scotia, Newfoundland and Alberta.

The program sessions included:

- Powers needed to be an effective regulator
- Risk-based regulation
- The role of intelligence and investigation in legal regulation
- Keeping lawyers equipped for practice (CLE).

There was also a very interesting presentation given by the 2 Nova Scotia representatives on the new program in NS which diverts from the disciplinary stream, some lawyers who are suffering from mental health or addiction issues to focus on remedial approaches and steps that can be taken to protect the public short of discipline. We also had a presentation on the lawyer discipline process in California where all hearings take place in front of state court judges.

I presented with my counterpart from Washington, DC on ways in which regulators can cooperate with one another and promote consistency among jurisdictions including sharing of information at the investigation and discipline stages, cooperation in investigations, recognition of other regulators' disciplinary results, common standards for conduct and common standards for discipline processes. In preparing for that presentation it became evident that a number of

regulators including legal regulators practice cooperation in ways in which we currently do not in Canada. We have just formed a working group at the Discipline Administrators level to develop proposals to the Federation on how Canadian law societies might enhance cooperation on the regulatory front.

2013 Discipline Administrators' Conference

Each year, the Discipline Administrators' Conference (DAC) is held under the auspices of the Federation. Senior staff involved in the various discipline functions at each of the Canadian law societies attend. This year, DAC was held in Ottawa. Michael Lucas, Sherelle Goodwin, Howie Caldwell, Jaia Rai, Katherine Crosbie and I attended from our law society.

In addition to the roundtable which highlights developments in each of the jurisdictions, sessions included:

- Adam Dodek on regulating law firms
- The Chief Adjudicator, Indian Residential Schools Assessment Process
- Wellness of regulators
- A toolbox for judicial reviews – Jaia Rai was one of the presenters
- Freeman on the Land movement – Sherelle Goodwin was one of the presenters
- Law Office Search and Seizure – Mike Lucas was one of the presenters
- Management of complainant expectations.

My counterparts from each of the law societies (DAC Steering Committee) met for half a day in advance of the main conference. We covered such matters as:

- Progress on the National Discipline Standards
- Implementation of the Codes of Conduct across the country
- Regulation of law firms
- The review that is taking place in Nova Scotia on their regulatory model
- Sharing of information among regulators.

The DAC Steering Committee also meets approximately 3 times a year by conference call. I will be Chair of the Steering Committee for the upcoming year.

In addition to the annual DAC and quarterly Steering Committee meetings, the broader discipline administrators group communicates on an ad hoc basis by email (sometimes several times a week) sharing information and ideas.

I am happy to answer questions about any of the above.

McEwan & Co. Law CORPORATION

L.J. Bridgeman*
P. Somerville*
K.M. Wyllie*
C. McEwan*
J. Gelber*
M. Lawson

Trail • Castlegar • Grand Forks

October 15, 2013

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

Attention: Mr. Art Vertlieb, QC and Mr. Timothy McGee

Re: The Rural Education and Access to Lawyers Initiative (REAL)

I am writing to briefly outline my experience with the REAL Initiative and its impact on the early stages of my legal career.

In 2010 I began a Law Degree at the University of Otago in New Zealand. At the end of my second year, I was offered a summer position with McEwan & Co. Law Corporation, a Firm based in the hometown I had left ten years prior, to offer me the opportunity to return to the rural community, build lasting relationships with local members of the profession, and gain valuable legal experience as part of the REAL initiative. This was an extremely successful experience. I returned to McEwan Law the following summer and was subsequently offered an articling position, which I have accepted despite having several opportunities to work in larger centers including Auckland, Wellington, and Vancouver.

The opportunity to gain practical experience as early as the end of second year was invaluable. Among many other benefits, REAL allowed me to return to Law School and choose courses with confidence that they would be utilized for my future legal practice. The opportunity also allowed me to experience the benefits of practicing in a rural environment. For example, the mentorship that has been afforded to me from this smaller firm which specializes in a wide range of areas of law has provided me with an exceptional foundation to begin my legal career. I have received one-on-one guidance which has allowed me to gain confidence in completing tasks for clients, and I have been afforded far more opportunity to engage with the practice of law than have been afforded to my peers who have accepted positions with larger firms.

I want to take this opportunity to thank the Law Society of British Columbia for continuing to support this important initiative.

Yours truly,

Elsa Wyllie

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